

To: Judge Michael Mack
From: Michelle Garcia & Charisa Smith
Date: 11/08/04

Confidentiality Statutes of Juvenile Dependency Proceedings

I. Introduction

Dependency hearings are presumed closed to the public in thirty-six other states. In the majority of these states, the only exception is that a person with “direct interest” in the case or work of the court may be admitted. In thirteen of the thirty-six states, the statutes allows the media, the general public, or other persons who do not have a “direct interest” in the case to be admitted into a dependency proceeding. Recently, four states with currently closed proceedings have adopted legislation establishing pilot programs to open proceedings to the public.

Thirteen states have open proceedings for child protection and dependency cases, with the majority passing such legislation in the late 1990s. Of these thirteen states, eleven create statutory exceptions in which the public may be excluded from such proceedings.

II. Note on the Model Rules of Juvenile Court

The Model Juvenile Court Act §24 states that the general public shall be excluded from hearings. It specifies that “only the parties, their counsel, witnesses, and other persons accompanying a party for his assistance, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court.” The model rules also allow the court to “temporarily exclude the child from the hearing except while allegations of his delinquency or unruly conduct are being heard.” Uniform Law Commissioners’ Model Juvenile Court Act of 1968 §24.

III. States with Open Proceedings that May be Closed in Certain Circumstances

- ❖ *Colorado*. The general public may be excluded if the court determines that doing so is in the best interest of the child. Colo. Rev. Stat. Ann. §19-1-106(3) (1999).
- ❖ *Florida*. The court may exclude the public from any hearing when “the public interest and the welfare of the child are best served by so doing.” Fla. Stat. Ann. §985.205 (1997).
- ❖ *Indiana*. Court has the discretion to close neglect and abuse proceedings to the public. Ind. Code Ann. §31-32-6-2 (1998). When determining whether a proceeding should be closed, the court should consider (1) the nature of the allegation or defense, (2) the age and psychological maturity of the child, and (3) the desire of the child to testify in a closed proceeding. Ind. Code Ann. §31-32-6-5 (1998).
- ❖ *Iowa*. A hearing may be closed on motion of any party or the court if the court determines that the possibility of damage to the child outweighs the public’s interest in the open hearing. The public shall be excluded if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Iowa Code Ann. 232.92 (1987).
- ❖ *Michigan*. By motion of a party or victim, a hearing may be closed during the juvenile witness’s or the victim’s testimony to protect the welfare of the juvenile witness or victim. In making its determination, the court shall consider the nature of the proceeding,

the age of the juvenile witness or victim, and his or her desire to testify in a room closed to the public. Mich. Comp. Law Ann. §712A.17(7) (1999).

- ❖ *Minnesota*. The court may only close proceedings to the general public in “exceptional circumstances.” Minn. Rules of Juv. Prot. Proc. 27 (2004). The closure of the hearing and the reasons for that closure shall be noted on the record. *Id.*
- ❖ *New York*. The public may only be excluded from proceedings on a case-by-case basis as determined by the judge. N.Y. Rules of Ct. §205.4(b) (2003). The court shall consider several factors in making its decision: (1) whether the person is disrupting or is likely to disrupt the proceedings; (2) the person’s presence is objected to by one of the parties for a compelling reason; (3) the orderly and sound administration of justice, including the nature of the proceeding, the privacy interest of the parties, and the “need for protection of litigants, in particular, children, from harm requires that some or all observers be excluded from the courtrooms;” (4) less restrictive alternatives to exclusion are unavailable or inappropriate. N.Y. Rules of Ct. §205.4 (2003). The judge must make findings prior to exclusion. *Id.*
- ❖ *North Carolina*. A hearing cannot be closed if the juvenile requests that it be open. N.C. Gen. Stat. §7B-801 (1999). When making the decision to close the hearing 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. *Id.*
- ❖ *Ohio*. Proceedings may be closed only after an exclusion hearing is held. Ohio Rev. Code Ann. §2151.35 (2002). The juvenile court may restrict access to abuse, neglect, or dependency proceedings if the court finds, after hearing evidence and argument on closure, that a “reasonable and substantial” basis for the belief that a public proceeding could harm the child or endanger the fairness of the proceedings and that the “potential for harm outweighs the benefits of public access.” *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga Cty.*, 652 N.E.2d 179, 183 (Ohio 1995) (citing *In re T.R.*, 556 N.E.2d 439 (Ohio 1990)).
- ❖ *Texas*. Court hearings are generally open to the public. Tex. Family Code §54.08 (2002). However, for good cause, the court may exclude the public from proceedings. *Id.*
- ❖ *Washington*. All hearings are public unless the judge finds that excluding the public is in the best interests of the child. Wash. Rev. Code Ann. §13.34.115 (2003). This move to closure may be forwarded by the parent, the child’s attorney, or the guardian *ad litem* at any time. *Id.*

