

ACT No. 494

HOUSE BILL NO. 729

BY REPRESENTATIVES DUPLESSIS, BOYD, BRASS, BRYANT, WILFORD
CARTER, FISHER, FREEMAN, GAINES, GREEN, HUGHES, JEFFERSON,
JENKINS, TRAVIS JOHNSON, JORDAN, LANDRY, LARVADAIN, LYONS,
MARCELLE, NEWELL, PIERRE, SELDERS, STAGNI, AND WILLARD

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§4.1. Exceptions

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

* * *

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

* * *

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

3 Art. 234. Booking photographs

4 A. As used in this Article:

5 (1) "Booking photograph" means a photograph or still, non-video image of
6 an individual generated by a law enforcement agency for identification purposes
7 after arrest or while in the agency's custody.

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

12 B. Except as provided in this Article, a law enforcement officer or agency
13 shall not provide a copy of a booking photograph in any format to a person
14 requesting a copy of that photograph.

15 C.(1) No law enforcement officer or agency shall publish, release, or
16 disseminate in any format a booking photograph to the public or to a private person
17 or entity unless any of the following occurs:

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

21 (b) A law enforcement officer or agency determines that the individual is an
22 imminent threat to an individual or to public safety and determines that releasing or
23 disseminating the booking photograph will assist in reducing or eliminating the
24 threat.

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

28 (d) The individual is convicted of or pleads guilty or nolo contendere to a
29 crime, lesser crime, or lesser included offense as defined in Article 558 in response

1 to the same crime for which he was arrested or if there is criminal litigation related
2 to the same crime that is pending or reasonably anticipated.

3 (e) The individual is charged with a crime of violence as defined in R.S.
4 14:2(B), except stalking, or charged with any of the following offenses:

5 (i) Sex offenses as defined in R.S. 15:541.

6 (ii) Human trafficking offenses as defined in R.S. 14:46.2 and 46.3.

7 (iii) Offenses affecting the health and morals of minors, R.S. 14:91 et seq.

8 (iv) Offenses affecting the health and safety of person with infirmities,
9 R.S.14:93.3 et seq.

10 (v) Video voyeurism.

11 (vi) Cruelty to animals.

12 (vii) Dogfighting.

13 (2) Notwithstanding the provisions of Subparagraph (1) of this Paragraph,
14 a law enforcement officer or agency shall provide a copy of a booking photograph
15 to the individual who is the subject of the booking photograph or to the counsel of
16 record for the individual upon request.

17 (3) A booking photograph published, released, or disseminated by a law
18 enforcement officer or agency, except after the subject of the booking photograph
19 being found guilty or pleading guilty or nolo contendere as provided in
20 Subsubparagraph (B)(1)(d) of this Paragraph, shall include a disclaimer that states
21 "all persons are presumed innocent until proven guilty".

22 (4) No law enforcement agency or employee thereof shall be subject to civil
23 action or be held liable when the publication, release, or dissemination was made by
24 mistake of fact or error, or was inadvertent and made in good faith.

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

28 E.(1) A remove-for-pay publication or website shall remove and destroy a
29 booking photograph of an individual who submits a request for removal and

1 destruction within seven calendar days from the day that the individual makes the
2 request if both of the following conditions exist:

3 (a) The individual in the booking photograph was acquitted of the criminal
4 charge or not prosecuted, or the individual had the criminal charge expunged,
5 vacated, or pardoned.

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

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

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

13 (2) If the remove-for-pay publication or website does not remove and destroy
14 the booking photograph, the remove-for-pay publication or website shall be liable
15 for all costs, including reasonable attorney fees, resulting from any legal action that
16 the individual brings in relation to the failure of the remove-for-pay publication or
17 remove-for-pay website to remove and destroy the booking photograph.

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.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____