

LEGISLATIVE COMMITTEE MINUTES

HB125

Bill as Introduced

HB 125 - AS AMENDED BY THE HOUSE

7Apr2021... 0385h

2021 SESSION

21-0092
08/06

HOUSE BILL ***125***

AN ACT relative to post-arrest photo distribution by law enforcement officers.

SPONSORS: Rep. Klein-Knight, Hills. 11; Rep. Bouchard, Hills. 11; Rep. Roy, Rock. 32

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill prohibits law enforcement from distributing post-arrest photos of suspects except in certain circumstances.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: April 15, 2021

HEARINGS

Tuesday

04/27/2021

(Day)

(Date)

Judiciary

REMOTE

1:00 p.m.

(Name of Committee)

(Place)

(Time)

1:00 p.m.	HB 179-FN	relative to enhanced penalties based on prior convictions for driving under the influence of drugs or liquor.
1:15 p.m.	HB 347-FN	relative to driving with a suspended license.
1:30 p.m.	HB 129-FN	prohibiting the installation or use of electronic tracking software.
1:45 p.m.	HB 125	relative to post-arrest photo distribution by law enforcement officers.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/98124930370>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +16465588656,,98124930370# or +13017158592,,98124930370#
4. Webinar ID: [981 2493 0370](https://www.zoom.us/j/98124930370)
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 179-FN

Rep. Abbas

HB 347-FN

Rep. Abbas

HB 129-FN

Rep. Testerman

HB 125

Rep. Klein-Knight

Rep. Bouchard

Rep. Roy

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 125, relative to post-arrest photo distribution by law enforcement officers.

Hearing Date: April 27, 2021

Time Opened: 1:55 p.m.

Time Closed: 2:48 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill prohibits law enforcement from distributing post-arrest photos of suspects except in certain circumstances.

Sponsors:

Rep. Klein-Knight

Rep. Bouchard

Rep. Roy

Who supports the bill: Rep. Klein Knight; Donald Bouchard; Trisha Newalu; Joseph Lascaze, American Civil Liberties Union; Alexandra Mennella; Eric Pauer; Elizabeth Fenner-Lukaitis; David Bates; Julian Long; Margery Phillips; Chrisinda Lynch; David Karrick; Sara Johnson

Who opposes the bill: Chief Allen Aldenberg, Manchester Police Department; Brendan McQuaid, New Hampshire Press Association; Andrew Connelly; Robert Krieger; John Simonds, Sullivan County; Gary Fisher; David Saad, RTKNH; Charles Pelton; Michael Bagan; Domenic Richardi; David Croft; Sheriff Mark Brave; Christopher Connelly; Joanne Connelly; Andre Shagoury; Chief Joseph Hoebeke, Hollis Police Department; Brendan LaFlamme, Hollis Police Department; James Maloney, Hollis Police Department; Timothy Crowley; Peter Morency; Joe Mahoney; William Wright; Edward Garone; Roger Carroll, The Laconia Daily Sun; Benjamin Sargent; Steven Russo; David Goldstein; Nancy West, InDepthNH.org; Barbara Tetreault; Chief Tara Laurent, Greenland Police Department; Kimberly Haas, New Hampshire Press Association; Elizabeth Sargent, NH Association of Chiefs of Police; John Drury; Anthony Bean Burpee; Patrick Sullivan; Charles Reynolds; Scott Spradling, NH Association of Broadcasters; Emily Cobb; John Parsons; Timothy Carpenter; Bradley Osgood; Gregory Patten; David Noyes; Richard Krauss; Michael Bilodeau; Scott Lester

Who is neutral on the bill: Lt. Brian Strong, NH State Police

Summary of testimony presented in support:

Representative Bouchard

- One of the most sacred rights in the American criminal justice system is that we are all innocent until proven guilty.
- Today, police departments are increasingly using Facebook to inform the community about who they are arresting.
- Concerned about the rights of the innocent.
- Posting mug shots with pejorative statements amounts to public shaming of people who have not yet been convicted of anything.
- This bill supports the preponderance of authority and the view that there is a right to privacy.
- There is a danger that the showing of a police photo of someone accused of a crime, who is subsequently acquitted may lay the groundwork for an action for damages, where the police chief could be named as one of the defendants.
- The possible cause of action would be an invasion of the right to privacy.
- The balance of the right to privacy versus the legitimate public interest should tend toward the person that has not yet been convicted.
- Senator Gannon asked if officers have a privacy interest in police involved shootings.
 - Everyone should be considered innocent until proven guilty.
- Senator Kahn asked if this bill is only dealing with a post arrest photo distribution, and would not inhibit the search for subjects.
 - That is his understanding of the bill.

