

Minors making news:
a state-by-state guide
to juvenile courts
nationwide



By Kristen Rasmussen

The last time Tim Harmon said he heard about a prior restraint on publication was in the 1970s in what famously became known as the *Pentagon Papers* case — until, that is, two months ago.

That's when editors and others in the *South Bend Tribune* newsroom learned that an Indiana appeals court had granted a request from a state agency to prevent publication of information from four audio recordings and accompanying transcripts from the agency's child abuse hotline. The information contained in the records was the basis of a significant report in the paper's ongoing investigative series about the child-protection system in Indiana. The documents revealed that six months before a 10-year-old boy was found tortured and killed in his home late last year, an anonymous caller tried to get the agency to investigate the mistreatment of children at the boy's home, pleading at times during the

20-minute phone conversation with the child welfare official to intervene immediately, before a child dies.

Faced with the threat of contempt of court, executive editor Harmon and other newsroom leaders opted to follow the advice of their attorney and remove the story from the paper's website, only about an hour after it had been posted that Friday afternoon, and halt plans to publish in print that weekend.

As it turns out, child services officials, who maintained that publicly disclosing the identity of anonymous hotline callers would chill similar reports of child abuse, had little to worry about. In accordance with its consistent assertion that the paper had no interest in identifying the caller, staff members, as soon as they received the records, began extensive efforts to disguise the woman's identity.

"We spent those few days [between receiving the records and the Friday of online publication] getting the story ready. We made sure to take out all identifying information. We changed [the caller's] voice so significantly that you couldn't even tell the gender," Harmon said in an interview.

Shortly before a hearing before the appeals court in Indianapolis the next Monday, state Attorney General Greg Zoeller intervened, asking the court to dismiss the matter. He said that a system exists to resolve disputes between government agencies and the news media over access to public records but that "prior restraint of the news media publishing records is inconsistent with the First Amendment."

For journalists and others who rely on this constitutional right to gather and disseminate information about matters of public interest and concern free from government interference, the case is certainly significant — and not only as an alarming example of the dangerous threats to press freedom in those rare instances where "some misguided government agency finds a misguided judge who's willing to order a publication to suppress a story," as a March 13 *Tribune* editorial described the events.

The scenario also serves as a dramatic example of the tension between the public's interest in providing oversight of an institution that adjudicates children's matters and its interest in rehabilitating and protecting its most vulnerable from lasting stigma and emotional trauma. To be sure, the secrecy that traditionally has been the hallmark of juvenile courts nationwide often impedes the ability to gather and disseminate information when

those for whom such anonymity and confidentiality are intended to protect are the ones making the news.

The jurisprudence of access to juvenile courts

Courts across the country have repeatedly declined to find a First Amendment-based right of public access to the juvenile court system. Following the U.S. Supreme Court's rationale that such a right exists where both experience and logic favor openness, most courts have found that public scrutiny is inconsistent with the juvenile court's aim of protecting children from the stigma and emotional trauma that can accompany publicity. Courts likewise have dismissed historical considerations, finding that a hallmark of the nation's juvenile court system is the adjudication of matters outside the public's gaze.

"The primary purpose has traditionally been to try and intervene with juveniles and protect them, so there has been a move to keep proceedings that involve juveniles more private than [parties] would be entitled to in an adult court system," said Seth Berlin, a Washington, D.C., media lawyer who authored in part a treatise on newsgathering and the law that includes a comprehensive discussion of the right of access to juvenile courts nationwide.

As such, juvenile proceedings, namely delinquency proceedings, largely resemble criminal cases. However, unlike adult offenders, juveniles in most jurisdictions are not charged with crimes but rather with committing "delinquent acts." Accordingly, juveniles do not have a trial; they have an adjudicatory hearing. If the court finds that the child committed the delinquent act, the child is not convicted but instead declared an adjudicated delinquent. Because these proceedings are technically not criminal prosecutions, courts have been free to reject the firm body of law that generally holds that criminal proceedings are presumptively open to the public.

Shifting standards

But the media's and public's ability to gain access to juvenile delinquency proceedings has improved since the late 1980s and early 1990s, when a teen-

age crime wave produced a significant increase in the number of older juveniles charged with serious offenses, Berlin said.

The public access right "also has to do with the severity of the crime. When you have barely juveniles charged with murder, many of those cases start to look more like an adult proceeding," he said.

Ohio media lawyer David Marburger agreed. Marburger represented *The Columbus Dispatch* in its 1990 appeal to the Ohio Supreme Court challenging a trial court order closing all juvenile court proceedings to determine whether a child was abused, neglected or dependent. The state Supreme Court found that juvenile court proceedings are neither presumptively open nor presumptively closed in Ohio. And a juvenile court can restrict public access to the proceedings only if, after a hearing, it finds there is a reasonable and substantial basis for believing that public access could harm the child or endanger the fairness of the adjudication, the potential harm to the child outweighs the benefits of public access and there are no reasonable alternatives to closure.

Since then, there has been increased openness in juvenile court proceedings in Ohio and more judicial skepticism of attempts to close proceedings, Marburger said.

Although the 1990 *Dispatch* case involved access to juvenile dependency proceedings, Marburger, like Berlin, attributes much of the increased access to the spike in serious juvenile delinquent acts.

"What we were mostly accustomed to was confidentiality to protect juveniles from their immature acts creating bad consequences for them when they achieved a more mature adulthood," he said. "The issue now is that these 17-year-olds who would be charged with violent crimes if committed by an adult don't need as much protection as the juvenile court system would give them. The public has a big interest in seeing how those matters are resolved."

Despite this trend toward openness, Marburger observed earlier this year that the juvenile court's longstanding stigma of secrecy may not be so easily discarded. In February, a juvenile court judge, before any hearing in the matter and on his own, issued an order prohibiting members of the news media from photographing the

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face of 17-year-old T.J. Lane, the high school sophomore charged with gunning down three fellow students and wounding two others on campus, or any member of his family not only in the courtroom but presumably on court premises and perhaps at all, Marburger said.

Before he challenged the order on behalf of the Associated Press, Marburger and Lane's attorney reached an agreement, and the court vacated its order.

"One of the things that is strange about juvenile courts is that they have always had an aura of confidentiality created by statute and rules that make them almost a secret court," he said. "But judges [who are not accustomed to presiding over high-profile juvenile delinquency proceedings] have a very limited understanding or realization that these secret courts are not as secret as they used to be."

But even the Ohio Supreme Court in the 1990 *Dispatch* case recognized that the need for confidentiality is even more compelling in the case of a child who is abused, neglected or dependent.

"The delinquent child is at least partially responsible for the case being in court; an abused, neglected, or dependent child is wholly innocent of wrongdoing," the court said in *In re T.R.*, which involved a consolidated custody and dependency proceeding related to a child born to a surrogate mother. "While the public arguably has an interest in delinquency proceedings which is analogous to its interest in criminal proceedings … this interest is not present in abuse, neglect, and dependency proceedings."

Because of this lack of similarity to criminal proceedings, access to which is governed by constitutional standards, access issues in the dependency side of juvenile courts — where abuse, neglect and abandonment issues are handled — largely involve the interpretation of statutes, which vary greatly among the states in terms of transparency.

But dependency proceedings generally remain even more impervious to public insight than delinquency cases. But perhaps taking a cue from the delinquency side, some juvenile courts have concluded that public access to dependency proceedings may improve juvenile court practice and serve many, if not all, of the societal values first recognized in the context of a criminal trial.

Perhaps most recent among them is the Los Angeles County Juvenile Court. Pursuant to a Jan. 31, 2012, order by the court's presiding judge, members of the media are deemed to have a legitimate interest in the work of the court, and

juvenile dependency proceedings in Los Angeles County are open to the media unless the parties involved can show that harm or detriment to the minor involved is reasonably likely to occur because of media access to the proceeding.

"There has been a recent recognition that the juvenile court system does not work as well as it always should," Berlin said. "Even in dependency cases, there are some courts that have said that having a little bit more openness serves a good public benefit."

State-by-state guide

The following is a state-by-state guide to each jurisdiction's law regarding access to juvenile courts. Some of the information was compiled by the authors of the Reporters Committee for Freedom of the Press' Open Courts Compendium.

This guide outlines: The right of access to juvenile delinquency proceedings, including transfer hearings, or the proceedings during which the juvenile court determines whether the minor should be prosecuted as an adult in criminal court. Unless specifically noted otherwise, the law of most states does not differentiate between access to transfer hearings and other delinquency hearings and thus the standard governing the media's and public's access right to delinquency proceedings in general will likewise apply to transfer hearings in most jurisdictions; The right of access to juvenile delinquency records, including juveniles' law enforcement records in those states where the law specifically addresses them; The right of access to dependency proceedings; The right of access to dependency records; Restrictions of media coverage of minors who appear in adult court, either civil or criminal, as either victims or witnesses, including exclusion from the courtroom during their testimony and restrictions on identifying or photographing them. Unless specifically noted otherwise, a state's court rules governing media coverage of judicial proceedings do not impose any additional restrictions on covering minors beyond those that apply generally to all court proceedings. Some states' discussions lack any mention of rules for recording or photographing minors in adult court most likely because cameras and electronic recording devices are not allowed in those states' trial courts; and The few states that allow cameras and recording devices in juvenile courts and the procedures the media must follow to record or photograph there.

References to case law have been included where courts have provided

further guidance on the relevant statute. Note that the law governing the right of public access to other proceedings involving minors, including divorce, child custody and visitation, paternity and adoption proceedings, is not covered in this guide. Finally, because the guide is intended for journalists, it does not expound on situations where various individuals or agencies designated by statute have a right of access to proceedings or records that does not extend to members of the news media.

This guide is meant as a general introduction for journalists to the state of the law concerning the right of public access to juvenile courts. It does not replace the legal advice from an attorney in one's own state when confronted with a specific legal problem. Journalists who have additional questions or who need to find a lawyer with experience litigating these types of claims can contact the Reporters Committee at (800) 336-4243.

Alabama

Delinquency and dependency proceedings: Juvenile court proceedings are generally closed to the public in Alabama, although those with a proper interest in the case or in the work of the court may be admitted but only on the condition that they refrain from divulging any information that would identify the child or family involved. Ala. Code § 12-15-129 (2012). But the state intermediate criminal appellate court held that the media's publication of a juvenile defendant's name prior to his transfer hearing in violation of the confidentiality law did not violate his right to a fair and impartial hearing where the judge, who of necessity knew the juveniles' names, rather than a jury sat as the trier of fact. *C.S. v. State*, 615 So. 2d 1254, 1255 (Ala. Crim. App. 1992).

Delinquency and dependency records: Juvenile court records are confidential in Alabama and may be inspected only by certain individuals and agencies designated by statute. Ala. Code § 12-15-133. But the court may release statistical information regarding the processing and disposition of juvenile cases if the parties cannot be identified from such information and the release is not detrimental to the interests of a child or the work of the juvenile court. Ala. R. Juv. Proc. R. 18.

Restrictions on coverage: Alabama law allows victims and witnesses 15 years old or younger to testify about child or sexual abuse or child sexual exploitation outside the presence of the defendant via video-recorded testimony or closed-circuit television. The law does not specify whether the media and public may remain

in the courtroom during this testimony, although it does state that the videotape is subject to a protective order of the court to protect the privacy of the victim. Ala. Code §§ 15-25-2, 15-25-3. Judicial rules governing media coverage of trials and other judicial proceedings prohibit photographing, recording or broadcasting a

minor who is testifying if the minor's parent or guardian expressly objects to the coverage. Ala. Canons of Jud. Ethics 3.

Alaska

Delinquency proceedings: Although the public is generally excluded from juvenile delinquency proceedings in Alaska, there

are four exceptions to this rule: 1) where the court, in its discretion, permits individuals to attend because their attendance is compatible with the best interests of the minor; 2) where the state Department of Health and Social Services requests openness and the petition for adjudication is based on the minor's alleged commission

Juvenile access chart

The following chart provides at-a-glance information about the right of access to juvenile courts in each state. As with the remainder of this guide, it approaches the issue from the point of view of members of the news media. It is designed to supplement, not serve as a substitute for, the in-depth information included for each jurisdiction. Keep in mind that in many states, the media must file a motion or otherwise notify the court of their intent to attend - and, where relevant, bring cameras or other recording devices into - a particular proceeding. Also be aware that the chart does not indicate the extent of information available in those jurisdictions where juvenile court or law enforcement records may be publicly disclosed. The language should be interpreted as follows: Where the information indicates that certain proceedings and records are generally open, there is a right of public access except in certain circumstances where, for example, a judge determines that closure is necessary to protect the interests of the child

involved; Conversely, where the information indicates that certain proceedings and records are not generally open, there is not a right of public access except in certain circumstances where, for example, the court finds that an individual has a legitimate interest in the case or in the work of the court and thus should be admitted; Where a box indicates "certain offenses and ages" or "certain child abuse and neglect," for example, there is a right of public access to those proceedings or records where they involve, respectively, certain statutorily designated offenses committed by juveniles of a certain statutorily designated age and certain statutorily designated cases involving child abuse or neglect; The \geq symbol followed by a number indicates a juvenile of that age or older, i.e., " ≥ 14 and felony" indicates a delinquency case involving a juvenile 14 years old or older charged with a felony offense if committed by an adult; and Where there is no information beneath the column about law enforcement records, the relevant law does not address the right of public access to police or other criminal-agency records.

State	Delinquency proceedings generally open?	Dependency proceedings generally open?	Delinquency records generally open?	Law enforcement records generally open?	Dependency records generally open?	Cameras in juvenile court?
Alabama	no	no	statistics only		statistics only	no
Alaska	no	yes	no		certain abuse and neglect	no
Arizona	yes	yes	yes		certain abuse and neglect	no
Arkansas	yes	no	statistics only	felonies		no
California	violent crimes	yes	if proceeding was open; violent crime	≥ 14 and serious felony	certain abuse and neglect; if proceeding was open	no
Colorado	yes	yes	no	certain offenses; tried as an adult; escaped	certain abuse and neglect	no
Connecticut	yes	yes	no	escaped; wanted for felony	no	no
Delaware	felonies	no	certain offenses	felonies and serious misdemeanors	no	no
District of Columbia	yes	yes	no		no	no
Florida	yes	yes	statistics only	felonies and repeat misdemeanors	statistics only	no
Georgia	yes	yes	certain offenses		certain abuse and neglect	yes
Hawaii	no	no	certain offenses and ages		no	no
Idaho	≥ 14 and felony	no	≥ 14 and felony		no	no
Illinois	yes	yes	certain offenses and ages	tried as an adult	no	no
Indiana	felonies	yes	certain offenses and ages	yes	certain abuse and neglect; threat to community	no
Iowa	yes	yes	no	tried as an adult	certain abuse and neglect	yes
Kansas	≥ 16	termination of parental rights	certain offenses and ages	certain offenses and ages	certain abuse and neglect	no
Kentucky	no	no	no	no	certain abuse and neglect	no
Louisiana	certain offenses	no	statistics only	certain offenses and ages; escaped; wanted for serious offenses	no	no
Maine	certain offenses	no	if proceeding was open	at time of charging	certain abuse and neglect	no
Maryland	felonies	no	no		no	no
Massachusetts	murder or by indictment	no	if by indictment	certain offenses and ages	no	no

of a felony or other serious offense; 3) where the prosecutor is seeking imposition of a dual sentence, or the imposition of an adult sanction and a juvenile sanction, the former of which is enforced only if the latter is violated, or the minor agrees as part of a plea agreement to be subject to dual sentencing; and 4) where

the minor agrees to or requests a public hearing. Alaska Stat. § 47.12.110 (2012).

Dependency proceedings: Hearings in juvenile dependency proceedings are generally open to the public, with certain exceptions. Specifically, the following are closed to the public: 1) the initial court hearing after the filing of a petition to

commence the case; 2) a hearing following the initial hearing in which a parent, child or other party is present but has not had an opportunity to obtain legal representation; and 3) a hearing or part of a hearing for which the court issues a written order finding that openness or partial openness would reasonably be expected

State	Delinquency proceedings generally open?	Dependency proceedings generally open?	Delinquency records generally open?	Law enforcement records generally open?	Dependency records generally open?	Cameras in juvenile court?
Michigan	yes	yes	yes		no	no
Minnesota	≥ 16 and felony	yes	≥ 16 and felony		yes	no
Mississippi	no	no	certain offenses	at time of custody; missing; abducted; statistics	certain abuse and neglect	no
Missouri	certain offenses	yes	certain offenses	tried as an adult; certain offenses	yes	no
Montana	yes	not specified	yes		certain abuse and neglect	no
Nebraska	not specified	not specified	yes		yes	yes
Nevada	yes	depends on location	if proceeding was open; certain offenses		no	no
New Hampshire	no	no	certain offenses and ages	escaped	no	no
New Jersey	transfer hearings only	no	certain offenses		no	no
New Mexico	yes	yes	no		certain abuse and neglect	no
New York	yes	yes	no		certain abuse and neglect	no
North Carolina	yes	no	no	runaway	certain abuse and neglect	no
North Dakota	contempt; certain transfer hearings	no	if proceeding was open; general, non-identifying information	tried as an adult; escaped; wanted for felony; general, non-identifying information	general, non-identifying information	no
Ohio	yes	yes	tried as an adult; if proceeding was open; certain offenses		no	yes
Oklahoma	certain offenses	no	certain offenses and ages	certain offenses and ages	certain abuse and neglect	no
Oregon	yes	yes	limited info.		certain abuse and neglect; limited information	no
Pennsylvania	certain offenses and ages	no	certain offenses and ages	if court records are open; tried as an adult	no	no
Rhode Island	no	no	tried as an adult; convicted in juvenile court	tried as an adult; convicted in juvenile court	certain abuse and neglect	no
South Carolina	no	no	tried as an adult; certain offenses	tried as an adult; certain offenses; escaped	certain abuse and neglect	no
South Dakota	≥ 16 and violent crime	no	no	tried as an adult; criminally convicted	certain abuse and neglect	no
Tennessee	yes	yes	≥ 14 and certain offenses; traffic violations	tried as an adult	certain abuse and neglect	yes
Texas	≥ 14	not specified	missing; wanted	missing; wanted	certain abuse and neglect	no
Utah	≥ 14 and certain offense	yes	≥ 14 and felony		no	no
Vermont	no	no	tried as an adult	tried as an adult	no	no
Virginia	≥ 14 and felony; adult charged with a crime	no	≥ 14 and certain offenses	≥ 14 and certain offenses; escaped	no	no
Washington	yes	no	yes		no	no
West Virginia	no	no	tried as an adult; certain offenses		certain abuse and neglect	no
Wisconsin	no	no	no	escaped; general, non-identifying information	certain abuse and neglect	no
Wyoming	contempt	no	tried as an adult; certain offenses		no	no

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to stigmatize or be emotionally damaging to a child, inhibit a child's testimony in that hearing, disclose matters required by law or court order or rule to be kept confidential or interfere with a criminal investigation or proceeding or a criminal defendant's right to a fair trial. The name, picture or other identifying information of the child involved may not be publicly disclosed. At the beginning of a hearing, the court will issue an order specifying the restrictions necessary to ensure such nondisclosure. The court may impose any appropriate sanction, including contempt and closure of any further hearings to a person who violates the order. *Id.* § 47.10.070.

Delinquency and dependency records: Juvenile court records are confidential and may be inspected only with the court's permission by individuals with a legitimate interest in the records. In delinquency cases where the prosecutor is seeking imposition of a dual sentence or the minor agrees as part of a plea agreement to be subject to dual sentencing, all court records are open to the public except predisposition, psychiatric and psychological reports and other documents the court orders to be kept confidential because their release could harm the minor or violate the constitutional rights of the victim or others. *Id.* §§ 47.10.090, 47.12.300.

In addition, the Department of Health and Social Services may publicly disclose confidential information about a child or alleged perpetrator named in a report of child abuse or neglect related to the department's determination of the nature and validity of the report or its activities as a result in cases where: 1) the parent or guardian of a child who is the subject of one or more reports of child abuse or

neglect has made a public disclosure about the department's involvement with the family; 2) the alleged perpetrator named in one or more reports of child abuse or neglect has been charged with a crime related to the alleged abuse or neglect; and 3) abuse or neglect has resulted in the fatality or near fatality of a child who is the subject of one or more reports of abuse or neglect. The department may withhold, however, disclosure of the child's name, picture or other identifying information if the department determines that disclosure would be contrary to the best interests of the child, the child's siblings or other children in the house, as well as information that would reasonably be expected to interfere with a criminal investigation or proceeding or a defendant's right to a fair trial. *Id.* § 47.10.093.

Restrictions on coverage: Alaska law allows victims and witnesses 15 years old or younger to testify in any criminal proceeding involving an offense committed against a child 15 years old or younger to testify outside the presence of the defendant via closed-circuit television or one-way mirrors. The statute does not specify whether the media and public may remain in the courtroom during this testimony. *Id.* § 12.45.046. Although court rules governing media coverage of court proceedings require the consent of all parties, including the guardian ad litem, or guardian appointed to represent the interests of a juvenile in a single litigation, in divorce, dissolution of marriage, domestic violence, child custody and visitation, paternity or other family proceedings, they do not specifically address restrictions on coverage of criminal or civil proceedings in which minors are testifying. They do state, however, that the court may impose

reasonable restrictions on the time, place or manner of media coverage of any case provided the restrictions are stated on the record and reasonably related and narrowly drawn by the least restrictive means to, among other aims, protect the reasonable privacy interests of a minor or any other person. Alaska R. Ct. Admin. 50.

Arizona

Delinquency proceedings: Juvenile delinquency proceedings are open to the public in Arizona except upon the court's written finding of a need to protect the best interests of a victim, the juvenile, a witness, the state or a clear public interest in confidentiality. In determining whether to close or partially close a hearing under this standard, the judge may consider whether an open hearing would 1) be emotionally harmful to a participant; 2) inhibit testimony or the disclosure or discussion of information material to the truth-finding or rehabilitation process; or 3) otherwise interfere with the emotional well-being of the victim. Any person requesting closure or partial closure of a hearing must give notice of such request to the parties or any other person designated by the court, which may include one or more representatives of the news media. Ariz. Juv. Ct. R. 19.

Dependency proceedings: Juvenile dependency proceedings are open to the public, although the judge is required to ask the parties at the first hearing in the proceeding if there are any reasons it should be closed. For good cause, the court may order any proceeding to be closed to the public. In considering whether to close the proceeding, the court must consider: 1) whether doing so is in the child's best interests; 2) whether

an open proceeding would endanger the child's physical or emotional well-being or the safety of any other person; 3) the privacy rights of the child and the child's family and any other person whose privacy rights the court determines need protection; 4) whether all parties have agreed to allow the proceeding to be open; 5) the child's wishes if the child is at least 12 years old and a party to the proceeding; and 6) whether an open proceeding could cause specific material harm to a criminal investigation. The court also may impose reasonable restrictions required by the physical limitations of the facility or to maintain order and decorum. Those individuals attending an open hearing may do so only on the condition that they refrain from divulging any information that would identify the child, the child's family and any other person mentioned in the hearing. Those who violate this order can be held in contempt of court.

