

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1475 (Low)
Version: June 16, 2021
Hearing Date: June 29, 2021
Fiscal: No
Urgency: No
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SUBJECT

Law enforcement: social media

DIGEST

This bill places limitations on the ability of police departments and sheriff's offices to share booking photos of individuals on social media.

EXECUTIVE SUMMARY

Society has reached a near universal embrace of some form of social media, individuals from all generations, companies from big to small, and certainly plenty of elected officials, for better or worse. In addition, public agencies have increasingly used social media to connect with the communities they serve; even the CIA has a Twitter account. This includes law enforcement departments across the country.

Just as with any other users, police departments and sheriff's offices can use accounts to build trust and familiarity with their communities. However, a troubling trend has arisen in which law enforcement departments have utilized their social media accounts to shame suspects by posting an individual's mugshots and other information online.

The bill responds to this practice by prohibiting police departments and sheriff's offices (collectively "law enforcement") from sharing booking photos of an individual arrested on suspicion of committing a nonviolent crime unless certain circumstances exist, such as where the individual is a fugitive and the posting will assist in apprehension. The bill also retroactively provides individuals the ability to request the removal of their booking photos for arrests for both nonviolent and violent crimes, as specified.

This bill is author-sponsored. It is supported by a variety of groups, including the Ella Baker Center for Human Rights, Legal Services for Prisoners with Children, and Asian Americans Advancing Justice, California. There is no known opposition. This bill passed out of the Senate Public Safety Committee on a 4 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that it shall be an unlawful practice for any person engaged in publishing or otherwise disseminating a booking photograph through a print or electronic medium to solicit, require, or accept the payment of a fee or other consideration from a subject individual to remove, correct, modify, or to refrain from publishing or otherwise disseminating that booking photograph. Each payment solicited or accepted in violation constitutes a separate violation, and permits a subject individual to bring a civil action for damages and attorney's fees, and any other legal or equitable relief. (Civ. Code § 1798.91.1.)
- 2) Permits a public entity to require and accept a reasonable administrative fee to correct a booking photograph. (Civ. Code § 1798.91.1(c).)
- 3) Provides pursuant to the California Public Records Act (PRA) that all records maintained by local and state governmental agencies are open to public inspection unless specifically exempt. (Gov. Code § 6250 et seq.)
- 4) Defines "violent felony" to include all of the following: murder or voluntary manslaughter; mayhem; rape; sodomy, as defined; oral copulation, as defined; lewd or lascivious act, as defined; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, as specified, or any felony in which the defendant uses a firearm, as specified; any robbery; arson; sexual penetration, as defined; attempted murder; kidnapping; assault with the intent to commit a specified felony; continuous sexual abuse of a child; carjacking; extortion; threats to victims or witnesses, as specified; any burglary of the first degree; and the use of explosives that causes bodily injury or death, or with the intent to commit murder. (Pen. Code Sec. 667.5(c) (Section 667.5(c)).)
- 5) Defines "social media" to mean "an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations." (Pen. Code § 632.01(a)(1).)
- 6) Defines "booking photograph" to mean "a photograph of a subject individual taken pursuant to an arrest or other involvement in the criminal justice system." (Civ. Code § 1798.91.1(a)(1).)
- 7) Defines "subject individual" to mean "an individual who was arrested." (Civ. Code § 1798.91.1(a)(2).)

This bill:

- 1) Prohibits a police department or sheriff's office from sharing, on social media, booking photos of an individual arrested on suspicion of committing a nonviolent crime unless any of the following circumstances exist:
 - a) a police department or sheriff's office has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the suspect's image will assist in locating or apprehending the suspect or reducing or eliminating the threat;
 - b) a judge orders the release or dissemination of the suspect's image based on a finding that it is in furtherance of a legitimate law enforcement interest; or
 - c) there is an exigent circumstance that necessitates the dissemination of the suspect's image in furtherance of an urgent and legitimate law enforcement interest.
- 2) Requires a police department or sheriff's office that shares, on social media, a booking photo of an individual arrested for the suspected commission of a nonviolent crime to remove the booking photo from its social media page within 14 days, upon the request of the individual who is the subject of the social media post or the individual's representative, unless any of the circumstances described above exist. This provision applies retroactively.
- 3) Requires, retroactively, a police department or sheriff's office that shares, on social media, a booking photo of an individual arrested for the suspected commission of a crime identified in subdivision (c) of Section 667.5 to remove the booking photo from its social media page within 14 days, upon the request of the individual who is the subject of the social media post or the individual's representative, if the individual or their representative demonstrates any of the following:
 - a) the individual's record has been sealed;
 - b) the individual's conviction has been dismissed, expunged, pardoned, or eradicated pursuant to law;
 - c) the individual has been issued a certificate of rehabilitation;
 - d) the individual was found not guilty of the crime for which they were arrested; or
 - e) the individual was ultimately not charged with the crime or the charges were dismissed.
- 4) Defines "nonviolent crime" as a crime not identified in Section 667.5(c).
- 5) Provides that "social media" has the same meaning as in Section 632.01, except that the term does not include an internet website or an electronic data system developed and administered by the police department or sheriff's office.

