

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILLS NOS. 331 & 21

AN ACT

To repeal sections 44.100 and 610.100, RSMo, and to enact in lieu thereof four new sections relating to law enforcement officers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 44.100 and 610.100, RSMo, are repealed
2 and four new sections enacted in lieu thereof, to be known as
3 sections 44.100, 590.711, 590.810, and 610.100, to read as
4 follows:

5 44.100. 1. The emergency powers of the governor shall be
6 as follows:

7 (1) The provisions of this section shall be operative only
8 during the existence of a state of emergency (referred to in this
9 section as "emergency"). The existence of an emergency may be
10 proclaimed by the governor or by resolution of the legislature,
11 if the governor in his proclamation, or the legislature in its
12 resolution, finds that a natural or man-made disaster of major
13 proportions has actually occurred within this state, and that the
14 safety and welfare of the inhabitants of this state require an
15 invocation of the provisions of this section;

16 (2) Any emergency, whether proclaimed by the governor or by
17 the legislature, shall terminate upon the proclamation thereof by

1 the governor, or the passage by the legislature, of a resolution
2 terminating such emergency;

3 (3) During the period that the state of emergency exists or
4 continues, the governor shall:

5 (a) Enforce and put into operation all plans, rules and
6 regulations relating to disasters and emergency management of
7 resources adopted under this law and to assume direct operational
8 control of all emergency forces and volunteers in the state;

9 (b) Take action and give directions to state and local law
10 enforcement officers and agencies as may be reasonable and
11 necessary for the purpose of securing compliance with the
12 provisions of this law and with the orders, rules and regulations
13 made pursuant thereof;

14 (c) Seize, take or requisition to the extent necessary to
15 bring about the most effective protection of the public:

16 a. Any means of transportation, other than railroads and
17 railroad equipment and fuel, and all fuel necessary for the
18 propulsion thereof;

19 b. Any communication system or part thereof necessary to
20 the prompt and efficient functioning of the emergency management
21 of the state;

22 c. All stocks of fuel;

23 d. Facilities for housing, feeding and hospitalization of
24 persons, including buildings and plants;

25 (d) Control, restrict and regulate by rationing, freezing,
26 use of quotas, prohibitions on shipments, price fixing,
27 allocation or other means the use, sale or distribution of food,
28 feed, fuel, clothing and other commodities, materials, goods or

1 services;

2 (e) Prescribe and direct activities in connection with but
3 not limited to use, conservation, salvage and prevention of waste
4 of materials, services and facilities, including production,
5 transportation, power and communication facilities, training and
6 supply of labor, utilization of industrial plants, health and
7 medical care, nutrition, housing, including the use of existing
8 and private facilities, rehabilitation, education, welfare, child
9 care, recreation, consumer protection and other essential civil
10 needs;

11 (f) Use or distribute all or any of this property among the
12 inhabitants of the state in any area adversely affected by a
13 natural or man-made disaster and to account to the state
14 treasurer for any funds received thereof;

15 (g) Waive or suspend the operation of any statutory
16 requirement or administrative rule regarding the licensing,
17 certification or issuance of permits evidencing professional,
18 mechanical or other skills;

19 (h) Waive or suspend the operation of any statutory
20 requirement or administrative rule prescribing procedures for
21 conducting state business, where strict compliance with such
22 requirements and rules would prevent, hinder, or delay necessary
23 action by the department of health and senior services to respond
24 to a declared emergency or increased health threat to the
25 population;

26 (i) In accordance with rules or regulations, provide that
27 all law enforcement authorities and other emergency response
28 workers and agencies of other states who may be within this state

1 at the request of the governor or pursuant to state or local
2 mutual-aid agreements or compacts shall have the same authority
3 and possess the same powers, duties, rights, privileges and
4 immunities as are possessed by like law enforcement authorities
5 and emergency response workers and agencies of this state;