Representative Abbas

- Under this bill post arrest photo distribution is only invoked up until the point of conviction.
- A childhood friend was charged with sexual assault 12 years ago, there were a few suspects, but he was unwilling to submit to a DNA test. He was arrested and the DNA test was performed; he was completely exonerated. However, the post arrest photo was on the front page of the Eagle Tribune. To this day if you Google his name those articles show up and it has impacted his life significantly in a negative way.
- The police log is public record, but not sure what public interest is satisfied with the release of a photo.

Trisha Newalu

- Hosts a peer support group for sex workers in NH, and they have spoken about the life altering ramifications of what happens when your image is circulated publicly in a defaming nature.
- Regardless of a person's assumed guilt, law enforcement should not have to power to paint any individual with a digital scarlet letter.
- The most recent data shows that human trafficking victims accused of prostitution are often unable to secure housing and employment.

- One community member was denied employment due to a post by law enforcement.
- Exiting the lifestyle is nearly impossible with a solicitation charge, especially with a photo that is easily found through any Internet browser.

Gilles Bissonnette (ACLU)

- Mug shots capture someone at their worst moment and are taken at a time when someone is presumed innocent.
- Too often there is a stigma of presumed guilt that comes with the photos that can last for years even when a person is acquitted, or the charges are dismissed.
- If a person is convicted a post arrest photo can be released under this bill.
- Had a client arrested for recording the police in a public place. It was an unconstitutional change, but his post arrest photo was released and published in the newspaper. He was fired the next day.
- The bill is narrow and only pertains to post arrest photos with ample exceptions.
- This does not pertain to the underlying police and court records.
- New York has restricted access to similar post arrest photos.

Summary of testimony presented in opposition:

Chief Allen Aldenberg (Association of Chiefs of Police)

- Police reports are public records, and the public has a right to access them.
- Not having these photos subject to RSA 91-A goes against law enforcement's efforts to be as transparent as possible.
- The public scrutiny faced by those who have their photos released, does not outweigh the right of the public and the media to access the information.
- Law enforcement does not and will never control the right of people to comment on arrest photos or arrest reports.
- The need for transparency in law enforcement is paramount.
- This will violate victim rights, the public's right to access records, and make our communities vulnerable.
- Senator French asked how long it has been a policy to release post arrest photos.
 - Would say it has been going on the last 10-15 years. It is becoming more prevalent with social media and the many different outlets that request the information.
- Senator French asked if he would agree that once an image is placed on the Internet it never goes away.
 - Agrees with that.
- Senator Carson asked if there is anything in this legislation that stops a member of the media or the public from videotaping or photographing an individual and putting that on social media.
 - Correct. The media could go to an arraignment and obtain a photograph that way. There are other means to obtain a photograph.
- Senator Kahn asked with all of the exemptions in the bill, are there instances where this bill would inhibit law enforcement.

- There are times where a department will use post arrest photos of people that may be charged with crimes against children that does cause other victims to come forward. There are also some investigatory advantages from photos being released. Departments do their due diligence and do not arbitrarily release photos. Sensitive to and concerned about how the release of the photos impact individuals. Maybe we can come to some compromise. Worries that this bill will put more requirements on law enforcement agencies to spend a lot of time on the question of releasing photos or not.
- Senator Kahn asked what happens when the department gets a 91-A request.
 - It goes through the legal division and if it meets the requirements of 91-A they make the release. The department gets inundated with 91-A requests already and this may bring along more.
- Senator Kahn pointed out that the first line of the bill would alleviate some of those requests by excluding them from 91-A.
 - That is correct.
- Senator Kahn asked if the maintenance of the record of when a photo is released is an onerous requirement.
 - It could be, depending on the volume of arrests. It may not be so difficult for smaller departments. If this bill passes, will learn to adapt and live with it.

