

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE NO. 2 FOR
SENATE BILL NO. 26
101ST GENERAL ASSEMBLY

0828H.05C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 67.030, 84.400, 557.045, and 574.085, RSMo, and to enact in lieu thereof seven new sections relating to public safety, with penalty provisions.

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

Section A. Sections 67.030, 84.400, 557.045, and 574.085, RSMo, are repealed and
2 seven new sections enacted in lieu thereof, to be known as sections 67.030, 84.400, 557.045,
3 574.045, 574.085, 590.192, and 590.502, to read as follows:

67.030. **1.** The governing body of each political subdivision may revise, alter, increase
2 or decrease the items contained in the proposed budget, subject to such limitations as may be
3 provided by law or charter **or in subsection 2 of this section**; provided, that in no event shall
4 the total authorized expenditures from any fund exceed the estimated revenues to be received
5 plus any unencumbered balance or less any deficit estimated for the beginning of the budget year.
6 Except as otherwise provided by law or charter, the governing body of each political subdivision
7 shall, before the beginning of the fiscal year, approve the budget and approve or adopt such
8 orders, motions, resolutions, or ordinances as may be required to authorize the budgeted
9 expenditures and produce the revenues estimated in the budget.

**2. Any taxpayer of a political subdivision may initiate an action for injunctive
11 relief, which the court shall grant, if the governing body of such political subdivision
12 decreases the budget for its law enforcement agency by an amount exceeding more than
13 twelve percent relative to the proposed budgets of other departments of the political
14 subdivision over a five year aggregate amount.**

84.400. **1.** Any one of said commissioners so appointed or any member of any such
2 police force who, during the term of his **or her** office, shall accept any other place of public trust,

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.

3 or emolument, or who shall knowingly receive any nomination for an office elective by the
4 people, and shall fail to decline such nomination publicly within the five days succeeding such
5 nomination or shall become a candidate for the nomination for any office at the hands of any
6 political party, shall be deemed to have thereby forfeited and vacated office as such
7 commissioner or member of such police force.

8 **2. Notwithstanding any provisions of law to the contrary, a member of the board**
9 **or any member of such police force may be appointed to serve on any state or federal**
10 **board, commission, or task force where no compensation for such service is paid, except**
11 **that such board member or member of such police force may accept payment of a per diem**
12 **for attending meetings or, if no per diem is provided, reimbursement from such board,**
13 **commission, or task force for reasonable and necessary expenses for attending such**
14 **meetings.**

557.045. No person found guilty of, or pleading guilty to, the following offenses shall
2 be eligible for probation, suspended imposition or execution of sentence, or conditional release,
3 and shall be sentenced to a term of imprisonment pursuant to subdivision (1) of subsection 2 of
4 section 557.011:

5 (1) Second degree murder when a person knowingly causes the death of another person
6 or, with the purpose of causing serious physical injury to another person, causes the death of
7 another person, as defined in subdivision (1) of subsection 1 of section 565.021;

8 (2) Any dangerous felony, as the term is defined in section 556.061, where the person
9 has been previously found guilty of a class A or B felony or a dangerous felony; [øø]

10 (3) Any dangerous felony, as the term is defined in section 556.061, where the
11 commission of the felony involves the use of a deadly weapon, as that term is defined in section
12 556.061; or

13 (4) Any dangerous felony, as the term is defined in section 556.061, where the
14 victim is a law enforcement officer, firefighter, or an emergency service provider while in
15 the performance of his or her duties.

574.045. 1. As used in this section, the following terms mean:

2 (1) "Interstate highway", a highway located in this state that is included in the
3 national system of interstate highways, as officially designated or as may be hereafter
4 designated by the Missouri highways and transportation commission within the Missouri
5 department of transportation and approved by the United States Secretary of
6 Transportation;

7 (2) "Unlawful assembly", when a person knowingly assembles with six or more
8 other persons and agrees with such persons to violate any of the criminal laws of this state
9 or of the United States with force or violence.

10 **2. A person commits the offense of unlawful traffic interference if, with the**
 11 **intention to impede vehicular traffic, the person walks, stands, sits, kneels, lies, or places**
 12 **an object in such a manner as to block passage by a vehicle on any public street, highway,**
 13 **or interstate highway. This section shall not apply to the blocking of passage by any**
 14 **person who has permission to do so from a government authority, who is a law**
 15 **enforcement officer, or who does so to direct traffic away from hazardous road conditions,**
 16 **an obstacle, or a scene of an accident.**

17 **3. The offense of unlawful traffic interference on a public street or highway is an**
 18 **infraction for the first violation. Any second violation that occurs on a public street or**
 19 **highway is a class B misdemeanor. Any third or subsequent violation that occurs on a**
 20 **public street or highway is a class E felony.**

