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SENATE BILL DRS45371-ML-14A

Short Title: Regulate Dissemination of Booking Photograph. (Public)

Sponsors: Senators Lazzara, Britt, and Nickel (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE THE DISSEMINATION AND REMOVAL OR DESTRUCTION
3 OF BOOKING PHOTOGRAPHS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 23 of Chapter 15A of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 15A-502.01. Prohibition on providing copy of booking photograph.**

8 (a) Definitions. – The following definitions apply in this section:

9 (1) Booking photograph. – A photograph or image of an individual that is
10 generated (i) for identification purposes and (ii) when the individual is booked
11 into a detention facility.

12 (2) Publish-for-pay publication. – A publication that requires the payment of a fee
13 or other consideration in order to remove or delete a booking photograph from
14 the publication.

15 (3) Publish-for-pay website. – A website that requires the payment of a fee or
16 other consideration in order to remove or delete a booking photograph from
17 the website.

18 (b) Prohibition. – A law enforcement agency is prohibited from providing a copy of a
19 booking photograph in any format to a person requesting a copy of the booking photograph if (i)
20 the booking photograph will be placed in a publish-for-pay publication or posted to a
21 publish-for-pay website or (ii) the booking photograph is prohibited from disclosure under
22 G.S. 132-1.4.

23 (c) Statement Required. – A person who requests a copy of a booking photograph from
24 a law enforcement agency shall, at the time of making the request, submit a written statement
25 signed by the person affirming that the booking photograph will not be placed in a
26 publish-for-pay publication or posted to a publish-for-pay website. A written statement provided
27 in accordance with this subsection shall have the same effect as an affirmation under G.S. 14-209,
28 and a person's knowing and intentional perjury on a statement provided in accordance with this
29 subsection shall be subject to the punishment set forth in G.S. 14-209.

30 (d) Removal. – A publish-for-pay publication or publish-for-pay website shall remove
31 and destroy a booking photograph of an individual who submits a request for removal and
32 destruction as follows:

33 (1) Within seven calendar days after the day on which the individual makes the
34 request if both of the following conditions are met:

35 a. The booking photograph relates to a criminal charge (i) that was
36 dismissed without leave, dismissed by the court, or resulted in a



1 finding of not guilty or not responsible or (ii) that was expunged,
2 vacated, or pardoned.

3 b. The individual submits with the request evidence that the condition in
4 sub-subdivision a. of this subdivision is met.

5 In addition to any other punishment or penalty set forth in this section, an
6 act of a publish-for-pay publication or publish-for-pay website that seeks to
7 condition removal or destruction of a booking photograph covered by this
8 subdivision on the payment of any fee or other item of value constitutes
9 extortion and shall be punishable under G.S. 14-118.4.

10 (2) Within 30 calendar days after the day on which the individual makes the
11 request for requests not covered by subdivision (1) of this subsection. A
12 publish-for-pay publication or publish-for-pay website may condition the
13 removal or destruction of a booking photograph covered by this subdivision
14 on the payment of a fee in an amount not exceeding fifty dollars (\$50.00).

15 (e) Failure to Remove. – In addition to any other punishment or penalty set forth in this
16 section, if a publish-for-pay publication or publish-for-pay website does not remove and destroy
17 a booking photograph in accordance with subsection (d) of this section, the individual who
18 submitted the request for removal and destruction may bring a civil action against the
19 publish-for-pay publication or publish-for-pay website, and the publish-for-pay publication or
20 publish-for-pay website is liable for both of the following:

21 (1) All costs, including reasonable attorneys' fees, resulting from any legal action
22 the individual brings in relation to the failure of the publish-for-pay
23 publication or publish-for-pay website to remove and destroy the booking
24 photograph.

25 (2) A civil penalty as follows:

26 a. For failure to remove and destroy a booking photograph subject to
27 subdivision (1) of subsection (d) of this section, a civil penalty of one
28 hundred dollars (\$100.00) per day for each day after the seven-day
29 deadline described in subdivision (1) of subsection (d) of this section
30 on which the booking photograph is visible or publicly accessible in
31 the publish-for-pay publication or the publish-for-pay website.

