

2018 Regular Session

SENATE BILL NO. 384

BY SENATOR CLAITOR

CRIMINAL RECORDS. Prohibits the commercial use of "mug shots" and other arrest records under certain circumstances. (8/1/18)

1 AN ACT

2 To enact R.S. 14:133.7, relative to offenses affecting public records; to prohibit the
3 publication of certain criminal record information or juvenile record information; to
4 provide definitions; to provide penalties; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 14:133.7 is hereby enacted to read as follows:

7 **§133.7. Publication of certain criminal record information or juvenile record**
8 **information prohibited**

9 **A.(1) No person or business entity shall:**

10 **(a) Publish confidential juvenile record information or confidential**
11 **criminal record information of a child.**

12 **(b) Publish any criminal history record or criminal history record**
13 **information in the person's or business entity's possession with respect to which**
14 **the person or business entity has received notice that either:**

15 **(i) An order of expungement has been entered pursuant to Code of**
16 **Criminal Procedure Article 971 et seq.**

17 **(ii) An order of nondisclosure has been issued by a court of competent**

1 jurisdiction.

2 (c) Charge a fee to remove, correct, or modify any criminal history
3 record or criminal history record information that the person or business entity
4 has published.

5 (d) Continue to publish an incomplete or inaccurate criminal history
6 record or inaccurate criminal history record information.

7 (2) A person or business entity does not violate this Section if the person
8 or business entity published confidential juvenile record information or
9 confidential criminal record information of a child and:

10 (a) The child who is the subject of the records gives written consent to
11 the publication on or after the child reaches the age of eighteen years.

12 (b) The publication of the information is authorized or required by any
13 other provision of law.

14 B.(1) A person or business entity shall ensure that a criminal history
15 record or criminal history record information that the person or business entity
16 publishes is complete and accurate.

17 (2) For purposes of this Section, a criminal history record or criminal
18 history record information published by a person or business entity is
19 considered:

20 (a) "Complete" if the information reflects the notations of arrest and the
21 filing and disposition of criminal charges, as applicable.

22 (b) "Accurate" if the information reflects the most recent information
23 received by the entity from a law enforcement agency, criminal justice agency,
24 or any other governmental entity within sixty days preceding the date of
25 publication.

26 (3) The person or business entity shall clearly and conspicuously publish
27 an email address, facsimile transmission number, or mailing address in order
28 to enable a person who is the subject of a criminal history record or criminal
29 history record information published by the person or business entity to dispute

1 the completeness or accuracy of the published information.

2 (4) If a person or business entity receives a dispute regarding the
3 completeness or accuracy of a criminal history record or criminal history
4 record information from a person who is the subject of the published
5 information, the person or business entity shall, within thirty business days of
6 receiving the notice of the dispute, verify with the appropriate law enforcement
7 agency, criminal justice agency, or any other governmental entity, without cost
8 to the person, the disputed information.

9 (5) If the person or business entity finds an incomplete or inaccurate
10 criminal history record or inaccurate criminal history record information after
11 conducting an investigation as prescribed by this Section, the person or business
12 entity shall promptly remove the inaccurate information from the website or
13 other publication or shall promptly correct the information, as applicable.

14 (6) The person or business entity shall provide written notice to the
15 person who disputed the completeness or accuracy of published information of
16 the results of an investigation conducted under this Section not later than the
17 fifth business day after the date on which the investigation is completed.

18 C.(1) If a person or business entity receives a written notice from any
19 person that the person or business entity is publishing information in violation
20 of this Section, the person or business entity shall immediately remove the
21 information from the website or publication.

22 (2) If the person or business entity confirms that the information is not
23 confidential juvenile record information or confidential criminal record
24 information of a child and the publication of the information is not otherwise
25 prohibited, the person or business entity may republish the information.

26 D.(1) Except as provided in Paragraph (2) of this Subsection, this Section
27 shall apply to:

28 (a) A person or business entity that publishes a criminal history record
29 or criminal history record information, including information originally

1 obtained pursuant to a public records request or purchased or otherwise
2 obtained from a law enforcement agency, criminal justice agency, or any other
3 governmental entity.

4 (b) A person or business entity that publishes confidential juvenile
5 record information or confidential criminal record information of a child in any
6 manner not permitted by Children's Code Article 412 or other provision of law,
7 regardless of the source of the information.

8 (2) This Chapter shall not apply to:

9 (a) Any statewide juvenile information sharing system authorized by
10 Children's Code Article 541 or other provision of law.

