

SECOND REGULAR SESSION

HOUSE BILL NO. 1815

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PHILLIPS.

5222H.03I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 610.100, RSMo, and to enact in lieu thereof two new sections relating to the open records and meetings law.

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

Section A. Section 610.100, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 610.100 and 610.250, to read as follows: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, **but shall not include accident reports as defined under**
20 **section 610.250;**

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

25 2. Each law enforcement agency of this state, of any county, and of any municipality
26 shall maintain records of all incidents reported to the agency, investigations and arrests made by
27 such law enforcement agency. All incident reports and arrest reports shall be open records.
28 Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6
29 of this section or section 320.083, investigative reports of all law enforcement agencies are
30 closed records until the investigation becomes inactive. If any person is arrested and not charged
31 with an offense against the law within thirty days of the person's arrest, the arrest report shall
32 thereafter be a closed record except that the disposition portion of the record may be accessed
33 and except as provided in section 610.120.

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

43 4. Any person, including a family member of such person within the first degree of
44 consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a
45 person involved in any incident or whose property is involved in an incident, may obtain any
46 records closed pursuant to this section or section 610.150 for purposes of investigation of any
47 civil claim or defense, as provided by this subsection. Any individual, his or her family member
48 within the first degree of consanguinity if such individual is deceased or incompetent, his or her
49 attorney or insurer, involved in an incident or whose property is involved in an incident, upon
50 written request, may obtain a complete unaltered and unedited incident report concerning the
51 incident, and may obtain access to other records closed by a law enforcement agency pursuant
52 to this section. Within thirty days of such request, the agency shall provide the requested
53 material or file a motion pursuant to this subsection with the circuit court having jurisdiction

54 over the law enforcement agency stating that the safety of the victim, witness or other individual
55 cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If,
56 based on such motion, the court finds for the law enforcement agency, the court shall either order
57 the record closed or order such portion of the record that should be closed to be redacted from
58 any record made available pursuant to this subsection.

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

74 6. Any person may apply pursuant to this subsection to the circuit court having
75 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest
76 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance
77 of the evidence that the law enforcement officer or agency has knowingly violated this section,
78 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.
79 If the court finds that there is a knowing violation of this section, the court may order payment
80 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the
81 court finds by a preponderance of the evidence that the law enforcement officer or agency has
82 purposely violated this section, the officer or agency shall be subject to a civil penalty in an
83 amount up to five thousand dollars and the court shall order payment by such officer or agency
84 of all costs and attorney fees, as provided in section 610.027. The court shall determine the
85 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the
86 offense, and whether the law enforcement officer or agency has violated this section previously.

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

610.250. 1. Notwithstanding any provision of law to the contrary, an accident report prepared by a law enforcement agency shall not be a public record under the provisions of this chapter, except as provided in subsections 3 and 4 of this section.

2. Any individual who is named in the accident report, designated as an injured person due to the accident described in the report, or the driver of a vehicle that was involved in the accident described within the accident report, or their agents or attorneys, may request such reports under the provisions of this chapter.

3. The law enforcement agency generating the accident report may develop a policy pertaining to the copying and distribution of an accident report that meets the guidelines of the agency including, but not limited to, the release of non-identifying information, for data capturing purposes.

4. Nothing in this section shall prohibit the state highway patrol from releasing accident reports as provided by law or rules or regulations adopted by the patrol.

5. For the purposes of this section, an "accident report" shall mean a report made by a law enforcement agency consisting of information such as the date, time, location, or circumstances of a motor vehicle accident that is maintained by such agency.

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