

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 994 (Jackson)  
Version: May 2, 2023  
Hearing Date: July 6, 2023  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Law enforcement: social media

**DIGEST**

This bill requires booking photos posted on social media to be taken down within 14 days, except as provided. It requires law enforcement to use the name and pronouns given by an individual, as specified.

**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.

To address these concerns, AB 1475 (Low, Ch. 126, Stats. 2021) was passed 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. It also provided individuals the ability to request the removal of their booking photos for arrests for both nonviolent and violent crimes, under certain circumstances. This bill goes further and requires all booking photos to be taken down within 14 days unless certain circumstances exist. It also requires law enforcement to use the name and pronouns given by the individual, but allows law enforcement to include other legal names or aliases, as provided.

This bill is author-sponsored. It is supported by various advocacy and civil liberties groups, including Equality California and the Prosecutors Alliance of California. It is opposed by a coalition of law enforcement associations, including the Newport Beach Police Association. This bill passed out of the Senate Public Safety Committee on a 4 to 1 vote.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Prohibits a police department or sheriff's office (law enforcement) 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 the release or dissemination is in furtherance of a legitimate law enforcement interest.
  - 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. (Pen. Code § 13665(a).)
- 2) Requires law enforcement, after sharing such a photo of a person suspected 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 post or their representative, unless the above circumstances continue to exist. (Pen. Code § 13665(b)(1).)
- 3) Requires law enforcement that share, 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 of the Penal Code to remove the booking photo within 14 days, upon the request of the individual or their representative, if the individual or 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.
  - e) The individual was ultimately not charged with the crime or the charges were dismissed. (Pen. Code § 13665(b)(2).)

- 4) Defines “nonviolent crime” as a crime not identified in subdivision (c) of Section 667.5. (Pen. Code § 13665(c).)
- 5) 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 § 667.5(c).)
- 6) 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.)
- 7) Permits a public entity to require and accept a reasonable administrative fee to correct a booking photograph. (Civ. Code § 1798.91.1(c).)
- 8) Provides pursuant to the California Public Records Act that all records maintained by local and state governmental agencies are open to public inspection unless specifically exempt. (Gov. Code § 6250 et seq.)
- 9) 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).)

This bill:

- 1) Requires booking photos posted on social media to be taken down within 14 days unless a circumstance laid out in Penal Code § 13665(a) exists.
- 2) Requires law enforcement to use the name and pronouns given by the individual when posting a booking photo on social media. However, law enforcement is permitted to include other legal names or known aliases of an individual if using

the names or aliases will assist in locating or apprehending the individual or reducing or eliminating an imminent threat to an individual or to public safety.

### COMMENTS

#### 1. 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.<sup>1</sup>

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.”<sup>2</sup>

The Legislature acted in 2021 with the passage of AB 1475, creating Section 13665 of the Penal Code. That law provided protections for individuals based on whether they were alleged to have committed a nonviolent crime or a violent felony, as defined.

Section 13665 outright prohibits the posting of a booking photo of an individual arrested on suspicion of committing a nonviolent felony, except under these limited circumstances:

- The suspect is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the image will assist in locating or apprehending the suspect or reducing or eliminating the threat.
- A judge orders it based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest.
- There is an exigent circumstance that necessitates it in furtherance of an urgent and legitimate law enforcement interest.

Section 13665 also provides individuals a path to remove booking photos that have already been posted. Law enforcement 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 continue to exist.

Separately, for mugshots of individuals arrested on suspicion of committing violent crimes, law enforcement must take down the photo upon request 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, the charges were dismissed, or charges were never brought.

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<sup>1</sup> 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 22, 2023.

<sup>2</sup> 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 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.

## 2. Bolstering Section 13665

According to the author:

This bill brings more equality and justice to every Californian, by ensuring that no one is assumed of being guilty or being a particular gender. As we protect our due process right, so too must we protect the privacy of every Californian. True justice is fairness! Equal protection under law should also have come with an equal protection of privacy and gender expression.

This bill bolsters the protections of Section 13665 by requiring booking photos to be taken down by default within 14 days without requiring the individual depicted to take action. Law enforcement are authorized to maintain the postings where the above exigent circumstances and legitimate law enforcement interests exist.

