Idaho Office of Performance Evaluations

State Transparency Policies in Child Abuse and Neglect Court Proceedings

Background Review

Requested by
Senator Melissa Wintrow

Prepared by
Amanda Bartlett & Mackenzie Moss

Reviewed by
Merritt L. Dublin, J.D.,[a]
Stacy L. Pittman, J.D.,[b]
& Ivy Smith, M.P.A.[c]

Copyedited by
Leslie Baker

Office of Performance Evaluations Director
Rakesh Mohan

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Summary: Increased transparency in child protection systems has been suggested to improve accountability and performance. The Office of Performance Evaluations was asked to review state transparency policies, specifically policies regarding open child protection court proceedings and records. This background review summarizes federal and state policies and provides potential pros and cons of an open child protection court system. Of note, whether a state has a presumptively open or closed system, many practices are similar and rely on judicial discretion and party representation to ensure that the default policy does not adversely affect the individuals in a case.

[a] Merritt L. Dublin is a Professor of Law at the University of Idaho and the Director of the Family Justice Clinic. Merritt serves as a current member of the Department of Health and Welfare Child Protection Advisory Board. Before moving to Idaho in 2005, Professor Dublin was Chief Counsel of Child Protective Services for the Arizona Office of the Attorney General.

[b] Stacy L. Pittman is a practicing attorney and the current Chairperson of the Child Protection Section of the Idaho State Bar. Stacy also served as a child advocate attorney representative on the Governor's Task Force on Children at Risk between 2021 and 2023.

[c] Ivy Smith is a Health Policy Specialist with Idaho Voices for Children. Ivy has also been a member of the Idaho Youth Advisory Board since 2016 and served as the Secretary and Chair between 2020 and 2021.

Introduction

Increased transparency into child protection systems has been suggested to improve accountability and performance. Debates about the degree to which the public should have access to proceedings involving juveniles, particularly court proceedings, are rooted as far back as the late 1800s.[4] Proponents believe more access will ensure procedures are appropriately conducted and raise community awareness and involvement.[5] Those who favor stronger confidentiality protections believe that public access will lead to scrutiny of children and parents, adding counterproductive pressure to families who are already highly stressed.[6]

States have adopted different transparency and confidentiality rules to balance accountability and privacy.

States have adopted different strategies to promote system accountability while protecting the privacy of children and families. Specifically, federal confidentiality rules allow states discretion in whether the public should have access to child protection court proceedings.[7] As such, many states have considered or implemented open child protection courts.

Senator Melissa Wintrow asked the Office of Performance Evaluations to conduct a background review of state transparency policies, specifically policies regarding child protection proceedings. Background reviews, also called 24-hour reviews, are expedited reports that supply a summary of best practices and publicly available information to meet the time-sensitive needs of legislators. This report does not make findings or recommendations that are typically found in our evaluations. However, this report does offer information that should be useful to policymakers considering further action.

[4] DIONNE MAXWELL, KIM TAITANO, & JULIE A. WISE, TO OPEN OR NOT TO OPEN: THE ISSUE OF PUBLIC ACCESS IN CHILD PROTECTION HEARINGS TECHNICAL ASSISTANCE BRIEF, National Council of Juvenile and Family Court Judges at 1 (2004).

5 *Id.*

6 *Id.*

7 *Id.* at 5. Prior to 2004, state child protection professionals were concerned that federal grant money would be withheld under the Child Abuse Prevention and Treatment Act (CAPTA) if states did not maintain strict confidentiality policies, even extending to the courtroom. That concern was addressed through a 2003 amendment discussed in section 1 of this report.

This report provides a high-level summary of federal and state practices to answer the following questions:

1. What are the federal confidentiality requirements?
2. What is Idaho's confidentiality framework in child protection court proceedings?
3. How do other states approach openness?
4. What are the pros and cons of an open court system?
5. How could openness improve the child protection system?
6. What questions could policymakers use to help guide discussions?

Methods

We created a list of states with notable child protection transparency laws.

We also searched for sources referencing how states applied federal law confidentiality requirements.

