

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 62 & 41
94TH GENERAL ASSEMBLY

Reported from the Special Committee on General Laws April 18, 2007 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill Nos. 62 & 41 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

0149L.05C

AN ACT

To repeal sections 476.083, 571.030, 571.080, 571.090, 571.095, and 571.111, RSMo, and to enact in lieu thereof seven new sections relating to the criminal justice system, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 476.083, 571.030, 571.080, 571.090, 571.095, and 571.111, RSMo,
2 are repealed and seven new sections enacted in lieu thereof, to be known as sections 476.083,
3 563.043, 563.058, 571.030, 571.080, 571.095, and 571.111, to read as follows:

476.083. 1. In addition to any appointments made pursuant to section 485.010, RSMo,
2 the presiding judge of each circuit containing one or more facilities operated by the department
3 of corrections with an average total inmate population in all such facilities in the circuit over the
4 previous two years of more than two thousand five hundred inmates may appoint a circuit court
5 marshal to aid the presiding judge in the administration of the judicial business of the circuit by
6 overseeing the physical security of the courthouse, serving court-generated papers and orders,
7 and assisting the judges of the circuit as the presiding judge determines appropriate. Such circuit
8 court marshal appointed pursuant to the provisions of this section shall serve at the pleasure of
9 the presiding judge. The circuit court marshal authorized by this section is in addition to staff
10 support from the circuit clerks, deputy circuit clerks, division clerks, municipal clerks, and any
11 other staff personnel which may otherwise be provided by law.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 2. The salary of a circuit court marshal shall be established by the presiding judge of the
13 circuit within funds made available for that purpose, but such salary shall not exceed ninety
14 percent of the salary of the highest paid sheriff serving a county wholly or partially within that
15 circuit. Personnel authorized by this section shall be paid from state funds or federal grant
16 moneys which are available for that purpose and not from county funds.

17 3. Any person appointed as a circuit court marshal pursuant to this section shall have at
18 least five years' prior experience as a law enforcement officer. In addition, any such person shall
19 within one year after appointment, or as soon as practicable, attend a court security school or
20 training program operated by the United States Marshal Service. In addition to all other powers
21 and duties prescribed in this section, a circuit court marshal may:

22 (1) Serve process;

23 (2) Wear a concealable firearm[, pursuant to a permit granted under section 571.090,
24 RSMo]; and

25 (3) Make an arrest based upon local court rules and state law, and as directed by the
26 presiding judge of the circuit.

**563.043. 1. A person is presumed to have held a reasonable fear of imminent peril
2 of death or great bodily harm to himself or herself or another when using defensive force
3 that is intended or likely to cause death or great bodily harm to another if:**

4 **(1) The person against whom the defensive force was used was in the process of
5 unlawfully and forcefully entering or had unlawfully and forcibly entered a dwelling,
6 residence, or occupied vehicle, or if that person had removed or was attempting to remove
7 another against that person's will from the dwelling, residence, or occupied vehicle; and**

8 **(2) The person who uses defensive force knew or had reason to believe that an
9 unlawful and forcible act was occurring or had occurred.**

10 **2. The presumption set forth in subsection 1 of this section does not apply if:**

11 **(1) The person against whom the defensive force is used has the right to be in or is
12 a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, titleholder,
13 and there is not an injunction for protection from domestic violence or a written pretrial
14 supervision order of no contact against that person; or**

15 **(2) The person or persons sought to be removed is a child or grandchild, or is
16 otherwise in the lawful custody of or under the lawful guardianship of the person against
17 whom the defensive force is used; or**

18 **(3) The person who uses defensive force is engaged in an unlawful activity or is
19 using the dwelling, residence, or occupied vehicle to further an unlawful activity; or**

20 **(4) The person against whom the defensive force is used is a law enforcement
21 officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the**

22 performance of his or her official duties and the officer identified himself or herself in
23 accordance with any applicable law or the person using force knew or reasonably should
24 have known that the person entering or attempting to enter was a law enforcement officer.

