

**STATE OF MINNESOTA  
IN SUPREME COURT**

**C2-95-1476**

**In Re:**

**Pilot Project on Open Hearings in Juvenile Protection Matters**

**RECOMMENDATIONS OF MINNESOTA SUPREME COURT  
ADVISORY COMMITTEE ON OPEN HEARINGS  
IN JUVENILE PROTECTION MATTERS**

**Final Report: Proposed Rule on Public Access to  
Records Relating to Open Juvenile Protection Hearings**

**April 15, 1998**

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# **Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings**

## **Introduction**

The Advisory Committee on Open Juvenile Protection Hearings (Committee) was established by the Minnesota Supreme Court to consider and recommend rules regarding public access to records relating to open juvenile protection hearings. The Supreme Court ordered the Committee to file its recommendations with the Supreme Court on or before April 15, 1998. After one half-day session and three full-day sessions, the Committee agreed to recommend the proposed rule set forth on pages one through nine of this report.

The proposed rule includes a **comment section** that attempts to explain the Committee's intent and rationale. The Committee recommends that the Supreme Court retain the comments to the proposed rule, if adopted, for the benefit of those who will have to interpret the rule.

An **effective date** provision is incorporated in the proposed rule (see subdivision 2). Although this is typically addressed in court orders promulgating rules, the Committee felt that it should be codified in the rule for easy reference by pilot project participants.

**Training** will be important to the success of the pilot project. The Committee recommends that the State Court Administrator's Office be directed to provide training to court staff in the pilot project counties.

Certain **background materials** are appended to the report for convenience. Appendix A is the order establishing the pilot project and appointing the Committee. Appendix B is the Conference of Chief Judges Report recommending the establishment of a pilot project. Appendix C summarizes the recommendations of the Foster Care and Adoption Task Force, which first proposed open hearings in juvenile protection proceedings. Finally, Appendix D attempts to identify some of the documents potentially found in juvenile protection files. These materials represent an outline of the scope of issues addressed by the Committee. Time simply does not permit a more detailed discussion of the Committee's deliberations.

DATED: April 15, 1998

Respectfully Submitted,

MINNESOTA SUPREME COURT  
ADVISORY COMMITTEE ON OPEN  
JUVENILE PROTECTION HEARINGS

## **Proposed Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings**

### **1 Subdivision 1. Presumption of Public Access to Records.**

2 Except as otherwise provided in this rule, all case records relating to the pilot project on  
3 open juvenile protection proceedings are presumed to be accessible to any member of the public  
4 for inspection, copying, or release. For purposes of this rule, "open juvenile protection  
5 proceedings" are all matters governed by the juvenile protection rules promulgated by the  
6 Minnesota Supreme Court.

### **7 Subdivision 2. Effective Date.**

8 All case records deemed accessible under this rule and filed on or after June 22, 1998,  
9 shall be available to the public for inspection, copying, or release. All case records deemed  
10 accessible under this rule and filed prior to June 22, 1998, shall not be available to the public for  
11 inspection, copying, or release.

### **12 Subdivision 3. Applicability of Rules of Public Access to Records of the Judicial Branch.**

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

### **18 Subdivision 4. Records That Are Not Accessible to the Public.**

19 Except for exhibits identified in subdivision 5 of this rule, the following case records  
20 relating to open juvenile protection proceedings shall not be accessible to the public:

- 21 (a) transcripts, stenographic notes and recordings of testimony of anyone taken during  
22 portions of proceedings that are closed by the presiding judge;
- 23 (b) audio tapes or video tapes from the social service agency;
- 24 (c) victim's statements;
- 25 (d) portions of juvenile court records that identify reporters of abuse or neglect;

- 26 (e) HIV test results;
- 27 (f) medical records and chemical dependency evaluations and records, psychological  
28 evaluations and records, and psychiatric evaluations and records;
- 29 (g) sexual offender treatment program reports;
- 30 (h) portions of photographs that identify a child who is a subject of the petition;
- 31 (i) ex parte emergency protective custody order, until the hearing where all parties have an  
32 opportunity to be heard on the custody issue;
- 33 (j) records or portions of records that specifically identify a minor victim of an alleged or  
34 adjudicated sexual assault;
- 35 (k) notice of pending court proceedings pursuant to 25 U.S.C. § 1912 (the Indian Child  
36 Welfare Act); and
- 37 (l) records or portions of records which the court in exceptional circumstances has deemed  
38 inaccessible to the public.

39 **Subdivision 5. Access to Exhibits.**

40 Case records received into evidence as exhibits shall be accessible to the public unless  
41 subject to a protective order.

