

2021 HOUSE JUDICIARY

HB 1294

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1294

1/25/2021

Relating to the unauthorized dissemination of criminal history record information; and to provide a penalty.

Chairman Klemin called the hearing to order at 11:00 PM.

Present: Representatives Klemin, Karls, Becker, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Buffalo

Discussion Topics:

- Recourse to correct inaccurate information.

Rep. Roers Jones: Introduced the bill. #3370

Motion made to adopt amendment 21.0778.01001 by Rep. Karls; Seconded by Rep. K. Hanson Voice vote carried.

Rep. K. Hanson Do Pass as Amended; Seconded by Rep. Karls.
Roll Call vote.

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	N
Rep. Christensen	N
Rep. Cory	N
Rep T. Jones	Y
Rep Magrum	N
Rep Paulson	Y
Rep Paur	N
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	A
Rep K. Hanson	Y

Motion carried. 8-5-1 Rep Hanson is carrier.

Chairman Klemin closed the hearing at 11:11.

DeLores D. Shimek
Committee Clerk

January 25, 2021

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181

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1294

Page 1, line 8, remove "1."

Page 1, remove lines 15 through 20

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1294: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1294 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "1."

Page 1, remove lines 15 through 20

Renumber accordingly

House Judiciary Committee
Chairman Larry Klemin
Monday, January 25, 2021 @ 11:00

HB 1294 – Booking Photo Civil Action:

This bill is a complimentary bill — intended to supplement HB 1296 which would make booking photos, also known as “mugshots” confidential records until a person has been **convicted** of a crime.

This bill would provide those individuals, whose booking photos have **already** been made public, a private cause of action to sue a company when that company charges money to remove or update information related to a person’s arrest record or booking photo.

Unlike federal authorities, North Dakota authorities **routinely** release booking photographs and contact information for presumptively innocent citizens accused of crimes. If the charge is dismissed or citizen is acquitted, it is impossible to undo the damage done. Earlier today I presented HB 1296 in the Industry, Business and Labor Committee, which would prohibit future releases of booking photos to the public until a person has been convicted, but for many that bell cannot be un-rung. This bill attempts to give them some recourse.

Until 2016, Federal law enforcement routinely released booking photographs. Similar to North Dakota’s open records law, the federal Freedom of Information Act, also known as FOIA, governs the release and dissemination of information collected by governmental employees. In 2016, the United States Court of Appeals for the Sixth Circuit reversed twenty years of precedent, when they determined that citizens “enjoy a **non-trivial** privacy interest in their booking photos” and held routine release of booking photographs during ongoing criminal proceedings violated the FOIA. *Detroit Free Press Inc. v. United States Dept. of Justice*, 829 F.3d 478 (6th Cir. 2016).

The *Free Press* court recognized the FOIA’s competing interests: a “general philosophy of full agency disclosure,” balanced with a need to restrict information compiled for law enforcement purposes when restriction is necessary to protect against “an unwarranted invasion of personal privacy.” Addressing personal privacy, the court described booking photos as:

- Conveying “guilt to the viewer”
- Uniformly interpreted “with guilt and criminality”

- “effectively eliminating the presumption of innocence and replacing it with an unmistakable badge of criminality”

The court went on to note: “A disclosed booking photo casts a long, damaging shadow over the depicted individual.” The court further noted mug-shot collection websites harvest booking photos, posting them online, and demanding a ransom to remove them. Ultimately, recognizing the change in technology and the ubiquity of the internet, in overruling its 1996 decision holding FOIA required the release of booking photographs, the court acknowledged that ten years earlier it “could not have known or expected that a booking photo could haunt the depicted individual for decades.” As a result of this case, federal law enforcement *rarely* releases booking photographs, reserving release only for instances where public safety requires it.

