

Temp State Com
on Penal Law
STATE OF NEW YORK
Revised

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IN ASSEMBLY

May 25, 1965

TEN-DAY BILL

Introduced by COMMITTEE ON RULES—read once and referred
to the Committee on Rules

AN ACT

JUN 17 1965

To amend a chapter of the laws of nineteen hundred sixty-five, entitled "An act providing for the punishment of offenses, constituting chapter forty of the consolidated laws," in relation to the justifiable use of physical force in resisting an arrest by a peace officer

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

1 Section 1. Section 35.15 of a chapter of the laws of nineteen hun-
2 dred sixty-five, entitled "An act providing for the punishment of
3 offenses, constituting chapter forty of the consolidated laws," is
4 hereby amended to read as follows:

5 § 35.15 Justification; use of physical force in defense of a per-
6 son. 1. Except as provided in subdivisions two [,] and three [and
7 four] of this section, a person is justified in using physical force
8 upon another person in order to defend himself or a third person
9 from what he reasonably believes to be the use or imminent use of

EXPLANATION — Matter in *italics* is new; matter in brackets [] is old law to be omitted.

1 unlawful physical force by such other person, and he may use a
2 degree of force which he reasonably believes to be necessary for
3 such purpose; except that deadly physical force may not be used
4 unless the actor reasonably believes that such other person is (a)
5 using or about to use unlawful deadly physical force, or (b) using
6 or about to use physical force against an occupant of a dwelling
7 while committing or attempting to commit a burglary of such
8 dwelling, or (c) committing or about to commit a kidnapping, rob-
9 bery, forcible rape or forcible sodomy.

10 **[2.]** Notwithstanding the provisions of subdivision one of this
11 section, a person is not justified in using physical force to resist
12 an arrest which he knows is being made or attempted by a peace
13 officer.]

14 **[3.]** 2. Notwithstanding the provisions of subdivision one of this
15 section, a person is not justified in using deadly physical force upon
16 another person if he knows that he can avoid the necessity of using
17 such force with complete safety (a) by retreating, except that the
18 actor is not required to retreat (i) if he is in his dwelling and was
19 not the initial aggressor, or (ii) if he is a peace officer or a private
20 person assisting him at his direction, and was acting pursuant to
21 section 35.30, or (b) by surrendering possession of property to a
22 person asserting a claim of right thereto, or (c) by complying with
23 a demand that he abstain from performing an act which he is not
24 obligated to perform.

25 **[4.]** 3. Notwithstanding the provisions of subdivision one of this
26 section, a person is not justified in using physical force if (a) with
27 intent to cause physical injury or death to another person, he pro-

1 voked the use of unlawful physical force by such other person, or
2 (b) he was the initial aggressor, except that his use of physical
3 force upon another person under such circumstances is justifiable
4 if he withdraws from the encounter and effectively communicates
5 to such other person his intent to do so, but the latter notwith-
6 standing continues or threatens the use of unlawful physical force,
7 or (c) the physical force involved was the product of a combat
8 by agreement not specifically authorized by law.

9 § 2. This act shall take effect September first, nineteen hundred
10 sixty-seven.