We began our research by reviewing public policy papers from an organization advocating for openness and transparency in child protection systems: the National Coalition for Child Protection Reform. We developed a list of states with notable transparency laws. We augmented this list with states mentioned by the requester and other stakeholders we interviewed during the fieldwork for our child protection follow-up evaluation. Throughout the paper, we include statutory language from the resulting list of states. We also searched Westlaw for secondary sources referencing confidentiality requirements in the federal Child Abuse Prevention and Treatment Act.

1. What are the federal confidentiality requirements?

Federal law requires the preservation of confidentiality but does not prohibit information sharing. The Child Abuse Prevention and Treatment Act (CAPTA) requires that states receiving federal funding have methods to preserve the confidentiality of reports and records, including requirements to ensure that information is released only to certain entities.[8] According to the Administration for Children and Families:

> *"CAPTA does not prohibit information sharing. In general, CAPTA requires that a state preserve the confidentiality of all abuse and neglect reports and records in order to protect the rights of the child and the child's parents or guardians. However, CAPTA allows the state to release information to certain individuals and entities."*[9]

CAPTA **requires** that the following individuals and entities have access to confidential child protection information:

- any government agency that needs the information to carry out responsibilities under the law to protect children from abuse and neglect[10]
- citizen review panels[11]
- child fatality review teams[12]
- members of the general public when a case of child abuse or neglect results in a child fatality or near fatality[13]

CAPTA **permits** confidential child protection information to be shared with the following individuals and entities:

- individuals who are the subject of an abuse or neglect report
- a grand jury or court

[8] 42 U.S.C.A. § 5106a(b)(2)(B)(viii). All fifty states receive CAPTA money for their child protection systems.

[9] CONFIDENTIALITY TOOLKIT: A RESOURCE TOOL FROM THE ACF INTEROPERABILITY INITIATIVE ADMINISTRATION FOR CHILDREN AND FAMILIES at 18 (2014).

[10] 42 U.S.C.A. § 5106(b)(2)(B)(ix).

[11] 42 U.S.C.A. § 5106(c)(5)(A).

[12] 42 U.S.C.A. § 5106(b)(2)(B)(viii).

[13] 42 U.S.C.A. § 5106(b)(2)(B)(x).

other individuals authorized by state or federal statute to receive information pursuant to a legitimate state purpose[14]

Even when CAPTA allows for an exemption or authorization to share information, other federal regulations with confidentiality or privacy restrictions still apply, including:

Health Insurance Portability and Accountability Act (HIPAA)

Family Education Rights and Privacy Act (FERPA)

Titles IV-B and IV-E of the Social Security Act, Child and Family Services

Substance Abuse Confidentiality Regulations[15]

States have some discretion in determining the public's access to child protection court proceedings and records. CAPTA was amended in 2003 to give states the discretion to allow public access to child protection court proceedings. CAPTA states explicitly that nothing in the Act:

CAPTA should not be construed to limit states' flexibility to determine its policies for public access to court proceedings if the policies ensure the safety and well-being of the child, parents, and families.

". . . shall be construed to limit the State's flexibility to determine State policies relating to public access to court proceedings to determine child abuse neglect, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and families."[16]

[14] 42 U.S.C.A. § 5106(b)(2)(B)(viii).

[15] 42 U.S.C.A. § 290dd-2

[16] 42 U.S.C.A. § 5106a(b)(2).

2. What is Idaho's confidentiality framework?

Child protection records in Idaho are generally unavailable to the media or any members of the public. (See Table 1). Idaho statute outlines that juvenile court records are available only to people with full or partial custody of the child in question and authorized agencies providing protective supervision or having legal custody of the child.[17] Child abuse and neglect court proceedings, including hearings and records, are also closed to the general public.[18]

TABLE 1. Confidentiality Rules Relating to Proceedings and Records

Proceeding, record, or entity	Access
Court hearings and proceedings	<u>Granted access:</u> "[. . . [O]nly such persons shall be admitted as are found by the court to have a direct interest in the case." <u>The judge has the discretion to admit or exclude</u>: the child a supportive person for the child when the child is testifying unless the parent's constitutional right would be unduly prejudiced persons who can show they have a direct interest in the case <u>Excluded:</u> "The general public shall be excluded . . ." ***Idaho Code § 16-1613***
Court records of proceedings	<u>Granted access:</u> parties to the proceeding persons with full or partial custody authorized agencies providing protective supervision or with legal custody of the child <u>At the discretion of the judge:</u> "Any other person may have access to the records only upon permission of the court and only if access is in the best interests of the child or for research purposes with an agreement not to disclose any information which could lead to the identification of the child." ***Idaho Code § 16-1626***

[17] Idaho Code § 16-1626.