IV. States with Notable Statutory Exceptions for Hearings that are Presumed Closed

A. Proceeding may be opened if doing so is in the best interest of the child

- ❖ *Alaska*. The court may permit individuals to attend a hearing if their attendance is compatible with the best interests of the child. Alaska Stat. §47.10.070 (1999).
- ❖ *Hawai’i*. Proceedings may be opened to the public if a judge determines that doing so is in the best interest of the child. Haw. Rev. Stat. §571-41 (2004).
- ❖ *Nevada*. All or part of a proceeding may be opened to the general public if it is in the best interests of the child who is the subject of the proceeding. In determining whether opening all or part of the proceeding is in the best interests of the child, “the judge or master must consider and give due weight to the desires of that child” and “must make specific findings of fact to support such a determination.” Nev. Rev. Stat. Ann. §432B.430 (2003).

B. Persons may be admitted to the proceeding by motion of the court or parties to the proceeding.

- ❖ *Arizona*. The person subject to investigation can request that the hearing or trial related to dependency proceedings be open to the public. Ariz. Rev. Stat. §8-224 (2003). Following this request, the court shall order the hearing to be open to the public unless it determines “for good cause that all or part of the hearing or trial should be closed.” *Id.*
- ❖ *California*. The public may be admitted if requested by the parent, guardian, or minor and consented to by the minor. Cal. Welf. & Inst. Code § 346 (1998).
- ❖ *Kansas*. Other persons besides those with a direct interest in the case may attend proceedings if all parties agree, unless the court finds the presence of the persons would be disruptive to the proceedings. Kan. Stat. Ann. §38-1552 (1993).
- ❖ *Illinois*. The family may waive confidentiality and allow a close non-party to attend the proceedings. (Charisa’s interviews). However, for the minor’s safety or protection or for good cause, the court may prohibit any person present from further disclosing the minor’s identity. Ill. Comp. Stat. Ann. §405.1-5 (2003).
- ❖ *Maine*. The court may order that child protection proceedings be open to the public. Me. Rev. Stat. Ann. tit. 22, §4007 (1979).
- ❖ *Oklahoma*. All proceedings shall be private unless specifically ordered by the judge to be conducted in public. Okla. Stat. Ann. tit. 10, §7003-4.1 (2000). If deprived¹ proceedings involve “discussion of confidential information from any child abuse or neglect report and record, or any information obtained from the Department of Human Services concerning a child or family who is receiving child welfare services, foster care or adoption assistance, the confidentiality requirements of those programs apply.” Such information will not be discussed in open court and, to the “extent that confidential information is relevant to the proceedings, it must be discussed in the court’s chambers or some other restricted setting, and the pertinent sections of the transcript shall be kept confidential.” Okla. Stat. Ann. tit. 10, §7003-4.1 (2000).
- ❖ *Wisconsin*. The child, through his or her counsel, may open the proceedings by demanding a public fact-finding hearing. However, the guardian *ad litem* may overrule this demand. Wis. Stat. Ann. §48.299 (1999).

C. Those who have a supportive relationship with the child may be admitted

- ❖ *Hawai’i*. Parties involved in Child Protective Act hearings may be accompanied by an adult advocate to provide support, “unless the court finds that the presence of that advocate is not in the best interest of the child.” Haw. Rev. Stat. §571-41 (2004).
- ❖ *Idaho*. When the child takes the stand as a witness, those having a supportive relationship with the child shall (if available) be permitted to remain the courtroom during the child’s testimony unless, in written findings, the court finds that the constitutional right of the child’s parents, guardians, or custodians to a fair hearing will be unduly prejudiced. Idaho Code §16-1607A(2) (2001).

D. Media can be admitted to private proceedings

- ❖ *California*. The court may admit those persons who it deems to have a “direct and legitimate” interest in the case or work of the court, including the media. *San Bernardino Dep’t of Public Social Services v. Superior Court of San Bernardino County*, 283 Cal. Rptr.

¹ A deprived child is defined as any child who is “destitute, homeless, or abandoned,” who does not have proper parental care, or whose “home is an unfit place for a child by reason of neglect, abuse, cruelty, or depravity on the part of the child’s parents, legal guardian, or other person responsible for the child’s health or welfare.” Okla. Stat. Ann. tit. 10, §7001-1.3(14).

