



# SOUTHERN AREA CONSORTIUM OF HUMAN SERVICES

## Literature Review: Open Juvenile Dependency Courts

Anita Harbert, Ph.D.  
*Executive Director*  
*Academy for Professional Excellence*

Jennifer Tucker-Tatlow, MSW  
*Director*  
*Academy for Professional Excellence*

**Prepared by:**  
Blaine Abate, MSW Student (San Diego State University)

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6505 Alvarado Road, Suite 107 / San Diego, CA 92120  
<http://theacademy.sdsu.edu>



## Table of Contents

<b>Executive Summary</b> .....	1
<b>Background</b> .....	2
<b>Key Federal Child Welfare Legislation</b> .....	2
<b>California’s Legislative Push for Open Courts</b> .....	4
<b>State’s Determine Dependency Court Status</b> .....	5
National Arguments in Favor of Open Courts .....	5
National Arguments in Opposition of Open Courts .....	6
<b>Overview of Open and Presumably Open States</b> .....	7
<b>Closed and Presumably Closed States</b> .....	8
<b>Sample State Statutes: Oregon and Florida</b> .....	8
Oregon.....	9
Florida.....	9
<b>Experiences with Open and Presumably Open Courts-National Responses</b> .....	10
Safeguards Implemented.....	10
No change .....	11
Positive Change .....	12
<b>Sample Open Court Pilot Programs: Minnesota, Arizona and Connecticut</b> .....	14
Minnesota Open Court Pilot Project and NCSC Report Summary .....	14
Arizona Open Court Pilot Program and The Arizona State University Study.....	19
Flaws with the NCSC and Arizona State University Reports.....	18
Research: Psychological Impact of Public Exposure on Children.....	21
Connecticut Juvenile Access Pilot Program .....	22
<b>Implementing Open Courts-Potential Budget Impacts</b> .....	23
<b>Recommendations to Minimize Potentially Harmful Effects of Open Courts</b> .....	23
<b>References</b> .....	25
<b>Appendix A: California Assembly Bill No. 73</b> .....	27
<b>Appendix B: Disclosure of Confidential Child Abuse and Neglect Records: Summary of State Laws (2010)</b> .....	30

## **Executive Summary**

With the responsibility to serve and protect our most vulnerable children, dependency courts across America have been at the center of a contentious debate concerning court confidentiality in dependency matters. In an attempt to reach the common goal to see that children receive the best quality of care from the dependency court system, states have taken various approaches in creating legislation governing level of public access. As “supporters push for increasing accountability... [and] doubters pull for protecting family privacy and avoiding further trauma to the child” (Sandt, 2004, p. 96), states nationwide continue to explore various levels of confidentiality, in search of the best system to serve their youth.

This review provides a summary of the existing research regarding public access to dependency proceedings and records in states across the country. It begins with a brief background of the history of confidentiality in the juvenile dependency court system. It then outlines the relevant legislation that has impacted state practices nationwide, including California’s legislative push to increase public access. The review then presents a summary of the predominant views found in the literature of those in favor of and opposed to open courts and provides an overview of each states’ status. Next it outlines a sample of representative state statutes and court rules from Oregon and Florida, followed by responses from those states and others regarding the effects of increased access in their states’.

In addition, the report includes a summary of sample open court pilot programs from Minnesota, Arizona and Connecticut, which were implemented to determine the desirability of opening courts and records statewide; as well as findings from the National Center for State Courts’ (NCSC) extensive evaluation of the Minnesota Open Court Pilot Project and Connecticut’s recommendations for closure. Lastly, the report concludes with a critical analysis of the NCSC report and Arizona State University study of the Arizona Open Court Pilot Program, including methodological and design flaws that may limit the applicability of these findings to other jurisdictions and recommendations for best practices.

Various federal and state websites were utilized in the research for this report to obtain legislation, government and state reports, including: Child Welfare Information Gateway and Child Welfare League of America. In addition, topic searches of “Open juvenile Dependency Courts”, “Dependency court proceedings” and “Open deprivation proceedings”, through the San Diego State University Journal databases and the Google search engine especially provided strong background articles and papers regarding this topic. Searches were employed as to obtain information in order to present an impartial and balanced analysis. Please refer to the Reference section of this report for details on resources.

## **Background**

(Stack, 2009)

The right of public access to juvenile matters has been a concern since the establishment of juvenile courts in Illinois in 1899. In an era before foster parents, or child labor laws, open court advocates expressed concern for children's rights and rallied against secrecy until reformers "reluctantly agreed to open hearings" (Stack, 2009, para. 5).

Shortly thereafter, the legislative language endorsing open hearings in Illinois was subsequently copied and upheld by many states, until 1968 when it was recommended by the National Conference of Commissioners on Uniform State laws that states adopt a standard law to close juvenile hearings, "except for those persons who the court finds have a proper interest in the proceeding or in the work of the court" (Stack, 2009, para. 5). Upon recommendation, most states, with the exception of Colorado, Iowa and Nebraska whose courts remained open, "adopted some form of the uniform law" (Stack, 2009, para. 6) restricting access to the public.

- Thus, the original dispute of 1899 resurfaced and over the past three decades has increasingly gained momentum (Stack, 2001).
- Those in support of closed courts, argue that increased confidentiality protects privacy rights and prevents stigmatization.
- While those opposed fear that closing courts allows juvenile judges and agencies to have unchecked power to separate children from their families without any public awareness.
- Although "child abuse and neglect systems are almost exclusively governed by state statute" (Tucker, 2006, p. 2), states are reliant on federal funding and therefore subject to federal funding guidelines.
- Prior to more recent amendments to federal legislation regarding confidentiality requirements, states were concerned that by opening their courts, they would be in jeopardy of losing federal funding.
- Nevertheless, "many states opened their courts prior to the federal requirements being changed and did not lose funding" (Children's Advocates' Roundtable, 2004, p. 3).
- Furthermore, "every state that has opened courts statewide in the past 30 years has kept them open. Not one has closed them again" (Wexler, 2008, p. 3).

This literature review focuses on the openness of dependency courtrooms. In regards to public accessibility to child abuse and neglect reports and records nationwide, all jurisdictions have confidentiality provisions to protect the privacy rights of the child and of the child's parents or guardians. Please refer to Appendix B, for a summary of current state laws on allowable disclosures of records.

## **Key Federal Child Welfare Legislation**

*The Child Abuse Prevention and Treatment Act (CAPTA):*  
(Flint, 2006)

- Enacted in 1974 in response to a congressional finding that roughly 900,000 children in America were suffering from abuse and/or neglect each year.

