

# SENATE BILL NO. 445

## 102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

0264S.01I

KRISTINA MARTIN, Secretary

### AN ACT

To repeal sections 544.190 and 563.046, RSMo, and to enact in lieu thereof three new sections relating to use of force by law enforcement officers, with penalty provisions.

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

Section A. Sections 544.190 and 563.046, RSMo, are  
2 repealed and three new sections enacted in lieu thereof, to be  
3 known as sections 544.190, 562.059, and 563.046, to read as  
4 follows:

544.190. [If, after notice of the intention to arrest  
2 the defendant, he either flee or forcibly resist, the]

3 1. An officer [may use all necessary means] shall not  
4 use deadly force to effect [the] an arrest unless:

5 (1) A person is displaying aggravated aggressive  
6 resistance, thereby leading the officer to an objectively  
7 reasonable belief that the person poses an imminent threat  
8 of death or serious physical injury to the officer or  
9 others, or to prevent escape of a person whom the officer  
10 has reasonable grounds to believe committed or attempted to  
11 commit a violent felony where the officer has probable cause  
12 to believe that the suspect poses a threat of immediate,  
13 serious physical injury either to the officer or others; and

14 (2) The officer first used less intrusive or  
15 physically harmful methods to control the person and such  
16 methods were ineffective or the officer reasonably  
17 determines such methods would be ineffective.

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

18           2.   (1)   Officers shall receive training on  
19 opportunities to employ tactical retreat, withdrawal, and  
20 other de-escalation techniques to increase incident  
21 resolution options and enhance officer safety; and

22           (2)   Law enforcement agencies shall publicly share use  
23 of force policies and report all instances of deadly force  
24 to the attorney general for annual publication.

25           3.   (1)   Prior to using force to effect an arrest,  
26 officers shall:

27           (a)   Identify themselves as officers before using force  
28 whenever safely possible;

29           (b)   Permit individuals the opportunity to submit to  
30 arrest before force is used whenever possible; and

31           (c)   Communicate, when possible and appropriate, to the  
32 individual and other officers that the use of the weapon is  
33 imminent in order to allow the individual an opportunity to  
34 comply; and

35           (2)   In determining whether the use of force is  
36 necessary and reasonable to effect an arrest, an officer  
37 shall consider whether a person may be noncompliant due to a  
38 medical or mental health condition, mental health crisis,  
39 physical or hearing impairment, language barrier, or drug  
40 interaction. When noncompliance appears to be due to such a  
41 condition, an officer shall be trained and required to  
42 employ de-escalation tactics and techniques.

43           4.   Use of force to effect an arrest shall be  
44 prohibited when:

45           (1)   A person is restrained, such as when handcuffed or  
46 contained in a police vehicle;

47           (2)   A person only verbally confronts an officer;

48           (3) Used as a retaliatory force against a person by an  
49 officer when use of such force is not reasonably necessary  
50 to effect the arrest;

51           (4) Used to punish a person for fleeing or otherwise  
52 resisting arrest;

53           (5) Used in response to an expression of criticism or  
54 disrespect for an officer or any other person;

55           (6) Used against a person who may be observing or  
56 recording officer behavior;

57           (7) Used to effect compliance with a command that is  
58 unlawful unless:

59           (a) Necessary to prevent imminent or ongoing injury to  
60 any person; or

61           (b) A person is refusing to get out of a law  
62 enforcement vehicle and reasonable attempts to gain  
63 voluntary compliance have failed, and a supervisor has  
64 approved the use of force to remove such person.

65           5. Immediately following any arrest which required use  
66 of force, an officer shall:

67           (1) Inspect the person for injury or complaints of  
68 pain resulting from the use of force;

69           (2) Render medical assistance, including emergency  
70 care, for any person who exhibits signs of physical  
71 distress, has sustained a visible injury, expresses a  
72 complaint of injury or continuing pain, or was rendered  
73 unconscious, including providing first aid until  
74 professional medical care providers arrive on the scene;

75           (3) Handcuff a person only when, based on the totality  
76 of the circumstances, the officer reasonably believes such  
77 person remains an imminent physical threat; and

78           (4) Ensure the person arrested is not restrained in a  
79 manner that compromises the ability for such person to  
80 breathe.

