

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 729

2022 Regular Session

Duplessis

CRIMINAL/RECORDS: Limits the release and dissemination of booking photographs of an arrested person

Synopsis of Senate Amendments

1. Change the definition of "booking photograph" from being inclusive of an image to being inclusive of a "still, non-video image" and other specified parameters.
2. Provide additional grounds for the release of a booking photograph: if the person pleads to or is convicted of an offense related to the crime for which he was arrested; if there is no pending or anticipated criminal litigation related to the arrest; if the person is charged with specified offenses; or if the subject of the photograph is filler as defined in Article 252.
3. Requires persons who publish a booking photograph to include a disclaimer that "all persons are presumed innocent until proven guilty in a court of law."
4. Specify that no law enforcement agency or employee shall be subject to civil action or liability when the publication, release, or dissemination was made by mistake or was inadvertent and made in good faith.
5. Remove complete exemption of a booking photograph from the Public Records Law.
6. Make technical changes.

Present law (R.S. 44:1 et seq. – Public Records Law) provides that all books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or under the authority of the constitution or laws of the state, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of the state are "public records". Present law establishes a framework for the ready availability of public records to requesting persons and specifically provides that it is the duty of the custodian of the public records of a public entity or agency to provide copies to persons so requesting. Provides for certain exceptions, exemptions, and limitations.

Proposed law prohibits a law enforcement officer or agency from publishing, releasing, or disseminating a booking photograph, as defined by proposed law, to the public or to a private person or entity unless:

- (1) The individual is a fugitive and such release will assist in apprehending the individual.
- (2) The individual is an imminent threat and such release will assist in reducing or eliminating the threat.

- (3) A judge orders such release based upon a finding that the release is in furtherance of a legitimate interest.
- (4) The individual is convicted of the crime for which he was arrested or pleads guilty or nolo contendere to a crime, lesser crime, or lesser included offense in response to the same crime for which he was arrested.
- (5) There is no criminal litigation related to the arrest that is pending or reasonably anticipated.
- (6) The individual is charged with a crime of violence (except stalking) or charged with video voyeurism, cruelty to animals, dogfighting, sex offenses as defined in present law (R.S. 15:541), human trafficking offenses as defined in present law (R.S. 14:46.2 and 46.3), offenses affecting the health and morals of minors as provided in present law (R.S. 14:91 et seq.), or offenses affecting the health and safety of persons with infirmities as provided in present law (R.S.14:93.3 et seq.).
- (7) The booking photograph is part of a law enforcement file solely because the subject of the booking photograph was filler.

Proposed law requires any entity, person, or agency that publishes a booking photograph in according to proposed law to include a disclaimer that "all persons are presumed innocent until proven guilty in a court of law."

Proposed law specifies that no law enforcement agency or employee shall be subject to civil action or be held liable when the publication, release, or dissemination was made by mistake of fact or error, or was inadvertent and made in good faith.

Proposed law defines "booking photograph" and "remove-for-pay publication or website" for its purposes.

Proposed law provides that a remove-for-pay publication or website shall remove and destroy a booking photograph of an individual who submits a request for removal and destruction within seven calendar days from the day that the individual makes the request if both of the following conditions exist:

- (1) The individual in the booking photograph was acquitted of the criminal charge or not prosecuted, or the individual had the criminal charge expunged, vacated, or pardoned.
- (2) The individual submits, in relation to the request, evidence of a disposition described in proposed law.

Proposed law provides that if the remove-for-pay publication or website does not remove and destroy the booking photograph, the remove-for-pay publication or website shall be liable for all costs, including reasonable attorney fees, resulting from any legal action that the individual brings in relation to the failure of the remove-for-pay publication or website to remove and destroy the booking photograph.

Proposed law provides that any remove-for-pay publication or website that seeks any fee or other valuable consideration for the removal or destruction of a booking photograph shall be subject to prosecution under present law (R.S. 14:66 – the crime of extortion).

Proposed law further specifies that the publication of a booking photograph of a La. resident constitutes minimum contact with the state and by doing so, the party shall be subject to the jurisdiction of La. courts.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 44:4.1(B)(38); Adds C.Cr.P. Art. 234)