

FIRST EXTRAORDINARY SESSION OF THE
SECOND REGULAR SESSION

HOUSE BILL NO. 40

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

5888H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 563.046, 590.010, 590.040, and 590.080, RSMo, and to enact in lieu thereof seven new sections relating to the use of chokeholds by law enforcement officers, with penalty provisions and an emergency clause.

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

Section A. Sections 563.046, 590.010, 590.040, and 590.080, RSMo, are repealed and
2 seven new sections enacted in lieu thereof, to be known as sections 563.046, 590.010, 590.040,
3 590.080, 590.651, 590.654, and 590.655, to read as follows:

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, **and 4 of this**
6 **section**, justified in the use of such physical force as he or she reasonably believes is immediately
7 necessary to effect the 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 the
11 particular facts and circumstances confronting the officer on the scene, without regard to the
12 officer's underlying intent or motivation.

13 3. **The use of a chokehold in making an arrest is not justified under this section.**

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.

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

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

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

20 (a) Has committed or attempted to commit a felony offense involving the infliction or
21 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-] **5.** The defendant shall have the burden of injecting the issue of justification under this
26 section.

 590.010. As used in this chapter, the following terms mean:

2 (1) **"Carotid restraint", the use of any body part or object to apply pressure to the**
3 **carotid arteries on the sides of a person's neck with the purpose, intent, or effect of**
4 **controlling or restricting the person's movement or restricting the person's blood flow. The**
5 **use of a carotid restraint shall not prevent or hinder breathing;**

6 (2) **"Chokehold", the intentional and prolonged application of force to a person's**
7 **throat or windpipe that prevents or hinders breathing or reduces the intake of air;**

8 (3) "Commission", when not obviously referring to the POST commission, means a grant
9 of authority to act as a peace officer;

10 [~~2~~] (4) "Director", the director of the Missouri department of public safety or his or
11 her designated agent or representative;

12 [~~3~~] (5) "Peace officer", a law enforcement officer of the state or any political
13 subdivision of the state with the power of arrest for a violation of the criminal code or declared
14 or deemed to be a peace officer by state statute;

15 [~~4~~] (6) "POST commission", the peace officer standards and training commission;

16 [~~5~~] (7) "Reserve peace officer", a peace officer who regularly works less than thirty
17 hours per week;

18 [~~6~~] (8) "School protection officer", an elementary or secondary school teacher or
19 administrator who has been designated as a school protection officer by a school district.

 590.040. 1. The POST commission shall set the minimum number of hours of basic
2 training for licensure as a peace officer no lower than four hundred seventy and no higher than
3 six hundred, with the following exceptions:

4 (1) Up to one thousand hours may be mandated for any class of license required for
5 commission by a state law enforcement agency;

6 (2) As few as one hundred twenty hours may be mandated for any class of license
7 restricted to commission as a reserve peace officer with police powers limited to the
8 commissioning political subdivision;

9 (3) Persons validly licensed on August 28, 2001, may retain licensure without additional
10 basic training;

11 (4) Persons licensed and commissioned within a county of the third classification before
12 July 1, 2002, may retain licensure with one hundred twenty hours of basic training if the
13 commissioning political subdivision has adopted an order or ordinance to that effect;

14 (5) Persons serving as a reserve officer on August 27, 2001, within a county of the first
15 classification or a county with a charter form of government and with more than one million
16 inhabitants on August 27, 2001, having previously completed a minimum of one hundred sixty
17 hours of training, shall be granted a license necessary to function as a reserve peace officer only
18 within such county. For the purposes of this subdivision, the term "reserve officer" shall mean
19 any person who serves in a less than full-time law enforcement capacity, with or without pay and
20 who, without certification, has no power of arrest and who, without certification, must be under
21 the direct and immediate accompaniment of a certified peace officer of the same agency at all
22 times while on duty; and

23 (6) The POST commission shall provide for the recognition of basic training received at
24 law enforcement training centers of other states, the military, the federal government and
25 territories of the United States regardless of the number of hours included in such training and
26 shall have authority to require supplemental training as a condition of eligibility for licensure.

27 2. The director shall have the authority to limit any exception provided in subsection 1
28 of this section to persons remaining in the same commission or transferring to a commission in
29 a similar jurisdiction.

30 3. The basic training of every peace officer, except agents of the conservation
31 commission, shall include at least thirty hours of training in the investigation and management of
32 cases involving domestic and family violence. Such training shall include instruction, specific to
33 domestic and family violence cases, regarding: report writing; physical abuse, sexual abuse, child
34 fatalities and child neglect; interviewing children and alleged perpetrators; the nature, extent and
35 causes of domestic and family violence; the safety of victims, other family and household members
36 and investigating officers; legal rights and remedies available to victims, including rights to
37 compensation and the enforcement of civil and criminal remedies; services available to victims and
38 their children; the effects of cultural, racial and gender bias in law enforcement; and state statutes.
39 Said curriculum shall be developed and presented in consultation with the department of health

40 and senior services, the children's division, public and private providers of programs for victims
41 of domestic and family violence, persons who have demonstrated expertise in training and
42 education concerning domestic and family violence, and the Missouri coalition against domestic
43 violence.