## *SACHS Literature Review: Open Juvenile Dependency Courts*

- Outlined rules of confidentiality “in order to protect the rights of the child and of the child’s parents or guardian” (Flint, 2006, p. 5).
- Required that states uphold near complete record confidentiality in order to receive federal funding.
- Did not clearly outline confidentiality rules regarding access to court proceedings.
  - **Amended in 2003** – specifically addressing the issue of access to court proceedings, stating that, “[n]othing in subparagraph (A) shall be construed to limit the State’s flexibility to determine State policies relating to public access to court proceedings to determine child abuse and neglect, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and families” (Flint, 2006, p. 6)
  - This “provision [made] it clear that states have discretion to establish their own policies on public access to child abuse and neglect court hearings “ (NCSC, 2004, p. 5)

### *Title IV-E of the Social Security Act:*

(Tucker, 2006)

- Includes rules of confidentiality regarding child abuse and neglect records that state laws must adhere to in order to receive federal funds.
- Lacked specific guidelines regarding access to court proceedings.
- In June of 1998, the Children’s Bureau “issued a policy statement advising states that they run a risk of losing federal funds if they open dependency proceedings because of the apparent conflict with federal confidentiality requirements” (Tucker, 2006, p. 3).
- “In response to the Children's Bureau's statement, the Conference of Chief Justices and others petitioned Congress to leave the policy determination of access to juvenile courts in the hands of the states” (Tucker, 2006, p. 4).
  - **Amended in 2005** – clarified required confidentiality provisions; does not limit the ability of a state to determine its policies regarding public access to court proceedings on child abuse and neglect or other child welfare related court proceedings.
    - The exception is that the policies must, “at a minimum ensure the safety and well being of the children, parents, and family.”<sup>1</sup>

### *The Adoption Assistance and Child Welfare Act (AACWA):*

(Flint, 2006)

- Enacted in 1980 to providing adequate resources to the foster care system and ensure that children receive timely placement.
- Provides federal funding to states upon creation of a plan for foster care and adoption assistance in accordance with federal guidelines.
- In order to receive funding state must put into place protections “which restrict the use of

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<sup>1</sup> Child Welfare League of America, *Summary & Analysis of Final Reconciliation Bill*, available at <http://www.cwla.org/advocacy/fostercare060201.htm> (last visited Feb. 16, 2011)

or disclosure of information concerning individuals assisted under the State plan” (Flint, 2006, p. 7).

- If a state does not adhere to requirements they risk losing federal funding.
- Does not specifically mention whether the proceedings themselves may be made public.

### California’s Legislative Push for Open Courts

(Flint, 2006; Tucker, 2006)

- In 1999, California's Senate passed SB1391, which provided for open dependency proceedings. The bill also provided that motions to close be granted upon finding that open proceedings would be harmful to the child’s best interest.
  - The bill died in the Assembly's Appropriation Committee for reasons unstated. According to the Los Angeles Times, efforts “failed ...amid heavy opposition from children’s rights groups” (Flint, 2006, p. 39) who did not feel that the bill “provided sufficient protection to the child victims” (Flint, 2006, p. 39).
- In 2004, Following CAPTA's reauthorization, the California Assembly introduced AB 2627 to change California's presumption from closed to open dependency proceedings.
  - AB 2627 was similar to SB 1391 with several differences to include:
    - The development of a pilot program in three counties.
    - The judge could only grant the motion for closure upon finding that “admitting members of the public would cause harm to the child’s best interest”.<sup>2</sup>
    - The court would be required to caution the public to refrain from divulging identifying information about the child.
    - The bill would have permitted the county’s child welfare department to communicate with the media or public regarding dependency proceedings.
  - Deliberation: “When considering the passage of AB 2627, the Senate rehashed arguments made during the informational hearings concerning SB 1391” (Flint 2006, p. 9).

<b>Proponents of AB 2627</b>	<b>Opponents of AB 2627</b>
<i>Major proponents of the bill:</i>  California Newspaper Publishers Association, Children's Advocacy Institute, Juvenile Court Judges of California, and Judicial Council of California.	<i>Major opponents to the bill:</i>  County Welfare Directors Association, Service Employees International Union, National Association of Social Workers, California Youth Connection, Legal Services for Children, and several experts in child psychology.

- Reaching a Decision: The California Senate cited “inconclusive empirical regarding the ‘potential benefits’ of an open court system”<sup>3</sup> and hesitated “to

<sup>2</sup> <http://www.senate.ca.gov>

<sup>3</sup> Id

make a change of this magnitude without greater certainty that the action is in the best interest of children in the dependency courts”<sup>4</sup>. **Although acknowledging the increasing trend to move towards opening juvenile courts, “the Senate Judiciary Committee (except for one) voted against the bill”** (Flint, 2006, p. 9).

- In December of 2010, assembly bill **AB 73** was introduced by assembly member Mark Feuer, as the third legislative attempt to change California’s dependency courts’ status from presumably closed to presumably open (see Appendix A for bill AB 73). (de Sá, 2011, February 5)
  - Cites the benefits of increasing accountability by child welfare system and providing education to the public.<sup>5</sup>
  - Cites safeguards as allowing judicial discretion to close individual cases upon finding closure is in “the best interest of specific children”.<sup>6</sup>
  - Does not allow public access to court files.
  - The bill will soon be discussed in Sacramento.
  - Los Angeles Juvenile court Judge Michael Nash strongly supports the bill and has “offered to let Los Angeles serve as a pilot program” (de Sá, 2011, February 5, p.2).
  - Proponents include “the state’s most influential juvenile court judges” (de Sá, 2011, February 5, p. 1).
  - Opponents include the social workers’ union and “the world’s largest organization of children’s attorneys, the National Association of Council for Children” (Patton, 2011, February 11, para. 3).

## **State’s Determine Dependency Court Status**

Although initial federal law governing dependency court clearly included provisions addressing confidentiality, legislation remained somewhat ambiguous regarding specific requirements relating to access to open court proceedings. Following the 2003 and 2005 amendments to the CAPTA and Title IV-E respectively, federal laws newly adapted provisions asserted with increased clarity that the authority to determine policies relating to public access to court proceedings was left in the hands of the state. This afforded flexibility has allowed states the freedom to create legislation without the threat of losing funding. The following are the arguments for and against open courts most frequently found in the literature reviewed.

*National Arguments in Favor of Open Courts:*  
(NCSC, 2001)

- **Increased visibility/ accountability:** System “lacks accountability because it is a closed system” (Children’s Advocates’ Roundtable, 2004, p. 1). Visibility will allow for public scrutiny.

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<sup>4</sup> Id

<sup>5</sup> AB 73 (California legislature- 2011-2012)

<sup>6</sup> Id

- **Community inclusion:** An open system allows for the opportunity of more informed policy decisions by taxpayers that are more closely based on “community standards”.
- **Lead to reform:** Educating the public on the deficiencies of the child welfare system will lead to reform.
- **Proceedings involving child abuse already open:** Adult criminal proceedings, which are open to the public, deal with issues central to Children in Need of Protection (CHIPS) and Termination of Parental Rights (TPR) proceedings (NCSC, 2001).
- **Provide uniformity:** Will decrease confusion and uncertainty by professionals regarding what can be shared under confidentiality protections (Children’s Advocates’ Roundtable, 2004).
- **Less restrictive communication:** Allows professionals the flexibility to communicate with the public in order to explain actions and clarify misinformation.

*National Arguments in Opposition of Open Courts:*

- **Emotional Harm:** Already victimized children will be further victimized by public exposure.
- **Interfere with rehabilitation:** “Exposing ...families’ dysfunctions to the public will not serve and may actually deter [the] goal” (NCSC, 2001, p.8) to rehabilitate and reunite families.
- **Increase reluctance to report:** With fear that family, friends and the public may “learn of their most shameful experiences,” (NCSC, 2001, p.8) children will be less inclined to report abuse.
- **Increase exploitation:** “Special interest groups and disenfranchised family members [can] use the media to further their purpose” (NCSC, 2001, p. 9).
- **Decrease adult accountability:** Allowing adults the option to plead ‘no contest’ defeats the goal of holding adults accountable. Adults will therefore be less likely to successfully rehabilitate, as they have not accepted fault.
- **Biased closures:** Potential abuse of closures under “exceptional circumstances” in order to protect prominent members will perpetuate mistrust in the system.
- **Irresponsible reporting:** It is extremely difficult to ensure that children’s identifying information is not published and it is unrealistic “to expect the media to fully report on cases therefore an accurate picture of cases and system is unlikely” (NCSC, 2001, p. 9).
- **Sensational cases will skew perception:** Cases reported by the media will most likely reflect those that may appeal to the public. This will skew perception of the system as a whole.
- **Consistent reporting unaffordable:** Because assigning a reporter to cover juvenile cases on a regular basis may not be economically feasible, novice reporters unfamiliar with child protection hearings “may misreport cases because of insufficient familiarity with the procedures and substantive events taking place” (Patton, 2005, p.322).
- **Difficult to monitor media:** Successfully enforcing any sort of accountability system for violation of disclosure agreements is close to impossible with the extensive amount of media and social media outlets (Patton, 2005).



