

SECOND REGULAR SESSION

# SENATE BILL NO. 1061

98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR DIXON.

Read 1st time February 15, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6425S.011

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## AN ACT

To repeal sections 610.026 and 610.100, RSMo, and to enact in lieu thereof two new sections relating to public records.

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

Section A. Sections 610.026 and 610.100, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 610.026 and 610.100, to  
3 read as follows:

610.026. 1. Except as otherwise provided by law, each public  
2 governmental body shall provide access to and, upon request, furnish copies of  
3 public records subject to the following:

4 (1) Fees for copying public records, except those records restricted under  
5 section 32.091, shall not exceed ten cents per page for a paper copy not larger  
6 than nine by fourteen inches, with the hourly fee for duplicating time not to  
7 exceed the average hourly rate of pay for clerical staff of the public governmental  
8 body. Research time required for fulfilling records requests **includes time**  
9 **spent reviewing records to determine whether requested records shall**  
10 **be closed or are authorized to be closed, and** may be charged at the actual  
11 cost of research time. Based on the scope of the request, the public governmental  
12 body shall produce the copies using employees of the body that result in the  
13 lowest amount of charges for search, research, and duplication time. Prior to  
14 producing copies of the requested records, the person requesting the records may  
15 request the public governmental body to provide an estimate of the cost to the  
16 person requesting the records. Documents may be furnished without charge or  
17 at a reduced charge when the public governmental body determines that waiver  
18 or reduction of the fee is in the public interest because:

19 (a) It is likely to contribute significantly to public understanding of the

20 operations or activities of the public governmental body and is not primarily in  
21 the commercial interest of the requester; **or**

22 **(b) The applicable fees are minimal and should be waived for**  
23 **administrative efficiency.**

24 (2) Fees for providing access to public records maintained on computer  
25 facilities, recording tapes or disks, videotapes or films, pictures, maps, slides,  
26 graphics, illustrations or similar audio or visual items or devices, and for paper  
27 copies larger than nine by fourteen inches shall include only the cost of copies,  
28 **research time**, staff time, which shall not exceed the average hourly rate of pay  
29 for staff of the public governmental body required for making copies and  
30 programming, if necessary, and the cost of the disk, tape, or other medium used  
31 for the duplication. Fees for maps, blueprints, or plats that require special  
32 expertise to duplicate may include the actual rate of compensation for the trained  
33 personnel required to duplicate such maps, blueprints, or plats. If programming  
34 is required beyond the customary and usual level to comply with a request for  
35 records or information, the fees for compliance may include the actual costs of  
36 such programming.

37 2. Payment of such copying, **search, research, and duplication** fees  
38 may be requested prior to the making of copies **or production of records**.

39 3. Except as otherwise provided by law, each public governmental body  
40 of the state shall remit all moneys received by or for it from fees charged  
41 pursuant to this section to the director of revenue for deposit to the general  
42 revenue fund of the state.

43 4. Except as otherwise provided by law, each public governmental body  
44 of a political subdivision of the state shall remit all moneys received by it or for  
45 it from fees charged pursuant to sections 610.010 to 610.028 to the appropriate  
46 fiscal officer of such political subdivision for deposit to the governmental body's  
47 accounts.

48 5. The term "tax, license or fees" as used in Section 22 of Article X of the  
49 Constitution of the State of Missouri does not include copying charges and related  
50 fees that do not exceed the level necessary to pay or to continue to pay the costs  
51 for providing a service, program, or activity which was in existence on November  
52 4, 1980, or which was approved by a vote of the people subsequent to November  
53 4, 1980.

610.100. 1. As used in sections 610.100 to 610.150, the following words  
2 and phrases shall mean:

3 (1) "Arrest", an actual restraint of the person of the defendant, or by his  
4 or her submission to the custody of the officer, under authority of a warrant or  
5 otherwise for a criminal violation which results in the issuance of a summons or  
6 the person being booked;

7 (2) "Arrest report", a record of a law enforcement agency of an arrest and  
8 of any detention or confinement incident thereto together with the charge  
9 therefor;

10 (3) "Inactive", an investigation in which no further action will be taken  
11 by a law enforcement agency or officer for any of the following reasons:

12 (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 or being worn**  
29 **or carried by personnel of a law enforcement agency and that includes,**  
30 **at minimum, a camera and recording capabilities;**

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

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

36 2. Each law enforcement agency of this state, of any county, and of any  
37 municipality shall maintain records of all incidents reported to the agency,  
38 investigations and arrests made by such law enforcement agency. All incident

39 reports and arrest reports shall be open records.

40           **(1)** Notwithstanding any other provision of law other than the provisions  
41 of subsections 4, 5 and 6 of this section or section 320.083, **mobile video**  
42 **recordings and** investigative reports of all law enforcement agencies are closed  
43 records until the investigation becomes inactive.