If a proceeding has been closed by the court, any person may subsequently request that the court reopen a proceeding or a specific hearing to the public, and the court must reconsider the same factors when ruling on that request. If a proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality has been closed by the court, any person may request that a transcript be made of the closed proceeding, the cost of which is borne by the person who requested the transcript. In ruling on this request, the court must consider the same factors it considered when deciding whether to close the proceeding. If the court grants a request for a transcript of a closed proceeding, it must redact from the document any information that is confidential by law or necessary to protect the privacy, well-being or safety of the child, the child's family or others, as well as any criminal investigation. *Ariz. Rev. Stat. Ann. § 8-525; Ariz. Juv. Ct. R. 41.*

Delinquency records: The following juvenile delinquency records are open to public inspection in Arizona: the legal files, which include pleadings, motions and orders, of offenders referred to juvenile court; arrest records of juveniles who are charged as adults; delinquency hearings; disposition hearings, or the proceedings during which the judge determines how the case will be resolved; a summary of delinquency, disposition and transfer hearings; revocation of probation hearings; appellate review records; and diversion proceedings involving delinquent acts, or those proceedings involving the informal handling of cases in which there is no formal charge and the case is closed

within a specified timeframe assuming the juvenile complies with the terms of the diversion. But the court may order that juvenile records be kept confidential and withheld from the public if it determines that the subject matter of any record involves a clear public interest in confidentiality. Moreover, the social file of a juvenile offender — which contains diagnostic evaluations and psychiatric, psychological and medical reports — is confidential and withheld from public view except upon court order. *Ariz. Rev. Stat. Ann. § 8-208 (2012); Ariz. Juv. Ct. R. 19.*

Dependency records: The records of a dependency proceeding are not open to public inspection. *Ariz. Rev. Stat. Ann. § 8-208.* But the state Department of Economic Security, which deals with children, adults and families, may release information to clarify or correct information about an allegation or actual instance of child abuse or neglect made public by sources outside the department, and must publicly release certain information when a case of child abuse, abandonment or neglect results in a fatality or near fatality. Specifically, the department must provide the following preliminary information: 1) the name, age and city, town or general area of residence of the child; 2) the fact that a child died or nearly died as a result of abuse, abandonment or neglect; 3) the name, age and city, town or general area of residence of the alleged perpetrator, if available; 4) whether there have been reports or any current or past cases of abuse, abandonment or neglect involving the child and the alleged abusive or neglectful parent, guardian or custodian; and 5) actions taken by child protective services in response to the fatality or near fatality. If requested, the department must promptly provide as much additional information as possible assuming the county attorney does not believe that such release would cause a specific, material harm to a criminal investigation or violate federal or state confidentiality laws. Any person who believes that the county attorney failed to demonstrate that release of the information would cause a specific, material harm to a criminal investigation may file an action in superior court and request that the court review the information privately in the judge's chambers and order disclosure. *Id. § 8-807.*

Restrictions on coverage: Arizona law allows victims and witnesses 14 years old or younger and those with a developmental disability and intelligence quotient score less than 75 regardless of age to testify in any criminal proceeding outside

the presence of the defendant via video-recorded testimony or closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom during this testimony. *Id. § 13-4251, 13-4253.*

Arkansas

Delinquency and dependency proceedings: In delinquency proceedings in Arkansas, the juvenile has the right to an open hearing. All other juvenile hearings may be closed at the discretion of the court, and all hearings involving allegations and reports of child mistreatment and cases of children in foster care must be closed. *Ark. Code Ann. § 9-27-325 (West 2011).* Although a statute prohibits the news media from publishing, without written order of the court, the name, picture or other identifying information of a child involved in a juvenile delinquency proceeding, the Arkansas Supreme Court found that a juvenile judge's gag order prohibiting the media from photographing juveniles and their families in public places around the courthouse was overbroad and a prior restraint in violation of the First Amendment. In that case, where the proceeding was open to the public and a photograph of the juvenile had been published prior to the judge's gag order, "the proverbial bell had been rung, so to speak, and could not be unring. The statutory policy prohibiting revelation of the name and identity of the juvenile had already been thwarted," the court said. Although the court recognized the juvenile judge's interest in protecting participants in her proceedings from harassment and maintaining the dignity of her court, the state Supreme Court noted that, "once the juvenile proceedings have been opened to the public, we discern no overriding state interest that would warrant an injunction against photographing [the juvenile involved] and the others entering or leaving the courthouse." But the court emphasized that its holding did not address a case in which the proceedings were closed by the judge and a gag order issued prior to the first publication of the juvenile's photograph and other vital information. *Ark. Democrat-Gazette v. Zimmerman*, 20 S.W.3d 301, 309—10 (Ark. 2000).

Delinquency and dependency records: Juvenile court records are confidential and may not be disclosed except to certain individuals and agencies designated by statute. This presumption of closure does not apply, however, to statistical information or other materials used for research that summarize records, reports or other

information in the aggregate if they do not disclose the identity of any juvenile defendant in any proceeding. The arrest and detention records of juveniles who are formally charged with a felony in criminal court also are exempt from the general rule of confidentiality. Ark. Code Ann. § 9-27-309. A separate statute prohibits the news media from publishing, without written court order, the name, picture or other identifying information of a child who is the subject of any juvenile proceeding. *Id.* § 9-27-348.

Restrictions on coverage: Arkansas law allows victims 16 years old or younger to testify about sexual offenses outside the presence of the defendant via video-recorded testimony. The statute does not specify whether the media and public may remain in the courtroom during this testimony, although it does state that the videotape is subject to a protective order of the court to protect the privacy of the victim. Ark. Code Ann. § 16-44-203. The state's Supreme Court order governing broadcasting, recording and photographing in the courtroom prohibits coverage of all juvenile matters in the trial court and minors without the consent of their parent or guardian. Ark. Sup. Ct. Admin. Order 6.

California

Delinquency proceedings: California law requires juvenile delinquency proceedings to be open if any of 28 violent crimes is involved, and prohibitions on the dissemination of information lawfully obtained during such proceedings violate the news media's First Amendment rights, a state intermediate appellate court held. *KGTV Channel 10 v. Superior Court*, 26 Cal. App. 4th 1673, 1684 (Cal. Ct. App. 1994). Nor can the press or public be excluded from such hearings absent a showing of reasonable likelihood of substantial prejudice to the juvenile's right to a fair trial. *Brian W. v. Superior Court*, 20 Cal. 3d 618, 624—25 (Cal. 1978) (involving competency hearing of a juvenile charged with kidnapping and murder); *Cheyenne K. v. Superior Court*, 208 Cal. App. 3d 331, 336 (Cal. Ct. App. 1989) (involving competency hearing of a juvenile charged with murder); *Tribune Newspapers W., Inc. v. Superior Court*, 172 Cal. App. 3d 443, 447 (Cal. Ct. App. 1985); (involving a hearing to determine whether two juveniles charged with bank robberies and other crimes while armed with a deadly weapon were fit to be dealt with under the juvenile court law). The judge also has the discretion to admit to juvenile court proceedings anyone with a direct and legitimate interest in the par-

The right of access in the federal system

Juvenile offenders of federal criminal law are primarily the responsibility of state juvenile court authorities. But the federal Juvenile Delinquency Act, originally passed in 1938 to remove minor suspects from the federal adult criminal system, allows federal delinquency proceedings if state courts are unwilling or unable to accept jurisdiction, the state has no adequate treatment plans or the juvenile is charged with a crime of violence or drug trafficking. The law applies to individuals charged before the age of 21 with a breach of federal criminal law occurring before they turned 18.

The act contains two confidentiality provisions, one of which prohibits the publication of the name and picture of any juvenile not prosecuted as an adult. The other provision contains guidelines for the time and place that a judge may convene a juvenile delinquency proceeding and authorizes private hearings in the judge's chambers. 18 U.S.C. §§ 5032, 5038 (2012).

In cases interpreting the act, this statutory line of authority often intersects with the constitutional authority providing that criminal proceedings are presumptively open to the public. In a case involving juveniles charged with hate crimes, a newspaper moved to intervene for access to arraignments and other proceedings, as well as court records filed in connection with the proceeding. The alleged offenders and government opposed the request, arguing that the act mandates closed proceedings and records — an assertion the trial court accepted.

But the U.S. Court of Appeals in Boston (1st Cir) held that the act could not be read to mandate closure. According to the court, Congress did not intend to deny judges the discretion to open or close their courtrooms when it built into the statute restrictions on who can receive juvenile court records and a ban on the release of a child's photograph. Measures designed to protect confidentiality are to be evaluated on a case-by-case basis, the court said.

Although it avoided answering the question, the court did acknowledge

that “the Act implicates First Amendment concerns, and thus must be interpreted with the Supreme Court's First Amendment jurisprudence in mind.” It thus looked to the case law spelling out the constitutional right of access to criminal courts and found “very instructive” the high court's seminal decision in *Globe Newspaper Co. v. Superior Court* striking down a mandatory closure rule. The court ultimately decided the case on statutory grounds but noted: “While the *Globe* case is not directly applicable here, the Court's reasoning in that case strongly suggests that the district court's preferred reading of the Act raises some serious First Amendment concerns.”

Nonetheless, the court described the assumption that the First Amendment applies to juvenile proceedings as “highly dubious” and questioned whether the high standard applicable in adult criminal cases should likewise apply in the juvenile context, where the exercise of judicial discretion in favor of closure “is not an exception to some general rule of openness, but the norm.” *U.S. v. Three Juveniles*, 61 F.3d 86, 88—92 (1st Cir. 1995); *see also United States v. A.D.*, 28 F.3d 1353, 1360 (3d Cir. 1994) (interpreting the Act to permit judicial discretion to authorize access on a case-by-case basis).

The jurisprudence discussing access to federal juvenile delinquency records likewise rejects a presumption of access. In a case involving a disabled 14-year-old who threatened classmates with a loaded gun, a federal appellate court upheld a district court order sealing the record and a memorandum order denying a motion for a preliminary injunction. “Whether we apply a constitutional standard or a common law standard, the result is the same: Pulitzer's interest in access to the records in this case clearly is outweighed by [the minor's] privacy interest and the state's interest in protecting minors from the public dissemination of hurtful information,” the court concluded. *Webster Groves Sch. Dist. v. Pulitzer Publ'g Co.*, 898 F.2d 1371, 1378 (8th Cir. 1990).

ticular case or in the work of the court — a phrase the California Supreme Court has interpreted to allow press attendance at juvenile hearings. *Brian W.*, 20 Cal. 3d at 623. The juvenile court must for each day it is in session post in a conspicuous place accessible to the general public a written list of open hearings along with their locations and times. The public is generally excluded from all other delinquency hearings unless the minor and the minor's parent or guardian request otherwise. Also, where one of the 28 violent crimes is a sexual offense, the public is not admitted to the hearing if the prosecutor makes a motion at the request of the victim for a closed hearing or during the victim's testimony if the victim was 15 or younger at the time of the offense. Cal. Welf. & Inst. Code § 676 (West 2012).

Dependency proceedings: The public is excluded from juvenile dependency proceedings in California unless a parent or guardian requests otherwise and the minor involved consents to or requests public access. But the judge has the discretion to admit anyone with a direct and legitimate interest in the particular case or in the work of the court. *Id.* § 346. Interpreting this language, the state intermediate appellate court found that the juvenile court should “allow press access unless there is a reasonable likelihood that such access will be harmful to the child's or children's best interests in the case.” Although the juvenile court, in exercising its discretion to allow public or media access to a juvenile dependency proceeding, should “first and foremost” consider what is in the best interests of the minor, the media “can assist juvenile courts in becoming more effective instruments of social rehabilitation by providing the public with greater knowledge of juvenile court processes, procedures, and unmet needs,” the court said. *San Bernardino County Dep't of Pub. Soc. Servs. v. Superior Court*, 232 Cal. App. 3d 188, 207—08 (Cal. Ct. App. 1991). Pursuant to a Jan. 31, 2012, order by Los Angeles County Juvenile Court Presiding Judge Michael Nash, members of the media are deemed to have a legitimate interest in the work of the court, and juvenile dependency proceedings in Los Angeles County are open to the media unless the parties involved can show that harm or detriment to the minor is reasonably likely to occur because of media access to the proceeding.

Delinquency and dependency records: Juvenile court records are confidential and may be viewed only by certain individuals and agencies designated by stat-

ute. Cal. Welf. & Inst. Code § 827. But the state intermediate appellate court held that a broader category of people than those enumerated in the statute may be permitted access to material in juvenile court files in the appropriate case. “The prohibition against dissemination recognizes the exclusive authority of the juvenile court to determine who may have access to juvenile court records. . . . If a juvenile court determines, consistent with the best interests of the minors, that records should be released to the press, the court has made the decision that the public can learn the content of the disclosed records,” the court ruled in *In re Keisha T.*, 38 Cal. App. 4th 220, 234 (Cal. Ct. App. 1995). And the state attorney general found that where juvenile proceedings are open to the public, the district attorney may provide the news media with whatever information is available to the public at those proceedings unless the court has placed restrictions on such dissemination. Cal. Op. Att'y Gen. 81-1007 (1982). Any person not designated in the statute who wishes to inspect, obtain or copy juvenile court records must petition the court for authorization using a specific form. Among other things, the petitioner is required to “describe in detail the reasons the records are being sought and their relevancy to the proceeding or purpose for which petitioner wishes to inspect or obtain the records.” In determining whether to release juvenile court records, the court must balance the interests of the child and other parties involved against those of the petitioner and the public. The court may allow disclosure of juvenile court records only if “the records requested are necessary and have substantial relevance to the legitimate need of the petitioner.” Cal. Juv. Ct. R. 5.552. In considering a request for access to the juvenile case records of a child who died, however, no weighing of interests is required, and the files must be released, even if no dependency petition had ever been filed, unless there is a showing that doing so is detrimental to the safety, protection or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case at issue. The statute's legislative history demonstrates the legislature's interest in opening up to public view the workings of the entire juvenile court and child protective system for the purpose of exposing deficiencies within them, the court said. *In re Elijah S.*, 125 Cal. App. 4th 1532, 1542—43, 1555 (Cal. Ct. App. 2005); see also *Pack v. Kings County Human Servs. Agency*, 107 Cal. Rptr. 2d 594, 601

(Cal. Ct. App. 2001).

There are additional exceptions that allow access to records in some juvenile delinquency cases. The name of a minor found to have committed one of the 28 violent offenses is public unless the court makes an on-the-record written finding explaining why good cause exists to make the name of the minor confidential. In this context, “good cause” is limited to protecting the personal safety of the minor, a victim or member of the public. The charging petition, minutes of the proceeding and orders of adjudication and disposition of the court contained in the court file are available for public inspection, although public access to other documents in the court file is not necessarily available. The probation officer or any party may petition the juvenile court to prohibit public disclosure of any such file or record. The juvenile court will grant the request if it appears that the harm to the minor, victims, witnesses or public from the public disclosure outweighs the benefit of public knowledge. The court cannot, however, prohibit disclosure for the benefit of the minor unless it makes a written finding that the reason for the prohibition is to protect the safety of the minor. Cal. Welf. & Inst. Code § 676. Also, a law enforcement agency may disclose the name of any minor 14 years old or older who has been charged with a serious felony under Cal. Penal Code § 1192.7. Cal. Welf. & Inst. Code § 827.5.

Restrictions on coverage: California law allows a trial judge to close the courtroom when a minor victim or one with a physical or developmental disability and substantial cognitive impairment regardless of age testifies about a sexual offense. Before the judge may do so, however, he or she must find that closure is essential to preserve higher values and narrowly tailored to serve that interest. And a transcript of the testimony of the witness must be made publicly available as soon as practicable. Closing the courtroom during the testimony of a 14-year-old molestation victim based only on the prosecutor's assertion that the victim would be uncomfortable violated the defendant's Sixth Amendment right to a public trial. Cal. Penal Code § 868.7; *People v. Baldwin*, 142 Cal. App. 4th 1416, 1421 (Cal. Ct. App. 2006). In addition, victims 13 years old or younger may testify in cases involving sexual offenses, violent felonies and child abuse outside the presence of the defendant via video-recorded testimony or closed-circuit television. In cases involving sexual offenses, the testimony of victims who are 15 years old or younger and those who are devel-

mentally disabled regardless of age may be video-recorded during a preliminary hearing for use at trial. The law does not specify whether the media and public may remain in the courtroom during this testimony, although it does state that the videotape will be subject to a protective order of the court to protect the privacy of the victim. *Id.* §§ 1346, 1347. Although court rules governing photographing, recording and broadcasting in California courtrooms do not specifically restrict coverage of minors, they do list among the factors a judge must consider when deciding a request for coverage the effect of such coverage on any minor who is a party, prospective witness, victim or other participant in the proceeding. Cal. Ct. R. 1.150.

Colorado

Delinquency and dependency proceedings: The general public cannot be excluded from juvenile court proceedings in Colorado unless the court determines that doing so is in the best interest of the child or the community. In such cases, the court may admit only those people with an interest in the case or in the work of the court, including those individuals whom the attorneys, the child involved and the child's parents or custodian wish to be present. Colo. Rev. Stat. Ann. § 19-1-106 (West 2012).

Delinquency records: Court records in juvenile delinquency cases are open without court order to certain individuals and agencies designated by statute. The records also may be inspected with consent from the court by any other person having a legitimate interest in the proceedings. The public has access to arrest and criminal-records information, including a person's physical description, of juveniles who are: 1) adjudicated delinquent for, charged with the commission of or subject to a revocation of probation for committing the crime of possession of a handgun by a juvenile or an act that would constitute a felony or would constitute any crime involving the use or possession of a weapon if committed by an adult; and 2) charged with an offense that would constitute unlawful sexual behavior or a crime of violence if committed by an adult. A law enforcement agency may release records, including identifying information, of juveniles who: 1) have escaped from an institution to which they were committed; 2) are tried as adults; and 3) are convicted as adults and a court has ordered a presentence investigation. Any records released under the statute, however, do not include investigatory records

or psychological profiles, intelligence test results or any information about whether the juvenile has been sexually abused. *Id.* § 19-1-304.

Dependency records: In general, reports of child abuse or neglect and the name, address or any other identifying information of any child, family or informant contained in such records are confidential, and disclosure is permitted only when authorized by a court for good cause. But such disclosure is not prohibited when there is a death of a suspected victim of child abuse or neglect and: 1) the death becomes a matter of public concern; 2) the alleged juvenile offender is or was a victim of abuse or neglect; or 3) the suspected or alleged perpetrator is arrested or charged in connection with the death. *Id.* § 19-1-307. In addition, all records prepared or obtained by the state Department of Human Services regarding the operation of juvenile facilities are confidential and not subject to public dissemination. *Id.* § 19-1-305.

Restrictions on coverage: Colorado law allows victims who were 14 years old or younger at the time of the alleged offense to testify about sexual offenses or child abuse outside the presence of the defendant via video-recorded testimony. The statute does not specify whether the media and public may remain in the courtroom during this testimony. Colo. Rev. Stat. Ann. §§ 18-3-413, 18-6-401.3.

Connecticut

Delinquency and dependency proceedings: Connecticut law appears to provide for media access to juvenile court proceedings but includes limitations on publication. Specifically, the law allows the judge to admit into dependency proceedings anyone with a legitimate interest in the hearing or in the work of the court, which provides a basis for media, but not necessarily, public access. Those individuals may be admitted only on the condition that they refrain from divulging any information that would identify the child or family involved. Conn. Gen. Stat. Ann. § 46b-122 (West 2012). But the state Supreme Court ruled that statutes intended to protect juveniles from publicity about their alleged offenses do not forbid the media from disclosing any information which may have come into their possession lawfully. *In re Juvenile Appeal*, 488 A.2d 778, 782 n.4 (Conn. 1985), *superseded by statute on other grounds*, *In re Michael S.*, 784 A.2d 317 (Conn. 2001). Also under this statute, the judge may exclude from any juvenile hearing people not necessary to the proceeding. Conn.

Gen. Stat. Ann. § 46b-122. Unlike in criminal courts, which are presumptively open, denial of public access to juvenile proceedings may be warranted in the interest of protecting the juvenile's right to privacy, the state intermediate appellate court held. Thus, a trial court's decision not to open the courtroom to the public and news media before finding a prospective adoptive mother in contempt of a confidentiality order was not an abuse of discretion, the court ruled. *In re Brianna B.*, 785 A.2d 1189, 1197—98 (Conn. App. Ct. 2001).

Delinquency and dependency records: Juvenile court records are confidential in Connecticut, and disclosure of any information contained in the records is prohibited. But records in delinquency cases can be inspected pursuant to court order by anyone with a legitimate interest in the information. Conn. Gen. Stat. Ann. § 46b-124. The Connecticut Supreme Court held that the strong presumption of confidentiality of juvenile records and the privacy interests implicated therein justified a narrow scope of the discretion afforded a trial court with regard to releasing information without the express written consent of the parties involved. The court concluded that until other alternatives had been exhausted, it was an abuse of discretion for the trial court to have provided access to information from juvenile files. *In re Sheldon G.*, 583 A.2d 112, 119, 123—24 (Conn. 1990). Law enforcement officials may disclose information about a minor who has escaped from a facility to which the minor was committed or one for whom an arrest warrant has been issued with respect to the commission of a felony. Conn. Gen. Stat. Ann. § 46b-124. But police department records are not to be released unless they are part of "records of cases of juvenile matters," a state trial court held. The court found that nothing in the record in that case, which involved case reports and accompanying documents regarding two incidents involving minors, suggested that the requested documents were records of juvenile court matters. *Glastonbury Police Dep't v. Freedom of Info. Comm'n*, No. CV 970570076, 1998 WL 161238, at *4 (Conn. Super. Ct. Mar. 25, 1998).

Restrictions on coverage: Connecticut law allows victims 12 years old or younger to testify in cases involving assault, sexual assault or child abuse outside the presence of the defendant via video-recorded testimony or closed-circuit television. The statute appears to allow the media and public to remain in the courtroom during this testimony. Conn. Gen. Stat. Ann. §

54-86g. Although court rules governing media coverage of court proceedings do not specifically restrict coverage of minors, they do state that, when deciding a request that coverage of a criminal proceeding be prohibited, the judge must give great weight to “requests where the protection of the identity of a person is desirable in the interests of justice, such as for . . . juveniles.” Conn. Super. Ct. R. 1-10B, 1-11.

Delaware

Delinquency and dependency proceedings: All juvenile court proceedings in Delaware are private with the exception of felony cases, which are open to the public. Del. Code Ann. tit. 10, § 1063 (2012).

Delinquency and dependency records: All juvenile court records likewise are private, although the court may consider “publication in the public interest.” In delinquency cases, if the crime is a felony or class A misdemeanor, the clerk of the family court or any state or local police authority may release the name and address of the minor and his or her parents’ names if requested by a “responsible representative of public information media.” *Id.*

Restrictions on coverage: Delaware law allows victims and witnesses 10 years old or younger to testify in child abuse cases outside the presence of the defendant via closed-circuit television. *Id.* tit. 11, § 3514. Moreover, in any criminal case, witnesses 11 years old or younger may testify outside the presence of the defendant via video-recorded testimony. The law does not specify whether the media and public may remain in the courtroom during this testimony, although it does state that the videotape is subject to a protective order by the court to protect the witness’ privacy. *Id.* § 3511.

District of Columbia

Delinquency and dependency proceedings: D.C. law provides for media access to juvenile court proceedings but includes limitations on publication. Specifically, the law allows the judge to admit those having a proper interest in the case or in the work of the juvenile court, and “[a]ny authorized representative of the news media” is among those who “shall be deemed to have a proper interest in the work of the Family Court, and shall be admissible to Family Court proceedings after filling out an application.” Among other things, the applicant is required to state that he or she “will refrain from divulging information identifying the [minor] or members of the [minor’s] fam-

ily or any other child involved in the proceedings.” D.C. Super. Ct. Juv. R. 53; D.C. Code § 16-2316 (2012). Interpreting this statute and rule, D.C.’s highest appellate court directed that all media be excluded from proceedings involving a juvenile charged in a shooting death, even where the juvenile had already been identified in an article in *The Wall Street Journal*. The court rejected the media’s argument that “the cat is already out of the bag,” noting that “[a]ssuming that the kitten’s whiskers (or even its tail) may be showing, the rest of the body remains concealed.” It held that the admission of the media at juvenile proceedings was a “discretionary” determination for the trial court. In particular, the court explained: “[I]f there is no reasonable assurance that the admission of the press will be consistent with the protection of a juvenile respondent’s anonymity, then exclusion may be the only alternative which will not compromise the legislature’s paramount aim.” The prior restraint doctrine was not implicated by the statute and rule, the court held, because the restraint was limited to information obtained through the judicial proceeding. “A prior restraint occurs when the state attempts to prohibit the publication of material already in the possession of the media,” the court said. *In re J.D.C.*, 594 A.2d 70, 74 n.6, 75, 79 (D.C. 1991).

Delinquency and dependency records: Juvenile court records are confidential in D.C. and may be inspected only by certain individuals and agencies designated by statute. D.C. Code §§ 16-2331—2332, 16-2363.

Restrictions on coverage: Although there does not appear to be a statute on point, D.C.’s highest appellate court has held that trial judges do not abuse their discretion when they allow young sexual abuse victims to testify outside the presence of the defendant via video-recorded testimony or closed-circuit television. *Williams v. United States*, 859 A.2d 130, 136—37 (D.C. 2004). Before doing so, however, the court must hear evidence and determine whether the use of out-of-court testimony is necessary to protect the welfare of the child witness who is testifying, find that the child witness would be traumatized, not by testifying in open court generally, but by the presence of the defendant and that the emotional distress the child would suffer in the presence of the defendant is more than minimal. *Ahmed v. United States*, 856 A.2d 560, 565 (D.C. 2004). It is not clear from the case law whether the media and public may remain in the courtroom during this testimony.

