

STATE OF NEW YORK

7835

2021-2022 Regular Sessions

IN ASSEMBLY

May 25, 2021

Introduced by M. of A. PERRY, FERNANDEZ, CRUZ, MEEKS -- (at request of the Attorney General) -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to justifying the use of force by police officers and peace officers and to the excessive use of police force

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

1 Section 1. Section 35.30 of the penal law, as added by chapter 73 of
2 the laws of 1968, the opening paragraph of subdivision 1, subdivisions 2
3 and 3, the opening paragraph and paragraph (a) of subdivision 4 and
4 subdivision 5 as amended by chapter 511 of the laws of 2004, paragraph
5 (c) of subdivision 1 as amended by chapter 843 of the laws of 1980, and
6 paragraph (b) of subdivision 4 as amended by chapter 264 of the laws of
7 2003, is amended to read as follows:

8 § 35.30 Justification; use of physical force in making an arrest or in
9 preventing an escape.

10 1. A police officer or a peace officer, in the course of effecting or
11 attempting to effect an arrest that the officer reasonably believes is
12 lawful, or of preventing or attempting to prevent the escape from custo-
13 dy, of a person whom he or she reasonably believes to have committed an
14 offense, may use physical force when and to the extent he or she reason-
15 ably believes such to be necessary to effect the arrest, or to prevent
16 the escape from custody, or in self-defense or to defend a third person
17 from what he or she reasonably believes to be the use or imminent use of
18 physical force; except that deadly physical force may be used for such
19 purposes only when he or she reasonably believes that:

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

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

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LBD10783-02-1

1 ~~(ii) kidnapping, arson, escape in the first degree, burglary in the~~
2 ~~first degree or any attempt to commit such a crime]~~ There is probable
3 cause to believe that the person has committed a felony involving death
4 or serious bodily injury, and the officer reasonably believes (i) such
5 person is armed with a firearm or other deadly weapon, (ii) the individ-
6 ual would cause death or serious bodily injury to another if not imme-
7 diately apprehended, (iii) that no less-lethal force alternatives or
8 non-force tactics or techniques are sufficient to subdue the person, and
9 (iv) that the officer's use of deadly force does not create a substan-
10 tial risk of serious bodily injury to any persons other than the person
11 against whom the deadly force is directed; or

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

16 ~~(c)]~~ Regardless of the particular offense which is the subject of the
17 arrest or attempted escape, the use of deadly physical force is neces-
18 sary to defend the police officer or peace officer or another person
19 from what the officer reasonably believes to be the use or imminent use
20 of deadly physical force.

21 2. For the purposes of this section, a person reasonably believes a
22 use of force is necessary when (a) he or she actually holds that belief,
23 and (b) a reasonable person under the same circumstances would hold that
24 belief.

25 3. For the purposes of this section, physical force shall be consid-
26 ered necessary when there are no reasonable alternative means to effect
27 the lawful objective and avoid the use of force or reduce the severity
28 of the force used, including the use of less-lethal force alternatives,
29 non-force tactics or techniques that are intended to stabilize the situ-
30 ation and reduce the immediacy of the threat, such as distance, cover,
31 containment, tactical repositioning, requesting additional officers, and
32 surveillance, verbal communication or de-escalation and the deployment
33 of specialized equipment or resources, such as officers trained in
34 crisis intervention, or mental health professionals. An alternative to
35 the use of physical force may be a reasonable alternative even if it
36 extends the overall duration of the interaction.

37 4. For the purposes of this section, a threat shall be considered
38 imminent when the person reasonably appears to have the present ability,
39 opportunity, and apparent intent to immediately inflict injury.

40 5. The use of any level of force by a police officer or peace officer
41 may be deemed not justified pursuant to subdivision one of this section
42 if such officer engaged in conduct that created a substantial and unjust-
43 ifiable risk that force would become necessary.

44 6. The use of any level of force by a police officer or peace officer
45 shall be presumptively not justified pursuant to subdivision one of this
46 section if applied to a person who has been rendered incapable of
47 resisting arrest.

48 7. The fact that a police officer or a peace officer is justified in
49 using deadly physical force under circumstances prescribed in [~~para-~~
50 ~~graphs (a) and (b) of]~~ subdivision one of this section does not consti-
51 tute justification for reckless conduct by such police officer or peace
52 officer amounting to an offense against or with respect to innocent
53 persons whom he or she is not seeking to arrest or retain in custody.

