

CHAPTER 426

COURTS

HOUSE BILL 23-1182

BY REPRESENTATIVE(S) Epps and Mabrey, Bacon, Garcia, Marshall, Sharbini, Woodrow, Boesenecker, Brown, Dickson, English, Gonzales-Gutierrez, Hamrick, Jodeh, Joseph, Kipp, Lieder, Lindsay, Lindstedt, Michaelson Jenet, Ortiz, Parenti, Ricks, Sirota, Soper, Titone, Velasco, Vigil, Weissman, Willford, Young, McCluskie, Amabile, Froelich, Herod, Martinez, Valdez; also SENATOR(S) Fields and Gardner, Buckner, Cutter, Exum, Jaquez Lewis, Liston, Marchman, Moreno, Priola, Roberts, Smallwood, Sullivan, Van Winkle, Winter F.

AN ACT**CONCERNING A REQUIREMENT FOR REMOTE PUBLIC ACCESS TO OBSERVE CRIMINAL COURT PROCEEDINGS.**

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

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

(a) It is the public policy of the state of Colorado to maximize transparency and accessibility of criminal court proceedings;

(b) The Colorado judicial branch increased transparency in 2020 when it facilitated expanded access to remote observation of criminal court proceedings in every judicial district;

(c) Continued access to remote court observation remains inconsistent and unpredictable, both within and between jurisdictions; and

(d) All Coloradans benefit from consistent, predictable access to observe criminal court proceedings remotely.

(2) Therefore, it is the intent of the general assembly to increase transparency and ensure consistent, predictable statewide access for the public to remotely observe criminal proceedings held in open court.

SECTION 2. In Colorado Revised Statutes, 13-1-132, **add** (3.5) as follows:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

13-1-132. Use of interactive audiovisual devices and communication technology in court proceedings. (3.5) (a) ALL COLORADO COURTS, INCLUDING MUNICIPAL COURTS, SHALL MAKE ANY CRIMINAL COURT PROCEEDING CONDUCTED IN OPEN COURT AVAILABLE FOR REMOTE PUBLIC VIEWING AND LISTENING IN REAL TIME, AT NO COST TO THE PUBLIC, THROUGH AN ONLINE PLATFORM, WHICH MAY INCLUDE A PARTICIPATORY WEB CONFERENCING PLATFORM, AND POST PROMINENTLY ON THE COURT'S WEBSITE THE LINKS FOR REMOTE OBSERVATION, UNLESS:

(I) THE COURTROOM DOES NOT HAVE SUFFICIENT TECHNOLOGICAL CAPABILITY, SUCH AS A PARTICIPATORY WEB CONFERENCING PLATFORM, TO MAKE SUCH PROCEEDINGS AVAILABLE TO THE PUBLIC FOR REMOTE OBSERVATION;

(II) MEMBERS OF THE PUBLIC HAVE BEEN EXCLUDED FROM THE CRIMINAL PROCEEDING BY ORDER OF THE COURT;

(III) TECHNOLOGY, STAFFING, OR INTERNET ISSUES LIMIT OR PREVENT REMOTE OBSERVATION; OR

(IV) AFTER A REQUEST BY A PARTY, WITNESS, OR VICTIM, OR ON THE COURT'S OWN MOTION, THE COURT MAKES FINDINGS ON THE RECORD BASED ON THE PARTICULAR FACTS AND CIRCUMSTANCES OF THE CASE THAT:

(A) THERE IS A REASONABLE LIKELIHOOD REMOTE OBSERVATION OF LIVE PROCEEDINGS RISKS COMPROMISING THE SAFETY OF ANY PERSON; THE DEFENDANT'S RIGHT TO A FAIR TRIAL, INCLUDING VIOLATIONS OF SEQUESTRATION ORDERS; OR THE VICTIM'S RIGHTS PURSUANT TO SECTION 24-4.1-302.5 (1)(a); AND

(B) THERE IS NO LESS RESTRICTIVE ALTERNATIVE THAT PRESERVES THE PUBLIC INTEREST IN REMOTE OBSERVATION WHILE MITIGATING THE IDENTIFIED RISK. AS USED IN THIS SUBSECTION (3.5)(a)(IV)(B), "LESS RESTRICTIVE ALTERNATIVE" INCLUDES ALLOWING REMOTE AUDIO-ONLY OBSERVATION WHILE DISABLING VIDEO OBSERVATION OR TURNING OFF REMOTE OBSERVATION FOR PARTICULAR WITNESSES OR DISCRETE PORTIONS OF THE PROCEEDING.

(b) AS USED IN THIS SECTION, "RISKS COMPROMISING THE SAFETY" INCLUDE RISKS TO PHYSICAL AND EMOTIONAL SAFETY, INTIMIDATION, AND HARASSMENT.

(c) WHEN ALLOWING REMOTE OBSERVATION, COURTS SHALL TAKE REASONABLE STEPS TO ENSURE THERE IS NO AUDIO OR VISUAL RECORDING, INCLUDING PHOTOGRAPHY OR SCREENSHOTS OF THE PROCEEDINGS, WITHOUT EXPLICIT PERMISSION OF THE COURT. AS USED IN THIS SUBSECTION (3.5)(c), "REASONABLE STEPS" MUST INCLUDE AN ON-SCREEN WARNING THAT ANY RECORDING OF THE PROCEEDINGS WITHOUT A COURT ORDER, INCLUDING ANY SCREEN CAPTURE, PHOTOGRAPH, OR AUDIOVISUAL RECORDING, IS PROHIBITED. "REASONABLE STEPS" MAY ALSO INCLUDE THE COURT ISSUING AN ADDITIONAL VERBAL OR ON-SCREEN WARNING AND PROHIBITING REMOTE OBSERVATION BY SPECIFIC INDIVIDUALS WHOM THE COURT HAS REASON TO BELIEVE MAY VIOLATE THIS RULE.

