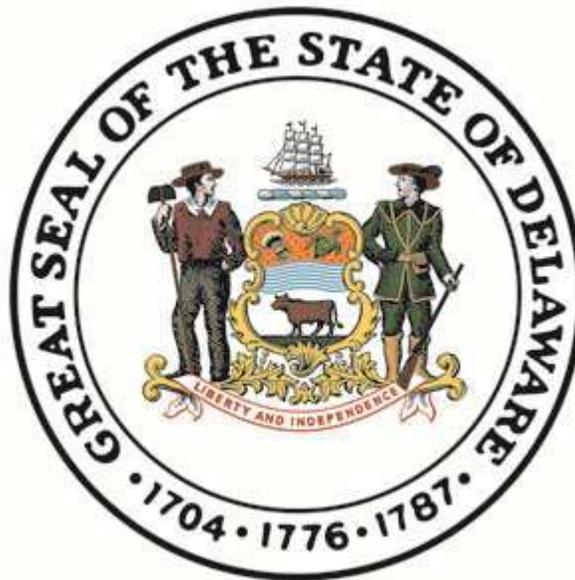


Senate Concurrent Resolution 9 -
The Blue Ribbon Task Force on
the Feasibility of Opening Family
Court Proceedings to the Public



Final Report

Task Force Members

Two Judges of Family Court: Chief Judge Chandlee Kuhn, Judge Michael Newell

One Child Psychologist: Dr. Joseph Zingaro

One member of the Attorney General's Office: Ms. Patricia Dailey Lewis, Esq.

One member of the Office of the Child Advocate: Ms. Tania Culley, Esq.

One family law attorney: Janine Howard-O'Rangers, Esq.

Two Commission on Family Law Members: Ms. Lynn Kokjohn, Ms. Raetta McCall

One public member: Ms. Mariann Kenville-Moore, LCSW

Two members of the Senate: Sen. Dave Lawson (R) & Sen. Bruce Ennis (D)

Two member of the House: Rep. Mike Ramone(R) & Rep. Larry Mitchell (D)

4/15/2014

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Special Thanks

The Blue Ribbon Task Force on the Feasibility of Opening Family Court Proceedings to the Public would like to express our gratitude to General Assembly staff who assisted the Task Force in their work. Special thanks are extended to Dick Carter and Megan Sokola for their guidance and support over the past 7 months. We would also like to express our appreciation for the invaluable legal research conducted by James McGiffin, Esq. Finally, the research on other jurisdictions statutes and practices related to Family Court proceedings by Legislative Fellows Caitlin Del Collo, Chris Kelly and Tanner Polce led to greater insight, and enhanced the review and discussion of the Task Force. Without their contributions, the work of the Task Force would not have been as complete.

Executive Summary

The Task Force was formed in the fall of 2013 and held six (6) meetings, from October 2013 through April 2014. The question before the Task Force was whether it is feasible for hearings that are currently presumed closed or private in Family Court to be presumed public. The Task Force found that it may be feasible in certain hearings. In addition to the passage of new legislation, the Task Force also identified key points that should be considered in the overall development of such a reform plan.

Much was learned within the Task Force about the meaning of open court from Delaware's Constitution. We learned that a non-lawyer could easily misinterpret the meaning of "open" to mean "all proceedings should be open to the public". However, the Delaware Supreme Court has reviewed this matter and has rendered an opinion clarifying the meaning of open court to mean that all persons shall have access to the court without having to pay for justice. The Task Force also learned that having closed/private hearings is constitutional when established by statute and when factors can be clearly articulated as to why privacy is required.

The Task Force reviewed and discussed the Family Court proceedings that are currently private. These hearings are Adoption, Custody/Visitation, Third Party Visitation, Termination of Parental Rights, Permanent Guardianship, Guardianship, Child Protection Registry, Paternity, Divorce, Property Division and Alimony (Ancillary Matters). Adult Misdemeanor, Juvenile Felony & some Misdemeanor, Child Support, and Protection from Abuse hearings are already presumed public.

The Task Force actively sought public comment for the Task Force's consideration. Three (3) press releases were issued to the media. The public was also invited to have a discussion with the 3 public members of the Task Force prior to each meeting. Over 30 people provided input. Of all comments received, approximately 60% indicated a preference to keep the courts as they currently are with approximately 40% indicating a preference to have proceedings public. Several people indicated a preference of keeping the current private system, but would like to allow the option of having a support person present if desired. Further detail about the public comment can be found in Appendix H.

