

APPENDIX 1



Substitute House Bill No. 6419

Public Act No. 09-194

AN ACT CONCERNING THE POLICIES, PRACTICES AND PROCEDURES OF THE DEPARTMENT OF CHILDREN AND FAMILIES AND A PILOT PROGRAM TO INCREASE PUBLIC ACCESS TO JUVENILE PROCEEDINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2009*) The Commissioner of Children and Families shall submit, in accordance with the provisions of section 11-4a of the general statutes and within available appropriations, an annual report to the select committee of the General Assembly having cognizance of matters relating to children regarding (1) the results of Connecticut comprehensive objective reviews conducted by the Department of Children and Families, including any recommendations contained in such reviews and any steps taken by the department to implement such recommendations; (2) the aggregate data from each administrative case review, including any information regarding the strengths and deficiencies of the department's case review process; and (3) any steps the department is taking to address department-wide deficiencies.

Sec. 2. (NEW) (*Effective October 1, 2009*) The Commissioner of Children and Families shall (1) determine measurable outcomes for each type of service provided by a private provider pursuant to such

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provider's contract with the Department of Children and Families; (2) incorporate such outcomes into the department's contract with each such provider; and (3) include achievement of such outcomes and other quality indicators in annual evaluations of each such provider. The department shall, annually, submit a report, in accordance with section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to human services on the department's progress in implementing such steps, including (A) the number of service types with outcomes, (B) the types of outcomes, (C) the incorporation of such outcomes into contracts, and (D) the application of outcome information into quality improvement.

Sec. 3. (NEW) (*Effective October 1, 2009*) The Department of Children and Families shall include the following information in each document of the department entitled study in support of permanency plan and status report for permanency planning team, except when otherwise directed by the Juvenile Court: (1) A description of any problems or offenses that necessitated the placement of the child with the department; (2) a description of the type and an analysis of the effectiveness of the care, treatment and supervision that the department has provided for the child; (3) for each child in substitute care, the current visitation schedule between the child and his parents and siblings; (4) a description of every effort taken by the department to reunite the child with a parent or to find a permanent placement for the child, including, where applicable, every effort to assist each parent in remedying factors that contributed to the removal of the child from the home; (5) a proposed timetable for reunification of the child and a parent, a permanent placement if continued substitute care is recommended or a justification of why extended substitute care is necessary; and (6) whether the child has been visited no less frequently than every three months by a state or private agency if the child has been placed in foster care outside this state.

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Sec. 4. Section 46b-129 of the general statutes is amended by adding subsection (r) as follows (*Effective October 1, 2010*):

(NEW) (r) In any proceeding under this section, the Department of Children and Families shall provide notice to every attorney of record for each party involved in the proceeding when the department seeks to transfer a child or youth in its care, custody or control to an out-of-state placement.

Sec. 5. Section 46b-122 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) All matters which are juvenile matters, as provided in section 46b-121, shall be kept separate and apart from all other business of the Superior Court as far as is practicable, except matters transferred under the provisions of section 46b-127, which matters shall be transferred to the regular criminal docket of the Superior Court. [Any] Except as provided in subsection (b) of this section, any judge hearing a juvenile matter may, during such hearing, exclude from the room in which such hearing is held any person whose presence is, in the court's opinion, not necessary, except that in delinquency proceedings, any victim shall not be excluded unless, after hearing from the parties and the victim and for good cause shown, which shall be clearly and specifically stated on the record, the judge orders otherwise. For the purposes of this section, "victim" means a person who is the victim of a delinquent act, a parent or guardian of such person, the legal representative of such person or an advocate appointed for such person pursuant to section 54-221.

(b) The Judicial Department shall establish, in a superior court for juvenile matters location designated by the Chief Court Administrator, a pilot program to increase public access to proceedings in which a child is alleged to be uncared for, neglected, abused or dependent or is the subject of a petition for termination of parental rights. In any

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proceeding under this subsection, the judge may order on a case-by-case basis that such proceeding be kept separate and apart and heard in accordance with subsection (a) of this section, upon motion of any party for good cause shown. After consultation with the Juvenile Access Pilot Program Advisory Board established pursuant to section 6 of this act, the Judicial Department shall adopt policies and procedures for the operation of the pilot program.

(c) Nothing in this section shall be construed to affect the confidentiality of records of cases of juvenile matters as set forth in section 46b-124.

Sec. 6. (*Effective from passage*) (a) There is established a Juvenile Access Pilot Program Advisory Board. The board shall consist of the following members:

(1) The Chief Court Administrator, or the Chief Court Administrator's designee;

(2) An attorney who represents children in proceedings in which a child is alleged to be uncared for, neglected, abused or dependent, appointed by the Speaker of the House of Representatives;

(3) An attorney who serves as a guardian ad litem in proceedings in the juvenile court, appointed by the president pro tempore of the Senate;

(4) A member or former member of the media who has experience reporting on juvenile matters, appointed by the majority leader of the House of Representatives;

(5) An attorney who represents parents in proceedings in which a child is alleged to be uncared for, neglected, abused or dependent, appointed by the majority leader of the Senate;

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(6) A judge of the Superior Court assigned to hear juvenile matters, appointed by the Chief Justice of the Supreme Court;

(7) An assistant attorney general assigned to the Child Protection Unit within the Office of the Attorney General, appointed by the Attorney General;

(8) An attorney who represents children and parents under a contract with the Chief Child Protection Attorney, appointed by the minority leader of the House of Representatives;

(9) An employee of the Department of Children and Families from the division of the department that provides child welfare services, appointed by the Commissioner of Children and Families;

(10) A social worker employed by the Department of Children and Families who, at the time of appointment, has experience working directly with children and families on behalf of the department, appointed by the minority leader of the Senate;

(11) The Chief Child Protection Attorney, or the Chief Child Protection Attorney's designee;

(12) The Child Advocate, or the Child Advocate's designee;

(13) The Chief State's Attorney, or the Chief State's Attorney's designee; and

(14) The Chief Public Defender, or the Chief Public Defender's designee.

(b) All appointments to the board shall be made not later than thirty days after the effective date of this section. Any vacancy shall be filled by the appointing authority.

(c) The Chief Court Administrator and the attorney appointed

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pursuant to subdivision (2) of subsection (a) of this section shall serve as chairpersons of the advisory board. The chairpersons shall schedule the first meeting of the board, which shall be held not later than sixty days after the effective date of this section.

(d) The Juvenile Access Pilot Program Advisory Board shall (1) review methods used in other states to increase public access to juvenile court proceedings of a similar nature to proceedings subject to the pilot program; (2) monitor the progress made by the Judicial Department in implementing the pilot program pursuant to section 46b-122 of the general statutes, as amended by this act; (3) not later than December 31, 2010, submit written recommendations concerning the pilot program to the Judicial Department and the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary and human services, in accordance with section 11-4a of the general statutes, with respect to such implementation and the pilot program; and (4) provide consultation to the Judicial Department pursuant to subsection (b) of section 46b-122 of the general statutes, as amended by this act, regarding policies and procedures adopted pursuant to said section.

(e) The board shall terminate on January 1, 2011.

Sec. 7. (*Effective October 1, 2009*) The Judicial Department shall conduct a comprehensive review of the pilot program established pursuant to section 46b-122 of the general statutes, as amended by this act. Not later than December 31, 2010, the Chief Court Administrator shall submit a report on such comprehensive review and the pilot program, in accordance with section 11-4a of the general statutes, to the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary and human services. At a minimum, the report shall include: (1) An assessment of the pilot program's effectiveness in balancing the interest in public access to proceedings included in the pilot program against the best interests of

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the children who are the subject of such proceedings; and (2) a recommendation on whether, and to what extent, the pilot program should be continued at the established juvenile matters location or expanded to other juvenile matters locations in the state.

APPENDIX 2

PILOT STANDING ORDER

PILOT PROGRAM TO INCREASE PUBLIC ACCESS TO CHILD PROTECTION PROCEEDINGS

CHILD PROTECTION SESSION AT MIDDLETOWN

HON. CHRISTINE E. KELLER, CHIEF ADMINISTRATIVE JUDGE

HON. JAMES BENTIVEGNA, PRESIDING JUDGE, CHILD PROTECTION SESSION AT MIDDLETOWN

EFFECTIVE FEBRUARY 16, 2010

(a) Pursuant to Section 5 of P.A. 09-194 and proposed Superior Court Rule 1-11D, the chief court administrator is establishing a pilot program to increase public access to trial proceedings in juvenile matters in which a child is alleged to be uncared for, neglected, abused or dependent or is the subject of a petition for termination of parental rights, except as otherwise provided by law or as hereinafter precluded or limited, and subject to the limitations set forth in Practice Book §§ 1-10B and 32a-7 and General Statutes §46b-124. The pilot program shall be located at the Child Protection Session in the Judicial District of Middlesex, 1 Court Street, Middletown, Connecticut 06457.

(b) As used in this standing order, the term "trial proceeding" shall mean the final hearing on the merits of any juvenile matter not involving evidence or allegations of the sexual abuse of a child which concerns: (1) an order of temporary custody pursuant to Practice Book §33a-7(d) or (e); (2) a petition alleging a child to be uncared for, neglected, abused or dependent; or (3) a petition for termination of parental rights. A trial proceeding shall be deemed to include all courtroom proceedings on any contested motion for review of permanency plan, motion to revoke commitment or motion to transfer guardianship which has been consolidated with the underlying proceeding for the final hearing on the merits. A trial proceeding shall commence with the swearing in of the first witness.

(c) Except as provided in this standing order or as otherwise provided by law, effective February 16, 2010, all trial proceedings in the pilot program at the Child Protection Session shall be presumed to be open to the public.

(d) Upon written motion of any party, guardian ad litem, witness or other interested person, or upon its own motion, the judicial authority may at any time,

prior to or during a trial proceeding, order that public access to all or any portion of the trial proceedings be denied or limited if the judicial authority concludes that there is good cause for the issuance of such an order. In determining if good cause has been shown to deny or limit public access to a trial proceeding under this standing order, the judicial authority shall consider the child's best interest, the safety, legal rights and privacy concerns of any person which may be affected by the granting or denial of the motion, and the integrity of the judicial process. Where good cause has been shown, the court may, in fashioning its order, consider whether there is any reasonable alternative to the issuance of an order limiting or denying public access to protect the interest to be served. An agreement of the parties to deny or limit public access to the trial proceeding shall not constitute a sufficient basis for the issuance of such an order.

(e) The burden of proving that public access to any trial proceeding governed by this standing order should be denied or limited shall be on the person who seeks such relief. Accordingly, any person moving for such relief, other than the judicial authority when acting upon its own motion, shall support the motion with an accompanying memorandum of law stating all known grounds upon which it is claimed that such relief should be granted. The motion and memorandum shall be served on all parties of record and be filed with the court, where they shall become parts of the confidential record of the underlying proceeding pursuant to General Statutes §46b-124. Absent good cause shown, such motion and memorandum shall be served and filed not less than fourteen days before the trial proceeding is scheduled to begin, except that if the trial proceeding concerns a contested order of temporary custody case, they shall be served and filed not less than two days before the trial proceeding is scheduled to begin.

(f) Upon the filing of any motion to deny or limit public access to a trial proceeding governed by this standing order, or upon the determination of the judicial authority, upon its own motion, that the ordering of such relief should be considered, the judicial authority shall schedule a hearing on the motion and shall, where practicable, post a notice of the hearing on the judicial website so that all interested persons can attend the hearing and present appropriate legal arguments in support of or opposition to the motion. Such notice shall set forth the date, time, location and the general subject matter of the hearing, and shall identify the underlying proceedings solely by reference to the first name and first initial of the last name of the child who is the subject of the proceeding or, if the proceeding involves more than one child, by reference to the first name and first initial of the last name of the eldest of the children involved. All memoranda of law and other written submissions in support of or in opposition to the motion shall be served on all parties of record and be filed with the pilot court, where they shall become part of the confidential record of the underlying proceeding pursuant to General Statutes §46b-124.

(g) Notwithstanding the confidentiality of the motion to deny or limit public access, the accompanying memorandum, and all memoranda of law and other written

submissions in support of or in opposition to the motion, the hearing on the motion shall be conducted in open court. Any person whose rights may be affected by the granting or denial of the motion, including any media representative, may attend and be heard at the hearing in the manner permitted by the judicial authority, but shall not be allowed intervening party status. The hearing shall be conducted by the judicial authority in a manner consistent with maintaining the confidentiality of the records of the underlying proceeding and protecting the interests for which denial or limitation of public access has been sought. At the conclusion of the hearing, the judicial authority shall announce its ruling on the motion in open court. If and to the extent that the judicial authority determines that public access to the trial proceeding should be denied or limited in any way, it shall articulate the good cause upon which it finds that such relief is necessary, shall specify the facts upon which it bases that finding, and shall order that a transcript of its decision become a part of the confidential record of the underlying proceeding pursuant to General Statutes §46b-124. If, however, and to the extent that it further determines that any such articulation of good cause or specification of factual findings would reveal information that any interested person is entitled to keep confidential, then the judicial authority shall make such articulation and specification in a signed writing, which shall be filed with the court and become part of the confidential record of the underlying proceeding pursuant to General Statutes §46b-124. The decision shall be final.

(h) Prior to the commencement of any trial proceeding accessible to the public, the judicial authority shall hold a pretrial conference with counsel for all parties to anticipate, evaluate and resolve prospective problems with the conduct of an open proceeding and to ensure compliance with the protective provisions of subsection (d) of this standing order.

(i) The efficacy of this pilot program shall be evaluated by the Rules Committee of the Superior Court on or before December 31, 2010. The Rules Committee shall receive recommendations from the chief court administrator, the juvenile access pilot program advisory board and other sources. Counsel and parties attending and participating in trial proceedings at the Child Protection Session will be provided with surveys seeking voluntary information and comment on the pilot program as part of the evaluation process.

APPENDIX 3

§ 1-11D. Pilot Program to Increase Public Access to Child Protection Proceedings

(a) Pursuant to this section, the chief court administrator shall establish a pilot program to increase public access to trial proceedings in juvenile matters in which a child is alleged to be uncared for, neglected, abused or dependent or is the subject of a petition for termination of parental rights, except as otherwise provided by law or as hereinafter precluded or limited, and subject to the limitations set forth in section 1-10B, section 32a-7 and General Statutes § 46b-124. The pilot program shall be in a single district or session of the superior court for juvenile matters, to be chosen by the chief court administrator based on the following considerations:

- (1) the age, size and ability of the courthouse facility to accommodate public access to available courtrooms, security and costs;
- (2) the volume of cases at such facility and the assignment of judges to the juvenile district;
- (3) the likelihood of the occurrence of significant proceedings of interest to the public in the juvenile district;
- (4) the proximity of the juvenile district to the major media organizations and to the organizations or entities providing coverage; and
- (5) the proximity of such facility to the Judicial Branch administrative offices.

(b) As used in this section, the term "trial proceeding" shall mean the final hearing on the merits of any juvenile matter not involving evidence or allegations of the sexual abuse of a child which concerns: (1) an order of temporary custody pursuant to section 33a-7 (d) or (e); (2) a petition alleging a child to be uncared for, neglected, abused or dependent; or (3) a petition for termination of parental rights. A trial proceeding shall be deemed to include all courtroom proceedings on any contested motion for review of permanency plan, motion to revoke commitment or motion to transfer guardianship which has been consolidated with the underlying proceeding for the final hearing on the merits. A trial proceeding shall commence with the swearing in of the first witness.

(c) Except as provided in this section or as otherwise provided by law, all trial proceedings in the pilot program shall be presumed to be open to the public.

(d) Upon written motion of any party, guardian ad litem, witness or other interested person, or upon its own motion, the judicial authority may at any time, prior to or during a trial proceeding, order that public access to all or any portion of the trial proceeding be denied or limited if the judicial authority concludes that there is good cause for the issuance of such an order. In determining if good

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cause has been shown to deny or limit public access to a trial proceeding under this section, the judicial authority shall consider the child's best interest, the safety, legal rights, and privacy concerns of any person which may be affected by the granting or denial of the motion, and the integrity of the judicial process. Where good cause has been shown, the court may, in fashioning its order, consider whether there is any reasonable alternative to the issuance of an order limiting or denying public access to protect the interest to be served. An agreement of the parties to deny or limit public access to the trial proceeding shall not constitute a sufficient basis for the issuance of such an order.

(e) The burden of proving that public access to any trial proceeding governed by this section should be denied or limited shall be on the person who seeks such relief. Accordingly, any person moving for such relief, other than the judicial authority when acting upon its own motion, shall support the motion with an accompanying memorandum of law stating all known grounds upon which it is claimed that such relief should be granted. The motion and memorandum shall be served on all parties of record and be filed with the court, where they shall become parts of the confidential record of the underlying proceeding pursuant to General Statutes § 46b-124. Absent good cause shown, such motion and memorandum shall be served and filed not less than fourteen days before the trial proceeding is scheduled to begin, except that if the trial proceeding concerns a contested order of temporary custody case, they shall be served and filed not less than two days before the trial proceeding is scheduled to begin.

(f) Upon the filing of any motion to deny or limit public access to a trial proceeding governed by this section, or upon the determination of the judicial authority, upon its own motion, that the ordering of such relief should be considered, the judicial authority shall schedule a hearing on the motion and shall, where practicable, post a notice of the hearing on the judicial website so that all interested persons can attend the hearing and present appropriate legal arguments in support of or opposition to the motion. Such notice shall set forth the date, time, location and the general subject matter of the hearing, and shall identify the underlying proceeding solely by reference to the first name and first initial of the last name of the child who is the subject of the proceeding or, if the proceeding involves more than one child, by reference to the first name and first initial of the last name of the eldest of the children involved. All memoranda of law and other written submissions in support of or in opposition to the motion shall be served on all parties of record and be filed with the court, where they shall become part of the confidential record of the underlying proceeding pursuant to General Statute § 46b-124.

(g) Notwithstanding the confidentiality of the motion to deny or limit public access, the accompanying memorandum, and all memoranda of law and other written submissions in support of or in opposition to the motion, the hearing on the motion shall be conducted in open court. Any person whose rights may be affected by the granting or denial of the motion, including any media

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representative, may attend and be heard at the hearing in the manner permitted by the judicial authority, but shall not be allowed intervening party status. The hearing shall be conducted by the judicial authority in a manner consistent with maintaining the confidentiality of the records of the underlying proceeding and protecting the interests for which denial or limitation of public access has been sought. At the conclusion of the hearing, the judicial authority shall announce its ruling on the motion in open court. If and to the extent that the judicial authority determines that public access to the trial proceeding should be denied or limited in any way, it shall articulate the good cause upon which it finds that such relief is necessary, shall specify the facts upon which it bases that finding, and shall order that a transcript of its decision become a part of the confidential record of the underlying proceeding pursuant to General Statutes § 46b-124. If, however, and to the extent that it further determines that any such articulation of good cause or specification of factual findings would reveal information that any interested person is entitled to keep confidential, then the judicial authority shall make such articulation and specification in a signed writing, which shall be filed with the court and become part of the confidential record of the underlying proceeding pursuant to General Statute § 46b-124. The decision shall be final.

(h) Prior to the commencement of any trial proceeding accessible to the public, the judicial authority shall hold a pretrial conference with counsel for all parties to anticipate, evaluate and resolve prospective problems with the conduct of an open proceeding and to ensure compliance with the protective provisions of subsection (d).

(i) The Rules Committee shall evaluate the efficacy of this section on or before December 31, 2010, and shall receive recommendations from the chief court administrator, the juvenile access pilot program advisory board and other sources.

CREDIT(S)

[Adopted March 26, 2010, effective April 15, 2010.]

APPENDIX 4

1. Middletown Child Protection Session (CPS), Juvenile Access Pilot Program

The Office of the Chief Court Administrator and the Juvenile Access Pilot Program Advisory Board are conducting a study to evaluate the pilot program presumptively opening child protection hearings to the public at the Middletown Child Protection Session.

You recently participated in a court hearing at the Middletown Child Protection Session.

Please take a few minutes to complete the following survey about your court hearing experience. Your participation is voluntary. You may skip any question that you do not wish to answer. Your responses will be completely confidential and will be combined with the responses of others who participate. The results will be reported in summary form and will only be used for research purposes.

If you have any questions or technical difficulties, please contact Marilou Giovannucci at marilou.giovannucci@jud.ct.gov or (860) 263-2734 Ext. 3058

1. Please identify the role that best describes you in the court hearing. (Check any/all that apply, example: Check both Attorney for the Minor Child and Guardian Ad Litem for the Minor Child if you are appointed in both roles.)

