

SECOND REGULAR SESSION

# HOUSE BILL NO. 1543

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES DIXON (Sponsor), ROARK AND ICET (Co-sponsors).

Read 1<sup>st</sup> time February 19, 2004 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4378L.011

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### AN ACT

To repeal section 610.100, RSMo, and to enact in lieu thereof one new section relating to law enforcement records.

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*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Section A. Section 610.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.100, to read as follows: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 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, RSMo, investigative reports of all law enforcement agencies  
29 are closed records until the investigation becomes inactive. **However, no entity of this state**  
30 **or subdivision thereof shall release the name of any law enforcement officer involved in**  
31 **incident reports or investigative reports relating to complaints against such officers which**  
32 **do not result in formal disciplinary action or filing of charges relating to the complaint.**  
33 If any person is arrested and not charged with an offense against the law within thirty days of the  
34 person's arrest, the arrest report shall thereafter be a closed record except that the disposition  
35 portion of the record may be accessed and except as provided in section 610.120.

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

45 4. Any person, attorney for a person, or insurer of a person involved in any incident or  
46 whose property is involved in an incident, may obtain any records closed pursuant to this section  
47 or section 610.150 for purposes of investigation of any civil claim or defense, as provided by this  
48 subsection. Any individual, his or her attorney or insurer, involved in an incident or whose  
49 property is involved in an incident, upon written request, may obtain a complete unaltered and  
50 unedited incident report concerning the incident, and may obtain access to other records closed  
51 by a law enforcement agency pursuant to this section. Within thirty days of such request, the  
52 agency shall provide the requested material or file a motion pursuant to this subsection with the  
53 circuit court having jurisdiction over the law enforcement agency stating that the safety of the  
54 victim, witness or other individual cannot be reasonably ensured, or that a criminal investigation

55 is likely to be jeopardized. If, based on such motion, the court finds for the law enforcement  
56 agency, the court shall either order the record closed or order such portion of the record that  
57 should be closed to be redacted from any record made available pursuant to this subsection.

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

73         6. Any person may apply pursuant to this subsection to the circuit court having  
74 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest  
75 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance  
76 of the evidence that the law enforcement officer or agency has purposely violated this section,  
77 the officer or agency shall be subject to a civil penalty in an amount not to exceed five hundred  
78 dollars, and the court shall order payment by such officer or agency of all costs and attorneys'  
79 fees, as provided by section 610.027.

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