Florida

Delinquency and dependency proceedings: Juvenile court proceedings are presumptively open to the public in Florida, and no one may be excluded without an order from the court. But the court, in its discretion, may close any hearing when the public interest and welfare of the child are best served by doing so. Fla. Stat. Ann. §§ 39.507, 985.035 (West 2012).

Delinquency records: Conversely, juvenile delinquency records are closed to inspection except in limited circumstances in which the court finds that the person requesting access has a proper interest in the records and orders their release to the individual. There is a limited right of access for the compilation of statistical information for authorized representatives of recognized organizations such as the media. *Id.* § 985.045. Typically, orders allowing access for such research purposes will require identifying information to be redacted.

A law enforcement agency may release for publication the name, photograph, address and crime or arrest report of a child taken into custody for violation of a law that would be a felony if committed by an adult. The law enforcement agency also may reveal the identity of a child found by a court to have committed three or more violations of law that would be misdemeanors if committed by an adult. The statute provides that law enforcement agencies may not use age as the sole reason for denying access to the record of a juvenile felony or three-time misdemeanor offender. Thus, law enforcement agencies should release such juvenile offender records unless some other justifiable reason exists for keeping the record confidential. The law enforcement agency is not limited to disclosure of the name, photograph and address of the juvenile but also may release other background information regarding the offense or arrest. *Id.* § 985.04. And law enforcement records that have been transmitted to a criminal justice agency such as the state Department of Juvenile Justice also may be released. Fla. Op. Att’y Gen. 1994-91 (1994). The only information that remains non-public are law enforcement records of juveniles arrested for a felony prior to Oct. 1, 1994. Fla. Op. Att’y Gen. 1995-19 (1995). But if the juvenile has allegedly committed some other delinquent act that would be a crime but not a felony if committed by an adult, the record is confidential and will be released only by court order to certain individuals and agencies designated by statute. There also is a limited right of access in this pro-

vision for the compilation of statistical information for research purposes. Fla. Stat. Ann. § 985.04.

Dependency records: In Florida, juvenile dependency records are closed except to those showing a proper interest, which the public may do on certain occasions. *Id.* §§ 39.0132, 39.814. Requests for access to such closed files often overlap with requests for access to the confidential files of the state Department of Children and Families that may not have been filed with the court. The test for showing a proper interest is therefore similar to the good cause standard for access to the agency's records. *Id.* § 39.2021. For example, the state intermediate appellate court upheld a trial judge's decision to disclose the full court record of a dependency proceeding despite the confidentiality provisions, noting that "the circuit court was acting within its discretionary powers when it determined that disclosure of the full record would best correct any speculation, rumor, or innuendo circulating about the instant family and that disclosure was in the best interest of the dependent children." *Dep't of Health & Rehabilitative Servs. v. A.N.*, 604 So. 2d 11, 11 (Fla. Dist. Ct. App. 1992). The media also may be permitted access to dependency records for the compilation of statistics or other quantitative data. Fla. Stat. Ann. §§ 39.0132, 39.814. In such situations, the court may impose conditions on the use of the information and hold in contempt of court those who violate the conditions. Fla. Op. Att'y Gen. 1991-32 (1991). Identifying information is often redacted from these records.

Restrictions on coverage: Florida law allows a trial judge to close the courtroom when a victim or witness 15 years old or younger or one with mental retardation regardless of age is testifying about a sexual offense. Newspaper and broadcast reporters are included among those permitted to remain in the courtroom during this testimony, but another law prohibits the disclosure of information that would reveal the identity of a victim of child abuse. Fla. Stat. Ann. §§ 119.071, 918.16. There is dispute, however, among the appellate courts in Florida over how this closure statute interacts with the First and Sixth Amendment rights of public access and a public trial, respectively. Two of the five district courts have held that before the judge orders even partial closure of the courtroom, four prerequisites must be met: 1) the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced; 2) the closure must be no broader than neces-

sary to protect that interest; 3) the trial court must consider reasonable alternatives to closing the proceeding; and 4) the court must make findings adequate to support the closure. *Alonso v. State*, 821 So. 2d 423, 426 (Fla. Dist. Ct. App. 2002); *Pritchett v. State*, 566 So. 2d 6, 7 (Fla. Dist. Ct. App. 1990). The other three districts do not require fulfillment of this standard for partial closures, only for full closures. *Kovaleski v. State*, 1 So. 3d 254, 258 (Fla. Dist. Ct. App. 2009); *Hobbs v. State*, 820 So. 2d 347, 349 (Fla. Dist. Ct. App. 2002); *Clements v. State*, 742 So. 2d 338, 341 (Fla. Dist. Ct. App. 1999). The law also allows a victim or witness 15 years old or younger or one with mental retardation regardless of age to testify in any civil or criminal case outside the presence of the defendant via video-recorded testimony or closed-circuit television. Fla. Stat. Ann. §§ 92.53, 92.54. The law does not specify whether the media and public may remain in the courtroom during this testimony, although an opinion by the state appellate court indicates that not only can they be present when this testimony is given in open court, they also may be able to attend the video-recording sessions. In that case, the trial judge granted members of the news media access to the session in which the trial testimony of an alleged minor victim of sexual battery was video-recorded but barred them from disclosing the contents of the testimony prior to its use at trial scheduled more than two months away. The appellate court found the trial court's belief in a qualitative difference between actual trial testimony and other pretrial and discovery proceedings insufficient justification for the prior restraint on publication. *Miami Herald Publ'g Co. v. Morphonios*, 467 So. 2d 1026, 1028, 1030 (Fla. Dist. Ct. App. 1985).

Georgia

Delinquency proceedings: As a matter of constitutional jurisprudence, the media and public have a right of access to juvenile delinquency proceedings in Georgia unless there is an overriding or compelling reason for closure. In a case involving a juvenile accused of stealing a boat, the Georgia Supreme Court held that a presumption of closure in "delinquency, deprivation, and unruliness hearings" cannot be conclusive, and the court must in an expeditious manner give the media and public an opportunity to show that the state's or juvenile's interest in a closed hearing is not overriding or compelling. *Fla. Publ'g Co. v. Morgan*, 322 S.E.2d 233, 238 (1984). And a juvenile court likewise found that juvenile felony murder, armed

robbery and theft proceedings must be open to the media and public because the public's interest in disclosure outweighs the state's or juvenile's interest in closed proceedings. *In re Ross*, 16 Media L. Rep. (BNA) 2087, 2088 (Ga. Juv. Ct. 1989). As a matter of statutory law, the public has a right of access to juvenile delinquency proceedings in cases where a juvenile previously has been adjudicated delinquent and in those involving allegations of a felony designated in Ga. Code Ann. § 15-11-63 (West 2011), which include: arson; kidnapping and attempted kidnapping; aggravated assault and battery; armed robbery; attempted murder; drug trafficking; possession, manufacture and distribution of destructive devices; burglary of a retail establishment with the intent to steal and causing more than \$500 in damages; racketeering; carjacking; and being adjudicated delinquent three previous times for an offense that would be a felony if committed by an adult. However, the court is required to close delinquency hearings involving allegations of sexual assault or those at which any party expects to introduce evidence related to matters of deprivation, which generally involves abandonment or the lack of proper parental care or control necessary for a child's physical, mental or emotional health or morals. *Id.* § 15-11-78. Any person seeking access to a juvenile delinquency proceeding must file a written motion for access prior to the time of the hearing for which access is sought. Ga. Juv. Ct. R. 26.1. The judge may prohibit the media from releasing information that would identify the child or family involved. Ga. Code Ann. § 15-11-78. Pictures of the minor are prohibited. Ga. Juv. Ct. R. 26.2.

Dependency proceedings: In Georgia, a juvenile dependency proceeding is presumptively open. The court may close a hearing only upon making a finding on the record and issuing a signed order as to the reason or reasons for closing all or part of the hearing. The court may close such a hearing on only two grounds: 1) the proceeding involves an allegation of an act that would constitute a sexual offense if committed by an adult; or 2) closure is in the best interest of the child. In deciding whether closure is in the best interest of the child, the court must consider factors such as the age of the child, the nature of the allegations, the effect that an open court proceeding would have on the court's ability to reunite and rehabilitate the family unit and whether the closure is necessary to protect the privacy of a child, a foster parent or other caretaker of a child or of a victim of domestic

violence. The court also has broad discretionary power to refuse to admit a person to a hearing upon making a finding on the record and issuing a signed order that the person's presence at the hearing would: 1) be detrimental to the best interest of a child who is a party to the proceeding; 2) impair the fact-finding process; or 3) be otherwise contrary to the interest of justice. Ga. Code Ann. § 15-11-78. As with delinquency proceedings, any person seeking access to a juvenile dependency proceeding in Georgia must file a written motion for access prior to the time of the hearing for which access is sought. Ga. Juv. Ct. R. 26.1. The judge may prohibit the media from releasing information that would identify the child or family involved. Ga. Code Ann. § 15-11-78. Pictures of the minor are prohibited. Ga. Juv. Ct. R. 26.2.

Delinquency and dependency records: In general, juvenile court records can be inspected only by court order, but several exceptions exist. The public can inspect court records in delinquency actions if a juvenile previously has been adjudicated delinquent or the case involves allegations of a felony designated in Ga. Code Ann. § 15-11-63. These felonies include: arson; kidnapping and attempted kidnapping; aggravated assault and battery; armed robbery; attempted murder; drug trafficking; possession, manufacture and distribution of destructive devices; burglary of a retail establishment with the intent to steal and causing more than \$500 in damages; racketeering; carjacking; and being adjudicated delinquent three previous times for offenses that would be felonies if committed by an adult. Ga. Code Ann. § 15-11-79. In addition, any requesting adult must have reasonable access to records regarding investigations by the state Department of Human Services or a government child protective agency regarding the findings or information about a case of child abuse or neglect that resulted in a fatality or near fatality unless such disclosure would jeopardize a criminal investigation or proceeding. Identifying information, including the name of the child and the child's caretaker, will be redacted to preserve the confidentiality of the child and other members of the household, including other children. And the actual child abuse records themselves are publicly available in cases where a child who, at the time of the child's fatality or near fatality, was: 1) in the custody of a state department or agency or foster parent; 2) a child for whom the state Division of Family and Children Services had an open case file; 3) a child who had been,

or whose siblings, parents, or other caretakers had been, the subject of a report to the division within the past five years; or 4) the subject of an investigation into or report, referral or complaint of child abuse. Again, identifying information, including the name of the child and the child's caretaker, will be redacted to preserve the confidentiality of the child and other members of the household, including other children. But once these documents have been released, representatives of the state human services department may comment publicly on the case. *Id.* § 49-5-41.

Restrictions on coverage: Georgia law allows a trial judge to close the courtroom when a victim or witness 15 years old or younger is testifying about a sexual offense so long as the judge makes specific findings that such closure is essential to preserve higher values and narrowly tailored to serve an overriding interest in closure. *Id.* § 17-8-54; *Goldstein v. State*, 640 S.E.2d 599, 602 (Ga. Ct. App. 2006). Under the statute, newspaper and broadcast reporters are included among those permitted to remain in the courtroom during this testimony. Ga. Code Ann. § 17-8-54. The law also allows victims 10 years old or younger to testify about sexual offenses outside the presence of the defendant via closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom during this testimony. *Id.* § 17-8-55.

Cameras: Georgia is one of only a few states that allow cameras and recording devices in juvenile courts. A request to photograph or record any juvenile proceeding must be made to the court at least two days before the hearing. The judge has the discretion to require pooled coverage, pursuant to the state's juvenile court rules, which impose further restrictions aimed at mitigating the intrusiveness of the camera equipment. Ga. Juv. Ct. R. 26.2.

Hawaii

Delinquency and dependency proceedings: In general, only people whose presence is requested by a parent or guardian or whom the judge deems to have a direct interest in the case upon considering the minor's best interests can attend juvenile court proceedings in Hawaii. Haw. Rev. Stat. § 571-41 (2011).

Delinquency and dependency records: Juvenile court records generally are closed and may be inspected only by certain individuals and agencies designated by statute and with consent from the court by those with a legitimate interest in the proceed-

ings or in the protection, welfare, treatment or disposition of the minor. Otherwise, court dockets, petitions, complaints, motions and papers filed in the case are withheld from the public. *Id.* § 571-84. This prohibition extends to the records of any police department, which may withhold from disclosure a 911 tape involving a minor charged with a criminal offense and blotter data concerning identifiable juvenile offenders. Haw. Op. Att'y Gen. 05-17 (2005); *Id.* 91-4 (1991). But exceptions exist when juveniles are charged with violent crimes. Specifically, all legal records are open for public inspection in delinquency proceedings in which a minor 14 years old or older is adjudicated delinquent for an act that if committed by an adult would: 1) be murder in the first- or second-degree or attempted murder; 2) result in serious bodily injury to or death of a victim; 3) be a class A felony; or 4) be a felony and the minor has more than one prior adjudication for acts that would constitute felonies if committed by an adult. Records also are public in delinquency proceedings in which a minor 16 years old or older is adjudicated delinquent for an act that if committed by an adult would: 1) be murder in the first- or second-degree or attempted murder; 2) result in serious bodily injury to or death of a victim; 3) be a class A felony and the minor has one or more prior adjudications for an act that would constitute a felony if committed by an adult; or 4) be a class B or C felony and the minor has more than one prior adjudication for acts that would constitute felonies if committed by an adult. The judge can prohibit public access to these records, however, if he or she finds in writing "that there are significant and compelling circumstances peculiar to the case" that warrant confidentiality. Haw. Rev. Stat. § 571-84.6.

Restrictions on coverage: Hawaii law allows victims 17 years old or younger to testify about abuse or sexual offenses outside the presence of the defendant via closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. *Id.* § 626-1, R. 616. Court rules governing electronic and photographic coverage of court proceedings require judges to grant requests for such coverage unless good cause is found to prohibit the coverage. Under the rules, a party may object to coverage of any proceeding, prompting a hearing to determine whether the coverage will be allowed. A presumption of good cause for a prohibition of media coverage exists when the testimony of child witnesses is being received. Haw. Sup. Ct. R. 5.1.

Idaho

Delinquency proceedings and records: Idaho law approaches juvenile delinquency proceedings differently depending on the minor's age and nature of the criminal offense. All proceedings against a juvenile offender who is 14 years old or older and charged with an offense that would be a felony if committed by an adult are open to the public. In addition, the court docket, petitions, complaints, information, arraignments, trials, sentencing, probation violation hearings and dispositions, motions and other papers filed in such a case are open, as well as transcripts of testimony taken by the court, findings, verdicts, judgments, orders, decrees and other papers filed in such proceedings. Only after a finding of extraordinary circumstances may a judge close such a proceeding or records. In cases where the juvenile offender is 13 years old or younger or 14 years old or older and charged with a crime that would not be a felony if committed by an adult, records and court proceedings are closed to the public if the court says so in writing. Idaho Code Ann. § 20-525 (2012); Idaho Ct. Admin. R. 32(g)(9)(B)(1).

Dependency proceedings and records: The general public is excluded from juvenile dependency proceedings, and only those people whom the court finds to have a direct interest in the case may be admitted. Idaho Code Ann. § 16-1613. Records of dependency proceedings are closed and available only to certain individuals and agencies designated by statute and with permission of the court to those who can show that such access is in the best interests of the child. *Id.* § 16-1626.

Restrictions on coverage: Idaho law allows witnesses 12 years old or younger to testify in a criminal or noncriminal proceeding by an alternative method to in-court testimony. The statute does not specify whether the media and public may be present when this testimony is given via the alternative method, which also is not specified in the law. *Id.* § 9-1802, 9-1805. u

Illinois

Delinquency and dependency proceedings: Illinois law provides for media access to juvenile court proceedings but includes limitations on publication. Specifically, the law allows the judge to exclude the general public except for the news media and the crime victim from any hearing. The court may, however, for the minor's safety and protection and for good cause prohibit anyone present from further disclosing the minor's identity. 705 Ill.

Comp. Stat. Ann. 405/1-5 (West 2012). This provision allows the trial court to suppress the minor's identity but nothing beyond that. *In re M.B.*, 484 N.E.2d 1154, 1159 (Ill. App. Ct. 1985). Also, the court may prohibit the media from identifying minors when the courtroom was the source for the identities, but it may not prohibit the media from publishing truthful information gathered through common reporting techniques. *In re Minor*, 563 N.E.2d 1069, 1077 (Ill. App. Ct. 1990). When a judge issues a prior restraint in the context of pending juvenile proceedings, the order will be invalid unless "it is: (1) necessary to obviate a 'serious and imminent' threat of impending harm, which (2) cannot adequately be addressed by other, less speech-restrictive means." *In re A Minor*, 537 N.E.2d 292, 300 (Ill. 1989). In *A Minor*, the Illinois Supreme Court determined this standard was not met where the newspaper learned the minor's name through routine reporting techniques and the state asserted the minor's safety as the reason for the order. The court noted that the fears for the minor's safety were speculative, and protective custody was an available alternative. *Id.* at 301—02. However, a trial court did not abuse its discretion when it excluded a newspaper reporter from a juvenile proceeding involving victims of physical and sexual abuse at the hands of a parent based on its finding that because of the nature of the abuse and size of the community where the victims resided and likely would continue to reside, extensive publicity of the proceedings would adversely affect the victims for the rest of their lives. *In re Minor*, 563 N.E.2d at 1076.

Delinquency and dependency records: Juvenile court records are confidential and may be inspected only by certain individuals and agencies designated by statute, including representatives of the news media by general or special court order. In cases where the records concern a pending juvenile court case, the party seeking to inspect the records must notify the attorney or guardian ad litem of the minor whose records are sought. In cases that are no longer pending, the minor or the minor's parent or guardian must be notified, and the request will be referred to the chief judge presiding over juvenile courts. In determining whether the records should be available for inspection, the court should consider the minor's interest in confidentiality and rehabilitation over the person's interest in obtaining the information. In delinquency cases, the public has a right of access to the name,

address and offense of juveniles adjudicated delinquent for the commission of serious acts. Specifically, such information is publicly available in cases where a juvenile: 1) has been adjudicated delinquent based on the commission of first-degree murder, attempted first-degree murder, aggravated criminal sexual assault or criminal sexual assault; 2) who was 13 years old or older at the time the act was committed and has been adjudicated delinquent based on the commission of an act involving criminal street gang activity, the use of a firearm in the commission of a felony or an act involving cannabis or controlled substances that would be a felony if committed by an adult; 3) who was 13 years old or older at the time the act was committed and has been criminally convicted based on the commission of first-degree murder, attempted first-degree murder, aggravated criminal sexual assault, criminal sexual assault or an act involving criminal street gang activity, the use of a firearm in the commission of a felony or an act involving cannabis or controlled substances that would be a felony if committed by an adult. 705 Ill. Comp. Stat. 405/1-8. Law enforcement records are closed to the public unless the juvenile is being prosecuted as an adult for a criminal offense. Officers may not disclose the identity of any minor when releasing information to the general public about the arrest, investigation or disposition of any case involving a minor. *Id.* 405/1-7.

Restrictions on coverage: Illinois law allows a trial judge to close the courtroom when a victim 17 years old or younger is testifying about a sexual offense. The media are included among those permitted to remain in the courtroom during this testimony. 725 Ill. Comp. Stat. 5/115-11.

Indiana

Delinquency and dependency proceedings: Juvenile courts in Indiana determine whether the public should be excluded from a proceeding except in delinquency proceedings where the child is charged with committing an act that would be murder or a felony if committed by an adult. In those cases, the proceeding is open to the public. Ind. Code Ann. §§ 31-32-6-2, 31-32-6-3 (West 2012). When requested by the prosecutor, the child involved or the child's guardian ad litem, counsel, parent, guardian or custodian, the court may close a proceeding during the testimony of a child witness or child victim if the court finds that an allegation or a defense involves matters of a sexual nature and closing the proceeding is necessary to protect the welfare of a child

witness or child victim. *Id.* § 31-32-6-4. In deciding whether closure is necessary to protect the welfare of a child witness or child victim, the court should consider: 1) the nature of the allegation or defense; 2) the age of a child witness or child victim; 3) the psychological maturity of a child witness or child victim; and 4) the desire of a child witness or child victim to testify in a proceeding closed to the public. *Id.* § 31-32-6-5. A proceeding also may be closed by request during the testimony of a health care provider, social worker, therapist, school counselor or school psychologist under certain circumstances. *Id.* § 31-32-6-4. If a proceeding is closed to the public, the court must make findings of fact concerning the closure and place the exclusion order in the file of the proceedings. *Id.* § 31-32-6-6.

Delinquency and dependency records: All juvenile court records in Indiana generally are confidential, Ind. Code Ann. § 31-39-1-2, but several exceptions exist. Records are available to the public without a court order in delinquency proceedings alleging that a child is delinquent as the result of any of the following alleged acts or combination of alleged acts: 1) an act that would be murder or a felony if committed by an adult; 2) an aggregate of two unrelated acts that would be misdemeanors if committed by an adult if the child was 12 years old or older when the acts were committed; and 3) an aggregate of five unrelated acts that would be misdemeanors if committed by an adult if the child was 11 years old or younger when the acts were committed. This public access extends to the child's name, age, nature of the offense, chronological case summaries, index entries, summonses, warrants, petitions, orders, motions not concerning psychological evaluations or child abuse and neglect, decrees and, if adjudicated delinquent for the alleged acts or combination of alleged acts, the child's photograph. All other records in delinquency proceedings are confidential and may be released only to certain individuals and agencies designated by statute. The identifying information of any child victim or child witness also is confidential under this statute. *Id.* 31-39-2-8.

Law enforcement agencies may disclose to the public the following information contained in records involving allegations of delinquency that would be a crime if committed by an adult: the nature of the offense allegedly committed and the circumstances immediately surrounding it, including the time, location and property involved; the identity of any victim; a description of the method of apprehen-

sion; any instrument of physical force used; the identity of any officers assigned to the investigation except for undercover units; the age and sex of any child apprehended or sought for the alleged commission of the offense; and, in limited circumstances, the child's identity. *Id.* § 31-39-3-2. Also, the head of a law enforcement agency or that person's designee may grant any person with a legitimate interest in the work of the agency or in a particular case access to the agency's confidential records. *Id.* § 31-39-4-8.

In addition to these exceptions to the general rule of confidentiality, the juvenile court may grant any person with a legitimate interest in the work of the court or in a particular case access to the court's legal records. A person with access to the records under this statute is not bound by the general confidentiality provisions and may publicly disclose the contents of the records. In exercising its discretion, the court should consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about the alleged commission of an act that would be murder or a felony if committed by an adult or the alleged commission of an act that would be part of a pattern of less serious offenses. *Id.* § 31-39-2-10. Interpreting this language, the state intermediate appellate court found that a trial court could not grant media access to confidential child-in-need-of-services records of children whose parents were accused of battery, neglect and causing the death of their sibling because there was no specific ongoing threat to the safety or welfare of the community. The trial court's stated goals of educating the public, addressing the community's interest in the welfare of the children and giving the public new insight into the workings of the trial court and the state Department of Child Services did not warrant disclosure of the records when awareness could be achieved by less intrusive measures, the court ruled. *In re K.B.*, 894 N.E.2d 1013, 1017 (Ind. Ct. App. 2008). But another appellate court held that a juvenile court was authorized to grant a newspaper's request for access to records from a child-in-need-of-services proceeding that was pending at the time of the death of a 3-year-old child who was allegedly neglected and murdered by her mother and mother's boyfriend. In that case, the death of the child was a matter "of the keenest public interest," and the newspaper had a legitimate interest in informing the public of the facts surrounding the death of a child while in the care of her mother just hours

before a scheduled court hearing, the court found. Access to records from a child-in-need-of-services proceeding that was closed after the child was reunified with her mother, a procedure whereby child services departments provide appropriate services in an attempt to return to the family a child who has been removed, also was granted because the child's prior involvement in the child-welfare system was undoubtedly of public interest and importance. The paper also was granted access to records held by state and local child services departments because the mother did not contest that the child's death was anything other than a result of abuse, abandonment or neglect. But the court was not authorized to grant the paper's request for access to a transcript of a review hearing, a periodic proceeding in which the court evaluates the case plan of a child under child services supervision and determines whether return to the family is appropriate, because the public had been excluded from the hearing; nor could the court disclose records in two delinquency proceedings involving the mother since her alleged neglect and murder of the child were not the bases for the delinquency allegations. *In re T.B.*, 895 N.E.2d 321 (Ind. Ct. App. 2008).

