



## ISSUE BRIEF

### Public Access to Child Abuse and Neglect Proceedings

by Kay Farley

#### Description of Issue

In 1998, a conflict was identified between the growing trend to allow public access to court hearings for child abuse and neglect cases and the federal confidentiality requirements. As a result, the Children's Bureau issued a Policy Inquiry Question (ACYF-CB-PIQ-98-01) on June 29, 1998. The PIQ indicated that states allowing public access to court hearings were in conflict with the federal confidentiality requirements, thereby placing their Federal child welfare funding in jeopardy. Since issuing the PIQ, sanctions have not been applied to any jurisdiction, but the threat exists.

*Open court hearings in child abuse and neglect cases threaten federal child welfare funding.*

Because of the implications for the administration of the courts, this is an issue of concern to the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA). The CCJ/COSCA Courts, Children, and Family Committee were assigned responsibility for reviewing the issue and making recommendations to their respective Boards of Directors.

#### Background

The Children's Bureau referenced the following statutory requirements in their PIQ:

- Section 471(a)(8) of the Social Security Act requires that states provide safeguards to restrict the use and/or disclosure of information regarding children receiving Title IV-E foster care and adoption assistance,
- Section 106(b)(2)(A)(v) of the Child Abuse Prevention and Treatment Act (CAPTA) requires states to preserve the confidentiality of all reports and records on child welfare cases to protect the privacy rights of the child and the child's parents/guardians, except under limited circumstances and prohibits disclosure of confidential information to persons or entities other than those enumerated in the statute, and

- Section 106(b)(2)(A)(vi) of CAPTA specifies the only exception to the disclosure restrictions is in cases of child abuse or neglect that result in the death or near death of a child.

After issuing the PIQ, it became obvious that public access to court hearings were conducted in a number of states and have been long-standing practice in some states. Carol Williams, then Assistant Commissioner of the Children's Bureau, met with the CCJ/COSCA Courts, Children, and Family Committee in August 1998. At the meeting, she indicated a willingness to re-examine the issue. In follow-up to this commitment, the Children's Bureau formed a small discussion group of judges and child welfare administrators to examine current practices and the implications/experience of open court hearings related to children's privacy rights. The discussion group met March 12-13, 1999. Iowa and Minnesota representatives discussed their experience with public access to court hearings. Representatives from Missouri and North Carolina discussed their experience with closed court hearings.

*Court officials and child welfare officials met with Children's Bureau staff to discuss implications of open court hearings on children's privacy rights.*

The discussion focused on the following questions:

- What information is disclosed in the open court hearings? Who discloses the information? When is the disclosure made?
- Are all proceedings open or are only certain hearings?
- Do open hearings impact the accountability of the system, specifically related to agencies, courts, parent, and children?
- How have the media responded to open hearings?
- In an open hearing environment, what is necessary to protect the privacy rights of children?
- What is the role of the community? Do open hearings impact community standards, ownership, and education?
- What evaluations have been done or are planned related to open court hearings?
- How does the closure of the Executive Branch records impact the quality of services?

The general consensus at the end of the discussion was that public access to court hearings do not necessarily negatively impact children's privacy rights and can positively impact the handling of child welfare cases. Through public access to court hearings, the child welfare system can be held more accountable and the public can be better educated about the needs of the child welfare system. Allowing judges discretion to close individual hearings based on the circumstances of cases and the needs of specific children can protect the children's privacy rights. Educating the media on the impact can

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also protect children's privacy rights.

### **Impact on State Courts**

A 1997 survey conducted by the National Center for Juvenile Justice (NCJJ) determined that "based on statutory language" 15 jurisdictions permitted or required open hearings for abuse/neglect/dependency cases. The 15 jurisdictions cited in their survey were Arizona, Arkansas, Colorado, Florida, Indiana, Iowa, Kansas, Maryland, Michigan, Montana, Nebraska, North Carolina, Ohio, Oregon, and Texas.<sup>1</sup>

Realizing that there were other non-conforming jurisdictions in addition to the 15 states cited in the NCJJ survey, the CCJ Courts, Children, and the Family Committee undertook a survey to determine current practice around the country. The detailed survey results are attached. The results of the survey are summarized below.

