

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 558

By Senators Weld, Woelfel, and Woodrum

[Passed March 09, 2023; in effect 90 days from

passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §62-1-6a, relating to prohibiting law enforcement agencies of the state from
3 posting on social media the booking photographs of individuals alleged to have committed
4 a minor offense; clarifying that the Division of Corrections and Rehabilitation and its
5 subordinate organizations may not be considered a law enforcement agency for purposes
6 of this section; providing exceptions; and requiring removal of booking photographs in
7 certain instances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PRELIMINARY PROCEDURE.

§62-1-6a. Booking photographs of criminal defendants.

1 (a) Except as authorized by the provisions of this section, a law enforcement agency may
2 not share on social media the booking photograph of an individual arrested for the alleged
3 commission of a minor offense.

4 (b) As used in this section, unless context clearly indicates, otherwise:

5 "Booking photograph" means a photograph or still, non-video image of an individual taken,
6 generated, or otherwise created by a law enforcement agency pursuant to an arrest or while an
7 individual is in the agency's lawful custody.

8 "Law enforcement agency" means any duly authorized state, county, or municipal
9 organization employing one or more persons whose responsibility is the enforcement of laws of
10 the state or any county or municipality of the state: *Provided*, That the Division of Corrections and
11 Rehabilitation and its subordinate organizations may not be considered a law enforcement agency
12 for purposes of this section.

13 "Social media" means a publicly available Internet-based platform that allows a user to
14 produce, post, or curate content and interact with other users via text, images, video, and audio,
15 for the purpose of informing, sharing, promoting, collaborating, or networking.

16 "Minor offense" means an offense that:

17 Is a misdemeanor or nonviolent felony eligible for expungement as provided by §61-11-
18 26(a) of this code, and not excepted from eligibility for expungement under §61-11-26(c) of this
19 code: *Provided*, That, for purposes of this section, offenses under §17B-4-3 of this code and
20 misdemeanor offenses under §17C-5-2 of this code, shall be considered minor offenses for
21 purposes of this section.

22 (c) *Exceptions.* — A law enforcement agency may share on social media the booking
23 photograph of an individual arrested for the alleged commission a minor offense, if:

24 (1) The individual is convicted of a criminal offense based upon the conduct for which the
25 individual was in custody for at the time the booking photograph was taken;

26 (2) A law-enforcement agency has determined that the suspect is a fugitive or an imminent
27 threat to an individual or to public safety and reasonably believes that releasing or disseminating
28 the suspect's booking photograph will assist in locating or apprehending the suspect or reducing
29 or eliminating that threat; or

30 (3) A court of competent jurisdiction orders the release or dissemination of the booking
31 photograph based upon a finding that doing so is in furtherance of a legitimate interest.

32 (d) A law-enforcement agency may not be subject to civil action or be held liable when the
33 publication, release, or dissemination of a booking photograph was made by mistake of fact or
34 error, and that publication, release, or dissemination was done in good faith.

35 (e) A law-enforcement agency that shares on social media a booking photograph of an
36 individual arrested for the suspected commission of any crime shall remove the booking
37 photograph from its social media page within 14 days upon the request of the individual who is the
38 subject of the social media post, or that individual's authorized representative, if any of the
39 following have occurred:

40 (1) The criminal charge for which the booking photograph was taken has been dismissed;

41 (2) A grand jury has declined to return an indictment on the charge for which the booking
42 photograph was taken; or

43 (3) A circuit court or jury has entered a judgment of acquittal on the charge for which the
44 booking photograph was taken, or a court of competent jurisdiction has issued an order or opinion
45 reversing, vacating, or otherwise nullifying the conviction for which the booking photograph was
46 taken.