42 **Subdivision 6. Access to Court Information Systems.**

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

45 **Subdivision 7. Protective Order**

46 Upon motion and hearing, a court may issue an order prohibiting public access to  
47 juvenile court case records that are otherwise accessible to the public when the court finds that  
48 there are exceptional circumstances supporting issuance of the order. The court may also issue  
49 such an order on its own motion and without a hearing pursuant to subdivision 4(1) of this rule,  
50 but shall schedule a hearing on the order as soon as possible at the request of any person.

51

51 **Subdivision 8 Case Captions.**

52 All juvenile protection files opened in a pilot project county on and after June 22, 1998,  
53 shall be captioned in the name of the parent(s) or the child's legal custodian or legal guardian as  
54 follows: "In the matter of child(ren) of \_\_\_\_\_, parent/legal  
55 guardian/legal custodian."

56 Advisory Committee Comment-1998

57 Under subdivision 1, application of this rule is limited to case records of the pilot project  
58 on open juvenile protection proceedings, which includes all proceedings identified in Rule 37 of  
59 the Minnesota Rules of Juvenile Procedure (1997) and any successor provision. *See Order*  
60 *Establishing Pilot Project On Open Hearings In Juvenile Protection Matters, #C2-95-1476* (Minn.  
61 S. Ct. filed Jan. 22, 1998). Rule 37 as currently written does not include adoption proceedings.  
62 Thus, this rule would not apply to any case records relating to adoption proceedings. The  
63 Committee is aware that the juvenile protection rules are in the process of being updated by  
64 another advisory committee. To the extent that there are substantive changes made to Rule 37,  
65 those changes would effect the pilot project.

66 Subdivision 1 establishes a presumption of public access to juvenile court case records,  
67 and exceptions to this presumption are set forth in the remaining subdivisions. Subdivision 2  
68 specifies the effective date of the pilot project as the cut off for public access. Case records  
69 deemed accessible under this rule and filed on or after June 22, 1998, shall be available to the  
70 public for inspection, copying, or release. Case records filed prior to June 22, 1998, shall not be  
71 available to the public for inspection, copying, or release under this rule; public access to these  
72 records is governed by existing rules and statutes.

73 Subdivision 3 incorporates the provisions of the Rules of Public Access to Records of the  
74 Judicial Branch promulgated by the Minnesota Supreme Court ("Access Rules"), except to the  
75 extent that the Access Rules are inconsistent with this rule. The Access Rules establish the  
76 procedure for requesting access, the timing and format of the response, and an administrative  
77 appeal process. The Access Rules also define "case records" as a subcategory of records  
78 maintained by a court. Thus, "case records" would not include items that are not made a part of  
79 the court file, such as notes of a social worker or guardian ad litem. Aggregate statistics on  
80 juvenile court cases that do not identify any participants or a particular case are included in the  
81 "administrative records" category and are accessible to the public under the Access Rules. Such  
82 statistics are routinely published by the courts in numerous reports and studies. These procedures

83 and definitions are consistent with this rule.

84 One significant aspect of both this rule and the Access Rules is that they govern public  
85 access only. Participants in a juvenile protection case may have greater access rights than the  
86 general public. *See, e.g.*, Minn.R.Juv.P. 64.02, subdivision 2 (1997).

87 Subdivision 3 preserves the confidentiality of domestic abuse restraining orders issued  
88 pursuant to Minn. Stat. § 518B.01 (1996). The address of a petitioner for a restraining order under  
89 section 518B.01 must not be disclosed to the public if nondisclosure is requested by the petitioner.  
90 Minn. Stat. § 518B.01, subd. 3b (1996). All other case records regarding the restraining order must  
91 not be disclosed until the temporary order made pursuant to subdivision 5 or 7 of section 518B.01  
92 is served on the respondent. Access Rule 4, subdivision 1(a) (1998).

93 Subdivision 3 prohibits public access to judicial work products and drafts. These include  
94 notes, memoranda and drafts prepared by a judge or court employed attorney, law clerk, legal  
95 assistant or secretary and used in the process of preparing a decision or order, except the official  
96 court minutes prepared pursuant to Minn. Stat. § 564.24-.25 (1996). Access Rule 4, subd. 1(c)  
97 (1998).

98 The court services provision of Rule 4, subdivision 1(b) of the Access Rules, is  
99 inconsistent with this rule. The advisory committee is of the opinion that public access to reports  
100 and recommendations of social workers and guardians ad litem, which become case records, is an  
101 integral component of the increased accountability that underlies the pilot project. Court rulings  
102 will necessarily incorporate significant portions of what is set forth in those reports, and similar  
103 information is routinely disclosed in family law cases.

