

SECOND REGULAR SESSION

# HOUSE BILL NO. 2473

98TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE MONTECILLO.

6265H.011

D. ADAM CRUMBLISS, Chief Clerk

---

## AN ACT

To repeal sections 610.100 and 610.200, RSMo, and to enact in lieu thereof two new sections relating to law enforcement records, with penalty provisions.

---

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

Section A. Sections 610.100 and 610.200, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 610.100 and 610.200, to read as follows: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]  
28 6, **and 7** of this section or section 320.083, 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, **and 8** of this section, if any  
34 portion of a record or document of a law enforcement officer or agency, other than an arrest  
35 report, which would otherwise be open, contains information that is reasonably likely to pose a  
36 clear and present danger to the safety of any victim, witness, undercover officer, or other person;  
37 or 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. **Except as otherwise provided in this section, any portion of a record or document**  
43 **of a law enforcement officer or agency which would otherwise be open shall be closed to**  
44 **the extent the record or document contains personally identifiable health information of**  
45 **any person. The portion of any record containing personally identifiable health**  
46 **information shall be closed and redacted from any record before it is made available under**  
47 **this chapter. For purposes of this subsection, "personally identifiable health information"**  
48 **means any information that can be used to identify, contact, or locate an individual, either**  
49 **alone or combined with other easily accessible sources, including information that is linked**  
50 **or linkable to an individual and that is connected to any information that relates to the**  
51 **past, present, or future physical or mental health or condition of an individual.**  
52 **"Personally identifiable" shall include, but not be limited to, the following data elements:**

53 (1) **Name;**

- 54           **(2) Address;**  
55           **(3) Birth date;**  
56           **(4) Telephone number;**  
57           **(5) Vehicle identification numbers or serial numbers;**  
58           **(6) Fax numbers;**  
59           **(7) Device identifiers or serial numbers;**  
60           **(8) Email addresses or any other online contact information;**  
61           **(9) Web universal resource locators (URLs);**  
62           **(10) Social Security numbers;**  
63           **(11) Medical record numbers;**  
64           **(12) Biometric identifiers;**  
65           **(13) Health plan beneficiary numbers;**  
66           **(14) Photographs; and**  
67           **(15) Account numbers.**

68  
69 **Notwithstanding any other provision of law, the sovereign immunity of a law enforcement**  
70 **agency from liability and suit for compensatory damages is hereby expressly waived in any**  
71 **instance in which a law enforcement officer or agency intentionally discloses personally**  
72 **identifiable health information in violation of the provisions of this subsection. A violation**  
73 **of this section due to a negligent act or omission by a law enforcement officer or a law**  
74 **enforcement agency shall be subject to discipline by the agency and the Police Officer**  
75 **Standards and Training Commission under chapter 590.**

76           **5.** Any person, including a family member of such person within the first degree of  
77 consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a  
78 person involved in any incident or whose property is involved in an incident, may obtain any  
79 records closed pursuant to this section or section 610.150 for purposes of investigation of any  
80 civil claim or defense, as provided by this subsection. Any individual, his or her family member  
81 within the first degree of consanguinity if such individual is deceased or incompetent, his or her  
82 attorney or insurer, involved in an incident or whose property is involved in an incident, upon  
83 written request, may obtain a complete unaltered and unedited incident report concerning the  
84 incident, and may obtain access to other records closed by a law enforcement agency pursuant  
85 to this section. Within thirty days of such request, the agency shall provide the requested  
86 material or file a motion pursuant to this subsection with the circuit court having jurisdiction  
87 over the law enforcement agency stating that the safety of the victim, witness or other individual  
88 cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If,  
89 based on such motion, the court finds for the law enforcement agency, the court shall either order

90 the record closed or order such portion of the record that should be closed to be redacted from  
91 any record made available pursuant to this subsection.

92 [5.] 6. Any person may bring an action pursuant to this section in the circuit court having  
93 jurisdiction to authorize disclosure of the information contained in an investigative report of any  
94 law enforcement agency, which would otherwise be closed pursuant to this section. The court  
95 may order that all or part of the information contained in an investigative report be released to  
96 the person bringing the action. In making the determination as to whether information contained  
97 in an investigative report shall be disclosed, the court shall consider whether the benefit to the  
98 person bringing the action or to the public outweighs any harm to the public, to the law  
99 enforcement agency or any of its officers, or to any person identified in the investigative report  
100 in regard to the need for law enforcement agencies to effectively investigate and prosecute  
101 criminal activity. The investigative report in question may be examined by the court in camera.  
102 The court may find that the party seeking disclosure of the investigative report shall bear the  
103 reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the  
104 decision of the law enforcement agency not to open the investigative report was substantially  
105 unjustified under all relevant circumstances, and in that event, the court may assess such  
106 reasonable and necessary costs and attorneys' fees to the law enforcement agency.

107 [6.] 7. Any person may apply pursuant to this subsection to the circuit court having  
108 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest  
109 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance  
110 of the evidence that the law enforcement officer or agency has knowingly violated this section,  
111 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.  
112 If the court finds that there is a knowing violation of this section, the court may order payment  
113 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the  
114 court finds by a preponderance of the evidence that the law enforcement officer or agency has  
115 purposely violated this section, the officer or agency shall be subject to a civil penalty in an  
116 amount up to five thousand dollars and the court shall order payment by such officer or agency  
117 of all costs and attorney fees, as provided in section 610.027. The court shall determine the  
118 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the  
119 offense, and whether the law enforcement officer or agency has violated this section previously.

120 [7.] 8. The victim of an offense as provided in chapter 566 may request that his or her  
121 identity be kept confidential until a charge relating to such incident is filed.

610.200. 1. **Except as provided in subsection 2 of this section**, all law enforcement  
2 agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints  
3 shall make available the following information for inspection and copying by the public:

4 (1) The time, substance, and location of all complaints or requests for assistance received  
5 by the agency;

6 (2) The time and nature of the agency's response to all complaints or requests for  
7 assistance; and

8 (3) If the incident involves an alleged crime or infraction:

9 (a) The time, date, and location of occurrence;

10 (b) The name and age of any victim, unless the victim is a victim of a crime under  
11 chapter 566;

12 (c) The factual circumstances surrounding the incident; and

13 (d) A general description of any injuries, property or weapons involved.

14 **2. Notwithstanding the provisions of any other law, any law enforcement agency**  
15 **with custody of an accident report or incident report shall not release the report containing**  
16 **any personally identifiable health information, except as provided under subsection 4 of**  
17 **section 610.100.**

✓