[18] Idaho Code § 16-1613.

Department Records of Investigations, Evaluations, Prognoses, and Orders Concerning Disposition or Treatment

Selected Rules and Statutes

(Emphasis added)

Records Subject to Idaho Public Records Act:

Most records fall under the investigatory records exemption in Idaho Code § 74-105(7). The department has the discretion to disclose records prepared by the department for reasons of health and safety, best interests of the child, or public interest. The department does not have the discretion to disclose adoption records under the Idaho Public Records Act.

The Idaho Public Records Act governs disclosure unless:

> **a court orders otherwise**
>
> **a person consents to disclosure**
>
> **disclosure is necessary to the delivery of services**

Idaho Code § 16-1629(6)

The sole remedy for a person aggrieved by the denial of a request for disclosure is to institute proceedings in the district court of the county where the records or some part thereof are located, to compel the public agency to make the information available . . .

Idaho Code § 74-115(1)

The department may use its discretion when not in conflict with the child's best interest and one or more of the following:

> **identifying information has been previously published or broadcast through the media;**
>
> **all or part of the child-specific information has been publicly disclosed in a judicial proceeding;**
>
> **the disclosure of information clarifies actions taken by the department on a specific case.**

Idaho Admin. Code* r. *16.05.01.210.02

"With a consent or an authorization, confidential information will be used or disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the department's business and the provision of benefits or services, subject to law and the exceptions listed in these rules."

Idaho Admin. Code r. 16.05.01.075

Records associated with valid discovery requests will be provided.

Idaho Admin. Code r. 16.05.01.075.07

"If information is subpoenaed in a civil, criminal or administrative action, the department will provide such information as would be disclosed with a public records request, without an order from the court or hearing officer. Alternatively, the department may submit the record with a request for a review solely by the judge or hearing officer, and an order appropriately limiting its use by the parties. If department staff have reason to believe that release of a record through a public records request may be detrimental to any individual, the department may seek a protective order."

Idaho Admin. Code r. 16.05.01.075.02

"Unless the individual is a witness in litigation, identifying information must not be disclosed about an individual who reported concerns relating to any department responsibility, including: . . . (b) abuse, neglect or abandonment of a child."

Idaho Admin. Code r. 16.05.01.075.03

In addition to the parties to cases, Idaho Code and department rule identify several entities with access to court and department records: elected officials, guardians ad litem, citizen review panels, multidisciplinary teams, and child fatality review teams.

Elected state officials carrying out their functions have full access to child protection records.[19]

Guardians ad litem have statutory authority to inspect all records about a child for which they are appointed, including records kept by:

- the department
- hospitals
- schools, health care providers, psychologists
- psychiatrists
- police departments
- mental health clinics
- any other person, agency, or organization[20]

Citizen review panels have access to all department records related to the child and chase under review. Citizen review panels also have access to court filings and police reports.[21]

The **Child Fatality Review Team**, part of the Governor's Children at Risk Task Force, receives non-identifying summary information from the department about relevant cases.[22]

Multidisciplinary teams, organized under the county prosecuting attorney, may receive confidential information from the department.[23]

[19] Idaho Code § 16-1629(6)

[20] Idaho Code § 39-8201 et. seq. The guardians' access is limited only by federal law and by the Idaho Safe Haven Act.

[21] Idaho Code § 16-1647. There are seven citizen review panels, one in each public health district.

[22] Idaho Admin. Code r. 16.05.01.210.01 in accordance with 42 U.S.C.A. § 5106a(b)(2)(B)(x)

[23] Idaho Admin. Code r. 16.05.01.100.07. *See also* Idaho Code *§* 16-1617

3. How do other states approach openness?

Two methods states use to balance openness and privacy are: 1) enumerate the specific entities that should have access to records and 2) create a presumption that court hearings and records are either open or closed.

