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HEARING ON HF 1940
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Thank you for the opportunity to testify on this bill. This bill raises several important issues - most of which are not immediately apparent, so allow me to address them at some length.

1) First, we recognize that this bill is an attempt to address a legitimate problem. Now, how one chooses to defines that problem goes a long ways toward describing the appropriate solution. If we characterize this problem as one of mug shot websites inaccurately labeling people who have been arrested as having been convicted, there are already remedies in law for that sort of behavior. An aggrieved person could bring a defamation lawsuit today to address just this matter, without the need for additional legislation.

2) If we define the problem as one of having mug shot websites "profiteer" by charging a fee to remove images, then there is a separate solution available. Other states, including New Jersey, have passed legislation making such conduct illegal. That is perhaps the most efficient remedy to this situation.

3) I would note that this second problem is remedied by Section 2, Subdivision 3c of this bill - one single sentence of text. While I commend Representative Norton for trying to address the underlying issue, the bill as written - and even as amended - contains many additional provisions that would cause serious, if unintended, consequences for data policy in Minnesota.

4) The first problem is that the bill would treat persons requesting mug shot data differently than other public requesters. It would apply certain requirements to those requesters only - requirements that I'll speak about in more detail momentarily.

When the Data Practices Act was conceived, it was done so in the context of securing access to government data for all Minnesotans - that is, its provisions applied equally to all users. By starting down the path of requiring certain users to adhere to special parameters, we violate the egalitarian spirit that infused that original legislation. And let us not have any assumptions that the special conditions created by this bill would only remain in this one section of statute -- others will come seeking their use, and will make "swiss cheese" of the rest of the statute by carving out special use conditions and exemptions.

John Finnegan - the architect of the Data Practices Act, and a newsman himself - was adamant that the provisions of the Act should adhere to the public as a whole, and should not contain special privileges for certain groups, and special penalties for others. And

particularly today, when the boundaries and definitions of the institutional media are in such flux, we should be very wary of defining who constitutes the media, and who does not.

5) In regard to the parameters that the bill sets out for requesters, the bill would do the following things: It would require requesters to submit their name to the law enforcement entity that holds the data; it would also require them to submit a statement about where the data they obtain will be used, and what they intend to do with it. This would be a practice at odds with the entire history of the Data Practices Act, which has never before sought to have statutory scrutiny over how requesters use public data.

That said of course, the Act does envision some legislative control over data, but that control has rested with the classification of data -- the question of whether data should be public or not public. Once that is determination has been made, the government has traditionally had no more say over the use of data, unless a particular use causes direct harm and violates a criminal statute (such as criminal defamation). This bill would change that historical practice, and would begin a process of tipping the control over the use of government data back toward the government, and away from the citizenry, by requiring citizens to register their intended uses of public data with the state.

6) The biggest functional problem raised by this bill is not only that it would require users to file statements of use about the data they receive, but it would institute monetary damages for not filing those statements. In certain contexts, this kind of activity walks very close to the line of what is called "prior restraint" in First Amendment law. If enacted, the statute would require that someone who receives a booking photograph from another person would then need to fill out a statement of use and file it with a law enforcement agency. If they do not do this, then they become exposed to monetary damages. Although a private party (the person in the photo) would be the party seeking those damages, that mere fact that one has to file a statement with the government before transferring or publishing a photograph raises significant First Amendment issues, and the statute would likely be invalidated by the courts.

In summary, this bill is attempting to address real issues here, but we would strongly suggest that the bill be re-worked to avoid collateral consequences that will cause significant damage to data policy in Minnesota if adopted. There is a better way to do this.