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

CONCERNING MAKING THE RECORDS OF CERTAIN STATE LEGAL DEFENSE ATTORNEY AGENCIES SUBJECT TO THE COLORADO 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.
Be it enacted by the General Assembly of the State of Colorado:

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

(a) The office of the state public defender and the office of alternate defense counsel are state agencies of the judicial department established by statute;

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

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

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

(e) This act is not intended to require the inspection, copying, or photographing of office of the state public defender or office of alternate defense counsel records when the records relate to or contain confidential attorney-client communications or information or work product that falls within the ambit of the "work product doctrine".
SECTION 2. In Colorado Revised Statutes, 24-72-202, amend

(6) (a) (I), (6) (b) (XII), and (6) (b) (XIII); and add (6) (b) (XIV) as follows:

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

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

(b) "Public records" does not include:

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

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

(XIV) ANY COMMUNICATION BETWEEN A CLIENT AND HIS OR HER ATTORNEY OR THE ATTORNEY'S AGENT MADE DURING THE COURSE OF THE ATTORNEY-CLIENT RELATIONSHIP, OR ANY OTHER INFORMATION DERIVED FROM SUCH COMMUNICATION OBTAINED DURING THE COURSE OF SUCH RELATIONSHIP, OR ANY MATERIALS PREPARED BY THE ATTORNEY OR THE ATTORNEY'S AGENT IN ANTICIPATION OF LITIGATION OR FOR TRIAL, OR THE CONTENTS OF ANY CLIENT FILE ACQUIRED OR PREPARED IN ANTICIPATION OF LITIGATION.
SECTION 3. In Colorado Revised Statutes, 24-72-204, add (1) (e) as follows:

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

(e) Such inspection would reveal communication between a client and his or her attorney or the attorney's agent made during the course of the attorney-client relationship, or any other information derived from such communication obtained during the course of such relationship, or any materials prepared by the attorney or the attorney's agent in anticipation of litigation or for trial, or the contents of a client file acquired or prepared in anticipation of litigation. Nothing in this section shall be construed as prohibiting the disclosure of public records within the office of the state public defender or the office of alternate defense counsel.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in
November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.