11 (b) A publication of general circulation or an internet website related to
12 such a publication that contains news or other information, including a
13 magazine, periodical newsletter, newspaper, pamphlet, or report.

14 (c) A radio or television station that holds a license issued by the Federal
15 Communications Commission.

16 (d) A telecommunications provider.

17 E. For purposes of this Section:

18 (1) "Confidential criminal record information of a child" means
19 information relative to a person's involvement in the criminal justice system
20 resulting from conduct that occurred or was alleged to occur when the person
21 was younger than eighteen years of age and that is confidential pursuant to
22 Children's Code Article 412 or any other provision of law. This term does not
23 include:

24 (a) A criminal history record or criminal history record information of
25 a person who is to stand trial as an adult for that conduct, as provided by
26 Children's Code Article 305 or any other provision of law.

27 (b) Records or information relating to a traffic offense.

28 (2) "Confidential juvenile record information" means information about
29 a person's involvement in the juvenile justice system that is confidential, sealed,

1 under restricted access, or required to be destroyed under any provision of law,
2 including:

3 (a) A description or notation of any referral to a juvenile probation
4 department or court with jurisdiction over the juvenile, including any instances
5 of being taken into custody, any informal disposition of a custodial or referral
6 event, or any formal charges and the disposition of those charges.

7 (b) A photograph or photographs of the person taken pursuant to a
8 custodial event or other involvement in the juvenile justice system.

9 (c) Personal identifying information of the person contained in any other
10 records of the person's involvement in the juvenile justice system.

11 (3) "Criminal justice agency" means any government agency or subunit
12 thereof, or private agency that, through statutory authorization or a legal
13 formal agreement with a governmental unit or agency, has the power of
14 investigation, arrest, detention, prosecution, adjudication, treatment,
15 supervision, rehabilitation or release of persons suspected, charged, or
16 convicted of a crime, or that collects, stores, processes, transmits, or
17 disseminates criminal history record or crime information.

18 (4) "Criminal history record" or "criminal history record information"
19 mean information collected by criminal justice agencies on individuals
20 consisting of identifiable descriptions and notations of arrests, detentions,
21 indictments, bills of information, or any formal criminal charges, and any
22 disposition arising therefrom, including sentencing, correctional supervision,
23 and release. These terms do not include intelligence or investigatory purposes,
24 nor does it include any identification information that does not indicate
25 involvement of the individual in the criminal justice system. These terms do not
26 include records of juvenile criminal conduct. These terms include but are not
27 limited to the following:

28 (a) A description or notation of any arrests, any formal criminal charges,
29 and the dispositions of those criminal charges.

1 **(b) A photograph or photographs of the person taken pursuant to an**
2 **arrest or other involvement in the criminal justice system.**

3 **(c) Personal identifying information of a person displayed in conjunction**
4 **with any other record of the person's involvement in the criminal justice system.**

5 **(5) "Juvenile justice system" means the system of public and private**
6 **services in Louisiana that includes prevention, early identification, early**
7 **intervention, child protection, law enforcement, prosecution, defense,**
8 **adjudication, diversion and informal processing, probation, corrections,**
9 **aftercare, transitional living, and other services provided to children and**
10 **families who either are or are likely to be brought into a court with juvenile**
11 **jurisdiction because of problems such as abuse, neglect or abandonment, mental**
12 **illness, substance abuse, aspects of a divorce and breakup of families,**
13 **predelinquency, social irresponsibility or delinquent behavior, or domestic**
14 **abuse involving children.**

15 **(6) "Personal identifying information" means information that alone or**
16 **in conjunction with other information identifies a person, including a person's**
17 **name, address, date of birth, photograph, and social security number or other**
18 **government-issued identification number.**

19 **(7) "Publish" means:**

20 **(a) In the case of the records of adults, to communicate or make**
21 **information available to another person on a publicly available internet website**
22 **or in any other publication that charges a fee for the removal of the**
23 **information.**

24 **(b) In the case of the records of a juvenile, to communicate or make**
25 **information available to another person by any means, including but not limited**
26 **to a publicly available internet website.**

27 **F. Whoever violates any provision of this Section:**

28 **(1) On a first conviction shall be fined not more than one thousand**
29 **dollars, or imprisoned for not more than six months, or both.**

1 **(2) On a second conviction shall be fined not more than five thousand**
 2 **dollars, or imprisoned for not more than one year, or both.**

