

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Section A. Section 610.100, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 590.810 and 610.100, to read as follows: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