- Lawyer for Parent
- Attorney and Guardian ad Litem for the Minor Child
- Lawyer for Minor Child
- Lawyer for Intervening Party
- Assistant Attorney General
- Guardian ad Litem for the Minor Child
- Guardian Ad Litem for the Parent
- Parent/Legal Guardian
- Intervening Party (for example: family relative)
- Media representative
- DCF employee
- Court staff

1a. For Lawyers for Minor Child(ren) Only: How old is/are the child(ren) for whom you are the lawyer?

| | |
|---------|----------------------|
| Child 1 | <input type="text"/> |
| Child 2 | <input type="text"/> |
| Child 3 | <input type="text"/> |
| Child 4 | <input type="text"/> |
| Child 5 | <input type="text"/> |
| Child 6 | <input type="text"/> |
| Child 7 | <input type="text"/> |
| Child 8 | <input type="text"/> |

1b. For Guardian ad Litem for the Child(ren) Only: How old is/are the child (ren) for whom you are the Guardian ad Litem?

| | |
|---------|----------------------|
| Child 1 | <input type="text"/> |
| Child 2 | <input type="text"/> |
| Child 3 | <input type="text"/> |
| Child 4 | <input type="text"/> |
| Child 5 | <input type="text"/> |
| Child 6 | <input type="text"/> |
| Child 7 | <input type="text"/> |
| Child 8 | <input type="text"/> |

1c. For Media Representative Only: Please list the type of media outlet that best describes your organization:

- Print
- TV/Radio
- Internet/Blog
- Other

Other (please specify)

2. Have you previously had trials at CPS at Middletown prior to the open court pilot?

- Yes
- No

2. About this court hearing

3. Did anyone ask the judge to close the hearing to the public?

- Yes
- No (SKIP TO PAGE 3, QUESTION 8)
- Don't know (SKIP TO PAGE 3, QUESTION 8)

4. Who asked the judge to close the hearing to the public? (Check all that apply)

- Lawyer for Parent
- Lawyer for Minor Child
- Lawyer for Intervening party
- Assistant Attorney General
- Guardian ad Litem for Minor Child
- Guardian ad Litem for Parent
- Parent/Legal Guardian
- Intervening party (for example: family relative)
- Media representative
- DCF employee
- Don't know

5. Who else, if anyone, supported the request that the hearing be closed to the public? (Check all that apply)

- Lawyer for Parent
- Lawyer for Minor Child
- Lawyer for Intervening Party
- Assistant Attorney General
- Guardian ad Litem for Minor Child
- Guardian ad Litem for Parent
- Parent/Legal Guardian
- Intervening Party (for example: family relative)
- Media Representative
- DCF employee
- Don't Know

6. Who, if anyone, disagreed with the request to close the hearing to the public? (Check all that apply)

- Lawyer for Parent
- Lawyer for Minor Child
- Lawyer for Intervening Party
- Assistant Attorney General
- Guardian ad Litem for Minor Child
- Guardian ad Litem for Parent
- Parent/Legal Guardian
- Intervening party (for example: family relative)
- Media Representative
- DCF employee
- Don't Know

3. About closing the hearing

7. Did the judge close the hearing to the public because of the request?

- Yes, all of the hearing was closed
- Yes, part of the hearing was closed
- No
- Don't Know

8. If no one asked to have the hearing closed to the public, did the judge close the hearing anyway?

- Yes, all of the hearing was closed
- Yes, part of the hearing was closed
- No
- Don't Know

9. Why was the hearing closed to the public?

- Involved allegations or evidence of sexual abuse of a child
- Best Interest of the Child
- Safety of any person
- Legal rights of a person or persons
- Privacy concerns of parties
- Integrity of the judicial process
- Don't Know
- Other

If other, please list

4. About the hearing

10. Who came to the court hearing? (Check all that apply)

- Relatives/friends of the family
- Service Providers (for example: therapist, counselor, doctor, mentor, parent aide)
- Foster parent(s)
- Media Representative (for example: newspaper reporters, blogger)
- Child Welfare professionals
- Students/Trainees (for example: law or social work students, DCF trainees)
- Don't Know
- Other

If other, please list

11. How do you think opening the court hearing to the public affected the following:

| | Better | Worse | No Difference | Don't Know |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| Preparation of the Participants | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Efficiency of conducting the Proceedings | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Dignity of the Proceedings | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

If you checked Better or Worse, Please Explain:

5. Questions for Lawyers and Lawyers serving as Guardians ad Litem Only

12. How do you think opening the court hearing to the public affected the following:

| | Better | Worse | No difference | Don't Know |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| Witness testimony | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The content of court statements, reports, or exhibits prepared for the court. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The services offered to the family (for example, counseling, visitation, help with placing child) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

If you checked Better or Worse, Please explain:

13. How do you think opening the hearing to the public affected how long it took to finish the hearing?

- Less time
- More time
- No difference
- Don't know

14. If a media person (for example, a newspaper reporter, blogger) was at the hearing, did that person ask to interview you?

- Yes
- No

15. Did you give an interview to that person?

- Yes
- No

6. Comments or Ideas

16. What comments or ideas do you have about opening the Juvenile Court to the public?

7. Questions for Lawyers serving as Guardians ad Litem and non-lawyer Guardian...

17. Was your client/ward present during any or all of the open court hearing?

- Yes
 No

18. Did you advise your client/ward that the court hearing might be open prior to its commencement?

- Yes
 No

19. Did the judge conduct a pre-trial conference to discuss issues related to opening the hearing to the public?

- Yes
 No

20. Was the pre-trial conference useful?

- Yes
 No

21. Which of the following statements best describes your client's/ward's reaction to the openness of the proceeding?

- My client/ward reacted negatively
 My client/ward reacted positively
 My client/ward reacted neither positively nor negatively

If you chose Negatively or Positively, Please explain:

22. Did your client request that you move to close the proceeding?

- Yes
 No

If Yes, Please explain:

8. Questions for Employees of the Department of Children and Families Only

23. Did opening the court hearing to the public affect your written reports to the court?

- Yes
- No
- Don't Know

If Yes or No, Please explain:

9. Questions for Media Representatives Only

24. Do you feel you were able to get the information you needed from the court hearing?

Yes

No

If No, Please explain:

25. Did your media outlet publicize any of your accounts of the court hearing?

Yes

No

If yes, state where and when:

26. Did you interview any of the hearing participants?

| | Yes | No |
|--|--------------------------|--------------------------|
| Lawyer for Parent | <input type="checkbox"/> | <input type="checkbox"/> |
| Lawyer for Minor Child | <input type="checkbox"/> | <input type="checkbox"/> |
| Lawyer for Intervening Party | <input type="checkbox"/> | <input type="checkbox"/> |
| Assistant Attorney General | <input type="checkbox"/> | <input type="checkbox"/> |
| Guardian ad Litem for Minor Child | <input type="checkbox"/> | <input type="checkbox"/> |
| Guardian ad Litem for Parent | <input type="checkbox"/> | <input type="checkbox"/> |
| Parent/Legal Guardian | <input type="checkbox"/> | <input type="checkbox"/> |
| Intervening party (for example, family relative) | <input type="checkbox"/> | <input type="checkbox"/> |
| DCF employee | <input type="checkbox"/> | <input type="checkbox"/> |

27. Did any of the hearing participants decline to be interviewed?

Yes

No

28. If yes, Who?

- Lawyer for Parent
- Lawyer for Minor Child
- Lawyer for Intervening Party
- Assistant Attorney General
- Guardian ad Litem for Minor Child
- Guardian as Litem for Parent
- Parent/Legal Guardian
- Intervening Party (for example, family relative)
- DCF employee

APPENDIX 5

Focus Group on Access to Juvenile Proceedings Judges Currently Presiding Over Juvenile Matters, except for judges who are assigned to the Middletown Child Protection Session 9/24/10

FOCUS GROUP QUESTIONS & RESPONSES

1. What are your general impressions about the current pilot program?
 - *No one attends –*
 - *No members of the public; no press*
 - *No one cares*
 - *The Pilot Program is in the wrong court/wrong place*
 - *Should be in a local court*
2. Under the current statute, have you ever allowed proceedings to be open to people who are not a party to the case?
If so, can you describe who you have allowed into the courtroom?

- *All the time –*
 - *Family members*
 - *Service providers*
 - *Boyfriend*
 - *Other supporters*
 - *Foster parents*
 - *Relatives*
- *Does anyone keep people out if any of the parties/participants objects?*
 - *Depends upon the circumstances*
 - *Depends upon who is objecting*

3. Are you in favor of public access to child protection proceedings?

- *No -13*
- *Yes - 6*

If yes, why?

- *Would like the public to be more aware of the difficult issues confronted in juvenile court*
- *Public should be aware of reasons people are there*
 - *Poverty*
 - *Social issues*
- *Greater parent accountability*
- *Keep people off DCF's back*

- *Public should know what's happening to the kids*
- *Other court-involved parents should see what happens to parents in these cases*
- *Enhances trust and confidence in the court system*
- *Make legislators come*

If no, why not?

- *Judge must engage parents and kids*
 - *Public viewers limit what the judge can do*
- *Such personal and intimate details come out*
 - *Harmful to the child*
- *Exceptions – Re-accountability*
 - *Let legislators in*
 - *Let the press in for certain cases*
- *Reiterated – harm to the child*
- *Family court is bad enough*
- *Information about the child will get out to the public*
 - *Everyone will know*
- *Would increase the number of trials and decrease the number of agreements*
- *Would affect the candor of the participants*
- *Part of due process is respecting the parents*
 - *Opening court is inherently exploitive*
 - *Should protect the parents from this*
- *Need consistency with records*
- *While people should know what DCF has done, who is going to suffer from disclosure?*
 - *There are other ways to expose DCF's inadequacy*
- *Protect the kids - the subject of juvenile court proceedings*

4. If given an opportunity to make recommendations to the Juvenile Access Pilot Program Advisory Board, which of the following would you recommend. Please indicate your top three recommendations by numbering them 1-3, with 1 being your top recommendation.

A total of 16 answers to this question were returned:

- Ending the current pilot and not allowing any access to Child Protection proceedings.
 - 11 responses chose this as their top choice*
 - 1 response chose this as its second choice*
- Continue the current pilot at Child Protection Session in Middletown on trial proceedings only.
 - 2 responses chose this as their top choice*
 - 5 responses chose this as their second choice*

- c. Continue the current pilot program, but allow public access to all Child Protection matters heard here.
 - 1 response noted this as its top choice*
 - 1 response noted this as its second choice*
 - 1 response noted this as its third choice*

- d. Start a new pilot program in a local Juvenile Matters location for trial proceedings only.
 - 2 responses noted this as their second choice*
 - 3 responses noted this as their third choice*

- e. Start a new pilot program in a local Juvenile Matters location that allows public access to all Child Protection matters.
 - 1 response noted this as its top choice*

- f. Expand public access to all juvenile matters locations for trial proceedings.
 - 1 response noted this as its third choice*

- g. Expand public access to all juvenile matters locations for all Child Protection matters.
 - No one chose this option*

- h. Expand public access to delinquency proceedings.
 - 1 response noted this as its top choice*

Focus Group with Child Protection Session Judges 10-6-10

- 1) How has the current pilot program affected court proceedings at CPS?
 - *Very little impact*
 - *There is no interest. People don't come to the open proceedings*
 - *Last six months or so, no one has attended*
 - *Not much interest. Judge Olear had one case*

- 2) What have been the challenges for you as a judge managing cases under the pilot program?
 - *One important issue is the conflict with the confidentiality requirements of 46b-124, which were not amended to accommodate the pilot program. This puts judges in an unrealistic situation, because confidential information inevitably gets out. If the pilot program continues, 46b-124 should be amended to create a realistic exception for the pilot program*

- 3) Has there been any positive impact of the pilot program? If so, how would you describe the positive outcomes?
 - *Since no one attends, it would be hard to identify a positive impact*
 - *No greater public awareness*
 - *Everyone involved in the proceedings knows no one comes so they have no reason to change their behavior in anticipation of being observed by the public*

- 4) Have there been negative impacts of the pilot program, i.e., cases not referred, parties settling to avoid either filing a motion to limit access or close the courtroom, or having the proceeding open?
 - *It seems as busy as ever*
 - *Eliminating cases involving allegations of sexual abuse has made a big difference here. If they were not excluded, less cases would be referred*
 - *Heard of one lawyer who didn't want case to come here because it would be open, but the case was referred anyway*

- 5) Have you or do you allow people other than parties to a case to attend court hearings at CPS? If so, can you describe who you might allow into the courtroom?
 - *Yes, unless a party has a big issue with it.*

- 6) Are you in favor of public access to child protection proceedings? If yes, why? If no, why not?

Two judges who had not voted at the previous focus group did so – Taking their votes into account the final tally is:

| | |
|-----------------|----|
| Yes – open | 6 |
| No – do no open | 15 |

- *Juvenile court has a unique mission and confidentiality should be honored. The focus is on rehabilitation, and confidentiality is needed to ensure that people feel free to discuss the information needed to allow them to be rehabilitated*
 - *Lots of unintended consequence. There must be a way to expose DCF's failings without jeopardizing kids. Second victimization.*
 - *Opening this up shows a lack of trust in the Judicial Branch's ability to handle these matters. Judges must make extremely difficult and wrenching decisions*
 - *Very difficult system for kids already. The possibility of information coming out makes it even worse.*
 - *Short calendar: unexpected information can easily come out. Dockets are so busy. Impossible to know how it would be dealt with. Can't slow things down to deal with these issues as it would slow the whole system down. So many participants in each case that it is very difficult to schedule continuances*
- 7) If given an opportunity to make recommendations to the Juvenile Access Pilot Program Advisory Board, what would you recommend?
- *Do not continue the program. If you want to learn about child protection cases, look at the decisions, which include extensive recitations of the facts found*
 - *Current statute allows access. Just need better education*
 - *Amend the statute (46b-121) to clarify the court's authority to allow persons not related to the case into proceedings, and make conforming amendments to 46b-124*
 - *If necessary, could do here for another year.*
 - *Agreements need to remain confidential. If they are not, there would be a negative impact on parties' willingness to consent to termination. Many do not tell people that they consented. This would result in delay for the kids.*

Focus Group with CPS Staff 10-18-10

1. How has the current pilot program affected court proceedings at CPS? How has the pilot program affected your work at CPS?
 - *# of proceedings is not down*
 - *The judges' opening advisement and the conference to discuss possible issues take a little more time, but not enough to be significant – 10-15 minutes in all*
 - *Don't have to hold the conference very often, because no one from the public attends*
 - *At first some reporters came, but a few times they were turned away because the case was closed*
 - *Have heard that reporters don't like to come in mid-stream*

Impact on Clerk's Office?

- *Motions to close that have to be scheduled*
 - *E-mail list of open cases to Hartford each week*
 - *Motions to close are often filed in cases with allegations of sexual abuse. There is no need for a motion, as they are not open under the rule, but the motion serves as a notice that there will be allegations of sexual abuse in the case. There is no need for a hearing in these cases – the clerks take the motions the judge to be signed.*
 - *Conferences are not much work*
2. What have been the challenges for you as court staff managing cases under the pilot program?
 - *No challenges*
 3. Has there been any positive impact of the pilot program? If so, how would you describe the positive outcomes?
 - *Negligible – because so few people attend*
 - *It is easier for family members to attend*
 - *Less discussion of whether they should be there*
 4. Have there been negative impacts of the pilot program, i.e. cases not referred, parties settling to avoid either filing a motion to limit access or close the court room, or having the proceeding open?
 - *No – it has not diminished the number of cases referred*
 5. Are you in favor of public access to child protection proceedings?
 - *No opinion expressed*
 - *Staff present felt they did not have enough experience to form an opinion*

What do you think the impact would be if the pilot were expanded to local courts?

- *A lot more work*

- *Short calendar would be extremely chaotic*
 - *Clerks would have to keep track of a lot more*
 - *At CPS, there is one case at a time and everyone knows what is going to happen*
 - *At CPS, the marshals are a great help*
6. If given an opportunity to make recommendations to the Juvenile Access Pilot Program Advisory Board, what would you recommend?
- *The Board should take into consideration the physical layout of the courts – lack of space*
 - *In Middletown Juvenile, there is not even enough room for the parents*
7. Any final thoughts/comments?
- *Judges at the CPS generally let other non-parties come into proceedings, such as foster parents, etc., but exclude people who are not related to the case or the parties*
 - *Access to records would cause a great deal of additional work, as the records would have to be redacted*
 - *It is strange that the motions to close are posted, but the list of open cases is not*
 - *Maybe open cases should be poster on the internet*
 - *Staff were surprised that more people from child advocacy groups had not come*
 - *The pilot has strict guidelines (the Rule), which makes the operation easier. If those guidelines were not in place and it was left up to the judge, they would see lots of motions to close*
 - *That would be a significant burden on the court*

Focus Group with Psychologists 10-25-10

General Comments:

- *Opening child protection matters to the public ignores the harm it will cause to the individuals, for questionable greater good*
 - *General concern about the disclosure they must now give to persons they see*
 - *Without the possibility of public access, they make the disclosure that anything the client says to them may come out during court, and that is already intimidating*
 - *Now they must disclose that it can come out to the general public*
 - *Chilling effect*
 - *It violates the American Psychological Association's code of ethics – psychologists' behavior cannot harm patients*
 - *It is rough surgery – using a crowbar instead of a scalpel*
1. Have you been called to testify in any proceedings at CPS during the open court pilot?
- *Two of them had, but no members of the public or press were there*
 - *Concern – sooner or later, an internet blogger will write about what they heard. The classmates of the child will hear what happened, and it will cause anguish to the child.*
 - *Even those cases involving sexual abuse are excluded, there are many other scenarios that are more egregious than sexual abuse – why pick that out for exclusion?*
2. If you believe that open courts are harmful to children, how do you gauge such harm? Can you give specific examples?
- *A family court case that was widely reported in which the child suffered immensely from the reporting*
 - *Heard from other children what their parents read in the newspaper*
 - *Caused incredible harm*
 - *A case involving a 14 year old who ran away from DCF with her baby that was publicized*
 - *She is now 16 and cannot face going to school*
 - *Clients have said, "I would like to fight this but I can't sit in court and hear people say those things about me – this would make it even worse"*
6. Are you in favor of public access to child protection proceedings?
- *No one present was in favor*
- If no, why not?
- *Privacy is the lynchpin of a psychological evaluation*
 - *This will decrease cooperation by parents in evaluations*
 - *It will color what is reported by psychologists*

- *Example – un-investigated and unsubstantiated allegations of abuse by a family member could come out*
- *Lots of allegations that are made are found not to be true*
- *Increased pressure on parents will cause them to avoid coming to court to defend themselves*
- *A lot of misinformation flies around court, but once it is out in public it is generally accepted as true*
- *Even if it no change is manifested in the proceedings – what about the aftermath?*
- *A Pandora's box that should not be opened*
- *Must distinguish between privacy and secrecy*
 - *In juvenile matters privacy is granted to children to protect them*
 - *The purpose is not to keep matters of public interest secret*
 - *This is not part of moving towards "transparency and openness"*
- *On the other hand – Family matters proceedings are currently open and do involve some very personal matters*
 - *Don't know of enormities occurring there*
 - *Horror was expressed about what was published in the paper about Martha Dean's custody case*
- *The difference is that the whole point of child protection proceedings is protecting the child. This distinguishes these cases from family matters cases*

7. In your professional opinion, do you think are there any possible psychological ramifications, either positive or negative, for children and/or their families of having their case heard in open court? What do you base your opinion on?
- *A complete breach of doctor/patient confidentiality – psychologists could be quoted*
 - *Chilling effect on what the client is willing to talk about*
 - *The families involved in child protection proceedings are extremely vulnerable*
 - *Public dissemination of the information affects the entire family*
 - *Lots of highly confidential highly damaging information will come out*
8. If given an opportunity to make recommendations to the Juvenile Access Pilot Program Advisory Board, what would you recommend?
- *The lack of a meltdown during the pilot program should not lead people to think it should be expanded*
 - *Conduct a focus group of parents*
 - *You will find out that the vast majority do not want the public to come into proceedings*
 - *Have guardians ad litem ask parents if they want proceedings to be open*

APPENDIX 6

**Juvenile Access Pilot Program
Child Protection Session
Effective February 16, 2010**

Note: If you attend a trial proceeding that is open to the public, you may be asked to voluntarily provide limited information to assist in the evaluation of the program.

Please check all categories that apply below:

Intervening Party (type)

Interested Party Relative Foster Parent

Service Provider Attorney for Service Provider

Advocate (type)

Media Outlet Print TV Radio Internet Media Attorney

Student Trainee Intern Assistant

Other

Member of the Public

APPENDIX 7

State Standards for Opening or Closing Juvenile Court Proceedings to Public

Alabama – The general public is excluded by statute, and only the parties, their counsel, witnesses and other persons requested by a party shall be admitted. Other persons as the juvenile court finds to have a proper interest in the case or in the work of the juvenile court may be admitted by the court on condition that the persons refrain from divulging any information which would identify the child or family involved. Ala. Code Ann. §12-15-129.

Alaska – With a number of exceptions, a hearing is open to the public. The following hearings are closed to the public: The initial court hearing after the filing of a petition; a hearing following the initial hearing in which a parent, child, or other party is present but has not had an opportunity to obtain counsel; a hearing, or a part of a hearing, for which the court issues a written order finding that allowing the hearing to be public would reasonably be expected to stigmatize or emotionally damage a child, inhibit a child's testimony, disclose matters otherwise required to be kept confidential by other law or regulation, or interfere with a criminal investigation or a criminal defendant's right to a fair trial. If a hearing is not closed, the court shall hear in camera any information offered regarding the location of a parent, child or other party to the case who is a victim of domestic violence or whose safety or welfare may be endangered by public disclosure. Grandparents and foster parents may attend hearings otherwise closed, but their presence can be limited if they testify. A person attending a hearing open to the public may not disclose a name, picture or other information that would readily lead to the identification of a child. At the beginning of the hearing, the court shall issue an order specifying the restrictions necessary. If a person violates the order, the court may impose sanctions, including contempt and prohibition of attendance at any further hearings. Alaska Statutes §47.10.070.