## Overview of Open and Presumably Open States

In establishing which side of the argument they are on, states have adopted and interpreted law in order to enforce their position. According to a report jointly published by the Children’s Advocacy Institute (CAI) and First Star (a non-profit established to strengthen and advance the rights of abused and neglected children across America), as of 2008, dependency hearings are open to the public in one state, and presumed open in twenty-one states. In those states operating under a presumed open status, statutes require that all cases are to be open providing they do not meet the specified criteria warranting closure. In the majority of these states, exceptions to the presumption either instructs the court to use discretion in order to “determine whether the public should be excluded” or specifies that the judge should close hearings upon finding closure would be “in the best interest of the child”.

Table 1: Open and presumably open states

	<i>Open</i>	<i>Presumably Open</i>
<b>Exceptions<sup>7</sup></b>		
	<ul style="list-style-type: none"> <li>• Oregon</li> </ul>	
Judicial discretion-- Does not specify		<ul style="list-style-type: none"> <li>• Alaska</li> <li>• Indiana</li> <li>• New Jersey</li> <li>• North Carolina*</li> <li>• Nebraska</li> <li>• New York</li> <li>• Tennessee</li> </ul>
In the best interest of the child		<ul style="list-style-type: none"> <li>• Colorado</li> <li>• Florida</li> <li>• Georgia*<sup>8</sup></li> <li>• Iowa</li> <li>• Missouri*</li> <li>• Utah</li> <li>• Washington</li> </ul>
Necessary to protect privacy of parents		<ul style="list-style-type: none"> <li>• Kansas</li> </ul>
Upon request of party or victim		<ul style="list-style-type: none"> <li>• Arizona</li> <li>• Michigan</li> </ul>
Under exceptional circumstances		<ul style="list-style-type: none"> <li>• Minnesota</li> </ul>

<sup>7</sup> Categories within “exceptions” were created in an attempt to collapse similar information and are no reflective of exact language in state statutes.

<sup>8</sup> Georgia enacted legislation to open courts in 2009 ([http://bettercourtsforkids.org/Pending\\_Legislation.html](http://bettercourtsforkids.org/Pending_Legislation.html)).

Counties with population less than 400,000		• Nevada
Must hold separate hearing to determine whether appropriate		• Ohio
Compelling governmental interest		• Pennsylvania
Under the age of 14 unless child better served by open proceeding		• Texas

\*States identified as having additional exceptions.

*Missouri:* May close under exceptional circumstances.

*Georgia:* Proceeding involving an allegation of an act constituting a sexual offense by an adult.

### Closed and Presumably Closed States

(Advocacy Institute & First Star, 2008)

Dependency courts are closed in six states and presumably closed in twenty-one states. Among states operating under a presumed closed status, hearings may be opened to the public or specific individuals under criteria specified in state statute; some contain more permissive language than others.

- *Closed proceedings:* Arkansas, Connecticut, Delaware, Louisiana, Maryland, Massachusetts, and West Virginia.
- *Presumably closed proceedings:* Alabama, California<sup>9</sup>, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Mississippi, Montana, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode, South Carolina, South Dakota, Vermont, Virginia, Wisconsin, Wyoming and the District of Columbia.

### Sample State Statutes: Oregon and Florida

Below are samples of state laws governing confidentiality in juvenile dependency court hearings from Oregon, whose constitution requires open courts for all cases, and Florida whose statute and court rules require that courts are presumed open, but permit closure under specified circumstances.

<sup>9</sup> Cal. Welf. & Inst. Code § 346: “Unless requested by a parent or guardian and consented to or requested by the minor concerning whom the petition has been filed, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit such persons as he deems to have a direct and legitimate interest in the particular case or the work of the court.” According to case law, the press has been recognized as a person with a “direct and legitimate” interest (*San Bernardino Dep’t of Public Social Services v. Superior Court of San Bernardino County*, 283 Cal. Rptr. 332 (Div. 2, 1991)).

– Oregon –  
Hearings: Open

- In 1980 Oregon became one of the first states in the country to open its juvenile courts to minor and the public. It is the only state in which courts do not possess judicial discretion to close, because “openness of juvenile court proceedings is a state constitutional right” (Tucker, 2006, p. 6). Oregon is the state with the least restrictions on access to dependency court proceedings, and is unique in that access is authorized by the constitution (Tucker, 6).

**O.R. CONST. art. I, § 10 –**

*“No court shall be secret, but justice shall be administered, openly and without purchase.”*

**Exceptions to openness:** Paternity issues and media coverage (Flint, 2006).

- **Issues of paternity**<sup>10</sup>
- Oregon Rule restricts “**public access coverage**”,<sup>11</sup> which is defined as, “television equipment; still photography equipment; audio, video, or other electronic recording equipment.”<sup>12</sup>
- **Obstruction:** Judicial discretion is permitted to limit courtroom access if it “interfere[s] with or obstruct[s] the proceedings, or overcrowd[s] the courtroom” (Flint, 2006, p. 21).

–Florida –  
Hearings: Presumably Open

- Prior to a 1994 Florida court hearing on sexual abuse and child custody were closed to the public. Following a 1994 amendment, the revised statute authorized increased access to the public (Flint, 2006).

**FLA. STAT. § 985.035 (2009) – Opening Hearings:**

(1) *“All hearings, except as provided in this section, must be open to the public, and no person may be excluded except on special order of the court. 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.”*

- **Exceptions to the presumption of openness:** Hearings terminating parental rights and adoption hearings are closed to the public (Flint, 2006).
  - **Termination of parental rights (TPR):** The Florida Supreme Court noted that “because TPR hearings may lead to the dissolution of the parent-child relationship, the mental state of the child may be especially delicate and in need of further protection,” (Flint, 2006, p.14) therefore:

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<sup>10</sup> OR.REV.STAT. §109.155(1) (2009).

<sup>11</sup> OR.U.T. CT.R. 3.180(2)(C).

<sup>12</sup> OR.U.T. CT.R. 3.180(6).

*“[a]ll hearings involving termination of parental rights are confidential and closed to the public.”*<sup>13</sup>

- **Adoption hearings:** The Florida Adoption Act requires that all adoptions hearings are to be closed to the public and media, and that records of hearings are sealed.

Florida statutes states that adoption hearings:

*“shall be held in closed court without admittance of any person other than essential officers of the court, the parties, witnesses, counsel, persons who have not consented to the adoption and are required to consent, and representatives of the agencies who are present to perform their official duties.”*<sup>14</sup>

- In defending this position, the Florida Supreme Court noted the difference between public interest and public concern, suggesting that the closure of adoption hearings “minimally impair[s] the media’s access to a story of public interest, but had no effect on its freedom to cover a matter of actual public concern” (Flint, 2006, p.17).