(d) WHEN ALLOWING REMOTE OBSERVATION, COURTS SHALL TAKE REASONABLE STEPS TO ENSURE NO AUDIO OR VISUAL TRANSMISSION OF PRIVILEGED,

CONFIDENTIAL COMMUNICATIONS OCCURS. TO HELP FACILITATE PRIVILEGED, CONFIDENTIAL COMMUNICATIONS IN THE COURTROOM, COURTS SHALL NOTIFY PARTIES AND ATTORNEYS OF THE LOCATION OF MICROPHONES AND ANY ABILITY TO MUTE MICROPHONES. IF THE COURT BECOMES AWARE THAT SUCH TRANSMISSIONS OCCURRED, THE COURT SHALL WORK WITH THE PARTIES AND ATTORNEYS TO PREVENT REOCCURRENCE.

(e) IF A PROCEEDING SUBJECT TO A SEQUESTRATION ORDER IS MADE AVAILABLE FOR PUBLIC REMOTE OBSERVATION, THE COURT SHALL TAKE REASONABLE STEPS TO ENSURE COMPLIANCE WITH THE SEQUESTRATION ORDER AND ENSURE THE RIGHT TO A FAIR TRIAL, WHICH MAY INCLUDE:

(I) ANNOUNCING THE SEQUESTRATION ORDER AS FREQUENTLY AS NECESSARY IN OPEN COURT;

(II) REQUIRING OBSERVERS TO IDENTIFY THEMSELVES TO ENSURE NONE ARE POTENTIAL WITNESSES AND THAT ANY OBSERVERS WHO ARE FORBIDDEN FROM DISCUSSING THE CASE WITH WITNESSES KNOW OF THAT OBLIGATION;

(III) AT THE REQUEST OF A PARTY, ALLOWING THE COURT OR PARTY TO INQUIRE OF ANY WITNESS, WHILE UNDER OATH AND OUTSIDE THE PRESENCE OF THE JURY, IF THE WITNESS WATCHED ANY PORTION OF THE PROCEEDING OR DISCUSSED ANY PORTION OF THE PROCEEDING WITH ANYONE PRIOR TO TESTIFYING; AND

(IV) TERMINATING REMOTE OBSERVATION TO PROTECT THE PARTIES' RIGHT TO A FAIR TRIAL OR TO ENSURE COMPLIANCE WITH THE SEQUESTRATION ORDER.

(f) FOR CRIMINAL COURTS THAT DO NOT HAVE SUFFICIENT EXISTING STAFF OR TECHNOLOGICAL CAPABILITIES TO MAKE PROCEEDINGS AVAILABLE FOR REMOTE OBSERVATION AS OF THE EFFECTIVE DATE OF THIS SUBSECTION (3.5), IF THE COURT SUBSEQUENTLY OBTAINS SUCH STAFF AND CAPABILITIES, THE COURT MUST COMPLY WITH THE PROVISIONS OF THIS SECTION WITHIN NINETY DAYS AFTER OBTAINING SUCH STAFF AND CAPABILITIES.

(g) THIS SUBSECTION (3.5) DOES NOT APPLY TO JUVENILE DELINQUENCY CASES PURSUANT TO TITLE 19 OR TO CASES IN WHICH A JUVENILE HAS BEEN CHARGED BY DIRECT FILING OF INFORMATION OR AN INDICTMENT IN DISTRICT COURT PURSUANT TO SECTION 19-2.5-801 UNTIL THE COMPLETION OF A PRELIMINARY HEARING AND COMPLETION OF ANY HEARING REQUESTING TO TRANSFER THE CASE TO JUVENILE COURT PURSUANT TO SECTION 19-2.5-801 (4).

SECTION 3. In Colorado Revised Statutes, **amend** 13-10-103 as follows:

13-10-103. Applicability. This article 10 applies to and governs the operation of municipal courts in the cities and towns of this state. Except for the provisions relating to the method of salary payment for municipal judges, the incarceration of children pursuant to sections 19-2.5-305 and 19-2.5-1511, the appearance of the parent, guardian, or lawful custodian of any child under eighteen years of age who is charged with a municipal offense as required by section 13-10-111, the right to a trial by jury for petty offenses pursuant to section 16-10-109, relief from improperly entered guilty pleas pursuant to section 18-1-410.6, MAKING CRIMINAL

COURT PROCEEDING CONDUCTED IN OPEN COURT AVAILABLE FOR REMOTE PUBLIC VIEWING AND LISTENING IN REAL TIME, rules of procedure promulgated by the supreme court, and appellate procedure, this article 10 may be superseded by charter or ordinance enacted by a home rule city.

SECTION 4. Act subject to petition - effective date. This act takes effect September 1, 2023; 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 the ninety-day period after final adjournment of the general assembly, 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 7, 2023