Arizona – At preliminary protective hearing (subsequent to an OTC), if the court finds that it is in the best interests of the child, the court may allow the following to be present in addition to the parents/counsel/protective services worker: the child, any relative or other interested person with whom the child is or might be placed, witnesses, an advocate or interested person requested by the parent or guardian, other persons who have knowledge of or an interest in the welfare of the child. Ariz. State. §8-824. By court rule, except as otherwise provided pursuant to statute, court proceedings are open. The court may limit the presence of a participant to the time of the participant's testimony. At the first hearing in any case, the court shall ask the parties if there are any reasons the proceedings should be closed. For good cause shown, the court may order any proceeding to be closed. The court shall consider the child's best interests, whether an open proceeding would endanger the child's physical or emotional well-being or safety of any other person, the privacy rights of the child, the child's sibling, parents, guardians and caregivers, whether all parties agree to allow the proceedings to be open and if the child is at least 12, the child's wishes. Arizona Rules of Procedure for the Juvenile Court, Rule 41.

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Arkansas – all hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed, no exceptions. Ark. Code Ann. §9-27-325(i)(1). Possibly updated in 2009.

California – By statute, unless requested by the parent, guardian or minor and consented to by the minor, the public is not admitted. The court may nevertheless admit relatives and anyone the court deems to have a “direct and legitimate” interest in a particular case or work of the court. Cal. Welf. & Inst. Code §346 (1998). By case law, the press has been recognized as a person with a “direct and legitimate” interest. *San Bernardino County Dep’t of Public Social Services v. Superior Court of San Bernardino County*, 283 Cal. Rptr. 332 (Court of Appeal, 4th District, Div. 2 1991). The media can attend on condition that it does not publish the name of the child, any likeness of the child, interview any child w/o attorney present, interview the child’s caretakers in the presence of the child, interview any mental health professional to whom the minor had been referred, and does not do any act which might interfere in the future with reunification or have a negative impact on the provision of reunification services. (The last set of requirements is not in the statute; presumably, it’s in a rule of court.)

Colorado – General public shall not be excluded unless the court determines that doing so is in the best interest of the child or community, and in such an event, court shall admit only those with an interest in the case or the work of the court including those persons the attorney for the state, the child or the parents or guardian wish to be present. Colo. Rev. Stat. Ann. §19-1-106(2).

Delaware – All proceedings before the court are private. However, court may consider publication in the public interest. Del. Code Ann. Tit. 10, §1063.

D.C. – Except in hearings to declare an adult in contempt of court, the general public shall be excluded from hearings. Only persons necessary to the proceedings shall be admitted but the Division may, pursuant to court rule, admit such other persons, including members of the press, as have a proper interest in the case or the work of the court on condition that they refrain from divulging information identifying the child or members of the child’s family involved in the proceedings. Attendees shall be bound by the confidentiality requirements of the law and shall be informed of said requirements and the penalties for their violation. D.C. Code Ann. §§16-2316(e).

Florida – Neglect and OTC proceedings are open. By statute, the court, in its discretion, may close any hearing to the public when the public interest and the welfare of the child are best served by so doing. Proceedings involving TPR, however, are closed. Fla. Rules Juv. P. Rule 8.685(c).

Georgia – The general public shall be excluded and only the parties, their attorneys, witnesses and persons accompanying a party for his/her assistance or any person who the court finds has proper interest in the proceedings or work of the court may be admitted. Court has discretion to open any DISPOSITIONAL hearing to the general public. Ga. Code Ann. §15-11-78.

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Hawaii – General public is excluded. Only those whose presence is requested by the parent or guardian or the judge finds to have a direct interest in the case, from the standpoint of the child, or in the work of the court may be admitted. Upon request by a party, hearings may be open to public if a judge determined that doing so is in the best interests of the child. Parties can be accompanied by “adult advocates” (not necessarily attorneys) to provide support unless court finds that would not be in the child’s best interests. Haw. Rev. State. §571-41.

Idaho – The general public is excluded. Only such persons who have a direct interest in the case may be admitted. Idaho Code §16-1613.

Illinois – General public excluded from any hearing except for the news media, representatives of agencies and associations who in the opinion of the court have a direct interest in the case or in the work of the court. However, the court may, for the child’s safety and protection and for good cause shown, prohibit any person or agency present in court from further disclosing the child’s identity. Ill. Comp. Stat. Ann. §405/1-6.

Indiana – Proceedings are presumed open. Court has discretion to close and may consider: the nature of the allegations or defense, the age and psychological maturity of the child or victim and the desire of the child or victim to testify in a closed proceeding. Ind. Code Ann. §§31-32-6-2 & 31-32-6-5.

Iowa – Hearings are presumed open to the general public unless the court, on motion of any of the parties or upon the court’s own motion, shall exclude the public from a hearing. The court may exclude the public if it determines that the possibility of damage or harm to the child outweighs the public’s interest in having an open hearing. Upon closure, the court may still admit those who have a direct interest in the case or work of the court. Iowa Code Ann. §232.92.

Kansas – All hearings shall be open to the public unless the judge determines that opening the hearing to the public is not in the best interests of the victim or of any juvenile who at the time of the alleged offense was less than 16 years of age. If the court determines that opening the court to the public is not in the best interest of the juvenile, the court may exclude all persons except the juvenile, the juvenile’s parents, attorneys for parties, officers of the court, the witness testifying and the victim and members of the victim’s family. Upon agreement of all parties, the court shall allow other persons to attend the hearing unless the court finds the presence of such persons would be disruptive to the proceedings. Kansas Stat. §38-2353. This statute does not appear to apply to child protection proceedings. An earlier provision, §38-1552, was repealed in 2007.

Kentucky – The general public shall be excluded, and only the immediate families or guardians of the parties before the court, witnesses, the probation officer, the victim or his representative, such persons as the judge shall find have a direct interest in the case or in the work of the court and such other persons as agreed to by the child and his attorney may be admitted. Parent, legal guardian or spouse who may physically disrupt the

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proceedings or may do violence to any participant may be excluded. Ky. Rev. Stat. Ann. §610.070(3).

Louisiana – The child, his parents, counsel, the district attorney, authorized officials of the court, agency representatives, CASA volunteer and the witness under examination may be present. The court shall not admit any other person into the courtroom unless the court has determined that the person has a proper interest in or is necessary to the proceedings. La. Children's Code Art. 661.

Maine – All child protection proceedings are closed to the public by statute unless the court orders otherwise. No standard. Me. Rev. Stat. tit.22, §4007.

Maryland - In any proceedings in which a child is alleged to be in need of assistance or in any voluntary placement hearing, the court may exclude the general public from a hearing and admit only those persons having a direct interest in the proceeding and their representatives. The court *shall* exclude the general public from a hearing where the proceedings involve discussion of confidential information from the child abuse and neglect report and record, or any information obtained from the child welfare agency concerning a child or family who is receiving child welfare services or foster care of adoption assistance. Md. Code Cts. & Jud. Proc. §3-810(b)(1).

Massachusetts – The court shall exclude the general public from juvenile sessions admitting only such persons who have a direct interest in the case. Mass. Gen. Laws ch. 119 §65.

Michigan – Upon motion of a party or a victim, courtroom may be closed to the general public during the testimony of a child witness or victim to protect the welfare of the child witness or victim. Court shall consider the age of the witness or victim, the nature of the proceedings and the wishes of the witness or victim to have testimony taken in a room closed to the public. Mich. Comp. Laws §712A.17(b)(7).

Minnesota – Absent exceptional circumstances, hearings are presumed accessible to the public. Hearings or portion of hearings, may be closed by the court only in exceptional circumstances. The closure of any hearing shall be noted on the record and the reasons for closure given. Any order of closure shall be accessible to the public. The court may exclude from any hearing any party or participant, other than a guardian ad litem or counsel for any party or participant, only if it is in the best interests of the child to do so or the person engaged in disruptive conduct. The exclusion of any party or participant shall be noted on the record and the decision to exclude shall be public. Minnesota Rules of Juvenile Protection Procedure §27; Minn. Stat. §260C.163, subd. 1(c).

Mississippi – General public is excluded. Only those persons who are found to have a direct interest in the case or work of the court may be admitted. Miss. Code §43-21-203(6).

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Missouri – General public is excluded. Only those persons with a direct interest in the case or work of the court may be admitted. Mo. Rev. Stat. §211.171(6). (Also parallel court rules, Rules of Practice and Procedure in Juvenile Courts §117.02).

Montana – “Notwithstanding any other law concerning public hearings . . . any hearing or trial held under this part shall be held in a closed court without admittance of any person other than those necessary to the action or proceeding. Mont. Code §40-6-120.

Nebraska – Open with judicial discretion to close. Neb. Rev. Stat. Ann. §24-1001.

Nevada – If a county has a population of 400,000 or more, any proceedings must be open to the general public unless the judge determines that all or part of the proceedings must be closed because it is in the best interest of the child. Judge must consider and give due weight to the desires of the child. Judge must make specific findings of fact to support closure and general public must be excluded and only those persons having a direct interest in the case, as determined by the judge, may be admitted to the proceedings. In counties with population of less than 400,000 the proceeding is presumptively closed, but judge may open it in accordance with same standards as set forth above. Neb. Rev. Stat. Ann. §432B.431(1)(a)(2)(a) Possible update 2009 Sec. 432B.457 proceedings are closed to general public and only those with direct interest in the case may be admitted.

New Hampshire – The general public shall be excluded from any hearing under this chapter and such hearing shall, whenever possible, be held in rooms not used for criminal trials. Only such persons as the parties, their witnesses, counsel and representatives of the agencies present to perform their official duties shall be admitted, except that other persons invited by a party may attend, with the court’s prior approval. The court may provide docket information to invited persons. N.H. Rev. Stat. Ann. §169-C:14.

New Jersey – The general public may be excluded from any hearing under this act, and only such persons and the representatives of authorized agencies may be admitted thereto as have an interest in the case. N.J. Stat. Ann. §- 8.43(b)(2004).

New Mexico – All abuse and neglect hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons approved by the court may be present. The foster parent, preadoptive parent or relative providing care for the child shall be given notice and an opportunity to be heard at the dispositional phase. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court on the condition that they refrain from divulging any information that would identify the child or family involved. Accredited representatives of the news media shall be allowed to be present subject to the condition that they refrain from divulging identifying information and subject to enabling regulations as the court finds necessary to maintain order and decorum and for the furtherance of the purposes of the Children’s Code. It is a misdemeanor to intentionally divulge identifying information. N.M. Stat. Ann. §32A-4-20(B) Possibly updated 2009

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New York – Members of the public, including the news media, shall have access to all courtroom, lobbies, waiting areas and other common areas of the family court. The general public or any person may be excluded from courtroom only if the judge determines, on a case-by-case basis based upon supporting evidence, that such exclusion is warranted. The court may consider whether (1) the person is causing or is likely to cause a disruption in the proceedings; (2) the presence of the person is objected to by a party for a compelling reason; (3) the orderly and sound administration of justice, including the nature of the proceedings, the privacy interests of individuals before the court, and the need for protection of the litigants, in particular, children, from harm, requires that some or all observers be excluded from courtroom; and (4) less restrictive alternatives to exclusion are unavailable or inappropriate to the circumstances of the case. Judge must make findings prior to ordering exclusion. When necessary to preserve decorum, the judge may instruct representatives of the news media and others regarding the permissible use of the courtroom and other facilities of the court, the assignment of seats on an equitable basis and any other matters that may affect the conduct of the proceedings and the well-being and safety of the litigants. NY CLS Unif Rules, Family Ct. §205.4(a)-(b).

North Carolina – A hearing may be closed unless the juvenile requests that it be open. When making the decision to close the hearings to the public, the court shall consider the nature of the allegations, the age and maturity of the juvenile, the benefit of confidentiality and the benefit of an open hearing to the juvenile. N.C. Gen. Stat. §7B-801.

North Dakota - The general public is excluded. Only the parties, their counsel, witnesses, victims and any other persons the court finds have a proper interest in the proceedings may be admitted by the court. N.D. Cent. Code §27-20-224(5).

Ohio – Hearings are presumed open. The court may exclude the general public from its hearings in a particular case if it holds a separate hearing to determine whether that exclusion is appropriate. If the court closes a proceeding, it may admit those who have a direct interest in the case and those who demonstrate that their need to attend outweighs the interest in keeping the hearing closed. Ohio Rev. Code Ann. §2151.35.

Oklahoma – All proceedings are private unless specifically ordered by the judge to be conducted in public, but persons with a direct interest in the case shall be admitted. Okla. Stat. Ann. Titl 10, §7003-4.1. Possible 2009 update.

Oregon – Proceedings are open to the public by constitutional mandate as interpreted by case law in *State Ex. Rel. Oregonian Pub. Co. v. Deiz*, 613 P.2d 23 (Ore. 1980). Oregon, has a constitutional provision that no court shall be secret. The Oregon Supreme Court held press should be admitted, and that the public has a right of access co-extensive with the press. Trial court retains the right to control access by members of the press or public who would overcrowd the courtroom or attempt to interfere or otherwise obstruct the proceedings.

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Pennsylvania – Except in hearings to declare a person in contempt of court and in certain delinquency hearings, the general public is excluded from hearings. Only the parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim to assist, and any other person as the court finds has a proper interest in the proceedings or in the work of the court shall be admitted by the court. 42 Pa. C.S.A. §6336.

Rhode Island – The general public is excluded from proceedings and only an attorney or attorneys, selected by the parents or guardian of a child to represent the child, may attend, and only those other persons shall be admitted who have a direct interest in the case, and as the judge may direct. R. I. Gen. Laws §14-1-30.

South Carolina – The general public must be excluded and only persons the judge finds to have a direct interest in the case or in the work of the court may be admitted. S.C. Code §63-3-590.

South Dakota – Hearings are closed by statute to the public unless the court finds compelling reasons to require otherwise. S.D. Codified Laws §26-7A-36.

Tennessee – The general public was excluded from all hearings except contempt hearings by statute, which was repealed. The new statute now references Rule 27 of the Tennessee Rules of Juvenile Procedure. Tenn. Code Ann. §37-1-124(a). Rule 27 states that unless specifically addressed in this rule, or provided for by statute or Supreme Court Rules, proceedings, *except dependent and neglected cases*, shall be open to all persons who are properly concerned. In the discretion of the court, the general public may be excluded from any juvenile or paternity proceedings and only those persons having a direct interest in the case may be admitted. A party seeking to close a hearing shall have the burden of proof. The juvenile court shall not close proceedings to any extent unless it determines that failure to do so would result in particularized prejudice to the party seeking closure that would override the public's compelling interest in open proceedings. Any order of closure must be no broader than necessary to protect the determined interests of the party seeking closure. Alternatives to closure of proceedings must be considered. The court must make adequate written findings to support any order of closure.

Texas – Court hearings are open to the public but the court may determine that the public should be excluded for good cause shown or if the child is under 14. Then the court shall close the hearing unless the court finds that the interests of the child or the public would be better served by opening the hearing. Tex. Fam. Code §54.08(a).

Utah – In abuse, neglect and dependency cases the court shall admit any person to a hearing unless the court makes a finding upon the record that the person's presence at the hearing would (a) be detrimental to the best interest of a child who is a party; (B) impair the fact-finding process; or (C) be otherwise contrary to the interests of justice. Utah Code §78A-6-114.

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Vermont – Except in contempt hearings, the general public shall be excluded. Only the parties, their counsel, witnesses, other persons accompanying a party in the case for his or her assistance and those persons the court finds to have proper interest in the case or work of the court may be admitted.

Virginia – The general public is excluded from all hearings and only such person admitted as the judge shall deem proper. Va. Code §16.1-302(C).

Washington – All hearings are public except if the judge finds that excluding the public is in the best interest of the child. Only parent or child's attorney or GAL may move to close a hearing. Even if judge excludes the public, the child's relatives, foster parents and "any person requested by the parent" may attend unless the judge determines their attendance is not in child's best interests. Wash. Rev. Code §13.34.115(1).

West Virginia – General public is excluded by statute. Only those persons who the parties request or that the court finds have a legitimate interest in the proceedings may be admitted. W. Va. Code §49-7-1(a). Also Tennessee Rules of Procedure for Child Abuse and Neglect Proceedings, Rule 6a.

Wisconsin – The general public is excluded by statute unless the child, through his or her counsel, demands a public fact finding hearing. However, the guardian ad litem may overrule this demand. If a public hearing is not held, only the parties, counsel, the GAL, a CASA advocate, the foster parent, witnesses and other persons requested by a party and approved by the court may be present, but a foster parent can be excluded if the court determines it would be in the best interests of the child. Any other person the court finds to have a proper interest in the case or in the work of the court, including a member of the bar, may also be admitted by the court. Identifying information may not be divulged, and there are sanctions. Wis. State. §48.299(1)(a).

Wyoming – Except in contempt hearings, the general public is excluded and only the parties, counsel, jurors, witnesses, victims and members of their immediate families and other persons the court finds having a proper interest in the proceedings or in the work of the court shall be admitted. Wyo. Stat. Ann. §14-3-424(b).

Most Liberally Open States: Oregon, New York, Minnesota, Iowa, Michigan

States With Rules Similar to CT Proposal:

Alabama, California, Colorado, D.C., Georgia, Kentucky, Iowa, Illinois, Wisconsin, Wyoming, Vermont, South Carolina, New Mexico, Missouri and Mississippi

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Summary of Minnesota Open Court/Records Pilot and Practices

Minnesota has open child protection courts in its juvenile division which are governed by both court procedural rules and state statute. Prior to the enactment of these provisions, Minnesota established a pilot project for some child protection hearings and court records to be open to the public.

The history of the process in Minnesota is interesting. In 1995, a Task Force on Foster Care and Adoption, created by the Minnesota Supreme Court, was directed to study the adequacy of the child protection courts in achieving permanency and delivering services. Informally, this task force also noted in its report that it “took on” the charge of assessing the desirability of opening child protection hearings to the public. It analyzed federal and state statutes, court rules and case law regarding public access to juvenile court hearings and records. It also solicited input from stakeholders in the child protection system by use of focus groups, public hearings, site visits and distribution of attitudinal surveys to judicial officers, state and tribal social services agencies, attorneys and public defenders. Based upon its data collection efforts, the Foster Care Task Force learned that “[t]vast majority of those surveyed were opposed to opening neglect or termination of parental rights hearings to the public.¹

Although recognizing the opposition to publicly accessible child protection hearings, a majority of the members of the Foster Care and Adoption Task Force, in a 1997 report to the Minnesota Supreme Court, recommended that hearings involving children in need of protection or services, (“CHIPS”—similar to Connecticut’s neglect/uncared for/dependent children), and termination of parental rights matters be presumptively open to the public. It stated that there should be a presumption that the hearings will be open absent exceptional circumstances. It further recommended that with the exception of certain information, juvenile court files also should be accessible to the public.² Five members of the Task Force filed a minority report voicing their objection to opening child protection proceedings.³

¹ Minnesota Supreme Court Advisory Committee on Open Hearings in Juvenile Protection Matters Introduction to Final Report of National Center for State Courts, August 2001, at 5.

² Members of the Task Force cited the experience of the state of Michigan, which had for several years authorized public access to juvenile protection hearings and records. In Michigan, such hearings are presumptively open, but may be closed to the public under the standard set forth in *Globe Newspaper v. Superior Court*, 457 U.S. 596 (1982), with regard to the closure of criminal cases. According to that standard, criminal court proceedings cannot be closed absent a showing that the restriction of public access is “necessitated by a compelling governmental interest and is narrowly tailored to serve that interest.” *Id.*, 607. In Michigan, only certain court records remain confidential, and they must be contained in a confidential file to which only those with a “legitimate interest” are allowed access. Children’s names may be published, but the press in Michigan had been sensitive and had rarely published children’s names. Minnesota Supreme Court Advisory Committee on Open Hearings in Juvenile Protection Matters, Introduction to Final Report of the NCSC, *supra*, 7.

³ One objection to openness, which would not occur in Connecticut, is that publicity would “chill” parents’ willingness to admit allegations and thus slow the progress of cases. The solution was to allow for no contest pleas, which Connecticut already permits in child protection case adjudications.

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The Task Force issued its recommendations to the Minnesota Supreme Court in January 1997 and bills opening the child protection proceedings were introduced in the Minnesota House and Senate. A pilot project was recommended. While the bill was pending, the Minnesota Conference of Chief Judges, the policy making body for Minnesota's trial courts, voted to recommend against a pilot project. Proposed legislation authorizing open child protection hearings on a permanent basis or through a pilot project failed to pass. In November 1997, at the request of the Minnesota Supreme Court, the issue was revised by the Conference of Chief Judges and a pilot project was recommended subject to certain conditions.

In January 1998, the Supreme Court established an Open Hearings Advisory Committee to consider and recommend rules regarding public access to records relating to open juvenile protection hearings. This committee included stakeholders, including one media attorney. After considering the Advisory Committee recommendations, in May 1998 the Supreme Court, based upon its "inherent power and authority" to "regulate public access to records and proceedings of the judicial branch," issued orders promulgating rules on public access to records and proceedings in juvenile protection proceedings.⁴ An order establishing a pilot project on open hearings in juvenile protection matters required that the proceedings would be presumed open and could be closed or partially closed by the presiding judge only in exceptional circumstances. These orders opening the courts and their records were in derogation of existing statutory law at the time. At the time of the initiation of the pilot, Minnesota law, in effect since 1959, stated, "[T]he court shall exclude the general public from hearings under this chapter and shall admit only those persons who, in the discretion of the court, have a direct interest in the case of in the work of the court."⁵

The pilot operated in 12 of 87 counties in the state from 1998 to 2001. In those counties, juvenile proceedings were presumably open with judicial discretion to close.⁶ To close hearings, the judge had to make findings on the record stating that an open hearing would not: (1) be in the best interests of the child, (2) impede the fact finding process, or (3) be contrary to the interest of justice. The pilot permitted public access to adjudicatory, dispositional and review hearings and the public was permitted access to all court files unless court rules specifically identified certain records that were not accessible.

