

FIRST REGULAR SESSION

SENATE BILL NO. 550

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time February 26, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2403S.011

AN ACT

To repeal section 610.100, RSMo, and to enact in lieu thereof two new sections relating to data in the possession of a law enforcement agency from mobile video recorders.

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Section A. Section 610.100, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 590.810 and 610.100, to read as follows:

590.810. 1. No law enforcement agency shall be required by the state to provide mobile video recorders as defined in section 610.100 to officers employed by the agency, nor shall the state require any peace officer to wear such recorders.

2. Any law enforcement agency that utilizes a mobile video recorder shall have a written policy on the use of the recorders.

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;

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, vessel, or**
29 **aircraft, or being worn or carried by personnel of a law enforcement**
30 **agency and that includes, at a minimum, a camera and recording**
31 **capabilities.**

32 2. Each law enforcement agency of this state, of any county, and of any
33 municipality shall maintain records of all incidents reported to the agency,
34 investigations and arrests made by such law enforcement agency. All incident
35 reports and arrest reports shall be open records. Notwithstanding any other
36 provision of law other than the provisions of subsections 4, 5 and 6 of this section
37 or section 320.083, investigative reports of all law enforcement agencies are closed
38 records until the investigation becomes inactive. If any person is arrested and
39 not charged with an offense against the law within thirty days of the person's
40 arrest, the arrest report shall thereafter be a closed record except that the
41 disposition portion of the record may be accessed and except as provided in
42 section 610.120. **Notwithstanding any other provision of law to the**
43 **contrary, other than the provisions of subsections 4, 5, and 6 of this**
44 **section or section 320.083, data from mobile video recorders in the**
45 **possession of law enforcement agencies are closed records.**

46 3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any
47 portion of a record or document of a law enforcement officer or agency, other than
48 an arrest report, which would otherwise be open, contains information that is

49 reasonably likely to pose a clear and present danger to the safety of any victim,
50 witness, undercover officer, or other person; or jeopardize a criminal
51 investigation, including records which would disclose the identity of a source
52 wishing to remain confidential or a suspect not in custody; or which would
53 disclose techniques, procedures or guidelines for law enforcement investigations
54 or prosecutions, that portion of the record shall be closed and shall be redacted
55 from any record made available pursuant to this chapter.

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

75 5. Any person may bring an action pursuant to this section in the circuit
76 court having jurisdiction to authorize disclosure of the information contained in
77 an investigative report of any law enforcement agency **or data in the**
78 **possession of a law enforcement agency from a mobile video recorder,**
79 which would otherwise be closed pursuant to this section. The court may order
80 that all or part of the information contained in an investigative report **or the**
81 **data from a mobile video recorder** be released to the person bringing the
82 action. In making the determination as to whether information contained in an
83 investigative report **or data from a mobile video recorder** shall be disclosed,
84 the court shall consider whether the benefit to the person bringing the action or

85 to the public outweighs any harm to the public, to the law enforcement agency or
86 any of its officers, or to any person identified in the investigative report **or**
87 **captured in the data from the mobile video recorder** in regard to the need
88 for law enforcement agencies to effectively investigate and prosecute criminal
89 activity. The investigative report **or mobile video recorder** in question may
90 be examined by the court in camera. The court may find that the party seeking
91 disclosure of the investigative report **or mobile video recorder** shall bear the
92 reasonable and necessary costs and attorneys' fees of both parties, unless the
93 court finds that the decision of the law enforcement agency not to open the
94 investigative report **or mobile video recorder** was substantially unjustified
95 under all relevant circumstances, and in that event, the court may assess such
96 reasonable and necessary costs and attorneys' fees to the law enforcement agency.

97 6. Any person may apply pursuant to this subsection to the circuit court
98 having jurisdiction for an order requiring a law enforcement agency to open
99 incident reports and arrest reports being unlawfully closed pursuant to this
100 section. If the court finds by a preponderance of the evidence that the law
101 enforcement officer or agency has knowingly violated this section, the officer or
102 agency shall be subject to a civil penalty in an amount up to one thousand
103 dollars. If the court finds that there is a knowing violation of this section, the
104 court may order payment by such officer or agency of all costs and attorneys' fees,
105 as provided by section 610.027. If the court finds by a preponderance of the
106 evidence that the law enforcement officer or agency has purposely violated this
107 section, the officer or agency shall be subject to a civil penalty in an amount up
108 to five thousand dollars and the court shall order payment by such officer or
109 agency of all costs and attorney fees, as provided in section 610.027. The court
110 shall determine the amount of the penalty by taking into account the size of the
111 jurisdiction, the seriousness of the offense, and whether the law enforcement
112 officer or agency has violated this section previously.

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

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