3 **(3) On a third or subsequent conviction shall be fined not more than ten**
 4 **thousand dollars, or imprisoned, with or without hard labor, for not less than**
 5 **six months nor more than one year, or both.**

6 **G. In addition to the penalties provided by Subsection F of this Section,**
 7 **a person or business entity that publishes information in violation of any**
 8 **provision of this Section shall be liable to pay restitution to the individual who**
 9 **is the subject of the information in an amount not to exceed five hundred dollars**
 10 **for each separate violation and, in the case of a continuing violation, an amount**
 11 **not to exceed five hundred dollars for each subsequent day on which the**
 12 **violation occurs.**

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy Wells.

DIGEST

SB 384 Reengrossed

2018 Regular Session

Claitor

Proposed law prohibits the publication of certain criminal record information or juvenile record information. Proposed law provides that no person or business entity is allowed to:

- (1) Publish confidential juvenile record information or confidential criminal record information of a child.
- (2) Publish any criminal history record or criminal history record information in the person's or business entity's possession with respect to which the person or business entity has received notice that either:
 - (a) An order of expungement has been entered.
 - (b) An order of nondisclosure has been issued by a court of competent jurisdiction.
 - (c) Charge a fee to remove, correct, or modify any criminal history record or criminal history record information that the person or business entity has published.
 - (d) Continue to publish an incomplete or inaccurate criminal history record or inaccurate criminal history record information.

Proposed law provided that a person or business entity does not violate proposed law if the person or business entity published confidential juvenile record information or confidential criminal record information of a child and:

- (1) The child who is the subject of the records gives written consent to the publication on or after the child reaches the age of 18 years.
- (2) The publication of the information is authorized or required by any other provision of present law.

Proposed law provides that a person or business entity must ensure that a criminal history record or criminal history record information that the person or business entity publishes is complete and accurate. Proposed law further provides that a criminal history record or criminal history record information is "complete" if the information reflects the notations of arrest and the filing and disposition of criminal charges, as applicable. Proposed law further provides that a criminal history record or criminal history record information is "accurate" if the information reflects the most recent information received by the entity from a law enforcement agency, criminal justice agency, or any other governmental entity within 60 days preceding the date of publication.

Proposed law provides that the person or business entity must clearly and conspicuously publish an email address, facsimile transmission number, or mailing address in order to enable a person who is the subject of a criminal history record or criminal history record information published by the person or business entity to dispute the completeness or accuracy of the published information.

Proposed law provides that if a person or business entity receives a dispute regarding the completeness or accuracy of a criminal history record or criminal history record information from a person who is the subject of the published information, the person or business entity must, within 30 business days of receiving the notice of the dispute, verify with the appropriate law enforcement agency, criminal justice agency, or any other governmental entity, without cost to the person, the disputed information.

Proposed law provides that if the person or business entity finds an incomplete or inaccurate criminal history record or inaccurate criminal history record information after conducting an investigation, the person or business entity must promptly remove the inaccurate information from the website or other publication or promptly correct the information, as applicable.

Proposed law provides that the person or business entity must provide written notice to the person who disputed the completeness or accuracy of published information of the results of an investigation not later than the fifth business day after the date on which the investigation is completed.

Proposed law provides that if a person or business entity receives a written notice from any person that the person or business entity is publishing information in violation of proposed law, the person or business entity must immediately remove the information from the website or publication. Proposed law further provides that if the person or business entity confirms that the information is not confidential juvenile record information or confidential criminal record information of a child and the publication of the information is not otherwise prohibited, the person or business entity may republish the information.

Proposed law applies to the following:

- (1) A person or business entity that publishes a criminal history record or criminal history record information, including information originally obtained pursuant to a public records request or purchased or otherwise obtained from a law enforcement agency, criminal justice agency, or any other governmental entity.
- (2) A person or business entity that publishes confidential juvenile record information or confidential criminal record information of a child in any manner not permitted by present law, regardless of the source of the information.

Proposed law does not apply to:

- (1) Any statewide juvenile information sharing system authorized by present law.
- (2) A publication of general circulation or an internet website related to such a publication that contains news or other information, including a magazine, periodical newsletter, newspaper, pamphlet, or report.
- (3) A radio or television station that holds a license issued by the Federal Communications Commission.
- (4) A telecommunications provider.

Proposed law does not authorize a person or business entity to access confidential juvenile record information or confidential criminal record information of a child.