## **Experiences with Open and Presumably Open Courts – National Responses** (Garcia & Smith, 2004)

As states across the nation have adopted legislation calling for increased access to dependency matters, a review of the literature suggests following implementation, states have put into place various safeguards to address some of the potential harmful effects of the legislative change. While many states have noted no significant change to their system, most others have responded favorably to the change. Unless otherwise indicated, responses below were selected from a 2004 survey conducted by two students at Yale law, who under supervision, interviewed “key stakeholders” in sixteen states, regarding their experiences with openness in dependency proceedings. The following represent some of the commonly expressed experiences with open and presumably open hearings. Unfavorable responses were omitted, as they were almost entirely from individuals in states with closed or presumptively closed hearings, reflecting “potential” disadvantages, as opposed to actual experiences.

<b>Safeguards Implemented:</b>
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### **Michigan:**

*“Court may close during a child’s testimony or victim’s testimony to protect the welfare of either . . . The files themselves can also be open so the public can read the proceedings, but this is only with initials [for protection].*

*--Don Duquette Clinical Professor of Law and Director of the Child Advocacy Clinic at the Univ. of Michigan*

<sup>13</sup> FLA.STAT. §39.809(4) (2005)

<sup>14</sup> Id

**Florida:**

*“The media has to ask permissions from administrative judges in juvenile court. Normally it is opened to the media. After permission, it [the media participation] has to be unintrusive. The media can’t ask questions . . . only 1 camera in the courtroom. DCF doesn’t talk to the media.*

*-- Supervising Attorney for the Dept. of Children and Families*

*“Children can testify out of the presence of other parties with safeguards that they won’t be exposed.”*

*--Guardian Ad Litem Program Attorney*

**Michigan:**

*“We have a policy of not naming a juvenile unless we decide we should... is there a way to tell the story without using the child’s name? Is there good reason to use a child’s name? And it has to be signed-off on by newspaper editors.”*

*--Jack Kresnak, Juvenile Justice Reporter (The Detroit Free Press for 15 years)*

**Ohio:**

*“Proceedings are presumed open and if someone wants to close, they have a hearing on it... The safeguard is the hearing.”*

*--Yvette Brown, President of the Center for child and Family Advocacy and retired family judge*

No Change:

**Arizona:**

*“There’s been absolutely no difference. A lot of folks came forward and fought legislation about opening with worry about information about kids and victims splattered over the press. We’ve found the press virtually never shows up. Nor outside people. No effect on cases whatsoever.*

*--Court appointed special advocate*

**Minnesota:**

*“Other than the high profile cases, the media just does not show up. [The cases are] just not sexy enough for them” (Edwards, 2004, p. 18).*

*-- Esther Wattenberg Minnesota Supreme Court Task Force*

**Michigan:**

*“[o]ther than notorious cases, like babies found in dumpsters, the public and the media just don’t tend to follow child protection . . . . So the practical effect of [open hearings] hasn’t been all that great” (Patton, 2005, p. 322).*

*--Juvenile Court Judge Donald Owens*

**Positive Change:**

**Increased accountability:**

**Ohio:**

***“As a judge, a t.v. camera made me sit up a bit straighter and consider public impact... The abuse and neglect arena changes when there’s public interest indecisions judges make. Otherwise they act with impunity.”***

*--Yvette Brown, President of the Center for Child and Family Advocacy and retired family judge*

**Iowa:**

***“Openness has improved the system because it takes away the secrecy aspect and people are less likely to blame the system and walk away”. When you aren’t under public scrutiny you have a tendency to call your own shots. But [openness] makes lawyers better. Often in juvenile court you see the same players . . .it can become casual and sloppy. I’m a believer in the positive aspects.”***

*--Judge Stephen Clark*

**Increased visibility and less restrictive communication:**

**Arizona:**

***The media says we’re hiding something, so this gets [others] to know there isn’t anything being hidden. . .The parents go to the media but CPS gives it balancing. There haven’t been any negative effects”***

*--Court Improvement Coordinator with Supreme Court*

**Indiana:**

***“When things are not kept confidential, we convey information in ways the public can comprehend. The public doesn’t always believe kids are harmed and abused and doesn’t understand that people need services.”***

*--James Payne a Superior court Judge*

**Community inclusion:**

**Michigan:**

***“People see how business is done. I practiced in court when it wasn’t open. There was more imperious activity by judges then. It provides that kind of protection . . .It builds a bigger constituency for a child protection agency and a court itself. . . [L]egislators get a better understanding of how serious and difficult these cases are. In our state, openness helped create public sentiment in favor of a family division of the circuit court. It elevated the status of juvenile court.”***

*--Don Duquette Clinical Professor of Law and Director of the Child Advocacy Clinic at the Univ. of Michigan*

**Detroit:**

***Many children have been helped because I’m able to sort through the truth of the matter with access... You’ll get fairness and balance in coverage of juvenile and family court issues if a journalist has access to this info ... We don’t exploit***

*children, but writing about the system keeps kids on track . . . Fewer court delays . . . I can name numerous cases where the reporting changed the system. A runaway foster kid no one was looking for . . . I don't get complaints that I'm violating confidentiality. What I do get are complaints that I'm not doing enough reporting."*

--Jack Kresnak, Juvenile Justice Reporter (*The Detroit Free Press* for 15 years)

**Led to reform:**

**New York:**

(Wexler, 2008)

- Initially opposed to the change, former administrative family court judge Michael Gage and former head of the Juvenile Rights Division of the Legal Aid Society Jane Spinak are now on board. Gage stating, "I think it worked . . . it worked remarkably well" and Spinak suggesting "the consensus now is that [the court] is better open than when it was closed" (Wexler, 2008, p. 3)
- Chief Administrative Judge Jonathan Lippman says "It has been 100 percent positive with no negatives . . . Our worst critics will say it was the best thing we ever did. Their fears were unfounded . . . I wish other states would do it" (Wexler, 2008, p. 2)
- Open courts has "led to funding for repairs" (Wexler, 2008, p. 3).
- Assisted in increasing lawyer fees for attorneys representing poor parents "from \$40 an hour in court and \$25 an hour out of court, to \$75 an hour in all cases" (Wexler, 2008, p. 3)

**California:**

(Mercury News, 2008)

- Although California courts are presumably closed, reporter Karen de Sá was granted court access to juvenile dependency courts in Santa Clara, San Mateo, San Francisco and Sacramento, upon agreement that she would not disclose any identifying information of the parties.
- de Sá observed the difficulties of overworked judges, lawyers and social workers, who were "struggling to achieve justice" (Mercury News, 2008, para. 3) and families who were being inadequately served.
- She was able to talk to various court professionals and families about the challenges they faced.
- **As a result** of de Sá's reports:
  - The owner of Santa Clara Juvenile Defenders, Gary Proctor, resigned after the series documented the firm's high turnover and failure to hire investigators, experts and social workers (de, Sa, 2008).
  - A new non-profit organization (Dependency Advocacy Center) took over the legal representation of impoverished parents and some children in Santa Clara County Juvenile Dependency Court in September 2008, to promote greater consistency and competency of court-appointed lawyers. This new contract included salary increases to promote and attract better-qualified representation, as well as contracts requiring that clients receive experts and investigators for cases when necessary (de, Sá , 2008, para. 1).

- For more information see: Broken Families, Broken Courts Special Reports, at: <http://www.mercurynews.com/dependency/>

## **Sample Open Court Pilot Programs: Minnesota, Arizona and Connecticut**

While positive experiences as a result of open courts have been observed and documented statewide by various professionals, the research found only two states that have actually conducted formal, external evaluations of their state pilot programs. These evaluations, done in Minnesota and Arizona, were implemented to better inform statewide decision-making on whether or not to proceed with open juvenile dependency court proceedings. These pilot project evaluations, as well as their critiques are summarized below. In addition, a review of the internal pilot evaluation report for the state of Connecticut is included, as they remain the only state thus far, who following the completion of an open juvenile dependency court pilot have decided against statewide implementation.

