

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0184.01 Michael Dohr x4347

HOUSE BILL 15-1101

HOUSE SPONSORSHIP

Lawrence and Fields,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MAKING THE RECORDS OF CERTAIN STATE LEGAL
102 DEFENSE ATTORNEY AGENCIES SUBJECT TO THE COLORADO
103 OPEN RECORDS ACT.

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>.)

Current law exempts the judicial department from the Colorado open records act (act). The bill makes the records of the state public defender and office of alternate defense counsel in the judicial department subject to the act, except for records that are privileged attorney-client records.

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.

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 office of the state public defender and the office of
5 alternate defense counsel are state agencies of the judicial department
6 established by statute;

7 (b) The majority of the budgets for the office of the state public
8 defender and the office of alternate defense counsel comes from public
9 funds appropriated by the general assembly;

10 (c) In response to requests made pursuant to the Colorado open
11 records act related to how it expends appropriated funds, the office of the
12 state public defender has denied the requests, indicating that it is a
13 judicial agency and is exempted from compliance with the Colorado open
14 records act;

15 (d) The public has an interest in how appropriated funds are
16 expended by any state agency, and it is necessary to amend the Colorado
17 open records act to clarify that the act applies to the office of the state
18 public defender and the office of alternate defense counsel when either
19 office receives a request to inspect, copy, or photograph any records in
20 the possession of that office related to the expenditure of appropriated
21 and other public funds; and

22 (e) This act is not intended to require the inspection, copying, or
23 photographing of office of the state public defender or office of alternate
24 defense counsel records when the records relate to or contain confidential
25 attorney-client communications or information or work product that falls
26 within the ambit of the "work product doctrine".

1 **SECTION 2.** In Colorado Revised Statutes, 24-72-202, **amend**
2 (6) (a) (I), (6) (b) (XII), and (6) (b) (XIII); and **add** (6) (b) (XIV) as
3 follows:

4 **24-72-202. Definitions.** As used in this part 2, unless the context
5 otherwise requires:

6 (6) (a) (I) "Public records" means and includes all writings made,
7 maintained, or kept by the state; any agency, INCLUDING THE OFFICE OF
8 THE STATE PUBLIC DEFENDER AND THE OFFICE OF ALTERNATE DEFENSE
9 COUNSEL; institution; a nonprofit corporation incorporated pursuant to
10 section 23-5-121 (2), C.R.S.; or political subdivision of the state, or that
11 are described in section 29-1-902, C.R.S., and held by any
12 local-government-financed entity for use in the exercise of functions
13 required or authorized by law or administrative rule or involving the
14 receipt or expenditure of public funds.

15 (b) "Public records" does not include:

16 (XII) Information security audit and assessment reports prepared
17 pursuant to section 24-37.5-403 (2) (d) or 24-37.5-404.5 (2) (d); ~~or~~

18 (XIII) The information provided to the state medical marijuana
19 licensing authority pursuant to section 25-1.5-106 (7) (e), C.R.S.; OR

20 (XIV) ANY COMMUNICATION BETWEEN A CLIENT AND HIS OR HER
21 ATTORNEY OR THE ATTORNEY'S AGENT MADE DURING THE COURSE OF THE
22 ATTORNEY-CLIENT RELATIONSHIP, OR ANY OTHER INFORMATION DERIVED
23 FROM SUCH COMMUNICATION OBTAINED DURING THE COURSE OF SUCH
24 RELATIONSHIP, OR ANY MATERIALS PREPARED BY THE ATTORNEY OR THE
25 ATTORNEY'S AGENT IN ANTICIPATION OF LITIGATION OR FOR TRIAL, OR THE
26 CONTENTS OF ANY CLIENT FILE ACQUIRED OR PREPARED IN ANTICIPATION
27 OF LITIGATION.

1 **SECTION 3.** In Colorado Revised Statutes, 24-72-204, **add** (1)
2 (e) as follows:

3 **24-72-204. Allowance or denial of inspection - grounds -**
4 **procedure - appeal - definitions.** (1) The custodian of any public
5 records shall allow any person the right of inspection of such records or
6 any portion thereof except on one or more of the following grounds or as
7 provided in subsection (2) or (3) of this section:

8 (e) SUCH INSPECTION WOULD REVEAL COMMUNICATION BETWEEN
9 A CLIENT AND HIS OR HER ATTORNEY OR THE ATTORNEY'S AGENT MADE
10 DURING THE COURSE OF THE ATTORNEY-CLIENT RELATIONSHIP, OR ANY
11 OTHER INFORMATION DERIVED FROM SUCH COMMUNICATION OBTAINED
12 DURING THE COURSE OF SUCH RELATIONSHIP, OR ANY MATERIALS
13 PREPARED BY THE ATTORNEY OR THE ATTORNEY'S AGENT IN ANTICIPATION
14 OF LITIGATION OR FOR TRIAL, OR THE CONTENTS OF A CLIENT FILE
15 ACQUIRED OR PREPARED IN ANTICIPATION OF LITIGATION. NOTHING IN THIS
16 SECTION SHALL BE CONSTRUED AS PROHIBITING THE DISCLOSURE OF
17 PUBLIC RECORDS WITHIN THE OFFICE OF THE STATE PUBLIC DEFENDER OR
18 THE OFFICE OF ALTERNATE DEFENSE COUNSEL.

19 **SECTION 4. 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 5, 2015, if adjournment sine die is on May 6, 2015); 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 2016 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.