Some states enumerate which entities can access records.

The more explicit statute is about who has access, the more certain access is.

Some states more specifically enumerate which entities have access to certain records. Entities that are more explicitly named in statute tend to have more certain access to records. A 2014 Children's Legal Rights Journal article summarizes how each state handles access to department records under CAPTA.[24]

As section 2 of this report outlines, Idaho is limited in the number of entities it allows to access records. As an example of a state with many enumerated entities, Montana lists 26 individuals, types of agencies, or other entities that must be given access to records upon request "unless otherwise protected" by law or "unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records."[25] (See Appendix A for the complete statute section).

Presumptively open court systems allow public access to certain information. Parties can ask the court to close a case.

Presumptively closed court systems restrict public access to child abuse and neglect proceedings and records. In some states, parties can ask the court make certain information public.

A second method states use in balancing openness and privacy is to create a default presumption that court hearings or records will be open or closed. Generally, the default policy in a court system that is presumed open is to allow public access with exceptions. A party in a presumptively open system can ask the court to close the proceedings or seal the records. In the alternative, the default policy in a court system that is presumptively closed restricts public access. In some presumptively closed systems, a party can ask the court to open the proceedings or make certain information public.

In 2014, 27 states and the District of Columbia had closed child protection hearings or allowed open hearings only at a judge's discretion.[26] We chose a handful of states to compare and

[24] Courtney Barclay, *When the Need to Know Outweighs Privacy: Granting Access to Child Welfare Records in the Fifty States*, 34 CHILD. LEGAL RTS. J. 175, 176-77 (2014).

[25] Mont. Code Ann. § 41-3-205(3).

[26] William Wesley Patton, *Bringing Facts into Fiction: The First Data-Based Accountability Analysis of the Differences Between Presumptively Open, Discretionarily Open, and Closed Child-Dependency Court Systems*, 44 U. MEM. L. REV. 831, 844 (2014).

highlight a variety of similar and dissimilar policies and practices. (See Table 2.)

TABLE 2. State Approaches to Open or Closed Access to Child Protection Court Proceedings

Court system	Public access to hearings	Public access to court records	Groups with access to court records
Idaho Idaho Code §§ 16-1613, 1626			
Closed	Closed with court discretion to admit persons found "who have a direct interest in the case"	Closed with court discretion to grant access when "shown that such access is in the best interests of the child"	Parties to the proceeding Persons with full or partial custody of the child Authorized agencies providing protective supervision or with legal custody of the child
Arizona Arizona Code §§ 8-525, 807			
Open	Open with exceptions and court discretion to close "for good cause" shown by the parties"	Closed with court discretion after balancing the rights of the parties and "the court shall take reasonable steps to prevent any clearly unwarranted invasions of privacy"	Government agencies Attorneys and guardians ad litem Service providers Schools Auditors and accreditors Legislators and a legislative investigatory committee Citizen review panel An independent oversight committee The Governor
California California Court Rule 5 Subsections 530, 552, 827			
Closed	Closed with court discretion to admit those deemed "to have a direct and legitimate interest in the case"	Closed with judge discretion to a petitioner that shows "good cause"	Court, child protective, and law enforcement agency personnel Attorneys, the child, the parent or guardian The school superintendent The departments of social services and justice and other support agencies and respective personnel Local child support agencies and multi-disciplinary teams

