STATE OF NEW YORK

5416

2021-2022 Regular Sessions

IN SENATE

March 4, 2021

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the executive law, in relation to requiring the state's model law enforcement use of force policy to conform to the United Nations basic principles on the use of force and firearms by law enforcement officials and the United Nations code of conduct for law enforcement officials

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

Section 1. Subparagraphs 1, 2 and 3 of paragraph (d) of subdivision 4 of section 840 of the executive law, as added by section 1 of part ZZ of chapter 55 of the laws of 2019, are amended to read as follows:

(1) Establish and regularly update a model law enforcement use of force policy suitable for adoption by any agency that employs police or peace officers**. Such model law enforcement use of force policy shall be consistent with the United Nations basic principles on the use of force and firearms by law enforcement officials and the United Nations code of conduct for law enforcement officials, except that the council may impose further and additional restrictions on the use of force**.

(2) The model law enforcement use of force policy shall include, but is not limited to:

(i) information on current law as it relates to the use of force by police and peace officers;

(ii) guidelines regarding when use of force is permitted**, including but not limited to:**

(A) a general definition of force;

(B) a separate definition of lethal force that includes any use of firearms and other police actions likely to cause death or serious bodily harm;

(C) restrictions on the use of lethal force, which shall strictly prohibit the use of lethal force unless:

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

LBD06447-01-1

(I) an officer or a third person faces a direct threat of death or serious bodily harm;

(II) the threat faced is imminent or current; and

(III) less extreme measures such as persuasion or verbal warning would prove ineffective in neutralizing the threat to life or serious bodily harm; and

(D) prohibition on the use of lethal force to detain a fleeing felon, except when the fleeing offender offers armed resistance that represents an immediate threat to life or threat of serious bodily harm and less extreme measures would be ineffective in countering that threat;

(iii) requirements for documenting all instances of the use of lethal force, including but not limited to the reporting and investigatory procedures referenced in clause (iv) of this subparagraph and the data collection procedures referenced in clause (x) of this subparagraph;

(iv) procedures for investigating use of force incidents, which shall include:

(A) prompt reporting to an immediate superior each time an officer uses any force, followed by a timely internal investigation conducted by parties independent from the law enforcement officers involved in the incident. This internal investigation shall provide for disciplinary sanctions, including command and superior responsibility;

(B) prompt reporting to an independent and external oversight body each time an officer discharges a firearm or otherwise uses lethal force, followed by an external investigation to determine whether the use of lethal force was justified under item (C) of clause (ii) of this subparagraph. The external oversight body shall be comprised of members of the community and have immediate access to all officers and witnesses involved, as well as any reports or internal investigatory materials created as a result of the use of force incident. This external investigation shall provide for disciplinary measures, including termination, of the officers involved. Persons affected by a law enforcement official's use of lethal force shall be entitled to participate in the process; and

(C) a separate, impartial, and exhaustive official investigation where the independent and external oversight body concludes that the use of lethal force was improper, by the state and headed by the attorney general, that is initiated in a prompt and reasonable manner and is subject to public scrutiny;

(v) guidelines regarding excessive use of force including duty to intervene, reporting, and timely medical treatment for injured persons;

(vi) standards for failure to adhere to use of force guidelines;

(vii) [~~training mandates on use of force, conflict prevention, conflict resolution and negotiation, de-escalation techniques and strategies, including, but not limited to, interacting with persons presenting in an agitated condition; and~~

~~(viii) prohibited uses of force~~] guidelines regarding officers' duty to intervene when another officer's use of force is excessive, arbitrary, abusive, and otherwise outside the clear restrictions contained in the use of force policy established pursuant to this subdivision, as well as a requirement that the officer report to his or her superior when he or she has knowledge of another officer's excessive, arbitrary, or abusive use of force;

(viii) guidelines regarding the provision of timely medical treatment for all persons injured by police use of force;

(ix) resources for officers involved in use of force incidents including but not limited to stress counseling;

(x) a program to collect, store, analyze and publicize data on police actions, including all incidents involving police or peace officer use of lethal force within the state;

(xi) mandated training on the use of force, conflict prevention, conflict resolution and negotiation and de-escalation techniques and strategies, including, but not limited to, specialized training for interacting with persons in an agitated condition;

(xii) upstream preventative measures aimed at limiting police contact in situations most likely to experience excessive force. These measures may include but are not limited to reduced police stops for quality of life crimes such as vandalism, drug addiction, and public intoxication; and

(xiii) a mechanism for review and approval of any changes to police use of force policies by the external oversight body referred to in item (B) of clause (iv) of this subparagraph in consultation with members of the community and civil society.

(3) The person in charge of every local police department, local correctional facility, each county sheriff, the superintendent of the division of the state police, the commissioner of the department of corrections and community supervision, and the person in charge of every agency that employs a police or peace officer in this state shall adopt and implement a use of force policy in the agency of which they are in charge. Such use of force policy shall be consistent with the model law enforcement use of force policy established pursuant to this subdivision, except that such departments, county sheriffs, superintendent, commissioner and agencies that employ a police or peace officer may impose further and additional restrictions on the use of force, in such use of force policy or otherwise.

§ 2. This act shall take effect immediately.