

First Extraordinary Session, 2005

HOUSE BILL NO. 28

BY REPRESENTATIVES MARTINY, ALEXANDER, BEARD, BRUNEAU, BURNS, R. CARTER, CROWE, DANIEL, DOVE, DOWNS, ERDEY, GEYMAN, GREENE, HUTTER, JOHNS, KATZ, KENNARD, KLECKLEY, LABRUZZO, LAMBERT, MCVEA, MORRISH, PITRE, M. POWELL, T. POWELL, SCALISE, SCHNEIDER, SMILEY, JANE SMITH, STRAIN, THOMPSON, TOOMY, TRAHAN, TUCKER, WADDELL, WALSWORTH, WHITE, AND WINSTON AND SENATORS BARHAM, BOASSO, CAIN, DARDENNE, HOLLIS, KOSTELKA, LENTINI, MALONE, MICHOT, QUINN, ROMERO, SCHEDLER, AND THEUNISSEN

LAW ENFORCEMENT: Limits liability of law enforcement agencies to prison detainees (Item #69)

1 AN ACT  
2 To amend and reenact R.S. 29:735(A), relative to immunity of law enforcement agencies  
3 during Hurricane Katrina or Rita; to provide for limitation of liability for law  
4 enforcement agencies and officers based on detention of persons in any parish prison  
5 or local jail under certain circumstances; to provide for liability of law enforcement  
6 agencies under certain circumstances; to provide for retroactive application; and to  
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 29:735(A) is hereby amended and reenacted to read as follows:

10 §735. Immunity of personnel

11 A.(1) Neither the state nor any political subdivision thereof, nor other  
12 agencies, nor, except in case of willful misconduct, the agents' employees or  
13 representatives of any of them engaged in any homeland security and emergency  
14 preparedness activities, while complying with or attempting to comply with this  
15 Chapter or any rule or regulation promulgated pursuant to the provisions of this

1 Chapter shall be liable for the death of or any injury to persons or damage to property  
2 as a result of such activity.

3 (2) Additionally, no prisoner in the custody of the sheriff or law enforcement  
4 agency who was evacuated to another prison or jail during and immediately after  
5 Hurricane Katrina or Rita, and who was not released within the time required by the  
6 Code of Criminal Procedure or Title 15 of the Louisiana Revised Statutes of 1950,  
7 shall have a cause of action for damages against the sheriff or law enforcement  
8 agency for the failure to timely release the prisoner, if the failure was due to the  
9 effects of Hurricane Katrina or Rita and the lack of access to prison records and  
10 information specifying when the prisoner is to be released; however, the sheriff or  
11 law enforcement agency shall be liable for damages if within a reasonable length of  
12 time following Hurricane Katrina or Rita, the sheriff or law enforcement agency  
13 makes no attempt to ascertain when the prisoner is to be released and fails to release  
14 the prisoner from custody.

15 \* \* \*

16 Section 2. The provisions of this Act shall be applied retroactively to August 29,  
17 2005.

18 Section 3. This Act shall become effective upon signature by the governor or, if not  
19 signed by the governor, upon expiration of the time for bills to become law without signature  
20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
21 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
22 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

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Martiny

HB No. 28

**Abstract:** Provides that no person shall have a cause of action against any law enforcement agency or officer based on his detention in a parish prison or local jail for a period of time in excess of that required by the Code of Criminal Procedure or Title 15 of the Louisiana Revised Statutes of 1950 when the failure to release was due to the effects of Hurricane Katrina or Rita.

Present law provides that neither the state nor any political subdivision thereof, nor other agencies, nor, except in case of willful misconduct, the agents' employees or representatives of any of them engaged in any homeland security and emergency preparedness activities, while complying with or attempting to comply with the provisions of the Louisiana Homeland Security and Emergency Assistance and Disaster Act or any rule or regulation promulgated pursuant to those provisions shall be liable for the death of or any injury to persons or damage to property as a result of such activity.

Proposed law retains present law and provides that no prisoner in the custody of the sheriff or law enforcement officer who was evacuated to another prison or jail during and immediately after Hurricane Katrina or Rita and who was not released timely in accordance with law shall have a cause of action for damages against the sheriff or law enforcement agency for the failure to timely release the prisoner due to the effects of Hurricane Katrina or Rita and the lack of access to prison records to ascertain when the prisoner is to be released. Provides that the sheriff or law enforcement agency shall be liable if the sheriff or law enforcement agency makes no attempt to ascertain when the prisoner is to be released and fails to release the prisoner.

Proposed law provides for retroactive application to August 29, 2005.

Effective upon signature or lapse of time for gubernatorial action.

(Amends R.S. 29:735(A))

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Limits proposed law to when the prolonged detention is caused by Hurricane Katrina or Hurricane Rita.
2. Provides for circumstances when the limitation of liability does not apply.
3. Provides for retroactive application to August 29, 2005.

#### House Floor Amendments to the engrossed bill.

1. Adds conditions under which limitation of liability applies.
2. Provides circumstances under which the sheriff or law enforcement officer is liable for the failure to release the prisoner timely.