The members of the Task Force approached the process with similar intent: that of wanting to provide litigants with the best court environment as possible. The Task Force worked to protect the privacy and personal interests of parties, including children, while promoting public trust and confidence in the court. Although the Task Force worked hard to reach consensus, not all members were in agreement. The following recommendations represent the majority view:

1. Paternity, Divorce, Property Division & Alimony hearings should be presumed public. Due to the needs of litigants, the court and those involved, it may be appropriate and necessary for a hearing to be private in part or full. The Task Force agreed that Judicial Officers maintain the discretion to determine such a request but based on the following factors:
 - a. Safety concerns of the Court or the parties
 - b. The position of the parties, including children
 - c. The effect of the release of private information
 - d. The opinion of medical and behavioral professionals involved with any of the parties or the children
 - e. The likelihood of harm from release of any medical or financial information, or
 - f. Any other factor the Court finds where privacy serves an overriding interest and no less restrictive means is available

NOTE: Recommendation One will require legislative action to implement; subsequent changes to the Court Rules and procedures will also be required.

2. Weighing the potential negative impact on the child, the Task Force voted that Adoption, Custody/ Visitation, Third Party Visitation, Termination of Parental Rights, Permanent Guardianship, Guardianship, and the Child Protection Registry hearings should be presumed private except to those with a legitimate or direct interest in the proceeding.

Due to the needs of litigants, the court and those involved, it may be appropriate and necessary for a matter to be made public with the ability for other individuals to be present. The Task Force agreed that Judicial Officers maintain the discretion to determine such a request but based on the following factors:

- a. Safety concerns of the Court or the parties
- b. The position of the parties regarding public access
- c. The position of the child or a representative of the child to have a support person present
- d. The position of the parties to have a support person
- e. The effect public access may have on the proceeding
- f. The opinion of medical and behavioral professionals involved with any of the parties or the children
- g. Legitimate academic or research interest in the work of the Court, or
- h. Any other factor the Court finds where public access serves an important interest and no other means is available.

NOTE: Recommendation Two will require legislative action to implement; subsequent changes to the Court Rules and procedures will be required.

The Task Force weighed what is in the best interest of children utilizing existing legal precedents. We recognize that these issues are also being considered nationally and that the legal review of this type of policy remains open to interpretation.

There were additional findings/factors that the Task Force identified which potentially impact the feasibility of a court system change.

- a) To ensure consistent application of the law, the Task Force recommends ongoing training on Court Rules and procedures for Family Court personnel, attorneys, professionals and agencies that appear before the court.
- b) Given the high percentage of Delawareans who are self-represented (*pro se*) in Family Court, access to information relevant to the legal process and procedures is imperative. The following areas were identified as requiring further attention:
 - i. Providing guidance and access to the public on how to file a grievance
 - ii. Increasing the public's awareness of the Family Court Resource Centers, online resource materials, and websites
 - iii. Improving access to the law through law libraries, public libraries, and relevant public resources
 - iv. Providing public education sessions on how civil & criminal cases are handled in Family Court.

The Delaware Family Law Commission may be an appropriate body to track subsequent changes made in reference to this work and assess whether recommendations are implemented, changes to the Court have improved outcomes for litigants and children, changes to public information has occurred and improved access to information has assisted litigants, especially those who are self-represented.

Senate Concurrent Resolution 9 The Open Family Court Task Force Report

I. Background of the Task Force

Prompted by public comment on the access and openness of Family Court, the Delaware Family Law Commission drafted Senate Concurrent Resolution 9 for the General Assembly's consideration. The goal was to facilitate a more detailed review and discussion on opening additional Family Court proceedings. Delaware's 147th General Assembly created a 13-member Blue Ribbon Task Force (hereafter the Task Force) through the passage of Senate Concurrent Resolution No. 9 (SCR 9). (See Appendices B & C)

The charge of the Task Force was to review the feasibility of opening Family Court proceedings to the public. SCR 9 referenced Article I, Section 9 of the Delaware Constitution stating that "all Courts shall be open." The Task Force was quickly educated about the decisions by the Delaware Supreme Court on the intent and meaning of that clause. The Court has interpreted that clause to mean that all persons shall have access to the Courts without having to pay for justice. Given this interpretation of the phrase "all Courts shall be open," it is apparent that openness does not mean that the public has a constitutional right to enter any court proceeding but rather that Delawareans have the ability to access justice through the Delaware Court system without having to overcome financial barriers.

Delaware statute further defines which Family Court proceedings are to be presumed "open" or what is more commonly thought of as public, and which proceedings are to be presumed closed or private. Currently, proceedings involving adoption/termination of parental rights, custody rights/visitation, dependency/neglect, guardianship, paternity, and divorce/alimony/property division in Family Court are presumed closed by statute, unless sufficient reasons exist to open the proceedings to the public. At present, there is no statutory guidance, rule or policy beyond judicial discretion for this decision.

