

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 660
PROPOSED COMMITTEE SUBSTITUTE S660-PCS35267-TT-10

Short Title: Regulate Dissemination of Booking Photograph.

(Public)

Sponsors:

Referred to:

April 7, 2021

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 disclosing a booking photograph.**

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

9 (1) Booking photograph. – A photograph or image (i) of an individual who is
10 alleged to have committed a crime, (ii) taken by law enforcement at the initial
11 booking, and (iii) maintained for identification purposes.

12 (2) Law enforcement purposes. – Law enforcement training or administrative
13 purposes, suspect identification or apprehension, or to further an investigation.

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

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

20 (b) Not a Public Record. – A booking photograph is not a public record as defined by
21 G.S. 132-1.

22 (c) Prohibition. – A law enforcement agency is prohibited from providing a copy of a
23 booking photograph of a defendant pretrial in any format except as provided in subsection (d) of
24 this section.

25 (d) Disclosure. – A law enforcement agency may only provide a copy of a booking
26 photograph of a defendant pretrial under one of the following circumstances:

27 (1) The disclosure is necessary for law enforcement purposes.

28 (2) To comply with discovery requirements.

29 (3) For use in criminal proceedings in district court.

30 (4) To comply with a court order.

31 (5) To fulfill a request for a copy of the booking photograph, as provided in
32 subsection (e) of this section.

33 (e) Application. – A person requesting a copy of a booking photograph must apply to the
34 head of the custodial law enforcement agency. The application must include a written request for
35 the booking photograph, the date and approximate time of arrest, and the name of the person in
36 the booking photograph sufficient to identify the booking photograph to which the application



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1 refers. The application must also include a sworn affidavit signed by the applicant and attesting,
2 under penalty of perjury, that the booking photograph will not be placed in a publish-for-pay
3 publication or posted to a publish-for-pay website.

4 (f) Removal. – A publish-for-pay publication or publish-for-pay website shall remove
5 and destroy a booking photograph of any individual who submits a request for removal and
6 destruction, as provided in G.S. 15A-152(a1). An entity that seeks to condition removal or
7 destruction of a booking photograph, on the payment of any fee or other item of value, may
8 constitute a criminal offense.

9 (g) Civil Liability. – In addition to any other punishment or penalty available under the
10 law, failure to remove and destroy a booking photograph in accordance with subsection (e) of
11 this section may result in civil liability as provided in G.S. 15A-152(c)."

12 **SECTION 2.** G.S. 15A-152 reads as rewritten:

13 "**§ 15A-152. Civil liability for dissemination of certain criminal history**
14 **information-information and booking photographs of defendant pretrial.**

15 (a) Duty to Delete Record – A private entity that holds itself out as being in the business
16 of compiling and disseminating criminal history record information for compensation shall
17 destroy and shall not disseminate any information in the possession of the entity with respect to
18 which the entity has received a notice to delete the record in question. The private entity shall
19 delete the record within the specified time and pursuant to the terms of the licensing agreement
20 with the State agency. If the license does not specify a time for deletion, or if no license agreement
21 exists between the private entity and state agency, the private entity shall delete the record within
22 10 business days of receiving notice to delete the record in question.

23 (a1) Duty to Remove and Destroy Booking Photograph. – A publish-for-pay publication
24 or publish-for-pay website, as defined by G.S. 15A-502.01, shall remove and destroy any
25 booking photograph within seven business days of receiving notice to remove the booking
26 photograph if both of the following conditions are met:

27 (1) There is no criminal conviction related to the arrest that generated the booking
28 photograph.

29 (2) The individual submits with the request written documentation that the
30 criminal charge related to the arrest that generated the booking photograph
31 resulted in a dismissal, acquittal, expunction, or that the grand jury returned
32 no true bill on a proposed indictment.