104 Subdivision 4(a) prohibits public access to testimony of anyone taken during portions of  
105 a proceeding that are closed by the presiding judge. The Supreme Court has directed that hearings  
106 under the pilot project may be closed or partially closed by the presiding judge only in exceptional  
107 circumstances. *Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters*,  
108 #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998).

109 Subdivision 4(b) prohibits public access to audio tapes and video tapes from the social  
110 service agency. This is consistent with Minn. Stat. § 13.391 (1996), which prohibits an individual  
111 who is a subject of the tape from obtaining a copy of the tape without a court order. *See also In*  
112 *re Application of KSTP Television v. Ming Sen Shiue*, 504 F.Supp. 360 (D.Minn. 1980) (television  
113 station not entitled to view and copy 3 hours of video tapes received in evidence in criminal trial).  
114 Subdivision 4(c) prohibits public access to victims' statements, and is consistent with Minn. Stat.  
115 §§ 609.115, subds. 1, 5; 609.2244; 611A.037 (1996 and 1997 supp.) (pre-sentence investigations  
116 to include victim impact statements; no public access; domestic abuse victim impact statement  
117 confidential).

118           Although victims' statements and audio tapes and video tapes from the social service  
119 agency are inaccessible to the public under subdivisions 4(b) and 4(c), this does not prohibit the  
120 attorneys for the parties or the court from including information from the statements or tapes in the  
121 petition, court orders, and other documents that are otherwise accessible to the public. In contrast,  
122 subdivision 4(d) prohibits public access to "information identifying reporters of abuse or neglect."  
123 By precluding public access to "information" identifying reporters of abuse or neglect, the advisory  
124 committee did not intend to preclude public access to any other information included in the same  
125 document. Thus, courts and court administrators must redact identifying information from  
126 otherwise publicly accessible documents and then make the edited documents available for  
127 inspection and copying by the public. Similarly, subdivision 4(e) requires that courts and court  
128 administrators redact from any publicly accessible juvenile court record any reference to HIV test  
129 results, and subdivision 4(h) requires administrators to redact the face or other identifying features  
130 in a photograph of a child.

131           The prohibition of public access to the identity of reporters of abuse or neglect under  
132 subdivision 4(d) is consistent with state law governing access to this information in the hands of  
133 social services, law enforcement, court services, schools and other agencies. Minn. Stat. § 626.556  
134 (1996 and Supp. 1997). Subdivision 4(d) is also intended to help preserve federal funds for child  
135 abuse prevention and treatment programs. *See* 42 U.S.C. §§ 5106a(b)(2)(A); 5106a(b)(3) (1998);  
136 45 C.F.R. §§ 1340.1 to 1340.20 (1997). Subdivision 4(d) does not, however, apply to testimony  
137 of a witness taken during a proceeding that is open to the public.

138           Subdivision 4(e) prohibits public access to HIV test results. This is consistent with state  
139 and federal laws regarding court ordered testing for HIV. Minn. Stat. § 611A.19 (1996) (defendant  
140 convicted for criminal sexual conduct; no reference to the test, the motion requesting the test, the  
141 test order, or the test results may appear in the criminal record or be maintained in any record of  
142 the court or court services); 42 U.S.C. 14011 (1998) (defendant charged with crime; test result may  
143 be disclosed to victim only). The Committee is also aware that federal funding for early  
144 intervention services requires confidential treatment of this information. 42 U.S.C. §§ 300ff-61(a);  
145 300ff-63 (1998).

146           Subdivisions 4(f) and 4(g) prohibit public access to medical records, chemical dependency  
147 evaluations and records, psychological evaluations and records, psychiatric evaluations and records  
148 and sex offender treatment program reports, unless admitted into evidence (see subdivision 5).  
149 This is consistent with public access limitations in criminal and juvenile delinquency proceedings  
150 that are open to the public. *See, e.g.*, Minn. Stat. § 609.115, subd. 6 (1996) (presentence  
151 investigation reports). Practitioners and the courts must be careful not to violate applicable federal  
152 laws. Under 42 U.S.C. § 290dd-2 (1998), records of all federally assisted or regulated substance

153 abuse treatment programs, including diagnosis and evaluation records, and all confidential  
154 communications made therein, except information required to be reported under a state mandatory  
155 child abuse reporting law, are confidential and may not be disclosed by the program unless  
156 disclosure is authorized by consent or court order. Thus, practitioners will have to obtain the  
157 relevant consents or court orders, including protective orders, before disclosing certain medical  
158 records in their reports and submissions to the court. See 42 C.F.R. §§ 2.1 to 2.67 (1997)  
159 (comprehensive regulations providing procedures that must be followed for consent and court-  
160 ordered disclosure of records and confidential communications).