In addition, in cases where a child's death or near death may have been the result of abuse, abandonment or neglect, redacted records in the possession of various state and local agencies regarding the child may be disclosed to any person who requests the record, although that person may be required to pay the reasonable expenses of copying the record. *Id.* § 31-33-18-1.5. Also in such cases, the agencies may disclose for research purposes general information such as the incidents of reported child abuse or neglect or other statistical data if the information is not the subject of pending litigation and does not identify the people involved. *Id.* § 31-33-18-3.

Restrictions on coverage: Indiana law allows victims and witnesses 13 years old or younger and those who are mentally ill, impaired or disabled regardless of age to testify about sexual and other offenses designated by statute outside the presence of the defendant via video-recorded testimony or closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. *Id.* §§ 35-37-4-6, 35-37-4-8.

Iowa

Delinquency and dependency proceedings: Juvenile court proceedings generally are open in Iowa, although the court, on

the motion of any of the parties or on its own, may exclude the public from the hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in an open hearing. Upon closing the hearing to the public, however, the court may admit those people with a direct interest in the case or in the work of the court. Iowa Code Ann. §§ 232.39, 232.92 (West 2012).

Delinquency and dependency records: Juvenile court records generally are confidential and may not be publicly disclosed except to certain individuals and agencies designated by statute and by court order to people with a direct interest in the proceeding or in the work of the court. Official juvenile court records in cases alleging delinquency, including delinquency complaints, are public records, but they are subject to several restrictions, including confidentiality orders and sealing. When the court excludes the public from a hearing, the transcript of the proceeding is not considered a public record, and inspection and disclosure of its contents are prohibited except by court order. *Id.* § 232.147.

Records and files of a criminal or juvenile justice agency concerning a child involved in a delinquent act are public records, but they are subject to several restrictions, including confidentiality orders and sealing. However, the records are not subject to sealing if the juvenile is being prosecuted as an adult for a criminal offense. Criminal or juvenile justice agencies may disclose the name of a juvenile who escaped from an institution to which he or she was committed, as well as the facts surrounding the escape and the offense or alleged offense that resulted in the placement of the juvenile in the facility. *Id.* § 232.149.

Upon request from a member of the public, the state Department of Human Services must disclose certain information relating to a case of founded child abuse involving the fatality or near fatality of a child. If the request is received before or during an assessment of the case, the director of human services or the director's designee must initially disclose whether or not the assessment will be or is being performed. Otherwise, within five business days of receiving the request or completing the assessment, whichever is later, the director of human services or the director's designee must release any relevant child abuse information concerning the child or the child's family and the department's response and findings. This information will include a summary of information as to whether the child

or a member of the child's family was utilizing social services provided by the department at the time of the fatality or near fatality or within the previous five years, information about the department's response and findings in the case and any recommendations it made to the county attorney or juvenile court. But the department will not release information that is confidential under federal law or information that would identify the reporter of the child abuse or be likely, in the director's or designee's reasonable belief, to cause mental or physical harm to a sibling of the child or another child in the house, jeopardize the prosecution or rights of any alleged perpetrator of the fatality or near fatality or undermine an ongoing or future criminal investigation. If a person who requested such information does not believe the department has substantially complied with the request, the person may apply to the juvenile court for an order for disclosure of additional information. Also, if an individual who is the subject of a child abuse report or another party involved in a child abuse assessment publicly releases information concerning the case, including information that would otherwise be confidential, the director of human services or the director's designee may respond with relevant information about the case. *Id.* § 235A.15.

Restrictions on coverage: Iowa court rules allow a magistrate judge to close the courtroom during a preliminary hearing in which the judge decides whether there is probable cause to believe that an indictable offense, including one involving a minor, has been committed and that the defendant committed it if the defendant requests such closure. The media and public may not remain in the courtroom in such cases. Iowa Ct. R. 2.2. The law also allows victims and witnesses 17 years old or younger and those who are mentally ill or intellectually or developmentally disabled regardless of age to testify in a criminal proceeding outside the presence of the defendant via video-recorded testimony or closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. Iowa Code Ann. § 915.38.

Cameras: Although court rules governing expanded media coverage of court proceedings specifically prohibit the broadcasting, recording and photographing of juvenile proceedings, such coverage is allowed in cases where all parties, including the parent or guardian of a minor child, consent on the record to the media coverage. Iowa Ct. R. 25.2.

Kansas

Delinquency proceedings: Delinquency hearings involving juveniles 16 years old or older at the time of the alleged offense are open to the public in Kansas. If the juvenile is 15 years old or younger, the judge may close the hearing after a determination that doing so is in the best interests of the victim or alleged juvenile offender. But even in those cases where the judge determines that an open hearing is not in the best interest of the juvenile, the court may allow other people to attend if all parties agree unless the judge finds that the presence of these people would disrupt the proceedings. Interpreting a different statutory provision that has since been repealed, the state Supreme Court held in a series of rulings that the meaning of "hearing" in the old statute applied only to hearings of an adjudicatory nature, or those that result in a determination of guilt or innocence or in confinement or punishment rather than merely address preliminary or procedural matters. But language in the current statute specifically states that "hearings" include all proceedings held under the Revised Kansas Juvenile Justice Code, including detention, first appearance, sentencing, as well as adjudicatory hearings. Kan. Stat. Ann. § 38-2353 (2011).

Delinquency records: Whether juvenile delinquency court, law enforcement and agency records are open to the public in Kansas depends on the age and alleged offense of the juvenile. If the juvenile is 13 years old or younger, the records are not available for public inspection and may be disclosed only to certain individuals and agencies designated by statute or those with a court order. However, this general rule of confidentiality does not apply in the following cases: 1) where a juvenile 14 years old or older has violated a statute, city ordinance or county resolution relating to the regulation of traffic or the operation of automobiles or other vehicles; 2) where a juvenile 16 years old or older has violated a specific statute governing, among other activities, the handling of firearms or boating activities; and 3) where any juvenile is charged as an adult. In addition, records concerning a public offense committed or allegedly committed by a juvenile 14 years old or older are subject to the same disclosure restrictions as those of adults. Information identifying victims and alleged victims of sexual offenses may not be publicly disclosed, although nothing in the statute prohibits such a victim or alleged victim from voluntarily disclosing his or her identity. *Id.* § 38-1608.

Dependency proceedings: Proceedings involving the termination of parental rights are generally open to the public unless the court determines that closure or exclusion of that person from the proceeding would be in the best interests of the child or necessary to protect the privacy rights of the parents. But proceedings related to the disposition of a child alleged to be in need of care are generally closed to the public. The court may allow other people to attend, however, if all parties agree and the court determines that such attendance would be in the best interests of the child or the conduct of the proceedings, subject to any limitations the court decides are appropriate. In addition, if confidential information is introduced into evidence, the court may exclude those people not authorized to receive such information or conduct a private hearing in the judge's chambers during the presentation of this evidence. *Id.* § 38-2247.

Dependency records: Juvenile court, agency and law enforcement records involving the subject of a child-in-need-of-care report are not available for public inspection and may be disclosed only to certain individuals and agencies designated by statute or those with a court order. *Id.* § 38-2209. However, information from confidential reports or records of such children may be publicly disclosed when: 1) the individuals involved or their representatives have given consent; or 2) an investigation into alleged child abuse or neglect or the filing of a petition alleging that a child is in need of care has become public knowledge so long as the disclosure is limited to confirmation of procedural details relating to professionals' handling of the case. In addition, in cases where child abuse or neglect has resulted in a child fatality or near fatality, reports or records of a child alleged or adjudicated to be in need of care that have been received by the secretary of the state Department of Social and Rehabilitation Services, a law enforcement agency or any juvenile intake and assessment worker are public record. Within seven days of receipt of an open-records request for these documents, the secretary will notify any affected individual, who, in addition to the secretary, may file a motion asking the court to prevent disclosure of the information. In that case, the court will consider the effect such disclosure may have on an ongoing criminal investigation, pending prosecution or the privacy of the child, the child's siblings, parents or guardians. If the court denies the request, it is required to make written, on-the-

record findings justifying its decision, a copy of which the court must provide to the individual who requested the records. *Id.* § 38-2212.

Restrictions on coverage: Kansas law allows victims 12 years old or younger to testify in criminal proceedings outside the presence of the defendant via video-recorded testimony or closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. *Id.* § 22-3434. In addition, the state Supreme Court's rules governing media coverage of judicial proceedings prohibit the audio recording and photographing of juveniles who participate in a trial court proceeding and request such a restriction. But members of the news media may record and photograph a juvenile who is being prosecuted as an adult for a criminal offense. Kan. Sup. Ct. R. 1001(6)—(7). A Supreme Court committee currently is reviewing the rules on media coverage of judicial proceedings.

Kentucky

Delinquency and dependency proceedings: Juvenile court proceedings are presumptively closed in Kentucky. But the court may admit those people with a direct interest in the case or in the work of the court. People agreed to by the child and the child's attorney also may be admitted to the hearing. Ky. Rev. Stat. Ann. § 610.070 (West 2011). The media can be excluded from a hearing in circuit court regarding a juvenile's appeal from an order declaring the transfer statute unconstitutional. Such an exclusion does not violate the media's First Amendment rights because the juvenile's "right to a fair trial, and the public's interest in fostering opportunities for rehabilitation transcend the right of the press to an instantaneous reporting. . . . It was intended that trials of juveniles not be publicized in the news media, as such publicity would possibly deprive the juvenile of a fair trial and, more particularly, would likely diminish his or her prospect for rehabilitation. To exclude the press at the district level, but admit them at the appellate level would tend to nullify the original intent and purpose of the [statute]," the state's Supreme Court ruled. In such cases, the media also can be denied access to the juvenile court records. *F.T.P. v. Courier-Journal & Louisville Times Co.*, 774 S.W.2d 444, 446 (Ky. 1989).

Delinquency and dependency records: Juvenile court records are confidential and may be disclosed only to certain individuals and agencies designated by statute. Ky.

Rev. Stat. Ann. § 610.340. The state attorney general found that the disclosure of the fact that a juvenile was wounded during a shooting invaded her privacy. Thus, the Lexington, Ky., police acted properly in redacting her name and her mother's name from an incident report disclosed to the *Lexington Herald-Leader*. Ky. Op. Att'y Gen. 96-ORD-115 (1996). More recently, the attorney general found that the Whitley County Police Department violated the state Open Records Act when it denied the *Corbin News Journal's* request for radio traffic and a computer-aided dispatch report from an incident in which a child was injured by exploding fireworks. Because these materials were not juvenile court records, the statutory restrictions on disclosure of such were thus inapplicable, according to the opinion. Ky. Op. Att'y Gen. 10-ORD 161 (2010).

A report of suspected child abuse, neglect or dependency and all information obtained by the state Cabinet for Health and Family Services during its investigation into or assessment of the alleged abuse or neglect is confidential and may not be publicly disclosed except in a couple of circumstances. When an adult who is the subject of a report of suspected abuse or neglect publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality is presumed voluntarily waived, and confidential information and records about that person not already disclosed but related to the information made public may be released if disclosure is in the best interest of the child or necessary for the administration of the cabinet's duties. Also, the cabinet may publicly disclose information in cases where child abuse or neglect resulted in a child death or near death. Ky. Rev. Stat. Ann. § 620.050. Beginning in 2011, two Kentucky newspapers have been involved in a lengthy legal dispute with the cabinet over records involving child deaths or near deaths stemming from abuse or neglect. A judge ordered the state to release documents in 2011, and the governor said his administration would comply with the order, releasing records weekly. But in April 2012, state officials denied a request by the *Herald-Leader* for child-protection records in the 2009 death of a 7-month-old whose father, claiming the death was accidental, was charged with murder in connection with the fatality. Cabinet officials claimed that the records were exempt because child protection workers never determined that the baby's death was caused by neglect or abuse — an assertion the newspaper's lawyer disputed,

saying in a newspaper article about the case, “there is simply no requirement of a criminal conviction” for the records to be public. *Newspaper in Another Dispute with State Officials over Child Protection Records*, Associated Press, Apr. 30, 2012.

The state attorney general held that arrest records and incident reports from a local police department in abuse situations are not exempt from public inspection. Ky. Op. Att’y Gen. 91-12 (1991). The official also found that the state police improperly relied on various confidentiality statutes, including the provision regarding child abuse or neglect reports, in denying a request for investigative files concerning charges of sodomy, sexual abuse and unlawful transaction with a minor involving an adult who was currently a candidate for elective office. The privacy interests of the juveniles involved could be protected by redaction of their names, while the privacy interest of the adult was outweighed by the public’s interest in assessing his fitness to serve in the office for which he was a candidate and its interest in evaluating the performance of the state police, the attorney general ruled. Ky. Op. Att’y Gen. 93-ORD-42 (1993).

Restrictions on coverage: Kentucky law allows victims and witnesses 12 years old or younger to testify in criminal proceedings involving illegal sexual activity outside the presence of the defendant via video-recorded testimony or closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. Ky. Rev. Stat. Ann. § 421.350.

Louisiana

Delinquency proceedings: Juvenile delinquency proceedings are closed in Louisiana except in cases involving a crime of violence or a delinquent act that is a second or subsequent felony-level adjudication. La. Child. Code Ann. art. 879 (2011). The court also may admit any other person with a proper interest in the proceedings or in the work of the court. *Id.* art. 407. The news media have standing to intervene and assert a right to attend, and obtain records to, juvenile court proceedings. *Chi. Tribune Co. v. Mauffray*, 996 So. 2d 1273, 1279–80. (La. Ct. App. 2008).

Dependency proceedings: Hearings in a dependency proceeding generally are closed, although the court may admit any person with an interest in the proceedings or in the work of the court. La. Child. Code Ann. art. 407.

Delinquency and dependency records: Juvenile court records except those involv-

ing traffic violations are confidential and may not be disclosed except by certain individuals and agencies designated by statute. But non-identifying information of a general nature, including statistics, is not confidential and may be released without a court order. *Id.* art. 412. Statistical and other financial data relating to money paid to attorneys out of the court’s judicial expense fund is exempt from the confidentiality protection afforded juvenile court records. *Babst v. Jordon*, 522 So. 2d 136, 137 (La. Ct. App. 1988). In addition, the district attorney, law enforcement agency or court may release to the public the following identifying information about an alleged or adjudicated child who was 14 years old or older when the delinquent act was committed: 1) the name, age and delinquent act for which the child is being charged when the court has found probable cause that the child committed a crime of violence or a second or subsequent felony-level offense; and 2) the name, age, delinquent act and disposition of a child who has been adjudicated delinquent for a crime of violence, a second or subsequent felony-level offense or the distribution or possession with the intent to distribute a controlled dangerous substance. Law enforcement agencies also may release to the public the name, age, physical description and photograph of a child who has escaped from a juvenile detention center and, in certain circumstances, of a child who is wanted for a felony-level delinquent act involving an offense against a person or a dangerous weapon. La. Child. Code Ann. art. 412.

Restrictions on coverage: Louisiana law allows a trial judge to close the courtroom when a victim 15 years old or younger testifies about a sex offense. During this testimony, the court may allow a “reasonable but limited” number of members of the public and any other person with a valid interest in the proceedings to remain. La. Rev. Stat. Ann. § 15:469.1 (2011). Although the statute applies to minors 15 years old or younger and does not specifically address those 16 or 17 years old, the interests of any minor victim of sexual abuse, upon a proper showing by the state, “may sometimes be protected by a court on a case-to-case basis on the exercise of the court’s inherent power to control its proceedings.” *State v. Fletcher*, 537 So. 2d 805, 807 (La. Ct. App. 1989). In an aggravated rape case, the court cleared the courtroom of spectators but allowed members of the news media to remain when the victims, the young stepdaughters of the defendant, were testifying. The court concluded that this

exclusion did not violate the defendant’s constitutional right to a public trial since the court did not exclude the media and other essential parties. *State v. Loyden*, 899 So. 2d 166, 179 (La. Ct. App. 2005). The law also allows victims and witnesses 16 years old or younger and those with a developmental disability regardless of age to testify in a criminal proceeding outside the presence of the defendant via closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. La. Rev. Stat. Ann. § 15:283.

Maine

Delinquency proceedings: Whether a juvenile delinquency proceeding is open to the public in Maine depends on the nature of the alleged offense. Hearings are open to the public if the crime would constitute murder or certain felonies if committed by an adult or a misdemeanor if committed by an adult and the juvenile has previously been adjudicated of committing a juvenile crime. The general public is excluded from all other delinquency hearings and proceedings. Me. Rev. Stat. Ann. tit. 15, § 3307 (2011).

Dependency proceedings: All child protection proceedings are closed to the public unless the court orders otherwise. *Id.* tit. 22, § 4007. According to the state Supreme Court, “the statute clearly states that the presumption is that proceedings will be closed absent extraordinary circumstances,” notwithstanding the contrary claim of a mother who sought to open to the public proceedings related to the termination of her parental rights that proceedings are open unless the court makes specific findings of unusual circumstances that would justify closure. *In re Bailey M.*, 788 A.2d 590, 596 (Me. 2002).

Delinquency records: If the proceeding is open to the public, the petition, record of the hearing and order of adjudication are open to public inspection as well. Records of proceedings not open to the public may be inspected only by certain individuals and agencies and with consent of the court by those with a legitimate interest in the proceedings provided the names of the juvenile, the juvenile’s parents, guardian, legal custodian, attorney and any other parties are excluded. Me. Rev. Stat. Ann. tit. 15, § 3308. A law enforcement agency may not release the identity of a juvenile until a petition is filed charging the minor with a juvenile crime. *Id.* § 3307.

Dependency records: Juvenile dependency records are confidential and may

be disclosed only to certain individuals and agencies designated by statute. *Id.* tit. 22, § 4008. In cases involving the abuse or neglect of a child, the commissioner of the state Department of Health and Human Services may disclose records relating to the alleged abuse or neglect and the investigation into such allegations if the official determines that such disclosure is not contrary to the best interests of the child, the child's siblings or other children in the house and any one of the following factors exists: 1) the alleged perpetrator of the abuse or neglect has been criminally charged in connection with the allegations; 2) a judge, law enforcement official, district attorney or other state or local investigative agency or official has publicly disclosed, as required by law in the performance of official duties, the provision of or investigation by child welfare services; or 3) a parent, custodian or guardian of the victim or a minor victim 15 years old or older previously made a knowing, voluntary and public disclosure of the information. In addition, the commissioner is required to publicly disclose the findings or information related to situations where child abuse or neglect results in a child fatality or near fatality except in those circumstances where the disclosure of child protective information would jeopardize a criminal investigation or proceeding. Such information may include, among other facts, the name and age of the abused or neglected child if various individuals agree with the commissioner's decision to release the information and the identification of child protective or other services provided or actions taken regarding the child and the child's family. The disclosure of such information is limited, however, when the investigation into the report of abuse or neglect is ongoing; nor may the disclosed information identify the source of the report or other members of the child's household who are not the subject of the report. When deciding whether disclosure would be contrary to the best interests of the child or others, the commissioner will consider the privacy of the child and the child's family and the effects disclosure may have on efforts to reunite and provide services to the family. *Id.* § 4008-A.

Restrictions on coverage: Maine law allows victims 15 years old or younger and those with a developmental disability regardless of age to testify about sexual offenses outside the presence of the defendant via video-recorded testimony. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broad-

cast there. *Id.* tit. 15, § 1205. In addition, court rules prohibit photographs of minors in criminal proceedings except those tried as adults. Me. Sup. Ct. Admin. Order JB-05-15.

Maryland

Delinquency proceedings: Whether a juvenile delinquency proceeding is open to the public in Maryland depends on the nature of the alleged offense. Hearings are open to the public if the child is charged with a felony unless good cause is shown for closing the proceeding. The court also may close a hearing in a felony delinquency proceeding when a child victim is testifying unless good cause for the child's testimony in open court is shown. Hearings in delinquency proceedings alleging misdemeanor offenses are closed to the public. Md. Code Ann., Cts. & Jud. Proc. § 3-8A-13 (West 2012). Courts must list the name of the alleged offender in all juvenile felony hearings and post hearing times and places. The clerk must make the list publicly available prior to convening court on any day the juvenile court is in session. Md. Juv. Ct. R. 11-104.

Dependency proceedings: In any proceeding in which a child is alleged to be in need of assistance, the court may exclude the general public from the hearing and admit only those people with a direct interest in the proceeding. Md. Code Ann., Cts. & Jud. Proc. § 3-810. The Maryland Court of Appeals, the state's highest appellate court, held that although a juvenile court has the discretion to exclude the media and public from a juvenile proceeding, this discretion is not unlimited and must be exercised within constitutional limitations. *In re Maria P.*, 904 A.2d 432, 442 (Md. 2006) (involving the exclusion of a mother from a hearing during the testimony of her 12-year-old daughter, whom the mother allegedly abused); *see also Balt. Sun. Co. v. State*, 667 A.2d 166, 171 (Md. 1995). In *The Sun* case, the court also ruled that although a juvenile court can place reasonable restrictions on the media's use of information obtained in a confidential juvenile proceeding, it cannot limit their publication of information legitimately collected from other sources nor can it condition access to the juvenile proceeding on the required publication of specific material dictated by the court. In that case, a juvenile dependency proceeding involving the alleged abuse of an infant, the Court of Appeals found that the juvenile court could not restrict the publication of a photograph of the juvenile obtained from the police department. Nor could the lower court, consistent

with constitutional free-press guarantees, require the media to publish specific material, including the use of specific terms in referring to the juvenile.

Delinquency and dependency records: Juvenile court records are confidential and cannot be released without a court order for good cause. Md. Code Ann., Cts. & Jud. Proc. §§ 3-827, 3-8A-27; Md. Juv. Ct. R. 11-121. But these statutes do not prohibit public access to juvenile facilities, the state attorney general found. Md. Op. Att'y Gen. 93-038 (1993). Even in civil court, records relating to juveniles may be sealed in certain circumstances. The federal court in Maryland held that preserving the confidential identity of a minor and her family was a compelling government interest and that replacing the juvenile plaintiff's name with her initials in a civil rights complaint was a sufficiently narrowly tailored redaction to serve this interest. But the court also held that any interested party, in that case a newspaper, may file a motion requesting further relief regarding the contents of the complaint, its attachments and other court pleadings. *M.P. v. Schwartz*, 853 F. Supp. 164, 168—69 (D. Md. 1994).

Minor testimony: Maryland law allows child victims of child or sexual abuse to testify in criminal proceedings outside the presence of the defendant via closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. Md. Code Ann., Crim. Proc. § 11-303. But the Court of Appeals held that closing the courtroom during the testimony of a 14-year-old alleged sexual abuse victim violated the defendant's Sixth Amendment right to a public trial. The court emphasized that while the trial judge has the authority to close the courtroom under such circumstances, he or she must provide case-specific findings justifying the closure order. The court also suggested that a judge considering a motion to close the courtroom during the victim's testimony in a child sexual abuse trial should hold an evidentiary hearing on the matter and may not simply rely on the prosecution's general claims that protection of the child warrants closure. *Carter v. State*, 738 A.2d 871, 876—78 (Md. 1999). Court rules governing the recording, broadcasting and photographing of court proceedings allow the court on request by any of the participants or on its own to prohibit such media coverage for good cause. There is a presumption that good cause exists in cases involving minors. Md. R. 16-109.

