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:

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

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

1. A police officer or a peace officer, in the course of effecting or attempting to effect an arrest **that the officer reasonably believes is lawful**, 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-defense 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~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. such use of physical force causes death to that person or to another person.

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

§ 3. This act shall take effect immediately.