

The House Committee on Judiciary Non-Civil offers the following substitute to HB 882:

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) and (c) and
11 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, and for use by law enforcement agencies for administrative
15 purposes, an arresting law enforcement agency or agent thereof shall not release to the
16 public or post booking photographs to or on a public website a booking photograph unless

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17 and until the individual depicted in such booking photograph is convicted of the offense
18 for which such booking photograph was taken.

19 (c) An arresting law enforcement agency shall not provide or make available a copy of a
20 booking photograph in any format to a person requesting such photograph if: unless and
21 until the individual depicted in such booking photograph has been convicted of the offense
22 for which such booking photograph was taken.

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

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

27 "(e)(1) No person or entity engaged in the business of publishing or otherwise
28 disseminating through a publicly accessible print or electronic medium booking
29 photographs of individuals who have been arrested shall solicit or accept a fee or other
30 form of payment to remove such booking photographs from such publicly accessible print
31 or electronic medium.

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

37 (3) The written request for removal of a booking photograph shall be sent by registered
38 mail and include sufficient proof of identification of the individual in such booking
39 photograph and specific information identifying such booking photograph. Within ten
40 calendar days after receipt of the written request for removal of a booking photograph,
41 the person or entity that published or otherwise disseminated such booking photograph
42 shall remove the booking photograph without charge and shall not publish or otherwise
43 disseminate such booking photograph again.

44 (f)(1) An individual whose booking photograph is published or otherwise disseminated
45 through a publicly accessible print or electronic medium may bring a civil action to
46 enjoin the continued publication or dissemination of his or her booking photograph if the
47 booking photograph is not removed within ten calendar days after receipt of a written
48 request for removal. The court shall impose a civil penalty of \$1,000.00 per day for
49 noncompliance with such injunction and shall award reasonable attorney's fees and court
50 costs related to the issuance and enforcement of the injunction. Moneys recovered for
51 civil penalties under this paragraph shall be deposited into the general fund of the state
52 treasury.

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

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

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

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

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

70

SECTION 2.

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