Task Force members were appointed by The President Pro Tempore of the Senate and the Speaker of the House. The Task Force included: 2 members of the Family Court Judiciary, a child psychologist, a representative of the Attorney General's Office, a family law attorney, a representative of the Office of the Child Advocate, 2 members of the Delaware Family Law Commission, 2 members of the Senate, 2 members of the House and a public member.

II. Process Summary of the Task Force's Work

The Task Force met for the first time on October 29, 2013. A majority of members were present for the first meeting. It was at this meeting that Mariann Kenville-Moore and Lynn Kokjohn were selected to be co-chairs. It was at this first meeting that it became clear that confusion existed as to the meaning and interpretation of the language within Delaware's constitution. Much time was spent in the first few meetings coming to an understanding of how the phrases presumed open and presumed closed were legally defined and interpreted. A complete set of meeting agendas, minutes, etc. can be found on the Task Force webpage posted on the General Assembly's Website. (See Appendix A)

The Task Force set out to review all case types in Family Court. Several of the proceedings are currently public. They include:

- Adult Criminal
- Juvenile Felonies
- Juvenile Misdemeanors
- Child Support and
- Protection from Abuse.

Since these proceedings are public, the Task Force determined that further discussion of these hearing types was not necessary.

The majority of the remaining Task Force meeting time focused on examining whether or not currently presumed closed or private types of hearings could be changed to being presumed open or public. That review was done individually by hearing type. Those hearing types included:

- Adoption
- Paternity
- Divorce/Alimony/Property Division
- Third Party Visitation
- Termination of Parental Rights
- Permanent Guardianship
- Guardianship
- DSCYF Custody
- Child Protection Registration.

It was decided at the first meeting that it would be beneficial to solicit public input in order to better understand the concerns and experiences of those using Family Court. Prior to each of the Task Force meetings, the three (3) public representatives (Raetta McCall, Mariann Kenville-Moore and Lynn Kokjohn) held an open public conversation. Members of the public attended each session and shared their experiences with Family Court in Delaware. Other members of the public shared information on their review of other states processes. Numerous concerns related to judicial decision making and discretion were raised. The public that attended were asked to provide their opinion on whether currently presumed hearings should be made public or open.

In addition to inviting the public to attend these sessions, the co-chairs on behalf of the Task Force issued press releases and status updates to local media. In these releases, comments and opinions were solicited. A summary of the written and verbal comments was gathered and added to the ongoing work plan so that Task Force members were made aware of the public's sentiment. Over 30 members of the public gave us written or verbal comments. (See Appendix H)

For those that expressed a desire to change the current private case types to public, some themes emerged. The following sentiments were made by members of the public:

- More openness in court will lead to additional support in the courtroom for litigants
- Demeaning behavior between spouses would be reduced
- More accountability for litigants and for attorneys
- Pro se litigants would benefit by observing relevant court proceedings and learning how to represent themselves
- Perjury would be minimized

- Judges act differently when the public is present thereby having more honest processing
- Instill more confidence in the Family Court system
- Some people still interpret the language in the constitution which says all courts shall be open to mean the public has a right to hear all court cases.

For those that expressed a desire to continue case types being private, some themes emerged and included:

- Safety
- Identity theft or the consequence of releasing private information
- Court has a duty to protect citizen's right to privacy
- Proceedings can be emotionally charged
- Cases are not usually friendly and should only be between the parties involved
- Need to protect mental health and abuse issues
- Media circus if courtrooms are open to everyone
- Intimidation could occur
- Very personal experience and should be private.

The Task Force was interested early in this review about procedures in other jurisdictions. We quickly realized however that making a direct comparison was difficult. We learned that each state appears to handle Family Court matters differently and that one could not rely on common interpretation of statutory language to accurately evaluate whether Delaware's system was similar or not. With the assistance of General Assembly Fellows, the Task Force was able to conduct a more thorough review of several states that seemed to have public proceedings. The Fellows were able to examine state statutes, talk with staff from other jurisdictions' courts, and review studies focusing on the impact of public hearings. Their report noted that the overriding policy themes from their review included: 1) judicial discretion is the foundation for either opening or closing the courts to the public; and 2) empirical data can't be readily found showing improved outcomes for children or litigants when courts are public. They stated that the studies did not yield any evidence to warrant changes.

Their findings were presented to the Task Force and were helpful in drafting the final report and recommendations (see appendix G). Of particular interest were the various parameters used by a Judicial Officer in making a decision.

