SENATE SUBSTITUTE

FOR

SENATE BILL NO. 26

AN ACT

To repeal sections 67.030, 557.045, and 574.085, RSMo, and to enact in lieu thereof five 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Section A. Sections 67.030, 557.045, and 574.085, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 67.030, 557.045, 574.045, 574.085, and 590.502, to read as follows:

67.030. 1. The governing body of each political 2 subdivision may revise, alter, increase or decrease the 3 items contained in the proposed budget, subject to such limitations as may be provided by law or charter or in 4 subsection 2 of this section; provided, that in no event 5 6 shall the total authorized expenditures from any fund exceed 7 the estimated revenues to be received plus any unencumbered 8 balance or less any deficit estimated for the beginning of 9 the budget year. Except as otherwise provided by law or 10 charter, the governing body of each political subdivision shall, before the beginning of the fiscal year, approve the 11 budget and approve or adopt such orders, motions, 12 13 resolutions, or ordinances as may be required to authorize the budgeted expenditures and produce the revenues estimated 14 in the budget. 15

16 <u>2. Any taxpayer of a political subdivision may</u>
 17 <u>initiate an action for injunctive relief, which the court</u>
 18 <u>shall grant, if the governing body of such political</u>
 19 <u>subdivision decreases the budget for its law enforcement</u>
 20 agency by an amount exceeding more than twelve percent

21 relative to the proposed budgets of other departments of the

22 political subdivision over a five year aggregate amount.

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

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

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

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

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

574.045. 1. As used in this section, the following terms mean: (1) "Interstate highway", a highway located in this state that is included in the national system of interstate highways, as officially designated or as may be hereafter designated by the Missouri highways and transportation

7 commission within the Missouri department of transportation

8 and approved by the United States Secretary of

9 Transportation;

10 (2) "Unlawful assembly", two or more persons who meet for the purpose of violating any of the criminal laws of 11 12 this state or of the United States. 2. A person commits the offense of unlawful traffic 13 interference if, with the intention to impede vehicular 14 traffic, the person walks, stands, sits, kneels, lays, or 15 places an object in such a manner as to block passage by a 16 17 vehicle on any public street, highway, or interstate highway. This section shall not apply to the blocking of 18 19 passage by any person who has permission to do so from a government authority, who is a law enforcement officer, or 20 21 who does so to direct traffic away from hazardous road 22 conditions, an obstacle, or a scene of an accident. The offense of unlawful traffic interference on a 23 3. public street or highway, except an interstate highway, is a 24 25 class A misdemeanor for the first violation. Any second or subsequent violation that occurs on a public street or 26 27 highway, except an interstate highway, is a class E felony. 28 4. The offense of unlawful traffic interference on an 29 interstate highway is a class E felony. For a first violation, the court shall grant a suspended imposition of 30 sentence and impose a term of supervised probation for five 31 years, one hundred hours of community service, and a fine 32 not to exceed seven hundred fifty dollars. 33 The offense of unlawful traffic interference on any 34 5. 35 public street, highway, or interstate highway while part of 36 an unlawful assembly is a class D felony. For a first violation, the court shall grant a suspended imposition of 37 sentence and impose a term of supervised probation for five 38 years, one hundred hours of community service, and a fine 39 40 not to exceed one thousand dollars.

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

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

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

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

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

16 (5) Any personal property contained in any
17 institution, facility, building, structure or place
18 described in subdivision (1), (2), or (3) of this
19 subsection; [or]

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

23 (7) Any public monument or structure on public
24 property owned or operated by a public entity.

25 2. The offense of institutional vandalism is a class A 26 misdemeanor, unless the value of the property damage is 27 seven hundred fifty dollars or more, in which case the 28 offense is a class E felony; or the value of the property 29 damage is more than five thousand dollars, in which case the 30 offense is a class D felony.

31 3. In determining the amount of damage to property,32 for purposes of this section, damage includes the cost of

33 repair or, where necessary, replacement of the property that was damaged. 34 590.502. 1. For purposes of this section, the 2 following shall mean: 3 (1) "Board", any individual or body authorized by an 4 agency or department to hear and make final decisions 5 regarding appeals of disciplinary actions issued by an 6 agency or department; 7 (2) "Color of law", any act by a law enforcement 8 officer, whether on duty or off duty, that is performed in furtherance of his or her sworn duty to enforce laws and to 9 10 protect and serve the public; 11 (3) "Economic loss", any economic loss, including but not limited to, loss of overtime accrual, overtime income, 12 sick time accrual, sick time, secondary employment income, 13 14 holiday pay, and vacation pay; 15 (4) "Exigent circumstances", an emergency situation in which the safety of the public is at immediate apprehension 16 17 of harm; "Good cause", sufficient evidence or facts that 18 (5) 19 would support a party's request for extensions of time or 20 any other requests seeking accommodations outside the scope of the rules set out herein; 21 22 "Law enforcement officer", any sworn peace officer (6) 23 with the power to arrest for a violation of the criminal 24 code who is employed by any unit of the state or any 25 political subdivision or by a state college or university. "Law enforcement officer" shall not include any officer who 26 is the highest ranking officer in the law enforcement agency. 27 28 2. Whenever a law enforcement officer is under investigation or is subjected to questioning, that the 29 officer reasonably believes could lead to disciplinary 30 31 action, demotion, dismissal, transfer, or placement on a