161 Although similar requirements apply to educational records under the Federal Educational  
162 Rights and Privacy Act (FERPA), 20 U.S.C. §§ 1232g, 1417, and 11432 (1998); 34 C.F.R. §§ 99.1  
163 to 99.67 (1997), FERPA allows schools to disclose education records without consent or court  
164 order in certain circumstances, including disclosures to state and local officials under laws in effect  
165 prior to November 19, 1974. 20 U.S.C. § 1232g(b)((1)(E)(i) (1998); 34 C.F.R. § 99.31(a)(5)(i)(A)  
166 (1997). Authorization to disclose truancy to the county attorney, for example, was in effect prior  
167 to that date and continues under current law. See Minn. Stat. § 120.12 (1974) (superintendent to  
168 notify county attorney if truancy continues after notice to parent); 1987 Minn. Laws ch. 178, §  
169 10, (repealing section 120.12 and replacing with current section 120.103, which adds mediation  
170 process before notice to county attorney); see also Minn. Stat. §§ 260A.06-.07 (1996) (referral to  
171 county attorney from school attendance review boards; county attorney truancy mediation program  
172 notice includes warning that court action may be taken). Practitioners will have to review the  
173 procedures under which they receive education records from schools and, where necessary, obtain  
174 relevant consents or protective orders before disclosing certain education records in their reports  
175 and submissions to the court. Additional information regarding FERPA may be found in *Sharing*  
176 *Information: A Guide to the Family Educational Rights and Privacy Act and Participation in*  
177 *Juvenile justice Programs* (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency  
178 Prevention, Washington, D.C. 20531, June 1997) (includes hypothetical disclosure situations and  
179 complete set of federal regulations).

180 Subdivision 4(h) requires administrators to redact the face or other identifying features  
181 in a photograph of a child before permitting public access. Any appropriate concern regarding  
182 public access to the remaining portions of such a photograph can be addressed through a protective  
183 order (see Subdivision 7).

184 Subdivision 4(i) precludes public access to an ex parte emergency protective custody order,  
185 until the hearing where all parties have an opportunity to be heard on the custody issue.  
186 This provision is designed to limit or avoid disclosure of the whereabouts of the child prior to the  
187 hearing where all parties can be heard on the custody issue. See, e.g., Minn.R.Juv.P. 51 (1997)



188 (order for immediate custody; parent, guardian and custodian, if present when child is taken into  
189 custody, shall immediately be informed of existence of order and reasons why child is being taken  
190 into custody).

191 Subdivision 4(j) precludes public access to portions of records that specifically identify  
192 a minor victim of sexual assault. This will require court administrators to redact information from  
193 case records that specifically identifies the minor victim, including the victim's name and address.  
194 Subdivision 4(j) does not preclude public access to other information in the particular record. This  
195 is intended to parallel the treatment of victim identities in criminal and juvenile delinquency  
196 proceedings involving sexual assault charges under Minn. Stat. § 609.3471 (1996). Thus, the term  
197 "sexual assault" includes any act described in Minnesota Statutes, sections 609.342, 609.343,  
198 609.344, and 609.345. The Committee considered using the term "sexual abuse" but felt that it  
199 was a limited subcategory of "sexual assault." See Minn. Stat. § 626.556, subd. 2(a) (1996)  
200 ("sexual abuse" includes violations of 609.342-345 committed by person in a position of authority,  
201 responsible for child's care, or having a significant relationship with the child). Subdivision 4(j)  
202 does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

203 Subdivision 4(k) precludes public access to the notice of pending proceedings given to an  
204 Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. § 1912(a) (1998). The  
205 notice includes extensive personal information on the child, including all known information on  
206 direct lineal ancestors, and requires parties who receive the notice to keep it confidential. 25  
207 C.F.R. § 23.11(d), (e) (1997). Notices are routinely given in doubtful cases because lack of notice  
208 can be fatal to a state court proceeding. See 25 U.S.C. § 1911 (1998) (exclusive jurisdiction of  
209 tribes; right to intervene; transfer of jurisdiction). The Committee felt that public access to  
210 information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes  
211 or petitions for transfer of jurisdiction. Subdivision 4(k) does not preclude public access to  
212 intervention motions or transfer petitions.

