

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1847

H. P. 1728

House of Representatives, January 22, 1980

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Simon of Lewiston.

Cosponsor: Mrs. Sewall of Newcastle.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Declare the Right of the Public to Attend Judicial Proceedings.

Be it enacted by the People of the State of Maine, as follows:

15 MRSA § 457 is enacted to read:

§ 457. Open court proceedings

1. **Open proceedings.** Except as provided in section 3307, the general public may not be excluded from any pretrial criminal proceedings, unless the accused demonstrates a substantial probability that:

A. Irreparable damage to his right to a fair trial will result from conducting the proceeding in public;

B. Alternatives to closure will not adequately protect his right to a fair trial; and

C. Closure will be effective in protecting against the perceived harm.

2. **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, reasonably limiting the number of spectators or exercising similar powers of judges at common law; or

B. To prevent protective measures or showings in camera as provided for by the Maine Rules of Evidence for the evaluation of claims of evidentiary privilege.

STATEMENT OF FACT

In a 5 - 4 decision last summer, **Gannett v. DePasquale**, the U.S. Supreme Court declined to hold that the Constitution prevented a judge from conducting a pretrial criminal proceeding in secret, without a showing that secrecy was necessary to protect the defendant's right to a fair trial. Lawyers and judges throughout the country have taken this decision as a cue to demand and conduct secret proceedings, including secret trials. Even the justices who participated in the decision have publicly disagreed with each other concerning its meaning.

This bill would restate what had been presumed to be the law before the Gannett decision. i.e., that the state's business before the courts must be conducted in public unless closure is necessary and effective to protect a criminal defendant's right to a fair trial.