32 status that could lead to economic loss, the investigation 33 or questioning shall be conducted under the following 34 conditions: (1) The law enforcement officer who is the subject of 35 the investigation shall be informed, in writing, of the 36 existence and nature of the alleged violation and the 37 individual who will be conducting the investigation. Notice 38 39 shall be provided to the officer along with a copy of the 40 complaint at least forty-eight hours prior to any 41 interrogation or interview of the officer; (2) Any person, including members of the same agency 42 43 or department as the officer under investigation, filing a 44 complaint against a law enforcement officer shall have the complaint supported by a sworn affidavit. Any complaint 45 supported by a sworn affidavit and found, in total or in 46 47 part, to contain knowingly false material information, shall be presented to the appropriate prosecuting or circuit 48 49 attorney for a determination of prosecution; 50 (3) When a law enforcement officer is questioned or 51 interviewed regarding matters pertaining to his or her law enforcement duties or actions taken within the scope of his 52 or her employment, such questioning shall be conducted for a 53 reasonable length of time and only while the officer is on 54 55 duty unless exigent circumstances exist that necessitate 56 questioning the officer while he or she is off duty; 57 (4) Any interviews or questioning shall be conducted 58 at a secure location at the agency that is conducting the investigation or at the place where the officer reports to 59 work, unless the officer consents to another location; 60 (5) Law enforcement officers shall be questioned by a 61 single investigator and shall be informed of the name, rank, 62 and command of the officer conducting the investigation; 63 64 except that, separate investigators shall be assigned to

65 investigate alleged department policy violations and alleged criminal violations; 66 67 (6) Interview sessions shall be for a reasonable period of time. There shall be times provided for the 68 69 officer to allow for such personal necessities and rest 70 periods as are reasonably necessary; (7) Law enforcement officers shall not be threatened, 71 harassed, or promised rewards to induce them into answering 72 73 any question; except that, law enforcement officers may be 74 compelled by their employer to give protected statements to an investigator under the direct control of the employer, 75 76 but such compelled statements shall not be used or 77 derivatively used against the officer in any aspect of a criminal case brought against the officer; 78 79 (8) Law enforcement officers under investigation are entitled to have an attorney or any duly authorized 80 81 representative present during any questioning that the law 82 enforcement officer reasonably believes may result in disciplinary action. The questioning shall be suspended for 83 a period of up to forty-eight hours if the officer requests 84 85 representation; 86 (9) Prior to the law enforcement officer being interviewed, the officer and his representative shall have 87 88 the opportunity to review any audio or video in the 89 possession of the agency conducting the investigation; 90 (10)The law enforcement agency conducting the 91 investigation shall have ninety days from receipt of a complaint to complete such investigation. The agency shall 92 determine the disposition of the complaint and render a 93 94 disciplinary decision, if any, within ninety days. The agency may, for good cause, petition the board overseeing 95 the administration of discipline for an extension of time to 96 97 complete the investigation. If the board finds the agency

98 has shown good cause for the granting of an extension of 99 time to complete the investigation, the board shall grant an 100 extension of up to sixty days. The agency is limited to one extension per investigation. Absent consent from the 101 102 officer being investigated, the board overseeing the 103 administration of discipline shall set the matter for hearing and shall provide notice of the hearing to the law 104 105 enforcement officer under investigation. The officer shall 106 have the right to attend the hearing and to present evidence 107 and arguments against extension; Within five days of the conclusion of the 108 (11)109 administrative investigation, the investigator shall inform 110 the officer, in writing, of the investigative findings and any recommendation for further action, including discipline; 111 (12) A complete record of the administrative 112 investigation shall be kept by the law enforcement agency 113 114 conducting such investigation. Upon completion of the 115 investigation, a copy of the entire record, including, but 116 not limited to, audio, video, and transcribed statements, 117 shall be provided to the officer or the officer's representative within forty-eight hours of the officer's 118 written request; and 119 (13) All records compiled as a result of any 120 121 investigation subject to the provisions of this section 122 shall be held confidential and shall not be subject to 123 disclosure under chapter 610. 3. Law enforcement officers who are suspended without 124 pay, demoted, terminated, transferred, or placed on a status 125 resulting in economic loss shall be entitled to a full due 126 process hearing. However, nothing in this section shall 127 prohibit a law enforcement agency and the authorized 128 bargaining representative for a law enforcement officer 129 130 employed by that agency from reaching written agreements

