

SECOND REGULAR SESSION

# SENATE BILL NO. 726

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR NASHEED.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4474S.02I

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### AN ACT

To repeal section 544.190, 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 one new section relating to the use of deadly force by law enforcement officers, with an emergency clause for certain sections 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 544.190, 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and section 563.046 as enacted by senate bill no. 60, seventy-ninth general assembly, first regular session, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 563.046, to read as follows:

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

12           3. A law enforcement officer [in effecting an arrest or in preventing an

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

13 escape from custody] is justified in using deadly force only:

14 (1) When deadly force is authorized under other sections of this chapter;

15 or

16 (2) When he or she reasonably believes that such use of deadly force is  
17 immediately necessary to effect the arrest **or prevent the escape of the**  
18 **person** and also [reasonably believes] **has probable cause to believe** that the  
19 person to be arrested:

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

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

23 (c)] May otherwise [endanger life or inflict] **pose a threat of** serious  
24 physical injury **to the officer or another person** unless arrested without  
25 delay.

26 4. The defendant shall have the burden of injecting the issue of  
27 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.

12 3. A law enforcement officer [in effecting an arrest or in preventing an  
13 escape from custody] is justified in using deadly force only:

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

15 (2) When he **or she** reasonably believes that such use of deadly force is  
16 immediately necessary to effect the arrest **or prevent the escape of the**  
17 **person** and also [reasonably believes] **has probable cause to believe** that the  
18 person to be arrested:

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

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

22 (c)] May otherwise [endanger life or inflict] **pose a threat of** serious  
23 physical injury **to the officer or another person** unless arrested without  
24 delay.

25 4. The defendant shall have the burden of injecting the issue of  
26 justification under this section.

2 [544.190. If, after notice of the intention to arrest the  
3 defendant, he either flee or forcibly resist, the officer may use all  
3 necessary means to effect the arrest.]

2 Section B. Because of the need to clarify Missouri's deadly force statute  
3 to align with supreme court precedent, the repeal of section 544.190 and the  
3 repeal and reenactment of the second occurrence of section 563.046 of this act is  
4 deemed necessary for the immediate preservation of the public health, welfare,  
5 peace and safety, and is hereby declared to be an emergency act within the  
6 meaning of the constitution, and the repeal of section 544.190 and the repeal and  
7 reenactment of the second occurrence of section 563.046 of this act shall be in full  
8 force and effect upon its passage and approval.

2 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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Bill  
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