



Policy Proposal: Reclassify Mugshots as Closed, Private Records

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Policy Challenge: Third Party Mugshot Websites Stigmatize “Criminals” and Charge for their Removal

The extortive practices of the insidious mugshot industry in the United States have profoundly harmed the millions of people who are arrested every year. By indiscriminately posting booking photos, mugshot websites digitally stigmatize people as “criminals,” even if their case is dismissed or if they were wrongly arrested. The owners of these for-profit websites also charge people hundreds – even thousands – of dollars to have their mugshots removed.

Policy Solution: Align State and Federal Policy to Prevent the Publishing of Mugshots on the Internet

Websites now routinely obtain booking photos from government, either through Freedom of Information Act requests, bulk purchase, or by “crawling” and “scraping” law enforcement websites. These photos are duplicated, posted on the internet, and indexed by search engines. To prevent this from the outset, states should reclassify booking photos as private information or “closed records.” States could then elect to keep the photos private unless there is a strong, articulated public interest in a particular booking photo (to be determined by the discretion of state actors), or until the defendant is officially charged with a crime or a disposition has been served.

This is similar to already routine criminal justice policies to attach a privacy right to victims, juveniles, and grand jury targets. Further, this would align state policy with federal policy that rules mugshots are not subject to automatic disclosure under the Freedom of Information Act. To fulfill existing victim notification mandates (often invoked as a rationale to release booking photos), law enforcement and jails could still post online, name-based rosters of current detainees, but without the harmful photographs that are traded and sold on the private market.

Further, by ceasing to automatically disclose mugshots to the public, states no longer need to grapple with developing laws to combat online mugshot extortion schemes. While important, existing state laws designed to combat mugshot extortion suffer from jurisdictional questions and lack of enforcement. By reclassifying booking photos, the state preemptively eradicates the opportunity for extortion.