#### Open Proceedings for All Cases – 1 jurisdiction Oregon

Presumably Open; Judicial Discretion to Close – 14 jurisdictions  
Arizona<sup>2</sup>, Florida, Indiana, Iowa, Maryland, Michigan, Minnesota<sup>3</sup>, Nebraska, New York, North Carolina, Northern Mariana Islands, Texas, Utah<sup>4</sup>, and Washington

Presumably Closed; Judicial Discretion to Open – 10 jurisdictions  
Alabama, Colorado, Connecticut, Maine, Missouri, Oklahoma, South Dakota, Tennessee, Virgin Islands, and Wisconsin

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<sup>1</sup> Szmanski, L. (1997) Confidentiality of Abuse/Neglect/Dependency Hearings, *NCJJ Snapshot*, 2(11). Pittsburgh, PA: National Center for Juvenile Justice

<sup>2</sup> The Arizona Legislature passed Senate Bill 1304 and authorized a pilot project in Maricopa County. The pilot project will include 5% of the Maricopa County cases. Conditions have been included to protect the child's privacy – factors in considering whether to close the hearing and admonishment of all attendees. Evaluative reports must be submitted to the Governor, Chief Justice, and State Legislature by January 1, 2004 and October 15, 2004.

<sup>3</sup> Minnesota is conducting a pilot project in 12 of 87 counties. In these 12 counties, the hearings are presumably open with judicial discretion to close individual hearings. In the remaining 75 counties, the hearings are closed.

<sup>4</sup> House Bill 222 became effective May 3, 2003 authorizing pilot projects. In the pilot project sites, court hearings will be presumably open with judicial discretion to close. To close hearings, the judge must make findings on the record stating that an open hearing would not (1) in the best interests of the child, (2) impede the fact finding process, or (3) be contrary to the interest of justice. Pilot districts will be selected by November 1, 2003. The Judicial Council must report the results of the pilot project to the Legislature by July 2005.

Closed Proceedings for All Cases with Some Exceptions<sup>5</sup> – 6 jurisdictions  
Alaska, Georgia, Illinois, Kansas<sup>6</sup>, New Mexico, North Dakota

Closed Proceedings for All Cases – 21 jurisdictions  
Arkansas, California, Delaware, District of Columbia, Hawaii, Idaho, Kentucky, Louisiana, Massachusetts, Mississippi, Montana, New Hampshire, New Jersey, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, and Wyoming

Other – 2 jurisdictions  
Nevada<sup>7</sup> and Ohio<sup>8</sup>

A strict reading of the federal interpretation of the Federal confidentiality requirements would indicate that at least 33 jurisdictions<sup>9</sup> might be out of compliance with the requirements.

*The CCJ survey indicates that at least 33 jurisdictions do not comply with the Children's Bureau's interpretation of the federal requirements.*

### **Alternative Action/Policy**

Federal officials advised that they are constrained by their interpretation of current law. At their January 2000 Midyear meeting, the CCJ Courts, Children, and the Family Committee considered alternative action and policy options. The consensus of the Committee was that they did not agree with the Children's Bureau interpretation of existing statute. Given the current circumstances, however, they agreed that clarification of the federal statute would be the simplest course of action for resolving the issue.

CAPTA reauthorization served as an opportunity for Congress to amend CAPTA to clarify that states have the authority to determine state practice related to whether court

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<sup>5</sup> In 6 states, the Court has the discretion to admit individuals with an interest in the case to be present during a hearing. These six states include Alaska, Georgia, Illinois, Nevada, New Mexico, and North Dakota. Additionally in Illinois and New Mexico, news media are allowed to be present.

<sup>6</sup> The Kansas hearings are closed, but individuals may be permitted to attend hearings by agreement of all of the parties. House Bill No. 2125 was adopted in 2003 by the Kansas Legislature and authorized a pilot project in two jurisdictions. In those jurisdictions, the court may exclude all persons from a court hearing except, the guardian ad litem, interested parties and their attorneys, officers of the court, the witness testifying, the child's foster parents, and up to two people designated by the parent of the child. A report will be made to the Kansas Legislature by July 1, 2005.

<sup>7</sup> The Nevada Legislature authorized a pilot project in 2003. In Clark County (Las Vegas), hearings are presumably open with discretion to close. In the other counties, the hearings are presumably closed with discretion to open. A report will be submitted to the Legislature in 2004.

