

SECOND REGULAR SESSION

HOUSE BILL NO. 876

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SALVA.

Pre-filed December 16, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3398L.011

AN ACT

To repeal section 610.100, RSMo, and to enact in lieu thereof one new section relating to arrest records.

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Section A. Section 610.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.100, to read as follows: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

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

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

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

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

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

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

(4) "Incident report", a record of a law enforcement agency consisting of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and

19 complaints maintained by that agency;

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

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

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

42 4. Any person, **including a family member of such person within the first degree of**
43 **consanguinity if such person is deceased or incompetent**, attorney for a person, or insurer of
44 a person involved in any incident or whose property is involved in an incident, may obtain any
45 records closed pursuant to this section or section 610.150 for purposes of investigation of any
46 civil claim or defense, as provided by this subsection. Any individual, his or her **family member**
47 **within the first degree of consanguinity if such individual is deceased or incompetent, his**
48 **or her** attorney or insurer, involved in an incident or whose property is involved in an incident,
49 upon written request, may obtain a complete unaltered and unedited incident report concerning
50 the incident, and may obtain access to other records closed by a law enforcement agency
51 pursuant to this section. Within thirty days of such request, the agency shall provide the
52 requested material or file a motion pursuant to this subsection with the circuit court having
53 jurisdiction over the law enforcement agency stating that the safety of the victim, witness or
54 other individual cannot be reasonably ensured, or that a criminal investigation is likely to be

55 jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court
56 shall either order the record closed or order such portion of the record that should be closed to
57 be redacted from any record made available pursuant to this subsection.

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

73 6. Any person may apply pursuant to this subsection to the circuit court having
74 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest
75 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance
76 of the evidence that the law enforcement officer or agency has purposely violated this section,
77 the officer or agency shall be subject to a civil penalty in an amount not to exceed five hundred
78 dollars, and the court shall order payment by such officer or agency of all costs and attorneys'
79 fees, as provided by section 610.027.

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