Brendan McQuaid (NH Press Association) (provided written testimony)

- The implementation of this bill is a threat to government transparency and the ability of the press to hold government accountable.
- Was provided a booking photo of a man with a swollen eye and a bloodied face. The man blamed off duty police officers for his injuries and due to the booking photo being public/matter of public record, the Union Leader was able to keep it in the public eye.
- While this bill may have the desired effect on limiting those social media posts by law enforcement, it does so by blasting a massive hole in police accountability and transparency.
- The Facebook pages of police departments may be an issue that needs to be addressed, but this bill is not the way to do it.
- The public has the right to know whom the police have arrested and what those arrestees look like.
- This affects the rights of the accused but also those with the same name as the accused.
- Has a cousin named Brendan McQuaid who is opening a pizza restaurant in Manchester. Ran a story on it without a picture and now everyone is asking for pizza.
- There are several exceptions in the bill, but they are subjective regarding what constitutes as danger to the public.

- The experience of journalists is that police error on the side of not releasing things.
- RSA 91-A is an invaluable tool for the public and journalists for keeping the government accountable.
- It is especially troubling that in a time when the public is demanding more police transparency, that lawmakers would consider taking a major step back by requiring police to hide the legal image they use as a part of an arrest record.
- Senator Kahn asked if photo of the man who suffered police brutality would not have been released if this bill was in statute.
 - It depends. In that scenario the police could say you don't want to release that photo and if you don't we will drop the charges against you. That is a very powerful tool police could use to keep something like that hidden. The Union Leader was able to obtain the photo because it was a matter of public record. What happens to people that just disappear off the street? What goes on with the government is in the public's interest. The public should know who government has and why and that includes a photo of the person.

Tony Schinella (Patch.com)

- Echoes the testimony of Mr. McQuaid.
- Historically these photos have been released to the public because the public has a right to know what people who are arrested and accused of crimes look like.
- This bill is not in the public interest and handcuffs the ability of the press to do their jobs in a complete manner.
- Knows of people who are found innocent but have been affected by the release of post arrest photos.
- Patch removes the information from the site when someone is proven innocent, charges have been dropped or when someone has resolved their sentence, and also reaches out to Google to have the names, charges, and booking photos completely removed from their search engine.
- Does not do that for annulments.
- This would pose a danger to the public because, even with the adequate balance exceptions, the press would not be able to get a photo of an accused armed robber.
- Article 22 of the Constitution stresses the liberty of the press and this hampers what the press can inform the public about.
- Has a had a number of police department tell him how previous stories they have written have helped solve crimes.
- Heard from a detective that 75% of open cases we solved due to previous reporting because the person's mug shot was in the article.
- This determines what the press can share with the public.
- Happy to work with anyone on continuing this conversation.
- Senator Kahn asked how they remove post arrest photos.

- Patch.com has a link on every police story that explains the process. If a person is arrested, they go plead guilty, the case is put on hold without a finding for 6months, at the end of 6months the person can send a copy of the case summary to Patch.com and they will remove it from the police blotter. Patch.com employees contact Google and then Google removes the person from the search engine on that charge. This is also for charges that are dropped.

Scott Spradling (NH Association of Broadcasters) (provided written testimony)

- A lot of the discussion seems to be based on assumption that once something is on the Internet it is out there forever. That is a false assumption.
- Images can be scrubbed from the Internet and a policy here in NH could control the flow of that information.
- Believes it is all or nothing in terms of transparency and releasing this type of information.
- There is a First Amendment right under this.
- More information is the fairer, more American way, and limiting this on the front end is the wrong focus.
- We need to be talking about the back end, and expunging images after someone has been found not guilty or if a mistake was made.
- Erin Andrews had images released globally and those have been expunged from the Internet.
- Senator Kahn asked if there is some model that the broadcast or Internet industry has suggested on the federal level. Questioned if this is something the press would be willing to work on with them for the next session.
 - Structurally speaking, what Mr. Schinella was talking about is the right type of model to be talking about. Agrees that this is a federal conversation. Would be more than happy to be a part of the conversation on this. Knows that Hearst also has a similar policy. Doesn't think those policies have ever been formalized but thinks there is a way to balance this process so that all interests can be equally served.

Neutral Information Presented:

Lt. Brian Strong (State Police)

- The bill only provides an allowance to circulate a photo for a wanted person who is a danger to public safety.
- This appears to preclude circulating the photo of a person wanted for offenses such as vehicle thefts or license fraud.
- If the vehicles are taken from a certain area, it makes sense to circulate a booking photo to the public.
- In the case of license fraud, departments would be prohibited from circulating photos to DMV clerks.
- Suggests that 'on going threat to public safety' could be better defined to alleviate those concerns.

