

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0709.01 Michael Dohr

HOUSE BILL 09-1251

HOUSE SPONSORSHIP

Kefalas, McCann

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE DISCLOSURE OF CRIMINAL JUSTICE RECORDS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Creates a presumption that a criminal justice record involving an investigation should be a public record unless the custodian determines that the disclosure would be contrary to the public interest based on the following factors:

- ! The purpose sought for releasing the records and whether the release or use would violate local, state, or federal law;
- ! The nature of the public interest involved;
- ! Whether the requested records contain the identity of informants not otherwise known that cannot be redacted;

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.*

! Whether the release of the requested records would hamper or prejudice a law enforcement action or an ongoing criminal investigation; and

! Whether the release of the requested records would expose legal investigatory techniques not otherwise known to the general public.

In a hearing in district court concerning a denial of disclosure of a criminal justice record, requires the court to determine whether the denial was proper considering the stated presumption and factors and applying a preponderance of the evidence standard.

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

2 **SECTION 1.** 24-72-305 (7), Colorado Revised Statutes, is
3 amended, and the said 24-72-305 is further amended BY THE
4 ADDITION OF A NEW SUBSECTION, to read:

5 **24-72-305. Allowance or denial of inspection - grounds -**
6 **procedure - appeal.** (5.5) WHEN DETERMINING WHETHER DISCLOSURE
7 WOULD BE CONTRARY TO THE PUBLIC INTEREST, THERE SHALL BE A
8 PRESUMPTION THAT THE DISCLOSURE IS IN THE PUBLIC INTEREST AND THE
9 CUSTODIAN SHALL CONSIDER THE FOLLOWING FACTORS IN DETERMINING
10 WHETHER THE DISCLOSURE IS CONTRARY TO THE PUBLIC INTEREST:

11 (a) THE PURPOSE SOUGHT FOR RELEASING THE REQUESTED
12 CRIMINAL JUSTICE RECORDS AND WHETHER THE RELEASE OR USE OF THE
13 RECORDS WOULD VIOLATE LOCAL, STATE, OR FEDERAL LAW;

14 (b) THE NATURE OF THE PUBLIC INTEREST INVOLVED;

15 (c) WHETHER THE REQUESTED CRIMINAL JUSTICE RECORDS
16 CONTAIN THE IDENTITY OF INFORMANTS NOT OTHERWISE KNOWN, WHICH
17 INFORMATION CANNOT BE REDACTED FROM THE REQUESTED RECORDS;

18 (d) WHETHER THE RELEASE OF THE REQUESTED CRIMINAL JUSTICE
19 RECORDS WOULD HAMPER OR PREJUDICE A LAW ENFORCEMENT ACTION OR
20 AN ONGOING CRIMINAL INVESTIGATION; AND

1 (e) WHETHER THE RELEASE OF THE REQUESTED CRIMINAL JUSTICE
2 RECORDS WOULD EXPOSE LEGAL INVESTIGATORY TECHNIQUES NOT
3 OTHERWISE KNOWN TO THE GENERAL PUBLIC.

4 (7) Any person denied access to inspect any criminal justice
5 record covered by this part 3 may apply to the district court of the district
6 wherein the record is found for an order directing the custodian of ~~such~~
7 THE record to show cause why ~~said~~ THE custodian should not permit the
8 inspection of ~~such~~ THE record. A hearing on ~~such~~ THE application shall
9 be held at the earliest practical time. AT THE HEARING, THE COURT SHALL
10 DETERMINE BASED ON A PREPONDERANCE OF THE EVIDENCE WHETHER THE
11 DENIAL OF THE INSPECTION WAS PROPER. IN DETERMINING WHETHER THE
12 DENIAL OF THE INSPECTION WAS PROPER, THE COURT SHALL CONSIDER THE
13 PRESUMPTION AND FACTORS LISTED IN SUBSECTION (5.5) OF THIS SECTION.
14 Unless the court finds that the denial of inspection was proper, it shall
15 order the custodian to permit ~~such~~ THE inspection and, upon a finding that
16 the denial was arbitrary or capricious, it may order the custodian to pay
17 the applicant's court costs and attorney fees in an amount to be
18 determined by the court. Upon a finding that the denial of inspection ~~of~~
19 ~~a record of an official action~~ was arbitrary or capricious, the court may
20 also order the custodian personally to pay to the applicant a penalty in an
21 amount not to exceed twenty-five dollars for each day that access was
22 improperly denied.

23 **SECTION 2. Act subject to petition - effective date.** This act
24 shall take effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly that is
26 allowed for submitting a referendum petition pursuant to article V,
27 section 1 (3) of the state constitution, (August 4, 2009, if adjournment

1 sine die is on May 6, 2009); except that, if a referendum petition is filed
2 against this act or an item, section, or part of this act within such period,
3 then the act, item, section, or part, if approved by the people, shall take
4 effect on the date of the official declaration of the vote thereon by
5 proclamation of the governor.