

# STATE OF NEW YORK

1473

2025-2026 Regular Sessions

## IN SENATE

January 10, 2025

Introduced by Sens. BORRELLO, HELMING, OBERACKER, O'MARA, ORTT, PALUMBO, STEC -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the civil practice law and rules, in relation to the justified use of physical force

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

1 Section 1. Section 35.15 of the penal law, as added by chapter 73 of  
2 the laws of 1968, subdivisions 1 and 2 as amended by chapter 511 of the  
3 laws of 2004, paragraph (b) of subdivision 2 as amended by chapter 23 of  
4 the laws of 2024, is amended to read as follows:

5 § 35.15 Justification; use of physical force in defense of a person.

6 1. A person may, subject to the provisions of subdivision two of this  
7 section, use physical force upon another person when and to the extent  
8 [~~he or she~~] such person reasonably believes such to be necessary to  
9 defend [~~himself, herself~~] themselves or a third person from what [~~he or~~  
10 ~~she~~] such person reasonably believes to be the use or imminent use of  
11 unlawful physical force by such other person, unless:

12 (a) The latter's conduct was provoked by the actor with intent to  
13 cause physical injury to another person; or

14 (b) The actor was the initial aggressor; except that in such case the  
15 use of physical force is nevertheless justifiable if the actor has with-  
16 drawn from the encounter and effectively communicated such withdrawal to  
17 such other person but the latter persists in continuing the incident by  
18 the use or threatened imminent use of unlawful physical force; or

19 (c) The physical force involved is the product of a combat by agree-  
20 ment not specifically authorized by law.

21 2. A person may not use deadly physical force upon another person  
22 under circumstances specified in subdivision one of this section unless:

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

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1 (a) The actor reasonably believes that such other person is using or  
2 about to use deadly physical force. [~~Even in such case, however, the~~  
3 ~~actor may not use deadly physical force if he or she knows that with~~  
4 ~~complete personal safety, to oneself and others he or she may avoid the~~  
5 ~~necessity of so doing by retreating; except that the~~] The actor is under  
6 no duty to retreat if [~~he or she~~] such actor is:

7 (i) in [~~his or her~~] such actor's dwelling or any other place that such  
8 actor is lawfully permitted to be and is not the initial aggressor; or

9 (ii) a police officer or peace officer or a person assisting a police  
10 officer or a peace officer at the latter's direction, acting pursuant to  
11 section 35.30 of this article; or

12 (b) [~~He or she~~] The actor reasonably believes that such other person  
13 is committing or attempting to commit a kidnapping, forcible rape,  
14 forcible aggravated sexual abuse, a crime formerly defined in section  
15 130.50 of this chapter by force, or robbery; or

16 (c) [~~He or she~~] The actor reasonably believes that such other person  
17 is committing or attempting to commit a burglary, and the circumstances  
18 are such that the use of deadly physical force is authorized by subdivi-  
19 sion three of section 35.20 of this article.

20 § 2. Section 35.05 of the penal law is amended by adding a new subdivi-  
21 sion 3 to read as follows:

22 3. When a defendant has offered the defense of justification for the  
23 threatened or actual use of deadly force, the court shall instruct the  
24 jury that they shall not be permitted to consider the possibility of  
25 retreat as a factor in determining whether a person who threatened or  
26 used deadly force reasonably believed that the force was necessary to  
27 prevent death or serious bodily injury to such person or another.

28 § 3. Section 35.10 of the penal law is amended by adding a new subdivi-  
29 sion 7 to read as follows:

30 7. A person who is justified in threatening or using physical force  
31 against another person in defense of themselves, another person, or prop-  
32 erty pursuant to this section is immune from criminal and civil liabil-  
33 ity for any damages incurred by the aggressor pursuant to the applica-  
34 tion of reasonable physical force or threatened use of force.

