

FIRST REGULAR SESSION

HOUSE BILL NO. 876

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

1902H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 563.046, 566.145, 590.010, 590.040, 590.080, and 590.195, RSMo, and to enact in lieu thereof ten new sections relating to law enforcement officers, with penalty provisions and an emergency clause for a certain section.

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

Section A. Sections 563.046, 566.145, 590.010, 590.040, 590.080, and 590.195, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 563.046, 566.145, 590.010, 590.040, 590.080, 590.195, 590.520, 590.651, 590.654, and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 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, **and 4 of this section**, 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. **The use of a chokehold in making an arrest is not justified under this section unless the use of deadly force is lawful under subsection 4 of this section. 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.

15 **this section, "chokehold" means the use of any body part or object to attempt to control**
 16 **or disable a person by applying pressure to the person's neck with the purpose, intent, or**
 17 **effect of controlling or restricting the person's breathing.**

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

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

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

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

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

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

29 ~~[4.]~~ **5.** The defendant shall have the burden of injecting the issue of justification under
 30 this section.

566.145. 1. A person commits the offense of sexual conduct **in the course of public**
 2 **duty if the person engages in sexual conduct:**

3 (1) With a **detainee, a prisoner, or an offender** ~~[if he or she]~~ **and the person:**

4 ~~[(4)]~~ (a) Is an employee of, or assigned to work in, any jail, prison or correctional facility
 5 and engages in sexual conduct with a prisoner or an offender who is confined in a jail, prison,
 6 or correctional facility; ~~or~~

7 ~~———(2)]~~ (b) Is a probation and parole officer and engages in sexual conduct with an offender
 8 who is under the direct supervision of the officer; **or**

9 (c) **Is a police officer and engages in sexual conduct with a detainee or prisoner who**
 10 **is in the custody of such officer; or**

11 (2) **With someone who is not a detainee, a prisoner, or an offender and the person**
 12 **is:**

13 (a) **A probation and parole officer, a police officer, or an employee of, or assigned**
 14 **to work in, any jail, prison, or correctional facility; and**

15 (b) **On duty.**

16 2. For the purposes of this section the following terms shall mean:

17 (1) **"Detainee", a person deprived of liberty and kept under involuntary restraint,**
 18 **confinement, or custody;**

19 (2) **"Offender", includes any person in the custody of a prison or correctional facility and**
 20 **any person who is under the supervision of the state board of probation and parole;**

21 ~~[(2)]~~ (3) "Prisoner", includes any person who is in the custody of a jail, whether pretrial
22 or after disposition of a charge.

23 3. The offense of sexual conduct ~~[with a prisoner or offender]~~ **in the course of public**
24 **duty** is a class E felony.

25 4. Consent of a **detainee**, a prisoner ~~[or]~~ , **an offender, or any other person** is not a
26 defense.

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.**
5 **The use of a carotid restraint shall not prevent or hinder breathing;**

6 (2) **"Chokehold", the use of any body part or object to attempt to control or disable**
7 **a person by applying pressure to the person's neck with the purpose, intent, or effect of**
8 **controlling or restricting the person's breathing;**

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

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

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

16 ~~[(4)]~~ (6) "POST commission", the peace officer standards and training commission;

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

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

21 (9) **"Security guard", any person who is paid to protect the person or property of**
22 **another, but shall not include law enforcement officers or any other public official or**
23 **employee.**

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
24 at 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
32 of cases involving domestic and family violence. Such training shall include instruction, specific
33 to domestic and family violence cases, regarding: report writing; physical abuse, sexual abuse,
34 child fatalities and child neglect; interviewing children and alleged perpetrators; the nature,
35 extent and causes of domestic and family violence; the safety of victims, other family and
36 household members and investigating officers; legal rights and remedies available to victims,
37 including rights to compensation and the enforcement of civil and criminal remedies; services
38 available to victims and their children; the effects of cultural, racial and gender bias in law
39 enforcement; and state statutes. Said curriculum shall be developed and presented in
40 consultation with the department of health and senior services, the children's division, public and
41 private providers of programs for victims of domestic and family violence, persons who have

42 demonstrated expertise in training and education concerning domestic and family violence, and
43 the Missouri coalition against domestic violence.