- Senator Kahn pointed out on line 9 it states, 'is suspected of committing a subsequent crime while on bail'. Asked if that would address the concerns of serial auto theft.
 - That could possibly address it.
- Senator Carson stated that the bill says 'if the subject fails to appear before the court after having been granted bail or is suspected of committing a subsequent crime while on bail and the assistance of the public is necessary to locate the subject after routine non-public methods of location have been exhausted.' Questioned what the non-public methods would be and would this bill delay law enforcement's ability to catch someone.
 - Believes every situation is different, where some people would be readily known to law enforcement. For serious offenses when someone fails to show up, police want to locate that person quickly. If they are transient or not living at the same place they are listed, by putting that photo out it could generate tips from the public about locating the person.

jch

Date Hearing Report completed: April 30, 2021

Speakers

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Senate Remote Testify

Judiciary Committee Testify List for Bill HB125 on 2021-04-27

Support: 13 Oppose: 46 Neutral: 1 Total to Testify: 8

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Bouchard, Donald	donaldjbouchard@gmail.com	603.622.0388	An Elected Official	Myself	Support	Yes	4/26/2021 12:21 PM
Aldenberg, Allen	aaldenbe@manchesternh.gov	Not Given	A Member of the Public	Manchester Police Department	Oppose	Yes	4/26/2021 1:54 PM
Newalu, Trisha	Not Given	Not Given	A Member of the Public	Myself	Support	Yes	4/20/2021 1:27 PM
McQuaid, Brendan	bmcquaid@unionleader.com	603-206-7828	A Member of the Public	Myself, New Hampshire Press Association	Oppose	Yes	4/26/2021 3:39 PM
Lascaze, Joseph	joseph@aclu-nh.org	Not Given	A Lobbyist	American Civil Liberties Union	Support	Yes	4/27/2021 5:40 AM
Klein Knight, Nicole	Nicole.kleinknight@leg.state.nh.us	603.380.8074	An Elected Official	Manchester ward 4	Support	Yes	4/27/2021 10:53 AM
Connelly, Andrew	Not Given	Not Given	A Member of the Public	Myself	Oppose	Yes	4/27/2021 7:27 AM
Strong, Brian	Brian.R.Strong@dos.nh.gov	603.223.8568	State Agency Staff	NH State Police	Neutral	Yes	4/27/2021 8:34 AM
Krieger, Robert	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 9:03 AM
Simonds, John	jsimonds@sullivancountynh.gov	603-863-4200	An Elected Official	Sullivan County	Oppose	No	4/27/2021 9:10 AM
Fisher, Gary	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 8:13 AM
saad, david	Not Given	Not Given	A Member of the Public	RTKNH	Oppose	No	4/27/2021 8:14 AM
Pelton, Charles	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 8:18 AM
Bagan, Michael	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 8:33 AM
Richard, Domenic	Not Given	Not Given	An Elected Official	Myself	Oppose	No	4/27/2021 7:07 AM
Croft, David	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 7:18 AM
Brave, Sheriff Mark	Mbrave@co.strafford.nh.us	Not Given	An Elected Official	Myself	Oppose	No	4/27/2021 7:21 AM
Connelly, Christopher	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 7:26 AM
Connelly, Joanne	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 7:26 AM
Shagoury, Andre	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 10:41 AM
Hoebeke, Joseph	jhoebeke@hollisnh.org	603.765.1595	State Agency Staff	Hollis Police Department	Oppose	No	4/27/2021 10:50 AM
LaFlamme, Brendan	blaflamme@hollisnh.org	603.465.7637	State Agency Staff	Hollis Police Department	Oppose	No	4/27/2021 10:50 AM
Maloney, James	jmaloney@hollisnh.org	603.465.7637	State Agency Staff	Hollis Police Department	Oppose	No	4/27/2021 10:51 AM
Crowley, Timothy	tcrowley@atkinson-nh.gov	978.888.3248	A Member of the Public	Myself	Oppose	No	4/26/2021 3:57 PM
Mennella, Alexandra	am88@fastmail.com	646.610.9858	A Member of the Public	Myself	Support	No	4/26/2021 10:18 PM
Pauer, Eric	secretary@BrooklineGOP.org	603.732.8489	A Member of the Public	Myself	Support	No	4/26/2021 10:25 PM
Morency, Peter	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 6:03 AM

