

STATE OF NEW YORK

7283--A

2021-2022 Regular Sessions

IN ASSEMBLY

May 3, 2021

Introduced by M. of A. PERRY -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law and the labor law, in relation to enacting "Cariol's Law"

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

1 Section 1. This act shall be known and may be cited as "Cariol's law"
2 or "duty to intervene".

3 § 2. The executive law is amended by adding a new section 839-a to
4 read as follows:

5 § 839-a. Excessive use of force; duty to intervene. 1. Definitions.
6 For the purposes of this section, the following terms shall have the
7 following meanings:

8 (a) "police officer" shall have the same meaning as provided for in
9 subdivision thirty-four of section 1.20 of the criminal procedure law;

10 (b) "use of force" shall include, but shall not be limited to:

11 (i) brandishing, pointing, using or discharging a firearm at or in the
12 direction of another person;

13 (ii) using a chokehold or similar restraint that applies pressure to
14 the throat or windpipe of a person in a manner that may hinder breathing
15 or reduce intake of air;

16 (iii) displaying, using or deploying a chemical agent, including, but
17 not limited to, oleoresin capsicum, pepper spray or tear gas;

18 (iv) brandishing, using or deploying an impact weapon, including, but
19 not limited to, a baton or billy club;

20 (v) brandishing, using or deploying an electronic control weapon,
21 including, but not limited to, an electronic stun gun, flash bomb or
22 long-range acoustic device; or

23 (vi) engaging in conduct which results in the death or serious bodily
24 injury of another person.

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

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1 (c) "objectively reasonable" shall mean a standard used to judge a
2 police officer's use of force which are reasonable based on the totality
3 of the circumstances known to such officer at the time of such use of
4 force;

5 (d) "physical injury" shall have the same meaning as provided for in
6 subdivision nine of section 10.00 of the penal law; and

7 (e) "serious physical injury" shall have the same meaning as provided
8 for in subdivision ten of section 10.00 of the penal law.

9 2. Duty to intervene. An on-duty police officer who is present and
10 observes another police officer using physical force that he or she
11 reasonably believes to be clearly excessive or beyond that which is
12 objectively reasonable under the circumstances, shall be required, when
13 such officer has a realistic opportunity to do so safely, to intervene
14 to prevent the use of such excessive force.

15 3. Failure to intervene. (a) A police officer who fails to intervene
16 when appropriate may:

17 (i) be held criminally liable for any offense under the penal law for
18 which failure to intervene satisfies every element of such offense, or
19 for any offense resulting from such officer's failure to intervene;

20 (ii) be subject to termination by his or her employer if such officer:

21 (1) had a realistic opportunity to intervene safely;

22 (2) acted while purporting or pretending to act within the scope and
23 performance of his or her official duties; and

24 (3) deprived an individual of rights, privileges, or immunities
25 secured by the Constitution or the laws of the United States.

26 (iii) be held civilly liable to any aggrieved party when such officer
27 observes or has reason to know that:

28 (1) excessive force is being used;

29 (2) an individual has been unjustifiably arrested; or

30 (3) any constitutional violation has been committed by a fellow offi-
31 cer.

32 (b) When a police officer fails to intervene in an incident which
33 results in death or serious physical injury, such incident shall be
34 referred to the district attorney.

35 (c) The commissioner shall authorize an investigation of any allega-
36 tions of a police officer's failure to intervene. Such officer may be
37 placed on administrative leave during the period of such investigation.
38 Any final disciplinary action shall be subject to arbitration pursuant
39 to article seventy-five of the civil practice law and rules.

40 (d) Police officers who falsely report incidents of inappropriate or
41 excessive use of force by a fellow police officer may be subject to
42 criminal liability pursuant to section 240.60 of the penal law.

43 4. Liability. Notwithstanding any provision of law to the contrary,
44 any police officer found to be civilly liable for excessive force shall
45 be liable for any judgments made against the municipality, state agency
46 or public authority if such judgment is directly connected to such offi-
47 cer's use of excessive force.

48 5. Reporting. Upon a police officer's observation of the use of phys-
49 ical force by another police officer who he or she reasonably believes
50 to be clearly excessive or beyond that which is objectively reasonable
51 under the circumstances, such officer shall file a formal complaint with
52 the chief of his or her police department, the county sheriff or the
53 superintendent of the state police. Reporting requirements shall apply
54 whether the use of physical force occurred while the offending officer
55 was on or off-duty. Failure to report shall be grounds for discipline,
56 including termination.

1 6. Retroactive protection for intervening officers. Any police officer
 2 terminated for reporting the use of physical force by another police
 3 officer who he or she reasonably believes to be clearly excessive or
 4 beyond that which is objectively reasonable under the circumstances,
 5 within the twenty year period prior to the effective date of this
 6 section, may have such termination reviewed.

7 § 3. Subdivision 2 of section 740 of the labor law, as added by chap-
 8 ter 660 of the laws of 1984, paragraph (a) as amended by chapter 442 of
 9 the laws of 2006, is amended to read as follows:

10 2. Prohibitions. An employer shall not take any retaliatory personnel
 11 action against an employee because such employee does any of the follow-
 12 ing:

13 (a) discloses, or threatens to disclose to a supervisor or to a public
 14 body an activity, policy or practice of the employer that is in
 15 violation of law, rule or regulation which violation creates and
 16 presents a substantial and specific danger to the public health or safe-
 17 ty, or which constitutes health care fraud;

18 (b) provides information to, or testifies before, any public body
 19 conducting an investigation, hearing or inquiry into any such violation
 20 of a law, rule or regulation by such employer; [~~or~~]

21 (c) objects to, or refuses to participate in any such activity, policy
 22 or practice in violation of a law, rule or regulation[~~+~~]; or

23 (d) if such employee is a police officer, as such term is defined in
 24 subdivision thirty-four of section 1.20 of the criminal procedure law,
 25 observes any police officer using physical force against an individual
 26 that he or she reasonably believes to be clearly excessive or beyond
 27 that which is objectively reasonable under the circumstances and such
 28 police officer intervenes.

29 § 4. This act shall take effect immediately.