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

48           **(3)** **Except as provided in subsections 3 and 5 of this section, a**  
49 **mobile video recording that is recorded in a nonpublic location is**  
50 **authorized to be closed, except that any person who is depicted in the**  
51 **recording or whose voice is in the recording, a legal guardian or parent**  
52 **of such person if he or she is a minor, a family member of such person**  
53 **within the first degree of consanguinity if he or she is deceased or**  
54 **incompetent, an attorney for such person, or insurer of such person,**  
55 **upon written request, may obtain a complete, unaltered, and unedited**  
56 **copy pursuant to this section.**

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

67           4. Any person, including a **legal guardian or parent of such person**  
68 **if he or she is a minor**, family member of such person within the first degree  
69 of consanguinity if such person is deceased or incompetent, attorney for a person,  
70 or insurer of a person involved in any incident or whose property is involved in  
71 an incident, may obtain any records closed pursuant to this section or section  
72 610.150 for purposes of investigation of any civil claim or defense, as provided by  
73 this subsection. Any individual, **legal guardian or parent of such person if**  
74 **he or she is a minor**, his or her family member within the first degree of

75 consanguinity if such individual is deceased or incompetent, his or her attorney  
76 or insurer, involved in an incident or whose property is involved in an incident,  
77 upon written request, may obtain a complete unaltered and unedited incident  
78 report concerning the incident, and may obtain access to other records closed by  
79 a law enforcement agency pursuant to this section. Within thirty days of such  
80 request, the agency shall provide the requested material or file a motion pursuant  
81 to this subsection with the circuit court having jurisdiction over the law  
82 enforcement agency stating that the safety of the victim, witness or other  
83 individual cannot be reasonably ensured, or that a criminal investigation is likely  
84 to be jeopardized. If, based on such motion, the court finds for the law  
85 enforcement agency, the court shall either order the record closed or order such  
86 portion of the record that should be closed to be redacted from any record made  
87 available pursuant to this subsection.

88         5. Any person may bring an action pursuant to this section in the circuit  
89 court having jurisdiction to authorize disclosure of **a mobile video recording**  
90 **or** the information contained in an investigative report of any law enforcement  
91 agency, which would otherwise be closed pursuant to this section. The court may  
92 order that all or part of **a mobile video recording or** the information contained  
93 in an investigative report be released to the person bringing the action.

94         **(1)** In making the determination as to whether information contained in  
95 an investigative report shall be disclosed, the court shall consider whether the  
96 benefit to the person bringing the action or to the public outweighs any harm to  
97 the public, to the law enforcement agency or any of its officers, or to any person  
98 identified in the investigative report in regard to the need for law enforcement  
99 agencies to effectively investigate and prosecute criminal activity.

100         **(2)** In making the determination as to whether a mobile video  
101 recording shall be disclosed, the court shall consider:

102         **(a)** Whether the benefit to the person bringing the action or to  
103 the public outweighs any harm to the public, to the law enforcement  
104 agency or any of its officers, or to any person identified in the mobile  
105 video recording in regard to the need for law enforcement agencies to  
106 effectively investigate and prosecute criminal activity;

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

110         **(c)** Whether the mobile video recording is reasonably likely to

111 **bring shame or humiliation to a person of ordinary sensibilities; and**

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

115 **(3) The mobile video recording or** investigative report in question may  
116 be examined by the court in camera.

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

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

123 **(b) That the mobile video recording or investigative report may**  
124 **be had only by a method of disclosure other than that selected by the**  
125 **party seeking such disclosure;**

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

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

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

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

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

142 **6. Any person may apply pursuant to this subsection to the circuit court**  
143 **having jurisdiction for an order requiring a law enforcement agency to open**  
144 **incident reports and arrest reports being unlawfully closed pursuant to this**  
145 **section. If the court finds by a preponderance of the evidence that the law**  
146 **enforcement officer or agency has knowingly violated this section, the officer or**

147 agency shall be subject to a civil penalty in an amount up to one thousand  
148 dollars. If the court finds that there is a knowing violation of this section, the  
149 court may order payment by such officer or agency of all costs and attorneys' fees,  
150 as provided by section 610.027. If the court finds by a preponderance of the  
151 evidence that the law enforcement officer or agency has purposely violated this  
152 section, the officer or agency shall be subject to a civil penalty in an amount up  
153 to five thousand dollars and the court shall order payment by such officer or  
154 agency of all costs and attorney fees, as provided in section 610.027. The court  
155 shall determine the amount of the penalty by taking into account the size of the  
156 jurisdiction, the seriousness of the offense, and whether the law enforcement  
157 officer or agency has violated this section previously.

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

161           **8. Any person who requests and receives a mobile video**  
162 **recording that was recorded in a nonpublic location pursuant to this**  
163 **section is prohibited from displaying or disclosing the mobile video**  
164 **recording, including any description or account of any or all of the**  
165 **mobile video recording, without first providing direct third party**  
166 **notice to each non law enforcement agency individual whose image or**  
167 **sound is contained in the recording and affording each person whose**  
168 **image or sound is contained in the mobile video recording no less than**  
169 **ten days to file and serve an action seeking an order from a court of**  
170 **competent jurisdiction to enjoin all or some of the intended display,**  
171 **disclosure, description, or account of recording. Any person who fails**  
172 **to comply with the provisions of this subsection is subject to damages**  
173 **in a civil action.**

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