Mahoney, Joe	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 6:50 AM
Wright, William	William.h.wright1@Gmail.com	603.520.6555	A Member of the Public	Myself	Oppose	No	4/26/2021 5:58 PM
Garone, Edward	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 10:11 AM
Carroll, Roger	Rogercarroll@laconiadailysun.com	603-524-0156	A Member of the Public	Myself and The Laconia Daily Sun	Oppose	No	4/27/2021 10:11 AM
Sargent, Benjamin	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 11:29 AM
Russo, Steven	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 12:21 PM
Goldstein, David	dgoldstein@franklinnh.org	16039989782	A Member of the Public	Myself	Oppose	No	4/27/2021 1:09 PM
West, Nancy	nancywestnews@gmail.com	603.738.5635	A Member of the Public	Reporter, Myself and InDepthNH.org	Oppose	No	4/27/2021 1:16 PM
Tetreault, Barbara	barbara@berlindailysun.com	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 9:42 AM
Laurent, Tara	tlaurent@greenlandpd.us	603.431.4624	A Member of the Public	Greenland Police Department	Oppose	No	4/27/2021 9:55 AM
Fenner-Lukaitis, Elizabeth	glukaitis@mcttelecom.com	Not Given	A Member of the Public	Myself	Support	No	4/24/2021 11:40 AM
Bates, David	dcbates70@gmail.com	603.456.2578	A Member of the Public	Myself	Support	No	4/24/2021 11:03 AM
Long, Julian	julianleelong@yahoo.com	603.767.1953	A Member of the Public	Myself	Support	No	4/24/2021 11:08 AM
Phillips, Margery	margeryphillips@gmail.com	603.277.2991	A Member of the Public	Myself	Support	No	4/25/2021 2:29 PM
Lynch, Chrisinda	cmmelynych@comcast.net	603.225.5614	A Member of the Public	Myself	Support	No	4/25/2021 5:10 PM
KARRICK, DAVID	electdavidkarrick@gmail.com	603.456.2772	A Member of the Public	Myself	Support	No	4/25/2021 7:18 PM
Haas, Kimberley	Not Given	603-361-7802	A Member of the Public	New Hampshire Press Association	Oppose	No	4/26/2021 4:35 PM
Sargent, Elizabeth	echasesargent@gmail.com	603.568.0213	A Lobbyist	NH Association of Chiefs of Police	Oppose	No	4/26/2021 5:23 PM
Drury, John	jdrury@farmingtonpd.com	603.755.2731	A Member of the Public	Myself	Oppose	No	4/26/2021 1:20 PM
Bean Burpee, Anthony	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:15 PM
Sullivan, Patrick	Patsully@comcast.net	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:21 PM
Reynolds, Charles	reynolds.charles@comcast.net	603.781.0168	A Member of the Public	Myself	Oppose	No	4/26/2021 5:31 PM
Spradling, Scott	scott@spradlinggroup.com	16037248092	A Lobbyist	NH Association of Broadcasters	Oppose	No	4/26/2021 9:28 PM
Cobb, Emily	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:48 PM
Parsons, John	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:49 PM
Carpenter, Timothy	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:53 PM
Osgood, Bradley	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:55 PM
Patten, Gregory	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 2:57 PM
Johnson, Sara	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 3:00 PM
Noyes, David	pdchief@wvpublicsafety.com	603.236.4732	A Member of the Public	Myself	Oppose	No	4/26/2021 3:08 PM
Krauss, Richard	rkrauss301@gmail.com	603.652.4514	A Member of the Public	Myself	Oppose	No	4/26/2021 3:15 PM
Bilodeau, Michael	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 3:16 PM
Lester, Scott	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/26/2021 3:23 PM

Testimony

April 26, 2021

Testimony of Brendan McQuaid on HB125
NH Senate – Judiciary Committee



Mugshot of Christopher Micklovich, Manchester Police Department

Ladies and Gentlemen of the committee,

My name is Brendan McQuaid. I am currently the President and Publisher of the New Hampshire Union Leader and reside in Manchester. My testimony today is on behalf of the New Hampshire Press Association. The New Hampshire Press Association is strongly opposed to HB125.