Connecticut **Connecticut Code §§ 46b-122, 124b**			
Open by court discretion	Courts "may permit any person whom the court finds has a legitimate interest" and "for the child's safety and protection and for good cause shown, prohibit any person"	Closed with judge discretion to open	Attorneys, parent or guardian, an adult adopted person Court personnel The department of children and families and division of criminal justice Judicial Review Council
Florida **Florida Code §§ 39-507, 0132, 3202, 3202**			
Open	Open with court discretion to close "upon determining that the public interest or the welfare of the child is best served by so doing"	Closed with court discretion to open to persons with "a proper interest"	Attorneys, parents, and child Guardians ad litem Criminal conflict and civil regional counsels Law enforcement agencies The child protective agency
Minnesota **Minnesota Court Rules 38.01, 8**			
Open	Open with court discretion to close "only in exceptional circumstances"	Open with exceptions for confidential documents and court discretion to close	Most confidential information that is not available to the public is accessible by case parties and participants
New York **New York Court Rules 205.4, 205.5**			
Open	Open with court discretion to close	Closed with court discretion to open	Attorneys, parents, and child Guardians ad litem The child protective agency Representatives from other government agencies A representative of the State Commission on Judicial Conduct

4. What are the pros and cons of an open court system?

The debate over open or closed child protection court proceedings is not new. Since the creation of juvenile courts, states have experimented with and argued over the merits of both systems. Even in states with opposing legal and statutory frameworks, there is a shared recognition that the decision to grant public access to court proceedings is "a balancing test between the public's right to information and the best interest of the child."[27] Our literature review revealed many theoretical pros and cons to presumptively open child protection court proceedings. (See Table 3).

TABLE 3. Pros and Cons to Presumptively Open Child Protection Court Proceedings

Potential benefits
Open proceedings may:
allow the public to access information about specific cases. Public access may encourage effective bureaucracy and legal practice.
better align with the press' First Amendment right to other court proceedings and may ensure due process for children and families
increase the accountability of judges, department case workers, and attorneys
increase the ability of parties to a case to speak openly with the public
create a feeling of community for children and youth by bridging the gap between "internal systemic norms and the public conception of how the system should function"[28]
reduce skepticism about how the child protection system operates
Potential drawbacks
Open proceedings may:
risk the privacy and safety of children and youth involved, including psychological harm
change the type of information children and youth feel comfortable sharing
further exhaust legal resources for child protection if attorneys are often compelled to file motions for closure. Current gaps in representation may also leave some children vulnerable and without the resources to promptly file a motion to close
may risk the parents' privacy in child protection cases
create ramifications for juveniles involved in cases of violence or misconduct
diminish the court's ability to control the types of information that media outlets report, including sensitive and identifying information
politicize the child protection court system

Source: OPE's synthesis of literature from national organizations and other states.

[27] Emily Bazelon, *PUBLIC ACCESS TO JUVENILE AND FAMILY COURT: SHOULD THE COURTROOM DOORS BE OPEN OR CLOSED*, 18 YALE L. & POL'Y REV. 155, 163 (1999) http://hdl.handle.net/20.500.13051/16892.

[28] *Id.*

Our literature review revealed a few key considerations for the implementation of either court system: (a) exceptions to public access, (b) judicial discretion to override the default policy at the request of the parties, (c) logistical considerations, (d) party representation, and (e) the value of input from people with lived experience.

Of note, whether a state has a presumptively open or closed system, many practices are similar and rely on judicial discretion and party representation to ensure that the default policy does not adversely affect the individuals in a case.

Of note, whether a state has a presumptively open or closed system, many practices are similar and rely on judicial discretion and party representation to ensure that the default policy does not adversely affect the individuals in a case.

A. Exceptions

Regardless of the type of court system, states generally use some form of legal framework to create exceptions. (See Table 4). For example, Minnesota's records are presumptively open while still excluding some records from public access, such as transcripts of testimony taken during court, audio or video recordings, portions of case records, and the minor's identity.[29]

TABLE 4. Excerpts of State Laws Creating Exceptions and Judicial Discretion

State	Statutory Language
California (Closed) California Court Rule 5-530	"The public must not be admitted to a juvenile court hearing. The court may admit those whom the court deems to have a direct and legitimate interest in the case or in the work of the court. If requested by a parent or guardian in a hearing under section 300, and consented to or requested by the child, the court may permit others to be present."
Connecticut (Discretionarily open) Connecticut General Statutes § 46b-122	"Any judge hearing a juvenile matter… may permit any person whom the court finds has a legitimate interest in the hearing or the work of the court to attend such hearing. Such person may include a party, foster parent, relative related to the child by blood or marriage, service provider or any person or representative of any agency, entity or association, including a representative of the news media. The court may, for the child's safety and protection and for good cause shown, prohibit any person or representative of any agency, entity or association, including a representative of the news media, who is present in court from further disclosing any information that would identify the child, the custodian or caretaker of the child or the members of the child's family involved in the hearing."
Florida (Open) Florida Statutes § 39-507	"All hearings, except as provided in this section, shall be open to the public, and a person may not be excluded except on special order of the judge, who may close any hearing to the public upon determining that the public interest or the welfare of the child is best served by so doing."