⁴ The records rules were complex and at times quite burdensome on court administrators as they required numerous redactions and the creation of separate parts of files as the rule opening records was not made retroactive, so existing files had to have different sections. Also, files continue to have separate sections to separate what is confidential from what is not under the rules. After 1998, all juvenile child protection files would be opened in the name of the parents or legal guardian and not the child. Social worker reports, similar to our social studies, are accessible.

⁵ MINN. STATE. §260C.163, subd. 1(c)(1998) (formerly codified as MINN. STAT. §260.155, subd. 1(c)). See Schellhast, Heidi, "Open Child Protection Proceedings in Minnesota," 26 Wm. Mitchell L. Rev. 631 (2000).

⁶ Connecticut has been described as a "presumably closed" state with judicial discretion to open. There are eight other such jurisdictions: Alabama, Colorado, Maine, Missouri, Oklahoma, South Dakota, Tennessee, and Wisconsin. Farley, K. "Issue Brief – Public Access to Child Abuse and Neglect Proceedings," (National Center for State Courts, Government Relations Office, Vol. 4, No. 5, July 2003), at 4.

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Minnesota decided to conduct a formal assessment of its pilot experience and hired the National Council on State Courts (NCSC) to conduct an evaluation. The selection process for an independent entity to conduct the study took over 7 months. The NCSC held a public hearing and received written comments from interested persons at the end of the pilot period and issued a final report. At the conclusion of the three-year study, the Minnesota Juvenile Court moved to adopt the practice of open child protection hearings to the public.

The NCSC employed a multi-method approach to collect data and information regarding open hearings and records in child protection matters pursuant to the pilot. The data and information collection methods included site visits, interviews and focus groups, two "waves" of surveys of child protection professionals⁷ and the media, a review of logbooks maintained by the courts recording instances of closed hearings and records requests, a review of case files to determine frequency of requests, a compilation of data on the number of dependency, neglect and TPR filings and appeals (to determine if filings significantly increased or decreased), and a compilation of newspaper articles on the subject of open hearings/records in child protection proceedings. Newspaper articles were carefully evaluated for the flavor of the media's handling of the issues, sensationalistic coverage, compromises of privacy and trends over time in the extent of coverage. Survey instruments were created and are included in the report.⁸

In Minnesota practice, court orders prohibiting any kind of public access are referred to as "protective orders." The NCSC conducted only a sample review to examine the frequency of the issuance of such orders and any subsequent appeals. It selected 157 requests at random, which was only 14.2 percent of all requests and found that protective orders were issued in just 3 cases reviewed and only one was appealed. The appeal was denied. Query why all requests for protective orders weren't reviewed as part of the pilot study, since logs could have been kept to note any such applications or motions.

The impact of open hearings/records was examined by the effect of openness on 5 critical subject areas: (1) the conduct of the hearings; (2) records access; (3) potential for harm; (4) public awareness and professional accountability; and (5) "overall" impact.

With respect to item (1), the conduct of the hearings, the NCSC concluded that open hearings slightly increased the number of people in the "courtroom audience," but usually 5 or fewer persons were in the audience, and most of them were extended family, foster

⁷"Professionals" included judges/referees/ attorneys, public defenders, guardians ad litem, court administrators and social workers.

⁸In the first wave, 1171 surveys were mailed but only 194 responses were useable. Many who sent in surveys indicated they had never attended an open hearing. The second wave of surveys produced 335 useable responses. The tabulation of these surveys appears did require some statistical expertise. The response to surveys mailed to the media was so disappointing, the NCSC resorted to telephone surveys and received only 46 responses. Cheesman, Fred L., "Key Findings From the Evaluation of Open Hearings and Court Records in Juvenile Protection Matters," Final Report – Volume I, National Center For State Courts, August 2001, at 11.

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parents and service providers. Court hearings were closed infrequently. The content of written court documents and statements was not significantly affected, although some surveyed noted more reticence to include sensitive information. The duration of hearings was not appreciably affected, nor did the nature of in court discussion change.

With respect to item (2), records access, there was a significant impact on the workload of administrative staff resulting from the record keeping requirements, separation of files, redactions to protect identifying information and handling public requests for documents.⁹ The court order contained several redacting requirements that had to be satisfied before records could be released to the public. Among information to be redacted was: the identities of reporters of abuse or neglect; the face or other identifying features in a photograph of a child; the identity of minor victims of sexual assault; any reference to HIV test results; and identities of foster parents, foster care institutions, or adoptive parents. Court clerks were tasked with the job of redaction.

In evaluating item (3), the potential for harm, the NCSC found no documented direct or indirect harm to any parties with the possible exception of a sensational case in one county.¹⁰ The media interest waned and was only prevalent for sensational cases. Those professionals serving clients – public defenders and parties’ attorneys, were less likely to report that the media had been responsible than judges, court administrators or prosecutors. Only a handful of documented cases compromised the privacy of children and families because the public and the press didn’t show much interest in attending. Although filings of petitions were predicted to decrease, they actually increased in 8 of the 12 pilot counties. Decreases in other counties were small. Appeals also did not increase greatly.

Item 4 was a focus on whether or not accountability was enhanced. After the first survey, professionals responding saw little effect on accountability, but after the second survey, these same professionals felt that accountability had been enhanced on the part of all court-involved professionals.

As to item (5), overall impact, the report concludes that in many ways, this was limited. The general public generally declined to attend open hearings and there were few public requests for court documents, 7.2% of all requests. The media lost interest over time and continued to focus only on sensational cases, providing little coverage of major child protection policy issues, such as the need for additional resources and the availability of services. A non-profit court watch group, called “Watch,” did show

⁹ In one court, significant time was spent responding to media requests for copies of all open neglect petitions for the past two years. Part-time employees had to be hired. *Id.*, 18.

¹⁰ In one county, a notorious case occurred almost immediately after open hearings/records was implemented. The case had been ongoing for two years, and the order to open was not retroactive. The judge closed the hearing because the inability to access what had occurred for the previous two years might produce a distorted view of the case. The case involved a mother whose 3 older children had met untimely deaths which led to the removal of her last-born child at birth. The mother’s attorney criticized previous coverage of the case in seeking closure. At one hearing, news crews from two local TV stations focused their cameras- through courthouse windows from the outside sidewalk—on the mother in the case as she walked through the lobby of the courthouse. *Id.*, 24.

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increased activity in one county. The NCSC concluded that there was virtually no effect on general public awareness of child protection issues.

When surveyed at the conclusion of the pilot, more than half of the GALs, social workers and county attorneys (similar to our AAGs) and almost half of judges were in favor of increasing public awareness of open courts. The percentage of attorneys representing children and parents supporting increasing awareness of open courts was less than 30%. Less than 30% of the court administrators favored increasing public awareness of openness due to the additional work it might produce. (Note: no additional funds were provided to the juvenile courts to operate the pilot initiative.)

The NCSC Minnesota report and its findings “are now widely referenced by proponents for open hearings as supporting the view that open hearings do not produce negative effects. However, as indicated by the concluding thoughts of the NCSC report on Minnesota, the recommendations were much more cautious and neutral than later references to the report would suggest. In addition, a number of methodological and other design flaws have been identified in the study by other researchers in this area that may further limit the scope and applicability of these findings to other jurisdictions.”¹¹

Attached are the current Minnesota Statute and the Minnesota Rules on open courts and records.

Note that the rule on opening proceedings uses the standard of exceptional circumstances to close, but also provides that a person other than parties and counsel can be removed from the courtroom if it is in the best interest of the child or if a person may prove to be a disruption.¹² The “best interest” standard employed in that one section is difficult to reconcile with the overall standard requiring “exceptional circumstances” to close the courtroom.

¹¹ Maxwell, Taitano, & Wise, “To Open or Not to Open: The Issue of Public Access in Child Protection Proceedings,” (National Council of Juvenile and Family Court Judges Permanency Planning for Children Department, 2004), at 13.

¹² This bears some similarity to Connecticut’s current standard under §46b-122, which provides that the court may exclude from the courtroom any person whose is not a necessary party to the proceeding.

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- 📁 Minnesota Statutes
- 📁 PUBLIC WELFARE AND RELATED ACTIVITIES
- 📁 CHAPTER 260C CHILD PROTECTION

260C.163 Hearing.

(c) Absent **exceptional circumstances**, hearings under this chapter are presumed to be accessible to the public, however the court may close any hearing and the records related to any matter as provided in the Minnesota Rules of Juvenile Protection Procedure.

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MINNESOTA RULES OF JUVENILE PROTECTION PROCEDURE

RULE 27. ACCESS TO HEARINGS

Rule 27.01. Presumption of Public Access to Hearings

Absent exceptional circumstances, hearings in juvenile protection matters are presumed to be accessible to the public. Hearings, or portions of hearings, may be closed to the public by the court only in exceptional circumstances. The closure of any hearing shall be noted on the record and the reasons for the closure given. Closure of all or part of a hearing shall not prevent the court from proceeding with the hearing or issuing a decision. Minnesota Statutes § 260C.163, subd. 1(c), is superseded insofar as it applies to public access to hearings in juvenile protection matters. An order closing a hearing or portion of a hearing to the public shall be accessible to the public.

Rule 27.02. Party and Participant Attendance at Hearings

Notwithstanding the closure of a hearing to the public pursuant to Rule 27.01, any party who is entitled to summons pursuant to Rule 32.02 or any participant who is entitled to notice pursuant to Rule 32.03, or any person who is summoned or given notice, shall have the right to attend the hearing to which the summons or notice relates unless excluded pursuant to Rule 27.04.

1999 Advisory Committee Comment

Pursuant to Rule 21, a party has the right to be present in person at any hearing. For a child, the person with physical custody of the child should generally be responsible for ensuring the child's presence in court. When a child is in emergency protective care or protective care, the responsible social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the responsible social services agency in out-of-home placement, the agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

Rule 27.03. Absence Does Not Bar Hearing

The absence from a hearing of any party or participant shall not prevent the hearing from proceeding provided appropriate notice has been served.

Rule 27.04. Exclusion of Parties or Participants from Hearings

The court may exclude from any hearing any party or participant, other than a guardian ad litem or counsel for any party or participant, only if it is in the best interests of the child to do so or the person engages in conduct that disrupts the court. The exclusion of any party or participant from a hearing shall be noted on the record and the reason for the exclusion given. The exclusion of any party or participant shall not

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prevent the court from proceeding with the hearing or issuing a decision. An order excluding a party or participant from a hearing shall be accessible to the public

MINNESOTA RULES OF JUVENILE PROTECTION PROCEDURE

RULE 8. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Rule 8.01. Presumption of Access to Records

Except as otherwise provided in this Rule, all juvenile protection case records relating to juvenile protection matters, as those terms are defined in Rule 2.01, are presumed to be accessible to any party and any member of the public for inspection, copying, or release. Records or information to which access is restricted under Rule 8.04 shall not be redacted prior to transmission to the clerk of appellate courts. If a party or a member of the public requests access to the juvenile protection case record during the appeal, the portion of the case record requested shall be returned to the trial court to be redacted pursuant to Rule 8.04 before access shall be allowed. The Minnesota Court of Appeals or the Minnesota Supreme Court shall deny access to the case records during the appeal if providing access would unduly delay the conclusion of the appeal. An order prohibiting access to the court file, or any record in such file, shall be accessible to the public.

2001 Advisory Committee Comment (amended 2003)

Rule 8.01 establishes a presumption of public access to juvenile protection case records, and exceptions to this presumption are set forth in the remaining provisions of Rule 8. Rule 8.01 does not apply to any case records relating to adoption proceedings, which remain inaccessible to the public.

Rule 8.02. Effective Date

Subd. 1. Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties on or after June 28, 1998, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties before June 28, 1998, shall not be accessible to the public for inspection, copying, or release.

Subd. 2. Non-Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county on or after July 1, 2002, shall be accessible to the public for inspection, copying, or release. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county before to July 1, 2002, shall not be accessible to the public for inspection, copying, or release.

2001 Advisory Committee Comment

Rule 8.02 identifies different effective dates for the pilot project counties (June 1998) and non-pilot project counties (July 2002) because

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the twelve pilot counties already permit public access to hearings and records under the open hearings pilot project. Twelve counties participated in the open hearings pilot project from June 28, 1998, through June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis–Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

Rule 8.03. Applicability of Rules of Public Access to Records of the Judicial Branch

Except where inconsistent with this rule, the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court shall apply to juvenile protection case records relating to juvenile protection matters. Subdivisions 1(a) and 1(c) of Rule 4 of the Rules of Public Access to Records of the Judicial Branch, which prohibit public access to domestic abuse restraining orders and judicial work products and drafts, are not inconsistent with this rule.

2001 Advisory Committee Comment

Rule 8.03 incorporates the provisions of the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court (“Access Rules”), except to the extent that the Access Rules are inconsistent with this rule. The Access Rules establish the procedure for requesting access, the timing and format of the response, and an administrative appeal process. The Access Rules also define “case records” as a subcategory of records maintained by a court. Thus, “case records” would not include items that are not made a part of the court file, such notes of a social worker or guardian ad litem. Aggregate statistics on juvenile protection cases that do not identify parties or participants or a particular case are included in the “administrative records” category and are accessible to the public under the Access Rules. Such statistics are routinely published by the courts in numerous reports and studies. These procedures and definitions are consistent with this rule.

One significant aspect of both this rule and the Access Rules is that they govern public access only. Parties and participants in a juvenile protection matter may have greater access rights than the general public. See, e.g., Minn. R. Juv. P. 17 (2001).

Rule 8.03 preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minn. Stat. § 518B.01 (Supp. 2001). The address of a petitioner for a restraining order under section 518B.01 must not be disclosed to the public if nondisclosure is requested by the petitioner. Minn. Stat. § 518B.01, subd. 3b (Supp. 2001). All other case records regarding the restraining order must not be disclosed until the temporary order made pursuant to subdivision 5 or 7 of section 518B.01 is served on the respondent. Access Rule 4, subd. 1(a) (Supp. 2001).

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Rule 8.03 prohibits public access to judicial work products and drafts. These include notes, memoranda, and drafts prepared by a judge or court employed attorney, law clerk, legal assistant, or secretary and used in the process of preparing a decision or order, except the official court minutes prepared pursuant to Minn. Stat. § 546.24 - .25 (Supp. 2001). Access Rule 4, subd. 1(c) (2001).

The "Court Services Records" provision of Access Rule 4, subd. 1(b), is inconsistent with this rule. The Advisory Committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem, which become case records, is an integral component of the increased accountability that underlies the concept of public access to juvenile protection matters. Court rulings will necessarily incorporate significant portions of what is set forth in those reports, and similar information is routinely disclosed in family law cases.

Rule 8.04. Records Not Accessible to the Public or Parties

The following records (a) – (m) in the court file are not accessible to the public. Unless otherwise ordered by the court, parties shall have access for inspection and copying to all records in the court file, except records (b), (d), and (e) listed below.

- (a) official transcript of testimony taken during portions of proceedings that are closed by the presiding judge;
- (b) audio tapes or video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child;
- (c) victims' statements;
- (d) portions of juvenile protection case records that identify reporters of abuse or neglect;
- (e) HIV test results;
- (f) medical records, chemical dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records;
- (g) sexual offender treatment program reports;
- (h) portions of photographs that identify a child;
- (i) applications for ex parte emergency protective custody orders, and any resulting orders, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a child in need of protection or services (CHIPS) petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this section (i);
- (j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault;
- (k) notice of pending court proceedings provided to an Indian tribe by the responsible social services agency pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1912;
- (l) records or portions of records which the court in exceptional circumstances has deemed to be inaccessible to the public; and

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(m) records or portions of records that identify the name, address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to an emergency protective care placement, foster care placement, pre-adoptive placement, adoptive placement, or any other type of court ordered placement.

2001 Advisory Committee Comment

Rule 8.04(a) prohibits public access to testimony of anyone taken during portions of a proceeding that are closed to the public by the presiding judge. Hearings or portions of hearings may be closed by the presiding judge only in exceptional circumstances.

Rule 8.04(b) prohibits public access to audio tapes and video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. This includes all tapes made pursuant to Minn. Stat. § 626.561, subd. 3 (Supp. 2001), during the course of a child abuse assessment, criminal investigation, or prosecution. This is consistent with Minn. Stat. § 13.391 (Supp. 2001), which prohibits an individual who is a subject of the tape from obtaining a copy of the tape without a court order. See also *In re Application of KSTP Television v. Ming Sen Shiue*, 504 F. Supp. 360 (D. Minn. 1980) (television station not entitled to view and copy three hours of video tapes received in evidence in criminal trial). Similarly, Rule 8.04(c) prohibits public access to victims' statements, and this includes written records of interviews of victims made pursuant to Minn. Stat. § 626.561, subd. 3 (Supp. 2001). This is consistent with Minn. Stat. § 609.115, subds. 1, 5; § 609.2244; and § 611A.037 (Supp. 2001) (pre-sentence investigations to include victim impact statements; no public access; domestic abuse victim impact statement confidential).

Although victims' statements and audio tapes and video tapes of a child alleging or describing abuse or neglect of any child are inaccessible to the public under Rule 8.04(b) and (c), this does not prohibit the attorneys for the parties or the court from including information from the statements or tapes in the petition, court orders, and other documents that are otherwise accessible to the public. In contrast, Rule 8.04(d) prohibits public access to "portions of juvenile protection case records that identify reporters of abuse or neglect." By precluding public access to "portions of records that identify reporters of abuse or neglect," the Advisory Committee did not intend to preclude public access to any other information included in the same document. Thus, courts and court administrators must redact identifying information from otherwise publicly accessible documents and then make the edited documents available to the public for inspection and copying. Similarly, Rule 8.04(e) requires that courts and court administrators redact from any publicly accessible juvenile court record any reference to HIV test results, and Rule 8.04(h) requires administrators to redact the face or other identifying features in a photograph of a child.

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The prohibition of public access to the identity of reporters of abuse or neglect under Rule 8.04(d) is consistent with state law governing access to this information in the hands of social services, law enforcement, court services, schools, and other agencies. Minn. Stat. § 626.556 (Supp. 2001). Rule 8.04(d) is also intended to help preserve federal funds for child abuse prevention and treatment programs. See 42 U.S.C. § 5106a(b)(2)(A) and § 5106a(b)(3) (1998); 45 C.F.R. § 1340.1 to § 1340.20 (1997). Rule 8.04(d) does not, however, apply to testimony of a witness taken during a proceeding that is open to the public.

Rule 8.04(e) prohibits public access to HIV test results. This is consistent with state and federal laws regarding court ordered testing for HIV. Minn. Stat. § 611A.19 (Supp. 2001) (defendant convicted for criminal sexual conduct; no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services); 42 U.S.C. § 14011 (1998) (defendant charged with crime; test result may be disclosed to victim only). The Committee is also aware that federal funding for early intervention services requires confidential treatment of this information. 42 U.S.C. § 300ff-61(a); § 300ff-63 (1998).

Rule 8.04(f) and (g) prohibit public access to medical records, chemical dependency evaluations and records, psychological evaluations and records, psychiatric evaluations and records, and sexual offender treatment program reports, unless admitted into evidence under Rule 8.05. This is consistent with public access limitations in criminal and juvenile delinquency proceedings that are open to the public. See, e.g., Minn. Stat. § 609.115, subd. 6 (Supp. 2001) (pre-sentence investigation reports). Practitioners and the courts must be careful not to violate applicable federal laws. Under 42 U.S.C. § 290dd-2 (1998), records of all federally assisted or regulated substance abuse treatment programs, including diagnosis and evaluation records, and all confidential communications made therein, except information required to be reported under a state mandatory child abuse reporting law, are confidential and may not be disclosed by the program unless disclosure is authorized by consent or court order. Thus, practitioners will have to obtain the relevant written consents from the parties or court orders, including protective orders, before disclosing certain medical records in their reports and submissions to the court. See 42 C.F.R. § 2.1 to 2.67 (1997) (comprehensive regulations providing procedures that must be followed for consent and court-ordered disclosure of records and confidential communications).

Although similar requirements apply to educational records under the Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, 1417, and § 11432 (1998); 34 C.F.R. § 99.1 to § 99.67 (1997),

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FERPA allows schools to disclose education records without consent or court order in certain circumstances, including disclosures to state and local officials under laws in effect before November 19, 1974. 20 U.S.C. § 1232g(b)(1)(E)(i) (1998); 34 C.F.R. § 99.31(a)(5)(i)(A) (1997). Authorization to disclose truancy to the county attorney, for example, was in effect before that date and continues under current law. See Minn. Stat. § 120.12 (1974) (superintendent to notify county attorney if truancy continues after notice to parent); 1987 Minn. Laws ch. 178 § 10 (repealing section 120.12 and replacing with current section 120.103, which adds mediation process before notice to county attorney); see also Minn. Stat. § 260A.06-.07 (Supp. 2001) (referral to county attorney from school attendance review boards; county attorney truancy mediation program notice includes warning that court action may be taken). Practitioners will have to review the procedures under which they receive education records from schools and, where necessary, obtain relevant written consents or protective orders before disclosing certain education records in their reports and submissions to the court. Additional information regarding FERPA may be found in *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. 20531, June 1997) (includes hypothetical disclosure situations and complete set of federal regulations).