In March of 2010 a man was arrested at the Strange Brew tavern in Manchester on charges of simple assault, disorderly conduct, resisting arrest, and criminal mischief. That man, Christopher Micklovich, went on to file an excessive force complaint against the officers that arrested him. While many arrestees may claim that arresting officers used excessive force, most do not have a publicly available photograph of their battered and bloodied face.

Christopher Micklovich ended up reaching a \$200,000 settlement with the city of Manchester. Public outcry over the incident resulted in an investigation into four officers, with one retiring early.

If HB125 had been the law at the time of his arrest then charges could have been quietly dropped against Mr. Micklovich. The government would have then been shielded against releasing the mugshot to the press under the right to know law. There would have been no front-page publication of the photo, no public outcry, no investigation, and likely no settlement. Mr. Micklovich would likely be left with just a mountain of medical bills two broken eye sockets and a broken nose.

The Micklovich case may not be a common occurrence, but it is important to consider the long-term effects that HB 125 would have.

Freedom is among the most fundamental rights in our society. The government, acting on behalf of the public, has a limited ability to take that freedom away from individuals. The public has a fundamental

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right to know what their government is up to. This includes knowing whom the government has taken into custody and why. A mugshot can play a fundamental role in this process.

We are not a society that abides citizens being "disappeared" from our streets. Ours is a society that demands transparency from our government, especially from our police. Without a photograph the public would not know if the police arrested this "John Smith" or that "John Smith." Perhaps the photograph released of "John Smith" is recognized by a victim of a different crime, a victim who never knew "John Smith" by name or knew him only by an alias.

Much of the discussion surrounding this bill concerned the dissemination of photos by police department or town social media pages. It seems that in attempting to solve the alleged problem of social media publicity the drafters of this bill created a massive problem for police accountability and transparency by creating an RSA 91-A exception. It is the legislative equivalent of killing a fly with an atomic bomb. Sure, the fly is dead, but what other problems have been created? Social media pages and press releases can be dealt with at a policy level, 91-A exceptions have far reaching consequences.

Members of the press in New Hampshire are charged with keeping government accountable. RSA 91-A (the right to know law) is an invaluable tool in this task. Each current exception to 91-A transparency is a hurdle that must be overcome before records can be obtained. The tendency of government has been to prevent release of any documents that could in any way touch on an exception to 91-A. Obscurity, rather than transparency, is the default position. I strongly caution the Senate against passing ANY further exceptions to 91-A. I urge you to kill HB 125.

Sincerely,



Brendan J. McQuaid
President and Publisher
New Hampshire Union Leader

UNION LEADER CORPORATION

100 William Loeb Drive • PO Box 9555 • Manchester, NH 03108-9555 • 603-668-4321 • unionleader.com

Jennifer Horgan

From: Donald Bouchard
Sent: Monday, April 26, 2021 12:30 PM
To: Jennifer Horgan
Cc: Nicole KleinKnight
Subject: HB 125 Testimony

Thank you, Madam Chairperson and fellow members of the Senate Judiciary Committee, for taking my testimony in support of HB 125

One of the most sacred rights in the American criminal justice system is that we are all innocent until proven guilty. In other words, the prosecution must prove, beyond a reasonable doubt, each essential element of the crime charged.

Today Police Departments in New Hampshire are increasingly using Facebook to inform the community about who they are arresting. Some add a little humor to the mix. But for those of us who are concerned about the rights of the innocent, say posting mugshots and written pejorative descriptions of suspects amounts to public shaming of people who have not yet been convicted.

HB 125 supports the preponderance of authority as well as supporting the view that there is an independent right called the right of privacy, the invasion of which gives rise to a cause of action.

There is another problem with New Hampshire Police Departments posting mugshots of people not yet convicted. The problem is there is a danger that the showing of a police photograph of a person accused of a crime, who is subsequently acquitted, may lay the groundwork for an action for damages in which the Chief of Police could be named as one of the defendants. In such a case, the possible cause of action would be based on an invasion of the right to privacy. The right of privacy is the right of an individual to be left alone, to live a life of seclusion, or to be free from unwarranted publicity. When we have a question involved in how we balance the individual's right of privacy against the legitimate public interest in the dissemination of information, the balance should always tilt toward the person who has not yet been convicted.

