

First Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0650.01 Brita Darling x2241

SENATE BILL 13-117

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SENATE SPONSORSHIP

Balmer,

HOUSE SPONSORSHIP

(None),

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Senate Committees  
Judiciary

House Committees

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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.

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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 and to inspect records on file with the court in connection  
7 with such proceedings;

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

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

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

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

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

23 (g) There has been some confusion and uncertainty among trial  
24 court judges in this state in applying the above standards because judicial  
25 records in criminal cases have previously been defined as "criminal  
26 justice records" under the "Colorado Criminal Justice Records Act",  
27 which imposes a deferential standard of "contrary to the public interest"

1 on custodians of criminal justice records other than those defined as  
2 "records of official action".

3 (2) Therefore, the general assembly finds and declares that  
4 preliminary hearings should be open to the public unless any party to the  
5 proceeding moves to close a portion of the hearing and the court makes  
6 specific findings that closure is necessary to advance a compelling  
7 governmental interest, that the order is narrowly tailored to advance that  
8 interest, that closure will be effective, and that the court has considered  
9 all reasonable alternatives to exclusion of the public from any portion of  
10 the hearing and has expressly found those alternatives inadequate to  
11 protect the compelling governmental interest.

12 (3) Further, the general assembly hereby finds and concludes that:

13 (a) Removing judicial records from the ambit of the "Colorado  
14 Criminal Justice Records Act" will remove any ambiguity and uncertainty  
15 that the standard set forth above, as adopted by the Colorado Supreme  
16 Court in *Star Journal Publishing Company v. County Court*, 591 P.2d  
17 1028 (Colo. 1979), shall govern all instances in which a member of the  
18 public seeks to inspect records on file in the court in connection with any  
19 criminal prosecution; and

20 (b) "Records of official actions" should continue to be available  
21 for public inspection and copying from criminal court clerks in this state,  
22 both as a matter of common sense and under the standards set forth  
23 above; access to such records will no longer be sought pursuant to the  
24 "Colorado Criminal Justice Records Act" from a court of law. Moreover,  
25 records of official action shall remain available for inspection under the  
26 "Colorado Criminal Justice Records Act" from any criminal justice  
27 agency having possession, custody, or control of such records.

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

3           **16-5-301. Preliminary hearing or waiver - dispositional**  
4 **hearing.** (1.5) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION,  
5 A PRELIMINARY HEARING SHALL BE OPEN TO THE PUBLIC UNLESS ANY  
6 PARTY TO THE PROCEEDING MOVES TO CLOSE A PORTION OF THE HEARING  
7 AND THE COURT MAKES SPECIFIC FINDINGS THAT CLOSURE IS NECESSARY  
8 TO ADVANCE A COMPELLING GOVERNMENTAL INTEREST, THAT THE ORDER  
9 IS NARROWLY TAILORED TO PROTECT THAT INTEREST, THAT CLOSURE WILL  
10 BE EFFECTIVE IN PROTECTING THAT INTEREST, AND THAT THE COURT HAS  
11 CONSIDERED ALL REASONABLE ALTERNATIVES TO EXCLUSION OF THE  
12 PUBLIC FROM ANY PORTION OF THE HEARING AND HAS FOUND THOSE  
13 ALTERNATIVES INADEQUATE TO PROTECT THE COMPELLING  
14 GOVERNMENTAL INTEREST.

15           **SECTION 3.** In Colorado Revised Statutes, 24-72-302, **amend**  
16 (3) as follows:

17           **24-72-302. Definitions.** As used in this part 3, unless the context  
18 otherwise requires:

19           (3) "Criminal justice agency" means ~~any court with criminal~~  
20 ~~jurisdiction and~~ any agency of the state, including but not limited to the  
21 department of education, or any agency of any county, city and county,  
22 home rule city and county, home rule city or county, city, town, territorial  
23 charter city, governing boards of institutions of higher education, school  
24 district, special district, ~~judicial district~~, or law enforcement authority that  
25 performs any activity directly relating to the detection or investigation of  
26 crime; the apprehension, pretrial release, posttrial release, prosecution,  
27 correctional supervision, rehabilitation, evaluation, or treatment of

1 accused persons or criminal offenders; or criminal identification activities  
2 or the collection, storage, or dissemination of arrest and criminal records  
3 information.

4 **SECTION 4. Act subject to petition - effective date.** This act  
5 takes effect at 12:01 a.m. on the day following the expiration of the  
6 ninety-day period after final adjournment of the general assembly (August  
7 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a  
8 referendum petition is filed pursuant to section 1 (3) of article V of the  
9 state constitution against this act or an item, section, or part of this act  
10 within such period, then the act, item, section, or part will not take effect  
11 unless approved by the people at the general election to be held in  
12 November 2014 and, in such case, will take effect on the date of the  
13 official declaration of the vote thereon by the governor.