25 **3. A person who is not engaged in an unlawful activity and who is attacked in any**
26 **other place where he or she has a right to be has no duty to retreat and has the right to**
27 **stand his or her ground and meet force with force if he or she reasonably believes it**
28 **necessary to do so to prevent death or great bodily harm to himself or herself or another**
29 **or to prevent the commission of a forcible felony.**

30 **4. A person who unlawfully and by force enters or attempts to enter a person's**
31 **dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to**
32 **commit an unlawful act involving force or violence.**

563.058. 1. A person who uses force as permitted in sections 563.031, 563.036,
2 **563.043, and 563.046, is justified in using such force and is immune from criminal**
3 **prosecution and civil actions for the use of such force, unless the person against whom**
4 **force was used is a law enforcement officer who was acting in the performance of his or her**
5 **official duties and the officer identified himself or herself in accordance with any**
6 **applicable law or the person using force knew or reasonably should have known that the**
7 **person was a law enforcement officer. As used in this subsection, the term "criminal**
8 **prosecution" includes arresting, detaining in custody, and charging or prosecuting the**
9 **defendant.**

10 **2. A law enforcement agency may use standard procedures for investigating the use**
11 **of force as described in subsection 1 of this section, but the agency may not arrest the**
12 **person for using force unless it determines that there is probable cause that the force that**
13 **was used was unlawful.**

14 **3. The court shall award reasonable attorney's fees and court costs, compensation**
15 **for loss of income, and all expenses incurred by the defendant in defense of any civil action**
16 **brought by a plaintiff if the court finds that the defendant is immune from prosecution as**
17 **provided in subsection 1 of this section.**

571.030. 1. A person commits the crime of unlawful use of weapons if he or she
2 **knowingly:**

3 (1) Carries concealed upon or about his or her person a knife, a firearm, a blackjack or
4 any other weapon readily capable of lethal use; or

5 (2) Sets a spring gun; or

6 (3) Discharges or shoots a firearm into a dwelling house, a railroad train, boat, aircraft,
7 or motor vehicle as defined in section 302.010, RSMo, or any building or structure used for the
8 assembling of people; or

9 (4) Exhibits, in the presence of one or more persons, any weapon readily capable of
10 lethal use in an angry or threatening manner; or

11 (5) Possesses or discharges a firearm or projectile weapon while intoxicated; or

12 (6) Discharges a firearm within one hundred yards of any occupied schoolhouse,
13 courthouse, or church building; or

14 (7) Discharges or shoots a firearm at a mark, at any object, or at random, on, along or
15 across a public highway or discharges or shoots a firearm into any outbuilding; or

16 (8) Carries a firearm or any other weapon readily capable of lethal use into any church
17 or place where people have assembled for worship, or into any election precinct on any election
18 day, or into any building owned or occupied by any agency of the federal government, state
19 government, or political subdivision thereof; or

20 (9) Discharges or shoots a firearm at or from a motor vehicle, as defined in section
21 301.010, RSMo, discharges or shoots a firearm at any person, or at any other motor vehicle, or
22 at any building or habitable structure, unless the person was lawfully acting in self-defense; or

23 (10) Carries a firearm, whether loaded or unloaded, or any other weapon readily capable
24 of lethal use into any school, onto any school bus, or onto the premises of any function or activity
25 sponsored or sanctioned by school officials or the district school board.

26 2. Subdivisions (1), (3), (4), (6), (7), (8), (9) and (10) of subsection 1 of this section shall
27 not apply to or affect any of the following:

28 (1) All state, county and municipal peace officers who have completed the training
29 required by the police officer standards and training commission pursuant to sections 590.030
30 to 590.050, RSMo, and possessing the duty and power of arrest for violation of the general
31 criminal laws of the state or for violation of ordinances of counties or municipalities of the state,
32 whether such officers are on or off duty, and whether such officers are within or outside of the
33 law enforcement agency's jurisdiction, or any person summoned by such officers to assist in
34 making arrests or preserving the peace while actually engaged in assisting such officer;

35 (2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other
36 institutions for the detention of persons accused or convicted of crime;

