

A BILL FOR AN ACT

RELATING TO ARREST BOOKING PHOTOGRAPHS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 481B, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§481B- Publication of arrest booking photographs on a commercial website. (a) Any person who is engaged in an activity involving or using a computer network and who publishes on the person's publicly accessible website an individual's arrest booking photograph for purposes of commerce shall be deemed to be transacting business in this State.

(b) Within thirty days of receiving a written request by a subject individual that includes the subject individual's name, date of birth, date of arrest, and the name of the pertinent criminal justice agency, a person subject to subsection (a) shall, without fee or compensation, remove from the person's website the subject individual's arrest booking photograph. The written request shall be transmitted via certified mail, return receipt requested, to the registered agent, principal place of



1 business, or primary residence of the person who published the
2 website.

3 (c) As used in this section:

4 "Arrest booking photograph" means a photograph or other
5 image of a subject individual taken or maintained by a criminal
6 justice agency in connection with the initial intake and routine
7 booking procedures pertaining to the subject individual's
8 arrest.

9 "Criminal justice agency" has the same meaning as defined
10 under section 846-1.

11 "Subject individual" means an individual who was arrested
12 and had the individual's arrest booking photograph taken and:

13 (1) Access to the individual's case or charges has been
14 restricted pursuant to chapter 846 or section 831-3.2;

15 (2) Prior to the return of an indictment or the filing of
16 a complaint, information, or other charging
17 instrument, the offense against the individual was
18 closed by the criminal justice agency and the
19 individual's case was not referred for prosecution to
20 the proper prosecuting attorney by the criminal
21 justice agency;



1 (3) Prior to the return of an indictment or the filing of
2 a complaint, information, or other charging
3 instrument, the statute of limitations expired;

4 (4) Prior to the return of an indictment or the filing of
5 a complaint, information, or other charging
6 instrument, the grand jury returned two no bills;

7 (5) After the return of an indictment or the filing of a
8 complaint, information, or other charging instrument,
9 all charges were dismissed or nolle prosequed;

10 (6) After the return of an indictment or the filing of a
11 complaint, information, or other charging instrument,
12 the individual:

13 (A) Pleaded guilty or nolo contendere and the court
14 entered an order pursuant to section 853-1; or

15 (B) Pleaded guilty to or was found guilty of
16 promoting a dangerous drug, harmful drug,
17 detrimental drug, or an intoxicating compound and
18 the court entered an order pursuant to section
19 712-1255;



1 and the individual successfully completed the terms
2 and conditions of the individual's deferral or
3 probation; or

4 (7) The individual was acquitted of all of the charges by
5 a judge or jury."

6 SECTION 2. Chapter 846, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§846- Restrictions on dissemination of arrest booking
10 photographs. (a) Except as otherwise provided in section 846-
11 8, or for arrest booking photographs that must be published
12 pursuant to section 846E-3 or any other law of the State, or for
13 use by criminal justice agencies for administrative purposes, no
14 criminal justice agency shall post arrest booking photographs on
15 a website.

16 (b) No criminal justice agency shall provide or make
17 available a copy of an arrest booking photograph in any format
18 to a person requesting the photograph if:

19 (1) The arrest booking photograph is to be placed in a
20 publication, posted on a website, or transferred to a



1 person to be placed in a publication or posted on a
2 website; and

3 (2) Removal or deletion of the arrest booking photograph
4 from the publication or website requires the payment
5 of a fee or other consideration.

6 (c) When a person requests an arrest booking photograph
7 from a criminal justice agency, the person shall submit a
8 statement, in a form prescribed and provided by the criminal
9 justice agency, affirming that the arrest booking photograph
10 will be used in compliance with subsection (b). Any person who
11 knowingly makes a false statement in requesting an arrest
12 booking photograph shall be deemed to have committed a violation
13 of section 710-1063.

14 (d) As used in this section, "arrest booking photograph"
15 has the same meaning as defined under section 481B- ."

16 SECTION 3. Section 846-9, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§846-9 Limitations on dissemination. [Dissemination]**
19 Subject to section 846- , dissemination of nonconviction data
20 shall be limited, whether directly or through any intermediary,
21 only to:



- 1 (1) Criminal justice agencies, for purposes of the
2 administration of criminal justice and criminal
3 justice agency employment;
- 4 (2) Individuals and agencies specified in section 846-10;
- 5 (3) Individuals and agencies pursuant to a specific
6 agreement with a criminal justice agency to provide
7 services required for the administration of criminal
8 justice pursuant to that agreement; provided that such
9 agreement shall specifically authorize access to data,
10 limit the use of data to purposes for which given, and
11 insure the security and confidentiality of the data
12 consistent with the provisions of this chapter;
- 13 (4) Individuals and agencies for the express purpose of
14 research, evaluative, or statistical activities
15 pursuant to an agreement with a criminal justice
16 agency; provided that such agreement shall
17 specifically authorize access to data, limit the use
18 of data to research, evaluative, or statistical
19 purposes, and insure the confidentiality and security
20 of the data consistent with the purposes of this
21 chapter;



(5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and

(6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

These dissemination limitations do not apply to conviction data.

These dissemination limitations also do not apply to data relating to cases in which the defendant is acquitted, or charges are dismissed, by reason of physical or mental disease, disorder, or defect under chapter 704.

Criminal history record information disseminated to noncriminal justice agencies shall be used only for the purposes for which it was given.

No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."



SECTION 4. Section 846-10, Hawaii Revised Statutes, is amended to read as follows:

"§846-10 Dissemination. [Criminal] Subject to section 846- , criminal history record information may be disseminated to:

- (1) The governor in individual cases or situations wherein the governor elects to become actively involved in the investigation of criminal activity or the administration of criminal justice in accordance with the governor's constitutional duty to insure that the laws be faithfully executed;
- (2) The attorney general in connection with the attorney general's statutory authority and duties in the administration and enforcement of the criminal laws and for the purpose of administering and insuring compliance with the provisions of this chapter;
- (3) To such other individuals and agencies who are provided for in this chapter or by rule or regulation."



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

7

INTRODUCED BY:

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Report Title:

Crime; Arrest Booking Photographs; Mug Shots; Commercial Websites

Description:

For criminal cases resulting in no conviction: 1) prohibits commercial websites from collecting a fee for removing arrest booking photographs from the website; and 2) prohibits criminal justice agencies from posting arrest booking photographs on a website except as provided by law.

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