

Missouri Revised Statutes, Chapter 563 - Defense of Justification

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Chapter definitions.

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

- (1) “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;
- (2) “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;
- (3) “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;
- (4) “Premises”, includes any building, inhabitable structure and any real property;
- (5) “Private person”, any person other than a law enforcement officer;
- (6) “Private property”, any real property in this state that is privately owned or leased;
- (7) “Remain after unlawfully entering”, to remain in or upon premises after unlawfully entering as defined in this section;
- (8) “Residence”, a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest;
- (9) “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.)

Civil remedies unaffected.

563.016. 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 1-1-79

Execution of public duty.

563.021. 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 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 conduct to be required or authorized to assist a public servant in the performance of his duties, notwithstanding that the public servant exceeded his legal authority.

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

Effective 1-1-79

Justification generally.

563.026. 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 crime 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 crime charged.

2. The necessity and justifiability of conduct under subsection 1 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)

Effective 1-1-79

Use of force in defense of persons.

563.031. 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 may 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 claiming a justification of using protective force under this section.

3. A person does not have a duty to retreat from a dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining. A person does not have a duty to retreat from private property that is owned or leased by such individual.

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)

Battered spouse syndrome evidence that defendant acted in self-defense or defense of another-procedure.

563.033. 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 mentally retarded 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 mentally retarded 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)

Use of physical force in defense of property.

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

Law enforcement officer's use of force in making an arrest.

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 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, he is, subject to the provisions of subsections 2 and 3, justified in the use of such physical force as he 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.

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

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

(2) When he reasonably believes that such use of deadly force is immediately necessary to effect the arrest and also reasonably believes that the person to be arrested

(a) Has committed or attempted to commit a felony; or

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

(c) May otherwise endanger life or inflict serious physical injury 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)

Effective 1-1-79

Private person's use of force in making an arrest.

563.051. 1. A private person who has been directed by a person he 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, use physical force when and to the extent that he reasonably believes such to be necessary to carry out such officer's direction unless he knows or believes that the arrest or prospective arrest is not or was not authorized.

2. A private person acting on his own account may, subject to the limitations of subsection 3, use physical force to effect arrest or prevent escape only when and to the extent such is immediately necessary to effect the arrest, or to prevent escape from custody, of a person whom he reasonably believes to have committed a crime and who in fact has committed such crime.

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

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

(2) When he reasonably believes such to be authorized under the circumstances and he is directed or authorized by a law enforcement officer to use deadly force; or

(3) When he reasonably believes such use of deadly force is immediately necessary to effect the arrest of a person who at that time and in his 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)

Effective 1-1-79

Use of force to prevent escape from confinement.

563.056. 1. A guard or other law enforcement officer may, subject to the provisions of subsection 2, 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 only

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

(2) When he 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)

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

563.061. 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 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 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; 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.

Effective 1-1-79

Accidents an excuse for crime, when.

563.070. 1. Conduct which would otherwise constitute a crime 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)

Effective 10-1-84

Justification as an absolute defense, when.

563.074. 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)

Missouri General Assembly: <http://www.moga.mo.gov/statutes/chapters/chap563.htm>