

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 765
98TH GENERAL ASSEMBLY

4939H.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 610.026 and 610.100, RSMo, section 575.320 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 575.320 as enacted by senate bill no. 180, eighty-seventh general assembly, first regular session, and to enact in lieu thereof five new sections relating to conduct of political subdivisions, public servants, and law enforcement officials.

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

Section A. Sections 610.026 and 610.100, RSMo, section 575.320 as enacted by senate
2 bill no. 491, ninety-seventh general assembly, second regular session, and section 575.320 as
3 enacted by senate bill no. 180, eighty-seventh general assembly, first regular session, RSMo, are
4 repealed and five new sections enacted in lieu thereof, to be known as sections 71.1000, 304.125,
5 575.320, 610.026, and 610.100, to read as follows:

**71.1000. 1. Any law enforcement officer, employed by a municipality with a
2 population of one hundred eight thousand but not greater than one hundred fifteen
3 thousand located in a first class county with a noncharter form of government, who is not
4 subject to a collective bargaining agreement, and not subject to removal under section
5 43.150 or 57.275 shall be subject to removal from office or employment by the governing
6 body of the political subdivision employing the officer if:**

7 **(1) The governing body issues a written notice to the officer whose removal is being
8 sought no fewer than ten business days prior to the meeting at which his or her removal
9 will be considered;**

10 **(2) The officer has been given written notice as to the governing body's intent to
11 remove him or her. Such notice shall include:**

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.

- 12 **(a) Charges specifying just cause for which removal is sought;**
- 13 **(b) A statement of facts that are alleged to constitute just cause for the officer's**
- 14 **removal; and**
- 15 **(c) The date, time, and location of the meeting at which the officer's removal will**
- 16 **be considered;**
- 17 **(3) The officer is given an opportunity to be heard before the governing body,**
- 18 **together with any witnesses, evidence, and counsel of his or her choosing; and**
- 19 **(4) The governing body, by a simple majority vote, finds just cause for removing**
- 20 **the officer.**

21 **2. Upon the satisfaction of the removal procedure under subsection 1 of this section,**

22 **the officer shall be immediately removed from office or employment, shall be relieved of**

23 **all duties and responsibilities of such office or employment, and shall be entitled to no**

24 **further compensation or benefits not already earned, accrued, or agreed upon.**

25 **3. Any officer removed under this section shall be issued a written notice of the**

26 **grounds of his or her removal within fourteen calendar days of the removal.**

27 **4. For the purposes of this section, the term "just cause" shall exist when a law**

28 **enforcement officer:**

29 **(1) Is unable to perform his or her duties with reasonable competence or reasonable**

30 **safety as a result of a mental condition, including alcohol or substance abuse;**

31 **(2) Has committed any act, while engaged in the performance of his or her duties,**

32 **that constitutes a reckless disregard for the safety of the public or another law enforcement**

33 **officer;**

34 **(3) Has caused a material fact to be misrepresented for any improper or unlawful**

35 **purpose;**

36 **(4) Acts in a manner for the sole purpose of furthering his or her self-interest or in**

37 **a manner inconsistent with the interests of the public of the governing body;**

38 **(5) Has been found to have violated any law, statute, or ordinance which constitutes**

39 **a felony; or**

40 **(6) Has been deemed insubordinate by refusal to obey a lawful order.**

304.125. No political subdivision or law enforcement agency shall have a policy

2 **requiring or encouraging an employee to issue a certain number of citations for traffic**

3 **violations on a daily, weekly, monthly, quarterly, yearly, or other quota basis. This section**

4 **shall not apply to the issuance of warning citations.**

 575.320. 1. A public servant, in his or her public capacity or under color of his or her

2 office or employment, commits the offense of misconduct in administration of justice if he or

3 she:

4 (1) Is charged with the custody of any person accused or convicted of any offense or
5 municipal ordinance violation and he or she coerces, threatens, abuses or strikes such person for
6 the purpose of securing a confession from him or her;

7 (2) Knowingly seizes or levies upon any property or dispossesses anyone of any lands
8 or tenements without due and legal process, or other lawful authority;

9 (3) Is a judge and knowingly accepts a plea of guilty from any person charged with a
10 violation of a statute or ordinance at any place other than at the place provided by law for holding
11 court by such judge;

12 (4) Is a jailer or keeper of a county jail and knowingly refuses to receive, in the jail under
13 his or her charge, any person lawfully committed to such jail on any criminal charge or criminal
14 conviction by any court of this state, or on any warrant and commitment or capias on any
15 criminal charge issued by any court of this state;

16 (5) Is a law enforcement officer and violates the provisions of section 544.170 by
17 knowingly:

18 (a) Refusing to release any person in custody who is entitled to such release; or

19 (b) Refusing to permit a person in custody to see and consult with counsel or other
20 persons; or

21 (c) Transferring any person in custody to the custody or control of another, or to another
22 place, for the purpose of avoiding the provisions of that section; or

23 (d) Proffering against any person in custody a false charge for the purpose of avoiding
24 the provisions of that section; or

25 (6) Orders or suggests to an employee of a [county of the first class having a charter form
26 of government with a population over nine hundred thousand and not containing any part of a
27 city of three hundred fifty thousand or more inhabitants] **political subdivision** that such
28 employee shall issue a certain number of traffic citations on a daily, weekly, monthly, quarterly,
29 yearly or other quota basis[, except when such employee is assigned exclusively to traffic control
30 and has no other responsibilities or duties] **or that such employee shall increase the number**
31 **of traffic citations that he or she is currently issuing.**

32 2. The offense of misconduct in the administration of justice is a class A misdemeanor.
575.320. 1. A public servant, in his public capacity or under color of his office or
2 employment, commits the crime of misconduct in administration of justice if:

3 (1) He is charged with the custody of any person accused or convicted of any crime or
4 municipal ordinance violation and he coerces, threatens, abuses or strikes such person for the
5 purpose of securing a confession from him;

6 (2) He knowingly seizes or levies upon any property or dispossesses anyone of any lands
7 or tenements without due and legal process, or other lawful authority;

8 (3) He is a judge and knowingly accepts a plea of guilty from any person charged with
9 a violation of a statute or ordinance at any place other than at the place provided by law for
10 holding court by such judge;

11 (4) He is a jailer or keeper of a county jail and knowingly refuses to receive, in the jail
12 under his charge, any person lawfully committed to such jail on any criminal charge or criminal
13 conviction by any court of this state, or on any warrant and commitment or *capias* on any
14 criminal charge issued by any court of this state;

15 (5) He is a law enforcement officer and violates the provisions of section 544.170 by
16 knowingly:

17 (a) Refusing to release any person in custody who is entitled to such release; or

18 (b) Refusing to permit a person in custody to see and consult with counsel or other
19 persons; or

20 (c) Transferring any person in custody to the custody or control of another, or to another
21 place, for the purpose of avoiding the provisions of that section; or

22 (d) Preferring against any person in custody a false charge for the purpose of avoiding
23 the provisions of that section;

24 (6) He orders or suggests to an employee of a [county of the first class having a charter
25 form of government with a population over nine hundred thousand and not containing any part
26 of a city of three hundred fifty thousand or more inhabitants] **political subdivision** that such
27 employee shall issue a certain number of traffic citations on a daily, weekly, monthly, quarterly,
28 yearly or other quota basis[, except when such employee is assigned exclusively to traffic control
29 and has no other responsibilities or duties] **or that such employee shall increase the number**
30 **of traffic citations that he or she is currently issuing.**

31 2. Misconduct in the administration of justice is a class A misdemeanor.

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

3 (1) Fees for copying public records, except those records restricted under section 32.091,
4 shall not exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with
5 the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff
6 of the public governmental body. Research time required for fulfilling records requests **includes**
7 **time spent reviewing records to determine whether requested records shall be closed or are**
8 **authorized to be closed, and** may be charged at the actual cost of research time. Based on the
9 scope of the request, the public governmental body shall produce the copies using employees of
10 the body that result in the lowest amount of charges for search, research, and duplication time.
11 Prior to producing copies of the requested records, the person requesting the records may request
12 the public governmental body to provide an estimate of the cost to the person requesting the

13 records. Documents may be furnished without charge or at a reduced charge when the public
14 governmental body determines that waiver or reduction of the fee is in the public interest
15 because:

16 (a) It is likely to contribute significantly to public understanding of the operations or
17 activities of the public governmental body and is not primarily in the commercial interest of the
18 requester; **or**

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

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

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

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

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

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

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

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

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

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

10 (a) A decision by the law enforcement agency not to pursue the case;

11 (b) Expiration of the time to file criminal charges pursuant to the applicable statute of
12 limitations, or ten years after the commission of the offense; whichever date earliest occurs;

13 (c) Finality of the convictions of all persons convicted on the basis of the information
14 contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such
15 persons;

16 (4) "Incident report", a record of a law enforcement agency consisting of the date, time,
17 specific location, name of the victim and immediate facts and circumstances surrounding the
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**
25 **is capable of installation in a vehicle or being worn or carried by personnel of a law**
26 **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,**
28 **including audio, video, and any metadata;**

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

31 2. 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 (1) 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 (2) 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 (3) **Except as provided in subsections 3 and 5 of this section, a mobile video**
41 **recording that is recorded in a nonpublic location is authorized to be closed, except that**
42 **any person who is depicted in the recording or whose voice is in the recording, a legal**
43 **guardian or parent of such person if he or she is a minor, a family member of such person**
44 **within the first degree of consanguinity if he or she is deceased or incompetent, an attorney**
45 **for such person, or insurer of such person, upon written request, may obtain a complete,**
46 **unaltered, and unedited copy 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 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, or insurer of a person involved in any incident
59 or whose property is involved in an incident, may obtain any records closed pursuant to this
60 section or section 610.150 for purposes of investigation of any civil claim or defense, as provided
61 by this subsection. Any individual, **legal guardian or parent of such person if he or she is a**
62 **minor**, his or her family member within the first degree of consanguinity if such individual is
63 deceased or incompetent, his or her attorney or insurer, involved in an incident or whose property
64 is involved in 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 closed by a law
66 enforcement agency pursuant to this section. Within thirty days of such request, the agency shall
67 provide the requested material or file a motion pursuant to this subsection with the circuit court
68 having jurisdiction over the law enforcement agency stating that the safety of the victim, witness
69 or other individual cannot be reasonably ensured, or that a criminal investigation is likely to be
70 jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court
71 shall either order the record closed or order such portion of the record that should be closed to
72 be redacted from any record made available pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

131 **8. Any person who requests and receives a mobile video recording that was**
132 **recorded in a nonpublic location pursuant to this section is prohibited from displaying or**
133 **disclosing the mobile video recording, including any description or account of any or all**
134 **of the mobile video recording, without first providing direct third party notice to each non**
135 **law enforcement agency individual whose image or sound is contained in the recording and**
136 **affording each person whose image or sound is contained in the mobile video recording no**
137 **less than ten days to file and serve an action seeking an order from a court of competent**
138 **jurisdiction to enjoin all or some of the intended display, disclosure, description, or account**
139 **of recording. Any person who fails to comply with the provisions of this subsection is**
140 **subject to damages in a civil action.**

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