37 (3) Members of the armed forces or national guard while performing their official duty;

38 (4) Those persons vested by article V, section 1 of the Constitution of Missouri with the
39 judicial power of the state and those persons vested by Article III of the Constitution of the
40 United States with the judicial power of the United States, the members of the federal judiciary;

41 (5) Any person whose bona fide duty is to execute process, civil or criminal;

42 (6) Any federal probation officer **or federal flight deck officer as defined under the**
43 **federal flight deck officer program, 49 U.S.C. Section 44921;**

44 (7) Any state probation or parole officer, including supervisors and members of the
45 board of probation and parole;

46 (8) Any corporate security advisor meeting the definition and fulfilling the requirements
47 of the regulations established by the board of police commissioners under section 84.340, RSMo;
48 and

49 (9) Any coroner, deputy coroner, medical examiner, or assistant medical examiner.

50 3. Subdivisions (1), (5), (8), and (10) of subsection 1 of this section do not apply when
51 the actor is transporting such weapons in a nonfunctioning state or in an unloaded state when
52 ammunition is not readily accessible or when such weapons are not readily accessible.
53 Subdivision (1) of subsection 1 of this section does not apply to any person twenty-one years of
54 age or older transporting a concealable firearm in the passenger compartment of a motor vehicle,
55 so long as such concealable firearm is otherwise lawfully possessed, nor when the actor is also
56 in possession of an exposed firearm or projectile weapon for the lawful pursuit of game, or is in
57 his or her dwelling unit or upon premises over which the actor has possession, authority or
58 control, or is traveling in a continuous journey peaceably through this state. Subdivision (10)
59 of subsection 1 of this section does not apply if the firearm is otherwise lawfully possessed by
60 a person while traversing school premises for the purposes of transporting a student to or from
61 school, or possessed by an adult for the purposes of facilitation of a school-sanctioned
62 firearm-related event.

63 4. Subdivisions (1), (8), and (10) of subsection 1 of this section shall not apply to any
64 person who has a valid concealed carry endorsement issued pursuant to sections 571.101 to
65 571.121 or a valid permit or endorsement to carry concealed firearms issued by another state or
66 political subdivision of another state.

67 5. Subdivisions (3), (4), (5), (6), (7), (8), (9), and (10) of subsection 1 of this section shall
68 not apply to persons who are engaged in a lawful act of defense pursuant to section 563.031,
69 RSMo.

70 6. Nothing in this section shall make it unlawful for a student to actually participate in
71 school-sanctioned gun safety courses, student military or ROTC courses, or other
72 school-sponsored firearm-related events, provided the student does not carry a firearm or other
73 weapon readily capable of lethal use into any school, onto any school bus, or onto the premises
74 of any other function or activity sponsored or sanctioned by school officials or the district school
75 board.

76 7. Unlawful use of weapons is a class D felony unless committed pursuant to subdivision
77 (6), (7), or (8) of subsection 1 of this section, in which cases it is a class B misdemeanor, or
78 subdivision (5) or (10) of subsection 1 of this section, in which case it is a class A misdemeanor
79 if the firearm is unloaded and a class D felony if the firearm is loaded, or subdivision (9) of

80 subsection 1 of this section, in which case it is a class B felony, except that if the violation of
81 subdivision (9) of subsection 1 of this section results in injury or death to another person, it is
82 a class A felony.

83 8. Violations of subdivision (9) of subsection 1 of this section shall be punished as
84 follows:

85 (1) For the first violation a person shall be sentenced to the maximum authorized term
86 of imprisonment for a class B felony;

87 (2) For any violation by a prior offender as defined in section 558.016, RSMo, a person
88 shall be sentenced to the maximum authorized term of imprisonment for a class B felony without
89 the possibility of parole, probation or conditional release for a term of ten years;

90 (3) For any violation by a persistent offender as defined in section 558.016, RSMo, a
91 person shall be sentenced to the maximum authorized term of imprisonment for a class B felony
92 without the possibility of parole, probation, or conditional release;

93 (4) For any violation which results in injury or death to another person, a person shall
94 be sentenced to an authorized disposition for a class A felony.