Massachusetts

Delinquency proceedings: The public is generally excluded from juvenile delinquency hearings in Massachusetts except in cases where the child is charged with murder in the first or second degree or where the state has proceeded by indictment. Mass. Gen. Laws Ann. ch. 119, § 65 (West 2012). In *News Group Bos., Inc. v. Commonwealth*, the trial judge, pursuant to the 1990 statutory amendment that provided a right to attend juvenile court sessions involving juveniles charged with murder, allowed public access to delinquency proceedings involving five juveniles charged with murder, aggravated rape and robbery. The Supreme Judicial Court of Massachusetts found it “reasonably clear that the Legislature intended generally that a judge not exclude the public from such a hearing . . . The Legislature could rationally conclude that the public interest in the proper disposition of a murder charge against a juvenile, the most serious of crimes (perhaps barring treason), warrants opening the courtroom to all proceedings.” Although the court did not adopt a standard governing closure, it did hold that “the presumption is . . . that the courtroom will be open.” *News Group Bos., Inc. v. Commonwealth*, 568 N.E.2d 600, 601, 603, 604 (Mass. 1991). A few years later, the state’s high court also held that a newspaper should have full access to the court cases involving Robert and Andrea Berkowitz, who were charged with 10 counts of serving alcohol to a minor and contributing to the delinquency of a minor after they allegedly served beer and liquor to their son and his friends at their home. The court found that the lower court’s order, which included a prohibition on publishing the name of any child who had engaged in delinquent conduct and photographing the face of any child who testified, was an unlawful prior restraint on publication. The court stated that the lower court failed to provide detailed findings of fact that would clearly show a compelling state interest. *George W. Prescott Publ’g Co. v. Stoughton Div. of the Dist. Court*, 701 N.E.2d 307, 311 (Mass. 1998).

Delinquency records: Records of a delinquency proceeding conducted by indictment are open to the public in the same manner as adult criminal records. All other delinquency records are withheld from public inspection except with the judge’s consent. Mass. Gen. Laws Ann. ch. 119, § 60A. In fact, the *News Group Boston* court held that the statutory requirement of opening juvenile courtrooms to the public in cases involving murder does not

necessarily extend to the records of those proceedings. *News Group Bos.*, 568 N.E.2d at 604. A juvenile’s probation officer must publicly disclose the name of any juvenile between the ages of 14 and 16 who previously has been adjudicated delinquent at least twice for acts that would be punishable by imprisonment in state prison if the juvenile were an adult and the juvenile is charged with another such offense. Mass. Gen. Laws Ann. ch. 119, § 60A.

Dependency proceedings and records: Juvenile dependency proceedings are closed to the general public in Massachusetts, and publication of the names of people involved in the closed hearings is prohibited. *Id.* § 38.

Restrictions on coverage: Massachusetts law allows a trial judge to close the courtroom when a victim 17 years old or younger is testifying about a sexual offense. *Id.* ch. 278, § 16A. Before doing so, however, the judge must determine that closure is necessary to prevent psychological harm or trauma to the minor victim and narrowly tailored to serve that interest. The court also must consider reasonable alternatives to closure. In deciding whether testifying in open court would cause the minor victim to suffer psychological harm or trauma, the court will consider the child’s age, maturity, nature of the alleged crime and desires and interests of the victim and the victim’s parents and relatives. *Commonwealth v. Martin*, 629 N.E.2d 297, 301–02 (Mass. 1994). Massachusetts law also allows victims and witnesses 14 years old or younger to testify about a sexual offense outside the presence of the defendant via video-recorded testimony or closed-circuit television. The statute appears to allow the media and public to remain in the courtroom when this testimony is broadcast there. Mass. Gen. Laws Ann. ch. 278, § 16D. Court rules governing electronic access to the courts prohibit photographing or recording minors without the judge’s consent. Mass. Sup. J. Ct. R. 1:19.

In March, the Supreme Judicial Court ruled that a judicial order that a news organization — in that case WBUR-FM’s OpenCourt program, which live-streams daily video and audio recordings of proceedings in Quincy District Court and posts the footage online two days later — redact material presented during open court is an unconstitutional prior restraint on publication. One of the issues on appeal was a broadcast from a dangerousness hearing in a criminal case in the Quincy court during which the name of an underage alleged victim of sexual abuse

was accidentally blurted. OpenCourt challenged the judge’s order to redact the victim’s name from the footage, and to temporarily put on hold public access to the online archive of its broadcasts. “We . . . agree that on the record of this case, the judge’s order was unconstitutional because the Commonwealth did not provide an adequate demonstration that this particular minor’s privacy or psychological well-being would be harmed by publication of her name, or that a prior restraint was the least restrictive reasonable method to protect those interests,” the court said. *Commonwealth v. Barnes*, 963 N.E.2d 1156, 1161 (Mass. 2012).

The Massachusetts Legislature is currently considering Senate bill 785, which would impose criminal charges against members of the news media and others who, in connection with any criminal proceeding, disclose documents that divulge information about a child involved in the proceeding, regardless of the source of such documents or information. The Reporters Committee for Freedom of the Press and a number of local media organizations and advocacy groups submitted comments opposing the measure, arguing that it goes too far by seemingly prohibiting the publication of all information about child witnesses in all criminal proceedings and amounts to an unconstitutional prior restraint on publication. In early February, the Joint Committee on the Judiciary held a public hearing on the bill, but there has been no action since.

Michigan

Delinquency and dependency proceedings: In general, juvenile court hearings are open to the public in Michigan. But on request by a party or victim, the court may close the proceedings during the testimony of a child or victim to protect the welfare of either. In deciding whether a child or victim’s welfare warrants closure, the court will consider the nature of the proceedings, the age and maturity of the witness and the preference of the witness or that of a parent if the witness is a child that the proceedings be open or closed. The court may not close a juvenile delinquency proceeding to the public during the testimony of the juvenile. Mich. Comp. Laws Ann. § 712A.17 (West 2012); Mich. Ct. R. 3.925.

Delinquency records: Juvenile delinquency records are open to the general public except for records of hearings that were closed. Those records can be opened only by court order to people with a legitimate interest in them.

Dependency records: Child protective

files and records are confidential and only available to certain individuals and agencies designated by statute and individuals with a legitimate interest. In determining whether a person has a legitimate interest, the court will consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor and any restrictions on disclosure imposed by state or federal law. Mich. Comp. Laws Ann. § 722.627; Mich. Ct. R. 3.925.

Minor testimony: Michigan law allows victims 15 years old or younger and developmentally disabled victims regardless of age to testify about a sexual offense outside the presence of the defendant via video-recorded testimony. During this testimony, the law requires that everyone “not necessary to the proceeding” be excluded from the courtroom but does not specify — nor have Michigan courts interpreted — whether the media are considered necessary in this context. Mich. Comp. Laws Ann. § 600.2163a.

Minnesota

Delinquency hearings: Under Minnesota law, juvenile delinquency hearings generally are not open to the public. However, the proceedings are open if a minor has allegedly committed an offense that would be a felony if committed by an adult and the minor was 16 years old or older at the time of the offense. Minn. Stat. Ann. § 260B.163 (West 2012). In a case where it was undisputed that the public had a right of access to a delinquency proceeding given the age and alleged crime of the juvenile, the public also had the right to attend a hearing during which the court would decide whether the juvenile would be tried as an adult. *Minneapolis Star Tribune v. Bush*, 20 Media L. Rep. (BNA) 2293 (Minn. Ct. App. 1993). But the court may still exclude the public from a transfer hearing when the parties are discussing evidence relating to the minor’s psychological state or other evidence that would not be public in an adult proceeding. In other delinquency proceedings, including transfer hearings that do not qualify under the criteria described above, the court may admit people with a direct interest in the case or in the work of the court. Minn. Stat. Ann. § 260B.163, Minn. Juv. Ct. R. 18.05. The Minnesota Supreme Court held that “the news media have a strong interest in obtaining information regarding our legal institutions and an interest in informing the public about how judicial power in juvenile courts is being exercised.” Because the media have a direct interest in the work of the court, a court may allow

journalists to be present during juvenile proceedings that otherwise are closed to the general public. *In re Welfare of R.L.K.*, 269 N.W.2d 367, 370, 371 (Minn. 1978). Although the court was interpreting a different statutory provision that has since been repealed, the language in the applicable statute is identical to that in the old one and thus the court’s reasoning likely is still applicable. It is important to note, however, that *In re Welfare of R.L.K.* did not involve a juvenile delinquency proceeding but rather a proceeding involving the termination of parental rights.

Delinquency records: Generally, the records of juvenile delinquency proceedings are unavailable to the public. But the public does have access to the written appellate opinions of juvenile courts as well as the records of juvenile delinquency proceedings where the offender is 16 years old or older and has committed a crime that would be a felony if committed by an adult. Minn. Stat. Ann. § 260B.171.

Dependency proceedings and records: Under Minnesota law, juvenile court hearings relating to the termination of parental rights and various other child protection matters are open to the public absent exceptional circumstances. *Id.* § 260C.163. The records from these proceedings also are available for public inspection. *Id.* § 260C.171. The Minnesota Court of Appeals held that the possible traumatization of a child involved in a juvenile dependency and neglect proceeding was not a compelling state interest sufficient to justify a gag order on the media. As a result, the trial court’s order prohibiting the media from publishing any information relating to the proceeding in question, including information obtained legally from public records and independent sources, was ruled unconstitutional. *Minneapolis Star & Tribune Co. v. Schmidt*, 360 N.W.2d 433, 435 (Minn. Ct. App. 1985)

Restrictions on coverage: Minnesota law allows trial judges to close the courtroom when minor victims testify about sexual offenses. Minn. Stat. Ann. § 631.045. The state appellate court upheld a trial court’s decision to allow news reporters into the courtroom during the testimony of minor sexual assault victims on the condition that the journalists not publish the juveniles’ names or disclose information relating to confidential records revealed through their testimony, although the media were not restrained from publishing information they obtained from other sources. *Austin Daily Herald v. Mork*, 507 N.W.2d 854, 858 (Minn. Ct. App. 1993). The law also allows victims and witnesses 11 years

old or younger to testify about physical or sexual abuse or a crime involving violence outside the presence of the defendant via closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. Minn. Stat. Ann. § 595.02.

Mississippi

Delinquency proceedings: Members of the public are excluded from juvenile delinquency hearings in Mississippi unless they have a direct interest in the cause or work of the court. Miss. Code Ann. § 43-21-203 (West 2011).

Dependency proceedings: Media coverage of delinquency or “child in need of supervision” proceedings is strictly prohibited except in extraordinary and compelling circumstances. Miss. Youth Ct. R. 5.

Delinquency and dependency records: Juvenile court records are confidential except by court order in situations where the court determines that disclosure would advance the child’s best interest or public safety. Non-identifying information is available to people engaged in bona fide research. This general rule of confidentiality does not apply to the names and addresses of juveniles who: 1) have been adjudicated delinquent twice for an act that would be a felony if committed by an adult or for the unlawful possession of a firearm; and 2) have been adjudicated delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense specified in a particular statute, any violation of a particular statute involving drug trafficking or any violation of a particular statute involving driving under the influence. Nor does the prohibition apply to the disclosure of information in a criminal defendant’s juvenile record if such information is discussed in open court. *Jeffries v. State*, 724 So. 2d 897, 899—900 (Miss. 1998). And in holding that a youth court judge did not abuse his discretion in releasing records of a juvenile’s adjudication of delinquency for shoplifting for use as a defense in the juvenile’s civil suit arising from the same incident, the Mississippi Supreme Court stated that the right of confidentiality in youth court proceedings is qualified and not an absolute privilege. *Daniels by Glass v. Wal-Mart Stores, Inc.*, 634 So. 2d 88, 93 (Miss. 1993).

Law enforcement agencies may publicly disclose information about a child taken into custody for the alleged commission of a delinquent act without a court order. But the information may not identify the

child or the child's address unless the information involves a child convicted as an adult. Miss. Code Ann. § 43-21-261. But the statute does not prohibit release of the name and identifying information of a child reported missing or abducted. Miss. Op. Att'y Gen. 2002-0561 (2002). Law enforcement agencies also may disclose any public record it has maintained that contains statistical information regarding the number of arrests of students at local public schools, including records that categorize students by age, grade level, sex, race, offense(s) charged and disposition of charges, provided that the records do not contain any information from which the child may be identified. Miss. Op. Att'y Gen. 2008-00290 (2008). In cases where there is any indication or suggestion of either abuse or neglect and a child's physical condition is medically labeled as "serious" or "critical," the general rule of confidentiality does not apply. Moreover, in cases of child deaths, the state Department of Human Services may release the following information: 1) the child's name; 2) the address or location; 3) a verification from the agency of case status, i.e., no case or involvement, case exists, open or active case, case closed; 4) if a case exists, the type of report or case, i.e., physical abuse, neglect, etc., date of intake and investigation, and case disposition, i.e., substantiated or unsubstantiated. This information may not be disclosed, however, if there is a pending or planned investigation into the death by any local, state or federal government agency or institution. Miss. Code Ann. § 43-21-261.

Restrictions on coverage: The Mississippi Constitution states that "in prosecutions for rape, adultery, fornication, sodomy or crime against nature the court may, in its discretion, exclude from the courtroom all persons except such as are necessary in the conduct of the trial." The Mississippi Court of Appeals held that the defendant's right to a public trial was not violated when the trial court excluded the public from the courtroom during the testimony of a child sexual assault victim. The court recognized the sensitive nature of the testimony, the family dynamics, the emotional state of the child and the child's age. *Tillman v. State*, 947 So. 2d 993, 995 (Miss. Ct. App. 2006); *Richardson v. State*, 990 So. 2d 247, 251—52 (Miss. Ct. App. 2008) (finding same in case involving child fondling). A request for closure must be docketed, as notice to the media and public, in the court clerk's office at least 24 hours before any hearing on the matter may be held, and the media have standing to contest a court order restricting public

access to legal proceedings. *Gannett River States Publ'g Co. v. Hand*, 571 So. 2d 941, 944 (Miss. 1990). Mississippi law also allows a child victim or witness who is less than 16 years old and testifying about sexual or child abuse to do so outside the presence of the defendant via closed-circuit television or video-recorded testimony if the court determines that the child witness would suffer traumatic or mental distress from testifying in open court on before the defendant. The statutes do not specify whether the media and public may remain in the courtroom during this testimony. Miss. Code Ann. §§ 13-1-405, 13-1-407. Court rules governing electronic and photographic coverage of judicial proceedings explicitly prohibit such coverage of minors. Miss. R. 3.

Missouri

Delinquency proceedings: Members of the public generally are excluded from juvenile court proceedings except for people with a direct interest in the case or in the work of the court. Public access is allowed, however, in those delinquency proceedings in which the juvenile is accused of conduct that would be a class A or B felony if committed by an adult or conduct that would be a class C felony if committed by an adult and the juvenile previously has been adjudicated delinquent at least twice for conduct that would be any-level felony if committed by an adult. Mo. Ann. Stat. § 211.171 (West 2012). Where there is a right of public access to a delinquency proceeding given the juvenile's alleged crime, the statute does not limit such access to a particular phase of the proceedings but provides for access to the entire case, including a transfer hearing. *State ex rel. St. Louis Post-Dispatch, LLC v. Garvey*, 179 S.W.3d 899, 901 (Mo. 2005).

Delinquency records: Records of juvenile delinquency proceedings are not open for public inspection except by court order to people with a legitimate interest in the records. But the records are open if the juvenile is charged with an offense which would be a class A felony if committed by an adult or capital, first- or second-degree murder. Moreover, after a child has been adjudicated delinquent for an offense which would be a class A felony if committed by an adult, the records related to the proceeding are open to the public to the same extent that records of criminal proceedings are open to the public. The juvenile officer is authorized to publicly disclose information about the juvenile's alleged offense, the substance of the petition, the status of proceedings in

the juvenile court and any other information that does not specifically identify the child or the child's family. Law enforcement records, however, are not open to public inspection unless by court order. But this rule of confidentiality does not apply to police records in cases where the juvenile is charged as an adult or convicted of serious offenses. Mo. Ann. Stat. § 211.321.

Dependency proceedings: Hearings conducted in any proceeding involving a juvenile who is alleged to be in need of care and treatment or involving the termination of parental rights are open to the public except during the testimony of any juvenile or victim. By request of a party or guardian ad litem, the court may close or partially close a hearing to the public if it finds that closure: 1) is in the best interests of the juvenile; 2) will protect the physical or emotional well-being of the juvenile or the safety of any other person; 3) will promote the integrity of the fact-finding process; or 4) will protect the privacy of the juvenile or a sibling, foster or adoptive parents, foster care institutions or any other person or institution providing care for the juvenile. A court also may exclude or partially exclude any person from a hearing for good cause, exceptional circumstances or where exclusion will serve the best interests of the juvenile. The public is prohibited from making any video or audio recordings of a hearing or photographing any party or witness during a hearing. After a dependency hearing is over, the juvenile officer, attorney for the juvenile officer, children's division, attorney for the children's division, guardian ad litem or court-appointed special advocate may provide, but is not limited to providing, the following information about the hearing: 1) the nature of the case, i.e., abuse or neglect; 2) the result or outcome of the hearing; and 3) the next hearing date. *Id.* § 211.319; Mo. Juv. Ct. R. 122.01.

Dependency records: Pleadings and court orders in proceedings involving a juvenile who is alleged to be in need of care and treatment or involving the termination of parental rights begun on Jan. 1, 2006, or later are open to the public, although the identity of any child involved, except the perpetrator, as well as identifying information about foster or adoptive parents or other people providing care to the juvenile and a reporter of child abuse will be redacted. Medical reports, psychological or psychiatric evaluations, investigative reports of the children's division, social histories, home studies, police reports and law enforce-

ment records and other records and reports deemed confidential by law are not available for public inspection, and only people whom the court deems to have a legitimate interest in the records will be allowed access to them. In deciding whether a person has a legitimate interest in the records, the court will consider the nature of the proceedings, the welfare and safety of the public and the interest of any child involved. The court may prohibit public access to specific pleadings and court orders after an opportunity for argument and a finding of exceptional circumstances. Publicly available pleadings and court orders are available for inspection and copying during regular business hours, but the public will not have access to files or records maintained in electronic format in court information systems because neither the courts nor the office of court administration is required to modify electronic information systems to comply with this right of public access. Mo. Ann. Stat. § 211.319; Mo. Juv. Ct. R. 122.02. The director of the state Department of Social Services, after a review of the potential harm to other children in the immediate family, may release findings or information about cases that resulted in the death or near death of a child. Mo. Ann. Stat. § 210.150.

Restrictions on coverage: Missouri law allows victims under 17 years old to testify about child or sexual abuse or violent crimes such as murder, assault or kidnapping outside the presence of the defendant if the court finds that the child would suffer such significant psychological or emotional trauma from testifying before the defendant that the child would be unable to testify. The statute does not specify whether the media and public are allowed to remain in the courtroom during this testimony. Mo. Ann. Stat. §§ 491.678—680. The state Supreme Court's rules governing media coverage of judicial proceedings prohibit the recording and photographing of juveniles who participate in a trial court proceeding and request such a restriction. But with the judge's permission members of the news media may record and photograph a juvenile who is being prosecuted as an adult. Mo. Sup. Ct. Op. R. 16.02—.03.

Montana

Delinquency proceedings: The general public generally may not be excluded from delinquency proceedings in Montana, although the court may close a hearing in cases where a petition for adjudication of delinquency alleges that the youth is in need of intervention. Mont. Code Ann. §

41-5-1502 (2011). In addition, the court may temporarily exclude the public from a dispositional hearing during the taking of evidence on the issues of the need for treatment and rehabilitation if the court finds that such closure is in the best interest of the juvenile or the juvenile's parent or guardian. *Id.* § 41-5-1511.

Delinquency records: Juvenile delinquency records on file with the clerk of court are open to public inspection. But social, medical and psychological records, assessment materials and supervision records of probationers are open only to certain individuals designated by statute and by court order to those people with a legitimate interest in the case or in the work of the court. *Id.* § 41-5-215.

Dependency proceedings: The statutory provisions addressing hearings in dependency proceedings do not specify whether they are open to the public. *Id.* §§ 41-3-432, 41-3-437, 41-3-438.

Dependency records: All reports of child abuse and neglect must be kept confidential, although the law allows that records, including case notes, correspondence, evaluations, videotapes and interviews, may be released to the news media if disclosure is limited to confirmation of factual information about how the case was handled if such disclosure does not violate the privacy rights of the child or the child's parents. Disclosure of the records may be prohibited, however, where release is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records. The law states that a news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member if the news organization, employee, writer or reporter maintains the confidentiality of the child who is the subject of the proceeding. *Id.* § 41-3-205.

Restrictions on coverage: Montana law allows child victims of sexual offenses to testify outside the presence of the defendant via video-recorded testimony. *Id.* § 46-15-402. The statute does not specify whether the public and media may remain in the courtroom during this testimony, although it does state that videotapes that are part of the court record are subject to a protective order by the court to protect the privacy of the victim. *Id.* § 46-15-403.

Nebraska

Delinquency and dependency proceedings: The relevant statute does not specify whether juvenile court proceedings are open to the public in Nebraska. Neb. Rev.

Stat. § 43-247 (2011).

Delinquency and dependency records: In all juvenile court proceedings, pleadings, orders, decrees and judgments are public documents, while medical, psychiatric and social welfare reports and the records of juvenile probation officers as they relate to individual proceedings in juvenile court are confidential. *Id.* § 43-2,108.

Restrictions on coverage: Nebraska law allows child victims and witnesses 11 years old or younger to testify about any felony offense outside the presence of the defendant via video-recorded testimony. The statute does not specify whether the public and media may remain in the courtroom during this testimony. *Id.* § 29-1926.

Cameras: Although court rules for expanded media coverage of Nebraska trial courts explicitly prohibit the broadcasting, recording and photographing of juvenile proceedings, such coverage is permissible if all parties, including a parent or guardian of a minor, consent on the record. Neb. R. 2.

Nevada

Delinquency proceedings: Juvenile delinquency hearings are open to the public in Nevada unless the judge determines that closure or partial closure is in the best interests of the child or the public. In those cases, only people with a direct interest in the case may be admitted. Nev. Rev. Stat. Ann. § 62D.010 (West 2011).

Delinquency records: Juvenile delinquency records generally are not open for public inspection except by court order to people with a legitimate interest in the records. *Id.* § 62H.030. A separate statutory provision prohibits a news medium from publishing or broadcasting the name or race of any child connected with any delinquency proceeding without court order unless the proceeding is open to the public. This restriction does not apply, however, in cases where: 1) the child previously has been adjudicated delinquent at least once for a crime that would have been a felony if committed by an adult that resulted in death or serious bodily injury and the child is charged with committing another crime that would be a felony if committed by an adult; and 2) the child previously has been adjudicated delinquent at least twice for crimes that would have been felonies if committed by an adult and the child is charged with committing another such act. *Id.* § 62H.020. The state Supreme Court held that nothing in the statute limits the class of people who can have a legitimate interest in juvenile records, and courts have

wide discretion to determine which individuals qualify. In exercising this discretion, a court must balance the need of the requesting party against the interests of society in keeping certain juvenile court records confidential. *Hickey v. Eighth Judicial Dist. Court*, 782 P.2d 1336, 1339 (Nev. 1989). Note that the court was interpreting a different statutory provision that has since been repealed, but nearly identical language from the old statute was recodified into the new one, so the case's authority is most likely still applicable.

Dependency proceedings: Whether dependency proceedings are open to the public depends largely on where they occur. All hearings involving children in need of protection statewide are closed to the general public unless the court on the motion of another person or on its own determines that opening the hearing is in the best interests of the child involved. In deciding whether opening the hearing is in the best interests of the child, the judge must consider and give due weight to the child's desires. If the hearing is open, the judge must make specific factual findings to support the decision. In judicial districts that include a county with a population of less than 700,000, hearings involving the termination of parental rights also are closed unless these same standards for openness are met. In all other judicial districts, these proceedings generally are open to the public unless the court on the motion of another person or on its own determines that the hearing must be closed or partially closed because such closure is in the best interests of the child. In deciding whether closure or partial closure is in the best interests of the child, the judge must consider and give due weight to the child's desires. If the hearing is closed, the judge must make specific factual findings to support the closure, and only those people with a direct interest in the case may be admitted. Hearings involving children taken into protective custody are generally closed regardless of where they occur, and only people with a direct interest in the case may be admitted. Nev. Rev. Stat. Ann. § 432B.430.

Dependency records: The records of juvenile dependency hearings are confidential. *Id.*

Restrictions on coverage: Nevada law allows witnesses less than 13 years old and victims of sexual abuse regardless of age to testify in any criminal prosecution outside the presence of the defendant via video-recorded testimony. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. *Id.* § 174.227.

New Hampshire

Delinquency proceedings: Juvenile delinquency proceedings are closed to the public in New Hampshire. N.H. Rev. Stat. Ann. § 169-B:34.

