

BILL ANALYSIS

Senate Research Center
88R8258 MZM-D

S.B. 997
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State Affairs
4/7/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A nationally publicized civil lawsuit involving the widow of the late basketball star Kobe Bryant has brought to light the fact that, in an age where most people have a digital device in their pocket with a camera, photographs of human remains from crime and accident scenes can end up in the public domain and cause significant mental and emotional harm to surviving family and friends.

S.B. 977 addresses the publication of photographs of human remains by first responders, coroners, medical examiners, law enforcement, and others who would, in their official capacity, have access to the scene of an accident or crime at which a dead or dismembered body is likely to be present.

This proposed legislation creates a criminal offense—a state jail felony—if a person publishes a photograph of human remains that the person obtained while acting as a first responder, coroner, medical examiner, or employee of those offices.

The legislation defines publication of the photograph as:

- Displaying it to another person
- Sending it to another person by text message
- Publishing it on a social media platform
- Selling it to a news publication
- Using it in a movie or documentary

The legislation also creates an affirmative defense for first responders and medical examiners and others covered under the legislation if the photo is published for official law enforcement or medical purposes. This protects the use of such photographs in court, the transmission of photos digitally between first responders, and the use of such photographs in academic pursuits connected to work as a first responder, coroner, etc.

The legislation further creates a civil cause of action for persons who are victimized by the publication of photos of human remains of a loved one. Governmental units are jointly and severally liable for damages resulting from the unlawful distribution of photos containing human remains, with a damages cap of \$100,000 proposed to be enshrined in statute.

As proposed, S.B. 997 amends current law relating to the publication of certain photographs of human remains by first responders, coroners, medical examiners, and certain other employees for a purpose other than an official purpose and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Requires that this Act be known as the Kobe and Gianna Bryant Act.

SECTION 2. Amends Chapter 39, Penal Code, by adding Section 39.08, as follows:

Sec. 39.08. PROHIBITION ON PUBLISHING CERTAIN PHOTOGRAPHS DEPICTING HUMAN REMAINS. (a) Defines "first responder," "human remains," and "publish."

(b) Provides that a person commits an offense if the person publishes a photograph of human remains that the person obtained while acting within the course and scope of the person's duties as a first responder, coroner, medical examiner, employee of a coroner's office, or employee of an office of a medical examiner.

(c) Provides that it is a defense to prosecution under Subsection (b) that the person published the photograph of human remains for an official law enforcement or medical purpose.

(d) Provides that a photograph, for purposes of Subsection (b), is considered to have been published if the photograph is:

- (1) displayed to another person;
- (2) sent to another person by text message;
- (3) posted on a social media platform;
- (4) sold to a news publication; or
- (5) used in a movie or documentary.

(e) Provides that an offense under this section is a state jail felony.

SECTION 3. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 117, as follows:

CHAPTER 117. LIABILITY FOR PUBLICATION OF CERTAIN PHOTOGRAPHS BY FIRST RESPONDER OR MEDICAL EXAMINER

Sec. 117.001. PUBLISHING PHOTOGRAPHS PORTRAYING HUMAN REMAINS.

(a) Provides that a defendant is liable to a person's surviving spouse, child, or parent for damages or other relief arising from a violation of Section 39.08, Penal Code, in relation to the person.

(b) Entitles a claimant who prevails in an action under Subsection (a) to recover reasonable attorney's fees and costs incurred in bringing the action.

(c) Provides that a governmental unit is jointly and severally liable for damages arising from a violation of Section 39.08, Penal Code, by a person employed by the governmental unit.

(d) Provides that a governmental unit's sovereign or governmental immunity to suit and from liability is waived to the extent of liability created by this section.

(e) Prohibits a first responder, coroner, medical examiner, employee of a coroner's office, or employee of an office of a medical examiner from asserting official immunity as a defense to liability under this section.

(f) Prohibits damages awarded in an action brought under this section from exceeding \$100,000.

SECTION 4. Makes application of Chapter 117, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 5. Effective date: September 1, 2023.