

FIRST REGULAR SESSION

# HOUSE BILL NO. 216

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HILL.

0114H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 43.540, 563.046, 590.080, 590.118, and 590.120, RSMo, and to enact in lieu thereof six new sections relating to law enforcement, with a penalty provision.

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

Section A. Sections 43.540, 563.046, 590.080, 590.118, and 590.120, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 43.540, 563.046, 590.080, 590.118, 590.120, and 590.1060, to read as follows:

43.540. 1. As used in this section, the following terms mean:

(1) "Applicant", a person who:

(a) Is actively employed by or seeks employment with a qualified entity;

(b) Is actively licensed or seeks licensure with a qualified entity;

(c) Actively volunteers or seeks to volunteer with a qualified entity; or

(d) Is actively contracted with or seeks to contract with a qualified entity;

(2) "Missouri criminal record review", a review of criminal history records and sex offender registration records pursuant to sections 589.400 to 589.425 maintained by the Missouri state highway patrol in the Missouri criminal records repository;

(3) "Missouri Rap Back program", shall include any type of automatic notification made by the Missouri state highway patrol to a qualified entity indicating that an applicant who is employed, licensed, or otherwise under the purview of that entity has been arrested for a reported criminal offense in Missouri as required under section 43.506;

(4) "National criminal record review", a review of the criminal history records maintained by the Federal Bureau of Investigation;

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.

16 (5) "National Rap Back program", shall include any type of automatic notification made  
17 by the Federal Bureau of Investigation through the Missouri state highway patrol to a qualified  
18 entity indicating that an applicant who is employed, licensed, or otherwise under the purview of  
19 that entity has been arrested for a reported criminal offense outside the state of Missouri and the  
20 fingerprints for that arrest were forwarded to the Federal Bureau of Investigation by the arresting  
21 agency;

22 (6) "Qualified entity", an entity that is:

23 (a) An office or division of state, county, or municipal government, including a political  
24 subdivision or a board or commission designated by statute or approved local ordinance, to issue  
25 or renew a license, permit, certification, or registration of authority;

26 (b) An office or division of state, county, or municipal government, including a political  
27 subdivision or a board or commission designated by statute or approved local ordinance, to make  
28 fitness determinations on applications for state, county, or municipal government employment;  
29 or

30 (c) Any entity that is authorized to obtain criminal history record information under 28  
31 CFR 20.33 **including, but not limited to, law enforcement agencies for the purpose of**  
32 **screening employees or applicants for employment.**

33 2. The central repository shall have the authority to submit applicant fingerprints to the  
34 National Rap Back program to be retained for the purpose of being searched against future  
35 submissions to the National Rap Back program, including latent fingerprint searches. Qualified  
36 entities may conduct Missouri and national criminal record reviews on applicants and participate  
37 in Missouri and National Rap Back programs for the purpose of determining suitability or fitness  
38 for a permit, license, or employment, and shall abide by the following requirements:

39 (1) The qualified entity shall register with the Missouri state highway patrol prior to  
40 submitting a request for screening under this section. As part of such registration, the qualified  
41 entity shall indicate if it chooses to enroll their applicants in the Missouri and National Rap Back  
42 programs;

43 (2) Qualified entities shall notify applicants subject to a criminal record review under  
44 this section that the applicant's fingerprints shall be retained by the state central repository and  
45 the Federal Bureau of Investigation and shall be searched against other fingerprints on file,  
46 including latent fingerprints;

47 (3) Qualified entities shall notify applicants subject to enrollment in the National Rap  
48 Back program that the applicant's fingerprints, while retained, may continue to be compared  
49 against other fingerprints submitted or retained by the Federal Bureau of Investigation, including  
50 latent fingerprints;

51 (4) The criminal record review and Rap Back process described in this section shall be  
52 voluntary and conform to the requirements established in Pub. L. 92-544 and other applicable  
53 state or federal law. As a part of the registration, the qualified entity shall agree to comply with  
54 state and federal law and shall indicate so by signing an agreement approved by the Missouri  
55 state highway patrol. The Missouri state highway patrol may periodically audit qualified entities  
56 to ensure compliance with federal law and this section;

