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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 by media outlets. States around the country have started adopting laws and policies that limit 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 obtained 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 an individual's 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 2023: [New Hampshire SB246](#)

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 to24 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 – Senate 246 (2023 - Currently in Senate Judiciary Committee)

Would amend RSA 91-A:5 by inserting paragraph XIV:(a) Post-arrest photographs of arrested persons taken by a law enforcement officer shall be considered records compiled for investigatory purposes and shall not be considered governmental records subject to disclosure under RSA 91-A:1-a, III unless: (1) The subject of the photograph is convicted of a charge arising out of the arrest that led to the taking of the photograph. (2) 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. (3) The subject presents an immediate danger to the public and the release of the photograph is necessary for public safety. (4) The subject of the photograph submits a written request to a media outlet that published the photo. (5) The dissemination of post-arrest photographs to witnesses or to other law enforcement agencies in the performance of any valid law enforcement function. (6) The taking or using the photographs of convicted, registered sex offenders under the provisions in RSA 651-B:5. (7) Upon written approval by the highest ranking police officer on duty under one of the conditions specified in subparagraphs (1)-(6).

(b) A photograph released under subparagraph (a) shall be removed from public circulation by the recipient of the photograph within 14 days of the occurrence of any of the following: (1) The court record of the individual who is the subject of the photograph has been sealed. (2) The conviction of the individual who is the subject of the photograph has been dismissed, annulled, or pardoned pursuant to law. (3) The individual who is the subject of the photograph was



found not guilty of the crime for which they were arrested. (4) The individual who is the subject of the photograph was ultimately not charged with the crime or the charges were dismissed.

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.”

Additional Resources

[Harvard Law Review Article about Supreme Court mugshot ruling](#)

[Detroit Free Press Inc. v. United States Dep’t of Just.](#)

[NCSL Mugshots and Booking Photo Websites Fact Sheet](#)

Newark Patch article* – [Newark Police Revamp Mugshot Policy After Viral Social Media Post](#)

ABC News article – [Lawmakers pursue limiting public access to mug shots](#)

News4Jax article – [Convicted or not, mugshots can live online forever. But should they?](#)

Q&A: Detroit Free Press ruling

What is the Freedom of Information Act (FOIA)?

FOIA makes federal government records available to the public upon request for government transparency.

What is FOIA Exemption 7(C)?

This exemption stops certain law enforcement records from being public under FOIA if their publication would be an unwarranted invasion of personal privacy. Courts decide if something falls under this exemption by weighing a person’s personal privacy interest against the public’s interest in seeing the records.

Do people have a privacy interest in their mugshots?

Yes. *In Detroit Free Press Inc. v. United States Department of Justice*, a federal court said that publishing mugshots is an invasion of privacy because mugshots imply that an arrestee is a criminal even though they are taken before the person’s guilt or innocence are determined. This ruling was a reversal from the same court’s earlier decision on the same issue. The ruling was reversed in light of the growth of the internet, where mugshots can be published and distributed quickly and usually remain online forever: “In 1996, this court could not have known or expected that a booking photo could haunt the depicted individual for decades.”

Is there a public interest in mugshots?

No. The court also found that there is not a significant public interest in seeing arrest photos, and that publicizing those photos does not serve any important purpose.



Can mugshots be released to the public under federal law?

No. Using the Exemption 7(C) balancing test, the privacy interest of people who may have their mugshots plastered all over the internet outweighs any interest the public may have in seeing the photos. This ruling, alongside similar ones in other federal courts, makes it so that mugshots aren't available to the public under FOIA in federal cases.

What about state law?

Because FOIA is federal law, it doesn't apply to government records at the state level. Federal courts have already ruled that mugshots should not be made public, but the same laws don't exist in most states.

Federal Caselaw Regarding Mugshots

Several federal courts have recognized that mugshots are commonly associated with criminal behavior regardless of the actual guilt or innocence of the person pictured. Courts generally prohibit the use of mugshots in trials because the risk of prejudicing juries outweighs any probative value those pictures may have (See [here](#) and [here](#)). Multiple federal appellate courts have ruled that individuals have a privacy interest in their mugshot photos and that the photos create an assumption of guilt. Courts agree that this privacy interest outweighs any potential public interest that could be served by the photos being publically accessible.

A United States District Court observed in 1999 that "mug shots in general are notorious for their visual association of the person with criminal activity ... as in the cliché, a picture is worth a thousand words. For that reason, a mug shot's stigmatizing effect can last well beyond the actual criminal proceedings. ... A mug shot preserves, in its unique and visually powerful way, the subject individual's brush with the law for posterity. It would be reasonable for a criminal defendant, even one who has already been convicted and sentenced, to object to the public disclosure of his or her mug shot." ([Citation](#))

In 2011, the Eleventh Circuit in [Karantalis v. U.S. Department of Justice](#) found a booking photograph to be a "unique and powerful type of photograph that raises personal privacy interests distinct from normal photographs. A booking photograph is a vivid symbol of criminal accusation, which, when released to the public, intimates, and is often equated with, guilt. Further, a booking photograph captures the subject in the vulnerable and embarrassing moments immediately after being accused, taken into custody, and deprived of most liberties." The court balanced the defendant's personal privacy interest in his booking photographs against the public's interest in seeing them, finding that the balance weighed against disclosure because "the public obtains no discernable interest from viewing the booking photographs, except perhaps the negligible value of satisfying voyeuristic curiosities," and accordingly found that "releasing the booking photographs could reasonably be expected to constitute an unwarranted invasion of personal privacy."

The Tenth Circuit discussed the limited public interest in the release of mugshot photographs, commenting that "there is little to suggest that releasing booking photos would significantly assist the public in detecting or deterring any underlying government misconduct" and that "mere speculation about hypothetical public benefits cannot outweigh significant privacy interests." ([Citation](#))

Most recently, the Sixth Circuit unequivocally stated that "individuals enjoy a non-trivial privacy interest in their booking photos," in a full reversal from a prior ruling on the same issue. The court explained the rationale in overturning existing law, noting that "in 1996, this court could not have known or expected that a booking photo could haunt the depicted individual for decades. ... Experience has taught us otherwise. As the Tenth and Eleventh Circuits recognize, individuals



have a privacy interest in preventing disclosure of their booking photos.” [\(Citation\)](#) This decision was cited extensively in the justification for California’s Assembly Bill 1475, which was passed in July 2021 and prohibits law enforcement agencies from publishing arrestee mugshots on their social media accounts.

Ultimately, there is substantial case law and dicta recognizing the privacy interest individuals have in their mugshots due to the risk of those photographs being associated with guilt, and the danger that arrestees will be unfairly haunted by their mugshots years after their involvement in the criminal legal system, regardless of their guilt or innocence.