54 [~~3-~~] 8. A person who has been directed by a police officer or a peace
55 officer to assist such police officer or peace officer to effect an
56 arrest or to prevent an escape from custody may use physical force,

1 other than deadly physical force, when and to the extent that he or she
 2 reasonably believes such to be necessary to carry out such police offi-
 3 cer's or peace officer's direction, unless he or she knows that the
 4 arrest or prospective arrest is not or was not authorized and may use
 5 deadly physical force under such circumstances when:

6 (a) He or she reasonably believes such to be necessary for self-de-
 7 fense or to defend a third person from what he or she reasonably
 8 believes to be the use or imminent use of deadly physical force; or

9 (b) He or she is directed or authorized by such police officer or
 10 peace officer to use deadly physical force unless he or she knows that
 11 the police officer or peace officer is not authorized to use deadly
 12 physical force under the circumstances.

13 ~~[4.]~~ 9. A private person acting on his or her own account may use
 14 physical force, other than deadly physical force, upon another person
 15 when and to the extent that he or she reasonably believes such to be
 16 necessary to effect an arrest or to prevent the escape from custody of a
 17 person whom he or she reasonably believes to have committed an offense
 18 and who in fact has committed such offense; and may use deadly physical
 19 force for such purpose when he or she reasonably believes such to be
 20 necessary to[+]

21 ~~(a) Defend]~~ defend himself, herself or a third person from what he or
 22 she reasonably believes to be the use or imminent use of deadly physical
 23 force[~~, or~~

24 ~~(b) Effect the arrest of a person who has committed murder,~~
 25 ~~manslaughter in the first degree, robbery, forcible rape or forcible~~
 26 ~~criminal sexual act and who is in immediate flight therefrom].~~

27 ~~[5.]~~ 10. A guard, police officer or peace officer who is charged with
 28 the duty of guarding prisoners in a detention facility, as that term is
 29 defined in section 205.00 of this chapter, or while in transit to or
 30 from a detention facility, may use physical force when and to the extent
 31 that he or she reasonably believes such to be necessary to prevent the
 32 escape of a prisoner from a detention facility or from custody while in
 33 transit thereto or therefrom.

34 § 2. The penal law is amended by adding three new sections 120.75,
 35 120.76 and 120.77 to read as follows:

36 § 120.75 Excessive use of force by a police officer or a peace officer
 37 in the third degree.

38 A peace officer or police officer is guilty of excessive use of force
 39 by a police officer or a peace officer in the third degree when, in the
 40 course of effecting an arrest, preventing an escape from custody, or
 41 otherwise in furtherance of an authorized law enforcement objective, he
 42 or she:

43 1. intentionally uses a degree of physical force against a person that
 44 is grossly in excess of the degree of force that a reasonable person
 45 under the same circumstances would believe to be necessary to achieve
 46 the intended outcome; and

47 2. such use of physical force causes physical injury to that person or
 48 to another person.

49 Excessive use of force by a police officer or a peace officer in the
 50 third degree is a class A misdemeanor.

51 § 120.76 Excessive use of force by a police officer or a peace officer
 52 in the second degree.

53 A peace officer or police officer is guilty of excessive use of force
 54 by a police officer or a peace officer in the second degree when he or
 55 she, in the course of effecting an arrest, preventing an escape from

1 custody, or otherwise in furtherance of an authorized law enforcement
2 objective:

3 1. intentionally uses a degree of physical force against a person that
4 is grossly in excess of the degree of force that a reasonable person
5 under the same circumstances would believe to be necessary to achieve
6 the intended outcome; and

7 2. such use of physical force causes serious physical injury to that
8 person or to another person.

9 Excessive use of force by a police officer or a peace officer in the
10 second degree is a class D felony.

11 § 120.77 Excessive use of force by a police officer or a peace officer
12 in the first degree.

13 A peace officer or police officer is guilty of excessive use of force
14 by a police officer or a peace officer in the first degree when he or
15 she, in the course of effecting an arrest, preventing an escape from
16 custody, or otherwise in furtherance of an authorized law enforcement
17 objective:

18 1. intentionally uses a degree of physical force against a person that
19 is grossly in excess of the degree of force that a reasonable person
20 under the same circumstances would believe to be necessary to achieve
21 the intended outcome; and

22 2. such use of physical force causes death to that person or to anothe-
23 er person.

24 Excessive use of force by a police officer or a peace officer in the
25 first degree is a class C felony.

26 § 3. This act shall take effect immediately.