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### **Minnesota Open Court Pilot Project and NCSC Report Summary** (NCSC, 2001)

#### ***Task Force on Foster Care and Adoption (Task Force)-***

Established in October of 1995 by the Minnesota Supreme Court to conduct a comprehensive review and analysis of federal and state law and practice in order to make an informed assessment of the “desirability of opening child protection hearings to the public” (NCSC, 2001, p. 5).

- ***Data Collection:***  
Solicited input from child protection system stakeholders through:
  - Focus groups, public hearings, site visits, file reviews of child protection cases in six counties, statistical analysis of information contained in the State Judicial Information System, and distribution of attitudinal surveys to judicial officers, state and tribal social services agencies, tribal attorneys, county attorneys, and public defenders.
- ***Task Force Majority Recommends Open Hearings:***  
“[T]here should be a presumption that hearings in juvenile protection matters will be open absent exceptional circumstances” (NCSC, 2001, p. 6). It was also recommended that, with the exception of certain information, juvenile protection court files should be accessible to the public.

Following Task Force recommendations and subsequent deliberation, the Conference of Chief Judges (CCJ), the policy making body for Minnesota’s trial court system, recommended that Minnesota Supreme Court established rules in order to implement an open hearings pilot project in certain jurisdictions whereby juvenile protection proceedings would be presumed open. Shortly thereafter, the Minnesota Supreme Court filed an “Order



Establishing Pilot Project on Open Hearings in Juvenile Protection Matters” (NCSC, 2001, p.13).

### ***Pilot-***

#### *Background:*

- In 1998, the Minnesota Supreme Court issued an order authorizing each of Minnesota's ten judicial districts to identify one or more counties in which to conduct a three-year pilot project where child protection hearings and court file records would be accessible to the public.
  - Twelve counties volunteered to participate in the pilot project.
- The National Center for State Courts (NCSC) was contracted by the Minnesota Supreme Court Office of State Court Administrator as an independent research organization to conduct an evaluation of the Open Juvenile Protection Proceedings Pilot Project.
- The purpose of the evaluation was to provide decision-makers with relevant information to assist their deliberations regarding whether open hearings/records should be expanded statewide.
- Although at the time, 16 other states had adopted statutes or court rules that require or permit access to juvenile court proceedings, the NCSC evaluation was the first of its kind to be conducted in the nation.

### ***NCSC Report Summary-*** (Cheeseman, 2001)

#### *Data collection methods:*

- Site visits, interviews, focus groups, logbooks, case file reviews and surveys.
- Surveys were designed for the following professional categories: judges/referees, court administrators, county attorneys, public defenders, guardians ad litem (GAL's), social workers, and news media.
- Compilation of newspaper articles on the subject of open hearings/records in child protection proceedings.

#### *Effects on Hearings:*

*Participation, Closures of Open Hearings, Courtroom Content, Length of Hearings, Use of Court Resources, Potential for Harm, Media Reaction*

### **Participation-**

**Finding:** “Open hearings have led to a slight but noticeable increase in attendance at child protection proceedings” (Cheesman, 2001, p. 3).

- **Increased attendance:** Most of whom were members of extended family (90% of those reporting report an increase of five or less people attending).
- **Possible trend:** Data suggests trend towards increased attendance by these groups.

### Closures of open hearings-

**Finding:** “Closures of open child protection hearings occurred very infrequently in the pilot counties” (Cheesman, 2001, p. 3).

- **Minimal closures:** Between May 2000 and March 2001 only six child protection hearings were closed (this includes data from eight counties).
- **Reasons for closures:** Cases involving incest, sexual abuse, parents’ psychological condition, child death, cases where the identity of the child is readily discernable, and cases involving HIV were more likely to be closed.
- **Hesitance to close:** Several judges expressed a reluctance to close hearings out of concern for the integrity of the open hearings pilot project.
- **“Blanket” motions to close:** Public defenders in some counties motioned to close nearly all proceedings. These early attempts at “blanket” closures were rejected by judges and were short lived.

### Courtroom content-

**Finding:** “In the opinion of the child protection professionals surveyed, the content of courtroom documents, exhibits, and statements have not been significantly affected” (Cheesman, 2001, p. 3).

- **Variation in opinions:** There was a difference in opinion as to the extent and effect of changes in documents, exhibits and statements.
- **Content of exhibit and social worker reports:** Judges and county attorneys were significantly more likely than other professionals to notice changes in exhibits.
- **Petitions:** County attorneys were significantly more likely to feel that there were changes in content of petitions.
- **Judges statements:** County attorneys and public defenders were significantly more likely to report change in content of Judge’s statements.
- **Increased accuracy:** Many feel that the content of statements and documents are generally more accurate, including fewer unsubstantiated allegations and timelier, better-prepared court documents.
- **Increased caution:** Some felt that documents and reports were “softened” and/or shortened, leaving out potentially helpful but sensitive information because of possible public scrutiny. Some report hesitance to include sensitive information.

### Length of hearings-

**Finding:** “There is little evidence that the duration of hearings was appreciably affected” (Cheesman, 2001, p. 3).

- **Length unaffected:** More than 90 percent of survey respondents felt that the length of hearings had not changed.
- **Increased length:** Public defenders were significantly more likely to report that hearings had become longer.
  - **Reasons for increased length:** Media presence, spectators, and extra time required for motions to close proceedings were reported as having affected length of hearings.
  - **Sensational cases:** The effects can be very profound from cases that attract media attention.

### Use of court resources-

**Finding:** “The very real demands made on court administrative staff as a result of open hearings/records appeared to have their greatest impact early after the project commenced and became less of a burden with the passage of time” (Cheesman, 2001, p.4).

- **Resources unaffected:** 81 percent of survey respondents reported that court resources were not affected.
- **Increased use of resources:** Judges and court administrators were significantly more likely to report an increase in the use of court resources.
- **Increased preparation time:** Public defenders report more of their time is required to prepare clients for open hearings.
- **Significant impact on administrative staff:** Great impact on the workload of the administrative staff resulting from the record keeping requirements in the court order and the need to address public requests for documents.
- **Additional administrative tasks:** Administrative staff that had to redact documents, separate files, prepare written materials to protect child’s identity, and deal with requests for documents.
- **Example of typical response from court administrator:**

*“Because of the changes, it takes longer to process cases. Cases are not accessible on TCIS so, when doing calendars, you have to first unconfidentialize (sic) then run calendars and go back in and make them confidential again. Very time consuming. It is also very time consuming if a member of the public wishes to review the file because the file has to be reviewed and redacted.”*

*“Initially increased a great deal to split open CHIPS records from closed. Delete status records stored in same physical file. Hired part-time employees for several matters. Significant time spent (40-60 hours) to respond to media requests for copies of all CHIPS petitions for each of last 2 years...”*

### Potential for harm-

**Finding:** “Open hearings/records have not resulted in documented direct or indirect harm to any parties involved in child protection proceedings, with the possible exception of a sensational case in Hennepin County” (Cheesman, 2001, p. 4).

- **Gross irresponsibility:** Was noted on the part of reporters in regards to one case in Hennepin County where “news crews from two local stations focused their TV cameras – through courthouse windows from the sidewalk outside – on the mother in the case as she walked through the lobby of the Hennepin County Juvenile Justice Center” (Cheesman, 2001, p.24).
  - It appears this case was atypical, as it had been ongoing for two years prior and had already received considerable media attention.
  - Due to the irresponsibility by previous reports, the judge closed hearings for this case.

