

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4621

By Delegates Foster, Garcia and Kump

[Originating in the Committee on the Judiciary;

January 17, 2024]

9 (b)(1) Notwithstanding any other provision of this code to the contrary, if a person arrested
10 without a warrant is brought before a magistrate prior to the filing of a complaint, a complaint shall
11 be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals,
12 and the issuance of a warrant or a summons to appear is not required.

13 (2) When a person appears initially before a magistrate either in response to a summons or
14 pursuant to an arrest with or without a warrant, the magistrate shall proceed in accordance with the
15 requirements of the applicable provisions of the rules of the Supreme Court of Appeals.

16 (c) As used in this section, a "booking photograph" means a photograph or still, non-video
17 image of an individual generated by the West Virginia Division of Corrections and Rehabilitation
18 for identification purposes after arrest or while in the Division of Corrections and Rehabilitation's
19 custody.

20 (d) "Remove-for-pay publication or website" means a publication that requires the payment
21 of a fee or other valuable consideration in order to remove or delete a booking photograph from the
22 publication or which utilizes the publication of booking photographs for profit or to obtain
23 advertising revenue.

24 (e) Notwithstanding any other provision of this code to the contrary, photographs of a
25 person for identification purposes taken by the Division of Corrections and Rehabilitation or any
26 other county or state jail facility upon booking into the facility are not public records and shall not be
27 disclosed to the public pursuant to §29B-1-1 et seq. of this code or published online. These
28 booking photographs shall not be published or disseminated to the public except:

29 (1) The individual is a fugitive, and the Division of Corrections and Rehabilitation
30 determines that releasing or disseminating the booking photograph will assist in apprehending the
31 individual.

32 (2) The Division of Corrections and Rehabilitation determines that the individual is an
33 imminent threat to an individual or to public safety and determines that releasing or disseminating
34 the booking photograph will assist in reducing or eliminating the threat.

35 (3) A judge of a court of competent jurisdiction orders the release or dissemination of the
36 booking photograph based on a finding that the release or dissemination is in furtherance of a
37 legitimate interest.

38 (4) The individual is convicted of or pleads guilty or nolo contendere to a crime, lesser
39 crime, or lesser included offense in response to the same crime for which he was arrested.

40 (f) Notwithstanding the provisions of this section, the Division of Corrections and
41 Rehabilitation shall provide a copy of a booking photograph to the individual who is the subject of
42 the booking photograph or to the counsel of record for the individual upon request.

43 (g) A booking photograph published, released, or disseminated by a law enforcement
44 officer or the Division of Corrections and Rehabilitation, except after the subject of the booking
45 photograph being found guilty or pleading guilty or nolo contendere as provided in this section,
46 shall include a disclaimer that states "all persons are presumed innocent until proven guilty".

47 (h) Neither the Division of Corrections and Rehabilitation nor any law enforcement agency,
48 nor any person in the employ thereof, shall be subject to civil action or be held liable when the
49 publication, release, or dissemination was made by mistake of fact or error, or was inadvertent and
50 made in good faith.

51 (i) A remove-for-pay publication or website shall remove and destroy a booking
52 photograph of an individual who submits a request for removal and destruction within seven
53 calendar days from the day that the individual makes the request if both of the following conditions
54 exist:

55 (1) The individual in the booking photograph was acquitted of the criminal charge or not
56 prosecuted, or the individual had the criminal charge expunged, vacated, or pardoned.

57 (2) The individual submits, in relation to the request, evidence of a disposition described in
58 subdivision (1) of this subsection.

59 (3) The booking photograph was published or disseminated to the public in error and not
60 for a reason set forth in subsection (e) of this section.

61 (j) A remove-for-pay publication or website shall not require payment for removal or
62 destruction of the booking photograph.

63 (k) A remove-for-pay publication or website shall remove a booking photograph pursuant
64 to this code provision regardless of whether the booking photograph pre-dates or post-dates the
65 passage of this code section.

66 (l) If the remove-for-pay publication or website does not remove and destroy the booking
67 photograph, the remove-for-pay publication or website shall be liable for all costs, including
68 reasonable attorney fees, resulting from any legal action that the individual brings in relation to the
69 failure of the remove-for-pay publication or remove-for-pay website to remove and destroy the
70 booking photograph.

NOTE: The purpose of this bill is to prohibit release mug shots of persons arrested for a crime unless certain exceptions exist. It also provides for civil liability for websites that disseminate these mugshots.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.