<sup>8</sup> The Ohio hearings are neither presumably open nor presumably closed.

<sup>9</sup> This number includes the jurisdictions included in the categories of Open Proceedings for All Cases, Presumably Open/Judicial Discretion to Close, Presumably Closed/Judicial Discretion to Open, Closed Proceedings for All Cases with Some Exceptions, and Other.

hearings are open or closed. The Committee's recommendation to the CCJ Board of Directors and membership was to request Congress to amend CAPTA and other applicable statutes to clarify that states have the authority to establish their own policy on the issue of open or closed court hearings.

CCJ was aware that other organizations, such as the National Council of Juvenile and Family Court Judges (NCJFCJ), the National Association of Public Child Welfare Administrators (NAPCWA), or others, might be willing to partner with the them and COSCA to develop and promote a legislative proposal for Congress. National Center for State Courts staff approached other organizations to see if they would support CCJ's initiative. NCJFCJ and NAPCWA adopted is support of state discretion to their own policy on the issue of open or closed court hearings. Additionally, the National Child Abuse Coalition included state discretion on this issue in their recommendations to Congress for the reauthorization of CAPTA.

### **Current Status of the Issue**

The Child Abuse Prevention and Treatment Act (CAPTA) was reauthorized through FY 2008. On June 25, 2003, President Bush signed S. 342 (P.L. 108-36). In addition to reauthorizing CAPTA, this legislation included a provision that makes it clear that states have discretion to establish their own policies on public access to child abuse and neglect court hearings as long as they "at a minimum, ensure the safety and well-being of the child, parents, and families."

Attention is now being turned to asking Congress to make the same amendment to Titles IV-E and IV-B of the Social Security Act.

## Public Access to Child Abuse and Neglect Proceedings: Survey Results (July 2003)

State/Territory	Practice Related to Public Access to Proceedings	Hearings to Which Public Has Access	Authority	Year Authorizing Public Access	Practice Related to Public Access to Court Files
Alabama	Presumably closed with judicial discretion to open proceedings	N/A	Statute	N/A	Case file presumably closed with judicial discretion to open all or part of file
Alaska	Closed proceedings for all cases; court has discretion to admit individuals to hearings if their attendance is compatible with the best interests of the child.	N/A	Statute Court Rule	N/A	(no response)
Arizona	Presumably closed proceedings with judicial discretion to open proceedings  In a Maricopa County pilot project, hearings are presumably open with judicial discretion to close	N/A	Statute Court Rule Statute	N/A N/A	Case file presumably closed with judicial discretion to open all or part of file
Arkansas	Closed proceedings for all cases	N/A	Statute	N/A	All records may be closed and confidential within the discretion of the court
California	Closed proceedings for all cases	N/A	Statute	N/A	Case files closed in all cases

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Colorado	Presumably closed proceedings with judicial discretion to open proceedings	N/A	Statute	N/A	Case file presumably closed with judicial discretion to open all or part of file
Connecticut	Presumably closed proceedings with judicial discretion to open proceedings	Adjudicatory, dispositional, and review hearings	Statute	1969, with subsequent amendments	Case file presumably closed with judicial discretion to open all or part of file
Delaware	Closed proceedings for all cases	N/A	Statute	N/A	Case files closed in all cases
District of Columbia	Closed proceedings for all cases	N/A	Statute	N/A	Case files closed in all cases; except certain individuals, specified by statute, may be permitted to have access to the records
Florida	Dependency adjudicatory hearings are open to the public, unless the court specifically closes a particular hearing upon a finding that the public interest or welfare of the child are best served by the closure; termination of parental rights adjudicatory hearings are closed to the public	Adjudicatory (for dependency only), dispositional, and review hearings	Statute	1975	Case file presumably closed with judicial discretion to open all or part of file

