

SECOND REGULAR SESSION

HOUSE BILL NO. 1110

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WOOD (Sponsor) AND MUNZLINGER (Co-sponsor).

Pre-filed December 13, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3046L.01I

AN ACT

To repeal sections 563.011, 563.031, 563.036, and 563.041, RSMo, and to enact in lieu thereof six new sections relating to the use of force.

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

Section A. Sections 563.011, 563.031, 563.036, and 563.041, RSMo, are repealed and
2 six new sections enacted in lieu thereof, to be known as sections 563.011, 563.029, 563.031,
3 563.036, 563.041, and 563.072, to read as follows:

563.011. As used in this chapter **the following terms shall mean:**

2 (1) "Deadly force" means physical force which the actor uses with the purpose of causing
3 or which he knows to create a substantial risk of causing death or serious physical injury[.];

4 (2) "Dwelling" means any building [or], inhabitable structure, [though movable or
5 temporary, or a portion thereof, which is for the time being the actor's home or place of lodging.]
6 **of any kind, including any attached porch, whether the building, inhabitable structure, or**
7 **conveyance is temporary or permanent, mobile or immobile, which has a roof over it,**
8 **including a tent, and is designed to be occupied by people lodging therein at night, together**
9 **with the curtilage of the building, inhabitable structure, or conveyance;**

10 (3) "Forcible felony" means any felony which involves the use or threat of physical
11 force or violence against any individual including but not limited to murder, robbery,
12 burglary, arson, kidnapping, assault, and any sexual offense;

13 (4) "Premises" includes any building, inhabitable structure and any real property[.

14 (4)];

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.

15 (5) "Private person" means any person other than a law enforcement officer;

16 (6) "**Residence**" means a dwelling in which a person resides either temporarily or
17 permanently or is visiting as an invited guest.

**563.029. 1. A person does not have a duty to retreat from a dwelling, residence,
2 vehicle, or place where the person has a right to be.**

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

6 **3. A person is presumed to have held a reasonable fear of imminent peril of death
7 or physical injury to himself or herself or another when using defensive force that is
8 intended or likely to cause death or physical injury to another if:**

9 **(1) The person against whom the defensive force was used had unlawfully or
10 forcibly entered or attempted to enter a dwelling, residence, or occupied vehicle, or if that
11 person had removed or attempted to remove another from the dwelling, residence, or
12 vehicle; and**

13 **(2) The person using defensive force knew or had reason to believe that an unlawful
14 or forcible entry or unlawful or forcible act had occurred.**

**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 section
11 563.046; 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
17 commission 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 he or she reasonably believes that such deadly**

20 force is necessary to protect himself **or herself** or another against [death, serious physical injury,
21 rape, sodomy or kidnapping or serious physical injury through robbery, burglary or arson] **the**
22 **other's imminent use of unlawful force or to prevent the imminent commission of a forcible**
23 **felony. A person does not have a duty to retreat if the person is in a place where he or she**
24 **has a right to be.**

25 3. The justification afforded by this section extends to the use of physical restraint as
26 protective force provided that the actor takes all reasonable measures to terminate the restraint
27 as soon as it is reasonable to do so.

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

563.036. 1. A person in possession or control of premises or a person who is licensed
2 or privileged to be thereon, may, subject to the provisions of subsection 2 of this section, use
3 physical force upon another person when and to the extent that he **or she** reasonably believes it
4 necessary to prevent or terminate what he **or she** reasonably believes to be the commission or
5 attempted commission of the crime of trespass by the other person.

6 2. A person may use deadly force under circumstances described in subsection 1 of this
7 section only:

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

9 (2) When he **or she** reasonably believes it necessary to prevent what he **or she**
10 reasonably believes to be an attempt by the trespasser to commit arson or burglary upon his **or**
11 **her** dwelling; or

12 (3) When entry into the premises is made or attempted in a violent and tumultuous
13 manner, surreptitiously, or by stealth, and he **or she** reasonably believes that the entry is
14 attempted or made for the purpose of assaulting or offering physical violence to any person or
15 being in the premises and he **or she** reasonably believes that force is necessary to prevent the
16 commission of a felony.

17 3. **A person does not have a duty to retreat if the person is in a place where he or**
18 **she has a right to be.**

19 4. The defendant shall have the burden of injecting the issue of justification under this
20 section.

563.041. 1. A person may, subject to the limitations of subsection 2, use physical force
2 upon another person when and to the extent that he **or she** reasonably believes it necessary to
3 prevent what he **or she** reasonably believes to be the commission or attempted commission by
4 such person of stealing, property damage or tampering in any degree.

5 2. A person may use deadly force under circumstances described in subsection 1 only
6 when such use of deadly force is authorized under other sections of this chapter.

7 3. The justification afforded by this section extends to the use of physical restraint as
8 protective force provided that the actor takes all reasonable measures to terminate the restraint
9 as soon as it is reasonable to do so.

10 4. **A person does not have a duty to retreat if the person is in a place where he or**
11 **she has a right to be.**

12 5. The defendant shall have the burden of injecting the issue of justification under this
13 section.

563.072. 1. A person who uses force as described in sections 563.029, 563.031,
2 **563.036, 563.041, 563.046, 563.051, 563.056, and 563.061 is justified in using such force and**
3 **is immune from criminal prosecution and civil action for the use of such force.**

4 2. A law enforcement agency may use standard procedures for investigating the use
5 of the force, but the agency may not arrest the person for using force unless it determines
6 that probable cause exists showing that the force that was used was unlawful.

7 3. The court shall award attorney's fees, court costs, compensation for loss of
8 income, and all expenses incurred by the defendant in defense of the criminal prosecution
9 if the court finds that the defendant is immune from prosecution as provided in subsection
10 1 of this section.

11 4. As used in this section the term "criminal prosecution" includes wrongfully
12 arresting, detaining in custody, and charging or prosecuting the defendant. The law
13 enforcement agency or state attorney that brought the criminal prosecution is liable to the
14 defendant for the payment of fees and costs.

15 5. The court shall award attorney's fees, court costs, compensation for loss of
16 income, and all expenses incurred by the defendant in defense of any civil action brought
17 by a plaintiff if the court finds that the defendant is immune from prosecution as provided
18 in subsection 1 of this section. The plaintiff and the plaintiff's attorney are jointly and
19 severally liable to the defendant for the payment of fees and costs.

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