35 § 4. Subdivision 1 of section 120.14 of the penal law, as amended by  
36 chapter 222 of the laws of 1994, is amended to read as follows:

37 1. [~~He or she~~] Such person intentionally places or attempts to place  
38 another person in reasonable fear of physical injury, serious physical  
39 injury or death by displaying a deadly weapon, dangerous instrument or  
40 what appears to be a pistol, revolver, rifle, shotgun, machine gun or  
41 other firearm; provided, however, that where a person is justified in  
42 the use of physical force upon another person in self-defense or defense  
43 of a third person, or in defense of premises under the provisions of  
44 article thirty-five of this chapter, such person shall not be liable  
45 under the provisions of this subdivision; or

46 § 5. Section 140.10 of the criminal procedure law is amended by adding  
47 a new subdivision 4 to read as follows:

48 4. No person shall be arrested pursuant to this section for a use of  
49 force, unless the police officer believes that there is probable cause  
50 to find that the use of force was not justifiable under article thirty-  
51 five of the penal law.

52 § 6. Section 180.10 of the criminal procedure law is amended by adding  
53 a new subdivision 8 to read as follows:

54 8. Upon arraignment, if a defendant offers the defense of justifica-  
55 tion to any allegation involving the use of physical force, including  
56 deadly physical force, the court shall dismiss the charges unless the

1 court determines by clear and convincing evidence that the use of such  
2 physical force by the defendant was not reasonable or justified.

3 § 7. Rule 3211 of the civil practice law and rules is amended by  
4 adding a new subdivision (i) to read as follows:

5 (i) (1) Motion to dismiss; use of force; justification. A party may  
6 move to dismiss a cause of action on the basis that the moving party  
7 used reasonable force under section 35.15 of the penal law. Upon filing  
8 a motion to dismiss, the court shall hold a hearing prior to trial and  
9 shall grant such motion unless the party responding to the motion proves  
10 by clear and convincing evidence that the use of force was not reason-  
11 able or justified.

12 (2) The court shall award reasonable attorney fees, court costs,  
13 compensation for any loss of income and all other expenses incurred by a  
14 person in defense of any civil action arising from the person's use of  
15 reasonable force pursuant to section 35.15 of the penal law if the court  
16 finds that the defendant's actions were justified and dismisses the case  
17 under this subdivision.

18 § 8. The civil practice law and rules is amended by adding a new  
19 section 3012-c to read as follows:

20 § 3012-c. Certificate of merit in certain actions to recover damages  
21 for personal injury, injury to property or wrongful death. (a) In any  
22 action to recover damages for personal injury, injury to property or  
23 wrongful death brought by an individual who committed a crime against  
24 the respondent, where the injuries complained of resulted from a use of  
25 physical force or deadly physical force by the respondent at the time of  
26 the commission of the crime, the complaint shall be accompanied by a  
27 certificate, signed by the attorney for the plaintiff, certifying that  
28 the attorney has reviewed the facts of the case and that, to the best of  
29 such attorney's knowledge, information and belief there is a reasonable  
30 basis for the commencement of such action and that the respondent was  
31 not justified in the use of physical force or deadly physical force  
32 against the plaintiff.

33 (b) Where a certificate is required pursuant to this section, a single  
34 certificate shall be filed for each action even if more than one defend-  
35 ant has been named in the complaint or is subsequently named.

36 (c) If the attorney for the plaintiff fails to provide the certificate  
37 as required by subdivision (a) of this section the court may dismiss the  
38 complaint or make such final or conditional order with regard to such  
39 failure as is just including but not limited to denial of the accrual of  
40 any interest, costs, attorneys' fees and other fees, relating to the  
41 underlying mortgage debt. Any such dismissal shall be without prejudice  
42 and shall not be on the merits.

43 § 9. This act shall take effect immediately; provided however, that  
44 section five of this act shall take effect upon the repeal of subdivi-  
45 sion 4 of section 140.10 of the criminal procedure law pursuant to  
46 section 59 of chapter 222 of the laws of 1994, as amended.