57 (5) A qualified entity shall submit to the Missouri state highway patrol a request for  
58 screening on applicants covered under this section using a completed fingerprint card;

59 (6) Each request shall be accompanied by a reasonable fee, as provided in section  
60 43.530, plus the amount required, if any, by the Federal Bureau of Investigation for the national  
61 criminal record review and enrollment in the National Rap Back program in compliance with  
62 applicable state or federal laws;

63 (7) The Missouri state highway patrol shall provide, directly to the qualified entity, the  
64 applicant's state criminal history records that are not exempt from disclosure under chapter 610  
65 or are otherwise confidential under law;

66 (8) The national criminal history data shall be available to qualified entities to use only  
67 for the purpose of screening applicants as described under this section. The Missouri state  
68 highway patrol shall provide the applicant's national criminal history record information directly  
69 to the qualified entity;

70 (9) This section shall not require the Missouri state highway patrol to make an eligibility  
71 determination on behalf of any qualified entity;

72 (10) The qualified entity shall notify the applicant, in writing, of his or her right to obtain  
73 a copy of any criminal record review, including the criminal history records, if any, contained  
74 in the report, and of the applicant's right to challenge the accuracy and completeness of any  
75 information contained in any such report and to obtain a determination as to the validity of such  
76 challenge before a final determination regarding the applicant is made by the qualified entity  
77 reviewing the criminal history information. A qualified entity that is required by law to apply  
78 screening criteria, including any right to contest or request an exemption from disqualification,  
79 shall apply such screening criteria to the state and national criminal history record information  
80 received from the Missouri state highway patrol for those applicants subject to the required  
81 screening; and

82 (11) Failure to obtain the information authorized under this section with respect to an  
83 applicant shall not be used as evidence in any negligence action against a qualified entity. The  
84 state, any political subdivision of the state, or any agency, officer, or employee of the state or a  
85 political subdivision shall not be liable for damages for providing the information requested  
86 under this section.

87           3. The criminal record review shall include the submission of fingerprints to the  
88 Missouri state highway patrol, who shall conduct a Missouri criminal record review, including  
89 closed record information under section 610.120. The Missouri state highway patrol shall also  
90 forward a copy of the applicant's fingerprints to the Federal Bureau of Investigation for a national  
91 criminal record review.

92           4. The applicant subject to a criminal record review shall provide the following  
93 information to the qualified entity:

94           (1) Consent to obtain the applicant's fingerprints, conduct the criminal record review,  
95 and participate in the Missouri and National Rap Back programs;

96           (2) Consent to obtain the identifying information required to conduct the criminal record  
97 review, which may include, but not be limited to:

98           (a) Name;

99           (b) Date of birth;

100           (c) Height;

101           (d) Weight;

102           (e) Eye color;

103           (f) Hair color;

104           (g) Gender;

105           (h) Race;

106           (i) Place of birth;

107           (j) Social Security number; and

108           (k) The applicant's photo.

109           5. Any information received by an authorized state agency or a qualified entity pursuant  
110 to the provisions of this section shall be used solely for internal purposes in determining the  
111 suitability of an applicant. The dissemination of criminal history information from the Federal  
112 Bureau of Investigation beyond the authorized state agency or related governmental entity is  
113 prohibited. All criminal record check information shall be confidential and any person who  
114 discloses the information beyond the scope allowed is guilty of a class A misdemeanor.

115           6. A qualified entity enrolled in either the Missouri or National Rap Back programs shall  
116 be notified by the Missouri state highway patrol that a new arrest has been reported on an  
117 applicant who is employed, licensed, or otherwise under the purview of the qualified entity.  
118 Upon receiving the Rap Back notification, if the qualified entity deems that the applicant is still  
119 serving in an active capacity, the entity may request and receive the individual's updated criminal  
120 history record. This process shall only occur if:

121 (1) The agency has abided by all procedures and rules promulgated by the Missouri state  
122 highway patrol and Federal Bureau of Investigation regarding the Missouri and National Rap  
123 Back programs;

124 (2) The individual upon whom the Rap Back notification is being made has previously  
125 had a Missouri and national criminal record review completed for the qualified entity under this  
126 section within the previous six years; and

127 (3) The individual upon whom the Rap Back notification is being made is a current  
128 employee, licensee, or otherwise still actively under the purview of the qualified entity.