Other concerns have arisen in connection with the purported practice whereby law enforcement publicly out transgender men and women and non-binary people on the internet by using their former name and the wrong pronouns. This bill is intended to address that by requiring that when law enforcement agencies post booking photos online, they use the preferred name and pronouns of the person in the picture. To ensure this does not interfere with legitimate law enforcement interests, the bill allows law enforcement to include other legal names or known aliases of an individual if using the names or aliases will assist in locating or apprehending the individual or reducing or eliminating an imminent threat to an individual or to public safety.

## 3. Stakeholder positions

Writing in support, the Prosecutors Alliance of California explains the need for the bill:

The presumption of innocence is a fundamental pillar of American jurisprudence. This principle notwithstanding, California law currently permits police departments to engage in the public shaming of presumptively innocent people arrested for an offense by publicly posting their booking photo and name on social media—even when no crime is charged. (Pen. Code § 13665.) The damage done by these posts can be incalculable – leaving people unable to find work or housing long after

they have concluded their cases, and forever harming those who were wrongfully arrested.

In addition, some law enforcement have intentionally posted booking photos to social media with the incorrect gender pronouns and name of the arrested person. This conduct is deeply harmful not just to the individual but to the entire LGBTQI community.

Equality California writes in support:

[L]aw enforcement has a long history of deadnaming and misgendering transgender and non-binary individuals. Not only can this strain relationships with family and friends, but it can also contribute to adverse mental health outcomes and even violence – especially with the exponential increase in anti-LGBTQ+ and anti-trans rhetoric over the past several years. AB 994 will help to protect the safety and privacy of transgender and non-binary Californians, while at the same time ensuring other legal names or known aliases can be used if necessary to assist in locating an individual or eliminating an imminent threat to public safety.

Writing in opposition, a coalition of law enforcement associations, including the Novato Police Officer's Association, argue:

AB 994 requires law enforcement agencies that post booking photos of persons arrested for violent crimes to use only the name the arrestees provide - regardless of their legal name. AB 994 is truly mindboggling in that it mandates sworn law enforcement officers provide knowingly false information to the public.

The bill goes even further by prohibiting the release of an "also known as" or aka, including the arrestee's real name, unless the person is a fugitive or imminent threat to public safety. If an arrestee prefers to be called "Gavin Newsom" or even "Mickey Mouse," the law enforcement agency would be mandated under AB 994 to publish only that name in conjunction with the booking photo,

The author has asserted that AB 994 is needed to prevent law enforcement from deadnaming transgender persons via the posting of booking photos on their social media pages. We are sympathetic to this concern and remain willing to work to find a workable solution to that issue - but this bill is not the answer.

### SUPPORT

ACLU California Action  
California Civil Liberties Advocacy  
Equality California  
Prosecutors Alliance California  
Sister Warriors Freedom Coalition

### OPPOSITION

Arcadia Police Officers' Association  
Burbank Police Officers' Association  
California Law Enforcement Association of Records Supervisors  
California Reserve Peace Officers Association  
California State Sheriffs' Association  
Claremont Police Officers Association  
Corona Police Officers Association  
Culver City Police Officers' Association  
Deputy Sheriffs' Association of Monterey County  
Fullerton Police Officers' Association  
Murrieta Police Officers' Association  
Newport Beach Police Association  
Novato Police Officers Association  
Palos Verdes Police Officers Association  
Placer County Deputy Sheriffs' Association  
Pomona Police Officers' Association  
Riverside Police Officers Association  
Riverside Sheriffs' Association  
Santa Ana Police Officers Association  
Upland Police Officers Association

### RELATED LEGISLATION

Pending Legislation: AB 760 (Wilson, 2023) requires the Trustees of the California State University to implement a system for allowing students, staff, and faculty to declare an affirmed name and gender to be used in their records and other documents, as provided. It requests the same of the Regents of the University of California. AB 760 is currently in the Senate Appropriations Committee.

Prior Legislation:

AB 1475 (Low, Ch. 126, Stats. 2023) *See* Executive Summary & Comment 1.

SB 1027 (Hill, Ch. 194, Stats. 2014) *See* Comment 1.



**PRIOR VOTES:**

Senate Public Safety Committee (Ayes 4, Noes 1)

Assembly Floor (Ayes 48, Noes 17)

Assembly Appropriations Committee (Ayes 12, Noes 3)

Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 3)

Assembly Public Safety Committee (Ayes 5, Noes 2)

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