Delaware Code Title 13 sections related to private Family Court hearings were gathered by General Assembly staff and Task Force members and were distributed to all members. They were used as a reference during the process. (See appendix E) There was also in-depth discussion about the nationally seen legal trend around the issue of public access to various court proceedings. At the request of the Task Force, James McGiffin, legal counsel to the Senate Democratic Caucus, researched a number of questions raised by the members and provided his best guidance. That memo, dated February 14, 2014, helped facilitate further conversation by the Task Force on the feasibility of making public or open currently presumed closed hearings. (See Appendix F)

The Task Force considered the recent decision of the United States Court for the Third Circuit regarding private proceedings in the Delaware Court of Chancery Court case. (*Delaware Coalition for Open Government v. The Honorable Leo E. Strine, Jr.; The*

Honorable John W. Noble; The Honorable Donald Parsons, Jr.; The Honorable J. Travis Laster; The Honorable Sam Glasscock, III, The Delaware Court of Chancery and the State of Delaware, 3d Cir. 2013). It remains undetermined whether this recent case will have any impact on Family Court proceedings.

In making these recommendations, the Task Force weighed what is in the best interest of litigants and children with existing legal precedents. We recognize that these issues are also being considered nationally and that the legal review of this type of policy remains open to interpretation.

III. Recommendations –

Reviewing the feasibility of making Family Court proceedings public is a complex matter and cannot be easily resolved without creating significant change. Our focus remains on what is best for the litigants and in many cases the children involved, so they may obtain the best outcome possible and can understand the decisions of the Court.

Members of the Task Force approached the process with similar intent, that of providing litigants with the best court environment as possible. The Task Force worked to protect the privacy and personal interests of parties, including children, in court proceedings while promoting public trust and confidence. Although the Task Force worked hard to reach consensus, not all members were in agreement.

The following recommendations represent the majority view:

1. Paternity, Divorce, Property Division & Alimony hearings ancillary matters should be presumed public. Due to the needs of litigants, the court and those involved, it may be appropriate and necessary for a hearing to be private in part or full. The Task Force agreed that Judicial Officers maintain the discretion to determine such a request but based on the following factors:
 - a. Safety concerns of the Court or the parties
 - b. The position of the parties, including children
 - c. The effect of the release of private information
 - d. The opinion of medical and behavioral professionals involved with any of the parties or the children
 - e. The likelihood of harm from release of any medical or financial information, and
 - f. Any other factor the Court finds where privacy serves an overriding interest and no less restrictive means is available

NOTE: Recommendation One will require legislative action to implement; subsequent changes to the Court Rules and procedures will also be required.

2. Weighing the potential negative impact on the child, the Task Force voted that Adoption, Custody/ Visitation, Third Party Visitation, Termination of Parental Rights, Permanent Guardianship, Guardianship, and the Child Protection Registry hearings should be presumed private except to those with a legitimate or direct interest in the proceeding.

Due to the needs of litigants, the court and those involved, it may be appropriate and necessary for a matter to be made public with the ability for other individuals to be

present. The Task Force agreed that Judicial Officers maintain the discretion to determine such a request but based on the following factors:

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- f. The opinion of medical and behavioral professionals involved with any of the parties or the children
- g. Legitimate Academic or research interest in the work of the Court, and
- h. Any other factor the Court finds where public access serves an important interest and no other means is available.

NOTE: Recommendation Two will require legislative action to implement; subsequent changes to the Court Rules and procedures will be required.

IV. Additional Findings of the Task Force

The work of the Task Force weighed what is in the best interest of children with existing legal precedents. We recognize that these issues are also being considered nationally and that the legal review of this type of policy is still open to interpretation.

There were additional findings/factors that the Task Force identified which potentially impact the feasibility of a court system change.

- a) To ensure consistent application of the law, the Task Force recommends ongoing training on Court Rules and procedures for Family Court personnel, attorneys, professionals and agencies that appear before the court.
- b) Given the high percentage of Delawareans who are self-represented (*pro se*) in Family Court, access to information relevant to the legal process and procedures is imperative. The following areas were identified as requiring further attention:
 - i. Providing guidance and access to the public on how to file a grievance
 - ii. Increasing the public's awareness of the Family Court Resource Centers, online resource materials, and websites
 - iii. Improving access to the law through law libraries, public libraries, and relevant public resources
 - iv. Providing public education sessions on how civil & criminal cases are handled in Family Court.
- c) The Delaware Family Law Commission may be an appropriate body to track subsequent changes made in reference to this work and assess whether recommendations are implemented, changes to the Court have improved outcomes for litigants and children, changes to public information has occurred and improved access to information has assisted litigants, especially those who are self-represented.

