

SECOND REGULAR SESSION

HOUSE BILL NO. 2396

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GUNBY.

4982H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 563.031, 565.023, and 565.052, RSMo, and to enact in lieu thereof three new sections relating to limiting defenses and justifications based on victim identity, with penalty provisions.

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

Section A. Sections 563.031, 565.023, and 565.052, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 563.031, 565.023, and 565.052,
3 to read as follows:

563.031. 1. A person may, subject to the provisions of subsection 2 of this section,
2 use physical force upon another person when and to the extent he or she reasonably believes
3 such 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,
5 unless:

6 (1) The actor was the initial aggressor; except that in such case his or her use of force
7 is nevertheless justifiable provided:

8 (a) He or she has withdrawn from the encounter and effectively communicated such
9 withdrawal to such other person but the latter persists in continuing the incident by the use or
10 threatened use of unlawful force; or

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

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

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

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

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

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

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

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

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

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

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

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

37 4. **A defendant is not justified in using force against another based on the**
38 **discovery of, knowledge about, or potential disclosure of the victim's actual or perceived**
39 **gender, gender identity, gender expression, or sexual orientation, including under**
40 **circumstances in which the victim made an unwanted nonforcible romantic or sexual**
41 **advance toward the defendant or in which the defendant and victim dated or had a**
42 **romantic or sexual relationship.**

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

46 [~~5.~~] 6. The defendant shall have the burden of injecting the issue of justification under
47 this section. If a defendant asserts that his or her use of force is described under subdivision
48 (2) of subsection 2 of this section, the burden shall then be on the state to prove beyond a
49 reasonable doubt that the defendant did not reasonably believe that the use of such force was
50 necessary to defend against what he or she reasonably believed was the use or imminent use
51 of unlawful force.

565.023. 1. A person commits the offense of voluntary manslaughter if he or she:

2 (1) Causes the death of another person under circumstances that would constitute
3 murder in the second degree under subdivision (1) of subsection 1 of section 565.021, except
4 that he or she caused the death under the influence of sudden passion arising from adequate
5 cause; or

6 (2) Knowingly assists another in the commission of self-murder.

7 2. The defendant shall have the burden of injecting the issue of influence of sudden
8 passion arising from adequate cause under subdivision (1) of subsection 1 of this section.

9 **3. The defense of being under the influence of sudden passion arising from**
10 **adequate cause is not a viable defense under this section based on the discovery,**
11 **knowledge, or potential disclosure of the victim's actual or perceived gender, gender**
12 **identity, gender expression, or sexual orientation that occurred under any circumstance**
13 **including, but not limited to, circumstances in which the victim made an unwanted**
14 **nonforcible romantic or sexual advance toward the defendant or the victim and**
15 **defendant dated or had a romantic relationship.**

16 ~~[3-]~~ 4. The offense of voluntary manslaughter is a class B felony.

565.052. 1. A person commits the offense of assault in the second degree if he or she:

2 (1) Attempts to kill or knowingly causes or attempts to cause serious physical injury
3 to another person under the influence of sudden passion arising out of adequate cause; or

4 (2) Attempts to cause or knowingly causes physical injury to another person by
5 means of a deadly weapon or dangerous instrument; or

6 (3) Recklessly causes serious physical injury to another person; or

7 (4) Recklessly causes physical injury to another person by means of discharge of a
8 firearm.

9 2. The defendant shall have the burden of injecting the issue of influence of sudden
10 passion arising from adequate cause under subdivision (1) of subsection 1 of this section.

11 **3. The defense of being under the influence of sudden passion arising from**
12 **adequate cause is not a viable defense under this section based on the discovery,**
13 **knowledge, or potential disclosure of the victim's actual or perceived gender, gender**
14 **identity, gender expression, or sexual orientation that occurred under any circumstance**
15 **including, but not limited to, circumstances in which the victim made an unwanted**
16 **nonforcible romantic or sexual advance toward the defendant or the victim and**
17 **defendant dated or had a romantic relationship.**

18 **4. The offense of assault in the second degree is a class D felony, unless the victim of**
19 **such assault is a special victim, as the term "special victim" is defined under section 565.002,**
20 **in which case it is a class B felony.**