

GREEN SHEET REDIGEST

HB 729

2022 Regular Session

Duplessis

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

DIGEST

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 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 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 or if there is no criminal litigation related to the arrest that is pending or reasonably anticipated.
- (5) The individual is charged with a crime of violence.
- (6) The booking photograph is part of a law enforcement file solely because the subject of the booking photograph was filler.

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 removal 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.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the reengrossed bill

1. Remove prohibition on applicability of the Public Records Law.
2. Provide additional grounds for the release of a booking photograph.
3. Make technical changes.