6 (j) Perform and exercise such other functions, powers and
7 duties as may be necessary to promote and secure the safety and
8 protection of the civilian population;

9 (k) Authorize the director of finance and the director of
10 credit unions to waive or suspend the operation of any statutory
11 requirement or administrative rule applicable to the division of
12 finance, banking, financial services, or the division of credit
13 unions and take action and give direction to banks, credit
14 unions, and financial institutions, including coordinating
15 actions with emergency responders, federal agencies, and state
16 banking and credit union associations as may be reasonable and
17 necessary to preserve the safety and soundness of banks, credit
18 unions, and financial institutions; and facilitate disaster
19 response and recovery efforts to serve essential civil needs and
20 protect the public interest.

21 2. When any property is seized, taken or requisitioned
22 under this section, the circuit court of the county in which the
23 property was taken may on the application of the owner thereof or
24 on the application of the governor in cases where numerous claims
25 may be filed, appoint three disinterested commissioners in the
26 manner provided by section 523.040 to assess the damages which
27 the owners may have sustained by reason of the appropriation
28 thereof. Upon the application the amount due because of the

1 seizure of property shall be determined in the manner provided in
2 chapter 523 for the determination of damages in case of the
3 exercise of the power of eminent domain.

4 3. If a state of emergency is proclaimed in response to
5 civil unrest, the governor shall, at the request of the county
6 health department, assign a sufficient number of state social
7 workers, counselors, or psychologists to provide counseling and
8 mental health services in the region affected by the unrest.

9 590.711. 1. As used in this section, the term "protest"
10 means the assembly of people for the purpose of expressing
11 disapproval or objection to some person or thing. The term
12 "protest" shall not include any unlawful assembly as defined in
13 section 574.040, or any assembly that interferes with the rights
14 of others through the commission of disorderly acts.

15 2. Each law enforcement agency shall have a policy that
16 requires peace officers on duty at a protest to wear accurate,
17 visible, department-issued identification tags displaying the
18 name of the law enforcement agency and the officer's last name,
19 when feasible.

20 590.810. 1. For purposes of this section, "law enforcement
21 camera" means a camera which is capable of recording video or
22 audio and is, during the course of a peace officer's official
23 duties:

24 (1) Worn on the person of a peace officer;

25 (2) Attached to a peace officer's motor vehicle,
26 watercraft, or aircraft; or

27 (3) Attached to any other device used by a peace officer.

28 2. No law enforcement agency shall be required by the state

1 to provide law enforcement cameras to officers employed by the
2 agency, nor shall the state require any peace officer to wear
3 such cameras.

4 610.100. 1. As used in sections 610.100 to 610.150, the
5 following words and phrases shall mean:

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

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

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

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

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

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

27 (4) "Incident report", a record of a law enforcement agency
28 consisting of the date, time, specific location, name of the

1 victim and immediate facts and circumstances surrounding the
2 initial report of a crime or incident, including any logs of
3 reported crimes, accidents and complaints maintained by that
4 agency;

5 (5) "Investigative report", a record, other than an arrest
6 or incident report, prepared by personnel of a law enforcement
7 agency, inquiring into a crime or suspected crime, either in
8 response to an incident report or in response to evidence
9 developed by law enforcement officers in the course of their
10 duties;

11 (6) "Law enforcement camera", the same meaning as provided
12 under section 590.810.

13 2. Each law enforcement agency of this state, of any
14 county, and of any municipality shall maintain records of all
15 incidents reported to the agency, investigations and arrests made
16 by such law enforcement agency. All incident reports and arrest
17 reports shall be open records. Notwithstanding any other
18 provision of law other than the provisions of subsections 4, 5
19 and 6 of this section or section 320.083, investigative reports
20 of all law enforcement agencies are closed records until the
21 investigation becomes inactive. If any person is arrested and
22 not charged with an offense against the law within thirty days of
23 the person's arrest, the arrest report shall thereafter be a
24 closed record except that the disposition portion of the record
25 may be accessed and except as provided in section 610.120.
26 Notwithstanding any other provision of law other than the
27 provisions of subsections 4 and 8 of this section or section
28 320.083 to the contrary, a law enforcement agency is authorized

1 to close recordings captured by law enforcement cameras.

