

FIRST REGULAR SESSION

# HOUSE BILL NO. 846

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ANDERSON.

1444H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To repeal sections 211.059 and 590.502, RSMo, and to enact in lieu thereof three new sections relating to law enforcement custodial interviews.

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

Section A. Sections 211.059 and 590.502, RSMo, are repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 211.059, 590.502, and 590.702, to read as  
3 follows:

211.059. 1. When a child is taken into custody by a juvenile officer or law  
2 enforcement official, with or without a warrant for an offense in violation of the juvenile code  
3 or the general law which would place the child under the jurisdiction of the juvenile court  
4 pursuant to subdivision (2) or (3) of subsection 1 of section 211.031, the child shall be  
5 advised, orally and in writing, prior to questioning:

6 (1) That the child has the right to remain silent;

7 (2) That any statement the child does make to anyone can be and may be used against  
8 the child in subsequent juvenile court proceedings;

9 (3) That the child has a right to have a parent, guardian or custodian present during  
10 questioning;

11 (4) That the child has a right to consult with an attorney and that one will be  
12 appointed and paid for him if he cannot afford one;

13 (5) That the child has the right to stop talking at any time; and

14 (6) That any statement the child does make to law enforcement can be and may be  
15 used against the child if the child is transferred to a court of general jurisdiction to be  
16 prosecuted under the general law.

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.

17           2. The juvenile officer shall halt or discontinue any questioning by law enforcement  
18 upon notice from the child that the child wishes to stop being questioned.

19           3. The juvenile officer shall ensure a child is advised of the limited role of the  
20 juvenile officer during questioning by law enforcement and specifically advise the child that  
21 the juvenile officer is not legal counsel for the child or an advocate for the child during  
22 questioning by law enforcement.

23           4. The juvenile officer shall not participate in the questioning by law enforcement by  
24 asking any questions or soliciting any information from the child regarding the alleged  
25 offense or offenses.

26           5. When a child is taken into custody by a juvenile officer or law enforcement official  
27 which places the child under the jurisdiction of the juvenile court under subdivision (1) of  
28 subsection 1 of section 211.031, including any interactions with the child by the children's  
29 division, the following shall apply:

30           (1) If the child indicates in any manner at any stage during questioning involving the  
31 alleged abuse and neglect that the child does not wish to be questioned any further on the  
32 allegations, or that the child wishes to have his or her parent, legal guardian, or custodian if  
33 such parent, guardian, or custodian is not the alleged perpetrator, or his or her attorney present  
34 during questioning as to the alleged abuse, the questioning of the child shall cease on the  
35 alleged abuse and neglect until such a time that the child does not object to talking about the  
36 alleged abuse and neglect unless the interviewer has reason to believe that the parent, legal  
37 guardian, or custodian is acting to protect the alleged perpetrator. Nothing in this subdivision  
38 shall be construed to prevent the asking of any questions necessary for the care, treatment, or  
39 placement of a child; and

40           (2) Notwithstanding any prohibition of hearsay evidence, all video or audio  
41 recordings of any meetings, interviews, or interrogations of a child shall be presumed  
42 admissible as evidence in any court or administrative proceeding involving the child if the  
43 following conditions are met:

44           (a) Such meetings, interviews, or interrogations of the child are conducted by the state  
45 prior to or after the child is taken into the custody of the state; and

46           (b) Such video or audio recordings were made prior to the adjudication hearing in the  
47 case. Nothing in this paragraph shall be construed to prohibit the videotaping or audiotaping  
48 of any such meetings, interviews, or interrogations of a child after the adjudication hearing;  
49 and

50           (3) Only upon a showing by clear and convincing evidence that such a video or audio  
51 recording lacks sufficient indicia of reliability shall such recording be inadmissible.

52

53 The provisions of this subsection shall not apply to statements admissible under section  
54 491.075 or 492.304 in criminal proceedings.

