

SECOND REGULAR SESSION

HOUSE BILL NO. 2477

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLY (141).

4964H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 610.100, RSMo, and to enact in lieu thereof one new section relating to closed 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Section A. Section 610.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.100, to read as follows: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

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.

18 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 (6) "Mobile video recorder", any system or device that captures visual signals that is
25 capable of installation and being installed in a vehicle or being worn or carried by personnel of
26 a law enforcement agency and that includes, at minimum, a camera and recording capabilities;

27 (7) "Mobile video recording", any data captured by a mobile video recorder, including
28 audio, video, and any metadata;

29 (8) "Nonpublic location", a place where one would have a reasonable expectation of
30 privacy, including, but not limited to a dwelling, school, or medical facility.

31 2. (1) Each law enforcement agency of this state, of any county, and of any municipality
32 shall maintain records of all incidents reported to the agency, investigations and arrests made by
33 such law enforcement agency. All incident reports and arrest reports shall be open records.

34 (2) Notwithstanding any other provision of law other than the provisions of subsections
35 4, 5 and 6 of this section or section 320.083, mobile video recordings and investigative reports
36 of all law enforcement agencies **and any reports or records in the possession of the**
37 **department of health and senior services' Missouri state public health laboratory which**
38 **were the result of testing performed at the request of any municipal, county, state, or**
39 **federal law enforcement agency**, are closed records until the investigation becomes inactive.

40 (3) If any person is arrested and not charged with an offense against the law within thirty
41 days of the person's arrest, the arrest report shall thereafter be a closed record except that the
42 disposition portion of the record may be accessed and except as provided in section 610.120.

43 (4) Except as provided in subsections 3 and 5 of this section, a mobile video recording
44 that is recorded in a nonpublic location is authorized to be closed, except that any person who
45 is depicted in the recording or whose voice is in the recording, a legal guardian or parent of such
46 person if he or she is a minor, a family member of such person within the first degree of
47 consanguinity if he or she is deceased or incompetent, an attorney for such person, or insurer of
48 such person, upon written request, may obtain a complete, unaltered, and unedited copy of a
49 recording under and pursuant to this section.

50 3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a
51 record or document of a law enforcement officer or agency, other than an arrest report, which
52 would otherwise be open, contains information that is reasonably likely to pose a clear and
53 present danger to the safety of any victim, witness, undercover officer, or other person; or

54 jeopardize a criminal investigation, including records which would disclose the identity of a
55 source wishing to remain confidential or a suspect not in custody; or which would disclose
56 techniques, procedures or guidelines for law enforcement investigations or prosecutions, that
57 portion of the record shall be closed and shall be redacted from any record made available
58 pursuant to this chapter.

59 4. Any person, including a legal guardian or a parent of such person if he or she is a
60 minor, family member of such person within the first degree of consanguinity if such person is
61 deceased or incompetent, attorney for a person, or insurer of a person involved in any incident
62 or whose property is involved in an incident, may obtain any records closed pursuant to this
63 section or section 610.150 for purposes of investigation of any civil claim or defense, as provided
64 by this subsection. Any individual, legal guardian or parent of such person if he or she is a
65 minor, his or her family member within the first degree of consanguinity if such individual is
66 deceased or incompetent, his or her attorney or insurer, involved in an incident or whose property
67 is involved in an incident, upon written request, may obtain a complete unaltered and unedited
68 incident report concerning the incident, and may obtain access to other records closed by a law
69 enforcement agency pursuant to this section. Within thirty days of such request, the agency shall
70 provide the requested material or file a motion pursuant to this subsection with the circuit court
71 having jurisdiction over the law enforcement agency stating that the safety of the victim, witness
72 or other individual cannot be reasonably ensured, or that a criminal investigation is likely to be
73 jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court
74 shall either order the record closed or order such portion of the record that should be closed to
75 be redacted from any record made available pursuant to this subsection.

