

Enrolled
House Bill 3273

Sponsored by Representatives WITT, BYNUM; Representatives ALONSO LEON, CAMPOS, DEXTER, NERON, NOBLE, NOSSE, PHAM, POWER, PRUSAK, REYNOLDS, RUIZ, SANCHEZ, SOLLMAN, Senator MANNING JR

CHAPTER

AN ACT

Relating to booking photos.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Notwithstanding ORS 192.311 to 192.478, a law enforcement agency may not release a booking photo except as provided in subsection (2) of this section.

(2) A law enforcement agency may release a booking photo described in subsection (1) of this section:

- (a) To the person depicted in the booking photo;
- (b) To another law enforcement agency, or to a law enforcement officer employed by another law enforcement agency, for a law enforcement purpose;
- (c) To the public, if the law enforcement agency determines that there is a law enforcement purpose for the release, including but not limited to assistance with the apprehension of a fugitive or a suspect in a criminal investigation, or the identification of additional criminal activity;
- (d) To a state mental hospital upon the admission to the hospital of the person depicted in the booking photo;
- (e) To a party in a criminal proceeding resulting from the arrest during which the booking photo was obtained;
- (f) To the victim of the offense for which the person depicted in the booking photo was arrested; or
- (g) Upon the conviction of the person depicted in the booking photo, if the conviction results from the arrest during which the booking photo was obtained.

(3) As used in this section:

- (a) "Booking photo" means a photograph of a person taken by a law enforcement agency for identification purposes when the person is booked into custody.
- (b) "Law enforcement agency" has the meaning given that term in ORS 131.915.
- (c) "Law enforcement officer" means an officer, deputy, member or employee of a law enforcement agency.

SECTION 2. (1) Except as provided in subsection (2) of this section:

(a) A publish-for-pay publication shall remove and destroy a booking photo of a person who submits a request for removal and destruction within 30 calendar days of the date of the request.

(b) A publish-for-pay publication may not condition the removal or destruction of a booking photo on the payment of a fee of more than \$50.

(c) If the publish-for-pay publication does not remove and destroy a booking photo as required by this subsection, the publish-for-pay publication is liable for:

(A) All costs, including reasonable attorney fees, resulting from any legal action the person brings in relation to the failure of the publish-for-pay publication to remove and destroy the booking photo; and

(B) Statutory damages of \$500 per day for each day after the 30-day deadline described in this subsection that the booking photo is visible or accessible in or on the publish-for-pay publication.

(2)(a) A publish-for-pay publication shall remove and destroy a booking photo of a person who submits a request for removal and destruction within seven calendar days of the date of the request if:

(A) The booking photo relates to a criminal charge for which the person was acquitted or not prosecuted, or to a criminal charge resulting a criminal conviction that has been set aside, vacated or pardoned; and

(B) The person submits to the publish-for-pay publication documentation of a disposition described in subparagraph (A) of this paragraph.

(b) A publish-for-pay publication may not condition the removal or destruction of a booking photo described in this subsection on the payment of any fee or other consideration.

(c) If the publish-for-pay publication that receives a request described in paragraph (a) of this subsection does not remove and destroy the booking photo as required by this subsection, the publish-for-pay publication is liable for:

(A) All costs, including reasonable attorney fees, resulting from any legal action the person brings in relation to the failure of the publish-for-pay publication to remove and destroy the booking photo; and

(B) Statutory damages of \$1,000 per day for each day after the seven-day deadline described in this subsection that the booking photo is visible or accessible in or on the publish-for-pay publication.

(d) An act by a publish-for-pay publication seeking to condition removal or destruction of a booking photo described in this subsection on the payment of any fee may be prosecuted as theft by deception under ORS 164.085.

(3) As used in this section:

(a) "Booking photo" means a photograph of a person taken by a law enforcement agency for identification purposes when the person is booked into custody.

(b) "Publish-for-pay publication" means a publication or website that requires the payment of a fee or other consideration in order to remove or delete a booking photo from the publication or website.

Passed by House April 26, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 9, 2021

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Peter Courtney, President of Senate

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Approved:

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Kate Brown, Governor

Filed in Office of Secretary of State:

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Shemia Fagan, Secretary of State