

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 2473

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MONTECILLO.

6265H.01P

D. ADAM CRUMBLISS, ChiefClerk

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Section A. Sections 610.100 and 610.200, RSMo, are repealed and two new sections
2 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
2 shall mean:

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

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

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

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

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

13 (c) Finality of the convictions of all persons convicted on the basis of the information
14 contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such
15 persons;

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.

16 (4) "Incident report", a record of a law enforcement agency consisting of the date, time,
17 specific location, name of the victim and immediate facts and circumstances surrounding the
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. **(1) Notwithstanding any other provision of this section or law to the contrary,**
43 **incident reports and investigative reports involving suicide or attempted suicide, and any**
44 **medical records contained within such reports involving instances of rape, sexual assault,**
45 **or any other sexual offense under chapter 566, shall not be public records or documents**
46 **subject to the provisions of this chapter and shall permanently be characterized as closed**
47 **records.**

48 **(2) Except as authorized by this section or any other law or rule for purposes**
49 **including administrative necessities, court adjudications, or law enforcement, such reports**
50 **shall not be released for any purpose whatsoever, except that suicide and attempted suicide**
51 **records shall be released upon the request of an individual who is the subject of the report**

52 of attempted suicide or upon the request of such individual's parent or guardian if the
53 individual is a minor or is incapacitated. If a suicide did occur, then such records shall be
54 released to the victim's familial relations within the second degree of consanguinity or
55 affinity upon request. Reports that have not been redacted containing medical records
56 related to rape, sexual assault, and any other sexual offense under chapter 566 shall be
57 released only upon the request of an individual who is the reported victim of any such
58 crime, to his or her parent or guardian if the individual is a minor, or to his or her parent
59 or guardian if the individual is incapacitated. A law enforcement agency may release any
60 information from reports involving suicide or attempted suicide, upon its own volition and
61 without the consent of the individual who is the reported victim of any such act, if the
62 release of such information is immediately necessary to the preservation of the health and
63 safety of an individual or the public health and welfare.

64 (3) The sovereign immunity of a law enforcement agency from liability and suit for
65 compensatory damages is hereby expressly waived in any instance in which a law
66 enforcement officer or agency intentionally discloses such reports in violation of the
67 provisions of this subsection. A violation of this subsection due to a negligent act or
68 omission by a law enforcement officer or a law enforcement agency shall be subject to
69 discipline by the agency and the Police Officer Standards and Training Commission under
70 chapter 590.

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

87 [5.] 6. Any person may bring an action pursuant to this section in the circuit court having
88 jurisdiction to authorize disclosure of the information contained in an investigative report of any
89 law enforcement agency, which would otherwise be closed pursuant to this section. The court
90 may order that all or part of the information contained in an investigative report be released to
91 the person bringing the action. In making the determination as to whether information contained
92 in an investigative report shall be disclosed, the court shall consider whether the benefit to the
93 person bringing the action or to the public outweighs any harm to the public, to the law
94 enforcement agency or any of its officers, or to any person identified in the investigative report
95 in regard to the need for law enforcement agencies to effectively investigate and prosecute
96 criminal activity. The investigative report in question may be examined by the court in camera.
97 The court may find that the party seeking disclosure of the investigative report shall bear the
98 reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the
99 decision of the law enforcement agency not to open the investigative report was substantially
100 unjustified under all relevant circumstances, and in that event, the court may assess such
101 reasonable and necessary costs and attorneys' fees to the law enforcement agency.

102 [6.] 7. Any person may apply pursuant to this subsection to the circuit court having
103 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest
104 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance
105 of the evidence that the law enforcement officer or agency has knowingly violated this section,
106 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.
107 If the court finds that there is a knowing violation of this section, the court may order payment
108 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the
109 court finds by a preponderance of the evidence that the law enforcement officer or agency has
110 purposely violated this section, the officer or agency shall be subject to a civil penalty in an
111 amount up to five thousand dollars and the court shall order payment by such officer or agency
112 of all costs and attorney fees, as provided in section 610.027. The court shall determine the
113 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
114 offense, and whether the law enforcement officer or agency has violated this section previously.

115 [7.] 8. The victim of an offense as provided in chapter 566 may request that his or her
116 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 information about a suicide, attempted suicide, rape, sexual assault, or any other**
17 **sexual offense under chapter 566, except as authorized under subsection 4 of section**
18 **610.100.**

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