21 **4. The offense of unlawful traffic interference on any public street, highway, or**
 22 **interstate highway while part of an unlawful assembly is an infraction for the first**
 23 **violation. Any second violation that occurs on a public street, highway, or interstate**
 24 **highway while part of an unlawful assembly is a class A misdemeanor. Any third or**
 25 **subsequent violation that occurs on a public street, highway, or interstate highway while**
 26 **part of an unlawful assembly is a class D felony.**

574.085. 1. A person commits the offense of institutional vandalism if he or she
 2 knowingly vandalizes, defaces, or otherwise damages:

3 (1) Any church, synagogue or other building, structure or place used for religious
 4 worship or other religious purpose;

5 (2) Any cemetery, mortuary, military monument or other facility used for the purpose
 6 of burial or memorializing the dead;

7 (3) Any school, educational facility, community center, hospital or medical clinic owned
 8 and operated by a religious or sectarian group;

9 (4) The grounds adjacent to, and owned or rented by, any institution, facility, building,
 10 structure or place described in subdivision (1), (2), or (3) of this subsection;

11 (5) Any personal property contained in any institution, facility, building, structure or
 12 place described in subdivision (1), (2), or (3) of this subsection; ~~[or]~~

13 (6) Any motor vehicle which is owned, operated, leased or under contract by a school
 14 district or a private school for the transportation of school children; **or**

15 **(7) Any public monument or structure on public property owned or operated by**
 16 **a public entity.**

17 2. The offense of institutional vandalism is a class A misdemeanor, unless the value of
 18 the property damage is seven hundred fifty dollars or more, in which case the offense is a class

19 E felony; or the value of the property damage is more than five thousand dollars, in which case
20 the offense is a class D felony.

21 3. In determining the amount of damage to property, for purposes of this section, damage
22 includes the cost of repair or, where necessary, replacement of the property that was damaged.

**590.192. 1. There is hereby created in the state treasury the "988 Public Safety
2 Fund", which shall consist of moneys appropriated by the general assembly. The state
3 treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180,
4 the state treasurer may approve disbursements. The fund shall be a dedicated fund and
5 moneys in the fund shall be used solely by the department of public safety for the purposes
6 of providing services for peace officers to assist in coping with stress and potential
7 psychological trauma resulting from a response to a critical incident or emotionally
8 difficult event. Such services may include consultation, risk assessment, education,
9 intervention, and other crisis intervention services provided by the department to peace
10 officers affected by a critical incident.**

11 **2. Notwithstanding the provisions of section 33.080 to the contrary, any moneys
12 remaining in the fund at the end of the biennium shall not revert to the credit of the
13 general revenue fund.**

14 **3. The state treasurer shall invest moneys in the fund in the same manner as other
15 funds are invested. Any interest and moneys earned on such investments shall be credited
16 to the fund.**

590.502. 1. For purposes of this section, the following shall mean:

2 **(1) "Administering authority", any individual or body authorized by an agency or
3 department to hear and make final decisions regarding appeals of disciplinary actions
4 issued by an agency or department;**

5 **(2) "Color of law", any act by a law enforcement officer, whether on duty or off
6 duty, that is performed in furtherance of his or her sworn duty to enforce laws and to
7 protect and serve the public;**

8 **(3) "Economic loss", any economic loss including, but not limited to, loss of
9 overtime accrual, overtime income, sick time accrual, sick time, secondary employment
10 income, holiday pay, and vacation pay;**

11 **(4) "Good cause", sufficient evidence or facts that would support a party's request
12 for extensions of time or any other requests seeking accommodations outside the scope of
13 the rules set out herein;**

14 **(5) "Law enforcement officer", any sworn peace officer with the power to arrest
15 for a violation of the criminal code who is employed by any unit of the state or any county,
16 charter county, city, charter city, municipality, district, college, university, or any other**

17 political subdivision or is employed by the board of police commissioners as defined in
18 chapter 84. "Law enforcement officer" shall not include any officer who is the highest
19 ranking officer in the law enforcement agency.

20 2. Whenever a law enforcement officer is under investigation or is subjected to
21 questioning that the officer reasonably believes could lead to disciplinary action, demotion,
22 dismissal, transfer, or placement on a status that could lead to economic loss, the
23 investigation or questioning shall be conducted under the following conditions:

24 (1) The law enforcement officer who is the subject of the investigation shall be
25 informed, in writing, of the existence and nature of the alleged violation and the individuals
26 who will be conducting the investigation. Notice shall be provided to the officer along with
27 a copy of the complaint at least twenty-four hours prior to any interrogation or interview
28 of the officer;

29 (2) Any person, including members of the same agency or department as the officer
30 under investigation, filing a complaint against a law enforcement officer shall have the
31 complaint supported by a written statement outlining the complaint that includes the
32 personal identifying information of the person filing the complaint. All personal
33 identifying information shall be held confidential by the investigating agency;

