

SCOPE members are likely concerned about the legal aspects of exercising their Second Amendment rights in the face of the recent national violence. Although SCOPE cannot give out legal advice, SCOPE wants you to be aware of the NY Penal Law regarding the use of physical force including deadly physical force.

The best legal advice in a perfect world would be the presence of a common sense District Attorney who believes in the 2nd Amendment and consultation with a 2nd Amendment defense lawyer before you use your firearm. Since the latter is generally impossible, the very least you can do is to be aware of the following Sections (S) and Short summaries from the NY State Penal Code.

*Italicized words are **NOT** from the Penal Code. Underlined words and **bolded** words are added by SCOPE.*

“Deadly physical force” means physical force which, under the circumstances in which it is used, is readily capable of causing death or serious physical injury.

The word actor in law is used to represent you.

It is important to know the definition of “premises”, as used in the penal code. See section S140.0 for that definition (below).

Actual S 140.00 Criminal trespass and burglary; definitions of terms.

The following definitions are applicable to this article: 1. "Premises" includes the term "building," as defined herein, and any real property.

The generally accepted legal definition of real property is land, and anything growing on, affixed to, or built upon land. This also includes man-made buildings as well as crops. Real property is best characterized as property that doesn't move, or that is attached to the land. This is in contrast to personal property, which can be moved or transferred physically.

Short summary of Article 35.15: Justification; use of physical force in defense of a person.

Subsection 2: A person may not use deadly physical force upon another person... unless (t)he actor reasonably believes that such other person is using or about to use deadly physical force... (T)he actor is under no duty to retreat if he or she is... in his or her dwelling and not the initial aggressor.

Actual S 35.15 Justification; use of physical force in defense of a person.

1. A person may, subject to the provisions of subdivision two, use physical force upon another person when and to the extent he or she reasonably believes such to be necessary to defend himself, herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by such other person, unless: (a) The latter's conduct was provoked by the actor with intent to cause physical injury to another person; or (b) The actor was the initial aggressor; except that in such case the use of physical force is nevertheless justifiable if the actor has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened imminent use of unlawful physical force; or (c) The physical force involved is the product of a combat by agreement not specifically authorized by law.

2. A person may not use deadly physical force upon another person under circumstances specified in subdivision one unless: (a) The actor reasonably believes that such other person is using or about to use deadly physical force. Even in such case, however, the actor may not use deadly physical force if he or she knows that with complete personal safety, to oneself and others he or she may avoid the necessity of so doing by retreating; except that the actor is under no duty to retreat if he or she is: (i) in his or her dwelling and not the initial aggressor; or (ii) a police officer or peace officer or a person assisting a police officer or a peace

officer at the latter's direction, acting pursuant to section 35.30; or (b) He or she reasonably believes that such other person is committing or attempting to commit a kidnapping, forcible rape, forcible criminal sexual act or robbery; or (c) He or she reasonably believes that such other person is committing or attempting to commit a burglary, and the circumstances are such that the use of deadly physical force is authorized by subdivision three of section 35.20.

Short summary of Article 35.20: Justification; use of physical force in defense of premises and in defense of a person in the course of burglary.

Subsection 3: A person in possession or control of, or licensed or privileged to be in, a dwelling or an occupied building, who reasonably believes that another person is committing or attempting to commit a burglary of such dwelling or building, may use deadly physical force upon such other person when he or she reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of such burglary.

Actual 35.20 Justification; use of physical force in defense of premises and in defense of a person in the course of burglary.

1. Any person may use physical force upon another person when he or she reasonably believes such to be necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission by such other person of a crime involving damage to premises. Such person may use any degree of physical force, other than deadly physical force, which he or she reasonably believes to be necessary for such purpose, and may use deadly physical force if he or she reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of arson.

2. A person in possession or control of any premises, or a person licensed or privileged to be thereon or therein, may use physical force upon another person when he or she reasonably believes such to be necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission by such other person of a criminal trespass upon such premises. Such person may use any degree of physical force, other than deadly physical force, which he or she reasonably believes to be necessary for such purpose, and may use deadly physical force in order to prevent or terminate the commission or attempted commission of arson, as prescribed in subdivision one, or in the course of a burglary or attempted burglary, as prescribed in subdivision three.

3. A person in possession or control of, or licensed or privileged to be in, a dwelling or an occupied building, who reasonably believes that another person is committing or attempting to commit a burglary of such dwelling or building, may use deadly physical force upon such other person when he or she reasonably believes such to be necessary to prevent or terminate the commission or attempted commission of such burglary.

4. As used in this section, the following terms have the following meanings: (a) The terms "premises," "building" and "dwelling" have the meanings prescribed in section 140.00.

Actual S 35.25 Justification; use of physical force to prevent or terminate larceny or criminal mischief.

A person 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 prevent or terminate what he or she reasonably believes to be the commission or attempted commission by such other person of larceny or of criminal mischief with respect to property other than premises.

Actual S 35.30.4 Justification; use of physical force in making an arrest.

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 himself, herself or a third person from what he or she reasonably believes to be the use or imminent use of deadly physical force.

If you believe you understand the above, there are other aspects of the law which you may run afoul of under an anti-2nd Amendment District Attorney. Below is one example

Actual 120.14 Menacing in the second degree.

A person is guilty of menacing in the second degree when: 1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm. **Menacing in the 2nd degree is a class A misdemeanor.**

Since the cause of our concern are “peaceful protests”, it is helpful to understand the definitions of a riot, unlawful assembly and anarchy, which might cause one to exercise their Second Amendment right

Actual S 240.05 Riot in the second degree.

A person is guilty of riot in the second degree when, simultaneously with four or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm. **Riot in the second degree is a class A misdemeanor.**

Actual S 240.06 Riot in the first degree.

A person is guilty of riot in the first degree when he: 1. Simultaneously with ten or more other persons, engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm, and in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs. **Riot in the first degree is a class E felony.**

Actual S 240.08 Inciting to riot.

A person is guilty of inciting to riot when he urges ten or more persons to engage in tumultuous and violent conduct of a kind likely to create public alarm. **Inciting to riot is a class A misdemeanor.**

Actual S 240.10 Unlawful assembly.

A person is guilty of unlawful assembly when he assembles with four or more other persons for the purpose of engaging or preparing to engage with them in tumultuous and violent conduct likely to cause public alarm, or when, being present at an assembly which either has or develops such purpose, he remains there with intent to advance that purpose.

Actual S 240.15 Criminal anarchy.

A person is guilty of criminal anarchy when (a) he advocates the overthrow of the existing form of government of this state by violence.