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AB-1475 Law enforcement: social media. (2021-2022)

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Date Published: 07/26/2021 02:00 PM

Assembly Bill No. 1475

CHAPTER 126

An act to add Section 13665 to the Penal Code, relating to law enforcement.

[Approved by Governor July 23, 2021. Filed with Secretary of State July 23, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1475, Low. Law enforcement: social media.

Existing law requires law enforcement agencies, departments, or entities to consider specified best practices regarding the downloading and storage of body-worn camera data, including prohibiting agency personnel from uploading recorded data onto public and social media internet websites, when establishing policies and procedures for the implementation and operation of a body-worn camera system.

This bill would prohibit a police department or sheriff's office from sharing, on social media, booking photos of an individual arrested on suspicion of committing a nonviolent crime, as defined, unless specified circumstances exist. The bill would require a police department or sheriff's office that shares, on social media, a booking photo of an individual arrested for the suspected commission of a nonviolent crime to remove the information from its social media page, upon request, unless the same specified circumstances exist. The bill would require a police department or sheriff's office to remove the booking photo of a person who has committed any other crime from social media if the individual's record has been sealed, the individual's conviction has been dismissed, expunged, pardoned, or eradicated pursuant to law, the individual has been issued a certificate of rehabilitation, the individual is found not guilty of committing the crime for which they were arrested, or the individual was ultimately not charged with the crime or the charges were dismissed.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

- (a) In our criminal justice system, suspects are considered innocent until proven guilty.
- (b) In recent years, law enforcement departments have begun to use social media platforms like Facebook, Twitter, Instagram, and Nextdoor to communicate with the public.
- (c) Some departments post the booking photos of suspects on their social media accounts even though the suspect is no longer at large or an ongoing threat to public safety.
- (d) Information posted to these social media accounts can remain on the internet for years, seriously affecting the life of the person depicted.

(e) In 2016, the United States Sixth Circuit Court of Appeals stated, in *Detroit Free Press Inc. v. United States Department of Justice* (829 F.3d 478, 482) that booking photos are “more than just ‘vivid symbols of criminal accusation, booking photos convey guilt to the viewer,’ effectively ‘eliminating the presumption of innocence and replacing it with an unmistakable badge of criminality.’”

(f) The Sixth Circuit also noted that booking photos are “snapped ‘in the vulnerable and embarrassing moments immediately after [an individual is] accused, taken into custody, and deprived of most liberties,’” putting them in the realm of “embarrassing and humiliating information.” (Id.)

(g) Section 1 of Article 1 of the California Constitution protects the privacy of Californians, including limiting the disclosure of arrest information unless that disclosure serves a compelling state interest (*Central Valley Ch. 7th Step Foundation, Inc. v. Younger* (1989) 214 Cal.App.3d 415, 151).

(h) In July 2020, San Francisco Police Chief Bill Scott instituted a department directive against the release of booking photos in most circumstances because their publication creates an “illusory correlation for viewers that fosters racial bias and vastly overstates the propensity of black and brown men to engage in criminal behavior.”

(i) The Legislature finds that publishing booking photos on social media when there is a low risk to public safety is detrimental to the right to a fair trial because it diminishes the presumption of innocence and potentially violates privacy rights of Californians without a commensurate benefit to public safety.

SEC. 2. Section 13665 is added to the Penal Code, to read:

13665. (a) A police department or sheriff's office shall not share, on social media, booking photos of an individual arrested on suspicion of committing a nonviolent crime unless any of the following circumstances exist:

(1) A police department or sheriff's office has determined that the suspect is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the suspect's image will assist in locating or apprehending the suspect or reducing or eliminating the threat.

(2) A judge orders the release or dissemination of the suspect's image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest.

(3) There is an exigent circumstance that necessitates the dissemination of the suspect's image in furtherance of an urgent and legitimate law enforcement interest.

(b) (1) A police department or sheriff's office that shares, on social media, a booking photo of an individual arrested for the suspected commission of a nonviolent crime shall remove the booking photo from its social media page within 14 days, upon the request of the individual who is the subject of the social media post or the individual's representative, unless any of the circumstances described in subdivision (a) exist.

(2) A police department or sheriff's office that shares, on social media, a booking photo of an individual arrested for the suspected commission of a crime identified in subdivision (c) of Section 667.5 shall remove the booking photo from its social media page within 14 days, upon the request of the individual who is the subject of the social media post or the individual's representative, if the individual or their representative demonstrates any of the following:

(A) The individual's record has been sealed.

(B) The individual's conviction has been dismissed, expunged, pardoned, or eradicated pursuant to law.

(C) The individual has been issued a certificate of rehabilitation.

(D) The individual was found not guilty of the crime for which they were arrested.

(E) The individual was ultimately not charged with the crime or the charges were dismissed.

(3) This subdivision shall apply retroactively to any booking photo shared on social media.

(c) For purposes of this section, the following terms have the following meanings:

(1) “Nonviolent crime” means a crime not identified in subdivision (c) of Section 667.5.

(2) “Social media” has the same meaning as in Section 632.01, except that social media does not include an internet website or an electronic data system developed and administered by the police department or sheriff's office.