Rule 8.04(h) prohibits public access to portions of photographs that identify a child, and requires administrators to redact the face or other identifying features in a photograph of a child before permitting public access. Any appropriate concern regarding public access to the remaining portions of such a photograph can be addressed through a protective order (see Rule 8.07).

Rule 8.04(i) precludes public access to an ex parte emergency protective custody order, until the hearing where all parties have an opportunity to be heard on the custody issue. This provision is designed to reduce the risk that a parent or legal custodian would try to hide a child before the child can be placed in protective custody or to take the child from custody before the court can hear the matter. See, e.g., Minn. R. Juv. P. 65 (Supp. 2001) (order must either direct that child be brought immediately before the court or taken to a placement facility designated by the court; parent or legal custodian, if present when child is taken into custody, shall immediately be informed of existence of order and reasons why child is being taken into custody). Rule 8.04(i) also precludes public access to the application or request for the protective custody order, except that if the request is made in a Child In Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order is inaccessible to the public.

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Rule 8.04(j) precludes public access to portions of records that specifically identify a minor victim of sexual assault. This will require court administrators to redact information from case records that specifically identifies the minor victim, including the victim's name and address. Rule 8.04(j) does not preclude public access to other information in the particular record. This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minn. Stat. § 609.3471 (Supp. 2001). Thus, the term "sexual assault" includes any act described in Minnesota Statutes § 609.342, § 609.343, § 609.344, and § 609.345. The Committee considered using the term "sexual abuse" but felt that it was a limited subcategory of "sexual assault." See Minn. Stat. § 626.556, subd. 2(a) (Supp. 2001) ("sexual abuse" includes violations of § 609.342 - .345 committed by person in a position of authority, responsible for child's care, or having a significant relationship with the child). Rule 8.04(j) does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Rule 8.04(k) precludes public access to the notice of pending proceedings given by the responsible social services agency to an Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. § 1912(a) (1998). The notice includes extensive personal information about the child, including all known information on direct lineal ancestors, and requires parties who receive the notice to keep it confidential. 25 C.F.R. § 23.11(d), (e) (1997). Notices are routinely given in doubtful cases because lack of notice can be fatal to a state court proceeding. See 25 U.S.C. § 1911 (1998) (exclusive jurisdiction of tribes; right to intervene; transfer of jurisdiction). The Committee believed that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Rule 8.04(k) does not preclude public access to intervention motions or transfer petitions.

Rule 8.04(l) recognizes that courts may, in exceptional circumstances, issue protective orders precluding public access to certain records or portions of records. Records of closed proceedings are inaccessible to the public under Rule 8.04(a). Procedures for issuing protective orders are set forth in Rule 8.07.

Rule 8.04(m) prohibits public access to the names, addresses, home, location, or other identifying information about the foster parents, foster care institutions, adoptive parents, and other persons and institutions providing care or pre-adoptive care of the child. This is consistent with the confidentiality accorded adoption proceedings. It is also designed to reduce the risk of continuing contact by someone whose parental rights have been terminated or who is a potentially dangerous family member. If deemed appropriate, the name, address, home, location, or other identifying

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information about a child's foster placement may be protected from a party through issuance of a protective order pursuant to Rule 8.07

Notwithstanding the list of inaccessible case records in Rule 8.04(a) through (m), many juvenile protection case records will typically be accessible to the public. Examples include: petitions, other than petitions for paternity; summons; affidavits of publication or service; certificates of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and supporting affidavits and legal memoranda; transcripts; and reports of social workers and guardians ad litem. With the exception of information that must be redacted under Rule 8.04(d) (e), and (h), these records will be accessible to the public notwithstanding that they contain a summary of information derived from another record that is not accessible to the public. For example, a social services or guardian ad litem report might discuss the results of a chemical dependency evaluation. Although the chemical dependency evaluation itself is not accessible to the public under Rule 8.04(f), discussion of the details of that evaluation in the social services or guardian ad litem report need not be redacted before public disclosure of the report. Finally, it must be remembered that public access under this rule would not apply to records filed with the court before the effective date of this rule (see Rule 8.02) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see Rule 8.03).

2006 Advisory Committee Comment

The child's name and other identifying information are not to be redacted from records that are accessible to the public, except under Rule 8.04(j) when the child is the victim of an alleged or adjudicated sexual assault and under Rule 8.04(d) where the child is specifically identified as the reporter of the abuse or neglect. In the latter instance, the child's name and other identifying information should be redacted only in those instances where it is used as the reporter of abuse or neglect but should not be redacted when referenced elsewhere in the record.

Rule 8.05. Access to Exhibits

Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order issued pursuant to Rule 8.07.

2001 Advisory Committee Comment

Rule 8.05 permits public access to records that have been received in evidence as an exhibit, unless the records are subject to a protective order (see Rule 8.07). Thus, any of the records identified in Rule 8.04(b) through (k) that have been admitted into evidence as an exhibit are accessible to the public, unless there is a protective order indicating otherwise. An exhibit that has been offered, but not expressly admitted by the court, does not become accessible to the public under Rule 8.05. Exhibits admitted during

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a trial or hearing must be distinguished from items attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching something as an “exhibit” to another filed document does not render the “exhibit” to be accessible to the public under Rule 8.05.

Rule 8.06. Access to Court Information Systems

Except where authorized by the district court, there shall be no direct public access to juvenile protection case records maintained in electronic format in court information systems.

2001 Advisory Committee Comment

Rule 8.06 prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the court. Rule 8.06 intentionally limits access to electronic formats as a means of precluding widespread distribution of case records about children into larger, private databases that could be used to discriminate against children for insurance, employment, and other purposes. This concern also led the Advisory Committee to recommend that case titles in the petition and other documents include only the name of the parent or legal custodian and exclude the names or initials of the children (see Rule 8.08). Rule 8.06 allows the courts to prepare calendars that identify cases by the appropriate caption. To the extent that court information systems can provide appropriate electronic formats for public access, Rule 8.06 allows the district court to make those accessible to the public.

Rule 8.07. Protective Order

Subd. 1. Orders Regarding the Public. The court may sua sponte, or upon motion and hearing, issue an order prohibiting public access to juvenile protection case records that are otherwise accessible to the public only if the court finds that an exceptional circumstance exists. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing, the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

Subd. 2. Orders Regarding Parties. The court may sua sponte, or upon motion and hearing, issue a protective order prohibiting a party’s access to juvenile protection case records that are otherwise accessible to the party. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order issued pursuant to this subdivision is accessible to the public.

2001 Advisory Committee Comment

Rule 8.07 establishes two categories of protective orders. One is made on motion of a party after a hearing, and the other is made on the court’s own motion without a hearing, subject to a later hearing if requested

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by any person, including representatives of the media. In any case, a protective order may issue only in exceptional circumstances. The Advisory Committee felt that these procedures would provide adequate protection and flexibility.

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Rule 8.08. Case Captions and Text of Decisions and Other Records

Subd. 1. District Court.

All juvenile protection court files opened and any petitions, pleadings, reports, orders, or other documents or records filed in any:

(i) of the twelve open hearings pilot project counties on or after June 22, 1998, or

(ii) non-open hearings pilot project county on or after July 1, 2002, shall be captioned in the name of the child's parent(s) or legal custodian(s), as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/ Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any petitions, pleadings, reports, orders, or other documents or records filed with the court shall include the child's and parent's or legal custodian's full name, not their initials. The case caption shall not be modified upon the issuance of an order terminating parental rights.

Subd. 2. Appellate Court. All juvenile protection court files opened in any Minnesota appellate court shall be captioned in the initials of the parent(s) or legal custodian(s) as follows: "*In the Matter of the Welfare of the Child(ren) of _____, Parent(s)/Legal Custodian(s).*" The caption shall not include the child's name or initials. The body of any decision filed in any Minnesota appellate court shall use the parent's and child's initials, not their names. Upon the filing of an appeal pursuant to Rule 47.02, the appellant shall provide to the court administrator, the appellate court, and the parties and participants notice of the correct appellate case caption required under this Rule. This Rule supercedes Rule 143.01 of the Rules of Civil Appellate Procedure regarding the provisions relating to case captions upon appeal.

2001 Advisory Committee Comment

Twelve counties participated in the pilot project from June 28, 1998, through June 30, 2002: Goodhue and LeSueur (First Judicial District); Houston (Third Judicial District); Hennepin (Fourth Judicial District); Watonwan (Fifth Judicial District); St. Louis-Virginia (Sixth Judicial District); Clay (Seventh Judicial District); Stevens (Eighth Judicial District); Marshall, Pennington, and Red Lake (Ninth Judicial District); and Chisago (Tenth Judicial District).

The change in case captions under Rule 8.08 is designed to minimize the stigma to children involved in juvenile protection matters that are accessible to the public. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect.

APPENDIX 9

**AN ANALYSIS OF THE
CONNECTICUT JUVENILE
ACCESS PILOT PROGRAM
HB NO. 6419**

WILLIAM WESLEY PATTON

**Lecturer, UCLA David Geffen School of Medicine,
Department of Psychiatry; Whittier Law School, Professor
and J. Allan Cook and Mary Schalling Cook
Children's Law Scholar**

(September 2010)¹

My name is Katherine [B.], Age Ten (10) I Live At A Foster Home in Suffolk County... I Don't Want People To Know What HAPPENED To ME, Because It's None of THERE BISNES. A MEAN Little Boy Was Saying Things About ME Last Week and It Made ME Sad...Please Don't Put MY CASE on T.V., It's BBAADD Enough That It's In The Papers.¹

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¹ *In re Katherine B.*, 596 N.Y.S. 2d 847, 850 (App. Div. 1993). In *Katherine B.* a psychologist in an affidavit stated that the young abused girl would be re-abused by the publicity of the open court proceeding and that it would lead to "taunting from peers". *Id.*, at 850-851. See also, Laura Cohen, *Kids, Courts, And Cameras: New Challenges For Juvenile Defenders*, 18 QLR 701, 703-704 (1998-99).

² *In re Tayler F.*, 995 A. 2d 611 [Connecticut Supreme Court (SC 18280), June 8, 2010].

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EXECUTIVE SUMMARY

One of the central concerns of the Juvenile Access Pilot Program Advisory Board was determining whether children in presumptively open court jurisdictions have been harmed. This report will discuss cases in which children have attempted or actually committed *suicide* as a result of publicity, and cases where children have been so bullied by peers about their child abuse that they moved to different schools or cities to escape that torment.³

Many, including some on the Advisory Board, still deny that the media publishes identifying information about abused children. This report discusses just a few of the dozens and dozens of media reports in Connecticut and in other presumptively open court jurisdictions that publish identifying and embarrassing information about abused children.

³ “Some victims of bullying have even attempted suicide rather than continue to endure harassment and punishment.” American Academy of Child & Adolescent Psychiatry, *Facts for Families, Bullying, No. 80* (updated May 2008). Studies have also indicated that victims of bullies are up to 11.5% at a greater risk of suicide ideation than other students. Ian Rivers and Nathalie Noret, *Participant Roles in Bullying Behavior and Their Association With Thoughts Of Ending One’s Life*, 31 *Crisis* 143, 144 (2010). In addition, the rate of suicide attempts among those children in the child welfare systems is higher than that for children in the general population. Stavros P. Kiriakidis, *Bullying and Suicide Attempts Among Adolescents Kept in Custody*, 29 *Crisis* 216, 216 (2008). Further, “childhood trauma may predispose individuals to suicidal behavior.” Ana Sfoggia, Marco Antonio Pacheco, and Rodrigo Grassi-Oliveira, *History of Childhood Abuse and Neglect and Suicidal Behavior at Hospital Admission*, 29 *Crisis* 154, 154 (2008).

This study demonstrates the direct conflict between the ethics code of the organization to which many Connecticut journalists belong, the **Society of Professional Journalists**, and the protection of abused children from publicity. As this analysis will demonstrate, the Connecticut Legislature and Judiciary for decades have mandated that all abused children, those sexually, physically, and/or emotionally abused, be protected. However, the **SPJ** ethics code only cautions journalists to omit identifying information and details about sexually abused children, not those physically and emotionally abused. This study discusses the psychiatric evidence of severe risk to physically and emotionally abused children from publicity. This conflict between Connecticut's policy of protecting all child victims and the conflicting media ethics code which only provides protection for sexually abused children, increases the risk that Connecticut's child victims will receive harmful publicity.

Finally, this analysis will discuss a recent survey of Connecticut child and adolescent psychiatrists which clearly demonstrates that those professionals with the greatest amount of information about the effects of publicity on abused children overwhelmingly oppose presumptively open child protection proceedings because it will exacerbate those children's psychopathology and make treatment more difficult.

INTRODUCTION

At its first meeting on September 17, 2009, the Juvenile Access Pilot Program Advisory Board set out its agenda for monitoring and analyzing the Pilot Program.⁴ Committee members indicated that they must determine whether any children in other open court jurisdictions have

⁴ This meeting is archived on the Connecticut Legislative web page at (<http://ct-n.com/ondemand.asp?ID=4747>).

been harmed by the publicity about the intimate and embarrassing details of their abuse. For instance, Catherine Holahan, an attorney with Connecticut Legal Services, stated that the committee should determine whether in other open court states

“wrong information got out in the media and caused harm to the children...and that child is subject to ridicule at school or by neighbors or the family is harassed.”⁵

This report will discuss the consequences of publicity that identifies abused children:

SUICIDE⁶, CONSTANT PEER HARRASMENT, AND CHILDREN WHO WERE FORCED TO CHANGE SCHOOLS OR MOVE TO A DIFFERENT CITY because of the disclosure of previously confidential facts about their abuse. **PART I** of my analysis of the Connecticut Juvenile Court Access Pilot Program will provide this Committee with the missing data on injuries to children.

A second major concern of the Juvenile Access Pilot Program Advisory Board was seeking expert mental health input into the question regarding the potential dangers to abused children in open courts. Co-Chair Judge Quinn on several occasions informed committee members that they could not pay experts to assist with the study because of “budget constraints

⁵ Id. The Pilot Committee’s Co-Chair, Sara Eagan, agreed that finding out about harm to children in other states is a very important charge of the committee and that Ms. Holahan’s concern “is a great point.” Id.

⁶ One of the strongest risk factors for teen suicide is physical and/or sexual child abuse and neglect, and the risk of suicide is increased when that depressed child is subject to peer bullying. See, National Association of School Psychologists (http://www.nasponline.org/resources/crisis_safety/suicideprevention.aspx). “Some victims of bullying have even attempted suicide rather than continue to endure such harassment and punishment.” American Academy of Child & Adolescent Psychiatry, *Facts For Families: Bullying* (<http://www.aacap.org>).

and time constraints....”⁷ My analysis will provide this Committee the underlying child and adolescent psychiatric evidence that clearly demonstrates the danger that open child protection proceedings pose to abused children. In addition, I will provide evidence from my recent survey of Connecticut child and adolescent psychiatrists that demonstrates that those experts consider presumptively open courts a bad idea that will exacerbate abused children’s psychopathology and make mental health treatment more difficult. These results of the Connecticut survey mirror a similar survey of California child and adolescent psychiatrists.⁸

A **third** major concern of the Pilot Committee was whether or not there is a history in open court states of the media publishing identifying information about abused and neglected children. It is interesting that the media representative on the Pilot Project Committee, Collin Poitras, clearly delineated the media’s view of open courts. He stated that the Pilot Project has not gone far enough.⁹ He stated that the media wants access to court records, does not want closure motions sealed, and wants to expand open courts to all juvenile dependency courts in Connecticut.¹⁰ Although Mr. Poitras has a long and distinguished journalistic career, he indicated that he had never heard of any harm to children from media publicity, and informed the committee that we need to “**just trust reporters.**” **PART III** of my report will chronicle several of the Connecticut and other open court states’ media reports that not only identify child abuse victims, but that also publish humiliating information about those child victims’ abuse.

⁷ September 17, 2009 Committee Meeting, *supra.*, note 2.

⁸ See, *Revictimizing Child Abuse Victims: An Empirical Rebuttal To The Open Juvenile Dependency Court Reform Movement*, 38 Suffolk Univ. L. Rev. 304, 317-319 (2005).

⁹ May 27, 2010 seminar, *supra.*, note 5.

¹⁰ *Id.*

Finally, in **PART IV** I discuss the almost total absence of evidence-based data on any systemic improvements that have occurred in any states based upon presumptively opening their courts. Most open court state analyses have relied almost exclusively upon *anecdotal* data and surveys of judges and attorneys. This analysis will demonstrate why such data, if not supported by empirical evidence, results in unreliable conclusions.

PART I

PSYCHOLOGICAL HARM TO ABUSED CHILDREN IN OPEN DEPENDENCY COURT JURISDICTIONS

The harm caused to abused and neglected children from publicity of their trauma is so well established in psychological and psychiatric studies that it is no longer subject to dispute. Media exposure “exacerbate[s]...risk of PTSD [post traumatic stress disorder] development...” for child abuse victims.¹¹ As one child and adolescent psychiatrist testified in the California Legislature in which an open dependency court bill failed to pass:

The notion that publicizing this process [child dependency] will somehow benefit the child is hard to fathom. Publicity in the area of child maltreatment makes the child vulnerable to wide ranging humiliation, it leads to repetition of original trauma allowing the legal process...to become part of an extended pattern of psychological abuse.¹²

¹¹ Christopher A. Kearney, Adrianna Wechsler, Harpreet Kaur, and Amie Lemos-Miller, *Posttraumatic Stress Disorder in Maltreated Youth: A Review of Contemporary Research and Thought*, 13 *Clinical Child & Family Psychology Rev.* 46, 55 (2010).

¹² This testimony by a California Child and Adolescent Psychiatrist appears at, *Dependency Proceedings: Open Court and Public Access: Hearing on A.B. 2627 Before the Senate Judiciary Committee, 2003-2004 Leg., Reg. Sess. 7 (Ca 2004)*.

In order for mental health professionals to properly treat and attempt to heal abused and neglected children, the children need to be placed in a protected environment in which they can regain a sense of control over their lives away from any negative community reactions.¹³

If publicity from presumptively open court proceedings causes harm to some abused and or neglected children, why is it so difficult to find that empirical data in the courtroom? First, one must determine the likely sources who would report such abuse in open court states. The press has a disincentive to publish that data in the general media because it has a conflict of interest. If that data on the psychological harm to child victims is published, then that evidence may lead to a movement to close those courts and deny the press continuing access to the information that they have been zealously fighting for decades to obtain. In addition, if the press

¹³ Kearney, *supra.*, note 11, at 63. See also, Anthony Charuvastra and Marylene Cloitre, *Social Bonds and Posttraumatic Stress Disorder*, 59 *Annu. Rev. Psychol.* 301, 318 [“Successful treatment of PTSD requires first and foremost providing a sense of safety to the client....”]. It is also important for the child to have control over the public disclosure of his or her abuse. “Whether, when, and whom sexual assault victims choose to disclose may have important implications for postassault recovery.” Kenneth J. Ruggiero, Rochelle F. Hanson, Daniel W. Smith, Heidi S. Resnick, Dean G. Kilpatrick, and Benjamin E. Saunders, *Sexual Assault Disclosure in Relation to Adolescent Mental Health: Results From the National Survey of Adolescents*, 36 *J. of Clin. Child & Adol. Psychiatry* 260, 260 (2007). The most effective mental health treatment for abused children, cognitive behavioral therapy [CBT] for children and adolescents “involves supporting and normalizing the client’s experience....” Victor G. Carrion and Katherine Hull, *Treatment Manual for Trauma-Exposed Youth: Case Studies*, 15 *Clin. Child Psychology & Psych.* 27, 28 (2009). See, also, Pamela C. Alexander, *The Differential Effects of Abuse Characteristics and Attachment in the Prediction of Long-Term Effects of Sexual Abuse*, 8 *J. Interpersonal Violence* 346, 359 (1993). Teresa O’Doherty, Stella McLaughlin, Deirdre O’Leary, Danny O’Neill, Cathy Tierney, *Recovery Work With Child Victims Of Sexual Abuse: A Framework For Intervention*, 7 *Child Care in Practice* 78, 82 (2001). See also, Richard Tsegay-Spates, *The Mental Health Needs of Victims*, in *Rape & Sexual Assault* 35, 40-43 (Ann W. Burgess ed., 1985).

publishes that identifying information, it will not only possibly increase the child's mental stress, but it will violate general canons of media ethics.

If not the media, then who else will publicize the harm to children? Mental health professionals cannot disclose their child clients' psychological harm due to professional confidentiality rules. Teachers and school personnel are precluded by federal student confidentiality rules from disclosing school related negative pedagogical or health related consequences from publicity of a student's abuse. Children's attorneys also have a duty of confidentiality and loyalty to their child clients that prohibit disclosure of the jurogenic effects of the open dependency system on their child clients.