V. Considerations for Implementation

A change of procedure such as those recommended herein will impact the Court and those that come before the Court. Therefore the recommendations for court system change need careful planning and implementation to mitigate potential negative impact. Despite the amount of time and effort dedicated to this review by the Task Force and others, additional research is suggested to ensure a smooth and effective implementation of any Family Court change. The Task Force has identified the following considerations for the General Assembly, the Court and other appropriate organizations:

- Develop and implement a court system reform plan
- Review whether the recommended changes will have any fiscal implication
- When drafting legislation related to the proceedings reviewed, eliminate multiple references in Title 13 on judicial discretion. Replace the multiple statute subsections with one subsection that identifies the discretionary factors a judicial officer should weigh in making a decision to either make proceedings public or private.

APPENDIX

A – p. 8	Task Force Website Summary
B – p. 9:	Senate Concurrent Resolution No. 9
C – p. 11:	Senate Concurrent Resolution No. 35
D – p. 12:	Current Status of Family Court Proceedings
E – p. 13:	Collection of DE Statutes Related to Family Court’s Presumptions on Privacy
F – p. 18:	Memo by Jim McGiffin, Esq.
G – p. 25:	Report on Public/Private Proceedings in other states
H – p. 39:	Final Spreadsheet

Appendix A

The Family Court Task Force website contains the following information for viewing by the public:

1. Membership of the task force and appointment information
2. Meeting agendas
 - a. October 29, 2013
 - b. December 10, 2013 – meeting was cancelled due to snow
 - c. January 7, 2014
 - d. March 3, 2014
 - e. March 21, 2014
 - f. April 8, 2014
3. Final Meeting Minutes
 - a. October 29, 2013
 - b. January 7, 2014
 - c. March 3, 2014
 - d. March 21, 2014
4. The February 2014 Task Force Status Report
5. Press release asking for public input

Appendix B

SPONSOR: Sen. Ennis & Rep. Ramone
Sens. Hall-Long, Henry, Peterson, Sokola; Reps.
Baumbach, J. Johnson, Kowalko, Mitchell, Briggs King,
Hudson, Outten, Peterman, D. Short, Smyk & Wilson

DELAWARE STATE SENATE 147th GENERAL ASSEMBLY

SENATE CONCURRENT RESOLUTION NO. 9

A RESOLUTION TO CREATE A BLUE RIBBON TASK FORCE TO REVIEW OPEN FAMILY COURT PROCEEDINGS.

WHEREAS, the Family Court of Delaware is a trial court of specialized statewide jurisdiction over all domestic relations, juvenile delinquency, and intra-family misdemeanors; and

WHEREAS, the Family Court's jurisdiction intensely affects the lives of many Delaware residents; and

WHEREAS, the proceedings involving adoption/termination of parental rights, custody rights/visitation, dependency/neglect, guardianship, paternity and divorce/alimony/property division in Family Court are closed by statute pursuant to the Delaware Code, unless sufficient reasons exist to open the proceedings to the public; and

WHEREAS, Article 1, Section 9 of the Delaware Constitution reads in part that "[a]ll courts shall be open"; and

WHEREAS, in *Husband C. v. Wife C.*, 320 A.2d 717, 728 (Del. 1974), the Supreme Court concluded "that this Constitutional provision was not directed to the question of public trial"; and

WHEREAS, the 139th General Assembly passed House Joint Resolution 4 creating a Task Force to study the current system in Delaware for opening Family Court hearings and to develop recommendations to improve that system; and

WHEREAS, the integrity of the Family Court process could be enhanced by opening court proceedings; and

WHEREAS, it is important to study the effects opening Family Court proceedings for the purpose of determining whether existing laws regarding such proceedings should be modified to reflect a presumption of openness; and

NOW THEREFORE:

BE IT RESOLVED by the 147th General Assembly that a Blue Ribbon Task Force be created with the charge of reviewing the feasibility of opening Family Court proceedings to the public.

BE IT FURTHER RESOLVED that the President Pro Tempore of the Senate and the Speaker of the House of Representatives appoint thirteen members of the Task Force to consist of two members of each of the Senate and the House of Representatives, two Judges/Commissioners of Family Court, One Child Psychologist, One member of the Attorney General's Office, One member of the Office of the Child Advocate, One Family Law Attorney, and two members of the Family Law Commission and one public member; and

BE IT FURTHER RESOLVED that the task force is to submit a report to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chair of the Family Law Commission by February 15, 2014.

