

kidnapping or serious physical injury through robbery, burglary or arson.

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. (L. 1977 S.B. 60, A.L. 1993 S.B. 180)

Missouri CCW Handbooks vol. 2

Defense of Justification

RSMO 563

“A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.”

corruptissima respublica plurimae leges

Use of physical force in defense of premises. 563.036. 1. A person in possession or control of premises or a person who is licensed or privileged to be thereon, may, subject to the provisions of subsection 2 of this section, use physical force upon another person when and to the extent that he reasonably believes it necessary to prevent or terminate what he reasonably believes to be the commission or attempted commission of the crime of trespass by the other person.

2. A person 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

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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. (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 nec-

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essary 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

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

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constitute any crime other than a class A felony or murder is justified 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

Chapter definitions, 563.011. As used in this chapter:

(1) "Deadly force" means physical force which the actor uses with the purpose of causing or which he knows to create a substantial risk of causing death or serious physical injury.

(2) "Dwelling" means any building or inhabitable structure, though movable or temporary, or a portion thereof, which is for the time being the actor's home or place of lodging. (3) "Premises" includes any building, inhabitable structure and any

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threatened use of unlawful force; or

(b) He 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 seeks to protect would not be justified in using such protective force.

2. A person may not use deadly force upon another person under the circumstances specified in subsection 1 of this section unless he reasonably believes that such deadly force is necessary to protect himself or another against death, serious physical injury, rape, sodomy or

Accidents an excuse for crime, when. 563.070. 1. Conduct which would otherwise constitute a crime under chapter 565, RSMo, 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

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(2) When he reasonably believes it necessary to prevent what he reasonably believes to be an attempt by the trespasser to commit arson or burglary upon his dwelling; or

(3) When entry into the premises is made or attempted in a violent and tumultuous manner, surreptitiously, or by stealth, and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering physical violence to any person or being in the premises and he reasonably believes that force is necessary to prevent the commission of a felony.

3. The defendant shall have the burden of injecting the issue of justification under this section. (L. 1977 S.B. 60, A.L. 1993 S.B. 180)

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

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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 reasonably believes it necessary to prevent what he 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 pro-

real property.

(4) "Private person" means any person other than a law enforcement officer.

(L. 1977 S.B. 60) Effective 1-1-79

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

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

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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 reasonably believes such force to be necessary to defend himself or a third person from what he 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 use of force is nevertheless justifiable provided

(a) He 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