What about juvenile court judges? Doesn't it make gut-level sense that judges and attorneys in the courtroom should be able to determine whether there are any detrimental effects on abused children by having the public and press attend those hearings? As intuitive as that answer might be, there are significant reasons why that observational data is not only incomplete, but why it is also usually inaccurate.¹⁴

There is a major disconnect between the psychiatric and psychological literature regarding the severe trauma that publicity causes abused children and the observations of court-related professionals. Thus, well-intentioned judges and attorneys think that no harm is occurring because they cannot necessarily see the children's traumatic manifestations. In

¹⁴ The majority of attorneys and juvenile court judges lack sufficient training in child and adolescent psychiatry to be able to make accurate diagnoses regarding trauma to abused children from court procedures. For instance, in one study "over 50 percent of participants [juvenile and family court judges] had not received prior training on the assessment of treatment of childhood trauma." Erica J. Adams, *Healing Invisible Wounds: Why Investing in Trauma-Informed Care For Children Makes Sense* (Justice Policy Institute, Georgetown University School of Medicine, July 2010).

addition, since many children who fear publicity never testify, court professionals have no mechanism for determining the psychological effects of the potential publicity on those child victims. In order to understand why juvenile court judges and attorneys rarely see the true impact of publicizing intimate details of abused children's lives, it is necessary to review several critical psychological precepts.

A. *Observing Abused Children While They Testify Provides Little Evidence Of Their Psychological Stress From The Public Airing Of Their Abuse History.*

When a child testifies in an open child dependency proceeding, there is a good reason why juvenile court judges and attorneys will fail to reasonably determine the extent of the psychological effects on the child by merely observing the child's courtroom behavior. Longitudinal psychological studies of abused children have demonstrated that children often do not manifest psychological symptoms of stress for weeks or even months after the stressful event.¹⁵ This significant time lag between the stressor and the child's psychological manifestation is termed the "**sleeper effect**".¹⁶ Longitudinal psychological studies overcome

¹⁵ John N. Briere & Diana M. Elliott, *Immediate and Long-Term Impacts of Child Sexual Abuse*, 4 *Sexual Abuse of Child*. 54, 63 (1994); Dean G. Kilpatrick, et. al., U.S. Dep't Of Justice, *Youth Victimization: Prevalence And Implications* 7-9 (2003); David Pelcovitz, et. al., *Post-Traumatic Stress Disorder in Physically Abused Adolescents*, 33 *J. Am. Acad. Child & Adolescent Psychiatry* 305, 306 (1994).

¹⁶ Erna Olafson & Barbara W. Boat, *Long-Term Management of the Sexually Abused Child: Considerations and Challenges*, in *TREATMENT OF CHILD ABUSE* 14, 25 (Robert M. Reece ed. 2000).

the sleeper effect by testing and interviewing children along a temporal continuum.¹⁷ In addition, since “traumatic stress may manifest differently in children of different ages or developmental stages, making it difficult to assess for stereotyped posttraumatic adaptations”, non-mental health professionals will frequently misdiagnose a child’s reactions to the stress from the open court process.¹⁸

It is critical to note that unlike in many open court states, Connecticut’s abused children rarely attend court hearings and/or testify. Therefore, what data do Connecticut’s judicial officers and attorneys rely upon in concluding that the loss of confidentiality on non-testifying abused children does **not** cause these emotionally fragile children additional psychological stress? Connecticut attorneys and judges do not make home visits, do not survey non-testifying abused children about whether the possible public exposure of their abuse makes them anxious, and do not survey any of the abused children’s psychological and psychiatric therapists. In effect, those with the most information regarding children’s psychological health during the open court dependency proceeding are **never questioned**. In reality, the conclusion that children who do not testify are not harmed by open court proceedings is not only **pure speculation**, it is inconsistent with expert evidence.

¹⁷ Psychological researchers have found that because the guilt and shame experienced by abused and neglected children are “internalized symptoms” it is difficult for lay persons to determine the degree of psychological trauma an abused child might be suffering. Susan V. McLéer, et. al., *Psychiatric Disorders in Sexually Abused Children*, 33 J. Am. Acad. Child & Adolescent Psychiatry 313, 313 (1994).

¹⁸ Erica J. Adams, *Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense* 4 (Justice Policy Institute, Georgetown University School of Medicine, July 2010).

The Canadian government funded the most comprehensive empirical study of both abused children who testify and **children who do not testify** in open court regarding their abuse.¹⁹ Like most child dependency systems, in the Canadian study there was a potential that each child might have to testify; however, approximately 40% of the children studied did not testify.²⁰ The study interviewed all of the children, both testifiers and non-testifiers, prior to the scheduled hearings and at intervals up to 3 years after the completion of the litigation.²¹ During the pendency of the proceedings both groups of children had “difficulty concentrating on their school work” and felt great psychological pressure from the fear that “**their fellow students not know of the abuse....**”²² The psychological stress from fearing public disclosure was described as an “arduous time” for many child abuse victims who had “[s]evere acting-out behaviors, depression or **suicide attempts....**”²³ A frequent response by the abused children when asked how to make the proceedings more friendly to abused children was “**closing the courtroom to the public**”.²⁴

¹⁹ *A Study of the Social and Psychological Adjustment of Child Witnesses Referred to the Child Witness Project* (Child Witness Project, Centre for Children and Families in the Justice System).

²⁰ *Id.* at 29.

²¹ *Id.*, at 5.

²² *Id.*, at 91.

²³ *Id.*, at 96.

²⁴ *Id.*, at 112, 114, 117.

B. *The Connecticut Supreme Court's Recent Case, In re Tayler F.*²⁵, Suggests That Many More Connecticut Abused Children May Be Forced To Testify In Child Dependency Cases.

At the June 24, 2010 meeting of the Juvenile Access Pilot Program Advisory Board meeting, "Judge Keller stated that in light of recent decision of the Connecticut Supreme Court in Tayler F., it will be more difficult not to have the child testify."²⁶ This is a startling development in Connecticut, especially since the debate on whether the Pilot Project should even be started was predicated on the assumption that children would very rarely testify in Connecticut dependency cases.

From an outsider's perspective, it appears that Connecticut is **schizophrenic** regarding abused children's involvement in child protection proceedings. In *In re Tayler F.*, a mental health expert stated that court involvement could cause the child psychological harm, the Department of Children's Services stated that children testifying "likely raises [the] probability that the children can be harmed by the very system that...is designed to protect them"²⁷, and the juvenile court and Connecticut Supreme Court both were concerned about the abused child's mental health from court involvement. Why then, do many of those same professionals reject the probability of mental health harm caused by the publicity of the abused child's secrets through presumptively open court hearings?

²⁵ *In re Tayler F.*, 995 A. 2d 611 [Connecticut Supreme Court (SC 18280), June 8, 2010].

²⁶ *Draft Minutes, Juvenile Access Pilot Program Advisory Board, June 14, 2010 Meeting*, at 1.

²⁷ *In re Taylor F.*, *supra.*, at 617-618.

In re Tayler F. increases the probability that more Connecticut abused children will have to become directly involved in some form of testimony, either at trial or in a pre-trial hearing on the child's credibility or competency to testify. Although the Court held in that case that the trial court did not commit prejudicial error by admitting abused children's hearsay statements, the test articulated by the court when applied to other cases will result in children becoming involved directly with the court process for several reasons. First, the court placed the burden of proof on the question of the abused child's unavailability on the party seeking to admit that hearsay evidence.²⁸ Second, the burden involves demonstrating that the "child will suffer serious emotional or mental harm if required to testify" and "a finding that it is not in the best interest of the child to testify is not equivalent to psychological harm."²⁹ Thus, the court substantially raised the bar regarding the quality of proof and the degree of proof of serious mental harm before abused children's hearsay statements may be admitted. This will mean even more mental health examinations for those children, and will sometimes mean that the judge may need to see the child in order to make a determination. But the *In re Tayler F.* court also predicted that more children may have to testify because in that case the parents' did not: (1) request that the children testify pursuant to § 32a-4; (2) did not contest the admission of the hearsay statements because of "the absence of corroboration" pursuant to *Conn. Code of Evidence* §8-10(a)(3)(B)(i); and (3) did not "challenge the trial court's determination that the children's hearsay statements were trustworthy and reliable."³⁰

²⁸ *Tayler, supra.*, at 627.

²⁹ *Id.*, at 628.

³⁰ *Id.*, at 622, 629, 633.

The bottom line is that the facts in the *In re Tayler F.* case provided an easy case for the court to hold that admission of the children's hearsay statements was proper because the parents did not raise the above three critical grounds for objecting to the introduction of those hearsay statements. In other cases in which the parents seek the child's testimony or object to the introduction of hearsay based upon the lack of corroboration and/or attempt to rebut their trustworthiness and reliability, the child may either have to testify in a pre-trial hearing, or if the parents' objections to the hearsay are sustained, the children may have to testify in the case in chief.

Thus, the Connecticut Supreme Court's opinion in *In re Tayler F.*, has raised the stakes regarding the potential for psychological harm to children who are forced to become part of the presumptively open court Pilot Project. Even though Connecticut provides testamentary options for abused children's testimony such as in-chambers or video testimony, the abused children will still be traumatized by the public viewing, in whatever media, their actual testimony about the abuse.

C. **Abused Children Whose Stories Are Published Are Often Tormented
By Peers, Thus Increasing The Severity of Their Psychopathology.**

It is also critically important to consider abused children's perspectives 3 or 4 years after the legal proceedings have concluded. One of the most dramatic effects of publicity is on their **PEER RELATIONSHIPS**. "One quarter reported that the disclosure had been followed by a change in the extent to which they interacted with their peers and class mates."³¹ What was even more remarkable is that:

³¹ *A Study of the Social and Psychological Adjustment of Child Witnesses*, supra., note 19, at 143.

“12 percent had been taunted by fellow students...[and] [t]hese taunts were often homophobic references or hateful and hurtful comments about incest.”³²

The Canadian study’s findings regarding poor peer relationships after disclosure of child abuse is supported by many different psychological studies. First, abused and neglected children often lack the ability to properly interpret social signals from peers because of their elevated levels of stress hormones and their lack of trust due to the violations of loyalty by previously trusted caretakers.³³ Second, abused children’s coping mechanisms and their misreading of social signals “contribute to the development of those interaction styles bullies seem to target.”³⁴ Third, “child victims may find peer reaction to the assault one of the greatest impediments to their recovery....This reaction is typically justified because such a disclosure is commonly met with peer group ostracism and torment.”³⁵ Abused children suffer from a fear of “disclosure of

³² Id., at 91. Peer victimization is substantially increased if the disclosure involves perceptions of lesbian, gay, or bisexual conduct. Craig R. Waldo, Matthew S. Hesson-McInnis, and Anthony R. D’Augelli, *Antecedents and Consequences of Victimization of Lesbian, Gay, and Bisexual Young People: A Structural Model Comparing Rural University and Urban Samples*, 26 *Am. J. of Community Psych.* 307, 327 (1998).

³³ “[R]esearch has shown that emotion processing difficulties are a possible consequence of early maltreatment and have been explored as a mechanism through which maltreatment exerts its influence on later behavior....” Tatyana Leist and Mark R. Dadds, *Adolescents’ Ability To Read Different Emotional Faces Relates To Their History of Maltreatment and Type of Psychopathology*, 14 *Clinical Child Psychology and Psychiatry* 237, 240 (2009). In addition, abused children’s ability to correctly read social signals “implicates dysfunction of the limbic/amygdale system for registering fearful emotional stimuli and learning to avoid aversive consequences....” Id., at 245.

³⁴ Renae D. Duncan, *Maltreatment by Parents and Peers: The Relationship Between Child Abuse, Bully Victimization, and Psychological Distress*, 4 *Child Maltreatment* 45, 47 (1999).

³⁵ Charles R. Petrof, *Protecting The Anonymity of Child Sexual Assault Victims*, 40 *Wayne L. Rev.* 1667, 1688 (1993-1994). See also, David A. Cole, Melissa A. Maxwell, Tammy L.

the event, due to the stigma that may be associated with having the trauma known...which may lead to self-blame for allowing the trauma to continue.”³⁶

Although many in the public may sympathize with abused and neglected children who are derided by their peers, the real problem is that abused children’s self-image and self-confidence is dependent upon their reflection of themselves in their peer structure. Perhaps the most important finding of developmental victimology is that the duration and severity of a child’s psychological pathology is more closely correlated with “the child’s subjective evaluation of the abusive event than with the frequency or severity of the physical invasion.”³⁷ The abused child’s perception of his or her responsibility for the abuse, which is based in large part upon the public’s and peers’ reactions, contributes “twice as much to the magnitude of psychological distress as did more objective characteristics of the [assaultive] event.”³⁸

Dukewich, and Rachel Yosick, *Targeted Peer Victimization and the Construction of Positive and Negative Self-Cognitions: Connections to Depressive Symptoms in Children*, 39 *J. of Clinical Child & Adol. Psychiatry* 421 (2010).

³⁶ Kilit Kletter, Carl F. Weems, and Victor G. Carrion, *Guilt and Posttraumatic Stress Symptoms in Child Victims of Interpersonal Violence*, 14 *Clin. Child Psychology & Psychiatry* 71, 72 (2009). See also, R. E. Culp, et. al., *Maltreated Children’s Self-concept: Effects of a Comprehensive Treatment Program*, 61 *Am. J. Orthopsychiatry* 114, 114-1121 (1991); David Pelcovitz, et. al., *Posttraumatic Stress disorder in Physically Abused Adolescents*, 33 *J. Am. Acad. Child Adolescent & Psychiatry* 305, 305-312 (1994). “ ‘Kant would require that rape victims be treated as individuals worthy of consideration rather than as vehicles to educate society that rape is not a stigma. He would probably agree with a guideline that victims’ names could be made public only if they were willing.’” Bastiaan Vanacker and John Breslin, *Ethics of Care: More Than Just Another Tool to Bash the Media*, 21 *J. of Mass Media Ethics* 196, 208 (2006).

³⁷ Elissa J. Brown and David J. Kolko, *Child Victims’ Attributions About Being Physically Abused: An Examination of Factors Associated with Symptom Severity*, 27 *J. Abnormal Child Psychol.* 311, 320 (1999).

³⁸ *Id.* at 312.

D. ***Most Lawyers and Judges Focus on Harm From Publicity to Child Sexual Abuse Victims; However, Psychological Studies Demonstrate that Physically and Emotionally Abused Children Are Equally At Risk From Public Disclosure.***

The legal system has a false impression that the only children at risk through publication of their abuse are child sexual abuse victims. However, data demonstrates that neglected children also suffer significantly from the disclosure of their personal lives. As early as 1991 the *American Academy of Pediatrics* stated that focus on the danger of publication of information regarding abused children should focus, not just on sexual abuse, but also on physical abuse and neglect:

Media publication of information about child abuse victims and their families may be detrimental to the victims. This is particularly true in cases of sexual abuse, but it may be just as serious in some cases of physical abuse or neglect.³⁹

Mental health evidence has determined that “chronic maltreatment of children is associated with a heightened risk of rejection by peers....”⁴⁰ In fact, many have argued that a “child victim of physical assault should...be granted the same rights to privacy as the victim of sexual assault.”⁴¹

³⁹ *Public Disclosure of Private Information About Victims of Abuse*, 87 *Pediatrics* 261 (1991) [this policy statement by the Committee on Child Abuse And Neglect included representatives from the American Academy of Pediatrics, the American Medical Association, the American Academy of Child and Adolescent Psychiatry, and was approved by the Council on Child and Adolescent Health].

⁴⁰ Gregory C. Elliott, Susan M. Cunningham, Meadow Linder, Melissa Colangelo, and Michelle Gross, *Child Physical Abuse and Self-Perceived and Social Isolation Among Adolescents*, 20 *J. of Interpersonal Violence* 1663, 1665 (2005).

⁴¹ Chris Goddard and Bernadette J. Saunders, *Child Abuse and the Media* (National Child Protection Clearinghouse, Child Abuse Prevention Issues Number 14, Winter 2001) (<http://www.aifs.gov.au/nch/pubs/issues/issues14/issues14.html>).

Unfortunately, the media organization to which many Connecticut journalists are members, the **Society of Professional Journalists**, does not in its *Code of Ethics* inform journalists that they should exclude identifying information about physically and emotionally abused children; it only suggests that details of sexual abuse be omitted.⁴² Therefore, there is a serious conflict among the Connecticut journalists' ethics codes regarding the publication of information about physically and emotionally abused children, and the Connecticut Legislature's and Connecticut Judiciary's policies that all abused children, those sexually, physically, and emotionally abused, may all be psychologically harmed by the systems that are supposed to treat them. Recently in *In re Tayler F.*, the Connecticut Supreme Court reaffirmed that:

protecting the physical and psychological well-being of children is a compelling state interest.⁴³

And the Supreme Court rejected the parents' argument that only sexually abused children need protection in court proceedings: "[W]e decline to limit the court's discretion to deem the child unavailable to only cases involving sexual abuse.... This state's policies, as reflected in our statutes and rules of practice, support a broader view of the protection of child witnesses."⁴⁴

⁴² See, *Code of Ethics*, Society of Professional Journalists, "Be cautious about identifying juvenile suspects or victims of sex crimes." The *Code of Ethics* states that it is merely "voluntary" for members, and that it is not "legally enforceable." "The obvious difficulty with codes [of media conduct] is that they are voluntary and cannot be consistently enforced." Lee Ann Barnhardt, ASSESSMENT OF NORTH DAKOTA TRIAL COURT MEDIA RELATIONS POLICIES AND PRACTICES (Institute for Court Management Court Executive Development Program 2009-2010, Phase II Project, May 2010), at 30.

⁴³ *In re Tayler F.*, *supra.*, at 624.

⁴⁴ *Id.*, at 626.

This major conflict between the State of Connecticut's legislative and judicial determination that all abused children should be protected and the media's focus only on protecting a very small segment of abused children, sexual abuse victims, increases exponentially the potential that physically and emotionally abused children will have their stories publicized through the presumptively open Pilot Project.

The following are just a few examples of **harm to children** from the publicity of their abuse:

1. In an interview with Barbara Walters on ABC News, the child abuse victim's mother stated that "[i]n her school...the kids ostracized so...badgered her....They chased her home in a threatening fashion. She had to take home studies and **drop out of school**...."⁴⁵;
2. In a case in which the Tulane Law School Clinic represented the child in dependency court, the minor committed **suicide**⁴⁶ once the details of his life were disclosed⁴⁷;

⁴⁵ Petrof, supra., note 40, at 1667.

⁴⁶ Suicide is a significant risk among abused and neglected children. One of the biggest factors in children committing suicide is from depression and the warning signs of potential suicide involve children who have been "isolated from peers" or who have "suffered physical abuse or sexual abuse." *Teen Suicide* (<http://www.thechildrenshospital.org/wellness/info/parents/21788.aspx>) (http://parentguide.dpsk12.org/parent_power/teen_suicide.html). See also, *Depression and Suicide in Children and Adolescents* (U. S. Public Health Service) (<http://www.surgeongeneral.gov/library/mentalhealth/chapter3/sec5.html>).

⁴⁷ David R. Katner, *Confidentiality And Juvenile Mental Health Records in Dependency Proceedings*, 12 Wm. & Mary Bill Rats. J. 511, 538-539 (2003-2004).

3. In one study of abused and neglected children it was determined that several students **transferred schools** “as a result of bullying and harassment from other students...”, and in a study of 1725 children “it was found that those who had been abused felt isolated from their peers at school.”⁴⁸; and,
4. The disclosure of abuse and/or neglect contributed to child victims being seen in the community as “damaged goods”⁴⁹; some **parents did not want their children to associate with abused children**, thus exacerbating their social isolation, feelings of shame and loss of self-confidence.⁵⁰

Whether or not we want to accept it, there are negative social consequences and a stigma attached to being physically abused and/or neglected. When the media identifies abused children, the community, including peers, often uses that information in ways that heighten and worsen those children’s emotional trauma.

⁴⁸ John Frederick and Chris Goddard, ‘*School Was Just A Nightmare*’: *Childhood Abuse and Neglect and School Experiences*, 15 *Child and Family Social Work* 22, 25-27 (2009).

⁴⁹ See, Damien W. Riggs, Daniel King, Paul H. Delfabbro and Martha Augoustinos, “*Children Out Of Place*”: *Representations of Foster Care in the Australian News Media*, 3 *J. Children & Media* 234, 236-237 (2009). Disclosure, especially of sexual abuse, “ ‘can result in changed response to [the victim] by boys and men including leers, lewd jokes, and other comments and...ostracism from the peer group.’” Charles R. Petrof, *Protecting The Anonymity of Child Sexual Assault Victims*, 40 *Wayne L. Rev.* 1677, 1688, n. 90 (1993-94).

⁵⁰ *Id.*, at 27. It may come as a surprise, but an empirical study of jurors’ reactions to the abuse history of juvenile delinquents demonstrated not only that jurors considered abused children “as **less amenable to rehabilitation**”, but that jurors used the child’s history of abuse as “an **aggravating** rather than mitigating factor” in some cases. Cynthia J. Najdowski, Bette L. Bottoms, and Maria C. Vargas, *Jurors’ Perceptions of Juvenile Defendants: The Influence of Intellectual Disability, Abuse History, and Confession Evidence*, *Behavioral Sciences and the Law* (2009) (DOI: 10.1002/bsl).

Thus, even though the sources from which to discover severe harm to abused and neglected children from open court systems are very limited, mental health professionals have in their surveys and in their research clearly demonstrated that many abused and neglected children are not only at risk of being retraumatized by media reports, but that many children's lives are actually destroyed by such humiliating and embarrassing revelations.

E. There Are Currently No Valid Empirical Studies That Demonstrate That Open Dependency Courts Are Safe For Abused and Neglected Children.

