

STATE OF NEW YORK

1471

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

Introduced by M. of A. PERRY, TAYLOR, EPSTEIN, DICKENS, L. ROSENTHAL,
GOTTFRIED, CAHILL -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to justification for the use
of deadly physical force by a police or peace officer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "New York
police use of deadly force restraint act".

§ 2. Subdivision 1 of section 35.30 of the penal law, as added by
chapter 73 of the laws of 1968, the opening paragraph as amended by
chapter 511 of the laws of 2004, and paragraph (c) as amended by chapter
843 of the laws of 1980, is amended and a new subdivision 1-a is added
to read as follows:

1. A police officer or a peace officer, in the course of effecting or
attempting to effect an arrest, or of preventing or attempting to
prevent the escape from custody, of a person whom he or she reasonably
believes to have committed an offense, may use physical force when and
to the extent he or she reasonably believes such to be necessary to
effect the arrest, or to prevent the escape from custody, or in self-de-
fense or to defend a third person from what he or she reasonably
believes to be the use or imminent use of physical force; except that
deadly physical force may be used for such purposes only when he or she
reasonably believes that:

(a) The offense committed by such person was[+
~~(i) a felony or an attempt to commit a felony involving the use or
attempted use or threatened imminent use of physical force against a
person; or~~

~~(ii) kidnapping, arson, escape in the first degree, burglary in the
first degree or any attempt to commit such a crime]~~ a felony that
threatened or resulted in death or serious bodily injury, if the officer
reasonably believes that the person will cause death or serious bodily

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD03710-01-1

1 injury to another person unless immediately apprehended. Where feasible,
2 a police officer or peace officer shall, prior to the use of force,
3 make reasonable efforts to identify himself or herself as a police offi-
4 cer or peace officer and to warn that deadly force may be used, unless
5 the officer has objectively reasonable grounds to believe such person is
6 aware of those facts; or

7 (b) [~~The offense committed or attempted by such person was a felony~~
8 ~~and that, in the course of resisting arrest therefor or attempting to~~
9 ~~escape from custody, such person is armed with a firearm or deadly weap-~~
10 ~~on; or~~

11 ~~(c)]~~ Regardless of the particular offense which is the subject of the
12 arrest or attempted escape, the use of deadly physical force is neces-
13 sary to defend the police officer or peace officer or another person
14 from what the officer reasonably believes to be the use or imminent use
15 of deadly physical force.

16 1-a. A police officer or peace officer shall not use deadly force
17 against a person based on the danger that such person poses to himself
18 or herself, if an objectively reasonable officer would believe the
19 person does not pose an imminent threat of death or serious bodily inju-
20 ry to the police officer, peace officer or to another person.

21 § 3. This act shall take effect immediately.