

FIRST REGULAR SESSION

# HOUSE BILL NO. 889

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE REHDER.

1704H.011

D. ADAM CRUMBLISS, Chief Clerk

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### 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.

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*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Section A. Sections 610.100 and 610.200, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 610.100 and 610.200, to read as follows: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 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;

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

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

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

31 2. (1) Each law enforcement agency of this state, of any county, and of any municipality  
32 shall maintain records of all incidents reported to the agency, investigations and arrests made by  
33 such law enforcement agency. All incident reports and arrest reports shall be open records.

34 (2) Notwithstanding any other provision of law other than the provisions of subsections  
35 ~~[4,]~~ 5, ~~[and]~~ 6, **and 7** of this section or section 320.083, mobile video recordings and  
36 investigative reports of all law enforcement agencies are closed records until the investigation  
37 becomes inactive.

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

41 (4) Except as provided in subsections 3 and ~~[5]~~ **6** of this section, a mobile video  
42 recording that is recorded in a nonpublic location is authorized to be closed, except that any  
43 person who is depicted in the recording or whose voice is in the recording, a legal guardian or  
44 parent of such person if he or she is a minor, a family member of such person within the first  
45 degree of consanguinity if he or she is deceased or incompetent, an attorney for such person, or  
46 insurer of such person, upon written request, may obtain a complete, unaltered, and unedited  
47 copy of a recording under and pursuant to this section .

48 3. Except as provided in subsections ~~[4,]~~ 5, 6, ~~[and]~~ **7, and 8** of this section, if any  
49 portion of a record or document of a law enforcement officer or agency, other than an arrest  
50 report, which would otherwise be open, contains information that is reasonably likely to pose a  
51 clear and present danger to the safety of any victim, witness, undercover officer, or other person;  
52 or jeopardize a criminal investigation, including records which would disclose the identity of a  
53 source wishing to remain confidential or a suspect not in custody; or which would disclose

54 techniques, procedures or guidelines for law enforcement investigations or prosecutions, that  
55 portion of the record shall be closed and shall be redacted from any record made available  
56 pursuant to this chapter.

57       **4. (1) Notwithstanding any other provision of this section or any law to the**  
58 **contrary, incident reports and investigative reports involving suicide or attempted suicide,**  
59 **and any medical records contained within such reports involving instances of rape, sexual**  
60 **assault, or any other sexual offense under chapter 566, shall not be public records or**  
61 **documents subject to the provisions of this chapter and shall permanently be characterized**  
62 **as closed records.**

63       **(2) Except as authorized by this section or any other law or rule for purposes**  
64 **including administrative necessities, court adjudications, or law enforcement, such reports**  
65 **shall not be released for any purpose whatsoever, except that suicide and attempted suicide**  
66 **records shall be released upon the request of an individual who is the subject of the report**  
67 **of attempted suicide or upon the request of such individual's parent or guardian if the**  
68 **individual is a minor or is incapacitated. If a suicide did occur, then such records shall be**  
69 **released to the victim's familial relations within the second degree of consanguinity or**  
70 **affinity upon request. Reports that have not been redacted containing medical records**  
71 **related to rape, sexual assault, and any other sexual offense under chapter 566 shall be**  
72 **released only upon the request of an individual who is the reported victim of any such**  
73 **crime, to his or her parent or guardian if the individual is a minor, or to his or her parent**  
74 **or guardian if the individual is incapacitated. A law enforcement agency may release any**  
75 **information from reports involving suicide or attempted suicide, upon its own volition and**  
76 **without the consent of the individual who is the reported victim of any such act, if the**  
77 **release of such information is immediately necessary to the preservation of the health and**  
78 **safety of an individual or the public health and welfare.**

79       **(3) The sovereign immunity of a law enforcement agency from liability and suit for**  
80 **compensatory damages is hereby expressly waived in any instance in which a law**  
81 **enforcement officer or agency intentionally discloses such reports in violation of the**  
82 **provisions of this subsection. A violation of this subsection due to a negligent act or**  
83 **omission by a law enforcement officer or a law enforcement agency shall be subject to**  
84 **discipline by the agency and the Police Officer Standards and Training Commission under**  
85 **chapter 590.**

86       **5. Any person, including a legal guardian or a parent of such person if he or she is a**  
87 **minor, family member of such person within the first degree of consanguinity if such person is**  
88 **deceased or [incompetent] incapacitated, attorney for a person, or insurer of a person involved**  
89 **in any incident or whose property is involved in an incident, may obtain any records closed**

90 pursuant to this section or section 610.150 for purposes of investigation of any civil claim or  
91 defense, as provided by this subsection. Any individual, legal guardian or parent of such person  
92 if he or she is a minor, his or her family member within the first degree of consanguinity if such  
93 individual is deceased or incompetent, his or her attorney or insurer, involved in an incident or  
94 whose property is involved in an incident, upon written request, may obtain a complete unaltered  
95 and unedited incident report concerning the incident, and may obtain access to other records  
96 closed by a law enforcement agency pursuant to this section. Within thirty days of such request,  
97 the agency shall provide the requested material or file a motion pursuant to this subsection with  
98 the circuit court having jurisdiction over the law enforcement agency stating that the safety of  
99 the victim, witness or other individual cannot be reasonably ensured, or that a criminal  
100 investigation is likely to be jeopardized. If, based on such motion, the court finds for the law  
101 enforcement agency, the court shall either order the record closed or order such portion of the  
102 record that should be closed to be redacted from any record made available pursuant to this  
103 subsection.

104 ~~[5-]~~ 6. (1) Any person may bring an action pursuant to this section in the circuit court  
105 having jurisdiction to authorize disclosure of a mobile video recording or the information  
106 contained in an investigative report of any law enforcement agency, which would otherwise be  
107 closed pursuant to this section. The court may order that all or part of a mobile video recording  
108 or the information contained in an investigative report be released to the person bringing the  
109 action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

161       ~~[7-]~~ **8.** The victim of an offense as provided in chapter 566 may request that his or her  
162 identity be kept confidential until a charge relating to such incident is filed.

163       ~~[8-]~~ **9.** Any person who requests and receives a mobile video recording that was  
164 recorded in a nonpublic location under and pursuant to this section is prohibited from displaying  
165 or disclosing the mobile video recording, including any description or account of any or all of  
166 the mobile video recording, without first providing direct third-party notice to each person not  
167 affiliated with a law enforcement agency or each non-law enforcement agency individual whose  
168 image or sound is contained in the recording, and affording, upon receiving such notice, each  
169 person appearing and whose image or sound is contained in the mobile video recording no less  
170 than ten days to file and serve an action seeking an order from a court of competent jurisdiction  
171 to enjoin all or some of the intended display, disclosure, description, or account of the recording.  
172 Any person who fails to comply with the provisions of this subsection is subject to damages in  
173 a civil action proceeding.

**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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