

Via Electronic Mail

August 3, 2022

The Honorable Kathy Hochul
Governor of New York State
633 3rd Ave, 38th Floor
New York, NY 10017

Re: Veto of the Crime Victims Images Bill (S.7211/A.1121)

Dear Governor Hochul,



1 Whitehall Street, 3rd Fl.
New York NY 10004
nyclu.org

Donna Lieberman
Executive Director

Robin Willner
President

The ACLU of New York urges you to veto the Crime Victims Images Bill, S.7211/A.1121, which would criminalize the distribution of photographs of crime victims under certain circumstances. While the ACLU of New York recognizes the important privacy interests at stake, the law would violate the First Amendment. It would also pose a risk of severe unintended consequences to protesters, demonstrators, and activists.

**Crime Scene Photos of Public Interest or
Journalistic Value are Protected by the First
Amendment**

The First Amendment’s free speech clause allows the public to capture, view, and disseminate crime scene photos if doing so serves the public interest, and its press clause independently allows journalists to do the same.¹ Indeed, graphic photos depicting the terrible impact of crime—though offensive to some—have always been a feature of media reporting in this country.² Yet, this bill does not exempt either journalism or publication in the public interest. And while the bill would excuse dissemination “involving activities in a

¹ See, generally, *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491-92 (1975), see also *Bartnicki v. Vopper*, 532 U.S. 514 (2001).

² See, e.g., *Gail Buckland, Shots in the Dark: True Crime Pictures* (Little Brown & Co. 1st ed. 2001) (publishing autopsy photographs of, among others, John F. Kennedy, Lee Harvey Oswald, decomposed body of infant Charles Lindbergh, Jr.); *16 Grisliest Crime Scene Photos From 1920s NYC*, Gothamist.com. May 9, 2012, available at: <https://gothamist.com/news/16-grisliest-crime-scene-photos-from-1920s-nyc/>. Last visited July 28, 2022; <https://www.crimeonline.com/category/crime-scene-photos/> (graphically depicting deceased bodies of wide variety of crime victims); <https://weirdpicturearchive.com/autopsy-photos.php> (autopsy photos of famous crime victims, including Malcom X, Marilyn Monroe, President John F. Kennedy, etc.).

public setting” or “made for a legitimate public purpose,” neither of those phrases is sufficiently broad to capture all activities protected by the First Amendment, and worse yet, neither phrase is *defined*, leaving would-be posters, publishers, and hosts³ to guess whether they were breaking the law, and to be prosecuted and sued if they guessed wrong. If history is any guide, such vague language will only encourage arbitrary and disproportionate enforcement.

Arbitrary Enforcement Would Harm Police Transparency and Risk Punishing Protesters and Activists



The bill’s imprecise language and insufficient definitions practically invite arbitrary and abusive enforcement. By criminalizing creation or distribution of any photo of someone who suffers a crime, the law would invite police officers to arrest anyone who photographs clashes between police and protesters on the theory that someone had been “victimized” in the fray.⁴ Indeed, the bill could be used by police to justify arresting anyone who photographs *police* at a crime scene if a crime victim were anywhere in the photo.

Similarly, anyone looking for a quick payday—including white supremacists and neo-Nazis—could avail themselves of the bill’s private right of action provision by provoking a violent encounter at a protest and suing activists or journalists who photograph the resulting clash.

The ACLU of New York understands the harms this bill seeks to prevent. The families and loved ones of crime victims deserve to mourn in peace and privacy. However, this bill’s vague proscriptions, and its failure to explicitly protect journalism and other photography in the public interest, render it too broad, open to abuse, and in any event, likely to be struck down. We urge you not to sign it into law.

³ §52-d(5) of the bill, which would purport to impose liability on websites that host certain crime victim photographs, is almost certainly preempted in its entirety by §230 of the federal Communications Decency Act, rendering it little more than a meaningless gesture.

⁴ Oddly, the bill does not even exempt photographs of oneself, meaning that a crime victim who photographs their own injuries and posts them online could be arrested and charged under this law.

Sincerely and respectfully,

The ACLU of New York