32 b. For failure to remove and destroy a booking photograph subject to
33 subdivision (2) of subsection (d) of this section, a civil penalty of fifty
34 dollars (\$50.00) per day for each day after the 30-day deadline
35 described in subdivision (2) of subsection (d) of this section on which
36 the booking photograph is visible or publicly accessible in the
37 publish-for-pay publication or the publish-for-pay website."

38 **SECTION 2.** G.S. 15A-152 is amended by adding a new subsection to read:

39 "(f) Applicability. – This section does not apply to booking photographs, as defined in
40 G.S. 15A-502.01."

41 **SECTION 3.** G.S. 132-1.4 reads as rewritten:

42 **"§ 132-1.4. Criminal investigations; intelligence information records; Innocence Inquiry**
43 **Commission records.**

44 (a) Records of criminal investigations conducted by public law enforcement agencies,
45 records of criminal intelligence information compiled by public law enforcement agencies, ~~and~~
46 records of investigations conducted by the North Carolina Innocence Inquiry Commission, and
47 booking photographs are not public records as defined by G.S. 132-1. Records of criminal
48 investigations conducted by public law enforcement agencies or records of criminal intelligence
49 information may be released by order of a court of competent jurisdiction.

50 (b) As used in this section:

- 1 (1) ~~"Records of criminal investigations" means all~~ Records of criminal
2 investigations. – All records or any information that pertains to a person or
3 group of persons that is compiled by public law enforcement agencies for the
4 purpose of attempting to prevent or solve violations of the law, including
5 information derived from witnesses, laboratory tests, surveillance,
6 investigators, confidential informants, photographs, and measurements. The
7 term also includes any records, worksheets, reports, or analyses prepared or
8 conducted by the North Carolina State Crime Laboratory at the request of any
9 public law enforcement agency in connection with a criminal investigation.
- 10 (2) ~~"Records of criminal intelligence information" means records~~ Records of
11 criminal intelligence information. – Records or information that pertain to a
12 person or group of persons that is compiled by a public law enforcement
13 agency in an effort to anticipate, prevent, or monitor possible violations of the
14 law.
- 15 (3) ~~"Public law enforcement agency" means a~~ Public law enforcement agency. –
16 A municipal police department, a county police department, a sheriff's
17 department, a company police agency commissioned by the Attorney General
18 pursuant to G.S. 74E-1, et seq., and any State or local agency, force,
19 department, or unit responsible for investigating, preventing, or solving
20 violations of the law.
- 21 (4) ~~"Violations of the law" means crimes~~ Violations of the law. – Crimes and
22 offenses that are prosecutable in the criminal courts in this State or the United
23 States and infractions as defined in G.S. 14-3.1.
- 24 (5) ~~"Complaining witness" means an~~ Complaining witness. – An alleged victim
25 or other person who reports a violation or apparent violation of the law to a
26 public law enforcement agency.
- 27 (6) Booking photograph. – As defined in G.S. 15A-502.01.
- 28 (c) Notwithstanding the provisions of this section, and unless otherwise prohibited by
29 law, the following information shall be public records within the meaning of G.S. 132-1.
30 ...
- 31 (7) A booking photograph, if any of the following conditions are met:
32 a. The person in the booking photograph is convicted of a criminal
33 offense based upon the conduct for which the person was incarcerated
34 at the time the photograph was taken.
35 b. A law enforcement agency releases or disseminates the photograph
36 after determining that (i) the individual is a fugitive or an imminent
37 threat to another person or to the public and (ii) releasing or
38 disseminating the photograph will assist in apprehending the person or
39 reducing or eliminating the threat.
40 c. A court of competent jurisdiction orders the release or dissemination
41 of the photograph based on a finding that the release or dissemination
42 is in furtherance of a legitimate law enforcement interest.
- 43 "

44 **SECTION 4.** The Revisor of Statutes is authorized to renumber the subdivisions of
45 G.S. 132-1.4(b), as amended by Section 3 of this act, to ensure that the subdivisions are listed in
46 alphabetical order and in a manner that reduces the current use of alphanumeric designations, to
47 make conforming changes, and to reserve sufficient space to accommodate future additions to
48 the statutory subsection.

49 **SECTION 5.** Subsections (b) and (c) of G.S. 15A-502.01, as enacted by Section 1
50 of this act, become effective October 1, 2021, and apply to photographs taken on or after that
51 date. The remainder of this act becomes effective October 1, 2021.