Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 180

HOUSE BILL 2383

AN ACT

AMENDING SECTIONS 39-123 AND 39-124, ARIZONA REVISED STATUTES; RELATING TO PUBLIC RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 39-123, Arizona Revised Statutes, is amended to read:

39-123. Information identifying a peace officer, justice, judge, commissioner, public defender or prosecutor; confidentiality; definitions

A. Nothing in this chapter requires disclosure from a personnel file by a law enforcement agency or employing state or local governmental entity of the home address or home telephone number of a peace officer as defined in section 13-105, a justice, a judge, a commissioner, a public defender or a prosecutor. ~~This exemption also applies to a photograph of a peace officer who is serving in an undercover capacity or who is scheduled to serve in an undercover capacity within sixty days.~~

B. The agency or governmental entity may release the information in subsection A of this section only if either:

1. The person consents in writing to the release.

2. The custodian of records of the agency or governmental entity determines that release of the information does not create a reasonable risk of physical injury to the person or the person's immediate family or damage to the property of the person or the person's immediate family.

C. A LAW ENFORCEMENT AGENCY MAY RELEASE A PHOTOGRAPH OF A PEACE OFFICER IF EITHER:

1. THE PEACE OFFICER HAS BEEN ARRESTED OR HAS BEEN FORMALLY CHARGED BY COMPLAINT, INFORMATION OR INDICTMENT FOR A MISDEMEANOR OR A FELONY OFFENSE.

2. THE PHOTOGRAPH IS REQUESTED BY A REPRESENTATIVE OF A NEWSPAPER FOR A SPECIFIC NEWSWORTHY EVENT UNLESS:

(a) THE PEACE OFFICER IS SERVING IN AN UNDERCOVER CAPACITY OR IS SCHEDULED TO BE SERVING IN AN UNDERCOVER CAPACITY WITHIN SIXTY DAYS.

(b) THE RELEASE OF THE PHOTOGRAPH IS NOT IN THE BEST INTEREST OF THIS STATE AFTER TAKING INTO CONSIDERATION THE PRIVACY, CONFIDENTIALITY AND SAFETY OF THE PEACE OFFICER.

(c) AN ORDER PURSUANT TO SECTION 28-454 IS IN EFFECT.

D. THIS SECTION DOES NOT PROHIBIT THE USE OF A PEACE OFFICER'S PHOTOGRAPH THAT IS EITHER:

1. USED BY A LAW ENFORCEMENT AGENCY TO ASSIST A PERSON WHO HAS A COMPLAINT AGAINST AN OFFICER TO IDENTIFY THE OFFICER.

2. OBTAINED FROM A SOURCE OTHER THAN THE LAW ENFORCEMENT AGENCY.

~~C.~~ E. This section does not apply to a certified peace officer who is no longer employed as a peace officer by a state or local government entity.

~~D.~~ F. For the purposes of this section:

1. "Commissioner" means a commissioner of the superior court.

2. "Judge" means a judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the Arizona court of appeals, the superior court or a municipal court.

3. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.

4. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.

5. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

Sec. 2. Section 39-124, Arizona Revised Statutes, is amended to read:

39-124. Releasing information identifying a peace officer, justice, judge, commissioner, public defender or prosecutor; violations; classification; definitions

A. Any person who is employed by a state or local government entity and who, in violation of section 39-123, knowingly releases the home address or home telephone number of a peace officer as defined in section 13-105, a justice, a judge, a commissioner, a public defender or a prosecutor with the intent to hinder an investigation, cause physical injury to a peace officer, justice, judge, commissioner, public defender or prosecutor or the peace officer's, justice's, judge's, commissioner's, public defender's or prosecutor's immediate family or cause damage to the property of a peace officer, justice, judge, commissioner, public defender or prosecutor or the peace officer's, justice's, judge's, commissioner's, public defender's or prosecutor's immediate family is guilty of a class 6 felony.

B. Any person who is employed by a state or local government entity and who, in violation of section 39-123, knowingly releases a photograph of a peace officer ~~who is serving in an undercover capacity or who is scheduled to serve in an undercover capacity within sixty days~~ with the intent to hinder an investigation, cause physical injury to a peace officer or the peace officer's immediate family or cause damage to the property of a peace officer or the peace officer's immediate family is guilty of a class 6 felony.

C. For the purposes of this section:

1. "Commissioner" means a commissioner of the superior court.

2. "Judge" means a judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the Arizona court of appeals, the superior court or a municipal court.

3. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.

4. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.

5. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

APPROVED BY THE GOVERNOR MAY 3, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 3, 2004.