COMMENTS

1. Stated intent of the bill

According to the author:

Suspects arrested on suspicion of committing a crime are presumed innocent until proven guilty. However, when law enforcement agencies publish a person's mug shot on Facebook or other social media without waiting for a conviction or even for charges to be formally filed, internet mobs rush to judgement. This practice causes great personal harm if a mug shot is shared with employers, clients, family members or friends – and these posts can follow a person for life.

The mug shots that law enforcement agencies post on social media are often unflattering and rarely warn the public of an ongoing safety threat, as the suspect is already in custody at the time of posting. Instead, the purpose of posting these images often is to shame and ridicule suspects, many of whom are dealing with serious drug addiction and mental health issues. Furthermore, these posts perpetuate harmful racial stereotypes and foster implicit bias in a community and police force.

AB 1475 would prohibit police and sheriff's departments from using social media to share the [mugshots] of suspects who are arrested on suspicion of committing a nonviolent crime. The legislation creates exemptions for situations in which the suspect is a fugitive or an imminent threat to public safety. It would also create a mechanism for a person whose mug shot has been published to request that their mugshot be deleted if that person was found not guilty, not charged with the crime, if their record was sealed or expunged, or if the person was pardoned or issued a certificate of rehabilitation. Suspects continue to have the right to acquire their own mug shot if they are alleging excessive force by arresting officers.

This bill will not only reduce racial stereotypes and negative interactions with law enforcement, but also serve as a reminder that all people are considered innocent in the eyes of the law until proven guilty.

2. Protecting the privacy of those arrested

In 2014, the Legislature responded to a disturbing practice whereby companies would scrape various websites and other sources for mugshots and arrest information and then post it online. These companies would then coerce the depicted individuals to pay to have them removed to avoid the public humiliation. SB 1027 (Hill, Ch. 194, Stats.

2014) was enacted, which prohibits a person who publishes a booking photograph from soliciting, requiring, or accepting a fee or other consideration from a subject individual to remove, correct, modify, or to refrain from publishing or otherwise disseminating that photograph, as specified. An aggrieved individual is authorized to bring a civil action to recover the greater of actual damages or a \$1,000 penalty for each violation, as specified.

As discussed above, law enforcement has been increasingly using social media to post mugshots in a way that also shames or humiliates individuals without a positive public purpose. However, there is little recourse for individuals and no way to legally have the photos removed. One media report described the issue:

Police departments are increasingly using Facebook to inform the community about what they're doing and who they're arresting. Some add a little humor to the mix. But civil rights advocates say posting mugshots and written, pejorative descriptions of suspects amounts to public shaming of people who have not yet been convicted. . . .

Police have traditionally made mugshots and details on suspects available to journalists for publication. But journalists, for the most part, selectively choose to write stories and use mugshots based on the severity or unusual nature of the crime. Many crimes don't get any coverage. . . .

Jaleel Bussey, 24, of Philadelphia, said he nearly got kicked out of a cosmetology school when instructors saw his mugshot on Facebook. Bussey was charged in 2016 after drugs were found during a police search of a house he was visiting to style a client's hair. Most of the charges were dismissed before trial; he was acquitted of the final charge, according to the Philadelphia public defender's office.

