

SECOND REGULAR SESSION

HOUSE BILL NO. 2364

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RHOADS.

6142H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 610.100, RSMo, and to enact in lieu thereof one new section relating to arrest and incident 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Section A. Section 610.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.100, to read as follows: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 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, investigative reports of all law enforcement agencies are
29 closed records until the investigation becomes inactive. If any person is arrested and not charged
30 with an offense against the law within thirty days of the person's arrest, the arrest report shall
31 thereafter be a closed record except that the disposition portion of the record may be accessed
32 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 a
44 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 or her
48 attorney or insurer, involved in an incident or whose property is involved in an incident, upon
49 written request, may obtain a complete unaltered and unedited incident report concerning the
50 incident, and may obtain access to other records closed by a law enforcement agency pursuant
51 to this section. Within thirty days of such request, the agency shall provide the requested
52 material or **in the event a criminal investigation occurs as a result of the incident, maintain**
53 **the records as closed records until after a charging decision by a prosecuting attorney or**

54 **Grand Jury has been issued, or for one year after the date of the incident, whichever is**
55 **later. Without limitation as to time, if the law enforcement agency believes the safety of**
56 **a victim, witness, or individual cannot reasonably be ensured, or that a criminal**
57 **investigation is likely to be jeopardized, the agency may** file a motion pursuant to this
58 subsection with the circuit court having jurisdiction over the law enforcement agency, [stating
59 that the safety of the victim, witness or other individual cannot be reasonably ensured, or that a
60 criminal investigation is likely to be jeopardized.] **and if**, based on such motion,] the court finds
61 for the law enforcement agency, the court shall either order the record closed or order such
62 portion of the record that should be closed to be redacted from any record made available
63 pursuant to this subsection.

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

79 6. Any person may apply pursuant to this subsection to the circuit court having
80 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest
81 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance
82 of the evidence that the law enforcement officer or agency has knowingly violated this section,
83 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.
84 If the court finds that there is a knowing violation of this section, the court may order payment
85 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the
86 court finds by a preponderance of the evidence that the law enforcement officer or agency has
87 purposely violated this section, the officer or agency shall be subject to a civil penalty in an
88 amount up to five thousand dollars and the court shall order payment by such officer or agency
89 of all costs and attorney fees, as provided in section 610.027. The court shall determine the

90 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
91 offense, and whether the law enforcement officer or agency has violated this section previously.

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

✓