This is great, unless you’ve been arrested in a state or municipal court since the advent of the Internet. Many states are working to protect the confidentiality of booking photos until conviction, and to provide some mechanism for individuals to get their photos and personal information removed from the multiple mugshot extortion websites that exist. There is no good, automatic, way for a person to wipe the internet clean of evidence of a prior arrest, regardless of whether they were convicted or not. However, HB 1294 takes one small step in that direction by allowing a person the opportunity to sue when mugshot extortion websites refuse to remove or update incorrect information without making a person pay a fee. Please send HB 1294 to the floor with a unanimous DO PASS recommendation, and I would be happy to answer any questions.

2021 SENATE JUDICIARY

HB 1294

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1294
3/8/2021

A BILL for an Act to create and enact section 12-60-16.12 of the North Dakota Century Code, relating to the unauthorized dissemination of criminal history record information; and to provide a penalty.

Hearing called to order Senators Present: **Myrdal, Luick, Bakke, Fors, Heitkamp, Larson.** [3:34]

Discussion Topics:

- Ransomed Booking Photos
- Freedom of Information Act and confidentiality

Rep. Shannon Roers Jones, testified in Favor [3:34]

Hearing Adjourned [3:53]

Jamal Omar, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1294
3/9/2021

A BILL for an Act to create and enact section 12-60-16.12 of the North Dakota Century Code, relating to the unauthorized dissemination of criminal history record information; and to provide a penalty

Hearing called to order, all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson. [3:00]**

Discussion Topics:

- Criminal Public Record Confidentiality
- Privacy rights of individuals charged with a crime

Representative Roers Jones, [3:07] testified in favor

Senator Myrdal [3:21] moved amendment 21.0778.02001

Senator Dwyer [3:21] seconded the motion
Motion passed on amendment 7-0-0, [3:21]

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Myrdal [3:22] moved a DO PASS AS AMENDED

Senator Dwyer [3:22] seconded the motion

Roll call Vote, 7-0-0, [3:24]

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Myrdal [3:24] will carry

Hearing adjourned [3:24]

Bill reconsidered on 03-10-2021

Jamal Omar, Committee Clerk

March 9, 2021

0319
1082

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1294

Page 1, line 1, after "enact" insert "a new section to chapter 12-44.1 and"

Page 1, line 2, after the first "to" insert "the confidentiality of booking photos and"

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 2 of section 44-04-18.7 of the North Dakota Century Code, relating to criminal information;"

Page 1, after line 4, insert:

"**SECTION 1.** A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:


Prohibition - Booking photo - Confidential.

1. Unless there is a public safety or law enforcement interest warranting release, the booking photo of an arrestee is a confidential record until the arrestee:
 - a. Fails to appear for court;
 - b. Is a fugitive from justice; or
 - c. Is convicted of the offense for which the arrestee was arrested or an offense related to the offense for which the arrestee was arrested.
2. This section does not prohibit the dissemination of booking photos among or on behalf of law enforcement agencies or officers.
3. Notwithstanding section 12.1-13-01, an individual who violates this section is guilty of an infraction."

Page 1, after line 13, insert:

"**SECTION 3. AMENDMENT.** Subsection 2 of section 44-04-18.7 of the North Dakota Century Code is amended and reenacted as follows:

2. "Criminal intelligence and investigative information" does not include:
 - a. Arrestee description, including name, date of birth, address, race, sex, physical description, and occupation of arrestee.
 - b. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer.
 - c. Conviction information, including the name of any person convicted of a criminal offense.
 - d. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person.