34 (3) When a law enforcement officer is questioned or interviewed regarding matters
35 pertaining to his or her law enforcement duties or actions taken within the scope of his or
36 her employment, such questioning shall be conducted for a reasonable length of time and
37 only while the officer is on duty unless reasonable circumstances exist that necessitate
38 questioning the officer while he or she is off duty;

39 (4) Any interviews or questioning shall be conducted at a secure location at the
40 agency that is conducting the investigation or at the place where the officer reports to
41 work, unless the officer consents to another location;

42 (5) Law enforcement officers shall be questioned by up to two investigators and
43 shall be informed of the name, rank, and command of the investigator or investigators
44 conducting the investigation; except that, separate investigators shall be assigned to
45 investigate alleged department policy violations and alleged criminal violations;

46 (6) Interview sessions shall be for a reasonable period of time. There shall be times
47 provided for the officer to allow for such personal necessities and rest periods as are
48 reasonably necessary;

49 (7) Prior to an interview session, the investigator or investigators conducting the
50 investigation shall advise the law enforcement officer of the rule set out in *Garrity v. New*
51 *Jersey*, 385 U.S. 493 (1967), specifically that the law enforcement officer is being ordered

52 to answer questions under threat of disciplinary action and that the officer's answers to the
53 questions will not be used against the officer in criminal proceedings;

54 (8) Law enforcement officers shall not be threatened, harassed, or promised
55 rewards to induce them into answering any question; except that, law enforcement officers
56 may be compelled by their employer to give protected *Garrity* statements to an investigator
57 under the direct control of the employer, but such compelled statements shall not be used
58 or derivatively used against the officer in any aspect of a criminal case brought against the
59 officer;

60 (9) Law enforcement officers under investigation are entitled to have an attorney
61 or any duly authorized representative present during any questioning that the law
62 enforcement officer reasonably believes may result in disciplinary action. The attorney or
63 representative shall be permitted to confer with the officer but shall not unduly disrupt or
64 interfere with the interview. The questioning shall be suspended for a period of up to
65 twenty-four hours if the officer requests representation;

66 (10) Prior to the law enforcement officer being interviewed, the officer and his or
67 her attorney or representative shall have the opportunity to review the complaint;

68 (11) Law enforcement officers or their designated representative shall have the
69 right to bring their own recording device and may record all aspects of the interview;

70 (12) The law enforcement agency conducting the investigation shall have ninety
71 days from receipt of a citizen complaint to complete such investigation. The agency shall
72 determine the disposition of the complaint and render a disciplinary decision, if any, within
73 ninety days. The agency may, for good cause, petition the administering authority
74 overseeing the administration of discipline for an extension of time to complete the
75 investigation. If the administering authority finds the agency has shown good cause for the
76 granting of an extension of time to complete the investigation, the administering authority
77 shall grant an extension of up to sixty days. The agency is limited to two extensions per
78 investigation; except that, if there is an ongoing criminal investigation there shall be no
79 limitation on the amount of sixty-day extensions. For good cause shown, the internal
80 investigation may be tolled until the conclusion of a concurrent criminal investigation
81 arising out of the same alleged conduct. Absent consent from the officer being investigated,
82 the administering authority overseeing the administration of discipline shall set the matter
83 for hearing and shall provide notice of the hearing to the law enforcement officer under
84 investigation. The officer shall have the right to attend the hearing and to present evidence
85 and arguments against extension;

86 **(13) Within five days of the conclusion of the administrative investigation, the**
87 **investigator shall inform the officer, in writing, of the investigative findings and any**
88 **recommendation for further action, including discipline;**

89 **(14) A complete record of the administrative investigation shall be kept by the law**
90 **enforcement agency conducting such investigation. Upon completion of the investigation,**
91 **a copy of the entire record, including, but not limited to, audio, video, and transcribed**
92 **statements, shall be provided to the officer or the officer's representative within five**
93 **business days of the officer's written request. The agency may request a protective order**
94 **to redact all personal identifying witness information; and**

95 **(15) All records compiled as a result of any investigation subject to the provisions**
96 **of this section shall be held confidential and shall not be subject to disclosure under**
97 **chapter 610, except by court order, by release approved by the officer, or as provided in**
98 **section 590.070.**

99 **3. Law enforcement officers who are suspended without pay, demoted, terminated,**
100 **transferred, or placed on a status resulting in economic loss shall be entitled to a full due**
101 **process hearing. However, nothing in this section shall prohibit a law enforcement agency**
102 **and the authorized bargaining representative for a law enforcement officer employed by**
103 **that agency from reaching written agreements providing disciplinary procedures more**
104 **favorable than those provided for this section. The components of the hearing shall**
105 **include, at a minimum:**