213 Subdivision 4(l) recognizes that courts may, in exceptional circumstances, issue protective  
214 orders precluding public access to certain records or portions of records. Exceptional circumstances  
215 is the standard promulgated by the Supreme Court for closure of portions of proceedings. See  
216 *Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters*, #C2-95-1476  
217 (Minn. S. Ct. filed Jan. 22, 1998) Records of closed proceedings are inaccessible to the public  
218 under subdivision 4(a). Procedures for issuing protective orders are set forth in Subdivision 7.

219 Notwithstanding the list of inaccessible case records in subdivision 4(a) through 4(l), many  
220 case records of the pilot project will typically be accessible to the public. Examples include:  
221 petitions other than petitions for paternity; summons; affidavits of publication or service; certificates  
222 of representation; orders; hearing and trial notices; subpoenas; names of witnesses; motions and

223 supporting affidavits and legal memoranda; transcripts; and reports of a social worker or guardian ad  
224 litem. With the exception of information that must be redacted under subdivisions 4(d), 4(e)  
225 and 4(h), these records will be accessible to the public notwithstanding that they contain a summary  
226 of information derived from another record that is not accessible to the public. For example, a  
227 social services or court services report recommending placement might discuss the results of a  
228 chemical dependency evaluation. Although the chemical dependency evaluation is not accessible  
229 to the public, the discussion of it in the social services or court services report need not be redacted  
230 prior to public disclosure of the report. Finally, it must be remembered that public access under  
231 this rule would not apply to records filed with the court prior to the effective date of the pilot  
232 project (see subdivision 2) or to reports of a social worker or guardian ad litem that have not been  
233 made a part of the court file (see subdivision 3).

234 Subdivision 5 of this rule permits public access to records that have been received in  
235 evidence as an exhibit, unless the records are subject to a protective order (see subdivision 7).  
236 Thus, any of the records identified in subdivisions 4(b) through 4(k) that have been admitted into  
237 evidence as an exhibit are accessible to the public, unless there is a protective order indicating  
238 otherwise. An exhibit that has been offered, but not expressly admitted by the court, does not  
239 become accessible to the public under subdivision 5. Exhibits admitted during a trial or hearing  
240 must be distinguished from items attached as exhibits to a petition or a report of a social worker  
241 or guardian ad litem. Merely attaching something as an "exhibit" to another filed document does  
242 not render the "exhibit" accessible to the public under subdivision 5.

243 Subdivision 6 prohibits direct public access to case records maintained in electronic format  
244 in court information systems unless authorized by the court. Subdivision 6 intentionally limits  
245 access to electronic formats as a means of precluding widespread distribution of case records about  
246 children into larger, private databases that could be used to discriminate against children for  
247 insurance, employment, and other purposes. This concern also led the Committee to recommend  
248 that case titles in the petition and other documents include only the names of the parent or other  
249 guardian, and exclude the names or initials of the children (see subdivision 8). Subdivision 6  
250 allows the courts to prepare calendars that identify cases by the appropriate caption. To the extent  
251 that court information systems can provide appropriate electronic formats for public access,  
252 subdivision 6 allows the court to make those accessible to the public, for example, by order of the  
253 chief judge of the judicial district.

254 Subdivision 7 establishes two categories of protective orders. One is made on motion of  
255 a party after a hearing, and the other is made on the court's own motion without a hearing, subject to  
256 a later hearing if requested by any person, including representatives of the media. In any case,  
257 a protective order may issue only in exceptional circumstances. *See Order Establishing Pilot*

258            *Project On Open Hearings In Juvenile Protection Matters, #C2-95-1476* (Minn. S. Ct. filed Jan. 22,  
259            1998). The advisory committee felt that these procedures would provide adequate protection and  
260            flexibility during the pilot project.

The change in case captions under Subdivision 8 is designed to minimize the stigma to children involved in open juvenile protection proceedings. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect.

## APPENDIX A

### STATE OF MINNESOTA IN SUPREME COURT

C2-95-1476

#### AMENDED ORDER ESTABLISHING PILOT PROJECT ON OPEN HEARINGS IN JUVENILE PROTECTION MATTERS

WHEREAS, the Supreme Court Foster Care and Adoption Task Force recommended that hearings in juvenile protection proceedings be presumed open absent exceptional circumstances and that the corresponding juvenile file be accessible to the public, except for certain documents and reports; and

WHEREAS, the Open CHIPS Proceedings Subcommittee of the Conference of Chief Judges held a hearing on the Task Force recommendation on November 21, 1997; and

WHEREAS, the Open CHIPS Proceedings Subcommittee of the Conference of Chief Judges, the Conference of Chief Judges Administration Committee, and the full Conference of Chief Judges recommended that this Court establish an open hearings pilot project in representative metropolitan, suburban, and rural jurisdictions to be evaluated by an independent research organization; and

