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Ending the Publication of Mugshots

What Are Mugshot Laws?

Booking photographs are often made public on mugshot websites, law enforcement social media pages, and in news reporting. States around the country have begun adopting laws and policies limiting the public use of mugshots.

Why Is It Important That Mugshots Be Private?

Federal courts have found that mugshots are an exception to public disclosure of government information under the Freedom of Information Act (FOIA) because people have a privacy interest in their booking photographs that outweighs any public interest in seeing those photos. The rationale behind these decisions is that mugshots imply that an arrestee is a criminal even though they are taken before the person's guilt or innocence are determined. Mugshot privacy laws and policies are becoming more commonplace in light of the growth of the internet, where booking photographs can be published and distributed quickly and remain online forever.

Who Is Protected By Mugshot Laws?

Mugshot privacy laws and policies protect all arrestees from unnecessary harm. Booking photographs are associated with criminality regardless of a person's guilt or innocence. Arrestees will be unfairly haunted by their mugshots years after their involvement in the criminal legal system regardless of their guilt or innocence, especially in the modern era where once something is posted online, it is nearly impossible to wipe from the internet entirely. These public photos can devastatingly affect employment opportunities, personal relationships, and mental health in the long and short term.

Some Existing and Proposed Mugshot Laws

Passed in 2019: Illinois SB1699, New York SB1505

Passed in 2021: California AB1475

Introduced in 2021: New Hampshire HB125



Example Language & Policy Rationale

California – Assembly Bill 1457 (2021)

Added California Penal Code Section 13665

Legislative Counsel's Digest: "Existing law requires law enforcement agencies, departments, or entities to consider specified best practices regarding the downloading and storage of body-worn camera data, including prohibiting agency personnel from uploading recorded data onto public and social media internet websites, when establishing policies and procedures for the implementation and operation of a body-worn camera system. This bill would prohibit 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, as defined, unless specified circumstances exist. The bill would require 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 information from its social media page, upon request, unless the same specified circumstances exist. The bill would require a police department or sheriff's office to remove the booking photo of a person who has committed any other crime from social media if 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 is found not guilty of committing the crime for which they were arrested, or the individual was ultimately not charged with the crime or the charges were dismissed."

New Hampshire – House Bill 125 (2021 – Passed House, Died in Senate Judiciary Committee)

Would add RSA § 105:20

105:20 Law Enforcement; Post-Arrest Photo Distribution. Post-arrest photos taken by law enforcement officers of arrested persons shall be considered records compiled for investigatory purposes and shall not be subject to RSA 91-A unless the subject of the photo is convicted of a charge arising out of the arrest that led to the taking of the photo. Law enforcement officers may publish post-arrest photos related to a crime for which the subject has not been convicted if the subject fails to appear before the court after having been granted bail or is suspected of committing a subsequent crime while on bail and the assistance of the public is necessary to locate the subject after routine non-public methods of location have been exhausted. Law enforcement officers may also release post-arrest photos if the subject presents an immediate danger to the public and the release of the photo is necessary for public safety. The subject shall be notified of the potential for public release of the photo when it is taken. Law enforcement officers may also release such applicable post-arrest photos to the subject of the photo upon written request of the person. Law enforcement officers shall maintain a record of all applicable photos released or disseminated and shall include with whom the photos were shared and for what purpose. Nothing in this subdivision shall prohibit the ability of law enforcement agencies from disseminating such post-arrest photos to witnesses or to other law enforcement agencies in the performance of any valid law enforcement function. Nothing in this subdivision shall alter the ability of law enforcement agencies to take or use the photos of convicted, registered sex offenders.

City of Newark, New Jersey Department of Public Safety – Adopted policy limiting public release of mugshots

Quote from Newark Public Safety Director Brian O'Hara

"O'Hara said the release of such photos is a modern-day form of 'public shaming.' And when the accused are members of a group that has seen a history of hate speech and other judgmental behavior – such as the LGBTQ+ community – the need for some common-sense sensitivity is even more urgent. Hopefully, the new policy will also help prevent cyber-bullying for suspects who may be developmentally disabled, undocumented, experiencing homeless or mentally ill, O'Hara added. 'Regulating the release of mugshots can help reduce public bias, stereotyping and the stigma associated with the modern-day 'perp walk,' O'Hara said."

<https://patch.com/new-jersey/newarknj/newark-police-revamp-mugshot-policy-after-viral-social-media-post>