I urge you all to support HB125

Thank you, Madam Chairperson

Representative Donald Bouchard
Hillsborough District 11
Manchester Ward 4

Jennifer Horgan

From: Kimberley Haas <khaas179@gmail.com>
Sent: Monday, April 26, 2021 4:51 PM
To: Jennifer Horgan
Subject: Testimony on HB 125 from Kimberley Haas

To: NH Senate - Judiciary Committee

From: Kimberley Haas

Re: Opposition to HB 125

My name is Kimberley Haas. I am a member of the New Hampshire Press Association's legislative committee and I am writing today to strongly oppose House Bill 125.

This bill limits the ability of law enforcement agencies to distribute booking photos of people who have been accused of crimes unless they have been convicted of the charge, fail to appear in court, are suspected of committing a subsequent crime, or they present an immediate danger to the public.

Under HB 125, law enforcement officers would have to maintain a record of all applicable photos released and include with whom the photos were shared and for what purpose.

This bill would place an undue burden on law enforcement agencies, adding mounds of paperwork onto their already stressed staffs.

It would also force them to create policies about who presents an immediate danger to the public, and that is not exactly easy to decide. Victims of sexual assault crimes may argue that those types of aggressors present a danger to the public, while others might see a house burglar as presenting a danger to the public.

Anyone who has lost a family member to a drunk driver or a person texting while driving could argue the same.

HB 125 would also violate the free speech rights of law enforcement agencies and could prevent them from doing their jobs to their full capacity.

Police and jail officials release booking photos of criminal defendants for a variety of reasons. Sometimes, new victims or witnesses come forward after seeing a defendant's booking photo.

A booking photo also helps to identify individuals, protecting people who have names common to the criminal defendant.

Additionally, a booking photo puts into context the situation behind the arrest. As a reporter, I have had instances where booking photos have led to questions which provide more information for the public about what happened.

Using RSA 91-A (the Right to Know law) to limit instances where booking photos are released to the public will be costly for police departments and, ultimately, taxpayers. As noted, it is up to opinion whether an individual is dangerous and interested members of the public and media will argue their right to have access to these photos if not provided in a seamless, timely manner.

Much of the discussion on this topic in recent years seems to be driven by a notion that police release booking photos of defendants who allegedly commit petty crimes to embarrass the arrested online.

I have covered the seacoast region of New Hampshire since 2013. I cannot recall one instance where a police department has sent me a booking photo for that purpose.

I know these are trying times, and lawmakers such as yourselves are asking hard questions about equality and fair treatment. But in order to have a transparent criminal justice system which works in New Hampshire, I urge you to kill HB 125 for the aforementioned reasons.

Sincerely,

Kimberley Haas

Jennifer Horgan

From: scott <scott@spradlinggroup.com>
Sent: Monday, April 26, 2021 9:36 PM
To: Jennifer Horgan
Subject: HB125 - NH Association of Broadcasters Opposes - Brief Testimony

Hey Jen!

I wanted to submit a very brief note in opposition to HB 125 on behalf of radio and tv broadcasters in New Hampshire - specifically the membership of the NH Association of Broadcasters.

We oppose HB125 as an unnecessary step away from the public's right to know regarding arrests and charges against citizens in New Hampshire. We are all well familiar with the idea of innocent until proven guilty, and the media believes

Releasing the photos publicly can serve as a check on law enforcement, in terms of the defendant/arrestee's condition and what may have taken place while someone was taken into custody. In addition, the decision to print mug shots should be left to news outlets as it has done for many years.

There is no demonstrable negative impact on people who have been arrested and their mug shot photo posted in a way for the public to be able to view the photograph. Members of the public deserve to know if and when their neighbors, coworkers or someone who might be familiar to them has been taken into custody and charged with a crime... including a photo. There is a benefit to public awareness and preventing these photos from being released can be considered a step in the direction of not informing the public and giving people a chance to know of potential criminal activity near them and by someone they may know.

The legal system has a process for expunging both records and mug shots and this bill is not necessary.

Respectfully,

Scott Spradling
NH Association of Broadcasters

Jennifer Horgan

From: dsaad <dsaad@infonetics-usa.com>
Sent: Tuesday, April 27, 2021 8:35 AM
To: Jennifer Horgan
Subject: Oppose HB 125 as written

To: Honorable Members of the Senate Judiciary Committee

Re: HB 125

My name is David Saad. I live in Rumney NH. I am also the President of Right to Know New Hampshire (RTKNH).

