

SECOND REGULAR SESSION

SENATE BILL NO. 854

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS KEAVENY AND WRIGHT-JONES.

Read 1st time January 28, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4577S.011

AN ACT

To repeal section 610.100, RSMo, and to enact in lieu thereof one new section relating to the disclosure of police officer identity in investigative reports.

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

Section A. Section 610.100, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 610.100, to read as follows:

610.100. 1. As used in sections 610.100 to 610.150, the following words
2 and phrases shall mean:

3 (1) "Arrest", an actual restraint of the person of the defendant, or by his
4 or her submission to the custody of the officer, under authority of a warrant or
5 otherwise for a criminal violation which results in the issuance of a summons or
6 the person being booked;

7 (2) "Arrest report", a record of a law enforcement agency of an arrest and
8 of any detention or confinement incident thereto together with the charge
9 therefor;

10 (3) "Inactive", an investigation in which no further action will be taken
11 by a law enforcement agency or officer for any of the following reasons:

12 (a) A decision by the law enforcement agency not to pursue the case;

13 (b) Expiration of the time to file criminal charges pursuant to the
14 applicable statute of limitations, or ten years after the commission of the offense;
15 whichever date earliest occurs;

16 (c) Finality of the convictions of all persons convicted on the basis of the
17 information contained in the investigative report, by exhaustion of or expiration
18 of all rights of appeal of such persons;

19 (4) "Incident report", a record of a law enforcement agency consisting of
20 the date, time, specific location, name of the victim and immediate facts and

21 circumstances surrounding the initial report of a crime or incident, including any
22 logs of reported crimes, accidents and complaints maintained by that agency;

23 (5) "Investigative report", a record, other than an arrest or incident report,
24 prepared by personnel of a law enforcement agency, inquiring into a crime or
25 suspected crime, either in response to an incident report or in response to
26 evidence developed by law enforcement officers in the course of their duties.

27 2. Each law enforcement agency of this state, of any county, and of any
28 municipality shall maintain records of all incidents reported to the agency,
29 investigations and arrests made by such law enforcement agency. All incident
30 reports and arrest reports shall be open records. Notwithstanding any other
31 provision of law other than the provisions of subsections 4, 5 and 6 of this section
32 or section 320.083, RSMo, investigative reports of all law enforcement agencies
33 are closed records until the investigation becomes inactive. If any person is
34 arrested and not charged with an offense against the law within thirty days of the
35 person's arrest, the arrest report shall thereafter be a closed record except that
36 the disposition portion of the record may be accessed and except as provided in
37 section 610.120.

38 3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any
39 portion of a record or document of a law enforcement officer or agency, other than
40 an arrest report, which would otherwise be open, contains information **that**
41 **identifies a law enforcement officer, other than an officer that is the**
42 **subject of a criminal investigation;** that is reasonably likely to pose a clear
43 and present danger to the safety of any victim, witness, undercover officer, or
44 other person; or jeopardize a criminal investigation, including records which
45 would disclose the identity of a source wishing to remain confidential or a suspect
46 not in custody; or which would disclose techniques, procedures or guidelines for
47 law enforcement investigations or prosecutions, that portion of the record shall
48 be closed and shall be redacted from any record made available pursuant to this
49 chapter.

50 4. Any person, including a family member of such person within the first
51 degree of consanguinity if such person is deceased or incompetent, attorney for
52 a person, or insurer of a person involved in any incident or whose property is
53 involved in an incident, may obtain any records closed pursuant to this section
54 or section 610.150 for purposes of investigation of any civil claim or defense, as
55 provided by this subsection. Any individual, his or her family member within the
56 first degree of consanguinity if such individual is deceased or incompetent, his or

57 her attorney or insurer, involved in an incident or whose property is involved in
58 an incident, upon written request, may obtain a complete unaltered and unedited
59 incident report concerning the incident, and may obtain access to other records
60 closed by a law enforcement agency pursuant to this section. Within thirty days
61 of such request, the agency shall provide the requested material or file a motion
62 pursuant to this subsection with the circuit court having jurisdiction over the law
63 enforcement agency stating that the safety of the victim, witness or other
64 individual cannot be reasonably ensured, or that a criminal investigation is likely
65 to be jeopardized. If, based on such motion, the court finds for the law
66 enforcement agency, the court shall either order the record closed or order such
67 portion of the record that should be closed to be redacted from any record made
68 available pursuant to this subsection.

69 5. Any person may bring an action pursuant to this section in the circuit
70 court having jurisdiction to authorize disclosure of the information contained in
71 an investigative report of any law enforcement agency, which would otherwise be
72 closed pursuant to this section. The court may order that all or part of the
73 information contained in an investigative report be released to the person
74 bringing the action. In making the determination as to whether information
75 contained in an investigative report shall be disclosed, the court shall consider
76 whether the benefit to the person bringing the action or to the public outweighs
77 any harm to the public, to the law enforcement agency or any of its officers, or to
78 any person identified in the investigative report in regard to the need for law
79 enforcement agencies to effectively investigate and prosecute criminal
80 activity. The investigative report in question may be examined by the court in
81 camera. The court may find that the party seeking disclosure of the investigative
82 report shall bear the reasonable and necessary costs and attorneys' fees of both
83 parties, unless the court finds that the decision of the law enforcement agency not
84 to open the investigative report was substantially unjustified under all relevant
85 circumstances, and in that event, the court may assess such reasonable and
86 necessary costs and attorneys' fees to the law enforcement agency.

87 6. Any person may apply pursuant to this subsection to the circuit court
88 having jurisdiction for an order requiring a law enforcement agency to open
89 incident reports and arrest reports being unlawfully closed pursuant to this
90 section. If the court finds by a preponderance of the evidence that the law
91 enforcement officer or agency has knowingly violated this section, the officer or
92 agency shall be subject to a civil penalty in an amount up to one thousand

93 dollars. If the court finds that there is a knowing violation of this section, the
94 court may order payment by such officer or agency of all costs and attorneys' fees,
95 as provided by section 610.027. If the court finds by a preponderance of the
96 evidence that the law enforcement officer or agency has purposely violated this
97 section, the officer or agency shall be subject to a civil penalty in an amount up
98 to five thousand dollars and the court shall order payment by such officer or
99 agency of all costs and attorney fees, as provided in section 610.027. The court
100 shall determine the amount of the penalty by taking into account the size of the
101 jurisdiction, the seriousness of the offense, and whether the law enforcement
102 officer or agency has violated this section previously.

103 7. The victim of an offense as provided in chapter 566, RSMo, may request
104 that his or her identity be kept confidential until a charge relating to such
105 incident is filed.

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Bill

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