### Media reaction-

**Finding:** “Media reporting tends to be dominated by sensational cases, as was the case before open hearings/records. No evidence was found that open hearings/records has exacerbated this tendency” (Cheesman, 2001, p. 5).

- **Minimal news stories:** 63 percent of the respondents reported that they rarely or never saw news stories about child protection cases.
- **Media attention waned:** Media attention on cases was high immediately after the implementation of open hearings/records but quickly declined thereafter.
- **Variation in opinions:** Court administrators, county attorneys, and judges were significantly more likely to report that the media had responsibly covered cases than GAL’s, public defenders, and social workers.
- **Published Images:** 7 percent of the media respondents reported that their media organization published the image/photo of a child involved in a child protection proceeding.
- **Published name:** 7 percent reported that that their media organization had published the name of a child involved and 35 percent reported publishing names of parents involved in proceeding.
- **Published address:** 11 percent indicated that their media organization had published the address of a child or parent involved in a child protection proceeding.

### NCSC Report concluding statement-

*“There are clearly costs attached to open hearings/records, especially for court administrative staff. Other costs may be borne by the parties to child protection cases, especially children and parents (and foster parents), who risk losing privacy. During the course of the data collection, the NCSC project team did not encounter any cases where harm to children or parents irrefutably resulted from open hearings/records although many professionals expressed concern for the potential of such harm.”* (Cheesman, 2001, p. 85)

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### Arizona Open Court Pilot Program and The Arizona State University Study

With the desire to increase accountability in the child welfare system, in 2003 Arizona passed SB 1304 and 2024, which established a pilot program permitting public access in 5% of Maricopa county’s dependency cases. The Department of Economic Security/Division of Children, Youth and Families (DES/DCYF) and the Administrative Office of the Courts (AOC) were responsible for overseeing and providing analysis for pilot program and representatives from Arizona State University-School of Justice & Social Inquiry were included in the development of the research.

Following the 18 months pilot program, the Arizona State University final report indicated that, “impacts [of the pilot program] have been minimal, though caution must be exercised in assuming too much into this fact based on the low volume of non-party courtroom attendance” (Broberg and Lopez, 2006, p.16). Subsequently, in 2005, the pilot was adopted statewide.

## Flaws with the NCSC and Arizona State University Reports

(Patton, 2005; Patton, 2009)

In his critical analysis' of both the NCSC and the Arizona State University reports, William Wesley Patton, lecturer at UCLA David Geffon School of Medicine, Department of Psychiatry; Whittier Law School Professor and J. Allan Cook and Mary Schalling Cook Children's Law Scholar, critically questions the validity of the NCSC report, which he refers to as "the 'Holy Grail' of empirical support for proponents on the efficacy and safety of open proceedings," (Patton, 2009, p. 2) and the Arizona State study, which he claims "suffers some of the same flaws [as the Minnesota study]" (as its methodology was based on the Minnesota study).

In his 2005 analysis, Patton outlines numerous deficiencies in the NCSC report, which he claims, "is so seriously flawed both in its design and in its conclusion that it has marginal statistical reliability" (Patton, 2005, p. 310). Patton follows his 2005 review with a 2009 analysis wherein he includes testimonies from both Dr. Cheesman, a "senior court researcher for the NCSC who designed and administered the Minnesota study" and Greg Broberg, a graduate student at Arizona State University who "formulated the methodology, implemented the research and wrote the [Arizona State] report". Their testimonies were given in a hearing at the California Superior Court of San Mateo County and "seriously call into question the credibility" (Patton, 2009, p. 2) of both the NCSC and Arizona State studies.

Following is a summary of the flaws in the NCSC report outlined in Patton's 2005 analysis, supported by testimonies from both Cheesman and Broberg, which are presents in his later analysis.

- **Inadequate sample:** The sample surveyed did not include abused children, their parents, or private or court appointed psychological therapists; those most likely to perceive abused children's trauma after publicity.
  - **Support:** In his testimony, Cheesman's expressed that talking to children and families could have been useful, but that "the Minnesota research advisory committee forbade the researchers from interviewing the abused children and their parents ...because such interviews might harm the children" (Patton, 2009, p. 2), which he expressed was against his professional judgment.
  
- **Premature conclusion:** Much of the psychological damage to child abuse victims is long-term, the court personnel and counsel who were surveyed did not have an opportunity to observe the child's psychological path.
  - **Support:** Dr. Cheesman was in agreement that the study was methodologically flawed stating, "I'm not claiming that this is the most fool-proof study ...there was no way, with our methodology, that we really could have taken into account some of these extraneous factors, like maturation. We just couldn't given the budget that we had to work with" (Patton, 2009, p.4).
  - **Support:** In response to whether or not the effects of open court's on abused children were studied, the if the methodology causes him "pause for the concern as to the reliability", Broberg testified, "the department did not have the resources to do that type of thing" (Patton, 2009, p.5).

- **Minimized harmful effects:** The report elevated the nature of the psychological harm required for minimum reporting to “extraordinary harm,” rather than all psychological harm experienced by child abuse victims through publicity. This eliminated from consideration a number of children who might have been psychologically harmed from the publicity, and significantly skewed the conclusion.
  - **Support:** In his testimony, Cheesman confirms that only instances of “extraordinary harm” were considered. He indicates that “extraordinary harm” was not defined in the study. And when questioned about why the term extraordinary harm was chosen “instead of some harm, slight harm, moderate harm to children - or ordinary harm” (Patton, 2009, p. 3), he responded, “it was probably some serious amount of harm. So I think that’s why I chose the word.” (Patton, 2009, p. 3). And when asked what he considered harm to mean, he “had great difficulty defining the term” (Patton, 2009, p. 3).
- **Lacked relevant expertise:** Failed to consider any of the extensive pediatric psychiatric evidence demonstrating the substantial psychological harm to children due to public exposure of their abuse.
  - **Support:** Dr. Cheesman’s testimony confirmed that neither psychologists nor psychiatrists were consulted regarding whether the open court proceedings were harmful to children (Patton, 2009), and stated that “the government people” chose the individuals who he would interview regarding the harmful effect on children. From this Patton concludes that responses as to whether or not harmful effects were observed by children were biased and that individuals with “the most interest in seeing that the court proceedings would remain open” (Patton, 2009, p. 3) were interviewed.
- **Unsubstantiated relationship:** Reported an increased attendance by family members, though admitting parents and family members to dependency court “does not require an open dependency court rule”. Also, there is no evidence whether reported increase in attendance is due to Minnesota’s open court policy, or a new statute which “requires the court to give notice of dependency hearings and to notify parents, prospective parents and relatives of their right to be heard” (Patton, 2005, p. 329).
- **Failed to assess financial cost:** The analysis did not study the financial impact of introducing open hearings and records.

In support of his assertions, Patton also includes an excerpt from a National Council of Juvenile and Family Court Judges report which warns against an over reliance on the findings of the Minnesota report. The report concluded:

*“The NCSC report and its findings are now widely referenced by proponents for open hearings as supporting the view that open hearings do not produce the negative effects that have been argued for by opponents to this practice. However, as indicated by the concluding thoughts of the report itself, the recommendations made by the NCSC evaluators 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” (Patton, 2009, p. 2).*

Not only does Patton highlight what he believes to be deficiencies in the NCSC and Arizona State report, but further extends his position to open court studies nationwide, asserting that they “[lack] any empirical evidence”. He suggests that one of the major issues with open court studies is the lack of appropriate emphasis placed on the psychological impact of public exposure on children. Echoing his criticisms of the NCSC report, he states:

*“None of those studies has investigated PTSD in child abuse victims and no open court study has included a longitudinal analysis of the abused children’s mental health after the legal proceedings have concluded. Open court studies have merely relied, instead, on anecdotal evidence of short-term psychological trauma observed by some court personnel and advocates. (Patton, 2005, p. 313)*

### **Research: Psychological Impact of Public Exposure on Children**

Patton cites a significant amount of psychiatric literature in his discussion of the negative impact that public exposure could have on children and trauma.

