

FIRST REGULAR SESSION

# HOUSE BILL NO. 968

## 100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SHAUL (113).

2076H.021

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

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

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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Section A. Section 610.100, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 610.100, to read as follows: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

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 of this section or section 320.083, mobile video recordings and investigative reports  
36 of all law enforcement agencies are closed records until the investigation becomes inactive.

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

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

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

54 portion of the record shall be closed and shall be redacted from any record made available  
55 pursuant to this chapter.

56 4. Any person, including a legal guardian or a parent of such person if he or she is a  
57 minor, family member of such person within the first degree of consanguinity if such person is  
58 deceased or incompetent, attorney for a person, **financial institution with a secured interest**  
59 **in the property**, or insurer of a person involved in any incident or whose property is involved  
60 in an incident, may obtain any records closed pursuant to this section or section 610.150 for  
61 purposes of investigation of any civil claim or defense, as provided by this subsection. Any  
62 individual, legal guardian or parent of such person if he or she is a minor, his or her family  
63 member within the first degree of consanguinity if such individual is deceased or incompetent,  
64 his or her attorney, **financial institution with a secured interest in the property**, or insurer,  
65 involved in an incident or whose property is involved in an incident, upon written request, may  
66 obtain a complete unaltered and unedited incident report concerning the incident, and may obtain  
67 access to other records closed by a law enforcement agency pursuant to this section. Within  
68 thirty days of such request, the agency shall provide the requested material or file a motion  
69 pursuant to this subsection with the circuit court having jurisdiction over the law enforcement  
70 agency stating that the safety of the victim, witness or other individual cannot be reasonably  
71 ensured, or that a criminal investigation is likely to be jeopardized. If, based on such motion, the  
72 court finds for the law enforcement agency, the court shall either order the record closed or order  
73 such portion of the record that should be closed to be redacted from any record made available  
74 pursuant to this subsection.

75 5. (1) Any person may bring an action pursuant to this section in the circuit court having  
76 jurisdiction to authorize disclosure of a mobile video recording or the information contained in  
77 an investigative report of any law enforcement agency, which would otherwise be closed  
78 pursuant to this section. The court may order that all or part of a mobile video recording or the  
79 information contained in an investigative report be released to the person bringing the action.

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

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

87 (a) Whether the benefit to the person bringing the action or the benefit to the public  
88 outweighs any harm to the public, to the law enforcement agency or any of its officers, or to any

89 person identified in the mobile video recording in regard and with respect to the need for law  
90 enforcement agencies to effectively investigate and prosecute criminal activity;

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

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

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

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

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

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

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

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

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

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

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

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

118 6. Any person may apply pursuant to this subsection to the circuit court having  
119 jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest  
120 reports being unlawfully closed pursuant to this section. If the court finds by a preponderance  
121 of the evidence that the law enforcement officer or agency has knowingly violated this section,  
122 the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars.  
123 If the court finds that there is a knowing violation of this section, the court may order payment  
124 by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the

125 court finds by a preponderance of the evidence that the law enforcement officer or agency has  
126 purposely violated this section, the officer or agency shall be subject to a civil penalty in an  
127 amount up to five thousand dollars and the court shall order payment by such officer or agency  
128 of all costs and attorney fees, as provided in section 610.027. The court shall determine the  
129 amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the  
130 offense, and whether the law enforcement officer or agency has violated this section previously.

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

133 8. Any person who requests and receives a mobile video recording that was recorded in  
134 a nonpublic location under and pursuant to this section is prohibited from displaying or  
135 disclosing the mobile video recording, including any description or account of any or all of the  
136 mobile video recording, without first providing direct third-party notice to each person not  
137 affiliated with a law enforcement agency or each non-law enforcement agency individual whose  
138 image or sound is contained in the recording, and affording, upon receiving such notice, each  
139 person appearing and whose image or sound is contained in the mobile video recording no less  
140 than ten days to file and serve an action seeking an order from a court of competent jurisdiction  
141 to enjoin all or some of the intended display, disclosure, description, or account of the recording.  
142 Any person who fails to comply with the provisions of this subsection is subject to damages in  
143 a civil action proceeding.

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