WHEREAS, open hearings in juvenile protection proceedings are authorized in other states, (See e.g. Michigan Rules of Juvenile Procedure 5.925(A); 22 New York Codes, Rules, and Regulations 205.4; and *Oregonian Pub. Co. v. Deiz*, 613 P.2d 23 (Or. 1980));

NOW, THEREFORE, by virtue of and under the inherent power and statutory authority of the Minnesota Supreme Court to regulate public access to records and proceedings of the judicial branch, IT IS HEREBY ORDERED that:

1. Subject to the requirements of this order and rules promulgated by this Court, each judicial district is hereby authorized to conduct a three year pilot project in one or more counties designated by the chief judge of the district, using open hearings in the following juvenile court proceedings: child in need of protection or services proceedings including permanent placement proceedings, termination of parental rights proceedings and subsequent state ward reviews.
2. Open proceedings authorized pursuant to this order shall be presumed open and may be closed or partially closed by the presiding judge only in exceptional circumstances.

3. The pilot projects shall begin June 1, 1998.
4. The State Court Administrator, in consultation with the Conference of Chief Judges and this Court, shall contract with an independent research organization to conduct an evaluation of the pilot projects authorized pursuant to this order. On or before August 1, 2001, such organization shall file with this Court a report addressing the impact of open hearings and records.
5. The Minnesota Supreme Court Advisory Committee on Open Juvenile Protection Hearings is hereby established to consider and recommend rules regarding public access to records relating to open juvenile protection hearings. The advisory committee shall file its recommendations with this Court on or before April 15, 1998. The following individuals are hereby appointed as members of the advisory committee:

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DATED: February 5, 1998

## **APPENDIX B**

### **CONFERENCE OF CHIEF JUDGES SUBCOMMITTEE ON OPEN CHIPS REPORT AND RECOMMENDATIONS**

December 4, 1997

APPROVED BY THE ADMINISTRATION COMMITTEE ON 12/4/97.  
APPROVED BY THE CONFERENCE OF CHIEF JUDGES ON 1/16/98.

#### ***THE SUBCOMMITTEE***

The Subcommittee on Open Juvenile CHIPS proceedings<sup>1</sup> consisted of the following members of the Conference of Chief Judges: Chief Judge Meyer (10th) Chair; Chief Judge Metzen (1st); Asst. Chief Judge Cohen (2nd); Chief Judge Wolf (3rd); Chief Judge Mabley (4th); Chief Judge Gross (5th); Asst. Chief Judge Pagliacetti (6th); Asst. Chief Judge Landwehr (7th); Asst. Chief Judge Seibel (8th); and Chief Judge Murphy (9th).

The Subcommittee heard testimony from the following proponents of Open CHIPS: Mike Freeman, Hennepin County Attorney; Don Anfinson, MN Newspaper Assn.; Mark Toogood, Hennepin Guardian Ad Litem Program; Dr. David Sanders, Director, Hennepin Family and Children's Services. It also heard testimony from the following opponents of Open CHIPS: James Backstrom, Dakota County Attorney; Candace Rasmussen, Third District Chief Public Defender; Rob Scott, Assistant Anoka County Attorney; and Dr. Esther Wattenberg, Center for Urban Affairs. Judge Donovan Frank submitted letter testimony.

Proponents argue: that it is in the public interest to have legal proceedings open generally; that Open Juvenile protection hearings will foster accountability and public awareness; that they will help set "community standards"; that a large number of juvenile matters are public anyway (i.e., family and criminal); and the court can still close hearings when necessary to protect a child.

Opponents argue: that opening juvenile protection proceedings is not in the best interest of children; that any benefits of accountability and public awareness (if they exist) are outweighed by the risks of harm to the children; that children will be less likely to tell of abuse if they know it will be public; and that children may be revictimized as adults if the files are open to the public.

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<sup>1</sup>Includes CHIPS, Termination of Parental Rights, and Foster Placement.

## ***BACKGROUND***

In January, 1997, the Supreme Court Foster Care and Adoption Task Force report recommended that hearings in Juvenile Protection proceedings be presumed open absent "exceptional circumstances" and that the corresponding juvenile file be accessible to the public, except for certain documents and reports. The Task Force was chaired by Judge Edward Toussaint, with Justice Kathleen Blatz as vice chair. Rep. Wes Skoglund was an active member of the task force.