- **Stigmatization:** Cites an American Psychological Association’s *amicus curiae* brief discussing the impact of child sexual abuse on stigmatization and suggests that public exposure could further exacerbate stigma to damaging degrees. (Patton, 2005, p. 311)
- **Self-blame:** Cites literature asserting that self-blame stemming from public reaction “contribute[s] twice as much to the magnitude of psychological distress as [does] more objective characteristics of [an] assaultive event” (Patton, 2005, p. 314).
- **Interferes with therapy:** Asserts that there is strong psychiatric evidence that “public disclosure of intimate identifying data regarding child abuse victims... will not only exacerbate the child’s psychological trauma, but that it will interfere with therapy” (Patton, 2005, p. 316).
- **Peer reactions:** Cites literature that suggests that peer reaction to the assault significantly impacts child victim recovery.
- **Post Traumatic Stress Disorder (PTSD):** Extensively discusses the impact of PTSD on child abuse victims.
  - Because children’s resilience and defenses are not yet as strong as adults, they are more likely to suffer renewed episodes of PTSD when questioned about abuse.
  - Exposure to events such as the press reporting on abuse or interviewing victim regarding abuse may re-victimize child and significantly interfere with therapeutic process.
- **Survey of psychiatrists:** Patton conducted a survey of 40 randomly selected California pediatric psychiatrists concerning their professional opinions regarding the likely effects

that opening the child dependency system to the press and public would have on child abuse victims:

- 90% strongly opposed opening the hearings.
- 97% felt that the effects on abused children suffering PTSD would be moderate to severe.
- 79% opined that publicity would have a strong to dramatic negative impact on their ability to provide successful psychotherapy to the abused children.

### **Connecticut Juvenile Access Pilot Program**

In February 2010, like Minnesota and Arizona, the State of Connecticut also implemented a pilot program to increase public access to juvenile court proceedings. Connecticut's Juvenile Access Pilot Program was done in only one court location (Middlesex Judicial District Courthouse). An internal Juvenile Access Pilot Program Advisory Board was also established to monitor the implementation of the pilot and submit written recommendations to the Judicial Branch and the legislature by December 31, 2010.

#### *Data collection methods:*

- In addition to careful consideration of the extensive research conducted by other States the Board decided to use three methods to solicit feedback from participants in the pilot program: participant surveys; focus groups; and hearing attendance sheets.

#### *Results<sup>15</sup>:*

- After a year of studying other open court systems as well as its own, the Connecticut Juvenile Access Pilot Program Advisory Board unanimously recommended against presumptively open juvenile courts, and that Connecticut's pilot program end on December 31, 2010.
  - Based on the research conducted by the Board, "it was unable to find conclusive data from other states that have contemplated open courts, or have opened their court, that demonstrates open courts are effective in increasing accountability of the juvenile court system and improving services to children and families." (Juvenile Access Pilot Program Advisory Board, 2010, p.15)
  - In addition, "significant concerns remained for many Board members that opening child protection proceedings could potentially harm children. These concerns were not alleviated by the experience of other states due to the lack of any reliable data from these states, however, it is noted that no state that has opened its juvenile court has since repealed their statute that provided the public with access to these proceedings." (Juvenile Access Pilot Program Advisory Board, 2010, p.15)

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<sup>15</sup> For full report see- Juvenile Access Pilot Program Advisory Board. (2010). *Report to the Connecticut General Assembly*. Available at: [http://www.jud.ct.gov/committees/juv\\_access/Final\\_report\\_123010.pdf](http://www.jud.ct.gov/committees/juv_access/Final_report_123010.pdf)



- “Recognizing that there is some benefit to limited expanded access, the Board further recommended amending the Connecticut statute to permit the court to grant access to individuals or entities with an established legitimate interest in the proceedings.” (Juvenile Access Pilot Program Advisory Board, 2010, p. 28)
  - The Advisory Board gave recommendations of what they had identified as “*ideal* legal standards for statutory and rule language for other states” citing the following states statutes and rules governing public access to juvenile court proceedings: California, Colorado, District of Columbia, Georgia, Illinois and New York (Juvenile Access Pilot Program Advisory Board, 2010, p. 28-30).

### **Implementing Open Courts-Potential Budget Impacts:**

(Patton, 2005)

- **Expert fees:** In an attempt to meet the burden of demonstrating sufficient psychological harm to the child, children’s attorneys will need to present evidence to the court such as expert testimony. These “new motions and requests for expert fees will substantially increase the cost of litigating routine child dependency actions”. (Patton, 2005, p. 334)
- **Increased court time:** Costs associated with additional time spent hearing motions to close hearings and supporting expert testimony. (Patton, 2010)
- **Training costs:** Additional cost necessary for training court professionals “regarding how and when to protect child abuse victims” (Patton, 2005, p. 335) and on cost incurred training court professionals on the appropriate ways to present relevant evidence such as medical, mental health, and drug treatment records without violating patient rights. (Patton 2010)
- **Protecting confidentiality:** Increased costs of removing “the public” from hearings during the presentation of confidential information in states where dependency records are confidential. This could also impact court length. (Patton, 2005, p. 335)
- **Pilot projects:** Additional costs associated with research and documentation showing project success or failure; evidenced by:
  - Minnesota study finding, “a significant impact on the workload of administrative staff” (Patton, 2011, para. 8).
  - In New York, \$5.6 million estimated for implementation. (Patton, 2011)

### **Recommendations to Minimize Potentially Harmful Effects of Open Courts:**

(Patton, 2005)

- **Presumably closed:** The best system is one that grants the juvenile court discretion to admit the press on a case-by-case basis for three reasons:
  - Empowers children by including them in the decision of whether or not the media will be included.

*SACHS Literature Review: Open Juvenile Dependency Courts*

- Requires parties seeking admittance to “articulate their rationale so that only legitimately interested individuals will be permitted access” (Patton, 2005, 348).
- Provides the court with leverage in relation with the media. If a reporter were to disclose identifying information, the court could deny any subsequent requests for admission.
- **Media accountability:** If the media publishes identifying and psychologically damaging data about child abuse victims from the hearing, the judge can protect the child by denying that reporter’s subsequent requests for access. (Patton, 2005, p. 329)
- **A “Model Press Act”:** States may pass an act allowing for a specific number of people from the media to attend hearings, who, in return will be required to attend “educational training on dependency law and on the psychological harm of disclosure”. The court may then deny access to media sources that are noncompliant. (Patton, 2005, p. 329)
- **Build relationships:** The press should attempt to “create a close reciprocal working relationship... with juvenile judges” (Patton, 2005, p. 349). By becoming better familiar with the legal process, the press is more likely to observe and report in appropriate manner.
- **Immunity provisions:** Statutory changes should be made providing for immunity and derivative immunity protecting individuals who may be reluctant to cooperate/testify in fear of self-incrimination. (Patton, 2005, p. 339)

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***Appendix A:  
California Assembly Bill No. 73***

(Source: [http://info.sen.ca.gov/pub/11-12/bill/asm/ab\\_0051-0100/ab\\_73\\_bill\\_20101221\\_introduced.pdf](http://info.sen.ca.gov/pub/11-12/bill/asm/ab_0051-0100/ab_73_bill_20101221_introduced.pdf))

**ASSEMBLY BILL**

**No. 73**

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**Introduced by Assembly Member Feuer**

December 21, 2010

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An act relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 73, as introduced, Feuer. Dependency proceedings: public access.