33 (b) Dissemination of Information. – Unless the entity is regulated by the federal Fair
34 Credit Reporting, Act 15 U.S.C. § 1681, et seq. or the Gramm-Leach-Bliley Act 15 U.S.C. §§
35 6801-6809, a private entity described by subsection (a) of this section that is licensed to access a
36 State agency's criminal history record database may disseminate that information only if, within
37 the 90-day period preceding the date of dissemination, the entity originally obtained the
38 information or received the information as an updated record information to its database. The
39 private entity must notify the State agency from which it receives the information of any other
40 entity to which it subsequently provides a bulk extract of the information.

41 (c) Civil Liability. – A private entity subject to the provisions of this section that
42 disseminates information in violation of this section is liable for any damages that are sustained
43 as a result of the violation by the person who is the subject of that information. A person who
44 prevails in an action brought under this section is also entitled to recover court costs and
45 reasonable attorneys' fees. This subsection does not apply to an entity regulated by and subject
46 to the civil liability remedies of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.,
47 or the Gramm Leach-Bliley Act, 15 U.S.C. 6801-6809, et seq.

48 In addition to any other punishment or penalty available under the law, a publish-for-pay
49 publication or publish-for-pay website that fails to remove and destroy a booking photograph in
50 accordance with G.S. 15A-502.01 is liable for any damages that are sustained as a result of the
51 violation by the person who is the subject of the booking photograph to include, at a minimum,

1 one hundred dollars (\$100.00) per day for each day after the seven-day deadline described in
2 subsection (a1) of this section, on which the booking photograph is visible or publicly accessible
3 in the publish-for-pay publication or the publish-for-pay website. A person who prevails in an
4 action brought under this section is also entitled to recover court costs and reasonable attorneys'
5 fees.

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

8 "**§ 132-1.4. Criminal investigations; intelligence information records; Innocence Inquiry**
9 **Commission records.**

10 (a) Records of criminal investigations conducted by public law enforcement agencies,
11 records of criminal intelligence information compiled by public law enforcement agencies,
12 records of investigations conducted by the North Carolina Innocence Inquiry Commission, are
13 not public records as defined by G.S. 132-1. Records of criminal investigations conducted by
14 public law enforcement agencies or records of criminal intelligence information may be released
15 by order of a court of competent jurisdiction.

16 (b) As used in this section:

17 (1) ~~"Records of criminal investigations" means all~~ Records of criminal
18 investigations. – All records or any information that pertains to a person or
19 group of persons that is compiled by public law enforcement agencies for the
20 purpose of attempting to prevent or solve violations of the law, including
21 information derived from witnesses, laboratory tests, surveillance,
22 investigators, confidential informants, photographs, and measurements. The
23 term includes booking photographs, as defined in G.S. 15A-502.01, of a
24 defendant pretrial. The term also includes any records, worksheets, reports, or
25 analyses prepared or conducted by the North Carolina State Crime Laboratory
26 at the request of any public law enforcement agency in connection with a
27 criminal investigation.

28 (2) ~~"Records of criminal intelligence information" means records~~ Records of
29 criminal intelligence information. – Records or information that pertain to a
30 person or group of persons that is compiled by a public law enforcement
31 agency in an effort to anticipate, prevent, or monitor possible violations of the
32 law.

33 (3) ~~"Public law enforcement agency" means a~~ Public law enforcement agency. –
34 A municipal police department, a county police department, a sheriff's
35 department, a company police agency commissioned by the Attorney General
36 pursuant to G.S. 74E-1, et seq., and any State or local agency, force,
37 department, or unit responsible for investigating, preventing, or solving
38 violations of the law.

39 (4) ~~"Violations of the law" means crimes~~ Violations of the law. – Crimes and
40 offenses that are prosecutable in the criminal courts in this State or the United
41 States and infractions as defined in G.S. 14-3.1.

42 (5) ~~"Complaining witness" means an~~ Complaining witness. – An alleged victim
43 or other person who reports a violation or apparent violation of the law to a
44 public law enforcement agency.

45"

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

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