81           6. (1) If a person is killed or seriously injured by  
82 an officer during an arrest, the law enforcement agency  
83 shall provide the family of such person with all information  
84 the agency can reasonably share regarding the incident and  
85 information relating to available counseling services.

86           (2) The law enforcement agency may keep the family  
87 from the seriously injured or killed person as necessary to  
88 protect the integrity of the scene provided that the law  
89 enforcement agency gives the family the rationale for such  
90 exclusion.

91           (3) Family members shall not be restrained unless  
92 necessary to protect the integrity of the scene.

          562.059. No law enforcement officer shall be immune  
2 from civil or criminal liability while on active duty or  
3 under color of law for any incident that involves an act of  
4 excessive use of physical or deadly force to effect an  
5 arrest pursuant to sections 544.190 and 563.046.

          563.046. 1. A law enforcement officer need not  
2 retreat or desist from efforts to effect the arrest, or from  
3 efforts to prevent the escape from custody, of a person he  
4 or she reasonably believes to have committed an offense  
5 because of resistance or threatened resistance of the  
6 arrestee. In addition to the use of physical force  
7 authorized under other sections of this chapter, a law  
8 enforcement officer is, subject to **section 544.190** and the  
9 provisions of subsections 2 [and], 3, 4, and 5 of this  
10 **section**, justified in the use of such physical force as he  
11 or she reasonably believes is immediately necessary to  
12 effect the arrest or to prevent the escape from custody.

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

21           3. **The use of a choke-hold in making an arrest is not**  
22 **justified under this section.**

23           4. In effecting an arrest or in preventing an escape  
24 from custody, a law enforcement officer is justified in  
25 using deadly force only **when the law enforcement officer**  
26 **reasonably believes, based on the totality of the**  
27 **circumstances, that such force is necessary:**

28           (1) [When deadly force is authorized under other  
29 sections of this chapter] **To protect the law enforcement**  
30 **officer or another from imminent death or great bodily harm;**

31 or

32           (2) [When the officer reasonably believes that such  
33 use of deadly force is immediately necessary to effect the  
34 arrest or prevent an escape from custody and also reasonably  
35 believes that the person to be arrested:

36           (a) Has committed or attempted to commit a felony  
37 offense involving the infliction or threatened infliction of  
38 serious physical injury; or

39           (b) Is attempting to escape by use of a deadly weapon  
40 or dangerous instrument; or

41           (c) May otherwise endanger life or inflict serious  
42 physical injury to the officer or others unless arrested  
43 without delay] **To effect the arrest or capture of a person**  
44 **whom the law enforcement officer knows or has reasonable**

45 grounds to believe has committed or attempted to commit a  
46 felony offense involving the infliction or threatened  
47 infliction of serious physical injury and the officer  
48 reasonably believes that the person will cause death or  
49 great bodily harm to another person unless immediately  
50 apprehended.

51 5. A law enforcement officer shall not use deadly  
52 force against a person based on the danger the person poses  
53 to the law enforcement officer if an objectively reasonable  
54 law enforcement officer would believe the person does not  
55 pose an imminent threat of death or great bodily harm to the  
56 law enforcement officer or to another person.

57 [4.] 6. The defendant shall have the burden of  
58 injecting the issue of justification under this section.

59 7. A law enforcement officer shall have the duty at  
60 any scene where physical force is being applied to either  
61 stop, or attempt to stop, another officer when force is  
62 inappropriately applied or is no longer required.

63 8. (1) A law enforcement officer who purposefully  
64 allows a fellow officer to use inappropriate or excessive  
65 force, including the use of a choke-hold, may be prosecuted  
66 for failure to intervene.

67 (2) Such failure to intervene shall be a class E  
68 felony if it is proven the defendant officer was aware of  
69 the other officer's violation and chose not to intervene.

70 9. Any law enforcement officer charged with a  
71 violation of this section shall be prohibited from being  
72 hired or employed by any law enforcement agency in the state.

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