For purposes of proposed law:

- (1) "Confidential criminal record information of a child" means information relative to a person's involvement in the criminal justice system resulting from conduct that occurred or was alleged to occur when the person was younger than 18 years of age and that is confidential pursuant to present law. This term does not include:
 - (a) Criminal record information of a person who is to stand trial as an adult for that conduct, as provided by present law.
 - (b) Information relating to a traffic offense.
- (2) "Confidential juvenile record information" means information about a person's involvement in the juvenile justice system that is confidential, sealed, under restricted access, or required to be destroyed under any provision of law, including:
 - (a) A description or notation of any referral to a juvenile probation department or court with jurisdiction over the juvenile, including any instances of being taken into custody, any informal disposition of a custodial or referral event, or any formal charges and the disposition of those charges.
 - (b) A photograph or photographs of the person taken pursuant to a custodial event or other involvement in the juvenile justice system.
 - (c) Personal identifying information of the person contained in any other records of the person's involvement in the juvenile justice system.
- (3) "Criminal justice agency" means any government agency or subunit thereof, or private agency that, through statutory authorization or a legal formal agreement with a governmental unit or agency, has the power of investigation, arrest, detention, prosecution, adjudication, treatment, supervision, rehabilitation or release of persons suspected, charged, or convicted of a crime, or that collects, stores, processes, transmits, or disseminates criminal history record or crime information.
- (4) "Criminal history record" or "criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, bills of information, or any formal criminal charges, and any disposition arising therefrom, including sentencing, correctional supervision, and release. These terms do not include intelligence or investigatory purposes, nor does it include any identification information that does not indicate involvement of the individual in the criminal justice system. These terms do not include records of juvenile criminal conduct.

These terms include, but are not limited to, the following:

- (a) A description or notation of any arrests, any formal criminal charges, and the dispositions of those criminal charges.
 - (b) A photograph or photographs of the person taken pursuant to an arrest or other involvement in the criminal justice system.
 - (c) Personal identifying information of a person displayed in conjunction with any other record of the person's involvement in the criminal justice system.
- (5) "Juvenile justice system" means the system of public and private services in Louisiana that includes prevention, early identification, early intervention, child protection, law enforcement, prosecution, defense, adjudication, diversion and informal processing, probation, corrections, aftercare, transitional living, and other services provided to children and families who either are or are likely to be brought into a court with juvenile jurisdiction because of problems such as abuse, neglect or abandonment, mental illness, substance abuse, aspects of a divorce and breakup of families, predelinquency, social irresponsibility or delinquent behavior, or domestic abuse involving children.
- (6) "Personal identifying information" means information that alone or in conjunction with other information identifies a person, including a person's name, address, date of birth, photograph, and social security number or other government-issued identification number.
- (7) "Publish" means:
- (a) In the case of the records of adults, to communicate or make information available to another person on a publicly available internet website or in any other publication that charges a fee for the removal of the information.
 - (b) In the case of the records of a juvenile, to communicate or make information available to another person by any means, including but not limited to a publicly available internet website.

Proposed law provides that whoever violates any provision of proposed law:

- (1) On a first conviction is to be fined up to \$1,000, or imprisoned for up to six months, or both (misdemeanor).
- (2) On a second conviction is to be fined up to \$5,000, or imprisoned for up to one year, or both (misdemeanor).
- (3) On a third or subsequent conviction is to be fined up to \$10,000, or imprisoned, with or without hard labor, for between six months and one year, or both (felony).

Proposed law provides that in addition to the fines and imprisonment provided by proposed law, a person or business entity that publishes information in violation of proposed law is liable to pay restitution to the individual who is the subject of the information in an amount not to exceed \$500 for each separate violation and, in the case of a continuing violation, an amount not to exceed \$500 for each day on which the violation occurs.

Effective August 1, 2018.

(Adds R.S. 14:133.7)

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Changes definition of "publish" for purposes of proposed law.

Senate Floor Amendments to engrossed bill

1. Clarifies definition of "publish" in the case of records of adults, by specifying information or communication published to a publicly available internet website.
2. Clarifies definition of "publish" in the case of records of juveniles, by specifying information or communication available to another person by any means, including publishing to a publicly available internet website.
3. Specifies that a person or business publishing criminal history record is prohibited if they have received notice of an expungement or an order of nondisclosure has been issued.
4. Makes technical correction to Children's Code Article citation.