

Legislative Bill Drafting Commission
10783-02-1

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

PENALA* *Attorney General 5
(Relates to justifying the use of
force by police officers and peace
officers and to the excessive use of
police force)

Pen L. police use of force

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:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s15 Addabbo	s17 Felder	s07 Kaplan	s58 O'Mara	s10 Sanders
s52 Akshar	s59 Gallivan	s26 Kavanagh	s62 Ortt	s23 Savino
s36 Bailey	s05 Gaughran	s63 Kennedy	s01 Palumbo	s32 Sepulveda
s30 Benjamin	s12 Gianaris	s28 Krueger	s21 Parker	s41 Serino
s34 Biaggi	s22 Gounardes	s24 Lanza	s19 Persaud	s29 Serrano
s57 Borrello	s47 Griffo	s11 Liu	s13 Ramos	s39 Skoufis
s04 Boyle	s40 Harckham	s50 Mannion	s61 Rath	s16 Stavisky
s44 Breslin	s54 Helming	s42 Martucci	s38 Reichlin-	s45 Stec
s25 Brisport	s46 Hinchey	s02 Mattera	Melnick	s35 Stewart-
s08 Brooks	s27 Hoylman	s53 May	s48 Ritchie	Cousins
s55 Brouk	s31 Jackson	s37 Mayer	s33 Rivera	s49 Tedisco
s14 Comrie	s43 Jordan	s20 Myrie	s60 Ryan	s06 Thomas
s56 Cooney	s09 Kaminsky	s51 Oberacker	s18 Salazar	s03 Weik

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a063 Cusick	a075 Gottfried	a020 Miller, M.	a121 Salka
a092 Abinanti	a045 Cymbrowitz	a021 Griffin	a051 Mitaynes	a111 Santabarbara
a031 Anderson	a018 Darling	a100 Gunther	a015 Montesano	a090 Sayegh
a122 Angelino	a053 Davila	a139 Hawley	a145 Morinello	a099 Schmitt
a107 Ashby	a072 De La Rosa	a083 Heastie	a065 Niou	a076 Seawright
a035 Aubry	a003 DeStefano	a028 Hevesi	a037 Nolan	a084 Septimo
a120 Barclay	a070 Dickens	a128 Hunter	a144 Norris	a016 Sillitti
a030 Barnwell	a054 Dilan	a029 Hyndman	a069 O'Donnell	a052 Simon
a106 Barrett	a081 Dinowitz	a079 Jackson	a091 Otis	a114 Simpson
a060 Barron	a147 DiPietro	a104 Jacobson	a132 Palmesano	a005 Smith
a082 Benedetto	a009 Durso	a011 Jean-Pierre	a088 Paulin	a118 Smullen
a042 Bichotte	a048 Eichenstein	a134 Jensen	a141 Peoples-	a022 Solages
Hermelyn	a004 Englebright	a115 Jones	Stokes	a110 Steck
a117 Blankenbush	a074 Epstein	a077 Joyner	a058 Perry	a010 Stern
a098 Brabenc	a109 Fahy	a125 Kelles	a023 Pheffer	a127 Stirpe
a026 Braunstein	a061 Fall	a040 Kim	Amato	a102 Tague
a138 Bronson	a080 Fernandez	a105 Lalor	a086 Pichardo	a064 Tannousis
a012 Brown	a008 Fitzpatrick	a013 Lavine	a089 Pretlow	a071 Taylor
a093 Burdick	a057 Forrest	a097 Lawler	a073 Quart	a001 Thiele
a085 Burgos	a124 Friend	a126 Lemondes	a019 Ra	a033 Vanel
a142 Burke	a046 Frontus	a135 Lunsford	a038 Rajkumar	a116 Walczyk
a119 Buttenschon	a095 Galef	a123 Lupardo	a006 Ramos	a055 Walker
a094 Byrne	a050 Gallagher	a129 Magnarelli	a062 Reilly	a143 Wallace
a133 Byrnes	a131 Gallahan	a036 Mamdani	a087 Reyes	a112 Walsh
a103 Cahill	a007 Gandolfo	a130 Manktelow	a043 Richardson	a041 Weinstein
a044 Carroll	a002 Giglio, J.A.	a108 McDonald	a078 Rivera, J.	a024 Weprin
a136 Clark	a148 Giglio, J.M.	a014 McDonough	a149 Rivera, J.D.	a059 Williams
a047 Colton	a066 Glick	a146 McMahon	a068 Rodriguez	a113 Woerner
a140 Conrad	a034 Gonzalez-	a137 Meeks	a027 Rosenthal, D.	a096 Zebrowski
a032 Cook	Rojas	a017 Mikulin	a067 Rosenthal, L.	a056 Zinerman
a039 Cruz	a150 Goodell	a101 Miller, B.	a025 Rozic	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and: in Assembly 2 copies of memorandum in support, in
Senate 4 copies of memorandum in support (single house); or 4 signed copies
of bill and 6 copies of memorandum in support (uni-bill).

