

HOUSE BILL REPORT

SHB 1689

As Passed House:
March 7, 2011

Title: An act relating to allowing booking photographs and electronic images at jails to be open to the public.

Brief Description: Allowing booking photographs at jails to be open to the public after charges have been filed.

Sponsors: House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representative Hurst).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/11/11, 2/16/11 [DPS].

Floor Activity:

Passed House: 3/7/11, 77-19.

Brief Summary of Substitute Bill

- Requires each county and city jail to include booking photographs as part of its jail register after charges have been filed upon that individual.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Armstrong, Goodman, Hope, Kirby, Moscoso and Ross.

Staff: Yvonne Walker (786-7841).

Background:

Each city and county jail located in Washington is required to maintain a jail register which is open to the public. The law enforcement officer who is charged with being responsible for the operation of the jail must enter, on a timely basis, the name of each person held in

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confinement, the reason for confinement, when the person was confined, and the time and the manner in which the person was discharged.

Generally, all other records regarding a person confined in jail are confidential and may only be released to a criminal justice agency or upon the written consent of the person being confined. Law enforcement may use the booking photographs of a person arrested and confined in a jail or prison to assist in conducting criminal investigations. Certain information and photographs of persons convicted of a sex offense may be released to the public for community protection purposes.

Summary of Substitute Bill:

Each county and city jail must include booking photographs of each person confined in jail as part of its jail register but only after charges are filed on that individual.

Various technical changes are made, including the deletion of a provision of the act that was repealed by the Legislature in 1987, and adding the authorization to release records relating to kidnappers which is consistent with current statute under RCW 4.24.550.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Last year there was a week-long article published regarding Lewis County's most wanted criminals and suspects. At the time when the articles were being written, it was unclear what information was available and what could be published. As a key for immunity under law, the local newspaper first requested the booking information on individuals as a public record. Now the Lewis County Police Department releases those records routinely and the local newspaper is able to publish that information, including booking photographs on a regular basis. The release of photographs provides assistance for current investigations.

There was a situation in Spokane where the police, who had routinely released photographs in the past, refused to release a booking photograph of a prominent person. However, it was ironic that the police did release the photographs of two black gentlemen who were also arrested on that same day. The case went to the Washington Supreme Court where it was found that the person's photograph could not be disclosed under this particular state statute.

The public release of a booking photograph does not constitute an unwarranted invasion of privacy of the arrestee. Washington is only one of two states, west of the Mississippi, that does not routinely release booking photographs to the public. Generally, the name of an arrestee is only published when the accused has been charged and has entered the judicial system. The release of such information is helpful when people have similar names and can

protect the innocence of others. The Public Disclosure Act defines records as photographs and media. An image is just another piece of information.

(With concerns) There needs to be a balance and discussion regarding the public's right to know information and an individual's right to privacy. Also, information regarding sex offenders and kidnappers is already released to the public so it may be a good idea to expand the release information to the public regarding habitual offenders. This would help communities to know who is out there and would give them a better sense of security.

(Opposed) Currently, who is in jail, why they are in jail, and when they are going to be released, is public information. This bill would just make the photographs available. However, this legislation is contrary to the presumption of innocence. It confounds police investigations by having inaccurate identification procedures. Faulty eyewitness identification is the primary source of wrongful convictions. It contributes to more wrongful convictions than all other causes combined. Over the course of years where this has been researched, several procedures have been established to ensure accuracy and decrease the number of wrong convictions based on faulty eyewitness procedures. These procedures or rules include: (1) who conducts the lineup or photo spread; (2) instructions on viewing; (3) the structure of lineup and photo spread; and (4) the obtaining of confident statements.

The New York Times reported on dissimilar photographs within a photo spread. Those rules helped to make photo spreads more accurate. Dissimilar faces decrease the accuracy. If photographs are released, witnesses and victims are likely to look at the photographs prior to the rules being implemented. There are times when law enforcement is following up with witnesses and it is later found that the witnesses were able to just identify the person from a photograph that was released to the media. This would increase wrongful convictions.

Not everyone arrested is filed upon. Sometimes they are not filed upon because of lack of evidence but other times the prosecutors do not believe that person did what was alleged. Once charges are filed, that person's picture can be taken in trail, but before that point it is a picture tied to an allegation of a crime.

Persons Testifying: (In support) Michael Wagar, Centralia Chronicle; James Neff, Seattle Times; and Rowland Thompson, Allied Daily Newspapers.

(With concerns) Steve Mansfield, Lewis County Sheriff.

(Opposed) Kent Underwood, Washington Association of Criminal Defense Lawyers and Washington Defense Attorneys; and Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.