SYNOPSIS

This resolution creates a Blue Ribbon Task Force to review the feasibility of opening Family Court proceedings to the public. The report is due by February 15, 2014 with a copy delivered to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

Author: Senator Ennis

Appendix C

SPONSOR: Sen. Ennis & Rep. Ramone
Sens. Hall-Long, Henry, Peterson, Sokola; Reps.
Baumbach, Briggs King, Hudson, J. Johnson, Kowalko,
Mitchell, Outten, Peterman, D. Short, Smyk, Wilson

DELAWARE STATE SENATE 147th GENERAL ASSEMBLY

SENATE CONCURRENT RESOLUTION NO. 35

EXTENDING THE REPORTING DATE OF THE BLUE RIBBON TASK FORCE TO REVIEW OPEN FAMILY COURT PROCEEDINGS.

WHEREAS, the Blue Ribbon Task Force to Review Open Family Court Proceedings was established under Senate Concurrent Resolution No. 9 of the 147th General Assembly to study the feasibility of opening Family Court proceedings to the public and to make findings and recommendations based on the study; and

WHEREAS, the Task Force was directed to submit its findings and recommendations report to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chair of the Family Law Commission by February 15, 2014; and

WHEREAS, the Task Force has worked diligently on its study, but is not yet prepared to submit its report; and

WHEREAS, the members of the Task Force believe they will be able to submit the report by April 15, 2014;

NOW, THEREFORE:

BE IT RESOLVED by the 147th General Assembly that the date by which the findings and recommendations report of the Blue Ribbon Task Force to Review Open Family Court Proceedings has been extended to April 15, 2014.

SYNOPSIS

This resolution extends the due date of the findings and recommendations report of the Blue Ribbon Task Force to Review Open Family Court Proceedings from February 15, 2014 to April 15, 2014.

Author: Senator Ennis

Appendix D

Privacy of Proceedings in Family Court

The Delaware Constitution, Delaware law and court rules mandate whether proceedings in Family Court are private. The legal authority regarding privacy is outlined below by case type:

Case Type	Authority
Adoption	DEL. CODE ANN. Tit. 13 §924; Family Court Rules of Civil Procedure 90.1(c) and 42.2
Paternity	DEL. CODE ANN. Tit. 13 §§8-105; Family Court Rules of Civil Procedure 90.1(c) and 42.2
Divorce/Alimony/Property Division	DEL. CODE ANN. Tit. 13 §1516; Family Court Rules of Civil Procedure 90.1(c) and 42.2
Custody/Visitation	DEL. CODE ANN. Tit. 13 §726; Family Court Rules of Civil Procedure 90.1(c) and 42.2
Third Party Visitation	DEL. CODE ANN. Tit. 13 §2406; Family Court Rules of Civil Procedure 90.1(c) and 42.2
Termination of Parental Rights	DEL. CODE ANN. Tit. 13 §§1107, 1112; Family Court Rules of Civil Procedure 90.1(c) and 42.2
Permanent Guardianship	DEL. CODE ANN. Tit. 13 §2355; Family Court Rules of Civil Procedure 90.1(c) and 42.2
Guardianship	DEL. CODE ANN. Tit. 13 §2327; Family Court Rules of Civil Procedure 90.1(c) and 42.2
Adult Criminal	Delaware Constitution of 1897, Article I, Section 7; Family Court Rules of Criminal Procedure 62(c) and 24
Juvenile Felonies	DEL. CODE ANN. Tit. 10 §1063(a); Family Court Rules of Criminal Procedure 62(c) and 24
Juvenile Misdemeanors	DEL. CODE ANN. Tit. 10 §1063; Family Court Rules of Criminal Procedure 62(c) and 24
DSCYF Custody	DEL. CODE ANN. Tit. 10 §1063 and Tit. 13 § 2506; Family Court Rules of Civil Procedure 90.1(c), 42.2 and 208
Child Support	DEL. CODE ANN. Tit. 10 §1063; Family Court Rule of Civil Procedure 303
Protection From Abuse	DEL. CODE ANN. Tit. 10 §1063; Family Court Rules of Civil Procedure 400 and 401
Child Protection Registry Matters	DEL. CODE ANN. Tit. 10 §1063; Family Court Rules of Civil Procedure 90.1(c) and 42.2

Rev. 10/13

Appendix E

Summary of Proceeding Privacy Clauses

Within Delaware Code Title 13

March 2014

Custody

§ 724 Interviews

(a) The Court may interview the child in chambers to ascertain the child's wishes as to his or her custodian and may permit counsel to be present at the interview. The Court shall, at the request of a party, cause a record of the interview to be made and it shall be made part of the record in the case.

