

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Revised

Committee Substitute

for

House Bill 4621

By Delegates Foster, Garcia, Kump, and Petitto

[Originating in the Committee on the Judiciary;

Reported on February 21, 2024]

9 (b)(1) Notwithstanding any other provision of this code to the contrary, if a person arrested
10 without a warrant is brought before a magistrate prior to the filing of a complaint, a complaint shall
11 be filed forthwith in accordance with the requirements of rules of the Supreme Court of Appeals,
12 and the issuance of a warrant or a summons to appear is not required.

13 (2) When a person appears initially before a magistrate either in response to a summons or
14 pursuant to an arrest with or without a warrant, the magistrate shall proceed in accordance with the
15 requirements of the applicable provisions of the rules of the Supreme Court of Appeals.

16 (c) As used in this section, a "booking photograph" means a photograph or still, non-video
17 image of an individual generated by the West Virginia Division of Corrections and Rehabilitation
18 for identification purposes after arrest or while in the Division of Corrections and Rehabilitation's
19 custody.

20 (d) "News-gathering organization" means any of the following:

21 (A) A newspaper, news publication, or news source, or an employee thereof, printed or on
22 an online or mobile platform, of current news and public interest, while operating as an employee
23 as provided in this subsection, who can provide documentation of such employment with the
24 newspaper, news publication, or news source; or

25 (B) A radio broadcast station, television broadcast station, cable television operator, wire
26 service, or employee thereof while operating as an employee as provided in this subsection, who
27 can provide documentation of such employment.

28 (e) "Remove-for-pay publication or website" means a publication, website, or social media
29 presence that requires the payment of a fee or other valuable consideration in order to remove or
30 delete a booking photograph from the publication or which utilizes the publication of booking
31 photographs for memberships, profit, or to obtain advertising revenue: *Provided*, That this
32 subsection shall not apply to any news gathering organizations.

33 (f) Notwithstanding any other provision of this code to the contrary, photographs of a
34 person for identification purposes taken by the Division of Corrections and Rehabilitation or any

35 other county or state jail facility upon booking into the facility are not public records and shall not be
36 disclosed to the public pursuant to §29B-1-1 et seq. of this code or published online. These
37 booking photographs shall not be published or disseminated to the public except:

38 (1) The individual is a fugitive, and the Division of Corrections and Rehabilitation
39 determines that releasing or disseminating the booking photograph will assist in apprehending the
40 individual.

41 (2) The Division of Corrections and Rehabilitation determines that the individual is an
42 imminent threat to an individual or to public safety and determines that releasing or disseminating
43 the booking photograph will assist in reducing or eliminating the threat.

44 (3) A judge of a court of competent jurisdiction orders the release or dissemination of the
45 booking photograph based on a finding that the release or dissemination is in furtherance of a
46 legitimate interest.

47 (4) The individual is convicted of or pleads guilty or nolo contendere to a crime, lesser
48 crime, or lesser included offense in response to the same crime for which he was arrested.

49 (5) A judge of a court of competent jurisdiction orders the release or dissemination of the
50 booking photograph based on a finding that a person has received verbal or physical threats of
51 harm to that person's immediate family by a defendant and that person is entitled to a copy of the
52 booking photograph.

53 (g) Notwithstanding the provisions of this section, the Division of Corrections and
54 Rehabilitation shall provide a copy of a booking photograph to the individual who is the subject of
55 the booking photograph or to the counsel of record for the individual upon request.

56 (h) Any booking photograph that is published, released, or disseminated by a law
57 enforcement officer or the Division of Corrections and Rehabilitation, except after the subject of
58 the booking photograph being found guilty or pleading guilty or nolo contendere as provided in this
59 section, shall include a disclaimer that states "all persons are presumed innocent until proven
60 guilty".

61 (i) Neither the Division of Corrections and Rehabilitation nor any law enforcement agency,
62 nor any person in the employ thereof, shall be subject to civil action or be held liable when the
63 publication, release, or dissemination was made by mistake of fact or error, or was inadvertent and
64 made in good faith.

65 (j) A remove-for-pay publication or website, or any other website, shall remove and destroy
66 a booking photograph of an individual who submits a request for removal and destruction within
67 seven calendar days from the day that the individual makes the request if the following conditions
68 exist:

69 (1) The individual in the booking photograph was acquitted of the criminal charge or not
70 prosecuted, or the individual had the criminal charge expunged, vacated, or pardoned.

71 (2) The individual submits, in relation to the request, evidence of a disposition described in
72 subdivision (1) of this subsection.

73 (3) The booking photograph was published or disseminated to the public in error and not
74 for a reason set forth in subsection (e) of this section.

75 (k) A remove-for-pay publication or website, or any other website, shall not require
76 payment for removal or destruction of the booking photograph.

77 (l) A remove-for-pay publication or website, shall remove a booking photograph pursuant
78 to this code provision regardless of whether the booking photograph pre-dates or post-dates the
79 passage of this code section.

80 (m) If the remove-for-pay publication or website does not remove and destroy the booking
81 photograph, the remove-for-pay publication or website shall be liable for all costs, including
82 reasonable attorney fees, resulting from any legal action that the individual brings in relation to the
83 failure of the remove-for-pay publication or remove-for-pay website to remove and destroy the
84 booking photograph.

85 (n) A booking photograph may be disclosed by the Division of Corrections and
86 Rehabilitation to an appropriate law-enforcement agency, or a prosecuting attorney's office, for the

87 investigation, prevention, or prosecution of a crime, or to safeguard the orderly operation of the
88 correctional institution. A booking photograph may also be disclosed between law-enforcement
89 agencies for investigation, public safety, prevention, or prosecution of a crime, or to safeguard the
90 orderly operation of a correctional institution.

NOTE: The purpose of this bill is to prohibit release mug shots of persons arrested for a crime unless certain exceptions exist. It also provides for civil liability for websites that disseminate these mugshots.

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