76 5. (1) Any person may bring an action pursuant to this section in the circuit court having
77 jurisdiction to authorize disclosure of a mobile video recording or the information contained in
78 an investigative report of any law enforcement agency, which would otherwise be closed
79 pursuant to this section. The court may order that all or part of a mobile video recording or the
80 information contained in an investigative report be released to the person bringing the action.

81 (2) In making the determination as to whether information contained in an investigative
82 report shall be disclosed, the court shall consider whether the benefit to the person bringing the
83 action or to the public outweighs any harm to the public, to the law enforcement agency or any
84 of its officers, or to any person identified in the investigative report in regard to the need for law
85 enforcement agencies to effectively investigate and prosecute criminal activity.

86 (3) In making the determination as to whether a mobile video recording shall be
87 disclosed, the court shall consider:

88 (a) Whether the benefit to the person bringing the action or the benefit to the public
89 outweighs any harm to the public, to the law enforcement agency or any of its officers, or to any

90 person identified in the mobile video recording in regard and with respect to the need for law
91 enforcement agencies to effectively investigate and prosecute criminal activity;

92 (b) Whether the mobile video recording contains information that is reasonably likely
93 to disclose private matters in which the public has no legitimate concern;

94 (c) Whether the mobile video recording is reasonably likely to bring shame or
95 humiliation to a person of ordinary sensibilities; and

96 (d) Whether the mobile video recording was taken in a place where a person recorded
97 or depicted has a reasonable expectation of privacy.

98 (4) The mobile video recording or investigative report in question may be examined by
99 the court in camera.

100 (5) If the disclosure is authorized in whole or in part, the court may make any order that
101 justice requires, including one or more of the following:

102 (a) That the mobile video recording or investigative report may be disclosed only on
103 specified terms and conditions, including a designation of the time or place;

104 (b) That the mobile video recording or investigative report may be had only by a method
105 of disclosure other than that selected by the party seeking such disclosure and may be disclosed
106 to the person making the request in a different manner or form as requested;

107 (c) That the scope of the request be limited to certain matters;

108 (d) That the disclosure occur with no one present except persons designated by the court;

109 (e) That the mobile video recording or investigative report be redacted to exclude, for
110 example, personally identifiable features or other sensitive information;

111 (f) That a trade secret or other confidential research, development, or commercial
112 information not be disclosed or be disclosed only in a designated way.

113 (6) The court may find that the party seeking disclosure of the mobile video recording
114 or the investigative report shall bear the reasonable and necessary costs and attorneys' fees of
115 both parties, unless the court finds that the decision of the law enforcement agency not to open
116 the mobile video recording or investigative report was substantially unjustified under all relevant
117 circumstances, and in that event, the court may assess such reasonable and necessary costs and
118 attorneys' fees to the law enforcement agency.

119 6. Any person may apply pursuant to this subsection to the circuit court having
120 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest
121 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance
122 of the evidence that the law enforcement officer or agency has knowingly violated this section,
123 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.
124 If the court finds that there is a knowing violation of this section, the court may order payment
125 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the

126 court finds by a preponderance of the evidence that the law enforcement officer or agency has
127 purposely violated this section, the officer or agency shall be subject to a civil penalty in an
128 amount up to five thousand dollars and the court shall order payment by such officer or agency
129 of all costs and attorney fees, as provided in section 610.027. The court shall determine the
130 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
131 offense, and whether the law enforcement officer or agency has violated this section previously.

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

134 8. Any person who requests and receives a mobile video recording that was recorded in
135 a nonpublic location under and pursuant to this section is prohibited from displaying or
136 disclosing the mobile video recording, including any description or account of any or all of the
137 mobile video recording, without first providing direct third-party notice to each person not
138 affiliated with a law enforcement agency or each non-law enforcement agency individual whose
139 image or sound is contained in the recording, and affording, upon receiving such notice, each
140 person appearing and whose image or sound is contained in the mobile video recording no less
141 than ten days to file and serve an action seeking an order from a court of competent jurisdiction
142 to enjoin all or some of the intended display, disclosure, description, or account of the recording.
143 Any person who fails to comply with the provisions of this subsection is subject to damages in
144 a civil action proceeding.

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