

2022 Regular Session

HOUSE BILL NO. 729

BY REPRESENTATIVE DUPLESSIS

CRIMINAL/RECORDS: Provides relative to photo identification of an arrested person

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(38) and to enact R.S. 44:4(64) and Code of Criminal
3 Procedure Article 234, relative to photo identification of an arrested person; to
4 provide for a public records exception; to provide for definitions; to provide relative
5 to the duty of law enforcement; to provide relative to submission of requests; to
6 provide for criminal liability; to provide relative to time periods; to provide relative
7 to attorney fees; to provide relative to civil penalties; to provide for applicability; and
8 to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 44:4.1(B)(38) is hereby amended and reenacted and R.S. 44:4(64)
11 is hereby enacted to read as follows:

12 §4. Applicability

13 This Chapter shall not apply:

14 * * *

15 (64) To an image taken of an individual during the process of booking the
16 individual into a correctional facility, unless either of the following occur:

17 (a) A law enforcement agency releases or disseminates the image after
18 determining that the individual is a fugitive or an imminent threat to an individual
19 or to public safety and releasing or disseminating the image will assist in
20 apprehending the individual or reducing or eliminating the threat.

1 statement signed by the person requesting the copy that affirms that the copy of the
2 booking photograph will not be placed in a publish-for-pay publication or website.

3 (2) A person who submits a false written statement under this Subsection is
4 subject to prosecution under R.S. 14:125.

5 D.(1) Except as provided in Subsection E of this Article, a publish-for-pay
6 publication or website shall remove and destroy a booking photograph of an
7 individual who submits a request for removal and destruction within thirty calendar
8 days after the day on which the individual makes the request.

9 (2)(a) A publish-for-pay publication or website shall not require payment of
10 a fee greater than fifty dollars for removal or destruction of the booking photograph.

11 (b) Any publish-for-pay publication or website that seeks any fee or amount
12 greater than fifty dollars for the removal or destruction of a booking photograph shall
13 be subject to prosecution under R.S. 14:66.

14 (3) If the publish-for-pay publication or website does not remove and destroy
15 the booking photograph in accordance with Subsection D(1) of this Article, the
16 publish-for-pay publication or website shall be liable for both of the following:

17 (a) All costs, including reasonable attorney fees, resulting from any legal
18 action that an individual brings in relation to the failure of the publish-for-pay
19 publication or website to remove and destroy the booking photograph.

20 (b) A civil penalty of fifty dollars per day for each day after the thirty-day
21 deadline that the booking photograph is visible or publicly accessible in the
22 publish-for-pay publication or website.

23 E.(1) A publish-for-pay publication or website shall remove and destroy a
24 booking photograph of an individual who submits a request for removal and
25 destruction within seven calendar days from the day that the individual makes the
26 request if both of the following conditions exist:

27 (a) The individual in the booking photograph was acquitted of the criminal
28 charge or not prosecuted, or the individual had the criminal charge expunged,
29 vacated, or pardoned.

1 (b) The individual submits, in relation to the request, evidence of a
2 disposition described in Paragraph (1)(a) of this Subsection.

3 (2) If the publish-for-pay publication or website does not remove and destroy
4 the booking photograph, the publish-for-pay publication or website shall be liable for
5 both of the following:

6 (a) All costs, including reasonable attorney fees, resulting from any legal
7 action that the individual brings in relation to the failure of the publish-for-pay
8 publication or publish-for-pay website to remove and destroy the booking
9 photograph.

10 (b) A civil penalty of one hundred dollars per day for each day after the
11 seven-day deadline that the booking photograph is visible or publicly accessible in
12 the publish-for-pay publication or on the publish-for-pay website.

13 F. The provisions of Subsection D shall apply to a defendant in any criminal
14 proceeding.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 729 Engrossed

2022 Regular Session

Duplessis

Abstract: Provides relative to photo identification of an arrested person.

Present law provides for exceptions to the Public Records Law.

Proposed law retains present law and adds an image taken of an individual during the process of booking the individual into a correctional facility, unless either of the following occur:

- (1) A law enforcement agency releases or disseminates the image after determining that the individual is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the image will assist in apprehending the individual or reducing or eliminating the threat.
- (2) A judge orders the release or dissemination of the image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest.

Proposed law (C.Cr.P. Art. 234) provides definitions for "booking photograph" and "publish-for-pay publication or website".

Proposed law prohibits a law enforcement officer from providing a copy of a booking photograph in any format to a person requesting a copy of the booking photograph if the law

enforcement officer reasonably believes that the person requesting a copy will publish the booking photograph on a publish-for-pay publication or website.

Proposed law provides that a person who requests a copy of a booking photograph from a law enforcement officer shall, at the time of making the request, submit a written statement signed by the person requesting the copy that affirms that the copy of the booking photograph will not be placed in a publish-for-pay publication or website. Provides that a person who submits a false written statement under this Subsection is subject to prosecution under present law (R.S. 14:125).

Proposed law provides that except as provided in proposed law, a publish-for-pay publication or website shall remove and destroy a booking photograph of an individual who submits a request for removal and destruction within 30 calendar days after the day on which the individual makes the request.

Proposed law provides that a publish-for-pay publication or website shall not require payment of a fee greater than \$50 for removal or destruction of the booking photograph.

Proposed law provides that any publish-for-pay publication or website that seeks any fee or amount greater than \$50 for the removal or destruction of a booking photograph shall be subject to prosecution under present law (R.S. 14:66).

Proposed law provides that if the publish-for-pay publication or website does not remove and destroy the booking photograph in accordance with proposed law, the publish-for-pay publication or website shall be liable for both of the following:

- (1) All costs, including reasonable attorney fees, resulting from any legal action that an individual brings in relation to the failure of the publish-for-pay publication or website to remove and destroy the booking photograph.
- (2) A civil penalty of \$50 per day for each day after the 30-day deadline that the booking photograph is visible or publicly accessible in the publish-for-pay publication or website.

Proposed law provides that a publish-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 publish-for-pay publication or website does not remove and destroy the booking photograph, the publish-for-pay publication or website shall be liable for both of the following:

- (1) All costs, including reasonable attorney fees, resulting from any legal action that the individual brings in relation to the failure of the publish-for-pay publication or publish-for-pay website to remove and destroy the booking photograph.
- (2) A civil penalty of \$100 per day for each day after the seven-day deadline that the booking photograph is visible or publicly accessible in the publish-for-pay publication or on the publish-for-pay website.

Proposed law provides that the provisions of proposed law shall apply to a defendant in any criminal proceeding.

(Amends R.S. 44:4.1(B)(38); Adds R.S. 44:4(64) and C.Cr.P. Art. 234)