44 **4. The basic training of every peace officer, except agents of the conservation**
45 **commission, shall prohibit the use of chokeholds unless deadly force is lawful. Law**
46 **enforcement agencies wishing to use carotid restraints shall instruct peace officers on the**
47 **difference between carotid restraints and chokeholds.**

590.080. 1. The director shall have cause to discipline any peace officer licensee who:

2 (1) Is unable to perform the functions of a peace officer with reasonable competency or
3 reasonable safety as a result of a mental condition, including alcohol or substance abuse;

4 (2) Has committed any criminal offense, whether or not a criminal charge has been filed;

5 (3) **Has applied a chokehold within the meaning of this chapter in the course of his**
6 **or her duties as a peace officer, whether or not the application of the chokehold resulted**
7 **in serious injury or death and whether or not the licensee is criminally prosecuted;**

8 (4) Has committed any act while on active duty or under color of law that involves moral
9 turpitude or a reckless disregard for the safety of the public or any person;

10 ~~[(4)]~~ (5) Has caused a material fact to be misrepresented for the purpose of obtaining
11 or retaining a peace officer commission or any license issued pursuant to this chapter;

12 ~~[(5)]~~ (6) Has violated a condition of any order of probation lawfully issued by the
13 director; or

14 ~~[(6)]~~ (7) Has violated a provision of this chapter or a rule promulgated pursuant to this
15 chapter.

16 2. When the director has knowledge of cause to discipline a peace officer license pursuant
17 to this section, the director may cause a complaint to be filed with the administrative hearing
18 commission, which shall conduct a hearing to determine whether the director has cause for
19 discipline, and which shall issue findings of fact and conclusions of law on the matter. The
20 administrative hearing commission shall not consider the relative severity of the cause for
21 discipline or any rehabilitation of the licensee or otherwise impinge upon the discretion of the
22 director to determine appropriate discipline when cause exists pursuant to this section.

23 3. Upon a finding by the administrative hearing commission that cause to discipline exists,
24 the director shall, within thirty days, hold a hearing to determine the form of discipline to be
25 imposed and thereafter shall probate, suspend, or permanently revoke the license at issue. If the
26 licensee fails to appear at the director's hearing, this shall constitute a waiver of the right to such
27 hearing. **The director shall produce an annual public report including a list of officers from**

28 **each law enforcement agency whose licenses are on probation, suspended, or revoked and**
29 **post such report on the department's website.**

30 4. Notice of any hearing pursuant to this chapter or section may be made by certified mail
31 to the licensee's address of record pursuant to subdivision (2) of subsection 3 of section 590.130.
32 Proof of refusal of the licensee to accept delivery or the inability of postal authorities to deliver
33 such certified mail shall be evidence that required notice has been given. Notice may be given by
34 publication.

35 5. Nothing contained in this section shall prevent a licensee from informally disposing of
36 a cause for discipline with the consent of the director by voluntarily surrendering a license or by
37 voluntarily submitting to discipline.

38 6. The provisions of chapter 621 and any amendments thereto, except those provisions
39 or amendments that are in conflict with this chapter, shall apply to and govern the proceedings
40 of the administrative hearing commission and pursuant to this section the rights and duties of the
41 parties involved.

590.651. All law enforcement agencies shall prohibit the use of chokeholds. The use
2 **of chokeholds shall be defined as deadly force pursuant to section 563.011 and shall be**
3 **reported to the attorney general for publication.**

590.654. 1. Any peace officer or security guard, while in the performance of his or
2 **her official duties, who uses a chokehold and causes death to another person in**
3 **circumstances in which a reasonable person would believe the use of deadly force is not**
4 **justified shall be guilty of the offense of aggravated strangulation in the first degree. Such**
5 **offense shall be a class A felony.**

6 **2. Any peace officer who is found guilty or has entered a plea of guilty or nolo**
7 **contendere under this section shall be referred for disciplinary action pursuant to section**
8 **590.080.**

590.655. 1. Any peace officer or security guard, while in the performance of his or
2 **her official duties, who uses a chokehold and causes serious physical injury to another**
3 **person in circumstances in which a reasonable person would believe physical force is not**
4 **justified shall be guilty of the offense of aggravated strangulation in the second degree.**
5 **Such offense shall be a class B felony.**

6 **2. Any peace officer who is found guilty or has entered a plea of guilty or nolo**
7 **contendere under this section shall be referred for disciplinary action pursuant to section**
8 **590.080.**

Section B. Because immediate action is necessary to reduce the chance of serious
2 physical injury or death during certain law enforcement actions where the use of deadly force is
3 not legitimate, section A of this act is deemed necessary for the immediate preservation of the

4 public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the
5 meaning of the constitution, and section A of this act shall be in full force and effect upon its
6 passage and approval.

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