Delinquency records: The public is not allowed access to delinquency court records, and the disclosure of information contained therein without court order is a misdemeanor offense. However, in cases involving violent crimes where the petition alleging adjudication for delinquency is found to be true, the court clerk may disclose the following information after the adjudicatory hearing: 1) the name and address of the juvenile charged; 2) the specific offense; 3) the custody status of the juvenile; and 4) the final disposition ordered by the court. *Id.* § 169-B:36. Release and publication of information about a juvenile, including the juvenile's name and address as well as that of the parent or guardian, who is 12 years old or older and found to have committed vandalism or a second or subsequent offense for the possession with intent to distribute any controlled drug also are permitted. *Id.* § 169-B:46. Although the law specifically states that it is a misdemeanor offense for any newspaper or radio or television station to disclose the name, address or any other identifying information about an arrested juvenile or information about any juvenile court proceeding, non-identifying information about the disposition of delinquency cases involving acts that would be felonies if committed by an adult may be released and published by the media. And the police, with written approval of the county attorney or attorney general, may release to the media the name and photograph of a juvenile if: 1) the juvenile escaped from court-ordered custody; 2) the juvenile has not been apprehended; and 3) there is good cause to believe that the juvenile presents a serious danger to the juvenile or public safety. *Id.* §§ 169-B:37, 169-B:38.

Dependency proceedings and records: New Hampshire law requires that the general public and any member of the news media be excluded from dependency proceedings, and only those people whose presence is requested or whom the judge deems to have a direct interest in the case or in the work of the court may be admitted. Those individuals are prohibited from disclosing any information obtained during the hearing that would identify any child or parent involved. *Id.* §§ 169-C:14, 170-C:10. The court records of dependency proceedings are confidential and withheld from public inspection. *Id.* § 169-C:25.

Restrictions on coverage: New Hampshire law allows a victim or witness who was 16 or younger at the time of the alleged offense to testify about any criminal offense outside the presence of the defendant via video-recorded testimony if the court determines that the child would suffer emotional or mental strain from testifying in open court. The statute does not specify whether the public and media are allowed to remain in the courtroom during this testimony. *Id.* § 517:13-a.

New Jersey

Delinquency proceedings: If requested by the juvenile or the juvenile's parent or guardian, the prosecutor or any other interested party, including the media, a court may allow public attendance during any proceeding in a juvenile delinquency case provided the judge determines that there is no substantial likelihood of specific harm to the juvenile. Unless such a request is made and granted, every delinquency hearing will be conducted in private with only those people having a direct involvement in the case present. The judge also may admit those people whom the judge deems to have an interest in the work of the court on the condition that they agree to not record, disclose or publish the names, photographs or other identifying information about people involved in the proceeding except as allowed by the court. N.J. Ct. R. 5:19-2. Hearings to determine whether a juvenile will be tried as an adult are open to the media where the juvenile fails to provide evidence of substantial likelihood that the juvenile would be specifically harmed by an open hearing or establish extraordinary circumstances that would compel exercise of the court's discretion to close the hearing. *State in Interest of Presha*, 677 A.2d 806, 810 (N.J. Super. Ct. Ch. Div. 1995). A juvenile's allegation that testimony of a highly embarrassing nature would occur during his sexual assault delinquency proceeding and that publicity might be detrimental to his rehabilitation were insufficient to deny the news media access to the courtroom. But the victim's demonstration of a substantial likelihood of specific harm that would occur if the media were allowed to be present — shown through the testimony of the victim's treating psychiatrist that she suffered from post-traumatic stress disorder and that media coverage would impede her recovery — warranted denial of the newspaper's request to be present during the hearing. Nonetheless, the court held that a victim has standing to oppose a request to open the juvenile proceeding. *State in Interest*

of *K.P.*, 709 A.2d 315, 317—18, 328 (N.J. Super. Ct. Ch. Div. 1997). In delinquency proceedings where information about the juvenile was lawfully obtained from other sources, a court restriction on the publication of identifying information about the juvenile violates the free press guarantees of the federal and state constitutions. *State in Interest of H.N.*, 632 A.2d 537, 539 (N.J. Super. Ct. App. Div. 1993).

Delinquency records: Social, medical, psychological, legal and other court records pertaining to juveniles charged as delinquents are “strictly safeguarded” from public inspection. N.J. Ct. R. 5:19-2. However, information about the identity of a juvenile adjudicated delinquent, the offense, the adjudication and the disposition will be publicly disclosed where the offense for which the juvenile was adjudicated delinquent would be a crime of the first, second or third degree, aggravated assault or property destruction or damage over \$500 if committed by an adult. But if the juvenile demonstrates at the time of disposition a substantial likelihood that specific and extraordinary harm would result from such disclosure, the information may be withheld from public inspection after the judge provides on-the-record reasons why disclosure would be harmful to the juvenile. N.J. Stat. Ann. § 2A:4A-60 (West 2012).

Dependency proceedings and records: Juvenile dependency hearings in New Jersey are conducted in private with only those people having a direct involvement in the case present. The judge also may admit those people whom the judge deems to have an interest in the work of the court on the condition that they agree to not record, disclose or publish the names, photographs or other identifying information about people involved in the proceeding. N.J. Ct. R. 5:17-4. The state Supreme Court held that the compelling state interest in protecting victims of child abuse from the embarrassment of testifying in open court, with the attendant possibility of media coverage, justified the presumption that proceedings involving the termination of parental rights are closed to public, notwithstanding the right of public access to judicial proceedings and records implicit in the First Amendment. This presumption of closure does not, however, equate with a mandatory rule, and members of the public, including the media, must be free to request that they be permitted to attend the proceedings. In those cases, the court must balance the public’s access right against the state’s interest in protecting children from the possible detrimental

effects of publicly revealing allegations and evidence relating to parental neglect and abuse, considering such factors as the nature of the allegation and the age and maturity of the child. *N.J. Div. of Youth & Family Servs. v. J.B.*, 576 A.2d 261, 269—70 (N.J. 1990). Social, medical, psychological, legal and other court records that are part of a dependency proceeding are “strictly safeguarded” from public inspection. N.J. Ct. R. 5:17-4.

Restrictions on coverage: New Jersey law allows victims and witnesses who are 16 years old or younger to testify about sexual or child abuse outside the presence of the defendant via closed-circuit television if the court finds that there is a substantial likelihood that the witness would suffer severe emotional or mental distress by testifying in open court. The statute seems to indicate that the public and media are allowed to remain in the courtroom during this testimony. N.J. Stat. Ann. § 2A:84A-32.4. Pursuant to court rules governing cameras in the courts, recording or photographing crime victims 17 years old or younger at the time of trial and witnesses 13 years old or younger at the time of trial is allowed only at the discretion of the judge. But coverage of 17-year-old defendants charged with motor vehicle violations is permissible. N.J. Ct. Directive 10-03.

New Mexico

Delinquency proceedings: Juvenile delinquency proceedings are open to the public in New Mexico, except where the judge, based on exceptional circumstances, finds it appropriate to conduct a closed hearing. People the court deems to have a proper interest in the case or in the work of the court, including “accredited representatives” of the news media, may attend a closed hearing on the condition that they agree to not reveal information regarding the exceptional circumstances that warranted closure to the general public. Members of the media who are granted admission to a closed hearing and intentionally divulge information obtained during the proceeding can be found guilty of a petty misdemeanor. N.M. Stat. Ann. § 32A-2-16 (West 2012).

Dependency proceedings: In New Mexico, all abuse and neglect hearings are closed to the general public. People the court deems to have a proper interest in the case or in the work of the court, including “accredited representatives” of the news media, may attend a closed hearing on the condition that they agree to not reveal information that would identify any child involved in the proceedings

or the parent, guardian or custodian of that child. A child subject to an abuse and neglect proceeding who is present at a hearing may object to the presence of the media. The court may exclude the media if it finds that their presence is contrary to the best interests of the child. *Id.* § 32A-4-20. Absent a statutory right of access to the courtroom, it is within the juvenile court’s discretion to decide whether to allow the media to attend abuse and neglect proceedings. *Albuquerque Journal v. Jewell*, 17 P.3d 437, 439 (N.M. 2001). In the *Albuquerque Journal* case, the state Supreme Court found that the juvenile court did not abuse its discretion in excluding the media from the proceeding because due to the extensive pre-hearing media coverage, they could not maintain the confidentiality of the parties involved, and “confidentiality is a necessary precondition to media access to child abuse and neglect proceedings.” *Id.* Members of the media who are granted admission to a closed abuse and neglect hearing and intentionally divulge information obtained during the proceeding can be found guilty of a petty misdemeanor. N.M. Stat. Ann. § 32A-4-20.

Delinquency records: In delinquency proceedings, all records, including, among others, related social records, diagnostic evaluations, psychiatric, medical, social-studies and pre-parole reports and supervision histories are privileged and generally not available for public inspection. But members of the public with a legitimate interest in the case or in the work of the court may inspect such records, save mental health and developmental disability records, by court order and an agreement to not release the records. People who intentionally release any delinquency information or records closed to the public can be found guilty of a petty misdemeanor. *Id.* § 32A-2-32.

Dependency records: In abuse and neglect proceedings, all records, including social records, diagnostic evaluations, psychiatric or psychological reports, videotapes, transcripts and audio recordings of a child’s statement of abuse and medical reports, are confidential and closed to the public. But members of the public with a legitimate interest in the case or in the work of the court may inspect such records by court order. People who intentionally release any abuse and neglect information or records closed to the public can be found guilty of a petty misdemeanor. *Id.* § 32A-4-33. In cases where a child’s death is allegedly caused by abuse or neglect, the state Children, Youth and Families Department may release the following

information: 1) the age and gender of the child; 2) the date of death; 3) whether the child was in foster care or in the home of the child's parent or guardian at the time of death; and 4) whether an investigation is being conducted by the department. If an investigation is being conducted, then a request for information beyond that listed above will be answered with a statement that a report is under investigation. If it is determined after completion of a child abuse or neglect investigation into a child's death that abuse or neglect caused the fatality, the following documents will be released upon request: 1) a summary of the department's investigation; 2) a law enforcement investigation report if it is in the department's possession; and 3) a medical examiner's report if it is in the department's possession. Prior to releasing any of these documents, however, department officials, after consulting with the district attorney, will redact: 1) information that would, in the opinion of the district attorney, jeopardize a criminal investigation or proceeding; 2) identifying information related to a reporting party or any other party providing information; and 3) information that is privileged, confidential or not subject to disclosure under federal or state law. Once these documents have been released, department officials may comment on the case within the scope of the released materials. *Id.* § 32A-4-33.1.

Restrictions on coverage: New Mexico law allows victims who are 15 years old or younger to testify about sexual offenses outside the presence of the defendant via video-recorded testimony. The statute does not specify whether the media and public may remain in the courtroom during this testimony. *Id.* § 30-9-17. Pursuant to the state Supreme Court's rules governing the broadcasting, recording and photographing of court proceedings, the judge has the discretion to prohibit such coverage of juveniles. N.M. Sup. Ct. R. 23-107.

New York

Delinquency and dependency proceedings: The state Family Court Act presumably permits the general public to attend juvenile court proceedings in New York. Because the statute states that the general public *may* be excluded, the assumption is that the public and media are allowed to attend and that an affirmative act by the court is required to exclude the public. N.Y. Fam. Ct. Act § 741 (McKinney 2012). Implementing this statute, the Uniform Rules for the Family Court explicitly provide that the public, including the news media, has access to proceedings before

the court. Closure is allowed only if the judge determines by supporting evidence that exclusion from a family court proceeding is warranted in that case because of factors designated in the rule. Among the factors governing the court's exercise of its discretion are the nature of the proceeding, the privacy interests of the individuals involved, the need to protect litigants, namely children, from harm and the unavailability or inappropriateness of less restrictive alternatives to exclusion. N.Y. Fam. Ct. R. 205.4. In 1997, the same year these rules were revised to provide greater public access, the family court allowed two news reporters to sit inconspicuously in the rear of the room during a hearing on charges that Malcolm Shabazz set a fire resulting in the death of his grandmother Betty Shabazz, the widow of Malcolm X. Citing the value of openness and applying constitutional standards, the court found that the juvenile failed to demonstrate an overriding interest establishing that closure of the hearing was essential to preserve higher values. "The public, as represented by the press, has a right to know that the Court is meeting its responsibility toward the community," the court said. *Matter of Application for News Media Coverage in the Matter of M.S.*, 662 N.Y.S.2d 207, 209 (N.Y. Fam. Ct. 1997); *see also Capital Newspapers Div. v. Moynihan*, 519 N.E.2d 825, 830 (N.Y. 1988) (involving youthful offenders who could not overcome the presumption of openness of their sentencing proceedings); *Matter of Chase*, 446 N.Y.S.2d 1000, 1009 (N.Y. Fam. Ct. 1982) (involving juvenile who failed to overcome the presumption of openness of fact-finding trial in a delinquency proceeding). However, another family court denied the news media access to a fact-finding hearing to determine whether a 9-year-old committed acts that would have been criminal if committed by an adult. The court's ruling was based on the extreme youth of the juvenile, his attorney's objection to public access and the court's inability, if it granted access, to shield the juvenile and his family from public identification in connection with any damaging or sensitive facts that may have been revealed at trial. *Matter of Robert M.*, 439 N.Y.S.2d 986, 990 (N.Y. Fam. Ct. 1981).

This rule allowing closure in certain circumstances does not apply, however, to juveniles charged with felonies. N.Y. Crim. Proc. Law § 720.15. Interpreting this statute, the state's highest appellate court held that sentencing proceedings for youthful offenders are presumptively open to the media and public and cannot be closed simply because juveniles are involved.

Moynihan, 519 N.E.2d at 829.

Although child protective proceedings also are presumptively open, New York courts have noted a concern for the physical, mental and emotional well-being of children as a basis for distinguishing access issues in such dependency cases from those that arise in the context of delinquency proceedings. N.Y. Fam. Ct. Act §§ 1011, 1043. For example, a state appellate court held that in an abuse and neglect proceeding involving parents charged with murdering their 6-year-old child, the family court erred in opening the proceedings to the public "in light of the extraordinarily sensitive and personal nature of the information that will be addressed . . . coupled with the strong evidence presented that publication of this information would be harmful to the [surviving] children and the impossibility of protecting the children's right to privacy due to the previous disclosure of the children's identities." *Matter of Ruben R.*, 641 N.Y.S.2d 621, 629 (N.Y. App. Div. 1996); *see also In re A.H.*, No. NN-2734-06, 2007 WL 2331882, at *2 (N.Y. Fam. Ct. Aug. 8, 2007) (denying access to child protective hearing to protect children's privacy and avoid psychological harm); *In re S./B./B./R. Children*, 34 Media L. Rep. (BNA) 2147, 2152 (N.Y. Fam. Ct. 2006) (denying access to child protective proceedings because public attention would be detrimental to children's mental health and welfare and suggesting instead that the media cover "the hundreds of truly 'anonymous' child protective cases filed each year"). Yet other New York courts have recognized that the strong presumption of public access to court proceedings extends to those before the family court. The state appellate court noted that "public access to court proceedings is strongly favored, both as a matter of constitutional law and as statutory imperative." *Anonymous v. Anonymous*, 550 N.Y.S.2d 704, 705 (N.Y. App. Div. 1990).

Last December, the chief administrative judge of the New York courts issued "general guidelines to help ensure public access to Family Court proceedings" — a move prompted by a Nov. 18, 2011, *New York Times* article reporting routine and regular violations of the public's right of access to family court proceedings. Memorandum from the Hon. A. Gail Prudenti to New York administrative judges (Dec. 19, 2011), available at http://www.rcfp.org/sites/default/files/docs/20111221_061013_ny_guidelines.pdf. According to the article, a reporter "tried to enter 40 courtrooms [during one week] in [New York City's] five Family Courts as a member of the public or a civic group monitoring the courts would. Entry was permitted to only five of

the courtrooms . . . a closing rate of nearly 90 percent.” The reporter encountered “antagonistic” court officials and officers, several of whom cited “court policy” as the rationale for barring public access. One judge called the reporter to the bench and told him he had to present his credentials to the court clerk on another floor, and in another instance, the chief court clerk told the journalist he had to answer the clerk’s questions before gaining access. William Glaberson, *New York Family Courts Say Keep Out, Despite Order*, N.Y. Times, Nov. 18, 2011, at A1.

In addition to reiterating the procedure for barring public access, the guidelines state that court staff, “in a respectful manner,” may ask each person who wants to observe a proceeding if he or she is a party, witness or otherwise associated with a specific case scheduled to be heard. Courtroom staff will inform the judge of the presence of a member of the news media or general public and advise whether that individual has any role in the matter. When that case is called, the judge may notify the litigants that an outside party is in attendance and ask if they have any objections. The memo also notes that a person who wishes to observe the proceeding will be allowed to sit in the courtroom subject to capacity limitations. Memorandum from the Hon. A. Gail Prudenti.

Delinquency and dependency records: The records of any proceeding in family court are not open to “indiscriminate” public inspection. But the court may in the exercise of its discretion allow the inspection of any papers or records in any case. N.Y. Fam. Ct. Act § 166. However, in cases involving child abuse or maltreatment, information about the abuse or maltreatment and investigation into and services related to may be publicly disclosed if a state or local commissioner of social services determines that such disclosure is not contrary to the best interests of the child, the child’s siblings or other children in the house and any of the following factors is present: 1) the subject of the abuse or maltreatment report has been charged with committing a crime related to a report maintained in the statewide central register; 2) a law enforcement agency or official, a district attorney, any other state or local investigative agency or official or a judge publicly disclosed in a report required to be disclosed in the course of their official duties the investigation into the child abuse or maltreatment by the local child protective service or the provision of services by such service; 3) an individual named as the subject of a child abuse or maltreatment report previously made a knowing,

voluntary, public disclosure concerning the report; or 4) the child named in the abuse or maltreatment report died or the report involves the near death of a child. Information released under this criteria may include, among other facts, the name and age of the abused or maltreated child and the identification of child protective or other services provided or actions taken regarding the child named in the report and the child’s family in response to the report. The disclosure of such information is limited, however, when the investigation into the report of abuse or maltreatment is ongoing; nor may the disclosed information identify the source of the report or other members of the child’s household who are not the subject of the report. When deciding whether disclosure would be contrary to the best interests of the child or others, the commissioner will consider the privacy of the child and the child’s family and the effects disclosure may have on efforts to reunite and provide services to the family. N.Y. Soc. Serv. Law § 422-a. Interpreting this statute, a New York trial court held that county social services records relating to a family, the father of which was convicted of murder in connection with a fire that killed his children, should be released under the state open records law where the county commissioner had determined that disclosure was in the public interest, he gave no specific reasons for nondisclosure, much of the information had already been released through the criminal proceedings and there were no surviving children whose best interests had to be considered. *Gannett Co., Inc. v. County of Ontario*, 661 N.Y.S.2d 920, 921 (N.Y. Sup. Ct. 1997).

In addition, civil or criminal court records relating to juveniles may be sealed in certain circumstances. A state trial court denied motions to seal records in a civil lawsuit brought against a school district by the parents of students allegedly sexually abused and held that where the identities of the alleged offenders had already been published and the identities of the alleged victims were known to the media, the mere fact that embarrassing allegations might be made against the school district was an insufficient showing of good cause to outweigh the presumption against sealing court records. In such cases, the media’s First Amendment right to report and the public’s right to be informed of allegations of sex crimes contained in court records outweighed the confidentiality interests of the parties. But the court did order that pseudonyms of the alleged victims be used in all court documents and that any documents using their real names be redacted. *Doe v. Bellmore-Merrick Cent. High Sch.*

Dist., 770 N.Y.S.2d 847, 850—51 (N.Y. Sup. Ct. 2003).

Restrictions on coverage: New York law allows child victims and witnesses 14 years old or younger to testify about sexual offenses outside the presence of the defendant via closed-circuit television. Unless the courtroom has been closed pursuant to a court order, the public may hear the testimony and view the image of the child witness as it is broadcast in the courtroom. N.Y. Crim. Proc. Law §§ 65.00—30. In addition, the state’s highest appellate court held that a trial court did not abuse its discretion when it excluded the media and public from a pretrial suppression hearing in the murder prosecution of a 13-year-old and instead granted the media access to a redacted transcript of the hearing. Because that transcript excluded matters ruled inadmissible during the closed suppression hearing, the defendant’s interest in a fair trial was no longer in jeopardy. *Merola v. Bell*, 393 N.E.2d 1038, 1039 (N.Y. 1979).

North Carolina

Delinquency proceedings: All juvenile delinquency hearings are open to the public in North Carolina unless the court closes or partially closes the hearing by request of a party involved or on its own for good cause. In deciding whether good cause exists to close or partially close a delinquency hearing, the court will consider: 1) the nature of the allegations; 2) the age and maturity of the juvenile; 3) the benefit to the juvenile of confidentiality; 4) the benefit to the public of an open hearing; and 5) the extent to which the confidentiality of the juvenile’s court file will be compromised by an open hearing. The court may not close or partially close a hearing if the juvenile requests that it remain open. N.C. Gen. Stat. Ann. § 7B-2402 (West 2011). Interpreting this statute, a court held that the detention and probable cause hearings in the case of a 15-year-old juvenile charged with the murder of an 8-year-old boy would remain open. The court found that no good cause existed to close the proceedings because the juvenile was at the uppermost age for being tried as a juvenile, the media would continue to cover the case even if the proceedings were closed and the juvenile’s file would remain confidential. *In re Juvenile Charged*, 30 Media L. Rep. (BNA) 2245 (N.C. County Ct. 2002).

Dependency proceedings: The court may close or partially close abuse, neglect and dependency proceedings to the public. In making that decision, the court will consider: 1) the nature of the allegations; 2) the age and maturity of the juvenile; 3) the benefit to the juvenile of confidentiality;

and 4) the benefit to the public of an open hearing. The court may not close or partially close a hearing if the juvenile requests that it remain open. *Id.* § 7B-801.

Delinquency and dependency records: In juvenile delinquency proceedings, all records are withheld from public inspection any may be examined only by court order. *Id.* §§ 7B-2901, 7B-3000. Disclosure of identifying information about a juvenile under investigation for an alleged delinquent act is prohibited, but the media's right to identify and publish the photograph of a juvenile charged with arson and murder is not outweighed by the minor's interest in confidentiality when the information is lawfully obtained. *In the Matter of a Minor Charged in This Proceeding*, 463 S.E.2d 72, 72 (N.C. 1995). The publication of photographs of runaway juveniles is permitted with the permission of the juveniles' parents, and specific information designated by statute, including the juvenile's photograph, will be publicly released within 24 hours of a juvenile's escape from custody. *Id.* §§ 7B-3100, 7B-3102.

A public agency must publicly disclose upon request the findings and information related to a child fatality or near fatality caused by suspected abuse, neglect or mistreatment if: 1) a person is criminally charged with causing the child fatality or near fatality; or 2) the district attorney has certified that a person would be charged with causing the child fatality or near fatality but for that person's prior death. The agency may refuse to disclose the information, however, if it has a reasonable belief that release of the information: 1) is not authorized by this statute; 2) is likely to cause mental or physical harm or danger to a minor child living in the deceased or injured child's household; 3) is likely to jeopardize the state's ability to prosecute the defendant; 4) is likely to jeopardize the defendant's right to a fair trial; 5) is likely to undermine an ongoing or future criminal investigation; or 6) is not authorized by federal law and regulations. If the request for such information is denied, an appeal may be filed with the appropriate superior court for an order compelling disclosure of the findings and information of the public agency. Legal actions brought under this statute will be scheduled for an immediate hearing, and subsequent proceedings in the action will receive priority by the appellate courts. N.C. Gen. Stat. Ann. § 7B-2902.

Restrictions on coverage: North Carolina law allows a trial court to close the courtroom during the testimony of a victim regardless of age in a case involving a sexual offense. N.C. Gen. Stat. Ann. § 15-166. Under the statute, only officers of the

court, the defendant and those involved in the trial may remain in the courtroom during this testimony, but courts have allowed the media to do so as well. *Bell v. Jarvis*, 236 F.3d 149 (4th Cir. 2000); *State v. Yoes*, 157 S.E.2d 386 (N.C. 1967). Before the court may close the courtroom, however, it must determine if the party seeking closure has advanced an overriding interest that is likely to be prejudiced. If so, the court must consider reasonable alternatives to closure and make on-the-record findings adequate to support the closure. Finally, the closure must be no broader than necessary to protect the interest identified. *State v. Jenkins*, 445 S.E.2d 622, 625 (N.C. Ct. App. 1994). Court rules governing media coverage of public judicial proceedings prohibit the recording and photographing of minors. N.C. R. 15.