[29] Minnesota Court Rule 8.04

B. Judicial discretion

Whether a state's child protection court proceedings are presumptively open or closed, judges usually have discretion to change the level of public access. (See Table 4). In most states, parties to a case may file a motion with the court to change the presumptive status—either from closed to open, or from open to closed. Judges may consider several factors when making such decisions, including:

- the child's age, maturity level, mental health status, and wishes
- the type of proceeding and access requested
- whether someone is causing or is likely to cause a disruption

C. Logistics

Each state has a different process for implementing open or closed court procedures. For example, according to an official with the Minnesota State Court Administrator's Office, to access court records available to the public, one must go onsite to the relevant courthouse with enough information to identify the child's and parents' names.

In Connecticut, although statute grants the court discretion to open or close any child protection case to the public, courts may operate more on a presumption of closed proceedings in practice.[30]

D. Representation

Accessible and effective legal representation is important to ensure that the correct balance of privacy and public access is achieved in either court system. (See Table 5). In our 2018 report, *Representation for Children and Youth in Child Protection Cases*, we discussed Idaho's issues in ensuring that all children have adequate representation. We plan to follow up on the specific recommendations we made in that evaluation during the 2024 legislative session. Our follow-up may reveal additional findings or recommendations related to transparency.

[30] 2-1-1 of Connecticut, *Family/Juvenile Court*, 2023, https://uwc.211ct.org/family-court-connecticut/.
Information generated by the State of Connecticut Judicial Branch states that "all court documents are confidential and court hearings are closed to the public."

TABLE 5. Excerpts of State Laws Outlining the Importance of Legal Representation for All Parties

State	Statutory Language
Minnesota (Open) Minnesota Court Rule 8.04	"The following juvenile protection case records are confidential and presumptively inaccessible to the public unless otherwise ordered by the court upon a finding of an exceptional circumstance: 'Confidential Documents' filed under subdivision 5; and 'Confidential Information Forms' filed under subdivision 5." "The person filing a confidential document is solely responsible for ensuring that it is filed under a 'Confidential Document' cover sheet and designated as confidential." "The person filing a publicly accessible document is solely responsible for ensuring that all confidential information is omitted from the document and filed on a separate 'Confidential Information Form.'"
Arizona (Open) Arizona Revised Statutes 8-525	"At the first hearing in any dependency, permanent guardianship or termination of parental rights proceeding, the court shall ask the parties if there are any reasons the proceeding should be closed. For good cause shown, the court may order any proceeding to be closed to the public except as provided in section 8-537."

E. Value of assessing the input of those with lived experience

Assessing the input of those with lived experience is also essential in balancing privacy and confidentiality. There is a known risk of negative impact on children and families in having their information available to the public. Any state considering a change in its child protection court system may benefit from the input of those with direct experience in the child protection system, including children, parents, relative caretakers, and foster parents.

The National Association of Counsel for Children supports presumptively closed court proceedings in their 2023 policy framework, recommending specific exceptions, including opening to the public upon youth request.

Of note, after weighing the input of those with lived experience, the National Association of Counsel for Children supports presumptively closed court proceedings in their 2023 policy framework, recommending specific exceptions, including opening to the public upon youth request.

5. How could openness improve the child protection system?

Reports on the impact of transparency policies offer inconclusive evidence. Transparency policies contain many variables that make it difficult to compare states. However, we found a few notable studies summarized below.