129 7. The highway patrol shall make available or approve the necessary forms, procedures,  
130 and agreements necessary to implement the provisions of this 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 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. In effecting an arrest or in preventing an escape from custody, a law enforcement  
14 officer is justified in using deadly force only:

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

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

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

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

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

24 4. ~~[The defendant shall have the burden of injecting the issue of justification under this~~  
25 ~~section.]~~ **(1) In effecting an arrest or in preventing an escape from custody, a law**  
26 **enforcement officer is justified in using a chokehold only when he or she reasonably**

27 **believes that it is necessary to defend himself or herself or a third person from what the**  
28 **officer believes to be the use or imminent use of deadly physical force or infliction of**  
29 **serious physical injury.**

30 **(2) For purposes of this section, "chokehold" means a physical maneuver or**  
31 **technique that restricts an individual's ability to breathe for the purpose of incapacitation.**

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 committed any act while on active duty or under color of law that involves moral  
6 turpitude or a reckless disregard for the safety of the public or any person;

7 (4) Has caused a material fact to be misrepresented for the purpose of obtaining or  
8 retaining a peace officer commission or any license issued pursuant to this chapter;

9 (5) Has violated a condition of any order of probation lawfully issued by the director;

10 or

11 (6) Has violated a provision of this chapter or a rule promulgated pursuant to this  
12 chapter.

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

21 3. Upon a finding by the ~~[administrative hearing commission]~~ **POST commission**  
22 **sustaining the director's belief** that cause to discipline exists, the director shall, within thirty  
23 days, hold a hearing to determine the form of discipline to be imposed and thereafter shall  
24 probate, suspend, or permanently revoke the license at issue. If the licensee fails to appear at the  
25 director's hearing, this shall constitute a waiver of the right to such hearing.

26 4. Notice of any hearing pursuant to this chapter or section may be made by certified  
27 mail to the licensee's address of record pursuant to subdivision (2) of subsection 3 of section  
28 590.130. Proof of refusal of the licensee to accept delivery or the inability of postal authorities  
29 to deliver such certified mail shall be evidence that required notice has been given. Notice may  
30 be given by publication.

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

34           **6. A licensee may appeal any order of probation, suspension, or license revocation**  
35 **issued under this section. The licensee shall file a notice of appeal with the administrative**  
36 **hearing commission within thirty days of the director's action or the licensee's right to**  
37 **further appeal or legal action shall be waived for failing to exhaust administrative**  
38 **remedies. Procedures governing the appeal shall be in accordance with chapter 536. If the**  
39 **administrative hearing commission determines that any disciplinary action taken by the**  
40 **director against the licensee was not supported by the evidence, the commission shall**  
41 **modify or reverse the department's action and order such relief as the commission deems**  
42 **appropriate.** The provisions of chapter 621 and any amendments thereto, except those  
43 provisions or amendments that are in conflict with this chapter, shall apply to and govern the  
44 proceedings of the administrative hearing commission and pursuant to this section the rights and  
45 duties of the parties involved.

          590.118. 1. All completed investigations of alleged acts of a peace officer shall be made  
2 available to any hiring law enforcement agency. The transfer of any law enforcement agency  
3 record to another law enforcement agency does not make the record a public record.

4           2. Any law enforcement agency with information showing a peace officer's unfitness for  
5 licensure shall provide such information to the peace officer's standards and training commission.

