

2022 Regular Session

HOUSE BILL NO. 729

BY REPRESENTATIVES DUPLESSIS, BOYD, BRASS, BRYANT, WILFORD
CARTER, FISHER, FREEMAN, GAINES, GREEN, HUGHES, JEFFERSON,
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MARCELLE, NEWELL, PIERRE, SELDERS, STAGNI, AND WILLARD

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

1 AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 44:4.1(B)(38) is hereby amended and reenacted to read as follows:

10 §4.1. Exceptions

11 B. The legislature further recognizes that there exist exceptions, exemptions,
12 and limitations to the laws pertaining to public records throughout the revised
13 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
14 limitations are hereby continued in effect by incorporation into this Chapter by
15 citation:

16 * * *

1 (38) Code of Criminal Procedure Articles 103, ~~234~~, 877, 894, Title XXXIV
2 of the Code of Criminal Procedure comprised of Articles 971 through 995, Title
3 XXXV of the Code of Criminal Procedure comprised of Articles 1001 through 1004

4 * * *

5 Section 2. Code of Criminal Procedure Article 234 is hereby enacted to read as
6 follows:

7 Art. 234. Booking photographs

8 A. As used in this Article:

9 (1) "Booking photograph" means a photograph or image of an individual that
10 is generated for identification purposes when the individual is booked into a
11 correctional facility and any photograph or image of an individual taken by a law
12 enforcement officer or agency while the individual was being arrested or in custody.

13 (2) "Remove-for-pay publication or website" means a publication that
14 requires the payment of a fee or other valuable consideration in order to remove or
15 delete a booking photograph from the publication or which utilizes the publication
16 of booking photographs for profit or to obtain advertising revenue.

17 B. A booking photograph shall not be subject to the Public Records Law.

18 C.(1) A law enforcement officer or agency shall not provide a copy of a
19 booking photograph in any format to a person requesting a copy of the booking
20 photograph.

21 (2) No law enforcement officer or agency shall publish, release, or
22 disseminate in any format a booking photograph to the public or to a private person
23 or entity unless one of the following occurs:

24 (a) The individual is a fugitive, and a law enforcement officer or agency
25 determines that releasing or disseminating the booking photograph will assist in
26 apprehending the individual.

27 (b) A law enforcement officer or agency determines that the individual is a
28 an imminent threat to an individual or to public safety and determines that releasing

1 or disseminating the booking photograph will assist in reducing or eliminating the
2 threat.

3 (c) A judge of a court of competent jurisdiction orders the release or
4 dissemination of the booking photograph based on a finding that the release or
5 dissemination is in furtherance of a legitimate interest.

6 (d) The individual is convicted of the crime for which he was arrested.

7 (3) Notwithstanding the provisions of Paragraph (2) of this Subsection, a law
8 enforcement officer or agency shall provide a copy of a booking photograph to the
9 individual who is the subject of the booking photograph or to the counsel of record
10 for the individual upon request.

11 D. The publication of a booking photograph of a Louisiana resident
12 constitutes minimum contact with the state and by doing so, the party shall be subject
13 to the jurisdiction of Louisiana courts.

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

18 (a) The individual in the booking photograph was acquitted of the criminal
19 charge or not prosecuted, or the individual had the criminal charge expunged,
20 vacated, or pardoned.

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

23 (2)(a) A remove-for-pay publication or website shall not require payment for
24 removal or destruction of the booking photograph.

25 (b) Any remove-for-pay publication or website that seeks any fee or other
26 valuable consideration for the removal or destruction of a booking photograph shall
27 be subject to prosecution under R.S. 14:66.

28 (2) If the remove-for-pay publication or website does not remove and destroy
29 the booking photograph, the remove-for-pay publication or website shall be liable

1 for all costs, including reasonable attorney fees, resulting from any legal action that
2 the individual brings in relation to the failure of the remove-for-pay publication or
3 remove-for-pay website to remove and destroy the booking photograph.

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

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 Reengrossed

2022 Regular Session

Duplessis

Abstract: Limits the release and dissemination of booking photographs of an arrested person.

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 provides that a booking photograph as defined in proposed law shall not be subject to the Public Records Law and prohibits a law enforcement officer or agency from publishing, releasing, or disseminating a booking photograph 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.

Proposed law (C.Cr.P. Art. 234) 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)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Prohibit a law enforcement officer or agency from releasing a booking photograph except under specified circumstances.
2. Remove provisions requiring law enforcement to determine whether a person requesting a booking photograph intended to publish the photograph to a remove-for-pay publication or website and requiring statements from requesting persons and possible prosecution for the crime of making a false statement related thereto.
3. Remove provisions relative to a mechanism for criminal defendants to have booking photographs removed within 30 days from remove-for-pay publications or websites for fees.
4. Prohibit a remove-for-pay website or publication from seeking a fee or other valuable consideration for remove of booking photograph of a person who is acquitted, not prosecuted or had the charge expunged, vacated, or pardoned.
5. Provide that the publication of the booking photograph subjects the party to the jurisdiction of La. courts.

6. Remove civil penalties.
7. Change definitions and terms and make technical changes.
8. Make proposed law effective upon signature of the governor.