

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO
UNOFFICIAL PREAMENDED VERSION

With Proposed L.003

LLS NO. 13-0650.01 Brita Darling x2241

SENATE BILL 13-117

SENATE SPONSORSHIP

Balmer,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101

CONCERNING INCREASING TRANSPARENCY IN CRIMINAL ACTIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill prohibits the court from closing any portion of a preliminary hearing to the public in a criminal action unless a party requests closure and the court finds that closure is necessary to advance a compelling governmental interest, that the order is narrowly tailored to advance that interest, that closure will be effective in protecting the interest, and that the court has considered all reasonable alternatives to exclusion of the public from any portion of the hearing and has found

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

those alternatives inadequate.

The bill removes criminal courts and judicial districts from the statutory list of "criminal justice agencies" that are subject to the provisions of state statute governing access to criminal justice records.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) The public enjoys a presumptive right of access, under both the
5 Colorado and United States constitutions, to attend criminal court
6 proceedings _____;

7 (b) This presumptive right of public access to these proceedings
8 _____ advances the goals of holding government institutions accountable
9 to the people they serve, assisting the truth-finding process in criminal
10 proceedings, and promoting public confidence in the process and
11 outcomes of the criminal justice system;

12 (c) The United States Supreme Court has held that judicial
13 proceedings in criminal cases, including both trials and preliminary
14 hearings, are subject to the presumptive right of public access under the
15 First Amendment to the United States constitution, see, e.g., *Richmond*
16 *Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) (First Amendment
17 right of public access applies to criminal trial); *Press-Enterprise Co. v.*
18 *Superior Ct.*, 464 U.S. 50 (1984) (First Amendment right of public access
19 applies to jury voir dire); *Press-Enterprise Co. v. Super. Ct. of Cal.*, 478
20 U.S. 1 (1986) (First Amendment right of public access applies to
21 preliminary hearings); and *El Vocero de Puerto Rico v. Puerto Rico*, 508
22 U.S. 147 (1993) (same);

23 (d) Further, both the Colorado Supreme Court and United States

1 Supreme Court have held that no portion of any such proceeding may be
2 closed to the public without express judicial findings that closure is
3 necessary to advance a compelling governmental interest of the highest
4 order, that closure would be effective in advancing that interest, that
5 closure is narrowly tailored to advancing that interest, and that no
6 reasonable alternative to closure is available that will adequately protect
7 that interest;

8 (e) In 1979, in *Star Journal Publishing Company v. County Court*,
9 591 P.2d 1028 (Colo. 1979), the Colorado Supreme Court rejected a
10 criminal defendant's request that his preliminary hearing be closed to the
11 public, recognizing that the public's constitutional right to attend the
12 proceedings outweighed the defendant's request in that case; and

13 (f) Moreover, in the *Star Journal Publishing* case, the Colorado
14 Supreme Court expressly adopted the American Bar Association's
15 Standard for Criminal Justice 8-3.2, which in its present form prohibits
16 a court from closing a criminal proceeding or sealing any portion of the
17 court file, absent findings on the record that: (1) disclosure of information
18 poses a substantial probability of harm to the fairness of the trial or
19 another compelling state interest; (2) sealing or closure will effectively
20 prevent the aforesaid harm; and (3) there is no less restrictive alternative
21 reasonably available to prevent the aforesaid harm; _____

22 _____
23 (2) Therefore, the general assembly finds and declares that
24 preliminary hearings should be open to the public unless the court
25 makes specific findings that closure is necessary to advance a compelling
26 governmental interest, that the order is narrowly tailored to advance that
27 interest, that closure will be effective, and that the court has considered

1 all reasonable alternatives to exclusion of the public from any portion of
2 the hearing and has expressly found those alternatives inadequate to
3 protect the compelling governmental interest.

4

5 **SECTION 2.** In Colorado Revised Statutes, 16-5-301, add (1.5)
6 as follows:

7 **16-5-301. Preliminary hearing or waiver - dispositional**
8 **hearing.** (1.5) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION,
9 A PRELIMINARY HEARING SHALL BE OPEN TO THE PUBLIC UNLESS THE
10 COURT MAKES SPECIFIC FINDINGS THAT CLOSURE IS NECESSARY TO
11 ADVANCE A COMPELLING GOVERNMENTAL INTEREST, THAT THE ORDER IS
12 NARROWLY TAILORED TO PROTECT THAT INTEREST, THAT CLOSURE WILL
13 BE EFFECTIVE IN PROTECTING THAT INTEREST, AND THAT THE COURT HAS
14 CONSIDERED ALL REASONABLE ALTERNATIVES TO EXCLUSION OF THE
15 PUBLIC FROM ANY PORTION OF THE HEARING AND HAS FOUND THOSE
16 ALTERNATIVES INADEQUATE TO PROTECT THE COMPELLING
17 GOVERNMENTAL INTEREST.

18

19 **SECTION 3. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly (August
22 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
23 referendum petition is filed pursuant to section 1 (3) of article V of the
24 state constitution against this act or an item, section, or part of this act
25 within such period, then the act, item, section, or part will not take effect
26 unless approved by the people at the general election to be held in

- 1 November 2014 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.