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Georgia	Closed proceedings for all cases; the court may admit any person having a proper interest in the case or the work of the court to hearings	N/A	Statute	N/A	Case files closed in all cases; except as permitted by statute
Guam					
Hawaii	Closed proceedings for all cases	N/A	Statute (records) Court Rule (hearings)	N/A	Case file presumably closed, judicial discretion to open all or part of file
Idaho	Closed proceedings for all cases	N/A	Statute Court Rule	N/A	Case files closed in all cases
Illinois	Only persons specified in statute or who in the opinion of the court have a direct interest in the case or the work of the court shall be admitted to hearings; the general public, except for the news media and the victim, are excluded from all hearings; the court may prohibit any person present in the court from further disclosing the minor's identity	N/A	Statute	N/A	Case files are closed, except as permitted by statute or special order of the court (statute allows news media to inspect juvenile court records)

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Indiana	Presumably open proceedings with judicial discretion to close proceedings (most courts routinely close abuse and neglect proceedings)	Adjudicatory, dispositional, and/or review hearings	Statute	1979	Case file presumably closed, judicial discretion to open all or part of file
Iowa	Presumably open proceedings with judicial discretion to close proceedings	Adjudicatory, dispositional, and/or review hearings	Statute	1989	Case file presumably closed, judicial discretion to open all or part of file
Kansas	<p>Any person may attend the proceeding upon agreement of all interested parties, unless the court finds the presence of the persons would be disruptive to the proceedings.</p> <p>In pilot project jurisdictions, the court may exclude all persons from a court hearing except, the guardian ad litem, interested parties and their attorneys, officers of the court, the witness testifying, the child's foster parents, and up to two people designated by the parent of the child.</p>	Adjudicatory, dispositional, and/or review hearings	<p>Statute</p> <p>Statute</p>	<p>1983</p> <p>2003</p>	Case file presumably closed, judicial discretion to open all or part of file

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Kentucky	Closed proceedings for all cases	N/A	Statute	N/A	Case file closed, except to specific list of individuals. Court may grant access to others upon request and showing cause.
Louisiana	Closed proceedings for all cases	N/A	Statute	N/A	Case file presumably closed with judicial discretion to open all or part of file
Maine	Presumably closed proceedings with judicial discretion to open proceedings	N/A	Statute	N/A	Case file presumably closed with judicial discretion to open all or part of file
Maryland	Presumably open proceedings with judicial discretion to close proceedings; abuse reports, however, are discussed in a confidential manner in the courtroom	(unspecified)	Statute Court Rule	1998	Case files are closed, except as permitted by statute
Massachusetts	Closed proceedings for all cases	N/A	Statute	N/A	Case files are closed; exceptions may be made for research purposes or law enforcement purposes with the permission of the court

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Michigan	Presumably open proceedings with judicial discretion to closed	Adjudicatory, dispositional, and review hearings	Court Rule	1988	Case file presumably open with judicial discretion to seal all or part of file (access to records may be limited by local administrative order requiring specific identification of information for files being requested, such as case name or number)
Minnesota	A three-year pilot project in 12 of 87 counties allows child protection hearings in the 12 counties to be presumed accessible to the public unless an exceptional circumstance exists	Adjudicatory, dispositional, and review hearings	Statute Court Rule (authorizes the pilot project)	1998	In the 12 pilot counties, the public may have access to all child protection court files; except the court rules specifically identifies certain records that are not accessible
Mississippi	Closed proceedings for all cases	N/A	Statute	N/A	Case file presumably closed with judicial discretion to open all or part of file
Missouri	Presumably closed proceedings with judicial discretion to open proceedings	N/A	Statute	N/A	Case file presumably closed with judicial discretion to open all or part of file
Montana	Closed proceedings for all cases	N/A	Statute	N/A	Case files are closed, except as permitted by statute

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Nebraska	Presumably open proceedings with judicial discretion to close proceedings	Adjudicatory, dispositional, and review hearings	Constitution Court Rule	1875	Case file presumably open with judicial discretion to seal all or part of file
Nevada	Closed proceedings, only persons having a direct interest as ordered by the judge may be admitted  In a pilot project, hearings in Clark County are presumably open proceedings with judicial discretion to close proceedings; in the other counties, hearings are presumably closed with judicial discretion to open; a report to the Legislature is due in 2004	N/A	Statute  Statute	N/A  2003	Case files are closed; court may publicly disclose information, if necessary
New Hampshire	Closed proceedings for all cases	N/A	Statute	N/A	The court may authorize disclosure information.
New Jersey	Closed proceedings for all cases	N/A	Statute Court Rule	N/A	Case files closed for all cases