Subsequently, the House Judiciary Committee, chaired by Rep. Skoglund, heard testimony, including Judge Toussaint and Justice Blatz, and recommended a pilot project. On the floor of the House, however, the bill was amended to include all jurisdictions, and passed by a substantial majority. The Senate passed a bill allowing certain limited access only. The bill is now in conference committee.

Subsequent to the Task Force report, and before the bill was passed in the House, the Conference of Chief Judges voted to recommend against Open CHIPS. The Conference also voted, by a less substantial majority, against a pilot project.

The Conference has been asked by Chief Justice Keith and Chief Justice designate Blatz to revisit the issue, as a pilot project, for selected counties.<sup>2</sup> There appears to be strong support in the Supreme Court for a CHIPS pilot project.

## ***SUBCOMMITTEE CONCERNS***

***The Issue Belongs in the Control of the Judiciary.*** Most members of the subcommittee are not in favor of opening CHIPS proceedings; however, the subcommittee agreed that the issue of rules governing the conduct of the courts proceedings should be dealt with in the judicial and not in the legislative or executive branches of government.

***Children's privacy needs to be protected.*** Safeguards need to be established to protect the privacy of the children to the extent possible. Limitations need to be in place regarding accessibility to the CHIPS file.

***Accurate and Independent appraisals of the Pilot should be made.*** If pilot projects are initiated, they need to be thoroughly, accurately, and independently evaluated; by an outside independent organization. Self-reporting and anecdotal experience are not a good test of the pilots.

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<sup>2</sup>Chief Justice Keith has recommended that the pilot be in Hennepin, Houston, and Northern St. Louis Counties.



**Judicial Discretion.** Concern was expressed that if judges are allowed discretion to close in the same manner as now exists for non juvenile proceedings, the county attorney, public defender and guardians in many jurisdictions may ask to close every CHIPS proceeding; and that if the judge does not close the hearing, it could be considered an abuse of discretion because of the unanimous request.

## ***RECOMMENDATIONS***

**THE SUBCOMMITTEE RECOMMENDS THAT THE SUPREME COURT ESTABLISH RULES FOR A PILOT PROJECT IN CERTAIN LIMITED JURISDICTIONS WHEREBY JUVENILE PROTECTION (CHIPS) PROCEEDINGS THERE WOULD BE PRESUMED OPEN, WITH THE FOLLOWING CONDITIONS:**

1. **Subject of Pilot Project:** The pilot will focus on Hennepin County, and other jurisdictions which are representative of urban, rural, metro, and outstate, with the advise of the Conference of Chief Judges. Hennepin County has been the biggest advocate of Open CHIPS, and for that reason needs to be included in the Pilot; however, the balance of the jurisdictions do not need to be staunch advocates.
2. **Length of the Pilot Project:** The pilot will last for three years. Analysis of the project will commence after it has been in place for one year.
3. **Independent Analysis of Pilot Project:** The pilot project will be analyzed by an independent organization, such as the National Center for Juvenile Justice, with funds appropriated for that study. The study's focus will be on whether the pilots have succeeded in greater accountability and public awareness; whether juveniles have been adversely affected by the open CHIPS proceedings or public accessible files; and whether the press has been responsible in its reporting.
4. **CHIPS Files:**
  - a. **Name.** The CHIPS files should be titled in the name of the parent(s) and not in the name of the child.
  - b. **Inaccessible to Data Gatherers.** The CHIPS files should be inaccessible to Data Gatherers, such as those retained by credit bureaus and medical providers.
  - c. **Sealed when closed.** The CHIPS files will be sealed when the child has been reunified, when parental rights are terminated, a long term permanency plan is completed and approved by the court, or when the case is closed.

- d. **Certain documents inaccessible.** Some documents, such as Guardian Ad Litem reports should be publicly inaccessible when the file is open. (See Task Force Report, p. 124).

5. **Judge's Discretion to Close.**

Juvenile Protection matters are presumed open and may be closed or partially closed by the presiding judge only in exceptional circumstances. The request by all parties to close may be a factor to be used by the presiding judge in determining whether exceptional circumstances exist.