North Dakota

Delinquency and dependency proceedings: The public is generally excluded from juvenile court proceedings in North Dakota. However, hearings to declare a person in contempt of court are open. Also open to the public are transfer hearings in which the court is considering a petition alleging that a juvenile who is 14 years old or older committed a delinquent act involving the offense of murder, attempted murder, gross sexual imposition or attempted gross sexual imposition by force or the threat of imminent death, serious bodily injury or kidnapping or the manufacture, delivery or possession with the intent to manufacture or deliver a controlled substance. Transfer hearings in which a juvenile has the burden of showing that he or she is amenable to treatment or rehabilitation as a juvenile through available programs also are open. These cases involve alleged delinquent acts involving the offense of manslaughter, aggravated assault, robbery, arson involving an inhabited structure or escape involving the use of a firearm, destructive device or other dangerous weapon or cases where the alleged delinquent act involves an offense that would be a felony if committed by an adult and the child previously has been adjudicated delinquent at least twice for offenses that would be felonies if committed by an adult. The general public must be excluded from all other delinquency and dependency hearings, although the court may allow people with a proper interest in the proceedings to attend. N.D. Cent. Code § 27-20-24 (2011).

Delinquency and dependency records: All juvenile court records are confidential and open to inspection only by court order to people the judge deems to have

a legitimate interest in the case or in the work of the court. But general information that does not identify any juvenile, witness or victim in a proceeding is open to the public by request. Also, delinquency files in the court clerk's office are open for public inspection if the related hearing was open to the public. *Id.* § 27-20-51.

Law enforcement records are not open to public inspection unless the juvenile is charged as an adult, national security requires disclosure or the court orders disclosure in the interest of the juvenile. But non-identifying general information may be released. *Id.* § 27-20-52. In order to apprehend a juvenile who is alleged to have committed a delinquent act involving actual or the threat of serious bodily injury that would constitute a felony if committed by an adult or has escaped from a juvenile facility, the juvenile's name, photograph, fingerprints or other identifying information may be publicly released. *Id.* § 27-20-51.1.

Restrictions on coverage: North Dakota law does not restrict public access to court proceedings during the testimony of minor witnesses. But the state Supreme Court held that a defendant's constitutional right to a public trial was not violated by the trial court's partial closure of his murder and aggravated assault trial during the testimony of a 15-year-old prosecution witness. The record indicated that the trial judge weighed the competing interests of the defendant and public, held three hearings on the closure request and delayed ruling until the media could be heard. The high court affirmed the trial court's finding that the witness' hesitation to testify due to extensive media coverage of the case and allegations of possible street-gang repercussions provided a substantial reason for the closure, especially since the court allowed members of the media and the defendant's immediate family, as well as the victim to remain in the courtroom during the testimony. *State v. Garcia*, 561 N.W.2d 599, 605—06 (N.D. 1997). Court rules governing media coverage of court proceedings prohibit recording or photographing a juvenile victim or witness in a proceeding in which illegal sexual activity is an element of the evidence. N.D. Sup. Ct. Admin. R. 21.

Ohio

Delinquency and dependency proceedings: Juvenile court proceedings are neither presumptively open nor presumptively closed in Ohio. A juvenile court can restrict public access to the proceedings if, after a hearing, it finds there is a reasonable and substantial basis for believing

that public access could harm the child or endanger the fairness of the adjudication, the potential harm to the child outweighs the benefits of public access and there are no reasonable alternatives to closure. *In re T.R.*, 556 N.E.2d 439, 451 (Ohio 1990). Before excluding the media and public from a juvenile court proceeding, the court must conduct an evidentiary hearing to determine under the *In re T.R.* standard whether the proceeding should be closed. *State ex rel. Plain Dealer Publ'g Co. v. Floyd*, 855 N.E.2d 35, 42 (Ohio 2006). In *In re T.R.*, the Ohio Supreme Court stated that the public may have an interest in juvenile delinquency proceedings analogous to its interest in criminal proceedings, which are presumptively open. Applying this language, a trial court held that the public does have such an interest, and “the closer the alleged delinquent is to the age of 18, the greater is the public’s interest in access to the proceedings. Moreover, the public’s interest is accentuated when the alleged delinquent is the subject of a pending motion to transfer to General Division for prosecution as an adult, because, at such time, the gap between the juvenile court and the General Division is at its narrowest.” Thus, the court held that the public has a First Amendment-based right of access to transfer hearings — an interest that “must be weighed against the unique confidentiality concerns of the child, which exist in all juvenile court proceedings.” *In re N.H.*, 626 N.E.2d 697, 703 (Ohio Ct. C.P. 1992); see also *State ex rel. Plain Dealer Publ'g Co. v. Geauga County Court of Common Pleas*, 734 N.E.2d 1214, 1219 (Ohio 2000); *Ohio v. Evans*, 26 Media L. Rep. (BNA) 1735, 1736 (Ohio Ct. C.P. 1997).

The issue of public access to Ohio juvenile courts garnered national attention in February 2012, when high school sophomore T.J. Lane allegedly gunned down three students at Chardon High School and wounded two others. The 17-year-old was charged with aggravated murder, attempted aggravated murder and felonious assault in juvenile court. A juvenile judge issued a gag order preventing the accused shooter and lawyers from speaking with the media, though some interviews had been granted prior to the order. The order also prohibited the media from photographing Lane’s face or his family members in court. Although the judge rescinded that order shortly after its imposition, juvenile court judges may impose gag orders on participants in cases provided they are not overbroad and the interests underlying them are balanced against those of the media and public. Some juvenile court judges have reacted favorably to arguments

that such gag orders restrict the media’s access to juvenile court proceedings and impose an unconstitutional prior restraint on publication.

Delinquency and dependency records: In general, juvenile court records are not open for public inspection in Ohio. However, there is an exception for certain juvenile records that are relevant to the state in prosecuting the juvenile as an adult. Moreover, some juvenile court judges allow access to juvenile court records, especially when the juvenile court proceedings are open to the public. Records in those cases where a juvenile has been adjudicated delinquent for committing certain serious felonies, including aggravated murder, may not be sealed. However, some information in those court documents, including identifying information about the alleged juvenile offender’s victim and any written statement he or she submitted to the court for its consideration in imposing the sentence, may remain confidential. The transcript of a juvenile court proceeding may be released where there is no evidence of a reasonable and substantial basis for believing that public access to the transcript could harm the child involved or endanger the fairness of the adjudication, or that any potential harm outweighs the benefits of public access. *State ex rel. Scripps Howard Broad. Co. v. Cuyahoga County*, 652 N.E.2d 179, 182–83 (Ohio 1995). Records and reports compiled by state agencies in relation to an allegation of child sexual abuse are confidential and privileged, but permission to view the records may be granted for good cause, an analysis that incorporates the concept of the best interest of the child. *In re Henderson*, No. 96-L-068, 1997 WL 752633, at *3 (Ohio Ct. App. 1997).

Restrictions on coverage: Ohio law allows victims who were 10 years old or younger when the defendant was charged to testify about sexual offenses outside the presence of the defendant via video-recorded testimony or closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom during this testimony. Ohio Rev. Code Ann. § 2907.41 (West 2011).

Cameras: Ohio is one of just a few states that allow cameras and recording devices in juvenile courts, provided a victim or witness does not object to their presence. Members of the news media who wish to photograph proceedings in a juvenile case must file a written request with the presiding judge, who, after consultation with the news organizations, will specify the place in the courtroom from which photographs and recordings may be made. If the media’s request is granted, there

is no prohibition on photographing or recording the juvenile. Ohio Ct. R. 12.

Oklahoma

Delinquency proceedings: Juvenile delinquency proceedings are held in private in Oklahoma unless the court specifically orders that they be conducted in public. But hearings related to the second or subsequent delinquency adjudication of a child are public, although the court still may, by request of a party or on its own, for good cause order that specific testimony or evidence be heard in private. In this context, good cause means a showing that it would be substantially harmful to the mental or physical well-being of the child if such testimony or evidence were presented at a public hearing. Okla. Stat. Ann. tit. 10A, § 2-2-402 (West 2012).

Dependency proceedings: A proceeding to determine whether a child is deprived and whether parental rights should be terminated is generally held in private unless the court specifically orders that it be conducted in public. *Id.* § 1-4-503.

Delinquency records: Delinquency records are confidential and not available for public inspection without a court order entered after the court determines that a compelling reason for inspection, release or disclosure of the confidential records exists and such disclosure is necessary for the protection of a legitimate public or private interest. But several exceptions exist, and this general rule of confidentiality does not apply to juvenile court and law enforcement records in delinquency cases, among others, where: 1) a juvenile is tried as an adult for a serious criminal offense; 2) a juvenile who is 14 years old or older who previously has been adjudicated delinquent comes before the court on a new delinquency matter; and 3) a juvenile has been adjudicated delinquent for committing an act that would be a felony if committed by an adult. In addition, the name and description of a delinquent child who has escaped or run away from an institution may be publicly released as necessary and appropriate for the protection of the public and apprehension of the juvenile. *Id.* § 2-6-102. Interpreting this statute, the state Supreme Court found that an adult defendant’s juvenile court and law enforcement records, which were exempt from the general confidentiality requirements applicable to juvenile court records, were not automatically open to the newspaper that requested them but were subject to the procedural provisions of the statute mandating judicial review and approval prior to their release. *World Publ'g Co. v. Miller*, 32 P.3d 829, 833 (Okla. 2001).

Dependency records: Dependency records are confidential and not available for public inspection without a court order. Okla. Stat. Ann. tit. 10A, § 1-6-102. But when a person responsible for a child has been charged with committing a crime resulting in the death or near death of the child, there is a presumption that the best interest of the public is served by public disclosure of certain information related to the investigation of the death or near death and any other investigations concerning that child or other children living in the house. This information, released by state officials seven days after the person is charged, includes a summary of previous reports of child abuse or neglect of the victim or other children living in the house, the dates and outcomes of such investigations, actions taken by the state Department of Human Services or district attorney in response and specific recommendations made and services rendered by the agency in a pending case involving the victim if reports containing that information have been submitted to the court. But this information will not identify any reporter of child abuse or neglect, the child victim's siblings or other children living in the house or any other member of the household other than the person charged. *Id.* § 1-6-105.

Restrictions on coverage: Oklahoma law allows child witnesses 12 years old or younger to testify in a criminal or non-criminal proceeding by an alternative method to in-court testimony. The statute does not specify whether the media and public may be present when this testimony is given via the alternative method, which also is not specified in the law. *Id.* tit. 12, §§ 2611.4, 2611.6. Closing a trial to the media and general public during the testimony of 13-, 14- and 15-year-old sexual offense victims was a narrowly tailored means of accommodating the state's interest in safeguarding the physical and psychological well-being of minor victims and sufficiently protected the defendant's right to a public trial. *Reeves v. State*, 818 P.2d 495, 498—99 (Okla. Crim. App. 1991). *Davis v. State*, 728 P.2d 846, 848 (Okla. Crim. App. 1986) (involving partial closure of the courtroom during the testimony of a 16-year-old sexual assault victim).

Oregon

Delinquency and dependency proceedings: Because of the robust access provisions provided by the Oregon Constitution, juvenile proceedings are open to the public and the media. In a case alleging that a 13-year-old girl drowned a younger child, the Oregon Supreme Court struck

down as invalid — under the state constitutional provision that “no court shall be secret, but justice shall be administered, openly”—a statute that allowed judges to exclude the press and public from juvenile court proceedings. Or. Const. art. I, § 10; *State ex rel. Oregonian Publ'g Co. v. Deiz*, 613 P.2d 23, 27 (Or. 1980).

Delinquency and dependency records: In general, records of juvenile court proceedings are not publicly available. However, limited information may be disclosed, including: 1) the name and date of birth of the child; 2) the basis for the juvenile court's jurisdiction over the child; 3) the date, time and place or any juvenile court proceeding in which the child is involved; 4) in delinquency cases, the alleged delinquent act and portion of the order providing for the legal disposition of the child offender; and 5) the names and addresses of the child's parents. Or. Rev. Stat. Ann. § 419A.255 (West 2012). In addition, the Department of Human Services must disclose information related to the agency's activities and responsibilities in a case where child abuse or neglect resulted in a child death or near death or where an adult has been charged with a crime related to child abuse or neglect. *Id.* § 409.225.

Restrictions on coverage: Oregon law allows victims 11 years old or younger and those with a developmental disability regardless of age to testify about child or sexual abuse outside the presence of the defendant via closed-circuit television if the court finds that there is a substantial likelihood that the witness will suffer severe emotional or psychological harm by testifying in open court. Only the judge, the parties and their attorneys, individuals necessary to operate the equipment and anyone the court finds would contribute to the welfare and well-being of the witness may be present during this testimony. *Id.* § 40.460(24).

Pennsylvania

Delinquency and dependency proceedings: Members of the public generally are excluded from juvenile court proceedings in Pennsylvania. The general public may not be excluded, however, from delinquency proceedings involving a minor 14 years old or older who allegedly committed any act that would be a felony if committed by an adult and those where a minor 12 years old or older allegedly committed a serious felony such as murder, voluntary manslaughter, kidnapping or others designated by statute. Judges have the discretion to close delinquency proceedings involving younger minors, although individuals with a proper interest in the proceeding or in

the work of the court may be admitted. 42 Pa. Cons. Stat. Ann. § 6336 (West 2012). In February, a state appellate court affirmed a juvenile court order closing the delinquency proceeding of a then-11-year-old boy charged with killing his father's pregnant fiancée and her unborn son because the government's interest in protecting the privacy of the juvenile outweighed the public's right of access to the proceeding. Three western Pennsylvania newspapers challenged the order, unsuccessfully arguing that because the juvenile was originally arrested and charged as an adult, the media and public previously had extensive access to information about the case, resulting in widespread public exposure that eliminated the juvenile's privacy interest. “Indeed, although circumstances surrounding the alleged delinquent act have been presented to the public due to proceedings in criminal court, it is still unknown what additional facts and evidence yet unrevealed would be offered at the upcoming juvenile proceedings,” the court said, also concluding that there were no less restrictive means other than total closure of the proceeding to protect the minor's privacy. *In re J.B.*, 39 A.3d 421, 433—34 (Pa. Super. Ct. 2012). Applying similar logic to a juvenile dependency case, a court upheld a lower court's denial of the media's motion to open the proceedings, stating that even though the minors' identities had been revealed in news reports after their sister's murder, the fact that they received some publicity increased their need for privacy because more exposure would further embarrass and stigmatize them. *In re M.B.*, 819 A.2d 59, 64 (Pa. Super. Ct. 2003).

Delinquency and dependency records: The contents of juvenile court records may not be publicly disclosed except in the following cases: 1) the child has been adjudicated delinquent for an act committed when the child was 14 years old or older and the conduct would be considered a felony if committed by an adult or for a serious felony where the child was 12 or 13 years old; and 2) a petition alleging delinquency has been filed and the child previously has been adjudicated delinquent for an offense listed in number 1 above. In such cases, the name, age and address of the child, as well as the offense charged and disposition of the case will be released. 42 Pa. Cons. Stat. Ann. § 6307.

Law enforcement records are not open to public inspection unless the juvenile is charged as an adult, national security requires disclosure or by court order. Police records also are available for public inspection in the same cases in which court records are open as described above. As

with court records, only the name, age and address of the child, as well as the offense charged and disposition of the case will be released. Law enforcement records and files contained in the Pennsylvania State Police registry may be disclosed only in certain circumstances involving juveniles who are 14 years old or older and charged with a firearms offense specified by statute. *Id.* § 6308.

Restrictions on coverage: Pennsylvania law allows victims and material witnesses 15 years old or younger to testify in any prosecution outside the presence of the defendant via video-recorded testimony or simultaneous electronic transmission. The statute does not specify whether the media and public may remain in the courtroom during this testimony. *Id.* §§ 5982, 5984.1, 5985.

Rhode Island

Delinquency and dependency proceedings: Juvenile court proceedings are closed to the public in Rhode Island. R.I. Gen. Laws § 14-1-30 (2011). The state Supreme Court held that excluding the media from juvenile court proceedings pursuant to the statutory provision allowing only those with a direct interest to attend was permissible. But barring from a proceeding members of the media who had published the name of a juvenile amounted to a penalty for the publication of lawfully obtained information. In addition, a court order that conditioned access to other juvenile court proceedings on an advance agreement to not publish the names of the juveniles involved was impermissibly overbroad and an unconstitutional prior restraint on publication. *Edward A. Sherman Publ'g Co. v. Goldberg*, 443 A.2d 1252, 1257—58 (R.I. 1982).

Delinquency and dependency records: Juvenile court and police records are not available for public inspection except in delinquency proceedings where the juvenile is tried as an adult or certified for trial and convicted in the juvenile court. R.I. Gen. Laws § 14-1-64. This general rule of confidentiality does not apply, however, to records of the state Department of Children, Youth and Families pertaining to children and their families in need of service or for whom an application for services has been made when the director of the department determines that there is a risk of physical self-injury by the person or injury to others and disclosure of the records is necessary to reduce that risk. The director also may disclose as he or she deems necessary the findings or other information about a case of child abuse or neglect that resulted in a child fatality or

near fatality. *Id.* § 42-72-8.

Restrictions on coverage: Rhode Island law allows victims 17 years old or younger to testify in sexual assault trials outside the presence of the defendant via video-recorded testimony or closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. *Id.* § 11-37-13.2. In addition, the state Supreme Court held that the protection of minor victims of sexual crimes from further trauma and embarrassment was a compelling state interest that justified redaction of court records in such criminal cases. But the trial court's blanket sealing of all records in child sexual assault cases impermissibly restricted the public's right of access to information about criminal prosecutions. The court directed the Superior Court to establish a "dual filing system" for a "confidential court file" and a "public file," the latter of which contains redacted documents in which the victim's name is either removed entirely or substituted by a fictitious name. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1138—39 (R.I. 1998).

South Carolina

Delinquency and dependency proceedings: Juvenile court hearings generally are closed to the public in South Carolina, and only those people whom the judge deems to have a direct interest in the case or in the work of the court may be admitted. S.C. Code Ann. § 63-3-590. Under the state constitutional provision that "all courts shall be public," the public and likewise the media have a right of access to court proceedings subject to a balancing of interests with the parties involved. S.C. Const. art. I, § 9. This guarantee of public access does not render unconstitutional the statute mandating exclusion of the general public from cases involving children. However, when challenged by the public or media, the decision of a judge to close any proceeding must be supported by findings that explain the balancing of interests and the need for closure of the proceeding. A conclusory statement that opening the proceeding to the public would adversely affect a juvenile offender's chances of rehabilitation is not a sufficient finding. *Ex parte Columbia Newspapers, Inc.*, 333 S.E.2d 337, 338 (S.C. 1985) (involving access to the transfer hearing of 15-year-old twin brothers charged with the murder of their mother). The state Supreme Court likewise ruled that a family court's findings were insufficient to justify closing a transfer hearing and denying two newspapers' requests for access to transcripts of two

closed detention hearings in the case of a 15-year-old charged with murdering his father and stepmother. The family court's findings that publicity would affect the juvenile's right to a fair trial and make him "anxious," along with its conclusion that confidential information about the juvenile's psychiatric status would be revealed in the hearing, did not justify closure of the proceeding because a probability of prejudice from publicity is insubstantial where extensive details about the defendant and the crimes with which he was charged already had been publicly disclosed by the media. Second, a reasonable alternative to closure would be a private hearing in the judge's chambers during the presentation of confidential testimony. Finally, lessening a defendant's "anxiety," even a juvenile's, does not promote "a higher value than protection of the public's constitutional right of access." Notably, the court also ruled that failing to challenge closure of hearings before they are held does not bar consideration of a subsequent request for access to the transcript of the proceeding. *Ex parte The Island Packet*, 417 S.E.2d 575, 577—78 (S.C. 1992).

Delinquency records: Juvenile court and law enforcement records of delinquency proceedings are confidential and may not be publicly disclosed except to certain individuals designated by statute and those with a court order. The court has the discretion to disclose the records to a person with a legitimate interest and to the extent necessary to respond to that interest. In addition, the name, identity or photograph of a juvenile offender or alleged offender may be provided to a newspaper or radio or television station in the following instances: 1) the court authorized the release; 2) the prosecutor has filed a petition, or the child has been bound over to a court that would have jurisdiction, to try the offense if committed by an adult; and 3) the child has been adjudicated delinquent in court for grand larceny of an automobile, drug distribution or trafficking or an offense involving a violent crime or one in which a weapon was used. S.C. Code Ann. § 63-19-2040. Also, fingerprints and photographs of juvenile offenders and alleged juvenile offenders may be "transmitted" to law enforcement agencies or "another agency or person," which presumably includes the media, to locate, identify or apprehend, or assist other agencies in their efforts to do so, juveniles who have escaped from the Department of Juvenile Justice or are otherwise missing or in violation of a court order mandating their presence at a particular place. *Id.* § 63-19-2020.

Dependency records: All papers and records pertaining to a termination of parental rights are confidential, and court records may be unsealed only with a court order for good cause. *Id.* § 63-7-2600. Likewise, in cases of child abuse or neglect, reports made and information collected and maintained by the state Department of Social Services and the Central Registry of Child Abuse and Neglect are confidential and may not be disclosed except to certain individuals and agencies designated by statute. But the director of the state social services department or the director's designee may disclose to the media information contained in child protective services records if the disclosure is limited to discussion of the department's activities in handling a case, including information placed in the public domain by other public officials, proceedings in a criminal prosecution or other public judicial proceeding or the alleged perpetrator or his or her attorney. In this context, information is considered "placed in the public domain" when it has been reported in the news media, is contained in public records of a court or criminal justice agency or has been the subject of testimony in a public judicial proceeding. The director or the designee also is authorized to prepare and release reports of the results of the department's investigations into the deaths of children in its custody or receiving child welfare services at the time of death. But any disclosed information will not identify a reporter of suspected child abuse or neglect and may not identify any other person named in a record if the department finds that such disclosure would be likely to endanger the life or safety of that person. *Id.* § 63-7-1990.

Restrictions on coverage: South Carolina law requires trial courts to "treat sensitively" witnesses who are very young, elderly, handicapped or who have special needs by using closed or taped sessions when appropriate. The prosecutor or defense attorney must notify the court when a victim or witness deserves special consideration. *Id.* § 16-3-1550(E). Before permitting a child witness to testify via closed-circuit television, however, the judge must first make a case-specific determination that use of the procedure is necessary to further the important state interest in protecting a minor child. The judge must find that the child would be traumatized, not by the courtroom generally, but by the presence of the defendant, and should consider the testimony of an expert witness, parents or other relatives, other concerned and relevant parties and

the child as the basis for its factual finding of necessity. *State v. Bray*, 535 S.E.2d 636, 640 (S.C. 2000). A criminal defendant's right to face her accuser in court was not violated when a trial judge found — based on the child's testimony and that of a child psychiatrist — that the alleged child sexual abuse victim was fearful of testifying in front of the defendant and would be traumatized and intimidated if required to do so. *Starnes v. State*, 414 S.E.2d 582, 583—84 (S.C. 1991). Neither the statute nor case law specifies whether the media and public may remain in the courtroom when this testimony is broadcast there.

South Dakota

Delinquency and dependency proceedings: All juvenile court hearings generally are closed unless the court finds compelling reasons to open them. But delinquency proceedings are open to the public when juveniles 16 years old or older are charged with an offense that would constitute a crime of violence such as murder, robbery, aggravated assault or other serious felony if committed by an adult or with a drug offense outlined in specific statutes. S.D. Codified Laws § 26-7A-36 (2011). Noting that "the legislature did not intend to allow the media or the general public open access to juvenile hearings," the state Supreme Court rejected the argument of the *Argus* (Sioux Falls) *Leader* that the nature of the alleged delinquent act — a minor's fatal shooting of another minor — was a sufficiently compelling reason to open the juvenile's transfer hearing. "*Argus* cannot rest upon its assumption that the criminal charge alone carries the day. The mere fact that a juvenile was involved in a homicide, by itself, does not constitute 'compelling reasons' for open hearings in this jurisdiction. There must be more evidence produced than just the nature of the alleged offense," the court said. *Matter of M.C.*, 527 N.W.2d 290, 294 (S.D. 1995).