95 9. Any person knowingly aiding or abetting any other person in the violation of
96 subdivision (9) of subsection 1 of this section shall be subject to the same penalty as that
97 prescribed by this section for violations by other persons.

571.080. 1. A person commits the crime of transfer of a concealable firearm [without
2 a permit if:

3 (1) He buys, leases, borrows, exchanges or otherwise receives any concealable firearm,
4 unless he first obtains and delivers to the person delivering the firearm a valid permit authorizing
5 the acquisition of the firearm; or

6 (2) He sells, leases, loans, exchanges, gives away or otherwise delivers any concealable
7 firearm, unless he first demands and receives from the person receiving the firearm a valid permit
8 authorizing such acquisition of the firearm.

9 2. A permit to acquire a concealable firearm shall only be valid for thirty days after the
10 issuance thereof.

11 3. Subsection 1 of this section shall not apply to the acquisition by or transfer of
12 concealable firearms among manufacturers, wholesalers or retailers of firearms for purposes of
13 commerce; nor shall it apply to antique firearms or replicas thereof; nor shall it apply to curio
14 or relic firearms as defined in section 571.010] **if such person violates 18 U.S.C. Section 922(b)**
15 **or 18 U.S.C. Section 922(x).**

16 [4.] **2. Transfer of concealable firearms [without a permit is a class A misdemeanor] is**
17 **an infraction punishable by a fine not to exceed one hundred dollars.**

571.095. Upon conviction for or attempting to commit a felony in violation of any law perpetrated in whole or in part by the use of a firearm, the court may, in addition to the penalty provided by law for such offense, order the confiscation and disposal **or sale or trade to a licensed firearms dealer** of firearms and ammunition used in the commission of the crime or found in the possession or under the immediate control of the defendant at the time of his **or her** arrest. **The proceeds of any sale or gains from trade shall be the property of the police department or sheriff's department responsible for the defendant's arrest or the confiscation of the firearms and ammunition.** If such firearms or ammunition are not the property of the convicted felon, they shall be returned to their rightful owner if he **or she** is known and was not a participant in the crime. **Any proceeds collected under this section shall be deposited with the municipality or by the county treasurer into the county sheriff's revolving fund established in section 50.535, RSMo.**

571.111. 1. An applicant for a concealed carry endorsement shall demonstrate knowledge of firearms safety training. This requirement shall be fully satisfied if the applicant for a concealed carry endorsement:

(1) Submits a photocopy of a certificate of firearms safety training course completion, as defined in subsection 2 of this section, signed by a qualified firearms safety instructor as defined in subsection 5 of this section; or

(2) Submits a photocopy of a certificate that shows the applicant completed a firearms safety course given by or under the supervision of any state, county, municipal, or federal law enforcement agency; or

(3) Is a qualified firearms safety instructor as defined in subsection 5 of this section; or

(4) Submits proof that the applicant currently holds any type of valid peace officer license issued under the requirements of chapter 590, RSMo; or

(5) Submits proof that the applicant is currently allowed to carry firearms in accordance with the certification requirements of section 217.710, RSMo; or

(6) Submits proof that the applicant is currently certified as any class of corrections officer by the Missouri department of corrections and has passed at least one eight-hour firearms training course, approved by the director of the Missouri department of corrections under the authority granted to him or her by section 217.105, RSMo, that includes instruction on the justifiable use of force as prescribed in chapter 563, RSMo.

