



Missouri Revised Statutes

Chapter 563 - Justification

28 August, 2020



563.011. Chapter definitions. — As used in this chapter the following terms shall mean:

(1) "**Armed nuclear security guard**", a security guard who works at a nuclear power plant, who is employed as part of the security plan approved by the United States Nuclear Regulatory Commission, and who meets the requirements mandated by the United States Nuclear Regulatory Commission for carrying a firearm;

(2) "**Deadly force**", physical force which the actor uses with the purpose of causing or which he or she knows to create a substantial risk of causing death or serious physical injury;

(3) "**Dwelling**", any building, inhabitable structure, or conveyance of any kind, whether the building, inhabitable structure, or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night;

(4) "**Forcible felony**", any felony involving the use or threat of physical force or violence against any individual, including but not limited to murder, robbery, burglary, arson, kidnapping, assault, and any forcible sexual offense;

(5) "**Premises**", includes any building, inhabitable structure and any real property;

(6) "**Private person**", any person other than a law enforcement officer;

(7) "**Private property**", any real property in this state that is privately owned or leased;

(8) "**Remain after unlawfully entering**", to remain in or upon premises after unlawfully entering as defined in this section;

(9) "**Residence**", a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest;

(10) "**Structure or fenced yard**", any structure, fenced yard, wall, building, other similar barrier, or any combination of the foregoing that is located on the real property of a nuclear power plant and that is posted with signage indicating it is a felony to trespass;

(11) "**Unlawfully enter**", a person unlawfully enters in or upon premises or private property when he or she enters such premises or private property and is not licensed or privileged to do so. A person who, regardless of his or her purpose, enters in or upon private property or premises that are at the time open to the public does so with license unless he or she defies a lawful order not to enter, personally communicated to him or her by the owner of such premises or by another authorized person. A license to enter in a building that is only partly open to the public is not a license to enter in that part of the building that is not open to the public. (L. 1977 S.B. 60, A.L. 2007 S.B. 62 & 41, A.L. 2010 H.B. 1692, et al., A.L. 2018 H.B. 1797) **563.011 8/28/2018**

563.016. Civil remedies unaffected. — The fact that conduct is justified under this chapter does not abolish or impair any remedy for such conduct which is available in any civil actions.

(L. 1977 S.B. 60) Effective 1-01-79 **563.016 1/1/1979**

563.021. Execution of public duty. — 1. Unless inconsistent with the provisions of this chapter defining the justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and not criminal when such conduct is required

or authorized by a statutory provision or by a judicial decree. Among the kinds of such provisions and decrees are:

- (1) Laws defining duties and functions of public servants;
 - (2) Laws defining duties of private persons to assist public servants in the performance of their functions;
 - (3) Laws governing the execution of legal process;
 - (4) Laws governing the military services and the conduct of war;
 - (5) Judgments and orders of courts.
2. The defense of justification afforded by subsection 1 of this section applies:
- (1) When a person reasonably believes his or her conduct to be required or authorized by the judgment or directions of a competent court or tribunal or in the legal execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process;
 - (2) When a person reasonably believes his or her conduct to be required or authorized to assist a public servant in the performance of his or her duties, notwithstanding that the public servant exceeded his or her legal authority.
3. The defendant shall have the burden of injecting the issue of justification under this section.

(L. 1977 S.B. 60, A.L. 2014 S.B. 491) Effective 1-01-17 **563.021** 1/1/2017 ↑

563.026. Justification generally. — 1. Unless inconsistent with other provisions of this chapter defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute any offense other than a class A felony or murder is justifiable and not criminal when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the actor, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability of avoiding the injury outweighs the desirability of avoiding the injury sought to be prevented by the statute defining the offense charged.

2. The necessity and justifiability of conduct under subsection 1 of this section may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder. Whenever evidence relating to the defense of justification under this section is offered, the court shall rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a justification.

3. The defense of justification under this section is an affirmative defense.

(L. 1977 S.B. 60, A.L. 2014 S.B. 491) Effective 1-01-17 **563.026** 1/1/2017

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

- (1) The actor was the initial aggressor; except that in such case his or her use of force is nevertheless justifiable provided:
 - (a) He or she has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened use of unlawful force; or

(b) He or she is a law enforcement officer and as such is an aggressor pursuant to section 563.046;
or

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

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

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

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

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

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

(3) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter private property that is owned or leased by an individual, or is occupied by an individual who has been given specific authority by the property owner to occupy the property, claiming a justification of using protective force under this section.

3. A person does not have a duty to retreat:

(1) From a dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining;

(2) From private property that is owned or leased by such individual; or

(3) If the person is in any other location such person has the right to be.

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

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

(L. 1977 S.B. 60, A.L. 1993 S.B. 180, A.L. 2007 S.B. 62 & 41, A.L. 2010 H.B. 1692, et al. merged with H.B. 2081, A.L. 2016 S.B. 656)

*Effective 10-14-16, see § 21.250. S.B. 656 was vetoed June 27, 2016. The veto was overridden on September 14, 2016.

