

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 558

By Senators Weld, Woelfel, and Woodrum

[Introduced February 03, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §61-2-13, relating to prohibiting law-enforcement agencies of the state from
 3 posting the booking photographs of certain criminal defendants on social media.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PRELIMINARY PROCEDURE.

§61-2-13. Booking photographs of criminal defendants.

1 (a) As used in this article, unless the context clearly indicates otherwise:

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

5 "Social media" means a publicly available Internet based platform that allows a user to
 6 produce content, post, or interact through text, images, video, and audio, for the purpose of
 7 informing, sharing, promoting, collaborating, or networking.

8 "Nonviolent offense" means an offense that:

9 (A) Does not have as an element the use, attempted use, or threatened use of physical
 10 force against the person or property of another;

11 (B) Is not a felony that by its nature involves a substantial risk that physical force against
 12 the person or property of another may be used in the course of committing the offense;

13 (C) Provided, That offenses under the provisions of §60A-1-101 et seq. and §61-3-11 of
 14 this code shall not be considered as a nonviolent offense pursuant to this section.

15 "Law enforcement agency" means any duly authorized state, county, or municipal
 16 organization employing one or more persons whose responsibility is the enforcement of laws of
 17 the state or any county or municipality thereof.

18 (b) Except as provided in this article, no law enforcement agency may share the booking
 19 photo of an individual arrested on suspicion of committing a nonviolent offense on social media.

20 (c) Exceptions. A law enforcement agency may share the booking photo of an individual

21 arrested on suspicion of committing a nonviolent offense on social media, if:

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

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

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

30 (d) No law enforcement agency may be subject to civil action or be held liable when the
31 publication, release, or dissemination of a booking photo was made by mistake of fact or error and
32 was done in good faith.

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

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

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

41 (3) A circuit court or jury has entered a judgment of acquittal on the charge for which the
42 booking photograph was taken.

NOTE: The purpose of this bill is to prohibit law enforcement agencies of the state from posting the booking photographs of certain criminal defendants on social media.

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