A 2001 evaluation of a pilot open court system in Minnesota reported several findings including a minimal impact on court procedures and no in documented harm to any involved parties.[31]

A 2006 evaluation of a pilot program in Arizona found that the impacts of an open court system were minimal.[32]

Later published reports offered some criticisms of the Minnesota and Arizona evaluations, namely that their methods did not adequately assess the potential harm of open courts on children.[33]

A 2014 article reviewed the child protection court procedures of all 50 states and found a correlation between system performance and openness. The author found "discretionarily open states' court systems outperformed presumptively open and closed states' court systems."[34] The author also pointed out that the correlation did not mean causation of confounding variables (such as access to legal representation, varying definitions of abuse

[31] MINNESOTA SUPREME COURT STATE COURT ADMINISTRATOR'S OFFICE, *KEY FINDINGS FROM THE EVALUATION OF OPEN HEARINGS AND COURT RECORDS IN JUVENILE PROTECTION MATTERS*, iii-iv (2001) https://www.mncourts.gov/mncourtsgov/media/assets/documents/reports/Volume_2_-_NCSC_Key_Findings.pdf.

[32] GREGORY B. BROBERG, *ARIZONA OPEN DEPENDENCY HEARING PILOT STUDY,* Arizona State University, 16 (2006) https://azmemory.azlibrary.gov/nodes/view/124449?keywords=.

[33] William Wesley Patton, *WHEN THE EMPIRICAL BASE CRUMBLES: THE MYTH THAT OPEN DEPENDENCY PROCEEDINGS DO NOT PSYCHOLOGICALLY DAMAGE ABUSED CHILDREN*, 33 LAW & PSYCHOL. REV. 29 (2009) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1844896.

[34] William Wesley Patton, *BRINGING FACTS INTO FICTION: THE FIRST "DATA-BASED" ACCOUNTABILITY ANALYSIS OF THE DIFFERENCES BETWEEN PRESUMPTIVELY OPEN, DISCRETIONARILY OPEN, AND CLOSED CHILD-DEPENDENCY-COURT-SYSTEMS*, 44(3) U. MEM. L. REV. 831, 867 (2014) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2472295.

and neglect across states, and access to resources and services).[35] This article was a helpful starting point in assessing the various court systems present in each state.

In theory, transparency policies offer a way to balance power between the state agency with custody of the child (in Idaho, the Department of Health and Welfare) and parents and children. At a system level, the public may have better insight into how the department interprets and implements state law, increasing accountability.

At the case level, transparency could allow for complete and robust advocacy for all parties. In Idaho, the status quo is that hearings and court records are closed, and the department has the discretion over what it shares with other parties. The department curates the information about a case and has full discretion over what department case information is disclosed, even to parties. Open hearings may allow people with relevant information (e.g., grandparents, extended family, providers, community members, foster parents) to hear what is being stated in court and offer supplemental or counter-evidence through the parties' attorneys.

[35] *Id.* at 867-68.

6. What questions could policymakers use to help guide discussions?

Some guiding questions policymakers could consider when evaluating whether to change public access to child protection court proceedings include:

- For which records does the state want to increase transparency?
- Who would benefit from transparency?
- What exceptions should be included?
- Procedurally, who can file a motion to change the default presumption, and how?
- Do all parties have access to quality legal representation?
- What will be the logistics of attending hearings or reviewing records if more public access is granted?
- What else can the state do to mitigate potential risks of public disclosure?
- What are the legal ramifications if records are misused?

Upcoming relevant work

This paper reviews state policies in child protection proceedings. In the upcoming months, OPE will release several additional related reports that will speak to other ways to measure and improve accountability in child protection, including:

- Background Review: 50 State Review of Child Protection Ombudsman'
- Follow-up Evaluation: Representation for Children and Youth in Child Protection Cases
- Follow-up Evaluation: Reducing the Risk of Adverse Outcomes
- Follow-up Evaluation: Evaluation and Retention of Child Neglect Referrals
- Follow-up Evaluation: Child Welfare System

APPENDIX A

MONTANA STATE LAW ENUMERATING ACCESS TO RECORDS

Mont. Code Ann. § 41-3-205
Emphasis added

"The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), **a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.**

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, must, upon request, be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in § 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family engagement meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

(p) the news media, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act [or the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13];

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a child protection specialist, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county or regional interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department."