Bussey said he was allowed to continue school after explaining that he did not have any drugs and that the charges had been dropped. He felt humiliated, he said, when his family and teachers saw his mugshot.¹

Some jurisdictions have made the decision to curtail the practice, such as the San Francisco Police Department, whose police chief described it as “a groundbreaking attempt to curb implicit bias in policing.”²

¹ Denise Lavoie, *Should police be allowed to shame suspects on Facebook?* (July 14, 2017) AP News, <https://apnews.com/article/police-us-news-ap-top-news-north-america-boston-ca79ccc2adfe41679e72e91b9e910915>. All internet citations are current as of June 17, 2021.

² Alejandro Serrano & Bob Egelko, *San Francisco police to stop releasing suspect mug shots in effort to prevent racial bias* (July 1, 2020) San Francisco Chronicle, <https://www.sfchronicle.com/crime/article/San-Francisco-police-to-stop-releasing-suspect-15379672.php>.

This bill takes the first step in stopping this practice. The bill prohibits law enforcement from sharing booking photos on social media of individuals arrested on suspicion of committing nonviolent crimes, unless certain countervailing circumstances exist that justify such posting, such as:

- a police department or sheriff's office has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the suspect's image will assist in locating or apprehending the suspect or reducing or eliminating the threat;
- a judge orders the release or dissemination of the suspect's image based on a finding that it is in furtherance of a legitimate law enforcement interest; or
- there is an exigent circumstance that necessitates the dissemination of the suspect's image in furtherance of an urgent and legitimate law enforcement interest.

The bill also provides individuals a path to remove booking photos that have already been posted. Police departments and sheriff's offices that share booking photos on social media of individuals suspected of committing nonviolent crimes must remove them upon request of the individual, unless the above circumstances exist.

The bill also requires law enforcement to take down mugshots for individuals arrested on suspicion of committing violent crimes, as defined in Section 667.5 of the Penal Code, upon request of the individual, if the individual or their representative can demonstrate any of the following:

- the individual's record has been sealed;
- the individual's conviction has been dismissed, expunged, pardoned, or eradicated pursuant to law;
- the individual has been issued a certificate of rehabilitation;
- the individual was found not guilty of the crime for which they were arrested; or
- the individual was ultimately not charged with the crime or the charges were dismissed.

This ensures that individuals have some control over images that when posted and remain public can amount to serious collateral consequences for them, even when they have committed no crime. But for those that have and are seeking to move forward, and possibly reenter society after incarceration, the publishing of these photos can be a major barrier to employment, housing, and other crucial steps for reentry. One potential concern is that the bill lacks a clear enforcement mechanism to hold law enforcement accountable should they fail to abide by the bill's requirements. The author may wish to consider including some sort of mechanism that affords aggrieved individuals the ability to enforce the rights being granted by the bill.

Writing in support, the Ella Baker Center for Human Rights makes the case for the bill:

Our criminal-legal system is built on the premise that the accused is innocent until proven guilty, but the routine practice by some local police departments of posting suspects' mugshots on Facebook in order to shame and ridicule flies in the face of that premise. This practice can cause great financial harm to the accused if such a post is shared with a current or prospective employer and great emotional harm if family and friends see it.

Previously, the State Legislature has worked to prevent the online mugshot publishing industry from charging exorbitant fees for a person to have their mugshot removed from a database. However, there is no recourse for an individual to have their name and mugshot removed from a public agency's social media page after they are found not guilty or have their record expunged.

In 2021, it is not enough to simply ban the box. With a quick internet search, a prospective employer can find information that may no longer be accurate or reflect charges that were ultimately not prosecuted. AB 1475 will ensure that people who were charged but found not guilty, or who have rehabilitated, have a fair shot at a good job and a life free from fear that a Facebook post will follow them forever. Furthermore, it will reduce implicit bias and stereotyping.

SUPPORT

ACLU California Action
Anti-Recidivism Coalition
Asian Americans Advancing Justice - California
California Public Defenders Association
Californians for Safety & Justice
Ella Baker Center for Human Rights
Initiate Justice
Legal Services for Prisoners with Children
National Association of Social Workers, California Chapter
San Francisco Public Defender

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 1027 (Hill, Ch. 194, Stats. 2014) *See* Comment 2.

PRIOR VOTES:

Senate Public Safety Committee (Ayes 4, Noes 0)

Assembly Floor (Ayes 74, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 10, Noes 0)

Assembly Public Safety Committee (Ayes 7, Noes 0)