2. A certificate of firearms safety training course completion may be issued to any applicant by any qualified firearms safety instructor. On the certificate of course completion the qualified firearms safety instructor shall affirm that the individual receiving instruction has taken and passed a firearms safety course of at least eight hours in length taught by the instructor that included:

- 25 (1) Handgun safety in the classroom, at home, on the firing range and while carrying the
26 firearm;
- 27 (2) A physical demonstration performed by the applicant that demonstrated his or her
28 ability to safely load and unload a revolver and a semiautomatic pistol and demonstrated his or
29 her marksmanship with both;
- 30 (3) The basic principles of marksmanship;
- 31 (4) Care and cleaning of concealable firearms;
- 32 (5) Safe storage of firearms at home;
- 33 (6) The requirements of this state for obtaining a certificate of qualification for a
34 concealed carry endorsement from the sheriff of the individual's county of residence and a
35 concealed carry endorsement issued by the department of revenue;
- 36 (7) The laws relating to firearms as prescribed in this chapter;
- 37 (8) The laws relating to the justifiable use of force as prescribed in chapter 563, RSMo;
- 38 (9) A live firing exercise of sufficient duration for each applicant to fire a handgun, from
39 a standing position or its equivalent, a minimum of fifty rounds at a distance of seven yards from
40 a B-27 silhouette target or an equivalent target;
- 41 (10) A live fire test administered to the applicant while the instructor was present of
42 twenty rounds from a standing position or its equivalent at a distance from a B-27 silhouette
43 target, or an equivalent target, of seven yards.
- 44 3. A qualified firearms safety instructor shall not give a grade of "passing" to an
45 applicant for a concealed carry endorsement who:
- 46 (1) Does not follow the orders of the qualified firearms instructor or cognizant range
47 officer; or
- 48 (2) Handles a firearm in a manner that, in the judgment of the qualified firearm safety
49 instructor, poses a danger to the applicant or to others; or
- 50 (3) During the live fire testing portion of the course fails to hit the silhouette portion of
51 the targets with at least fifteen rounds.
- 52 4. Qualified firearms safety instructors who provide firearms safety instruction to any
53 person who applies for a concealed carry endorsement shall:
- 54 (1) Make the applicant's course records available upon request to the sheriff of the
55 county in which the applicant resides;
- 56 (2) Maintain all course records on students for a period of no less than four years from
57 course completion date; and
- 58 (3) Not have more than forty students in the classroom portion of the course or more than
59 five students per range officer engaged in range firing.

60 5. A firearms safety instructor shall be considered to be a qualified firearms safety
61 instructor by any sheriff issuing a certificate of qualification for a concealed carry endorsement
62 pursuant to sections 571.101 to 571.121 if the instructor:

63 (1) Is a valid firearms safety instructor certified by the National Rifle Association
64 holding a rating as a personal protection instructor or pistol marksmanship instructor; or

65 (2) Submits a photocopy of a certificate from a firearms safety instructor's course offered
66 by a local, state, or federal governmental agency; or

67 (3) Submits a photocopy of a certificate from a firearms safety instructor course
68 approved by the department of public safety; or

69 (4) Has successfully completed a firearms safety instructor course given by or under the
70 supervision of any state, county, municipal, or federal law enforcement agency; or

71 (5) Is a certified police officer firearms safety instructor.

72 6. Any firearms safety instructor who knowingly provides any sheriff with false
73 information concerning an applicant's performance on the live fire exercise or test administered
74 to the applicant by the instructor pursuant to subdivision (9) or (10) of subsection 2 of this
75 section shall be guilty of a class C misdemeanor.

2 [571.090. 1. A permit to acquire a concealable firearm shall be issued
3 by the sheriff of the county in which the applicant resides, if all of the statements
4 in the application are true, and the applicant:

5 (1) Is at least twenty-one years of age, a citizen of the United States and
6 has resided in this state for at least six months;

7 (2) Has not pled guilty to or been convicted of a crime punishable by
8 imprisonment for a term exceeding one year under the laws of any state or of the
9 United States other than a crime classified as a misdemeanor under the laws of
10 any state and punishable by a term of imprisonment of two years or less that does
11 not involve an explosive weapon, firearm, firearm silencer or gas gun;

12 (3) Is not a fugitive from justice or currently charged in an information
13 or indictment with the commission of a crime punishable by imprisonment for
14 a term exceeding one year under the laws of any state or of the United States
15 other than a crime classified as a misdemeanor under the laws of any state and
16 punishable by a term of imprisonment of two years or less that does not involve
17 an explosive weapon, firearm, firearm silencer or gas gun;

18 (4) Has not been discharged under dishonorable conditions from the
19 United States armed forces;

20 (5) Is not publicly known to be habitually in an intoxicated or drugged
21 condition; and

22 (6) Is not currently adjudged mentally incompetent and has not been
23 committed to a mental health facility, as defined in section 632.005, RSMo, or
a similar institution located in another state.