6           **3. Prior to offering employment to any peace officer, all law enforcement agencies**  
7 **shall be required to perform a pre-employment screening with the applicant's previous**  
8 **employers for all jobs related to law enforcement in order to determine whether the**  
9 **applicant has any history of employment-related disciplinary action.**

10          **4. Notwithstanding any other provision of law to the contrary, the state; any**  
11 **political subdivision of the state; any agency, officer, or employee of the state or political**  
12 **subdivision; or any private entity shall not be liable for damages for providing any**  
13 **information requested under this section, provided that the information is truthful and**  
14 **accurate.**

          590.120. 1. There is hereby established within the department of public safety a "Peace  
2 Officer Standards and Training Commission" which shall be composed of eleven members,  
3 including a voting public member, appointed by the governor, by and with the advice and  
4 consent of the senate, from a list of qualified candidates submitted to the governor by the director  
5 of the department of public safety. No more than two members of the POST commission shall  
6 reside in the same congressional district as any other at the time of their appointments but this  
7 provision shall not apply to the public member. Three members of the POST commission shall

8 be police chiefs, three members shall be sheriffs, one member shall represent a state law  
9 enforcement agency covered by the provisions of this chapter, two members shall be peace  
10 officers at or below the rank of sergeant employed by a political subdivision, and one member  
11 shall be a chief executive officer of a certified training academy. The public member shall be  
12 at the time of appointment a registered voter; a person who is not and never has been a member  
13 of any profession certified or regulated under this chapter or the spouse of such person; and a  
14 person who does not have and never has had a material financial interest in either the providing  
15 of the professional services regulated by this chapter, or an activity or organization directly  
16 related to any profession certified or regulated under this chapter. Each member of the POST  
17 commission shall have been at the time of his appointment a citizen of the United States and a  
18 resident of this state for a period of at least one year, and members who are peace officers shall  
19 be qualified as established by this chapter. No member of the POST commission serving a full  
20 term of three years may be reappointed to the POST commission until at least one year after the  
21 expiration of his most recent term.

22         2. Three of the original members of the POST commission shall be appointed for terms  
23 of one year, three of the original members shall be appointed for terms of two years, and three  
24 of the original members shall be appointed for terms of three years. Thereafter the terms of the  
25 members of the POST commission shall be for three years or until their successors are appointed.  
26 The director may remove any member of the POST commission for misconduct or neglect of  
27 office. Any member of the POST commission may be removed for cause by the director but  
28 such member shall first be presented with a written statement of the reasons thereof, and shall  
29 have a hearing before the POST commission if the member so requests. Any vacancy in the  
30 membership of the commission shall be filled by appointment for the unexpired term. No two  
31 members of the POST commission shall be employees of the same law enforcement agency.

32         3. Annually the director shall appoint one of the members as chairperson. The POST  
33 commission shall meet at least twice each year as determined by the director or a majority of the  
34 members to perform its duties. A majority of the members of the POST commission shall  
35 constitute a quorum.

36         4. No member of the POST commission shall receive any compensation for the  
37 performance of his official duties.

38         5. **The director shall employ staff as the director deems necessary, which may**  
39 **include part-time or full-time attorneys and additional investigators, not to exceed the**  
40 **financial limits authorized by appropriations by the general assembly.**

41         6. The POST commission shall guide and advise the director concerning duties pursuant  
42 to this chapter.



2       **590.1060. 1. A peace officer shall intervene to attempt to prevent or stop another**  
3 **peace officer from using physical force that the intervening officer reasonably believes,**  
4 **based on his or her law enforcement expertise and experience, exceeds the degree of force**  
5 **permitted under this chapter or chapter 563.**

6       **2. A peace officer who intervenes as required under subsection 1 of this section**  
7 **shall report the intervention to his or her immediate supervisor or to the person next in the**  
8 **chain of command.**

9       **3. A member of a law enforcement agency or governing body shall not discipline**  
10 **or retaliate in any way against a peace officer for intervening as required under subsection**  
11 **1 of this section, reporting unconstitutional conduct, or failing to follow a directive the**  
12 **peace officer reasonably believes is unauthorized and illegal.**

13       **4. When an internal investigation finds that a peace officer failed to intervene or**  
14 **prevent the use of unlawful physical force under this section in an incident resulting in**  
15 **serious bodily injury or death to any person, the peace officer's employer shall subject the**  
16 **peace officer to discipline, up to and including termination.**

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