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New Mexico	Closed proceedings for all cases; the media is allowed to attend hearings, but not divulge the names of the child, parent, or guardian; other persons with a legitimate interest in the cases or the work of the court may attend hearings provided they receive court permission and refrain from divulging any information that would identify the child or family	Adjudicatory, dispositional, and/or review hearings	Statute	N/A	Case files closed, except as permitted by statute or by order of the court
New York	Presumably open proceedings with judicial discretion to close proceedings	Adjudicatory, dispositional, and/or review hearings	Statute Court Rule	1909 1970	Files not open to “indiscriminate” public inspection, however, the court in its discretion may permit the inspection of any papers or records
North Carolina	Presumably open proceedings with judicial discretion to close proceedings	Adjudicatory, dispositional, and/or review hearings	Statute	1979, amended 1998	Case file presumably closed with judicial discretion to open all or part of file

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North Dakota	Closed proceedings except to declare a person in contempt of court; the court may admit others with proper interest in the case or in the work of the court	N/A	Statute	1999	Case files are closed, except as permitted by statute
Northern Mariana Islands	Presumably open proceedings with judicial discretion to close proceedings	Adjudicatory, dispositional, and/or review hearings	Statute	(unspecified)	Case files closed in all cases
Ohio	Cases are neither “presumptively open, nor presumptively closed, to press or public”.	Adjudicatory, dispositional, and/or review hearings	Constitution Statute Court Rule Case Law	1851 1969 1972 1990	As a general rule, no public use can be made of any juvenile court record, except if there is an appeal, or authorized by court order.
Oklahoma	Presumably closed proceedings with judicial discretion to open proceedings	Adjudicatory, dispositional, and/or review hearings	Statute	1968	Case file presumably closed with judicial discretion to open all of part of file

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Oregon	Public access for all cases	Adjudicatory, dispositional, and review hearings	State Constitution Statute	1859 1980	Case files are closed, except the public has access to the name and date of birth of a child, as well as the basis of the court's jurisdiction over the child. The public also has a right to know the date, time, and place of any court proceeding in which the child is involved.
Pennsylvania	Closed proceedings for all cases	N/A	Statute	N/A	Case files closed in all cases
Puerto Rico	Closed proceedings for all cases	N/A	Statute	N/A	Case files closed in all cases
Rhode Island	Closed proceedings in all cases	N/A	Statute	N/A	Case files closed in all cases
South Carolina	Closed proceedings in all cases	N/A	Statute	N/A	Case files closed in all cases
South Dakota	Presumably closed proceedings with judicial discretion to open proceedings	N/A	Statute Case Law	N/A	Case files are closed, except as permitted by statute
Tennessee	Presumably closed proceedings with judicial discretion to open proceedings	N/A	Statute Court Rule	N/A	Case files presumably closed with judicial discretion to open all or part of file

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Texas	Presumably open proceedings with judicial discretion to close proceedings	Adjudicatory, dispositional, and review hearings	Statute Case Law	1995 1992	Case file presumably open with judicial discretion to seal all or part of file
Utah	Closed proceedings for all cases  In pilot jurisdictions, court hearings will be presumably open with judicial discretion to close proceedings	N/A	Statute  Statute	N/A  2003	Case files closed in all cases
Vermont	Closed proceedings for all cases	N/A	Statute	N/A	Case files closed in all cases
Virginia	Closed proceedings for all cases	N/A	Statute	N/A	Case files closed in all cases
Virgin Islands	Presumably closed except to declare a person in contempt of court; the court may admit others with proper interest in the case or in the work of the court on condition that such persons keep information they hear confidential	N/A	Statute	N/A	Case files are closed, except as permitted by statute
Washington	Presumably open proceedings with judicial discretion to close	N/A	Statute	2003	Case files closed in all cases

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West Virginia	Closed proceedings for all cases	N/A	Statute	N/A	Case file presumably closed with judicial discretion to open all or part of file
Wisconsin	Presumably closed proceedings with judicial discretion to open proceedings	(no response)	Statute	(no response)	Case file presumably closed with judicial discretion to open all or part of file
Wyoming	Closed proceedings for all cases	N/A	Statute	N/A	Case files closed in all cases