

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1936

98TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 21, 2016, with recommendation that the Senate Committee Substitute do pass.

5348S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 57.111 and 610.100, RSMo, and to enact in lieu thereof two new sections relating to law enforcement officers.

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

Section A. Sections 57.111 and 610.100, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 57.111 and 610.100, to
3 read as follows:

57.111. Whenever any sheriff or deputy sheriff of any county in this state
2 is expressly requested, in each instance, by a sheriff [of an adjoining county] of
3 this state to render assistance, such sheriff or deputy shall have the same powers
4 of arrest in such county as he **or she** has in his **or her** own jurisdiction. **Any**
5 **sheriff, or deputy sheriff that a responding sheriff sends, of a county**
6 **responding to a request for assistance in another county of the state**
7 **shall be deemed an employee of his or her sheriff's office and shall be**
8 **subject to the workers' compensation, overtime, and expense**
9 **reimbursement provisions provided to him or her as an employee of his**
10 **or her sheriff's office.**

610.100. 1. As used in sections 610.100 to 610.150, the following words
2 and phrases shall mean:

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

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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

9 therefor;

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

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

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

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

19 (4) "Incident report", a record of a law enforcement agency consisting of
20 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**
28 **visual signals that is capable of installation in a vehicle or being worn**
29 **or carried by personnel of a law enforcement agency and that includes,**
30 **at minimum, a camera and recording capabilities;**

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

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

36 2. Each law enforcement agency of this state, of any county, and of any
37 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 (1) 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 are closed
43 records until the investigation becomes inactive.

44 (2) If any person is arrested and not charged with an offense against the

45 law within thirty days of the person's arrest, the arrest report shall thereafter be
46 a closed record except that the disposition portion of the record may be accessed
47 and except as provided in section 610.120.

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

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

67 4. Any person, including a **legal guardian or parent of such person**
68 **if he or she is a minor**, family member of such person within the first degree
69 of consanguinity if such person is deceased or incompetent, attorney for a person,
70 or insurer of a person involved in any incident or whose property is involved in
71 an incident, may obtain any records closed pursuant to this section or section
72 610.150 for purposes of investigation of any civil claim or defense, as provided by
73 this subsection. Any individual, **legal guardian or parent of such person if**
74 **he or she is a minor**, his or her family member within the first degree of
75 consanguinity if such individual is deceased or incompetent, his or her attorney
76 or insurer, involved in an incident or whose property is involved in an incident,
77 upon written request, may obtain a complete unaltered and unedited incident
78 report concerning the incident, and may obtain access to other records closed by
79 a law enforcement agency pursuant to this section. Within thirty days of such
80 request, the agency shall provide the requested material or file a motion pursuant

81 to this subsection with the circuit court having jurisdiction over the law
82 enforcement agency stating that the safety of the victim, witness or other
83 individual cannot be reasonably ensured, or that a criminal investigation is likely
84 to be jeopardized. If, based on such motion, the court finds for the law
85 enforcement agency, the court shall either order the record closed or order such
86 portion of the record that should be closed to be redacted from any record made
87 available pursuant to this subsection.

88 5. Any person may bring an action pursuant to this section in the circuit
89 court having jurisdiction to authorize disclosure of **a mobile video recording**
90 **or** the information contained in an investigative report of any law enforcement
91 agency, which would otherwise be closed pursuant to this section. The court may
92 order that all or part of **a mobile video recording or** the information contained
93 in an investigative report be released to the person bringing the action.

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

100 **(2)** In making the determination as to whether a mobile video
101 recording shall be disclosed, the court shall consider:

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

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

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

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

115 **(3)** The **mobile video recording or** investigative report in question may
116 be examined by the court in camera.

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

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

123 **(b) That the mobile video recording or investigative report may**
124 **be had only by a method of disclosure other than that selected by the**
125 **party seeking such disclosure;**

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

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

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

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

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

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

153 to five thousand dollars and the court shall order payment by such officer or
154 agency of all costs and attorney fees, as provided in section 610.027. The court
155 shall determine the amount of the penalty by taking into account the size of the
156 jurisdiction, the seriousness of the offense, and whether the law enforcement
157 officer or agency has violated this section previously.

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

161 **8. Any person who requests and receives a mobile video**
162 **recording that was recorded in a nonpublic location pursuant to this**
163 **section is prohibited from displaying or disclosing the mobile video**
164 **recording, including any description or account of any or all of the**
165 **mobile video recording, without first providing direct third party**
166 **notice to each non law enforcement agency individual whose image or**
167 **sound is contained in the recording and affording each person whose**
168 **image or sound is contained in the mobile video recording no less than**
169 **ten days to file and serve an action seeking an order from a court of**
170 **competent jurisdiction to enjoin all or some of the intended display,**
171 **disclosure, description, or account of recording. Any person who fails**
172 **to comply with the provisions of this subsection is subject to damages**
173 **in a civil action.**

✓