

SECOND REGULAR SESSION

SENATE BILL NO. 918

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ONDER.

Read 1st time January 22, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4232S.011

AN ACT

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Section A. Section 610.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.100, to read as follows: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

21 circumstances surrounding the initial report of a crime or incident, including any
22 logs of reported crimes, accidents and complaints maintained by that agency;

23 (5) "Investigative report", a record, other than an arrest or incident report,
24 prepared by personnel of a law enforcement agency, inquiring into a crime or
25 suspected crime, either in response to an incident report or in response to
26 evidence developed by law enforcement officers in the course of their duties;

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

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

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

36 2. (1) Each law enforcement agency of this state, of any county, and of
37 any municipality shall maintain records of all incidents reported to the agency,
38 investigations and arrests made by such law enforcement agency. All incident
39 reports and arrest reports shall be open records.

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

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

52 (4) Except as provided in subsections 3 and 5 of this section, a mobile
53 video recording that is recorded in a nonpublic location is authorized to be closed,
54 except that any person who is depicted in the recording or whose voice is in the
55 recording, a legal guardian or parent of such person if he or she is a minor, a
56 family member of such person within the first degree of consanguinity if he or she

57 is deceased or incompetent, an attorney for such person, or insurer of such
58 person, upon written request, may obtain a complete, unaltered, and unedited
59 copy of a recording under and pursuant to this section.

60 3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any
61 portion of a record or document of a law enforcement officer or agency, other than
62 an arrest report, which would otherwise be open, contains information that is
63 reasonably likely to pose a clear and present danger to the safety of any victim,
64 witness, undercover officer, or other person; or jeopardize a criminal
65 investigation, including records which would disclose the identity of a source
66 wishing to remain confidential or a suspect not in custody; or which would
67 disclose techniques, procedures or guidelines for law enforcement investigations
68 or prosecutions, that portion of the record shall be closed and shall be redacted
69 from any record made available pursuant to this chapter.

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

90 5. (1) Any person may bring an action pursuant to this section in the
91 circuit court having jurisdiction to authorize disclosure of a mobile video
92 recording or the information contained in an investigative report of any law

93 enforcement agency, which would otherwise be closed pursuant to this
94 section. The court may order that all or part of a mobile video recording or the
95 information contained in an investigative report be released to the person
96 bringing the action.

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

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

105 (a) Whether the benefit to the person bringing the action or the benefit
106 to the public outweighs any harm to the public, to the law enforcement agency or
107 any of its officers, or to any person identified in the mobile video recording in
108 regard and with respect to the need for law enforcement agencies to effectively
109 investigate and prosecute criminal activity;

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

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

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

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

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

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

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

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

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

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

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

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

143 6. Any person may apply pursuant to this subsection to the circuit court
144 having jurisdiction for an order requiring a law enforcement agency to open
145 incident reports and arrest reports being unlawfully closed pursuant to this
146 section. If the court finds by a preponderance of the evidence that the law
147 enforcement officer or agency has knowingly violated this section, the officer or
148 agency shall be subject to a civil penalty in an amount up to one thousand
149 dollars. If the court finds that there is a knowing violation of this section, the
150 court may order payment by such officer or agency of all costs and attorneys' fees,
151 as provided by section 610.027. If the court finds by a preponderance of the
152 evidence that the law enforcement officer or agency has purposely violated this
153 section, the officer or agency shall be subject to a civil penalty in an amount up
154 to five thousand dollars and the court shall order payment by such officer or
155 agency of all costs and attorney fees, as provided in section 610.027. The court
156 shall determine the amount of the penalty by taking into account the size of the
157 jurisdiction, the seriousness of the offense, and whether the law enforcement
158 officer or agency has violated this section previously.

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

162 8. Any person who requests and receives a mobile video recording that
163 was recorded in a nonpublic location under and pursuant to this section is
164 prohibited from displaying or disclosing the mobile video recording, including any

165 description or account of any or all of the mobile video recording, without first
166 providing direct third-party notice to each person not affiliated with a law
167 enforcement agency or each non-law enforcement agency individual whose image
168 or sound is contained in the recording, and affording, upon receiving such notice,
169 each person appearing and whose image or sound is contained in the mobile video
170 recording no less than ten days to file and serve an action seeking an order from
171 a court of competent jurisdiction to enjoin all or some of the intended display,
172 disclosure, description, or account of the recording. Any person who fails to
173 comply with the provisions of this subsection is subject to damages in a civil
174 action proceeding.

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