

# HOUSE BILL REPORT

## HB 1723

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### As Reported by House Committee On: Public Safety

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

**Brief Description:** Allowing booking photographs and electronic images at jails to be open to the public.

**Sponsors:** Representatives Hayes, Hurst, Harmsworth, Takko, Rodne, Griffey, Pettigrew and Wilson.

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 2/10/15, 2/20/15 [DPS].

#### **Brief Summary of Substitute Bill**

- Requires jails to include booking photographs of persons charged with an offense as part of its jail register, however, the photographs can only be released under certain circumstances.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Griffey, Moscoso, Pettigrew and Wilson.

**Minority Report:** Do not pass. Signed by 1 member: Representative Appleton.

**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

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the operation of the jail must enter, on a timely basis, the name of each person held in 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 in certain circumstances to a criminal justice agency, certain entities for research purposes, or upon the written consent of the person being confined. Law enforcement may also 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.

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**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. However, the photographs may only be released if the following conditions are met: (1) charges have been filed; (2) an arraignment has taken place; and (3) the investigating or prosecuting authority has determined that release of the particular booking photograph would not compromise or impede an ongoing investigation in which case the photograph may not be released until the authority making the determination approves its release. A booking photograph that has not been released must be released when its release would no longer impede or compromise an ongoing investigation.

Various technical changes are made, including deleting 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 (relating to the release of information to the public relating to sex offenders and kidnappers).

**Substitute Bill Compared to Original Bill:**

Two additional conditions are added as to when a jail can release booking photographs of a confined person: (1) an arraignment must have taken place; and (2) the investigating or prosecuting authority has determined that release of the particular booking photograph would not compromise or impede an ongoing investigation.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) There was a family that had returned home one day to discover their house had been broken into and many valuable items had been stolen. The police responded quickly and the suspect was apprehended and jailed. The family requested a photo of the criminal suspect but their request was denied by the sheriff's office as well as the local prosecutor's office. Since that time, the family has lived in fear and has installed a security system on their house and their property. They were warned that these offenders commonly return back to same location to commit further crimes. The lack of having access to the offender's booking photo has also caused the entire neighborhood to live in fear. Victims want to have the peace of mind to know who caused them to become a victim.

Most people assume that booking photos are available to the general public, but in reality only criminal justice agencies can use them for investigatory purposes. It is also assumed that booking photos are open to the public under the Public Records Act but they are not. People can look up a criminal offender's history but you cannot see the suspect's picture. The law needs to be clarified as some sheriff's departments will release booking photos and others will not. Washington and South Dakota are the only two states west of the Mississippi that do not release booking photos. Most of the states located east of the Mississippi do release photos. Oregon posts all photos regardless of whether charges has been filed and arrests are regarded as a public event. The Department of Corrections also allows anyone to see photographs of a person who is incarcerated.

(Opposed) There is a presumption of innocence and at the time of a person's booking, no probable cause has been found. In addition, release of photos can have a negative impact on eye witness identifications. Decades of research have shown that it is not intuitive and that people often are wrong. When a photo is released it can be suggestive to future witnesses. Just because an offender has prior convictions does not mean they should be tainted on the current charge.

A portion of the prosecutors' concerns has been taken care of in the bill as these booking photos would only be released after charges have been filed. This fixes the problem in superior court but district court is somewhat different. In addition, there may be times where it may cause a problem and the prosecutors do not want to see a booking photo in the newspaper when they are trying to firm up the identification of someone who did something wrong. It is suggested to amend the bill to "authorize" instead of "require" the photos to be released. This will allow the prosecutors to hold back those photos in cases where there is potential for a person getting a fair trial in the future.

**Persons Testifying:** (In support) Representative Hayes, prime sponsor; Rod and Carol Mourant; and Rowland Thompson, Allied Daily Newspapers.

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

**Persons Signed In To Testify But Not Testifying:** None.