131	providing disciplinary procedures more favorable than those
132	provided for this section. The components of the hearing
133	shall include, at a minimum:
134	(1) The right to be represented by an attorney or
135	other individual of their choice during the hearing;
136	(2) Fourteen days notice of the hearing date and time;
137	(3) An opportunity to access and review documents, at
138	least ten days in advance of the hearing, that are in the
139	employer's possession and that were used as a basis for the
140	disciplinary action or gathered in the course of its
141	investigation including, but not limited to, access to audio
142	or transcribed statements;
143	(4) An opportunity to present witnesses and evidence
144	and a right to cross-examine any adverse witness;
145	(5) The right to refuse to testify at the hearing if
146	the officer is concurrently facing criminal charges in
147	connection with the same incident. A law enforcement
148	officer's decision not to testify shall not result in
149	additional internal charges or discipline;
150	(6) A complete record of the hearing shall be kept by
151	the agency for purposes of appeal. The record shall be
152	provided to the officer or his or her attorney upon written
153	request.
154	(7) The entire record of the hearing shall remain
155	confidential and shall not be subject to disclosure under
156	chapter 610.
157	If a contractual disciplinary grievance procedure executed
158	by and between the agency and the bargaining unit of that
159	officer is in effect, the terms of that disciplinary
160	grievance procedure shall take precedence and govern the
161	conduct of the hearing.
162	4. In the event a law enforcement officer is entitled
163	to a hearing, a hearing shall be scheduled within a

164	reasonable period of time from the alleged incident, but in
165	no event more than one hundred twenty days following the
166	notification of discipline, unless waived in writing by the
167	charged officer.
168	5. Any decision, order, or action taken following the
169	hearing shall be in writing and shall be accompanied by
170	findings of fact. The findings shall consist of a concise
171	statement upon each issue in the case. A copy of the
172	decision or order accompanying findings and conclusions
173	along with the written action and right of appeal, if any,
174	shall be delivered or mailed promptly to the law enforcement
175	officer or to the officer's attorney or representative of
176	record.
177	6. Law enforcement officers shall have the opportunity
178	to provide a written response to any adverse materials
179	placed in their personnel file, and such written response
180	shall be permanently attached to the adverse material.
181	7. Law enforcement officers shall not be subject to
182	double jeopardy in the administration of discipline through
183	separate punishments for the same alleged act by multiple
184	administrative bodies, except that multiple administrative
185	bodies may impose the same punishment concurrently for the
186	same act.
187	8. Employers shall defend and indemnify law
188	enforcement officers from and against civil claims made
189	against them in their official and individual capacities if
190	the alleged conduct arose in the course and scope of their
191	obligations and duties as law enforcement officers. This
192	includes any actions taken off duty if such actions were
193	taken under color of law. In the event the law enforcement
194	officer is convicted of, or pleads guilty to, criminal
195	charges arising out of the same conduct, the employer shall

196 no longer be obligated to defend and indemnify the officer 197 in connection with related civil claims. 198 9. Law enforcement officers shall not be disciplined, demoted, dismissed, transferred, or placed on a status 199 200 resulting in economic loss as a result of the assertion of 201 their constitutional rights in any judicial proceeding. The remedies provided by this section against law 202 10. enforcement agencies or governmental bodies shall be in 203 204 addition to those provided by any other provision of law. 205 Any aggrieved law enforcement officer or authorized representative may seek judicial enforcement of the 206 requirements of this section. Suits to enforce this section 207 208 shall be brought in the circuit court for the county in 209 which the law enforcement agency or governmental body has 210 its principal place of business. 11. Upon a finding by a preponderance of the evidence 211 212 that a law enforcement agency, governmental body or a member 213 of same has violated this section, the law enforcement 214 agency or governmental body or the member shall be subject 215 to a civil penalty in an amount up to five thousand dollars for each violation. If the court finds that there is a 216 217 violation of this section, the court may order the payment by such body or member of all costs and reasonable attorney 218 219 fees to any party successfully establishing a violation. 220 The court shall determine the amount of the penalty by 221 taking into account the size of the jurisdiction, the 222 seriousness of the offense, and whether the law enforcement 223 agency, governmental body or member of same has violated

224 sections previously.

225 <u>12. Upon a finding by a preponderance of the evidence</u>
 226 <u>that a law enforcement agency, governmental body, or a</u>
 227 member of a same has purposely violated these sections, the

228 law enforcement agency, governmental body, or the member

229	shall be subject to a civil penalty in an amount up to ten
230	thousand dollars. If the court finds that there was a
231	purposeful violation of these sections, then the court shall
232	order the payment by such body or member of all costs and
233	reasonable attorney fees to any party successfully
234	establishing such a violation. The court shall determine
235	the amount of the penalty by taking into account the size of
236	the jurisdiction, the seriousness of the offense, and
237	whether the law enforcement agency, governmental body, or
238	member of same has violated these sections previously.
239	13. Upon a finding by a preponderance of the evidence
240	that a law enforcement agency, governmental body, or member
241	of same has violated any provision of these sections, a
242	court shall void any action taken in violation of these
243	sections. Suit for enforcement shall be brought within one
244	year from which the violation is ascertainable.