

The House Committee on Judiciary, Non-Civil offers the following substitute to HB 10:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 35-1-19 of the Official Code of Georgia Annotated, relating to
2 disclosure of arrest booking photographs prohibited, so as to prohibit the release or posting
3 of a booking photograph unless and until the individual depicted therein is convicted; to
4 provide for booking photograph removal; to provide for penalties; to provide for a civil cause
5 of action; to provide for limitations; to provide for related matters; to repeal conflicting laws;
6 and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 35-1-19 of the Official Code of Georgia Annotated, relating to disclosure of
10 arrest booking photographs prohibited, is amended by revising subsections (b) through (d)
11 and adding new subsections to read as follows:

12 "(b) Except as provided in Code Section 50-18-77 and booking photographs required for
13 publication as set forth in Titles 16 and 40, for the ~~State Sexual Offender Registry~~ state
14 sexual offender registry, for representatives of a news media organization as provided in
15 paragraphs (1) and (2) of subsection (c) of this Code section, and for use by law
16 enforcement agencies for administrative purposes, an arresting law enforcement agency or

17 agent thereof shall not release to the public or post booking photographs to or on a public
18 website a booking photograph unless and until the individual depicted in such booking
19 photograph is convicted of the offense for which such booking photograph was taken.

20 (c)(1) An arresting law enforcement agency shall ~~not provide or make available a copy~~
21 ~~of a booking photograph in any format to a person requesting such photograph if: provide~~
22 ~~or make available a copy of a booking photograph in any format to a person requesting~~
23 ~~such photograph for a news media organization if such person is gathering information,~~
24 ~~is making the request as a representative of that news media organization, and complies~~
25 ~~with the requirements of paragraph (2) of this subsection.~~

26 (2) When a person is making a request, pursuant to paragraph (1) of this subsection, as
27 a representative of a news media organization, such representative shall submit a
28 statement affirming that the use of the booking photograph shall be in compliance with
29 this Code section; that such news media organization's primary business model is not the
30 publishing and disseminating of booking photographs for a commercial purpose or
31 pecuniary gain; and that such news media organization does not solicit or accept a fee or
32 other form of payment to remove a booking photograph. Such statement shall also
33 disclose the legal name and any and all trade names of that news media organization.
34 Any person who knowingly makes a false statement in requesting such booking
35 photograph shall be guilty of a violation of Code Section 16-10-20.

36 (1) ~~Such booking photograph may be placed in a publication or posted to a website or~~
37 ~~transferred to a person to be placed in a publication or posted to a website; and~~

38 (2) ~~Removal or deletion of such booking photograph from such publication or website~~
39 ~~requires the payment of a fee or other consideration.~~

40 (d) When a person, other than a representative of a news media organization making a
41 request pursuant to paragraphs (1) and (2) of subsection (c) of this Code section, requests
42 a booking photograph, he or she shall submit a statement affirming that the use of such
43 photograph is in compliance with ~~subsection (c)~~ this Code section. Any person who

44 knowingly makes a false statement in requesting a booking photograph shall be guilty of
45 a violation of Code Section 16-10-20.

46 (e)(1) No person or entity engaged in the business of publishing or otherwise
47 disseminating through a publicly accessible print or electronic medium booking
48 photographs of individuals who have been arrested shall solicit or accept a fee or other
49 form of payment to remove such booking photographs from such publicly accessible print
50 or electronic medium.

51 (2) An individual whose booking photograph is published or otherwise disseminated
52 through a publicly accessible print or electronic medium, or his or her legal
53 representative, may make a request, in writing, for the removal of such booking
54 photograph to the registered agent of the person or entity that published or otherwise
55 disseminated such booking photograph.

56 (3) The written request for removal of a booking photograph shall be sent by registered
57 mail and include sufficient proof of identification of the individual in such booking
58 photograph and specific information identifying such booking photograph. Within ten
59 calendar days after receipt of the written request for removal of a booking photograph,
60 the person or entity that published or otherwise disseminated such booking photograph
61 shall remove the booking photograph without charge and shall not publish or otherwise
62 disseminate such booking photograph again.

63 (f)(1) An individual whose booking photograph is published or otherwise disseminated
64 through a publicly accessible print or electronic medium may bring a civil action to
65 enjoin the continued publication or dissemination of his or her booking photograph if the
66 booking photograph is not removed within ten calendar days after receipt of a written
67 request for removal. The court shall impose a civil penalty of \$1,000.00 per day for
68 noncompliance with such injunction and shall award reasonable attorney's fees and court
69 costs related to the issuance and enforcement of the injunction. Moneys recovered for

70 civil penalties under this paragraph shall be deposited into the general fund of the state
71 treasury.

72 (2) If a person or an entity required to remove a booking photograph under this Code
73 section later publishes or otherwise disseminates such booking photograph again, the
74 individual depicted in such booking photograph may bring a civil action to enjoin the
75 continued publication or dissemination of such booking photograph. The court shall
76 impose a civil penalty of \$5,000.00 per day for noncompliance with such injunction and
77 shall award reasonable attorney's fees and court costs related to the issuance and
78 enforcement of the injunction. Moneys recovered for civil penalties under this paragraph
79 shall be deposited into the general fund of the state treasury.

80 (g) This Code section shall not apply to any person or entity that publishes or disseminates
81 booking photographs unless:

82 (1) The person or entity solicits or accepts a fee or other form of payment to remove the
83 booking photographs; or

84 (2) The person or entity's primary business model is the publishing and disseminating
85 of booking photographs for a commercial purpose or pecuniary gain.

86 (h) This Code section shall not apply where in the interest of public safety a law
87 enforcement agency releases a 'be on the lookout' notice of an individual suspected of
88 criminal activity or during exigent circumstances of a law enforcement investigation."

89 **SECTION 2.**

90 All laws and parts of laws in conflict with this Act are repealed.