(b) The Court may seek the advice of professional personnel whether or not they are employed on a regular basis by the Court. The advice given may be in writing and shall for good cause shown be made available by the Court to counsel of record, parties and other expert witnesses upon request, but shall otherwise be considered confidential and shall be sealed and shall not be open to inspection, except by order of the Court. Counsel may call for cross-examination any professional personnel consulted by the Court.

(c) The Court may, sua sponte or upon request of any party including the child, interview a child on the record regarding any factual statements pertaining to the matter before the Court. Any party may request to submit questions to the judicial officer to be asked of the child. Where all parties are represented, the Court may upon request permit counsel for the parties to observe the interview if, in the opinion of the Court, their presence will not adversely affect the welfare or well-being of the child. The Court may permit any person to be present during the interview whose presence, in the opinion of the Court, contributes to the welfare or well-being of the child. All parties to the matter shall be entitled to review the recorded interview in its entirety. Upon request, the Court may provide an oral or written summary of the interview to the parties.

(d) An out-of-court statement made by a child may be admitted into evidence by the Court if reasonable notice of the intention to offer the out-of-court statement is given to all parties and:

(1) The child is available to be interviewed pursuant to subsection (c) of this section, and the statement touches upon the matter before the Court; or

(2) The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness, and the child is found by the Court to be unavailable to be interviewed on any of these grounds:

- a. The child's death;
- b. The child's absence from the jurisdiction;
- c. The child's total failure of memory;
- d. The child's refusal to comply with subsection (c) of this section;
- e. The child's physical or mental disability;
- f. The existence of a privilege involving the child;
- g. The child's incompetence, including the child's inability to communicate about the matter before the Court due to fear or a similar reason; or
- h. Substantial likelihood that the child would suffer emotional trauma from being interviewed as set forth in subsection (c) of this section.

(e) The Court shall support with findings on the record any rulings pertaining to the child's unavailability and the trustworthiness of the out-of-court statement admitted pursuant to subsection (d) of this section. In determining whether a statement possesses particularized guarantees of trustworthiness under paragraph (d)(2) of this section, the Court may consider, but is not limited to considering, the following factors:

- (1) The child's personal knowledge of the event;
- (2) The age and maturity of the child;
- (3) Certainty that the statement was made, including the credibility of the person testifying about the statement;
- (4) Any apparent motive the child may have to falsify or distort the event, including bias, corruption or coercion;
- (5) The timing of the child's statement;
- (6) Whether more than 1 person heard the statement;
- (7) Whether the child was suffering pain or distress when making the statement;
- (8) Whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
- (9) Whether the statement has a "ring of verity," has internal consistency or coherence and uses terminology appropriate to the child's age;
- (10) Whether the statement is spontaneous or directly responsive to questions;

(11) Whether the statement is suggestive due to improperly leading questions.

(f) This section shall in no way limit the admissibility of any statement under other Court rules or statutes governing admissibility. This section shall apply to all proceedings governed by this title as well as to all proceedings set forth in subchapter II of Chapter 9 of Title 16.

§ 726 Hearings.

(a) The Court without a jury shall determine questions of law and fact. All hearings and trials shall be conducted in private but the Court may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the Court.

(b) If the Court finds it necessary to protect the child's welfare, that the record of any interview, report, investigation or testimony in a custody proceeding be kept secret, the Court shall make an appropriate order sealing the record.

(c) The Court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the Court deems necessary to determine the best interests of the child.

Uniform parentage

§ 8-105 Protection of participants.

(a) Notwithstanding any other law concerning public hearings and records, any hearing or trial under this chapter shall be held in closed court without admittance of any person other than those necessary to the action or proceeding, unless the court otherwise directs for good cause.

(b) Except as provided in § 8-633 of this title, all papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the appropriate public agency or elsewhere, are subject to inspection by persons other than the parties only upon consent of the court, for good cause.

§ 8-633 Inspection of records.

A final order in a proceeding under this subchapter is available for public inspection

TPR & Adoption

§1107 Time for hearing; preparation of social report.

(a) When a petition for the termination of parental rights is filed in which the Department or licensed agency is a party to the proceedings, the Court shall set a date for hearing thereon, and shall cause notice of the time, place and purpose of the hearing to be served as required in § 1107A of this title.

(b) When a petition for termination of parental rights is filed and the Department or licensed agency is not a party to the proceeding, the Court shall, before any hearing, order a social study and report on the

petition, by the Department or a licensed agency, to be filed within 4 months, subject to such additional time as the Court shall determine is reasonably required. The Court shall set a date for a hearing to take place after the report is to be filed and notice shall be accomplished as provided in § 1107A of this title.

(c) All hearings shall be held before the Court privately, but for reasons appearing sufficient to the Court, the hearing in any particular case may be public.

