

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILLS NOS. 661, 726 & 741**  
98TH GENERAL ASSEMBLY

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 25, 2016, with recommendation that the Senate Committee Substitute do pass.

5051S.02C

ADRIANE D. CROUSE, Secretary.

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**AN ACT**

To repeal section 563.046 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 563.046 as enacted by senate bill no. 60, seventy-ninth general assembly, first regular session, RSMo, and to enact in lieu thereof two new sections relating to actions committed by government officials, with an emergency clause for a certain section and an effective date for a certain section.

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

Section A. Section 563.046 as enacted by senate bill no. 491, ninety-  
2 seventh general assembly, second regular session, and section 563.046 as enacted  
3 by senate bill no. 60, seventy-ninth general assembly, first regular session, RSMo,  
4 are repealed and two new sections enacted in lieu thereof, to be known as sections  
5 537.570 and 563.046, to read as follows:

**537.570. Every person who, under color of any statute, ordinance,  
2 regulation, custom, or usage, of the state of Missouri or any political  
3 subdivision thereof subjects, or causes to be subjected, any citizen of  
4 the United States or other person within the jurisdiction thereof to the  
5 deprivation of any rights, privileges, or immunities secured by the  
6 Missouri Constitution and laws of this state, or interferes or attempts  
7 to interfere, by threats, intimidation or coercion, with the exercise or  
8 enjoyment by any other person of rights secured by article I of the  
9 Missouri Constitution, shall be liable to the party injured in an action  
10 at law, suit in equity, or other proper proceeding for redress. A party  
11 injured by a violation of this section may bring a private civil action to  
12 enforce their rights under this section. The attorney general shall be**

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 **authorized to bring a civil action on behalf of a party injured pursuant**  
14 **to this section.**

563.046. 1. A law enforcement officer need not retreat or desist from  
2 efforts to effect the arrest, or from efforts to prevent the escape from custody, of  
3 a person he or she reasonably believes to have committed an offense because of  
4 resistance or threatened resistance of the arrestee. In addition to the use of  
5 physical force authorized under other sections of this chapter, a law enforcement  
6 officer is, subject to the provisions of subsections 2 and 3, justified in the use of  
7 such physical force as he or she reasonably believes is immediately necessary to  
8 effect the arrest or to prevent the escape from custody.

9 2. The use of any physical force in making an arrest is not justified under  
10 this section unless the arrest is lawful or the law enforcement officer reasonably  
11 believes the arrest is lawful, **and the amount of physical force used was**  
12 **objectively reasonable in light of the totality of the particular facts and**  
13 **circumstances confronting the officer on the scene, without regard to**  
14 **the officer's underlying intent or motivation.**

15 3. **In effecting an arrest or in preventing an escape from custody,**  
16 a law enforcement officer [in effecting an arrest or in preventing an escape from  
17 custody] is justified in using deadly force only:

18 (1) When deadly force is authorized under other sections of this chapter;  
19 or

20 (2) When [he or she] **the officer** reasonably believes that such use of  
21 deadly force is immediately necessary to effect the arrest **or prevent an escape**  
22 **from custody** and also reasonably believes that the person to be arrested:

23 (a) Has committed or attempted to commit a felony **offense involving**  
24 **the infliction or threatened infliction of serious physical injury;** or

25 (b) Is attempting to escape by use of a deadly weapon; or

26 (c) May otherwise endanger life or inflict serious physical injury **to the**  
27 **officer or others** unless arrested without delay.

28 4. The defendant shall have the burden of injecting the issue of  
29 justification under this section.

563.046. 1. A law enforcement officer need not retreat or desist from  
2 efforts to effect the arrest, or from efforts to prevent the escape from custody, of  
3 a person he reasonably believes to have committed an offense because of  
4 resistance or threatened resistance of the arrestee. In addition to the use of  
5 physical force authorized under other sections of this chapter, he is, subject to the

6 provisions of subsections 2 and 3, justified in the use of such physical force as he  
7 reasonably believes is immediately necessary to effect the arrest or to prevent the  
8 escape from custody.

9         2. The use of any physical force in making an arrest is not justified under  
10 this section unless the arrest is lawful or the law enforcement officer reasonably  
11 believes the arrest is lawful, **and the amount of physical force used was**  
12 **objectively reasonable in light of the totality of the particular facts and**  
13 **circumstances confronting the officer on the scene, without regard to**  
14 **the officer's underlying intent or motivation.**

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17 custody] is justified in using deadly force only:

18         (1) When such is authorized under other sections of this chapter; or

19         (2) When [he] **the officer** reasonably believes that such use of deadly  
20 force is immediately necessary to effect the arrest **or prevent an escape from**  
21 **custody** and also reasonably believes that the person to be arrested:

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23 **the infliction or threatened infliction of serious physical injury;** or

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26 **officer or others** unless arrested without delay.

27         4. The defendant shall have the burden of injecting the issue of  
28 justification under this section.

Section B. Because of the need to clarify Missouri's deadly force statute  
2 to align with supreme court precedent, the repeal and reenactment of the second  
3 occurrence of section 563.046 of this act is deemed necessary for the immediate  
4 preservation of the public health, welfare, peace and safety, and is hereby  
5 declared to be an emergency act within the meaning of the constitution, and the  
6 repeal and reenactment of the second occurrence of section 563.046 of this act  
7 shall be in full force and effect upon its passage and approval.

Section C. The repeal and reenactment of the first occurrence of section  
2 563.046 of this act shall become effective January 1, 2017.

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