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

15 4. Any person, including a family member of such person
16 within the first degree of consanguinity if such person is
17 deceased or incompetent, attorney for a person, or insurer of a
18 person involved in any incident or whose property is involved in
19 an incident, may obtain any records closed pursuant to this
20 section or section 610.150 for purposes of investigation of any
21 civil claim or defense, as provided by this subsection. Any
22 individual, his or her family member within the first degree of
23 consanguinity if such individual is deceased or incompetent, his
24 or her attorney or insurer, involved in an incident or whose
25 property is involved in an incident, upon written request, may
26 obtain a complete unaltered and unedited incident report
27 concerning the incident, and may obtain access to other records
28 closed by a law enforcement agency pursuant to this section.

1 Within thirty days of such request, the agency shall provide the
2 requested material or file a motion pursuant to this subsection
3 with the circuit court having jurisdiction over the law
4 enforcement agency stating that the safety of the victim, witness
5 or other individual cannot be reasonably ensured, or that a
6 criminal investigation is likely to be jeopardized. If, based on
7 such motion, the court finds for the law enforcement agency, the
8 court shall either order the record closed or order such portion
9 of the record that should be closed to be redacted from any
10 record made available pursuant to this subsection.

11 5. Any person may bring an action pursuant to this section
12 in the circuit court having jurisdiction to authorize disclosure
13 of the information contained in an investigative report of any
14 law enforcement agency, which would otherwise be closed pursuant
15 to this section. The court may order that all or part of the
16 information contained in an investigative report be released to
17 the person bringing the action. In making the determination as
18 to whether information contained in an investigative report shall
19 be disclosed, the court shall consider whether the benefit to the
20 person bringing the action or to the public outweighs any harm to
21 the public, to the law enforcement agency or any of its officers,
22 or to any person identified in the investigative report in regard
23 to the need for law enforcement agencies to effectively
24 investigate and prosecute criminal activity. The investigative
25 report in question may be examined by the court in camera. The
26 court may find that the party seeking disclosure of the
27 investigative report shall bear the reasonable and necessary
28 costs and attorneys' fees of both parties, unless the court finds

1 that the decision of the law enforcement agency not to open the
2 investigative report was substantially unjustified under all
3 relevant circumstances, and in that event, the court may assess
4 such reasonable and necessary costs and attorneys' fees to the
5 law enforcement agency.

6 6. Any person may apply pursuant to this subsection to the
7 circuit court having jurisdiction for an order requiring a law
8 enforcement agency to open incident reports and arrest reports
9 being unlawfully closed pursuant to this section. If the court
10 finds by a preponderance of the evidence that the law enforcement
11 officer or agency has knowingly violated this section, the
12 officer or agency shall be subject to a civil penalty in an
13 amount up to one thousand dollars. If the court finds that there
14 is a knowing violation of this section, the court may order
15 payment by such officer or agency of all costs and attorneys'
16 fees, as provided by section 610.027. If the court finds by a
17 preponderance of the evidence that the law enforcement officer or
18 agency has purposely violated this section, the officer or agency
19 shall be subject to a civil penalty in an amount up to five
20 thousand dollars and the court shall order payment by such
21 officer or agency of all costs and attorney fees, as provided in
22 section 610.027. The court shall determine the amount of the
23 penalty by taking into account the size of the jurisdiction, the
24 seriousness of the offense, and whether the law enforcement
25 officer or agency has violated this section previously.

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

1 8. Recordings captured by law enforcement cameras shall be
2 available to any civilian review board for the purposes of
3 investigating allegations of misconduct by a law enforcement
4 officer. The recordings shall not be further disclosed by the
5 civilian review board to any person who is not a member of the
6 board.