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

24 (ii) kidnapping, arson, escape in the first degree, burglary in the
25 first degree or any attempt to commit such a crime] There is probable
26 cause to believe that the person has committed a felony involving death
27 or serious bodily injury, and the officer reasonably believes (i) such
28 person is armed with a firearm or other deadly weapon, (ii) the individ-

1 ual would cause death or serious bodily injury to another if not imme-
2 diately apprehended, (iii) that no less-lethal force alternatives or
3 non-force tactics or techniques are sufficient to subdue the person, and
4 (iv) that the officer's use of deadly force does not create a substan-
5 tial risk of serious bodily injury to any persons other than the person
6 against whom the deadly force is directed; or

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

11 (c)] Regardless of the particular offense which is the subject of the
12 arrest or attempted escape, the use of deadly physical force is neces-
13 sary to defend the police officer or peace officer or another person
14 from what the officer reasonably believes to be the use or imminent use
15 of deadly physical force.

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

20 3. For the purposes of this section, physical force shall be consid-
21 ered necessary when there are no reasonable alternative means to effect
22 the lawful objective and avoid the use of force or reduce the severity
23 of the force used, including the use of less-lethal force alternatives,
24 non-force tactics or techniques that are intended to stabilize the situ-
25 ation and reduce the immediacy of the threat, such as distance, cover,
26 containment, tactical repositioning, requesting additional officers, and
27 surveillance, verbal communication or de-escalation and the deployment
28 of specialized equipment or resources, such as officers trained in

1 crisis intervention, or mental health professionals. An alternative to
2 the use of physical force may be a reasonable alternative even if it
3 extends the overall duration of the interaction.

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

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

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

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

21 [3.] 8. A person who has been directed by a police officer or a peace
22 officer to assist such police officer or peace officer to effect an
23 arrest or to prevent an escape from custody may use physical force,
24 other than deadly physical force, when and to the extent that he or she
25 reasonably believes such to be necessary to carry out such police offi-
26 cer's or peace officer's direction, unless he or she knows that the
27 arrest or prospective arrest is not or was not authorized and may use
28 deadly physical force under such circumstances when:

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

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

8 [4.] 9. A private person acting on his or her own account may use
9 physical force, other than deadly physical force, upon another person
10 when and to the extent that he or she reasonably believes such to be
11 necessary to effect an arrest or to prevent the escape from custody of a
12 person whom he or she reasonably believes to have committed an offense
13 and who in fact has committed such offense; and may use deadly physical
14 force for such purpose when he or she reasonably believes such to be
15 necessary to[:

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

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

22 [5.] 10. A guard, police officer or peace officer who is charged with
23 the duty of guarding prisoners in a detention facility, as that term is
24 defined in section 205.00 of this chapter, or while in transit to or
25 from a detention facility, may use physical force when and to the extent
26 that he or she reasonably believes such to be necessary to prevent the
27 escape of a prisoner from a detention facility or from custody while in
28 transit thereto or therefrom.

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

3 § 120.75 Excessive use of force by a police officer or a peace officer
4 in the third degree.

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

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

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

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

18 § 120.76 Excessive use of force by a police officer or a peace officer
19 in the second degree.

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

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

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

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

5 § 120.77 Excessive use of force by a police officer or a peace officer
6 in the first degree.

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

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

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

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

20 § 3. This act shall take effect immediately.