106 **(1) The right to be represented by an attorney or other individual of their choice**
107 **during the hearing;**

108 **(2) Seven days' notice of the hearing date and time;**

109 **(3) An opportunity to access and review documents, at least seven days in advance**
110 **of the hearing, that are in the employer's possession and that were used as a basis for the**
111 **disciplinary action;**

112 **(4) The right of the law enforcement officer or his or her attorney to present**
113 **witnesses and evidence in the officer's defense and a right to cross-examine any adverse**
114 **witnesses against the officer;**

115 **(5) The right to refuse to testify at the hearing if the officer is concurrently facing**
116 **criminal charges in connection with the same incident. A law enforcement officer's**
117 **decision not to testify shall not result in additional internal charges or discipline;**

118 **(6) A complete record of the hearing shall be kept by the agency for purposes of**
119 **appeal. The record shall be provided to the officer or his or her attorney upon written**
120 **request;**

121 **(7) The entire record of the hearing shall remain confidential and shall not be**
122 **subject to disclosure under chapter 610, except by lawful subpoena or court order.**

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124 **If a contractual disciplinary grievance procedure executed by and between the agency and**
125 **the bargaining unit, if such exists, of that officer is in effect, the terms of that disciplinary**
126 **grievance procedure shall take precedence and govern the conduct of the hearing.**

127 **4. Any decision, order, or action taken following the hearing shall be in writing and**
128 **shall be accompanied by findings of fact. The findings shall consist of a concise statement**
129 **upon each issue in the case. A copy of the decision or order accompanying findings and**
130 **conclusions along with the written action and right of appeal, if any, shall be delivered or**
131 **mailed promptly to the law enforcement officer or to the officer's attorney or**
132 **representative of record.**

133 **5. Law enforcement officers shall have the opportunity to provide a written**
134 **response to any adverse materials placed in their personnel file, and such written response**
135 **shall be permanently attached to the adverse material.**

136 **6. Law enforcement officers shall have the right to compensation for any economic**
137 **loss incurred during an investigation if the officer is found to have committed no**
138 **misconduct.**

139 **7. Law enforcement officers may petition the circuit court in the county in which**
140 **the law enforcement agency has its principal place of business to review the decision of the**
141 **administrative body hearing the appeal of discipline. Upon a finding that the discipline**
142 **was not justified, the circuit court may award the law enforcement officer back pay and**
143 **costs incurred in bringing the suit, including attorney's fees.**

144 **8. Employers shall defend and indemnify law enforcement officers from and**
145 **against civil claims made against them in their official and individual capacities if the**
146 **alleged conduct arose in the course and scope of their obligations and duties as law**
147 **enforcement officers. This includes any actions taken off duty if such actions were taken**
148 **under color of law. In the event the law enforcement officer is convicted of, or pleads**
149 **guilty to, criminal charges arising out of the same conduct, the employer shall no longer**
150 **be obligated to defend and indemnify the officer in connection with related civil claims.**

151 **9. Law enforcement officers shall not be disciplined, demoted, dismissed,**
152 **transferred, or placed on a status resulting in economic loss as a result of the assertion of**
153 **their constitutional rights in any judicial proceeding, unless the officer admits to wrong-**
154 **doing, in which case the provisions of this section shall not apply.**

155 **10. No state or local governmental unit including, but not limited to, a county,**
156 **charter county, city, charter city, municipality, district, college, university, or any other**

157 **political subdivision that employs a law enforcement officer shall enact, promulgate,**
158 **enforce, or follow any law, regulation, or policy that would abolish, conflict with, modify,**
159 **or in any way diminish any right or remedy provided to law enforcement officers under**
160 **this section.**

161 **11. The rights set out in this section are minimum standards to be applied**
162 **throughout the state. However, nothing in this section shall prohibit a law enforcement**
163 **agency and the authorized bargaining representative for a law enforcement officer**
164 **employed by that agency from reaching written agreements providing disciplinary**
165 **procedures more favorable than those provided in this section.**

166 **12. Any aggrieved law enforcement officer or authorized representative may seek**
167 **judicial enforcement of the requirements of this section. Suits to enforce this section shall**
168 **be brought in the circuit court for the county in which the law enforcement agency or**
169 **governmental body has its principal place of business.**

170 **13. Upon a finding by a preponderance of the evidence that a law enforcement**
171 **agency, governmental body, or member of same has violated any provision of this section,**
172 **a court shall void any action taken in violation of this section. The court may also award**
173 **the law enforcement officer the costs of bringing the suit including, but not limited to,**
174 **attorneys' fees. A lawsuit for enforcement shall be brought within one year from which**
175 **the violation is ascertainable.**

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