I ask you to oppose this bill as it is currently written.

The current language of the bill says:

“Law enforcement officers may also release such applicable post-arrest photos to the subject of the photo upon written request of the person.”

I believe the subject of the photo should, under all instances, have the right to get a copy of the photo. As such, I believe the bill text should be changed to:

“Law enforcement officers **shall** also release such applicable post-arrest photos to the subject of the photo upon written request of the person, **or their legal guardian.**”

Additionally, the subject’s legal guardian should be able to receive a copy if the subject is not able to request a copy themselves.

I would support the bill if the suggested changes were made to the existing bill.

David Saad
President
Right To Know New Hampshire (RTKNH) *Promoting Open Government*
Email: RightToKnowNH@gmail.com
Blog: www.RightToKnowNH.org

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB125

Hearing date: _____

Executive Session date: _____

Motion of: OTP Vote: 3-2

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: French

Notes: _____

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB125

Hearing date: _____

Executive Session date: _____

Motion of: IS Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn <i>Sherman</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn <i>Sherman</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: French

Notes: need more time to look at other states
and their efforts. right balance between public
safety & privacy

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Tuesday, May 25, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 125**

AN ACT

relative to post-arrest photo distribution by law
enforcement officers.

Having considered the same, the committee recommends that the Bill

ought to pass

BY A VOTE OF: 3-2

Senator Harold French
For the Committee

Jennifer Horgan 271-7875

JUDICIARY

HB 125, relative to post-arrest photo distribution by law enforcement officers.

Ought to Pass, Vote 3-2.

Senator Harold French for the committee.

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Wednesday, December 15, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 125**

AN ACT

relative to post-arrest photo distribution by law
enforcement officers.

Having considered the same, the committee recommends that the Bill

BE REFERRED TO INTERIM STUDY

BY A VOTE OF: 5-0

Senator Harold French
For the Committee

This bill would prohibit law enforcement from distributing post-arrest photos of suspects except in certain circumstances. The Committee believes that more time is needed to look at what other states have done in order for New Hampshire to find the right balance between public safety and privacy, and therefore recommends the bill be referred to Interim Study.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

HB 125, relative to post-arrest photo distribution by law enforcement officers.

Interim Study, Vote 5-0.

Senator Harold French for the committee.

This bill would prohibit law enforcement from distributing post-arrest photos of suspects except in certain circumstances. The Committee believes that more time is needed to look at what other states have done in order for New Hampshire to find the right balance between public safety and privacy, and therefore recommends the bill be referred to Interim Study.

HB125

Bill Details

Title: relative to post-arrest photo distribution by law enforcement officers.

Sponsors: (*Prime*) Klein-Knight (D), Bouchard (D), Roy (R)

LSR Number: **21-0092**

General Status: **SENATE**

House:

Committee: Criminal Justice and Public Safety

Due Out: 4/1/2021

Status: PASSED/ADOPTED WITH AMENDMENT

Senate:

Committee: Judiciary

Floor Date: 1/5/2022

Status: INTERIM STUDY

Bill Docket

Body	Description
H	Introduced (in recess of) 01/06/2021 and referred to Criminal Justice and Public Safety HJ 2 P. 36
H	Public Hearing: 02/17/2021 09:00 am Members of the public may attend using the following link To join the webinar: https://www.zoom.us/j/98063742762 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
H	Committee Report: Ought to Pass with Amendment # 2021-0385h (Vote 19-2; RC) HC 18 P. 34
H	Amendment # 2021-0385h: AA VV 04/07/2021 HJ 5 P. 140
H	Ought to Pass with Amendment 2021-0385h: MA VV 04/07/2021 HJ 5 P. 140
S	Introduced 04/08/2021 and Referred to Judiciary; SJ 12
S	Remote Hearing: 04/27/2021, 01:45 pm; Links to join the hearing can be found in the Senate Calendar; SC 20
S	Committee Report: Ought to Pass, 05/27/2021; SC 25A
S	Sen. Bradley Moved to Rerefer to Committee, MA, VV; 05/27/2021; SJ 17
S	Committee Report: Referred to Interim Study, 01/05/2022; Vote 5-0; CC; SC 49
S	Refer to Interim Study, MA, VV; 01/05/2022; SJ 1

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB125

Senate Committee: Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:



Committee Aide

8/12/22

Date

Senate Clerk's Office AK