2. Applications shall be made to the sheriff of the county in which the applicant resides. An application shall be filed in writing, signed and verified by the applicant, and shall state only the following: the name, Social Security number, occupation, age, height, color of eyes and hair, residence and business addresses of the applicant, the reason for desiring the permit, and whether the applicant complies with each of the requirements specified in subsection 1 of this section.

3. Before a permit is issued, the sheriff shall make only such inquiries as he deems necessary into the accuracy of the statements made in the application. The sheriff may require that the applicant display a Missouri operator's license or other suitable identification. The sheriff shall issue the permit within a period not to exceed seven days after submission of the properly completed application excluding Saturdays, Sundays or legal holidays.

The sheriff may refuse to issue the permit if he determines that any of the requirements specified in subsection 1 of this section have not been met, or if he has reason to believe that the applicant has rendered a false statement regarding any of the provisions in subsection 1 of this section. If the application is approved, the sheriff shall issue a permit and a copy thereof to the applicant.

4. The permit shall recite the date of issuance, that it is invalid after thirty days, the name and address of the person to whom granted, the nature of the transaction, and a physical description of the applicant. The applicant shall sign the permit in the presence of the sheriff.

5. If the permit is used, the person who receives the permit from the applicant shall return it to the sheriff within thirty days after its expiration, with a notation thereon showing the date and manner of disposition of the firearm and a description of the firearm including the make, model and serial number. The sheriff shall keep a record of all applications for permits, his action thereon, and shall preserve all returned permits.

6. No person shall in any manner transfer, alter or change a permit, or make a false notation thereon, or obtain a permit upon any false representation, or use, or attempt to use a permit issued to another.

7. For the processing of the permit, the sheriff in each county and the city of St. Louis shall charge a fee not to exceed ten dollars which shall be paid into the treasury of the county or city to the credit of the general revenue fund.

8. In any case when the sheriff refuses to issue or to act on an application for a permit, such refusal shall be in writing setting forth the reasons for such refusal. Such written refusal shall explain the denied applicant's right to appeal and, with a copy of the completed application, shall be given to the denied applicant within a period not to exceed seven days after submission of the properly completed application excluding Saturdays, Sundays or legal holidays. The denied applicant shall have the right to appeal the denial within ten days of receiving written notice of the denial. Such appeals shall be heard in small

claims court as defined in section 482.300, RSMo, and the provisions of sections 482.300, 482.310 and 482.335, RSMo, shall apply to such appeals.

9. A denial of or refusal to act on an application for permit may be appealed by filing with the clerk of the small claims court a copy of the sheriff's written refusal and a form substantially similar to the appeal form provided in this section. Appeal forms shall be provided by the clerk of the small claims court free of charge to any person:

SMALL CLAIMS COURT

In the Circuit Court of Missouri

Case Number

., Denied Applicant)

)

vs.

)

., Sheriff

)

Return Date

DENIAL OF PERMIT APPEAL

The denied applicant states that his properly completed application for a permit to acquire a firearm with a barrel of less than sixteen inches was denied by the sheriff of County, Missouri, without just cause. The denied applicant affirms that all of the statements in the application are true.

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Denied Applicant

10. The notice of appeal in a denial of permit appeal shall be made to the sheriff in a manner and form determined by the small claims court judge.

11. If at the hearing the person shows he is entitled to the requested permit, the court shall issue an appropriate order to cause the issuance of the permit. Costs shall not be assessed against the sheriff in any case.

12. Any person aggrieved by any final judgment rendered by a small claims court in a denial of permit appeal may have a trial de novo as provided in sections 512.180 to 512.320, RSMo.

13. Violation of any provision of this section is a class A misdemeanor.]

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