55 **6. Notwithstanding any other provision of law, a statement made by a child**  
56 **during questioning is presumed to be involuntary if the court determines that the law**  
57 **enforcement officer intentionally used information known by the officer to be false to**  
58 **elicit the statement. This presumption may be overcome if the state proves by clear and**  
59 **convincing evidence that the statement was voluntary and not made in response to the**  
60 **false information used by the law enforcement officer to elicit the statement.**

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

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

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

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

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

14 (5) "Law enforcement officer", any commissioned peace officer with the power to  
15 arrest for a violation of the criminal code who is employed by any unit of the state or any  
16 county, 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 ranking  
19 officer in the law enforcement agency.

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

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

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

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

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

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

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

50 (7) Prior to an interview session, the investigator or investigators conducting the  
51 investigation shall advise the law enforcement officer of the rule set out in *Garrity v. New*  
52 *Jersey*, 385 U.S. 493 (1967), specifically that the law enforcement officer is being ordered to  
53 answer questions under threat of disciplinary action and that the officer's answers to the  
54 questions will not be used against the officer in criminal proceedings;

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

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

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

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

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

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

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

97 3. Law enforcement officers who are suspended without pay, demoted, terminated,  
98 transferred, or placed on a status resulting in economic loss shall be entitled to a full due  
99 process hearing. However, nothing in this section shall prohibit a law enforcement agency  
100 and the authorized bargaining representative for a law enforcement officer employed by that  
101 agency from reaching written agreements providing disciplinary procedures more favorable

102 than those provided for this section. The components of the hearing shall include, at a  
103 minimum:

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

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

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

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

113 (5) A complete record of the hearing shall be kept by the agency for purposes of  
114 appeal. The record shall be provided to the officer or his or her attorney upon written request;

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

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

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

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

128 7. Employers shall defend and indemnify law enforcement officers from and against  
129 civil claims made against them in their official and individual capacities if the alleged conduct  
130 arose in the course and scope of their obligations and duties as law enforcement officers. This  
131 includes any actions taken off duty if such actions were taken under color of law. In the event  
132 the law enforcement officer is convicted of, or pleads guilty to, criminal charges arising out of  
133 the same conduct, the employer shall no longer be obligated to defend and indemnify the  
134 officer in connection with related civil claims.

135 8. Law enforcement officers shall not be disciplined, demoted, dismissed, transferred,  
136 or placed on a status resulting in economic loss as a result of the assertion of their  
137 constitutional rights in any judicial proceeding, unless the officer admits to wrongdoing, in  
138 which case the provisions of this section shall not apply.

139           **9. Notwithstanding any other provision of law, a statement made by a law**  
140 **enforcement officer who is the subject of an investigation during questioning is**  
141 **presumed to be involuntary if the court determines that the investigating agency**  
142 **intentionally used information known by the investigating agency to be false to elicit the**  
143 **statement. This presumption may be overcome if the state proves by clear and**  
144 **convincing evidence that the statement was voluntary and not made in response to the**  
145 **false information used by the investigating agency to elicit the statement.**

146           **10.** Any aggrieved law enforcement officer or authorized representative may seek  
147 judicial enforcement of the requirements of this section. Suits to enforce this section shall be  
148 brought in the circuit court for the county in which the law enforcement agency or  
149 governmental body has its principal place of business.

150           ~~[10.]~~ **11.** Upon a finding by a preponderance of the evidence that a law enforcement  
151 agency, governmental body, or member of same has violated any provision of this section, a  
152 court shall void any action taken in violation of this section. The court may also award the  
153 law enforcement officer the costs of bringing the suit including, but not limited to, attorneys'  
154 fees. A lawsuit for enforcement shall be brought within one year from which the violation is  
155 ascertainable.

156           ~~[11.]~~ **12.** Nothing in this section shall apply to any investigation or other action by the  
157 director regarding a license issued by the director under this chapter.

158           ~~[12.]~~ **13.** A law enforcement agency that has substantially similar or greater  
159 procedures shall be deemed in compliance with this section.

**590.702. Notwithstanding any other provision of law, a statement made by a**  
2 **person under arrest during a custodial interrogation, as defined in section 590.700, is**  
3 **presumed to be involuntary if the court determines that the law enforcement agency**  
4 **conducting the interview intentionally used information known by the agency to be false**  
5 **to elicit the statement. This presumption may be overcome if the state proves by clear**  
6 **and convincing evidence that the statement was voluntary and not made in response to**  
7 **the false information used by the law enforcement agency to elicit the statement.**

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