

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE NO. 2 FOR  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NOS. 199, 417 & 42

98TH GENERAL ASSEMBLY

0972H.09C

D. ADAM CRUMBLISS, Chief Clerk

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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, and section 563.031, RSMo, and to enact in lieu thereof three new sections relating to judicial proceedings, 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-seventh general assembly, second regular session, and section 563.046 as enacted by senate bill no. 60, seventy-ninth general assembly, first regular session, and section 563.031, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 478.252, 563.031, and 563.046, to read as follows:

**478.252. 1. The circuit court of Jackson County may establish the "Armed Offender Docket Pilot Project". The armed offender docket shall have dedicated judges and other personnel for all matters of hearing, setting of bail or other pretrial matters, trial, sentencing, and supervision of the accused or convicted in all actions in which the lead charge has been brought under subdivision (2) of subsection 1 of section 569.020 prior to December 31, 2016, or, beginning January 1, 2017, subdivision (1) of subsection 1 of section 569.160, subdivision (2) of subsection 1 of section 570.023, 571.015, subdivisions (1), (2), (3), or (6) of subsection 1 of section 571.020, 571.030, 571.045, 571.050, subdivision (1) of subsection 1 of section 571.060, 571.063, 571.070, 571.072, or 571.150. For purposes of**

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.

10 this section, a "lead charge" means the highest grade of a charge against a defendant.  
11 Charges tried by the docket shall arise from lead charges brought on or after the effective  
12 date of the creation of the docket.

13 2. The circuit court may impose a thirty dollar surcharge for each criminal case  
14 assigned to the armed offender docket. Moneys from such surcharge shall be collected in  
15 the manner provided in sections 488.010 to 488.020 and shall be used solely to defray the  
16 costs of prosecution, pretrial supervision, and statistical analysis of such cases. No such  
17 surcharge shall be collected in any proceeding if the proceeding or the defendant has been  
18 dismissed by the court or if costs are to be paid by the state, county, or municipality.

19 3. The presiding judge of the circuit court, along with the prosecuting attorney and  
20 all law enforcement agencies in such circuit, shall assist in the coordinating and sharing of  
21 court and law enforcement data and information that is relevant to the operation and  
22 evaluation of the armed offender docket. Such information shall include, but not be  
23 limited to, the following:

24 (1) The number of cases in which the court ordered the defendant to be confined  
25 pretrial;

26 (2) The number of cases in which the court ordered release of the defendant  
27 pretrial;

28 (3) The range of bond amounts in cases in which the defendant was released  
29 pretrial;

30 (4) The number of cases in which the court revoked the defendant's release prior  
31 to trial;

32 (5) The number of cases dismissed by the court;

33 (6) The number of cases disposed of by plea and the range of sentences imposed in  
34 such cases;

35 (7) The number of cases resulting in jury verdicts, including acquittals;

36 (8) The number of cases resulting in a sentence of confinement and the range of  
37 sentences imposed;

38 (9) The number of cases in which the court granted probation and release after a  
39 judgment of conviction either by plea or verdict;

40 (10) The number of cases in which probation revocation was sought and is pending;

41 (11) The number of cases in which probation revocation was granted; and

42 (12) Any nonprivileged information reasonably requested by such agencies or by  
43 a research university in Missouri with an accredited program in criminology, criminal  
44 justice, public health, or social work. Any information that is protected from disclosure

45 **by a recognized privilege or statute shall be disclosed only by court order or as provided**  
46 **by statute.**

47 **4. Within six months after each anniversary of the creation of the armed offender**  
48 **docket, the circuit court shall provide and publish a public report on the operations of the**  
49 **armed offender docket during the year immediately preceding the anniversary, including**  
50 **any commentary on such operations as may be offered by a research university in**  
51 **Missouri, prosecuting attorney or public defender in such circuit, or law enforcement**  
52 **agency in such circuit.**

53 **5. The provisions of this section shall expire on December 31, 2021.**

563.031. 1. A person may, subject to the provisions of subsection 2 of this section, use  
2 physical force upon another person when and to the extent he or she reasonably believes such  
3 force to be necessary to defend himself or herself or a third person from what he or she  
4 reasonably believes to be the use or imminent use of unlawful force by such other person, unless:

5 (1) The actor was the initial aggressor; except that in such case his or her use of force  
6 is nevertheless justifiable provided:

7 (a) He or she has withdrawn from the encounter and effectively communicated such  
8 withdrawal to such other person but the latter persists in continuing the incident by the use or  
9 threatened use of unlawful force; or

10 (b) He or she is a law enforcement officer and as such is an aggressor [pursuant to]  
11 **under** section 563.046; or

12 (c) The aggressor is justified under some other provision of this chapter or other  
13 provision of law;

14 (2) Under the circumstances as the actor reasonably believes them to be, the person  
15 whom he or she seeks to protect would not be justified in using such protective force;

16 (3) The actor was attempting to commit, committing, or escaping after the commission  
17 of a forcible felony.

18 2. A person may not use deadly force upon another person under the circumstances  
19 specified in subsection 1 of this section unless:

20 (1) He or she reasonably believes that such deadly force is necessary to protect himself,  
21 or herself or her unborn child, or another against death, serious physical injury, or any forcible  
22 felony;

23 (2) Such force is used against a person who unlawfully enters, remains after unlawfully  
24 entering, or attempts to unlawfully enter a dwelling, residence, or vehicle lawfully occupied by  
25 such person; or

26 (3) Such force is used against a person who unlawfully enters, remains after unlawfully  
27 entering, or attempts to unlawfully enter private property that is owned or leased by an

28 individual, **or is occupied by an individual who has been given specific authority by the**  
29 **property owner to occupy the property**, claiming a justification of using protective force under  
30 this section.

31 3. A person does not have a duty to retreat from a dwelling, residence, or vehicle where  
32 the person is not unlawfully entering or unlawfully remaining. A person does not have a duty  
33 to retreat from private property that is owned or leased by such individual.

34 4. The justification afforded by this section extends to the use of physical restraint as  
35 protective force provided that the actor takes all reasonable measures to terminate the restraint  
36 as soon as it is reasonable to do so.

37 5. The defendant shall have the burden of injecting the issue of justification under this  
38 section. If a defendant asserts that his or her use of force is described under subdivision (2) of  
39 subsection 2 of this section, the burden shall then be on the state to prove beyond a reasonable  
40 doubt that the defendant did not reasonably believe that the use of such force was necessary to  
41 defend against what he or she reasonably believed was the use or imminent use of unlawful  
42 force.

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

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

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

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

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

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

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

23 (c) May otherwise endanger life or inflict serious physical injury **to the officer or others**

24 unless arrested without delay.

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

26 section.

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

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

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

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

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

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

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

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

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

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

5 constitution, and the repeal and reenactment of the second occurrence of section 563.046 of this  
6 act shall be in full force and effect upon its passage and approval.

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

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