Open dependency court advocates call their "holy grail", the National Center for State Courts study of the Minnesota Open Court Pilot Project [hereinafter "NCSC"].⁵¹ However, the validity of that study has been severely impeached. The shabby methodology of the NCSC study has led the **National Council of Juvenile and Family Court Judges** to caution other states not to rely on the Minnesota study in policy considerations regarding opening child protection proceedings in other jurisdictions.⁵² Even, Dr. Cheesman, the author of the NCSC study, testified under oath⁵³ that he lacked a sufficient budget to conduct the type of empirical work that would have helped determine the effect of the open courts on the abused children. He testified that, "I'm not claiming that this is the most full-proof study."⁵⁴ Partly because of budget

⁵¹ Fred L. Cheesman, *NATIONAL CENTER FOR STATE COURTS, KEY FINDINGS FROM THE EVALUATION OF OPEN HEARINGS AND COURT RECORDS IN JUVENILE PROTECTION MATTERS* (August 2001).

⁵² Dionne Maxwell, et. al., *NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, TO OPEN OR NOT TO OPEN: THE ISSUE OF PUBLIC ACCESS IN CHILD PROTECTION HEARINGS*, at 13-14.

⁵³ *In re San Mateo County Human Services Agency* (Super. Ct, San Mateo County, Dept. 5, March 3, 2005 (transcripts on file with author).

⁵⁴ *Trial Transcript, supra., note 4*, at 74.

limitations, he did not survey the parents and children or any of the children's mental health professionals, but instead relied on the anecdotal observations of attorneys, judges and court personnel. The other study that open court advocates cite to prove abused children are safe in open court systems is the report on the Arizona open court pilot project, Gregory B. Bromberg, *Arizona Open Dependency Hearing Pilot Study* (2006). However, the author of that report, Mr. Bromberg, testified under oath that he used the Minnesota study as his model, and that his study had the same methodological flaws as the Minnesota study, including a failure to survey parents, children, or psychologists in the system regarding harm to the abused children from the open court system, and that his was an unfunded project, and he therefore did not have the resources to investigate the issue of harm to children.⁵⁵

The truth is that not a single open court state has conducted any valid empirical research that includes surveying mental health professionals or a substantial percentage of parents and abused children who are in the best position to determine the manifested harms that are experienced through the publicity and embarrassment of having an abused child's intimate secrets told before strangers and/or published in the media. In contrast, as demonstrated, *supra.*, dozens of psychological and psychiatric studies demonstrate the potential for serious emotional damage from not only the publication of identifying information, but also from **the fear of disclosure** even if the facts are never actually published.

⁵⁵ For a more detailed report on the methodological weaknesses in the Arizona study, see the article I have supplied the committee, William Wesley Patton, *When The Empirical Base Crumbles.....*, 33 Law & Psychology Rev. 29, 35-36 (2009).

1. Question: "In general, if confidential details regarding abused and/or neglected children's abuse becomes public, that disclosure may exacerbate the child's psychopathology."
Answers: 7 "Strongly Agreed"; 7 "Agreed", and 0 Disagreed.
2. Question: "In general, if confidential details regarding abused and/or neglected children's abuse becomes public, it will complicate any ongoing psychiatric therapy for the child."
Answers: 9 "Strongly" agreed, two "neither agreed or disagreed", and 6 "Agreed". Therefore, 92% agreed or strongly agreed.
3. Question: "In general, if confidential details regarding abused and/or neglected children's abuse becomes public it will increase the risk of interpersonal relationship problems with peers at the abused child's school."
Answer: 10 "Strongly Agreed", 7 "Agreed", and 0 "Disagreed".

Although the sample size of this survey is not as large as one that I would like to conduct if I had more resources, since the results were almost identical with the earlier survey of California child and adolescent psychiatrists, it strongly supports the conclusion that the risk of publicity of Connecticut abused children's privacy in presumptively open courts is a great concern. These mental health experts who are on the front line treating these child victims on a daily basis are unalterably opposed to presumptively permitting attendance by the press and public.

(<http://www.gifted.uconn.edu/siegle/research/Instrument%20Reliability%20and%20Validity/Likert.html>).

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PART II

MEDIA ROUTINELY PUBLISHES IDENTIFYING INFORMATION ABOUT ABUSED AND/OR NEGLECTED CHILDREN.

It is axiomatic that “[c]hildren’s vulnerability must be a prime concern for broadcasters.”⁶⁰ In fact, most news organizations and most countries’ model media codes explicitly state that child victims shall not be identified in media stories either by name or by including information that can lead to the identification of the child victim.⁶¹ In addition, in one survey 90% of the general public stated that it did **not** support the media’s publication of the name of a child sexual abuse victim legally gleaned by the press from court documents.⁶² Despite voluntary non-enforceable media ethics codes, newspapers for decades have provided identifying information about abused and/or neglected children. The substantive nature of the legal proceeding, whether it is a criminal case, a civil case for damages, a family law case, or a child protection case in which the child’s identifying information is supplied is irrelevant to the potential psychological damage to the abused child caused by that publication. The reality is that

⁶⁰ The United Kingdom Broadcasting Standards Commission Code, contained in, Michael de Tombe, *Get That Camera Out Of My Face!”: A Look At Children, Privacy And The Broadcasting Standards*, 31 Victoria U. Wellington L. Rev. 577, 584 (2000). *Reuters Handbook of Journalism: Reporting About People*, states that the “overriding concern must be to avoid exposing a minor to harm and we must do our utmost to minimize the stress of the experience for the subject.”

(http://handbook.reuters.com/index.php/Reporting_about_people#Tra).

⁶¹ The Radio-Television News Directors Foundation publication guidelines states that “Juveniles should be given greater privacy protection than adults”...[and] “do unto other people’s kids as you would have them do unto your kids.” Tom Brislin and Yashuhiro Inoue, *Kids and Crime: A Comparative Study of Youth Coverage in Japan and the United States*, 22 J. Mass Media Ethics 3 (2007).

⁶² Robert E. Dreschel, *Media Ethics And Media Law: The Transformation Of Moral Obligation Into Legal Principle*, 6 Notre Dame J. L. Ethics & Pub. Pol’y 5, 23-25 (1992).

once the media obtains confidential identifying data regarding child victims, they often publish that data for the public to read immediately, and often to be preserved in electronic media for the rest of that child's life.

A. *Connecticut Media Has Published Identifying Information About Child Abuse Victims For Decades.*

Some newspapers, including those in Connecticut, have stated that keeping abused children's identities confidential is a bad idea. For example, the *Hartford Courant* issued an editorial suggesting that it is not always in abused children's best interest for the press to keep their identities confidential:

"Although the impulse to protect the identity of abused children is understandable, it can lead to excess."⁶³

As the following examples from Connecticut media disclosure of abused and neglected children's identifying information demonstrate, the trust in the media's protection of child victims has already been violated for years and on numerous occasions. Here are just a few examples of outrageous disclosures regarding child victims' lives by the Connecticut media:

1. Lynne Tuohy, *Judge Describes Child Victims' Anxiety, Self-Loathing As He Sentences Giordano To 37 Years.*⁶⁴ In this story the reporter chronicles the sexual abuse in which a **named mother** allegedly brought "her 8-year-old daughter and 10-year-old niece" to the named defendant for sex.;

[Since this reporter revealed the mother's identity, the community could easily also identify the child sexual abuse victims. Many more protective media codes inform reporters to omit the names of criminal defendants if identifying them will lead to the identity of the child victim].⁶⁵

⁶³ *Conspiracy of Silence*, Hartford Courant, June 29, 1993, at B12.

⁶⁴ (<http://www.courant.com/news/connecticut/hc-giordano-sentence>), June 14, 2003.

2. Matt Burgard, *After Father's Arrest In Unrelated Case, Allegations Surface That He Tortured And Abused His Wife and Children* (March 17, 2007): The story gives the father's name and the fact that he "routinely subjected to humiliating acts of 'corporal punishment' his two girls, aged 7 and 10, and two boys, aged 14 and 15...."⁶⁶;

[Section I.B., supra., noted the danger of publicity to physically and emotionally abused children].

2. Jenna Carlesso, *Domestic Violence Death Of A Parent Can Scar Kids For Life*, *The Hartford Courant*, May 3, 2010. In this article in which the author specifically acknowledges that children who witness the murder of a mother by a father have "emotional scars [that] run deep" and that some "children develop anxiety, difficulty sleeping and post-traumatic stress disorder" nonetheless **published the full names of the 9-year-old sister and her brother** who witnessed the murder;

[This is a very troubling news report because the reporter expressly noted that these children were emotionally fragile and have emotional scars that run deep, but still published the children's names].

3. In another article, the Connecticut reporter gave the mother's name, the names of the mother's 7-year-old, 13-year-old, 9-month-old, and 17-year-old children and described the details of the mother's physical abuse of the children. The article, which included a photograph of the mother and three of her children described the mother as she "whipped her [named] 13-year-old son across the face and her [named] 7-year-old daughter on her small frame." And to add **public humiliation** to the [named] 13-year-old son, the reporter stated that he "bowed his head in shame Monday and admitted he'd misbehaved."⁶⁷

[One must wonder why this reporter determined that this abused child's "SHAME" was so newsworthy?]

⁶⁵ See, infra., note 62.

⁶⁶ (<http://www.courant.com/news/domestic-violence/hc-domestic-violen....>).

⁶⁷ Meredith Carlson, *Parent Jailed After Calling For Help To Stop Child Abuse*, *Hartford Courant*, September 17, 1991, at B1.

5. A reporter not only described in detail the child abuse resulting in “welts and bruises on the arms of both girls” and that the mother “beat her daughters with a metal broom handle....”, he also gave the girl’s **street** and the **name of the girls’ high school**, apparently so that no reader would be left with insufficient identifying information regarding these two high school students;⁶⁸

[Why would a reporter supply an abused child’s street and the name of the abused child’s school? Is this what is meant by *Sunshine*?]

6. In another article the reporter listed both parents’ names and their full **street address**, and stated that the couple had neglected their 7, 11, and 14-year-old children by “raising their three daughters in a house where rotting food littered almost every room....”⁶⁹.

[This is the type of disclosure of abused and neglected children’s home lives that leads to peer and community rejection. See, Section II.B.4., supra.]

One can draw a few conclusions from this small sample of Connecticut media articles identifying abused and neglected children. First, Connecticut media often violate the warnings by mental health professionals that identified abused children’s stories should not be published. And second, Connecticut journalists often publish child abuser’s home addresses, thus providing the public with sufficient identifying data of the abused children even if their names are not published. This publication of information which can lead to the identity of abused children

⁶⁸ David Owens, *West Hartford Woman Charged Again With Assaulting Daughters*, Courant.com, November 12, 2009 (<http://www.courant.com/news/connecticut/hc-child-abuse-1112.artnov>).

⁶⁹ Kenneth R. Gosselin and Robin Stansbury, *House Found In Squalor....*, Hartford Courant, June 10, 1994, at C5.

even violates journalistic standards in countries that one would expect would provide abused children with fewer protections than provided by the American press.⁷⁰

B. The Media in States With Open Dependency Courts Routinely Publish Embarrassing and Identifying Information About Child Abuse Victims.

For the sake of brevity, this report will only provide a small sample of media reports that provide the child victims' names, identifying data, and/or details of the child abuse or neglect from other presumptively open court states:

1. Pennsylvania:

It is important to note that the Pennsylvania courts were **not** opened after a policy cost/benefit analysis regarding the benefits and burdens of openness, but rather based on a court mandate interpreting an independent state constitutional right to court access for the press and public.

The Pennsylvania media fought for years to gain access to closed dependency proceedings. However, some of the newspapers, especially the *Pittsburgh Post Gazette* have the **worst record** of publishing child victims' names and details of their abuse. It is no wonder since the paper's editor has defended publishing the name and photograph of a **sexually abused** girl, and when the paper suffered pressure from such publication the editor responded, "We're going to keep running the name and we are

⁷⁰ *Code of Professional Ethics of Russian Journalists* (http://ethicnet.uta.fi/russia/coe_of_professional_ethics_of_russian); *Code of the National Federation of the Italian Press* (http://ethics.iit.edu/indexOfCodes-2.php?key=18_420_751&q=printme); *Publicistic Principles of the German Press Council* (http://ethics.iit.edu/indexOfCodes-2.php?key=18_290_735&q=printme); *Guidelines For Good Journalistic Practice, Union of Journalists of Finland* (http://ethics.iit.edu/indexOfCodes-2.php?key=18_132_772&q=printme).

going to keep running the picture.”⁷¹ In that case of a missing girl who was eventually recovered, the newspaper for **28 days** published **23 stories** by **12 different reporters**, many of which used her name and photograph and disclosed that her captor with his picture in his sado-masochistic torture chamber was charged with transporting the named girl across state boundaries for sexual purposes.⁷² The editor explained that even a rule not to publish a child rape victim’s name is subject to corporate waiver:

“The important point is that a newspaper is not an agency of government; it is a private information business that can make exceptions to any rule. If circumstances recommend an exception, it will be made, which has occurred.”⁷³

2. **Michigan:**

Michigan was one of the first states to open its dependency courts to the press and public. Historically, the Michigan press has published identifying data regarding child victims. “In Michigan, which has had open hearing since 1988, numerous Detroit newspaper articles publish children’s names and photographs.”⁷⁴ That trend continues today.⁷⁵ The National Center for State Courts investigation of the

⁷¹ John G. Craig, Jr., *To Name or Not to Name? Sex-Crime Cases Pose a Privacy Problem*, Pittsburgh Post-Gazette, Jan. 20, 2002, at C-3.

⁷² In another Pennsylvania case the press sought court access to a child custody hearing, and once admitted, they published the name of a 14-year-old in that case. William Shane Stein, *Open Minds-and Courts....*, Pittsburgh Post-Gazette, July 31, 2002, at A10.

⁷³ John C. Craig, Jr, *To Name or Not to Name: Sex-Crime Cases Pose a Privacy Problem*, Pittsburgh Post-Gazette, January 20, 2002.

Minnesota open pilot project found that many Michigan “news articles revealed that in some cases children’s real names were used, as well as their photographs, when describing cases of foster care abuse, termination of parental rights and child protection matters.”⁷⁶

3. **New York:**

New York also has a long history of publishing the identities or identifying information regarding child victims. Perhaps the worst case in recent memory involved the sexual abuse of a son by his mother. That report stated that the child, “Justin, stated that respondent-mother had placed his penis in her mouth. Justin also stated that respondent-mother had placed her mouth on his butt and ‘titties’” and reported that Justin acted out sexually through “acts of exhibitionism and masturbation.”⁷⁷

⁷⁴ Susan Harris, *Open Hearings: A Questionable Solution*, 26 Wm. Mitchell L. Rev. 673, 677 (2000).

⁷⁵ For instance, the press still supplies information in stories that can lead to the child victim’s identity. See, e.g., Ben Schmitt, *Wayne County: Task Force Fans Out To Check For Child Abuse....*, Detroit Free Press, May 17, 2007, at 1.

⁷⁶ Mary Jo Brooks Hunter, *Minnesota Supreme Court Foster Care and Adoption Task Force*, 19 *Hamline J. Pub. L. & Pol’y* 1, 231 (1997).

⁷⁷ *Court Decisions: Signs of Sexual Abuse of Child Are Shown But Mother is Not Proven to be Likely Abuser*, N.Y.L.J., July 11, 2000, at 25. See, also, *Dad Jailed for Dog-Housed Daughter*, N.Y. Times, Feb. 1, 2001; Celia W. Dugger, *Sex-Abuse Case in Harlem Leaves Neighbors Confused*, The New York Times, May 23, 1991 [says the 14-year-old daughter of the named father is a special education student, gives her address, and details of the father fondling her breasts and inserting “his finger into her vagina.”]

4. **Oregon:**

Like Pennsylvania, the Oregon courts were not opened after a policy analysis, but rather were ordered opened based upon an independent state constitutional right of access to the courts.⁷⁸

The Oregon media has historically published identifying information about child victims. Even when excluded by the court from a dependency proceeding, one Oregon newspaper still published the name of a 13-year-old minor, and once the story was published by one newspaper, several other Oregon papers also republished the child's name.⁷⁹ Other stories have published the child's name and details of the abuse and/or neglect.⁸⁰

5. **Texas:**

In one of the worst cases of reporters re-abusing a child victim, a Texas newspaper disclosed parents' names, their town, and the following information about the child sexual abuse victim: (1) the boy had learning and physical disabilities; (2) he was "sodomized...with a four-foot long cable as punishment"; (3) he

⁷⁸ See *Oregon Const. Art. I, § 10; State ex. re. Oregonian Pub. Co. v. Deiz*, 613 P. 2d 23 (Oregon 1980).

⁷⁹ See the report in 613 P. 2d 23.

⁸⁰ See, e.g., Emily Tsao, *State's Kids Need More Protection, Audit Says*, *The Oregonian*, May 12, 2005; Ruth Liao, *Couple Get Three Years In Prison For Confining, Abusing 4-Year-Old*, *Statesman Journal*, March 8, 2007; Pat Knight and Dana Tims, *Stevens Arraigned in Linn Murder, Assault on Girls....*, *The Oregonian*, March 8, 1998 (giving mother's name and stating that the girls were kidnapped and "sexually molested...."); Emily Tsao & Sarah Hunsberger, *Failings Found in Foster Child's Care*, *The Oregonian*, Feb. 19, 2005, at B1 (child's name and medical condition disclosed).

was handcuffed to a railing” and beaten with a wooden paddle. In addition, the reporter disclosed his conversation with the boy’s sixteen-year-old sister in which she said that her brother would have a sock or rag put in his mouth when he screamed.⁸¹

6. **Arizona:**

Arizona, one of the most recent court systems that decided to open its dependency proceedings to the press and public, has a press that frequently publishes identifying information regarding child victims.

In one article the media disclosed that the named parents’ neglected their son who “has attention deficit hyperactivity disorder” and described in a manner that can only be horribly embarrassing to an 11-year-old boy, that he was locked in his room that had bars on the windows and “was left a jug of water and a sandwich, a roll of toilet paper and a bucket in which to relieve himself.”⁸² In another story the reporter gave the child’s name and described the child crying when taken from the mother and was placed in foster care.⁸³ In another story the reporter gave the child’s name, his medical condition, and the fact that he and his sibling were taken into police custody.⁸⁴

⁸¹ *Police Couple Charged With Beating, Child Sexual Abuse*, Lubbock Avalanche-J., April 13, 2000. In another story the reporter provided the abused child’s name and stated that he was “struck hundreds of times with a tree branch...causing him to be in danger of kidney failure.” Cindy Horswell, *Abusive Mom Will Regain 6 Kids*, Houston Chronicle, Dec. 12, 2003, at A37.

⁸² *Tucson Couple Arrested for Child Abuse*, The Associated Press Local Wire, August 11, 2008.

⁸³ Rhonda Bodfield Bloom, *Broken Bonds*, Ariz. Daily Star, Oct. 22, 2005.

⁸⁴ Joyesha Chesnick, *Shift in Policy Aims at Keeping Children Out of Foster Homes*, Ariz. Daily Star, July 25, 2005.

7. **Florida:**

The Florida media routinely publishes identifying and extremely embarrassing stories about child victims. Imagine how a 16-year-old boy would feel when the public reads that the mother's attorney has publicly called him a "liar" and an "aggressor" in an abuse case in which it is alleged that he was brutally beaten with "bruises on nearly every part of his body, a broken right forearm and cuts on his buttocks so severe he couldn't sit". It also states that the mother's boyfriend "ordered him to strip naked...."⁸⁵

These are just some of the dozens and dozens of examples of the press in open court jurisdictions publishing identifying and often extremely embarrassing information about child victims, even **sexually abused children**. The debate, therefore, is not whether or not this information about abused children may or will be published, but rather it involves an analysis of whether or not the risk to vulnerable child abuse victims is worth the cost of the symbolic value of opening the courts to the press and public.

PART III.

**THE PILOT PROJECT FAILED TO ADEQUATELY EDUCATE
AND TRAIN ABUSED CHILDREN'S ATTORNEYS REGARDING
THE IMPORTANCE AND TACTICS FOR PROTECTING
THEIR CHILD CLIENTS THROUGH MOTIONS TO LIMIT PUBIC ACCESS**

Presumptively open court advocates have confidence that abused children will be protected in open dependency court proceedings because judges will close any hearing in which

⁸⁵ John Frank, *Abuse of Teen Disputed*, St. Petersburg Times, March 18, 2009, at 1B. A sample of other media stories about Florida child abuse victims includes: Shannon O'Boye, *Mom Arrested On Child Abuse Count: Exam Reveals Boy's Bruises Are 'Severe'*, Sun-Sentinel, Jan. 22, 2005, at 2B; Valerie Kalfrin, *Scuffle With Son Brings New Abuse Charge for Dad*, Tampa Tribune, August 27, 2007, at 4; *Law and Order*, Tampa Tribune, Feb. 13, 2009, at 15.

it is alleged that it is not in the best interest of the abused child or children. The problem, however, is that this argument is based upon speculation and faith, and it is inconsistent with the empirical evidence from presumptively open court jurisdictions.

As one scholar has indicated, a presumptively open court system with discretion to close does not sufficiently protect abused children for a number of reasons. First, it assumes that “the child recognizes the possible harm to his or her interests from open courts....Second, we must assume that the child will have the wherewithal to alert his or her attorney of the potential harm. Third, we must assume that the child’s attorney will take the child’s concern seriously and will move in court to close the proceedings. Fourth, we must assume that the dependency court judge will also recognize the harm to the child and close the proceedings.”⁸⁶

The evidence clearly demonstrates that children’s attorneys rarely file motions to close proceedings in presumptively open dependency court systems, and when those motions are filed few hearings are ever closed. For instance, according to Judge Barbara Quinn, Chief Court Administrator, the early results of the Connecticut Pilot Project demonstrate that so far not a single child’s attorney has filed a motion to close a proceeding.⁸⁷ In addition, during the seven months of the Pilot Project attorneys have only filed 15 motions to exclude the press and public.⁸⁸ It is therefore quite clear that the attorneys representing children and/or parents in the Pilot Project do not understand the rules regarding attendance at these hearings, and have not

⁸⁶ Jennifer Flint, *Who Should Hold The Key? An Analysis Of Access And Confidentiality in Juvenile Dependency Courts*, 28 J. Juv. L. 45, 80 (2007).