44 **4. The basic training of every peace officer, except agents of the conservation**
45 **commission, shall prohibit the use of maneuvers that restrict oxygen flow to the brain, or**
46 **prevent or hinder breathing or reduce the intake of air, such as kneeholds, chokeholds, or**
47 **similar acts of applying force or pressure against the person's neck, unless deadly force is**
48 **lawful.**

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 in the course of his or her duties as a peace officer**
6 **when the use of deadly force was not lawful and the chokehold resulted in serious injury**
7 **or death, regardless of whether 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~~]
17 **licensee** pursuant to this section, the director may cause a complaint to be filed with the
18 administrative hearing commission, which shall conduct a hearing to determine whether the
19 director has cause for discipline, and which shall issue findings of fact and conclusions of law
20 on the matter. The administrative hearing commission shall not consider the relative severity of
21 the cause for discipline or any rehabilitation of the licensee or otherwise impinge upon the
22 discretion of the director to determine appropriate discipline when cause exists pursuant to this
23 section.

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

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

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

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

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

590.195. 1. A person commits a class B misdemeanor if, in violation of this chapter,
2 such person knowingly:

3 (1) Holds a commission as a peace officer without a peace officer license valid for such
4 commission; or

5 (2) Grants or continues the commission of a peace officer not validly licensed for such
6 commission.

7 2. Any person who purposely violates any other provision of this chapter shall be guilty
8 of a class B misdemeanor.

9 3. Any law enforcement agency that commissions a peace officer in violation of this
10 chapter or that is otherwise in violation of any provision of this chapter shall not be eligible to
11 receive state or federal funds that would otherwise be paid to it for the purpose of training and
12 licensing peace officers or for any other law enforcement, safety, or criminal justice purpose **and**
13 **shall be subject to a fine of one thousand dollars each day the agency knowingly**
14 **commissions a peace officer in violation of this chapter to serve.**

590.520. 1. For purposes of this section, "serious misconduct" means improper or
2 illegal actions taken by a law enforcement officer in connection with the officer's official
3 duties including, but not limited to, a conviction for a felony, fabrication of evidence,
4 repeated use of excessive force, acceptance of a bribe, or the commission of fraud.

5 2. Before beginning employment with a law enforcement agency in this state, a law
6 enforcement officer who has been certified in another state shall submit a preliminary
7 application for certification through examination by the agency.

8 **3. The application shall be under oath and shall require the law enforcement officer**
9 **to provide any information determined to be necessary by the agency including, but not**
10 **limited to, an attestation by the law enforcement officer of any of the following:**

11 **(1) Whether the officer has pled guilty to or been convicted of a felony;**

12 **(2) Whether the officer has been discharged for serious misconduct from**
13 **employment as a law enforcement officer;**

14 **(3) Whether the officer's certification as a law enforcement officer has been**
15 **revoked or suspended in another state; and**

16 **(4) Whether the officer resigned or has been laid off when the officer knew or had**
17 **reason to believe that a disciplinary investigation or action was imminent or pending which**
18 **could have resulted in the officer being discharged for serious misconduct.**

19 **4. A law enforcement agency shall deny a preliminary application upon a finding**
20 **that a law enforcement officer has done any of the following:**

21 **(1) Pled guilty to or been convicted of a felony;**

22 **(2) Had his or her certification as a law enforcement officer revoked in another**
23 **state;**

24 **(3) Been discharged for serious misconduct from employment as a law enforcement**
25 **officer; or**

26 **(4) Resigned or been laid off when a disciplinary investigation or action was**
27 **imminent or pending which could have resulted in the officer being discharged for serious**
28 **misconduct.**

29 **5. If a law enforcement agency denies a preliminary application for certification,**
30 **the officer shall be prohibited from employment as a law enforcement officer in this state.**

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

590.654. 1. Any peace officer or security guard who, while in the performance of
2 **his or her official duties, 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 under section**
8 **590.080.**

590.655. 1. Any peace officer or security guard who, while in the performance of
2 **his or her official duties, 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 under section**
8 **590.080.**

Section B. Because immediate action is necessary to protect vulnerable persons from
2 sexual assault or harm who are in state custody or on probation or parole, the repeal and
3 reenactment of section 566.145 of section A of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace, and safety, and is hereby declared to be an
5 emergency act within the meaning of the constitution, and the repeal and reenactment of section
6 566.145 of section A of this act shall be in full force and effect upon its passage and approval.

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