Delinquency and dependency records: Identifying information about any child in the juvenile court system generally may not be released without a court order except to certain individuals and agencies designated by statute. S.D. Codified Laws § 26-7A-28. Also, police and agency records of children generally are confidential, but the records, including the child's name, may be publicly disclosed if the child is being prosecuted as an adult, the child has been criminally convicted and a presentence investigation is being prepared or by court order. *Id.* § 26-7A-27.

In addition, the state Department of

Social Services must release on request findings or information relating to acts of child abuse or neglect that resulted in a fatality or near fatality unless such release would jeopardize a pending criminal investigation or proceeding. But the disclosed information will not identify the child. *Id.* § 26-8A-13.

Restrictions on coverage: South Dakota law allows a trial judge to close the courtroom when a minor victim or witness is testifying about a sexual offense. Authorized representatives of the news media are included among those permitted to remain in the courtroom during this testimony unless the court determines that the best interest of the minor warrants exclusion of the media. *Id.* § 23A-24-6. The law also allows victims and witnesses 11 years old or younger and those with a developmental disability regardless of age to testify about physical abuse or neglect, sexual offenses or crimes of violence such as murder, robbery, aggravated assault or other serious felonies outside the presence of the defendant via closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. *Id.* §§ 26-8A-30, 26-8A-31. Statutory rape victims 15 years old or younger may testify outside the presence of the defendant via video-recorded testimony taken at a preliminary hearing or deposition. This statute likewise does not specify whether the media and public may remain in the courtroom when this testimony is broadcast during the trial. *Id.* § 23A-12-9.

Tennessee

Delinquency and dependency hearings: Juvenile delinquency proceedings are open to "all persons who are properly concerned," although the court has the discretion to exclude the general public from any juvenile proceeding and admit only those people with a direct interest in the case. Tenn. R. Juv. P. 27. But the state Supreme Court has held that the juvenile court must not close proceedings to the media and public to any extent unless it determines that failure to do so would result in particularized prejudice to the party seeking closure that would override the public's compelling interest in open proceedings. If the court so finds, its closure order must be no broader than necessary to protect the interests of the party who sought it. The court also must consider reasonable alternatives to closure and make adequate written findings to support any order closing proceedings to the media or public. *State v. James*, 902

S.W.2d 911, 914 (Tenn. 1995). Proceedings in child neglect and other dependency cases are not open to the general public. Tenn. R. Juv. P. 27.

Delinquency and dependency records: All files and records in juvenile court proceedings except cases of alleged traffic violations are generally closed and may be inspected only by certain individuals and agencies designated by statute and by court order by those with a legitimate interest in the proceeding or in the work of the court. Tenn. Code Ann. § 37-1-153 (West 2012). The media's interest in confidential juvenile court records and files as a source of potentially newsworthy information does not qualify as a legitimate interest. Tenn. Op. Att'y Gen. 00-128 (2000). But petitions and court orders in delinquency proceedings may be publicly disclosed in cases where juveniles 14 years old or older are charged with conduct that would constitute murder, aggravated robbery, kidnapping or another statutorily designated serious crime if committed by an adult. Tenn. Code Ann. § 37-1-153.

Law enforcement records likewise are confidential and may not be publicly disclosed except when a juvenile is being prosecuted as an adult, the interest of national security requires disclosure or by court order in the interest of the child. *Id.* § 37-1-154.

In cases of child abuse or neglect, the state Department of Children's Services may confirm whether a child abuse or neglect investigation has been initiated but may not disclose any details about the case, including the name of the reporter, the alleged victim or alleged perpetrator. *Id.* § 37-1-409. The department also must publicly release information about a case that results in a child fatality or near fatality. *Id.* § 37-5-107.

Restrictions on coverage: Tennessee law allows victims 12 years old or younger to testify about sexual abuse in criminal or civil proceedings via video-recorded testimony. The law does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there, although it does state that a video recording of an alleged victim's interview by a forensic interviewer used in a criminal trial is subject to a protective order of the court, is not to become a public record in any legal proceeding and must be sealed after it has ended. *Id.* §§ 24-7-117, 24-7-123. In addition, the state Supreme Court's rules governing media coverage of public judicial proceedings prohibit recording, broadcasting or photographing a person 17 years old or younger unless the minor is being tried

for a criminal offense as an adult. The rules allow the judge as a matter of discretion and after a hearing to restrict media coverage of proceedings. Tenn. Sup. Ct. R. 30.

Cameras: Tennessee is one of only a few states that allow cameras and recording devices in juvenile courts. If the court receives a request for media coverage, it will notify the parties and their counsel, and prior to the beginning of the proceeding, the court will advise the accused, the parties and the witnesses that they have a right to object and that consent, if given, must be in writing. Objections by a witness in any juvenile proceeding will restrict media coverage of only that person during the proceeding, but objections by the accused in a delinquency case or any party in a non-delinquency case will prohibit coverage of the entire proceeding. As in criminal proceedings, pooled coverage is required, and the judge has the discretion to restrict coverage of a hearing or portions thereof, pursuant to the rules governing media coverage, which impose further restrictions aimed at mitigating the intrusiveness of the camera equipment. Tenn. Sup. Ct. R. 30.

Texas

Delinquency proceedings: Juvenile delinquency hearings for juveniles 14 years old or older generally are open to the public in Texas unless the court for good cause determines that the public should be excluded. Hearings for juveniles 13 years old or younger are closed unless the court finds that the interests of the child or of the public would be better served by an open hearing. Tex. Fam. Code Ann. § 54.08 (Vernon 2011). The state intermediate appellate court held that the juvenile court did not err in allowing the media, but not the general public, to attend the transfer hearing of a juvenile charged with capital murder. *R.A.G. v. State*, 870 S.W.2d 79, 83 (Tex. App. 1993), *judgment rev'd on other grounds, Matter of R.A.G.*, 866 S.W.2d 199 (Tex. 1993).

Delinquency records: Juvenile delinquency and law enforcement records are confidential and may be inspected only by certain individuals and agencies designated by statute and with leave of the court by those with a legitimate interest in the proceeding or in the work of the court. *Id.* § 58.005. But certain identifying information, including the child's name, photograph and a description of the conduct the child is alleged to have committed, may be publicly disclosed to help locate or apprehend certain juveniles for whom an arrest warrant has been issued, and the state and national Crime Information Centers may

release information about a child who has been reported missing by a parent. A juvenile probation department also is authorized to release information without leave of the court pursuant to guidelines it has adopted. *Id.* §§ 58.005, 58.106.

Dependency proceedings and records: Texas law does not specify whether the overwhelming majority of juvenile dependency proceedings and records are open in Texas, although it does state that hearings and records in cases involving certain abandoned children of whom the state takes emergency possession are closed. *Id.* § 262.308. But if the state Department of Family and Protective Services is investigating a case of child abuse or neglect that results in the death of the child, the state must release within five days of a request the age and sex of the child, the date of death and certain information related to where the child was living and the state's role at the time of death. If after an investigation the department determines that the death was in fact caused by abuse or neglect, it must "promptly" release on request additional facts, including, among others, a summary of previous reports of abuse or neglect involving that child or another child while living with the same person and a description of any services provided to the child and the child's family as a result. Information that would identify the reporter of the abuse or neglect or anyone besides the child or alleged perpetrator, as well as details that would jeopardize an ongoing investigation or prosecution, endanger the life or safety of any individual or be confidential under state or federal law will be redacted. If the department is unable to release the information before the eleventh day after it receives the request or the date the investigation is over, whichever is later, it must inform the person requesting the information of the date it will release the materials. *Id.* § 261.203.

Restrictions on coverage: Texas law allows victims and witnesses 12 years old or younger to testify about serious felony offenses such as murder, aggravated kidnapping and sexual performance by a child outside the presence of the defendant via video-recorded testimony or closed-circuit television. Tex. Code Crim. Proc. Ann. art. 38.071. However, the state's highest appellate court for criminal cases last year held that the provision allowing the use of child-abuse forensic interview statements and videotapes violates the defendant's constitutional right to confront his or her accuser unless the child testifies during the trial or the defendant had a prior opportunity to cross-examine the child. The

court reiterated a prior ruling upholding the constitutionality of the use of closed-circuit television, which “allow[s] for rigorous, contemporaneous cross-examination, as well as any necessary objections to the questions or answers given.” *Coronado v. State*, 351 S.W.3d 315, 320 n.26, 325—26 (Tex. Crim. App. 2011). Thus, it is likely this procedure will continued to be used, but the statute authorizing it does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. Tex. Code Crim. Proc. Ann. art. 38.071.

Utah

Delinquency proceedings: Juvenile delinquency hearings involving minors 14 years old or older charged with a felony offense if committed by an adult or a misdemeanor offense if committed by an adult and the juvenile previously had been charged with any offense are generally open to the public unless the court for good cause finds that the hearing should be closed. All other delinquency cases are closed, and only those with a direct interest in the case and those whose presence is requested by the parent or legal guardian may be admitted. Utah Code Ann. § 78A-6-114 (West 2011).

Dependency proceedings: Abuse, neglect and dependency proceedings are generally open to the public. But the court by request of a party or on its own may exclude a person after finding that the person’s presence would be detrimental to the best interest of the child involved, impair the fact-finding process or be otherwise contrary to the interests of justice. *Id.* Earlier this month, a juvenile court judge in Salt Lake City agreed with the attorneys for the parties that closing a hearing in the case of an 18-year-old asking the state to remove his siblings from their father’s home pending a criminal investigation into the mysterious death of their mother was in the best interest of the 18-year-old and his three younger siblings. The judge also granted a gag order in the case after a guardian ad litem told him that media coverage of the case had caused the 16-, 13- and 11-year-old children difficulty in school. Dennis Romboy, *Gag Order Issued as Son of Dead Mother Asks State to Remove Siblings from Father*, *The Deseret News*, May 9, 2012.

Delinquency and dependency records: Juvenile court records are closed to public inspection except by certain individuals and agencies designated by statute and with consent of the judge those having a legitimate interest in the proceedings. But in cases involving minors 14 years old or older and charged with a felony offense if committed by an adult, the petition, any

adjudication or disposition orders and the delinquency history summary of the juvenile are open unless the court closes the records for good cause. The juvenile delinquency adjudication or disposition orders and the delinquency history summary of a juvenile charged as an adult with a felony offense also are available for public inspection. Utah Code Ann. § 78A-6-209.

Restrictions on coverage: Utah law allows a trial judge to close the courtroom during certain cases, mainly those involving sexual offenses. In such circumstances, only those people with a direct interest in the proceeding, as well as jurors, witnesses and court officers may remain in the courtroom. Neither the statute nor case law specifies whether the media qualify as those with a direct interest in the proceeding. *Id.* § 78A-2-208. Court rules also allow victims and witnesses 13 years old and younger to testify about child abuse and sexual offenses outside the presence of the defendant via video-recorded testimony or closed-circuit television. The rule does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. Utah R. Crim. P. 15.5. Finally, judicial rules governing media in the courtroom prohibit photographing the face of a person known to the photographer to be a minor. Utah R. Jud. Admin. 4-401.

Vermont

Delinquency and dependency proceedings: The general public is excluded from juvenile court proceedings in Vermont, although the court may admit people with a proper interest in the case or in the work of the court. Vt. Stat. Ann. tit. 33, § 5110 (2012). Interpreting this statute, the state Supreme Court found that the law imposes a mandatory closure rule in juvenile court proceedings and rejected a lower court holding that the statute violated the First Amendment. *In re J.S.*, 438 A.2d 1125, 1129 (Vt. 1981). This holding was limited to proceedings already in juvenile court. Proceedings prior to transfer are presumptively open in Vermont, given the need to accommodate the First Amendment and the alleged juvenile delinquent’s confidentiality interests. *In re K.F.*, 559 A.2d 663, 664—65 (Vt. 1989) (holding that proceedings against a juvenile charged with manslaughter would be confidential only after transfer to the juvenile court).

Delinquency and dependency records: Juvenile court and law enforcement records are confidential and not open to public inspection except by certain individuals and agencies designated by statute. However, this general rule of confidential-

ity does not apply to delinquency records of juveniles who are prosecuted as adults or those that the court orders to be open in the interests of the child. *Id.* § 5117.

Restrictions on coverage: Vermont law allows victims 12 years old or younger and those who are mentally ill or mentally impaired regardless of age to testify about abuse, neglect, exploitation or sexual offenses in a criminal or civil proceeding via video-recorded testimony or closed-circuit television. The law does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. Vt. R. Evid. 807. Although court rules governing the recording of court proceedings do not specifically restrict coverage of minors, the reporter’s note accompanying the rule suggests that coverage may be inappropriate for cases in which the victim is a minor. The decision is left to the discretion of the trial judge to evaluate on a case-by-case basis. Vt. R. Civ. P. 79.2; Vt. R. Crim. P. 53.

Virginia

Delinquency and dependency proceedings: Juvenile court proceedings generally are closed to the public in Virginia, although the court may admit people whom it deems proper. But delinquency proceedings involving an adult charged with a crime and a juvenile 14 years old or older charged with an offense that would be a felony if committed by an adult are not subject to this general rule of closure. For good cause, however, the court may on request of the accused, the state attorney or on its own close the proceedings. If it does, the court must state in writing its reasons for closure, and the statement will be made part of the public record. Also, in hearings involving criminal charges or traffic offenses, the charged juvenile has the right to a public hearing if he or she so chooses. Va. Code Ann. § 16.1-302 (West 2011).

Delinquency and dependency records: Juvenile court records are confidential and may be inspected only by certain individuals and agencies designated by statute and with court order by those with a legitimate interest in the case, the juvenile or the work of the court. But in delinquency cases where a juvenile 14 years old or older is adjudicated delinquent for an act that would be a felony if committed by an adult, all court records regarding that adjudication are open to the public unless a hearing was closed and the judge has ordered that certain records of that proceeding remain confidential to the extent necessary to protect a juvenile victim or witness. *Id.* § 16.1-305. Also, in cases where a juvenile 14 years old or older is charged with a delinquent

act that would be a serious criminal offense if committed by an adult such as a felony offense involving a weapon, a felony drug offense or an act of violence, the judge may publicly release the juvenile's name and address "where consideration of the public interest requires." *Id.* § 16.1-309.1.

Law enforcement records likewise are not open to public inspection except in cases where juveniles 14 years old or older are charged with a violent juvenile felony such as murder, robbery or rape. *Id.* § 16.1-301. Certain identifying information also may be publicly released when an alleged juvenile offender or juvenile offender escapes from law enforcement custody or a secure facility. *Id.* § 16.1-309.1. A Virginia trial court interpreted the statutes that purport to seal the records of all children committed to the state Department of Corrections and other children whether delinquent or dependent to provide at least a limited right of public access to juvenile court records. The court held that only safeguarding the interest of the juvenile in rehabilitation could outweigh the right of public access. In the case before it, in which the 17-year-old juvenile who was the subject of the delinquency records at issue had died, the court concluded that damage to his family and to the deceased child could not justify maintaining the juvenile's record under seal. The interest of the family and child of the juvenile is no different than that of the family or child of an adult offender and thus does not outweigh the public's right of access. *In re Richmond Newspapers, Inc.*, 1988 WL 619412, at *5 (Va. Cir. Ct. Dec. 15, 1988).

Restrictions on coverage: Virginia law allows victims 14 years old or younger at the time of the alleged offense and 16 years old or younger at the time of trial and witnesses 14 years old or younger at the time of trial to testify in criminal proceedings involving charges of kidnapping, sexual offenses and murder outside the presence of the defendant via closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there. Va. Code Ann. § 18.2-67.9. Court rules governing the photographing and broadcasting of criminal proceedings explicitly prohibit coverage of minor witnesses. *Id.* § 19.2-266.

Washington

Delinquency proceedings: The presumption is that all juvenile delinquency proceedings are open in Washington, and the public and media may attend unless the court for good cause orders that a particular hearing be closed. Wash. Rev.

Code Ann. § 13.40.140 (West 2011). The intermediate appellate court found that a trial court abused its discretion in closing a transfer hearing without making specific findings concerning how an open hearing would prejudice fair trial rights. The court held that the party seeking closure bears the burden of establishing particularized prejudice that would override the public's compelling interest in open proceedings. The court also required that closure orders supported by adequate written findings be no broader than necessary to protect the competing interests and that the presiding judge consider alternatives to closure. *State v. Loukaitis*, 918 P.2d 535, 539—40 (Wash. Ct. App. 1996).

Delinquency records: The official juvenile court file of an alleged or actual juvenile offender is open to public inspection. And information not in an official juvenile court file concerning a juvenile or a juvenile's family may be publicly released only when the information could not reasonably be expected to identify the juvenile or the family. Identifying information about minor victims of sexual assaults by juvenile offenders is confidential and may not be publicly disclosed without permission of the victim or the victim's guardian. Wash. Rev. Code Ann. § 13.50.050.

Dependency proceedings: Juvenile dependency proceedings generally are closed to the public, although people with a direct interest in the case or in the work of the court may be admitted. *Id.* § 13.34.110 (West 2011).

Dependency records: Juvenile dependency records generally may be inspected only by certain individuals and agencies designated by statute, including those engaged in legitimate research for educational, scientific or public purposes on the condition that the anonymity of every person mentioned in the records or information will be preserved. *Id.* § 13.50.010. A trial court abused its discretion when it denied a newspaper reporter's request for access to delinquency and dependency records because, according to the judge, a newspaper did not constitute legitimate research and news media personnel could not qualify as legitimate researchers — a conclusion based on "untenable grounds," the state Supreme Court held. Adopting the dictionary definition of legitimate research as "a studious inquiry or examination within the purview of recognized principles or accepted rules and standards," journalism — in this case, an examination of the effects of the Juvenile Justice Act's policy of nonintervention in dependency cases on abused children — may qualify as legitimate research, the court concluded.

Seattle Times Co. v. Benton, 661 P.2d 964, 967, 969 (Wash. 1983).

Restrictions on coverage: Washington law allows victims and witnesses 9 years old or younger to testify about physical abuse and sexual and violent offenses outside the presence of the defendant via closed-circuit television. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there, although it does state that the videotape is subject to a protective order of the court to protect the child witness. Wash. Rev. Code Ann. § 9A.44.150. A trial court order prohibiting the media from photographing minor witnesses during a trial did not violate the court rule that open access to courtroom photography and recording by members of the news media is presumed. The judge made particularized findings that cameras might hinder the juvenile witnesses' ability to testify given the sensitive subject matter of their testimony and held a special hearing to allow members of the media to voice their concerns about the ruling. *State v. Russell*, 172 P.3d 361, 364 (Wash. Ct. App. 2007).

West Virginia

Delinquency and dependency proceedings: The public is generally excluded from juvenile court proceedings in West Virginia, although the court may admit people with a legitimate interest in the proceedings. In delinquency hearings, individuals whose presence is requested by the parties also may attend. W. Va. Code Ann. § 49-5-2 (West 2012); W. Va. Child Abuse and Neglect Proceedings R. 6a.

Delinquency and dependency records: All juvenile court records are confidential and may not be disclosed except to certain individuals and agencies designated by statute. This presumption of confidentiality does not apply, however, to records in cases where the juvenile is being prosecuted as an adult for a criminal offense and in certain cases where a court determined that there was probable cause to believe that the juvenile committed an offense that would subject the juvenile to a transfer to a criminal jurisdiction but the case nonetheless is not transferred. In these cases, the records are open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense. *Id.* § 49-5-17.

In child abuse and neglect cases where a child dies or nearly dies, the state Department of Health and Human Resources must publicly release information about the fatality or near fatality. But the infor-

mation will not identify a person who reported or made a complaint of child abuse or neglect.

Restrictions on coverage: Neither West Virginia statutory law nor court rules appear to restrict the media's ability to attend or electronically cover civil or criminal proceedings involving minors.

Wisconsin

Delinquency and dependency proceedings: The public is generally excluded from juvenile court proceedings in Wisconsin, but the court may admit people with a proper interest in the case or in the work of the court and those requested by a party and approved by the court. Wis. Stat. Ann. § 48.299 (West 2011). Noting that knowledge of juvenile courts' philosophy and practice is necessary for their efficient functioning, a court found that members of the news media, who may attend hearings and report to the public what they observed, have a proper interest in the court. Yet, the legislature left it to the discretion of the trial judge to determine on a case-by-case basis whether the interests of the child were in jeopardy in certain cases so as to justify barring the media from the courtroom. *State ex rel E.R. v. Flynn*, 276 N.W.2d 313, 316 (Wis. Ct. App. 1979). Note that the court was interpreting a provision of an earlier statute that was recodified into the present statute governing access to juvenile courts.

Delinquency and dependency records: Juvenile court records generally are not available for public inspection except by certain individuals and agencies designated by statute. But if a juvenile adjudicated delinquent or found to be in need of protection services escapes from a facility or has been allowed to leave a facility for a specified time period and is absent more than 12 hours after the expiration of the specified period, the department having supervision over the juvenile may publicly release the juvenile's name and any information about the juvenile that is necessary for the protection of the public or to secure the juvenile's return. Wis. Stat. Ann. § 938.78. In addition, the general rule of confidentiality that applies to law enforcement officers' records of children does not apply to members of the news media who wish to obtain information for the purpose of reporting news without revealing the



A family enters into the Juvenile Court Offices at the Whitfield County Courthouse in Dalton, Ga. AP Photo/Chattanooga Times Free Press by Ashlee Culverhouse.

identity of the child. *Id.* § 48.396.

In addition, the subunit of the state department responsible for statewide oversight of child abuse and neglect programs must, within two days of its receipt, publicly disclose the fact that an agency that received a report of child abuse or neglect has reason to suspect that death, serious injury or egregious abuse or neglect has occurred. The subunit also must disclose whether the department is conducting a review of the incident and, if so, its scope, the identities of any other agencies with which the department is currently cooperating in conducting the review, whether the child was residing in the home or was placed in an out-of-home placement at the time of the incident and information about the child, including age. *Id.* § 48.981.

Restrictions on coverage: Wisconsin law allows a trial judge to close the courtroom during a preliminary hearing to determine if there is probable cause to believe the defendant committed a felony if the defendant is accused of a crime under any of several statutorily-designated felonies involving sexual offenses, including those against children, if the compelling interest in protecting a victim from undue embarrassment and emotional trauma would likely be prejudiced if the exclusion were not ordered. Members of the news media are not included among the people entitled to remain. *Id.* § 970.03. The law also allows witnesses 15 years old or younger to testify in any criminal prosecution outside the presence of the defendant via video-recorded testimony. The law does not specify whether the media and public may remain in the courtroom when

this testimony is broadcast there, although it does state that no one may inspect or copy the videotape except by court order. *Id.* § 967.04. The state Supreme Court's rules governing electronic and photographic coverage of judicial proceedings allow the court for cause to prohibit such coverage on its own or on the request of a participant. In cases involving juveniles, a presumption of validity attends the request. Wis. Sup. Ct. R. 61.11.

Wyoming

Delinquency and dependency proceedings: Except in hearings to declare a person in contempt of court, juvenile court proceedings

are generally closed to the public in Wyoming. But individuals with a proper interest in the proceedings or in the work of the court — a category of people that seemingly includes members of the news media pursuant to another statutory provision discussed below — may be admitted. Wyo. Stat. Ann. §§ 14-6-224, 14-6-424 (2011).

Delinquency and dependency records: Juvenile court records generally are not available for public inspection. *Id.* §§ 14-6-239, 14-6-437. But this general rule of confidentiality does not apply to delinquency records if there is an adjudication of a delinquent act or the juvenile is being prosecuted as an adult for a criminal offense. *Id.* § 14-6-203. In addition, upon a finding that release of information would serve to protect the public health or safety or that due to the nature or severity of the offense in question, the release of information would serve to deter the minor or others similarly situated from committing similar offenses, the court may release the name of the minor, the legal records or disposition in any delinquency proceeding filed in juvenile court to the media or other members of the public with a legitimate interest. *Id.* § 14-6-240.

Restrictions on coverage: Wyoming law allows victims 11 years old or younger to testify about sexual offenses outside the presence of the defendant via video-recorded testimony. The statute does not specify whether the media and public may remain in the courtroom when this testimony is broadcast there, although it does state that videotapes that are part of the court record are subject to a protective order to preserve the privacy of the child. *Id.* § 7-11-408. ♦