⁸⁷ www.ctn.state.ct.us/webstream.asp?odID=5497&odTitle (Center for Children’s Advocacy Seminar on Public and Media Access to Juvenile Court (May 27, 2010)).

⁸⁸ See State of Connecticut Judicial Branch (http://www.jud.ct.gov/juvenile/pilot/motions_archive.htm).

been sufficiently trained regarding either the serious psychiatric consequences of public access to previously confidential child victim data or on the legal procedures necessary to meet a party's burden of having a presumptively open hearing closed.

But even worse, the Minnesota open court study demonstrates that even when motions to close are filed, they are rarely granted in some open court jurisdictions. That study found that “[c]losures of open child protection hearings occurred very infrequently”, a result all the more troubling since a motion to close in some counties was filed in “almost all child protection proceedings.”⁸⁹

Why do most motions to close a dependency court hearing in presumptively open jurisdictions usually fail, and thus provide no protection to abused children from community publicity of the intimate details of their abuse? First, judges are elected. They fear bad publicity. If a judge closes a hearing she is at risk of having the media, perhaps the most biased source of reporting since it is the media who will be excused, attack the judge's ruling in the press.⁹⁰ Second, presumptively open court systems put the burden on the party moving to close the courtroom to prove the necessity of closure based upon an actual demonstrated risk of harm to the abused child. How, one might ask, is a child's advocate with a case load of between 100-250 abused children and with a substantially reduced budget for expert witnesses supposed to meet the child's burden of demonstrating that the open hearing is not in the child's best interest? The answer is that children's attorneys, when they make motions, often lack sufficient resources to

⁸⁹ NCSC Report, Vol. 1, at vii, 6-7.

⁹⁰ Judges are reluctant to close hearings for other reasons as well. In the Minnesota study many judges did not close their courtrooms because they thought that it would interfere with the study that was being conducted to evaluate the open court system. NCSC Report, Vol. 1, at vii, 6-7.

PART IV.

LIKE OTHER STATES' OPEN COURT SYSTEMS, CONNECTICUT'S PILOT PROJECT FAILED TO DEMONSTRATE ANY *EVIDENCE-BASED*⁹³ INCREASES IN SYSTEM AND/OR PERSONNEL ACCOUNTABILITY

Presumptively open court proponents point to two central values inherent in that system. First, openness has a symbolic value that says "we have nothing to hide". Second, the argument is that with sunshine comes accountability. However, the study of presumptively open courts belies the conclusion that significant increases in accountability, including better judging, more competent attorneys and social workers, and more frequent voter approval of better funding for the system will result.

The Executive Summary of the Minnesota Open Court Study states that professional accountability "has changed little".⁹⁴ In addition, Esther Wattenberg, a member of the Minnesota Supreme Court Task Force, noted that opening the courts did not have a reformatory effect because such reform is costly, and because the public's willingness to provide more

⁹³ "The Institute of Medicine (IOM) defines 'evidence-based practice' as a combination of the following three factors: (1) best research evidence, (2) best clinical experience, and (3) consistent with patient values (IOM, 2001). These three factors are also relevant for child welfare." The California Evidence-Based Clearinghouse explains why evidence-based child welfare policy is essential and why anecdotal evidence is insufficient for determining policy directions (<http://www.cebc4cw.org/importance-of-evidence-based-practice#explain>).

⁹⁴ NCSC Report, Vol. 1, at ii-vii. In a second survey the report noted that in anecdotes some of the attorneys and judges felt like the system was more accountable. However, the Minnesota study did not conduct an evidence-based follow-up study to determine whether or not those anecdotes were accurate and whether, in fact, judges', attorneys', and social workers' work was more professional or whether abused children were actually better off in terms of more accurate fact-finding or quicker reunification or permanency placement. It should also be noted that the press was so uninterested in the court study that reporters simply did not return the court's surveys.

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managers, their reactions are to increase worker accountability which has a result of the “employees...[being] bogged down with new restrictions and increased culpability, [who] become less able to perform their duties and more frustrated with their situation.”⁹⁹ The results of media reports have been described as a “vicious circle”:

[M]anagement is frantically trying to correct a bad image, employees are angry and frustrated over what they cannot manage to do for their clients [without more resources], the clients are not receiving services that might correct their dire situations, and the media sensationalize every new case that comes to their attention.¹⁰⁰

When that negligible social benefit from presumptively open hearings is balanced against the tremendous number of empirical studies demonstrating the severe danger to abused children’s psychological health, it becomes clear that other solutions to improving the system need to be pursued.

In analyzing the public’s frustration regarding child abuse systems, child abuse experts have noted, “we are now **in danger of uncritically embracing whatever is offered as a**

⁹⁹ Lindsay D. Cooper, *Implications Of Media Scrutiny For A Child Protection Agency*, 32 J. Soc. & Soc. Welf. 107, 108, 117.

¹⁰⁰ Id., at 117-118. Other analyses of media stories about the child abuse system have demonstrated that “media representations of foster care, families, parents, and children often serve to affirm negative stereotypes about the state and its treatment of foster children and carers....” Damien W. Riggs, Daniel King, Paul H. Delfabbro and Martha Augoustinos, “*Children Out of Place*”: *Representations of Foster Care*...., 3 J. of Children and Media 234, 235-236 (2009). “On an extensive search of Internet newspapers two types of stories regarding the dependency courts predominated: (1) stories in which judges made the wrong decision and placed children in environments in which they were abused or harmed and (2) stories of legislative/executive review of such incidents and/or new legislation aimed at preventing future occurrences. Positive stories of work of the court were not to be found.” Cecil Greek and John Cochran, *Abuse, Neglect and the Mass Media: Discussing The Relationship Between Abuse Cases and Media Response*, at 4 (presented at the Dependency Court Improvement Summit for Judges, June 5, 1997) (<http://www.fsu.edu/-crimdo/abuse.html>).

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remedy, even though it is not at all clear that we should be comforted by the ‘something’ that is being done about this tragic phenomenon [of child abuse].”¹⁰¹ As Richard Gelles has argued, “we must provide services based on **scientific information rather than conventional wisdom and persuasive myths.**”¹⁰²

CONCLUSION

The frustration of Connecticut citizens, the judiciary, legislature, and executive branches of government regarding the checkered history of the child dependency system in Connecticut is understandable. However, it is unreasonable and bordering on reckless, to use a system, presumptively opening the courts to the press and public, which has been shown to provide absolutely no evidence-based empirically proven accountability or improvement in professional competency in any other open court jurisdictions and which has clearly been demonstrated to place abused and neglected children at severe risk of exacerbating their mental health. Using abused children as pawns in a system to appease Connecticut voters and media regarding the child welfare system is a cruel utilitarian strategy. It is clear that if one merely engages in a cost/benefit analysis of the rights of an individual abused child to privacy versus the public’s non-constitutional desire to court access, the abused child’s rights will be trumped almost every time:

¹⁰¹ Frank D. Fincham, et. al., *The Professional Response to Child Sexual Abuse: Whose Interests Are Served?*, 43 Fam. Rel. 244, 244 (1994).

¹⁰² Richard J. Gelles, *Demythologizing Child Abuse*, 25 Fam. Coordinator 135, 141 (1976).

“Invasion of privacy is resolved on technical journalistic grounds, for example, with harm to victims of tragedy excused whenever it is perceived as benefiting the public good.”¹⁰³

Accountability for Connecticut’s child welfare system can be accomplished by keeping the current presumptively closed courts and by granting judges sufficient discretion to admit researchers and those with a legitimate interest in the case. The harm to abused children from permitting the general public and all media to attend is not required to bring sunshine into child protection proceedings.¹⁰⁴ Therefore, this Committee should recommend an end to the Pilot Access Project and start working with the Legislature and courts to design a better system of judicial discretion for admittance to those hearings of the media and individuals, such as relatives and current child custodians, but with sufficient prophylactic protections against publication of confidential and/or identifying information.

If the Juvenile Access Pilot Program Advisory Board wants to increase public and press access to court while still protecting Connecticut’s fragile abused children from the dramatic consequences of publicity of their intimate lives, I suggest the **following policy changes**:

1. Confidentiality statutes should be modified, as they are in many presumptively closed systems, to provide access to those who generally have a direct interest

¹⁰³ Clifford G. Christians, *Utilitarianism in Media Ethics and Its Discontents*, 22 J. of Mass Media Ethics 113, 113 (2007).

¹⁰⁴ *Sunshine* is the open court advocates’ mantra. However, as one who lives in California, I am well aware that sunshine without sufficient prophylactic protection, leads to cancer. Presumptively open child protection proceedings do not provide sufficient protection from the public’s and press’s gaze on the intimate tragedies of child victims. The protection of a presumptively closed court with judicial discretion to open both provides sunshine and prophylactic protection for child abuse victims.

- in the proceeding, including specified relatives and current out-of-home caretakers;
2. Provide that in order to grant the media court access, the trial judge should secure from each media member to be admitted a conditional access contract in which the press agrees not to disclose the names of any parties and not to disclose any circumstantial evidence that might lead to the identification of the minors in the case. The prior restraint problems inherent in a presumptively open system are much less problematic in a presumptively closed system since the court has the remedy of excluding anyone into future hearings if they violate the confidentiality agreement. On the other hand, excluding reporters from entering future presumptively open hearings based upon their past violation of a court condition of confidentiality raises both the specter of prior restraint and First Amendment retaliation;
 3. Suggest that the state judiciary establish a committee or judicial administrative staff that monitors and reports on the media's coverage of the child dependency system¹⁰⁵;
 4. Support reasonable alternatives to presumptively open dependency courts like a *Public and Media Access Panel* in which a committee composed of media representatives and the public, akin to a grand jury, are given access to dependency court data and hearings in order to issue "*white papers*" to address problems and potential solutions to those systemic problems. My model for such a media/public access panel is included in William Wesley Patton, *Pandora' Box: Opening Child*

¹⁰⁵ Most jurisdictions that have established more liberal press access in dependency courts have failed to investigate or monitor press coverage. For example, the recent report regarding the North Dakota court system recommended the development of "a process for monitoring media reports." Lee Ann Barnhardt, ASSESSMENT OF NORTH DAKOTA TRIAL COURT RELATIONS POLICIES AND PRACTICES 7 (Institute for Court Management Court Executive Development Program 2009-2010 Phase III Project, May 2010).

Protection Cases To The Press and Public, 27 Western State Univ. L. Rev. 181, 200-203 (1999-2000).

In *In re Tayler F.* the Connecticut Supreme Court has reaffirmed Connecticut's long-standing position that protecting children's mental health and avoiding unwarranted psychological trauma is a **compelling state interest**.¹⁰⁶ Neither the Connecticut Legislature nor the Judiciary should betray Connecticut's abused and neglected children by forcing them to endure the humiliation and trauma of having their intimate child victim stories exposed in open court to the press and public.

¹ During the past 15 years I have been involved in the debate of whether or not to open the child dependency courts to the press and public by testifying as an expert witness in juvenile court and state legislatures, debating state supreme court justices and supervising judges of the juvenile court, teaching Forensic Child and Adolescent Psychiatry at the UCLA David Geffen School of Medicine, Department of Psychiatry, writing several law review articles, and by conducting empirical studies regarding the effects of open child dependency courts on the psychopathology of child abuse victims.¹ My research on open court systems includes: William Wesley Patton, *Viewing Child Witnesses Through A Child And Adolescent Psychiatric Lens: How Attorneys' Ethical Duties Exacerbate Children's Psychopathology* [to be published in the Widener Law School Symposium on Child Witnesses, Fall 2010, V. 16:2); *When The Empirical Base Crumbles: The Myth That Open Dependency Proceedings Do Not Psychologically Damage Abused Children*, 33 Univ. of Alabama L. & Psych. Rev. 29 (2009); *The Connecticut Open-Court Movement: Reflection and Remonstrations*, Connecticut Public Interest L. J., Fall 2005; *An Empirical Rebuttal To The Open Juvenile Dependency Court Reform Movement*, 38 Suffolk Univ. L. Rev. 303 (2005); and, *Pandora's Box: Opening Child Protection Cases To The Press and Public*, 27 W.S.L. Rev. 181 (2000).

¹⁰⁶ In re Tayler F., supra., at 624.

APPENDIX 10

Child and Youth Law Forum Juvenile Access Pilot Program Survey

1. Please select the profession that best describes your role in child protection proceedings? (Check all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Judge | <input type="checkbox"/> Assistant Attorney General |
| <input type="checkbox"/> Attorney for Child | <input type="checkbox"/> DCF Staff Attorney |
| <input type="checkbox"/> Attorney for Parent(s) | <input type="checkbox"/> Court Staff |
| <input type="checkbox"/> Guardian ad Litem for Child | <input type="checkbox"/> DCF Staff |
| <input type="checkbox"/> Guardian ad Litem for Parent(s) | |

2. Have you participated in a court proceeding at the Child Protection Session during the Juvenile Access Pilot Program?

- YES
 NO

3. Do you agree or disagree the the following statement:

"There should be Public Access to Child Protection Proceedings"

- not applicable strongly disagree disagree agree strongly agree

4. Should the current Pilot Program be continued?

- Yes, if yes go to next question.
 No, if no, skip the next question.

5. If in your opinion, the Public Access Pilot Program should be continued, how should that be done?

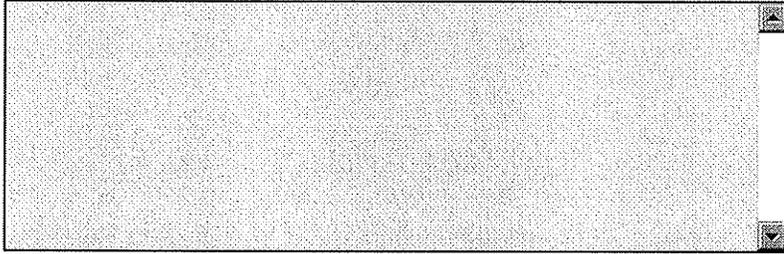
- Continue as it is at CPS (trial proceedings only)
 Continue at CPS but allow public access to all child protection matters heard there.
 Start a new pilot program in a juvenile court location for trial proceedings only.
 Start a new pilot program in a juvenile court location that allows access to all child protection matters.
 Expand public access to all juvenile matters court locations for trial proceedings.
 Expand public access to all juvenile matters court locations for all child protection matters.

6. Should public access be allowed in delinquency proceeding?

- not applicable strongly disagree disagree agree strongly agree

Child and Youth Law Forum Juvenile Access Pilot Program Survey

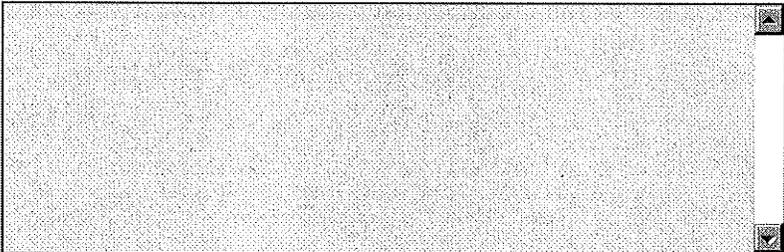
7. Please make any comments you might have about your experience with the Public Access Pilot Program?

A large, empty rectangular text input field with a light gray background and a thin black border. It is positioned below the question text and is intended for the respondent to provide their comments.

8. Please make any comments you might have about allowing Public Access to Child Protection proceedings generally?

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9. Please make any comments you might have about allowing Public Access to Delinquency proceedings generally?

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APPENDIX 11

Minutes – Juvenile Access Pilot Program Advisory Board

11/16/10

Attendees: Judge Keller, Sarah Eagan, Stacey Gerber, Carolyn Signorelli, Mike Besso, Deborah Fuller, Jeanne Milstein, Marilou Giovannucci, Elizabeth Duryea, Nancy Porter, Cynthia Cunningham, Bryan Morris, & Anne-Louis Blanchard. Judge Quinn participated in the latter portion of the meeting by teleconference.

The meeting opened at 2:14 p.m. Eight voting members were present at that time.

I. **Welcome and approval of minutes for 10-29-10 meeting**

Sarah noted that only a limited number of members were present and suggested holding off on voting, possibly at a conference call meeting.

Carolyn pointed out that the Child Advocate/CCPA/Martha Stone recommendation for the formation of a monitoring body was not on the list of possible recommendations. With the addition of that item, the minutes were approved.

2. **Discussion of Advisory Board Report**

Judge Keller and Sarah Eagan discussed whether the Board should make recommendations about other options to improve juvenile court. Anne-Louis Blanchard expressed her discomfort with including recommendations outside the scope of the pilot program, and suggested that it might be appropriate for the Board to suggest further study. Jeanne Milstein stated that she is fine with not including other options in the report and stated that if the group wants to, it could include a recommendation for further study. Sarah Eagan agreed that the Board hadn't studied any alternatives that could be included in the report at this point.

In light of this discussion, the Board members all agreed to strike section VIII, "Other Options to Increase Public Access and Accountability," from the report outline.

A discussion of whether the report should include both majority and minority reports ensued. Judge Keller stated that any member who wishes to voice their dissent could write their own minority report, which could be included as an Appendix.

Discussion of Listed Recommendations:

It was pointed out that all the recommendations address opening hearings but not records. One member suggested that a separate vote could be taken on whether records should be opened, but it was pointed out that opening the records is beyond the scope of the Advisory Board's charge. Members agreed that the issue of opening records should not be voted on. A discussion of whether any votes taken could be held open until the next day occurred, with advise from the

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Judicial Branch's legal counsel that such an action would be highly unusual and might not comply with the requirements of the FOIA.

Jeanne Milstein made a motion that the Advisory Board vote today, which was unanimously approved. Sarah Eagan made a motion to keep the vote open through the next day, which was seconded by Judge Keller. The motion failed by a vote of 6 to 2.

Sarah Eagan and Judge Keller shared the information they got from other states regarding "legitimate interest" and what that means in those states. Judge Keller suggested including examples of other states' definitions of "legitimate interest" in the report. Anne-Louise Blanchard opined that a particular definition should not be recommended.

Sarah made a motion to vote on the recommendations, and the motion was approved unanimously. The recommendations that were voted on and the tallies follow:

- a. Recommendation: End the current pilot program and do not change the statute or practice book rule regarding access to child protection proceedings.
Yea - 0
Nay - 9
- b. Recommendation: End the current pilot program but change the statute and practice book rule to include a legitimate interest rule regarding access to child protection proceedings.
Yea - 9
Nay - 0
- c. Recommendation: Extend the current pilot program with the existing standing order and rule at the Child Protection Session in Middletown for another year.
Yea - 0
Nay - 9
- d. Recommendation: Extend and expand the current pilot program at the Child Protection Session by amending the standing order and rule to open more hearings.
Yea - 0
Nay - 9
- e. Recommendation: Extend the pilot program but change the location of the pilot program to a local juvenile district.
Yea - 1
Nay - 8
- f. Recommendation: Extend and expand the pilot program to additional location(s).
Yea - 0

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Nay - 9

- g. Recommendation: Expand public access to all child protection proceedings at all juvenile maters locations.

Yea - 2

Nay - 7

NOTE: During the course of the voting process, Judge Quinn joined the meeting by conference call. She cast her vote on all items.

A discussion of how much detail to include in the report on each of the recommendations ensued. Judge Keller suggested simply stating that the Board considered a number of options and there was little support for anything else but Recommendation b. Judge Quinn suggested including a summary statement in the report, but listing all the recommendations voted on in the appendix. Anne-Louise Blanchard opined that since there were only one or two who voted in the minority, a minority report shouldn't be included in the report but could be included in the appendix.

A discussion of whether the media has a "legitimate interest" in child protection proceedings ensued. Judge Quinn stated that the report should point out that sometimes the media does have a legitimate interest, albeit rarely. Mike Besso and Carolyn Signorelli had concerns about the media being deemed to have a legitimate interest, and pointed out that neither the sample definitions of "legitimate interest" that were read at the meeting nor the discussion prior to the vote mentioned the media. Mike Besso also pointed out that at the last meeting Judge Quinn talked about allowing the media in through an order, not because they have a legitimate interest. Judge Quinn stated that the legislature, not the Advisory board, would flesh out the meaning of "legitimate interest." Mike Besso expressed his concern that an undefined "legitimate interest" standard will allow the press in -- if it is left vague and the court declares that the press do have a legitimate interest, then the Advisory Board has not accomplished what it wants. Anne-Louise Blanchard agreed with the concern and stated that the report should include a statement that several members (Carolyn Signorelli, Mike Besso, Anne-Louise Blanchard and Jeanne Milstein) have concerns about the press being deemed to have a "legitimate interest", except in exceptional circumstances.

Marilou Giovannucci asked whether data should be included in the report, and everyone agreed that it should. Mike Besso suggested including the data about who attended proceedings, but not the survey results because there are too few responses to be statistically valid. Marilou Giovannucci suggested including a statement that the data is not statistically valid.

The meeting adjourned at approximately 4:25 p.m.