

BILL ANALYSIS

H.B. 3825
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Homeland Security & Public Safety
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In Texas, arrest booking photos, also known as mug shots, stay online in perpetuity even if there is an acquittal. These mug shots are easily accessed by the public due to open records laws. As such, an individual's mug shot can be used against them in professional circumstances, such as during the hiring process, as well as social circumstances, such as when applying for housing, even if they are not convicted for the crime. Additionally, predatory entities exist that blackmail and extort individuals for money in exchange for removal of their mug shot from public websites. Though current law bans businesses from extorting individuals for money to have their mug shots removed, this law only applies if the business receives notice of expunction or an order of nondisclosure, which often takes months to acquire and can be costly. Current law has been largely ineffective in preventing businesses from posting mug shots online and then charging for their removal. H.B. 3825 seeks to address this issue by prohibiting law enforcement agencies from publishing mug shots prior to conviction, with certain exceptions for fugitives or individuals that pose an imminent threat, and prohibiting business entities from publishing a mug shot unless the individual was convicted.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3825 amends the Business & Commerce Code to prohibit a business entity from publishing the criminal record information of an individual that includes a photograph of the person taken pursuant to an arrest or other involvement in the criminal justice system unless the individual was convicted of an offense arising out of the same transaction for which the individual was arrested or otherwise involved in the criminal justice system and pursuant to which the photograph was taken.

H.B. 3825 amends the Code of Criminal Procedure to prohibit a law enforcement agency from publishing an individual's mug shot unless:

- the individual has been convicted of an offense based on the conduct for which the individual was arrested or incarcerated at the time the mug shot was taken;
- the agency publishes the mug shot after determining that:
 - the individual is a fugitive or an imminent threat to another individual or to public safety; and

- releasing the mug shot will assist in apprehending the individual or reducing or eliminating the threat; or
- a judge orders the release of the mug shot based on good cause shown.

The bill defines "mug shot" as a photograph of an individual taken during the process of arresting the individual or booking the individual into jail and establishes that mug shots are not confidential and are subject to disclosure in accordance with state public information law. The bill provides for the meaning of "publish" by reference to Business & Commerce Code provisions relating to business entities engaged in the publication of certain criminal record or juvenile record information.

H.B. 3825 applies to any publication of criminal record information, including a mug shot, that occurs on or after the bill's effective date, regardless of whether the information relates to an arrest that occurred before, on, or after that date or the information was initially published before that date.

EFFECTIVE DATE

September 1, 2023.