563.031 10/14/2016

563.033. Battered spouse syndrome evidence that defendant acted in self-defense or defense of another — procedure. — 1. Evidence that the actor was suffering from the battered spouse syndrome shall be admissible upon the issue of whether the actor lawfully acted in self-defense or defense of another.

2. If the defendant proposes to offer evidence of the battered spouse syndrome, he shall file written notice thereof with the court in advance of trial. Thereafter, the court, upon motion of the state, shall appoint one or more private psychiatrists or psychologists, as defined in section 632.005, or physicians with a minimum of one year training or experience in providing treatment or services to intellectually disabled or mentally ill individuals, who are neither employees nor contractors of the department of mental health for the purposes of performing the examination in question, to examine the accused, or shall direct the director of the department of mental health, or his designee, to have

the accused so examined by one or more psychiatrists or psychologists, as defined in section 632.005, or physicians with a minimum of one year training or experience in providing treatment or services to intellectually disabled or mentally ill individuals designated by the director, or his designee, for the purpose of examining the defendant. No private psychiatrist, psychologist, or physician shall be appointed by the court unless he has consented to act. The examinations ordered shall be made at such time and place and under such conditions as the court deems proper; except that if the order directs the director of the department of mental health to have the accused examined, the director, or his designee, shall determine the reasonable time, place and conditions under which the examination shall be conducted. The order may include provisions for the interview of witnesses.

3. No statement made by the accused in the course of any such examination and no information received by any physician or other person in the course thereof, whether such examination was made with or without the consent of the accused or upon his motion or upon that of others, shall be admitted in evidence against the accused on the issue of whether he committed the act charged against him in any criminal proceeding then or thereafter pending in any court, state or federal.

(L. 1987 H.B. 341, A.L. 2014 H.B. 1064) (1990) Evidence of "battered spouse syndrome" admissible in claims of self-defense does not depend on defendant's marital status. (Mo.App.E.D.) State v. Williams, 787 S.W.2d 308. (1995) Where wife looked for someone to kill her husband for over three months prior to murder, statute prohibits the battered spouse syndrome because defendant had not been able to raise the issue of self-defense. Anderson v. Goetze, 44 F.3d 675 (8th Cir.). **563.033 8/28/2014** ↑

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

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

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

4. An armed nuclear security guard may use the following levels of physical force against another person at a nuclear power plant or within a structure or fenced yard of a nuclear power plant if the armed nuclear security guard reasonably believes that such force is necessary:

(1) An armed nuclear security guard may use physical force, as he or she reasonably believes is immediately necessary, up to and including deadly physical force to:

(a) Prevent an action that would constitute murder in the first or second degree under section 565.020 or 565.021;

(b) Prevent an action that would constitute voluntary manslaughter under section 565.023;

(c) Prevent an action that would constitute assault in the first or second degree under section 565.050 or 565.052; or

(d) Defend himself, herself, or a third person from the use or imminent use of deadly physical force;

(2) An armed nuclear security guard may use physical force, as he or she reasonably believes is immediately necessary, up to but not including deadly physical force to prevent an action that would constitute:

(a) Assault in the third or fourth degree under section 565.054 or 565.056;

- (b) Kidnapping in the first, second, or third degree under section 565.110, 565.120, or 565.130;
- (c) Burglary in the first or second degree under section 569.160 or 569.170;
- (d) Arson in the first, second, or third degree under section 569.040, 569.050, or 569.053;
- (e) Property damage in the first degree under section 569.100;
- (f) Robbery in the first or second degree under section 570.023 or 570.025;
- (g) Armed criminal action under section 571.015; or
- (h) Trespass in the first degree under section 569.140;

(3) An armed nuclear security guard is justified in threatening to use physical force or deadly physical force if and to the extent a reasonable armed nuclear security guard believes it necessary to protect himself, herself, or others against another person's potential use of physical force or deadly physical force.

5. Notwithstanding any provisions of section 563.016 to the contrary, an armed nuclear security guard, employer of an armed nuclear security guard, or owner of a nuclear power plant shall not be subject to civil liability for conduct of an armed nuclear security guard that is permitted by this section.

6. **The defendant shall have the burden of injecting the issue of justification under this section.**

(L. 1977 S.B. 60, A.L. 2007 S.B. 62 & 41, A.L. 2018 H.B. 1797) **563.041 8/28/2018**

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

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

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

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

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

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

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

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

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

(L. 1977 S.B. 60, A.L. 2016 H.B. 2332) Effective 1-01-17 **563.046 1/1/2017**

563.051. Private person's use of force in making an arrest. — 1. A private person who has been directed by a person he or she reasonably believes to be a law enforcement officer to assist such

officer to effect an arrest or to prevent escape from custody may, subject to the limitations of subsection 3 of this section, use physical force when and to the extent that he or she reasonably believes such to be necessary to carry out such officer's direction unless he or she knows or believes that the arrest or prospective arrest is not or was not authorized.