Existing law provides that the public shall not be admitted to a juvenile court hearing in a dependency proceeding, unless requested by a parent or guardian and consented to or requested by the minor concerning whom the petition has been filed. Existing law permits the judge or referee to admit those persons as he or she deems to have a direct and legitimate interest in the particular case or the work of the court.

This bill would express the intent of the Legislature to enact legislation to provide that juvenile court hearings in juvenile dependency cases shall be presumptively open to the public, unless the court finds that admitting the public would not be in a child's best interest. The bill would also include a statement of legislative findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Many states increasingly permit or require public access to
- 4 juvenile court hearings in juvenile dependency cases involving
- 5 abuse and neglect.

**AB 73**

— 2 —

1 (b) Pursuant to Section 346 of the Welfare and Institutions Code,  
2 California is currently among the states that require that all  
3 proceedings in juvenile dependency matters be closed to the public,  
4 except under specified circumstances.

5 (c) Public access to juvenile court hearings has the benefit of  
6 ensuring that the child welfare system can be held more  
7 accountable, and of educating the public about the needs of the  
8 child welfare system.

9 (d) Children's privacy rights can be protected by ensuring that  
10 juvenile court judges have the discretion to close individual  
11 hearings based on the circumstances of the cases and the needs  
12 and best interests of specific children while presumptively ensuring  
13 those proceedings are open and transparent.

14 SEC. 2. It is the intent of the Legislature to enact legislation  
15 to provide that juvenile court hearings in juvenile dependency  
16 cases shall be presumptively open to the public unless the court  
17 finds that admitting the public would not be in a child's best  
18 interest.

***Appendix B:  
Disclosure of Confidential Child Abuse and Neglect Records:  
Summary of State Laws (2010)***

(Source: [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/confide.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/confide.cfm))



## **Disclosure of Confidential Child Abuse and Neglect Records: Summary of State Laws**

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*Current through June 2010*

*This brief introduction summarizes how States address this topic in statute.*

Records of child abuse and neglect reports are maintained by State child protection or social services agencies to aid in the investigation, treatment, and prevention of child abuse cases and to maintain statistical information for staffing and funding purposes. In many States, these records and the results of investigations are maintained in databases, which often are called central registries.<sup>1</sup> The type of information contained in registries and department records varies from State to State, as does accessibility to the information.

### **Confidentiality of Records**

Among the requirements for receiving Federal funding under the Child Abuse Prevention and Treatment Act (CAPTA), States must preserve the confidentiality of all child abuse and neglect reports and records to protect the privacy rights of the child and of the child's parents or guardians except in certain limited circumstances.<sup>2</sup> All jurisdictions have confidentiality provisions to protect abuse and neglect records from public scrutiny. Confidentiality provisions mandate that such records are confidential, and many include specific mechanisms for protecting them from public view.

### **Persons or Entities Allowed Access to Records**

Most jurisdictions permit certain persons access to registry and department records. In general, these people have a direct interest in a case, in the child's welfare, or in providing protective or treatment services. Many statutes specifically describe who may access the records and under what circumstances. Typically, persons entitled to access are physicians; researchers; police; judges and other court personnel; the person who is the subject of a report; a person who was an alleged child victim; and the parent, guardian, or guardian *ad litem* of an alleged victim who is a minor.

In approximately 18 States and Puerto Rico, the person or agency that made the initial report of suspected abuse or neglect may be provided with a summary of the outcome of the investigation.<sup>3</sup> In approximately 19 States and Guam, a prospective foster or adoptive parent is provided with information from the records in order to help the parent in meeting the needs of the child.<sup>4</sup> In 25 States and the District of Columbia, public agencies in other States are permitted access to information related to their child protection duties.<sup>5</sup>

## **When Public Disclosure of Records Is Allowed**

Under most circumstances, information from child abuse and neglect records may not be disclosed to the public. In approximately 27 States and the District of Columbia, however, some disclosure of information is allowed in cases in which abuse or neglect of the child has resulted in a fatality or near fatality.<sup>6</sup> In three States, the alleged perpetrator of the abuse must be criminally charged with causing the fatality or near fatality before information may be disclosed.<sup>7</sup> Georgia and South Carolina require public disclosure of information when a child in State custody has died.

Approximately 13 States allow disclosure of information for the purpose of clarifying or correcting the record when information has already been made public through another source, such as disclosure by the subject of the report, a law enforcement agency, or the court.<sup>8</sup> In five States, public disclosure is allowed when a suspected perpetrator of abuse or neglect has been arrested or criminally charged.<sup>9</sup>

## **Use of Records for Employment Screening**

Central registry and department records are used increasingly to screen adults for various employment or volunteer positions. Approximately 29 States and the District of Columbia allow or require a check of central registry or department records for individuals applying to be child care or youth care providers.<sup>10</sup> Information is made available to employers in the child care business, schools, or health-care industry. However, it is generally limited to whether there are substantiated or indicated reports of child maltreatment for potential employees or volunteers who will have significant contact with children.

Four States allow parents to check the records of child abuse and neglect for a provider of child care to help them determine whether to hire that provider to care for their child.<sup>11</sup> In 21 States and the District of Columbia, a person or agency conducting an investigation of a prospective foster or adoptive parent may access the records.<sup>12</sup>

*To access the statutes for a specific State or territory, visit the **State Statutes Search:***  
[http://www.childwelfare.gov/systemwide/laws\\_policies/state/](http://www.childwelfare.gov/systemwide/laws_policies/state/)

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<sup>1</sup> The records referred to are maintained by State child protection agencies and are not the same as those accessed during a criminal history records check. Criminal histories are records of convictions maintained by the criminal justice system.

<sup>2</sup> 42 U.S.C.A. §5106a(b)(2)(A)(viii)-(x) (LexisNexis 2010).

<sup>3</sup> The word *approximately* is used to stress the fact that States frequently amend their laws. This information is current through June 2010. The States that provide information to reporters of maltreatment include California, Colorado, Connecticut, Georgia, Iowa, Louisiana, Maine, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Pennsylvania, Rhode Island, Wisconsin, and Wyoming.

<sup>4</sup> Arizona, Arkansas, Florida, Georgia, Illinois, Kansas, Louisiana, Maine, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, and Wisconsin.

*SACHS Literature Review: Open Juvenile Dependency Courts*

<sup>5</sup> Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Missouri, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, and Wisconsin.

<sup>6</sup> Alabama, Arizona, Arkansas, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, South Dakota, Texas, West Virginia, and Wisconsin allow disclosure when there has been a fatality or near fatality. A 'near fatality' is usually defined as a serious injury that places the child in critical condition.

<sup>7</sup> Minnesota, North Carolina, and Oklahoma.

<sup>8</sup> Arizona, Connecticut, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Montana, Nebraska, New York, South Carolina, and Wisconsin.

<sup>9</sup> Colorado, Illinois, Maine, Nebraska, and New York.

<sup>10</sup> Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Maine, Maryland, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wyoming.

<sup>11</sup> Louisiana, Mississippi, Missouri, and New Jersey.

<sup>12</sup> Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Nevada, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, South Dakota, Utah, and Wisconsin.

*This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.*