

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-845)
109TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1728, L.D. 1847, Bill,
"AN ACT to Declare the Right of the Public to Attend Judicial
Proceedings."

Amend the Bill by striking out all of the Title and
inserting in its place the following:

'AN ACT to Declare the Right of the Public to Attend Certain
Pretrial Criminal Proceedings.'

Further amend the Bill by striking out everything after
the amending clause and inserting in its place the following:

'§457. Open pretrial criminal proceeding

1. Definition of pretrial proceeding. As used in this
section, the term "pretrial proceeding" means an appearance
before the court at which both parties are present and motions
are heard, witnesses testify or evidence is presented, when
the appearance occurs after the beginning of the initial
appearance of the accused and before the swearing in of the
jury or, in a jury waived trial, before the calling of the
first witness.

2. Open proceedings. Except as provided by statute, the
general public may not be excluded from a pretrial criminal
proceeding at which the court hears a motion to exclude
evidence from trial, unless the court finds a substantial
likelihood that:

A. ~~injury or damage to the accused's~~
right to a fair trial will result from conducting the
proceeding in public;

B. Alternatives to closure will ^{not} protect the
accused's right to a fair trial; and

C. Closure will protect against the perceived injury or damage.

3. Exceptions. Nothing in this section may be
construed:

A. To limit the powers of courts to maintain decorum
by ordering unruly spectators removed from the
courtroom, by reasonably limiting the number of
spectators or by exercising similar powers of judges
at common law; or

B. To require that a proceeding to determine the validity
of a claim of evidentiary privilege ^{as provided by} / the Maine Rules
of Evidence be open to the public.'

Statement of Fact

The purpose of this amendment is to clarify the terms of the bill and to clearly establish a general principle that pretrial proceedings will be open to the public, with narrow exceptions to protect the defendant's rights.

The opinions in Gannett v. DePasquale raised questions about the grounds for closing pretrial proceedings to the public and the defendant's rights. Though the dicta in various opinions sought to resolve these questions, the decision left them unresolved with possibly conflicting

interpretations. This amendment is intended to express the Legislature's understanding of the law and the principle of open court proceedings. It will resolve the questions and express a clear statement of policy, while providing explicit guidelines to apply that policy.

Reported by the Majority of the Committee on Judiciary
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