332 (Div. 2, 1991). The media can attend juvenile court proceedings on the condition that it does not (1) publish the names of the minors involved, (2) publish any “likeness, characters, cartoons or photographs, (3) interview any minors unless their attorneys are present, (4) “interview the minors’ caretakers in front of the minors,” (5) interview any “mental health professional to whom the minor has been referred, and (6) commit any future act which would interfere with “reunification or have a negative impact upon the providing of reunification services.” *Id.*

- ❖ *Illinois*. The news media, representatives of agencies and associations, and those who the court deems to have a direct interest in the case or in the work of the court shall be admitted. Ill. Comp. Stat. Ann. §405/1-5 (2003).
- ❖ *New Mexico*. Accredited members of the news media may attend closed proceedings. N.M. Stat. Ann. §32A-4-20(B). However, they must refrain from divulging “information that would identify any child involved in the proceedings or the parent, guardian, or custodian of that child.” *Id.*

V. Pilot Programs to Open Juvenile Proceedings to the Public

- ❖ *Arizona*. The pilot project commenced January 1, 2004 to open to the public between five and ten per cent of dependency, guardianship, and termination of parental rights proceedings to “determine if opening these proceedings to the public will promote due process while safeguarding privacy rights.” 2003 Ariz. S.B. 1304. The text of the legislation outlines the pilot program procedures in detail. First, the court must ask at the beginning of the proceeding if the parties have any reason to close the proceeding. Before opening a proceeding to the public, the court shall consider if opening the proceeding (1) is in the child’s best interests, (2) would endanger the child’s “physical or emotional well-being or the safety of any person, the privacy rights of the child, the child’s siblings, parents, guardians, and caregivers and of any person whose privacy rights the court determines need protection,” and (3) is agreed upon by all the parties. *Id.* If the hearing is open, attendees are prohibited from “disclosing outside the hearing personally identifiable information about the child, the child’s siblings, parents, guardians, caregivers and other mentioned in the hearing.” *Id.* The court may close an open hearing at any time. If the child is at least twelve years of age and a party to the proceeding, the court shall consider the request to close the proceeding. A final report should have been submitted to the Governor on October 15, 2004. *Id.*
- ❖ *California*. A pilot program is established in three counties. Cal. A.B. 2627 (2003). All non-party attendees to open proceedings must not disclose “personally identifiable information about the child or specified other persons.” *Id.* However, the child (including through his attorney) may request that the proceeding be closed, and the proceeding will then be closed if the court rules that admitting members of the general public “would cause harm to the child’s best interest.” *Id.*
- ❖ *Nevada*. Nevada is instituting a pilot program in Clark County (Las Vegas) in which it conduct open hearings. 2003 Nev. A.B. 132. In communities with more than 400,000 people, proceedings are presumed open; in communities with fewer than 400,000 people, procedures are presumed closed. Nev. Rev. Stat. 432B.430 (2003). When hearings are presumed closed, the judge may determine (by his own motion or by motion of another person) that all or part of the proceeding must be open to the general public because doing so would be in the best interest of the child. *Id.* In making this determination, the

judge must “give due weight to the desires of the child” and must make specific findings of fact supporting the determination. *Id.* Parallel rules apply for closing proceedings that are presumed open. *Id.*

- ❖ *Utah.* In all of the pilot districts, any person shall be admitted to an abuse, neglect, and dependency proceeding unless the court finds upon the record that the person’s presence at the hearing would: “(1) be detrimental to the best interest of a child who is a party to the proceeding, (2) impair the fact-finding process, or (3) be otherwise contrary to the interests of justice.” 2003 Utah H.B. 222. The court may exclude a person from a hearing on its own motion or by motion of a party to the proceeding.

VI. Exclusion of Children from Proceedings

- ❖ *Alabama.* A child may be temporarily excluded from the hearing if it is in the best interest of the child. Ala. Code §12-15-65 (1975).
- ❖ *District of Columbia.* If the Division finds that it is in the child’s best interest, the child may be temporarily excluded from any portion of the proceeding except the fact finding hearing. D.C. Stat. 16-2316(f) (1981). However, if the petition alleges neglect, the child may also be excluded from the fact-finding hearing. *Id.* The child’s counsel may not be excluded. *Id.*
- ❖ *Georgia.* The court may temporarily exclude the child from hearing except while allegations of his or her delinquency or unruly conduct is being heard. Ga. Code Ann. §15-11-78 (2000).
- ❖ *Idaho.* The child may be excluded from a hearing at any time at the discretion of the court. Idaho Code 16-1607A(1) (2001).
- ❖ *New Mexico.* The child may be excluded from a neglect or abuse hearing if the court finds that exclusion is in the child’s best interest. N.M. Stat. Ann. §32A-4-20(B).
- ❖ *Tennessee.* The child may be temporarily excluded from a hearing. Tenn. Code Ann. §37-1-124 (1970).

VII. Proceedings may be recorded or published

- ❖ *District of Columbia.* All hearings and proceedings the juvenile court shall be recorded by appropriate means. D.C. Code Ann. 16-2316(e) (1981).
- ❖ *Delaware.* The court may consider publication in the public interest of court proceedings and records. Del. Code Ann. Tit. 10, §1063. However, this publication only extends to notice of the time of the proceeding and the parties involved. There is no publication of the substance of the proceedings. (Charisa’s interviews).
- ❖ *Maine.* All proceedings must be recorded. Me. Rev. Stat. Ann. tit. 22, §4007 (1979).