2. A private person acting on his or her own account may, subject to the limitations of subsection 3 of this section, use physical force to arrest or prevent the escape of a person whom such private person reasonably believes has committed an offense, and who in fact has committed such offense, when the private person's actions are immediately necessary to arrest the offender or prevent his or her escape from custody.

3. A private person in effecting an arrest or in preventing escape from custody is justified in using deadly force only:

- (1) When deadly force is authorized under other sections of this chapter; or
- (2) When he or she reasonably believes deadly force is authorized under the circumstances and he or she is directed or authorized by a law enforcement officer to use deadly force; or
- (3) When he or she reasonably believes such use of deadly force is immediately necessary to arrest a person who at that time and in his or her presence:
 - (a) Committed or attempted to commit a class A felony or murder; or
 - (b) Is attempting to escape by use of a deadly weapon.

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

(L. 1977 S.B. 60, A.L. 2014 S.B. 491) Effective 1-01-17 **563.051 1/1/2017**

563.056. Use of force to prevent escape from confinement. — 1. A guard or other law enforcement officer may, subject to the provisions of subsection 2 of this section, use physical force when he reasonably believes such to be immediately necessary to prevent escape from confinement or in transit thereto or therefrom.

2. A guard or other law enforcement officer may use deadly force under circumstances described in subsection 1 of this section only:

- (1) When such use of deadly force is authorized under other sections of this chapter; or
- (2) When he or she reasonably believes there is a substantial risk that the escapee will endanger human life or cause serious physical injury unless the escape is prevented.

3. The defendant shall have the burden of injecting the issue of justification under this section.

(L. 1977 S.B. 60, A.L. 1983 H.B. 713 Revision, A.L. 2014 S.B. 491) Effective 1-01-17 **563.056 1/1/2017**

563.061. Use of force by persons with responsibility for care, discipline or safety of others.

— 1. The use of physical force by an actor upon another person is justifiable when the actor is a parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person or when the actor is a teacher or other person entrusted with the care and supervision of a minor for a special purpose; and

- (1) The actor reasonably believes that the force used is necessary to promote the welfare of a minor or incompetent person, or, if the actor's responsibility for the minor is for special purposes, to further that special purpose or to maintain reasonable discipline in a school, class or other group; and
- (2) The force used is not designed to cause or believed to create a substantial risk of causing death, serious physical injury, disfigurement, extreme pain or extreme emotional distress.

2. A warden or other authorized official of a jail, prison or correctional institution may, in order to maintain order and discipline, use whatever physical force, including deadly force, that is authorized by law.

3. The use of physical force by an actor upon another person is justifiable when the actor is a person responsible for the operation of or the maintenance of order in a vehicle or other carrier of passengers and the actor reasonably believes that such force is necessary to prevent interference with its operation or to maintain order in the vehicle or other carrier, except that deadly force may be used only when the actor reasonably believes it necessary to prevent death or serious physical injury.

4. The use of physical force by an actor upon another person is justified when the actor is a physician or a person assisting at his or her direction; and

(1) The force is used for the purpose of administering a medically acceptable form of treatment which the actor reasonably believes to be adapted to promoting the physical or mental health of the patient; and

(2) The treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of the parent, guardian, or other person legally competent to consent on his or her behalf, or the treatment is administered in an emergency when the actor reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

5. The use of physical force by an actor upon another person is justifiable when the actor acts under the reasonable belief that:

(1) Such other person is about to commit suicide or to inflict serious physical injury upon himself or herself; and

(2) The force used is necessary to thwart such result.

6. The defendant shall have the burden of injecting the issue of justification under this section.

(L. 1977 S.B. 60, A.L. 2014 S.B. 491) Effective 1-01-17 **563.061 1/1/2017**

563.070. Accidents an excuse for offense, when. — 1. Conduct which would otherwise constitute an offense under chapter 565 is excusable and not criminal when it is the result of accident in any lawful act by lawful means without knowingly causing or attempting to cause physical injury and without acting with criminal negligence.

2. The defendant shall have the burden of injecting the issue of excuse authorized under this section.

(L. 1983 S.B. 276, A.L. 1984 S.B. 448 § A, A.L. 2014 S.B. 491) Effective 1-01-17 **563.070 1/1/2017**

563.074. Justification as an absolute defense, when. — 1. Notwithstanding the provisions of section 563.016, a person who uses force as described in sections 563.031, 563.041, 563.046, 563.051, 563.056, and 563.061 is justified in using such force and such fact shall be an absolute defense to criminal prosecution or civil liability.

2. The court shall award attorney's fees, court costs, and all reasonable expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant has an absolute defense as provided in subsection 1 of this section.

(L. 2007 S.B. 62 & 41) **563.074 8/28/2007**