- 
- e. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred.
 - f. A crime summary, including a departmental summary of crimes reported and public calls for service by classification, nature, and number.
 - g. Radio log, including a chronological listing of the calls dispatched.
 - h. General registers, including jail booking information.
 - i. ~~Arrestee photograph, if release will not adversely affect a criminal investigation."~~

Renumber accordingly

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1294
3/15/2021

Relating to the unauthorized dissemination of criminal history record information; and to provide a penalty

Hearing called to order, [2:04] all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Publishing Mugshots

Senator Heitkamp [2:05] motioned to reconsider the Do Pass action on HB 1294
Senator Dwyer [2:05] seconded the motion

Senators	Vote
Senator Janne Myrdal	N
Senator Larry Luick	Y
Senator Michael Dwyer	Y
Senator Jason G Heitkamp	Y
Senator Robert O Fors	N
Senator Jonell A Bakke	N
Senator Diane Larson	Y

The motion passes 4-3-0

Senator Heitkamp [2:06] motioned to reconsider the motion that passed the amendment, (removing the amendment)

Senator Luick [2:07] seconded the motion

Senators	Vote
Senator Janne Myrdal	N
Senator Larry Luick	N
Senator Michael Dwyer	Y
Senator Jason G Heitkamp	Y
Senator Robert O Fors	N
Senator Jonell A Bakke	N
Senator Diane Larson	Y

The motion failed 3-4-0

Senator Myrdal [2:18] moved to DO PASS HB 1294 as amended

Senator Bakke [2:18] seconded the motion

Senators	Vote
Senator Janne Myrdal	Y
Senator Larry Luick	Y
Senator Michael Dwyer	N
Senator Jason G Heitkamp	N
Senator Robert O Fors	Y
Senator Jonell A Bakke	Y
Senator Diane Larson	N

The motion passes 4-3-0
Senator Myrdal [2:19] carries HB 1294
Hearing adjourned [2:19]
Bill Reconsidered on 03/16/2021
Jamal Omar, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1294
3/16/2021

Relating to the unauthorized dissemination of criminal history record information; and to provide a penalty

Hearing called to order, [2:04] all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson.**

Discussion Topics:

- Open Record Request Statute
- Confidential information as defined by statute

Senator Myrdal [10:27] moved to reconsider actions on HB 1294

Senator Luick [10:28] seconded the motion

The motion passes 7-0-0

Senators	Vote
Senator Janne Myrdal	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Diane Larson	Y

Senator Myrdal Moved amendment LC 21.0778.02003 [10:30]

Senator Luick Seconded the Motion

Vote Passed 7-0-0

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Myrdal [10:39] moved a Do Pass As Amended

Senator Luick [10:40] seconded the motion

The motion passes 7-0-0

Senator Myrdal [10:40] will carry

Hearing adjourned [10:42]

Jamal Omar, Committee Clerk

Senators	Vote
Senator Janne Myrdal	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Diane Larson	Y

March 16, 2021

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3/16
10847

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1294

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Page 1, line 2, after the first "to" insert "the confidentiality of booking photos and"

Page 1, line 2, after the semicolon insert "to amend and reenact subsection 2 of section 44-04-18.7 of the North Dakota Century Code, relating to criminal information;"

Page 1, after line 4, insert:

"SECTION 1. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Prohibition - Booking photo - Confidential.

1. Unless there is a public safety or law enforcement interest warranting release, the booking photo of an arrestee is a confidential record until the arrestee:
 - a. Fails to appear for court;
 - b. Is a fugitive from justice; or
 - c. Is charged with the offense for which the arrestee was arrested or an offense related to the offense for which the arrestee was arrested.
2. This section does not prohibit the dissemination of booking photos among or on behalf of law enforcement agencies or officers.
3. An individual who violates this section is not subject to a penalty under section 12.1-13-01."

Page 1, after line 13, insert:

"SECTION 3. AMENDMENT. Subsection 2 of section 44-04-18.7 of the North Dakota Century Code is amended and reenacted as follows:

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 - c. Conviction information, including the name of any person convicted of a criminal offense.
 - d. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person.

- 2-11-15
- e. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred.
 - f. A crime summary, including a departmental summary of crimes reported and public calls for service by classification, nature, and number.
 - g. Radio log, including a chronological listing of the calls dispatched.
 - h. General registers, including jail booking information.
 - i. ~~Arrestee photograph, if release will not adversely affect a criminal investigation."~~

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1294, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1294 was placed on the Sixth order on the calendar.

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Renumber accordingly