Judge Gary J. Meyer  
Chair, Open CHIPS Subcommittee

## APPENDIX C

### LIST OF ACCESSIBLE AND INACCESSIBLE DOCUMENTS RECOMMENDED BY FOSTER CARE AND ADOPTION TASK FORCE

During their deliberations regarding accessible and inaccessible documents, the members of the Open Juvenile Protection Hearings Committee considered the following recommendation of the Foster Care and Adoption Task Force:

*Court records in juvenile protection matters should be open to the public. However, certain information which is protected by law from public access should not be available to the public as well as other information which is of such a nature that public access to the information might 1) cause emotional or psychological harm to children due to the intensely personal nature of the information included, about either the children or their families; or 2) discourage potential reports of neglect by revealing confidential information about reporters. Statutes and court rules should be amended to specify what records within the court file are accessible to the public.*

#### Accessible Documents

*Accessible documents include those in which information is sufficiently detailed to allow the public to hold the agencies involved in the court process accountable, but not so intensely personal as to cause harm to children or discourage reporters from identifying victims of abuse or neglect. The following documents, if located in the court file should be accessible to the public:*

- *CHIPS Summons and Petition;*
- *Parental Termination Summons and Petition;*
- *Affidavits of Publication;*
- *Petition for Transfer of Legal Custody;*
- *Petitions for Paternity;*
- *Affidavits of Service;*
- *Certificates of Representation;*
- *Court Orders;*
- *Hearing and Trial Notices;*
- *Witness Lists;*
- *Subpoenas;*
- *Motions and Legal Memoranda;*
- *Exhibits Introduced at Hearings or Trial, unless described below as "inaccessible" to public;*
- *Birth Certificates;*
- *All other documents not listed as inaccessible to the public.*

*Inaccessible Documents*

*Those documents listed as inaccessible include those that if made accessible might*

- 1) cause emotional or psychological harm to children due to the intensely personal nature of the information included, about either the children or their families; or*
- 2) discourage potential reports of neglect by revealing confidential information about reporters. The following documents, if located in the court file should be inaccessible to the public:*

- Written, audio-taped, or video-taped information from the social service agency except to the extent the information appears in the petition, court orders or other documents that are presumed accessible;*
- Child Protection Intake or Screening Notes;*
- Any other documents identifying reporters of neglect or abuse, unless reporters' names and other identifying information are redacted;*
- Guardian ad litem reports;*
- Victims' Statements;*
- Lists of Addresses and Telephone numbers of Victims;*
- Documents Listing Non-Party Witnesses under the age of 18, unless the names and other identifying information of those witnesses are redacted;*
- Transcripts of Testimony of Anyone Taken during Closed Hearing;*
- Fingerprinting Materials of Anyone;*
- HIV Test Results of Anyone;*
- Psychological Evaluations of Juvenile;*
- Psychological / Psychiatric Evaluations of Anyone;*
- Chemical Dependency Evaluations;*
- Pre-sentence Evaluations of Juvenile and Probation Reports;*
- Medical Records of Anyone;*
- Reports Issued by Sexual Predator Programs for Anyone;*
- Diversion Records (i.e., records prepared by diversion programs, for example, relating to truancy, shoplifting, drug use, runaway, etc.) of Juvenile;*
- Any document which the court, upon its own motion or upon motion of a party, deems inaccessible because doing so would serve the best interests of the child.*

*Court records should be open only for cases filed after a certain date.*

## APPENDIX D

### DOCUMENTS POTENTIALLY FOUND IN JUVENILE COURT FILES

Among the records considered by the Open Juvenile Protection Hearings Committee were:

1. referee findings and recommended orders,
2. case plans, 260.191, subd. 1e
3. informal review reports/orders/findings
4. formal review reports/orders/findings
5. pre-placement reports
6. foster placement reports
7. expert witness reports and recommendations
8. petition for adoption
9. petition for review of foster care status, 260.131, subd 1a
10. petition for habitual truant 260.131, subd. 1b
11. notice and summons (all types of cases) 260.135
12. emergency CHIPS petition, 260.133
13. temporary orders
14. affidavits (or other documents) accompanying or attached to petitions
15. dept. of corrections reports
16. residential placement reports
17. mental health screening tools, 260.152, subd. 3
18. questions submitted to court to question child victim
19. court minutes/transcripts/recordings, 260.161
20. index of files under child's name, 260.161, subd.1
21. register of documents contained in file, 260.161, subd. 1
22. peace officer records, 260.161, subd. 3
23. photographs of child
24. school records - truancy
25. protective orders precluding attys. from releasing records to clients, 260.165, subd. 3a
26. community program records, 260.165, subd. 3b
27. peace officer notice to parents regarding custody, 260.165, subd. 3
28. notice of placement in shelter care, 260.171.subd. 5a
29. shelter care facility report, 260.171, subd. 6(b)
30. social services intake documents/tools, 260.174, subd. 2
31. insurance information, 260.174
32. probation officer reports (truants or runaways)
33. permanent placement determination pleadings, 260.191, subd. 3b
34. home studies for PPD, 260.191, subd. 3
35. guardianship petitions or modifications, 260.245
36. appellate records
37. interstate compact reports, 260.51