[48 Del. Laws, c. 135, § 6](#); 12 Del. C. 1953, § 1107; [50 Del. Laws, c. 17, § 1](#); [59 Del. Laws, c. 466, § 22](#); [60 Del. Laws, c. 251, § 13](#); [62 Del. Laws, c. 402, § 4](#); [64 Del. Laws, c. 108, §§ 6, 10](#); [66 Del. Laws, c. 356, § 1](#); [68 Del. Laws, c. 276, § 1](#); [73 Del. Laws, c. 171, §§ 12, 17](#);

§1112 Confidential nature of court records.

(a) All court records and dockets pertaining to any termination shall be confidential and shall be kept by the Clerk of the Court in a sealed container which shall be opened only by the order of a Judge of the Family Court, except as provided in subchapter III of Chapter 9 of this title.

(b) Nothing in this section shall be construed in such a way as to restrict the Department or a licensed agency from releasing nonidentifying information in its records to any of the parties to the termination.

(c) Identifying information, such as names and addresses, shall not be released by the Department or a licensed agency except:

(1) By order of the Court;

(2) According to § 929 of this title; or

(3) According to subchapter III of Chapter 9 of this title.

(d) In cases where the adopted individual's health or the health of any blood relative of the adopted individual is concerned and the agency has refused to release the health information to the adopted individual, the Court, through petition by the adopted individual, may permit the individual to inspect only that part of the agency or court record containing medical information for health reasons. The Court shall order open to inspection by the adopted individual the part of the record containing the needed medical information if the Court finds that any medical information in the court or agency record of the adopted individual is needed for the health of the adopted individual or any blood relative of the adopted individual. This section shall apply to information as to the identification and location of any biological sibling of the adopted individual if the adopted individual's health or the health of any blood relative of the adopted individual depends on the sibling's participation in any medical treatment.

(e) Anyone wishing to inspect the papers filed in connection with any termination shall petition the Family Court or the court of original jurisdiction setting forth the reasons for the inspection. The Court may refer the petition to the Department or a licensed agency for investigation and report. If, in the opinion of the Court, the information is necessary, and the interests of the adopted individual, the biological parents or the adoptive parents will not be prejudiced by its disclosure, the Court shall issue

an order permitting the release of the information and setting forth the terms under which it shall be released.

13 Del. C. 1953, § 1111; [50 Del. Laws, c. 17, § 1](#); [57 Del. Laws, c. 402, § 2](#); [62 Del. Laws, c. 402, §§ 3, 4](#); [62 Del. Laws, c. 420, § 10](#); [64 Del. Laws, c. 108, §§ 4, 10](#); [64 Del. Laws, c. 387, § 2](#); [68 Del. Laws, c. 276, § 1](#); [69 Del. Laws, c. 433, §§ 6, 7](#);

Divorce

§ 1516 Hearings; use of masters; impoundment; assignment of counsel.

(a) All hearings and trials shall be private, but for reasons appearing sufficient to the Court any hearing or trial may be opened to any person who has a direct and legitimate interest in the particular case, or a legitimate educational or research interest in the work of the Court.

(b) A judge or commissioner, sitting without a jury, shall conduct all hearings and trials where there is a contest, and in those proceedings that are uncontested.

(c) Whenever it seems appropriate, in the interest of justice, the Court may designate a disinterested attorney to defend, or otherwise participate in, a proceeding before the Court, and a fee for such attorney shall be taxed as part of the costs.

(d) No record or evidence in any case shall be impounded or access thereto refused.

Guardianship

§ 2327 Confidentiality of proceedings.

All proceedings under this chapter shall be held before the Court privately, but for reasons appearing sufficient to the Court, the hearing in any particular case may be public.

MEMO

TO: Dick Carter, Family Court Task Force

FROM: James G. McGiffin, Jr., Senate Attorney¹

DATE: February 14, 2014

RE: Family Court Proceedings and Public Access

With this memo I will address four issues relevant to the question of public access to Family Court matters in divorce and child custody cases presently presumed private.

First, is there a Delaware Constitutional requirement that the public have access to all matters litigated in the Family Court?

Second, what are the implications of the recent federal court decision, *Delaware Coalition for Open Government v. Strine, et al.*²?

Third, would a system that provided a presumption that the proceeding was public, but that allowed a judge to make private the proceedings under certain circumstances, pass constitutional muster?

Fourth, assuming that proceedings are presumed public, could the parties agree to bar the public in a way that passes constitutional muster?

I. The Delaware Constitutional Issue

The issue presented is whether the Delaware Constitution confers an unconditional right of public access to all matters litigated in the Family Court. According to the Delaware Supreme Court, the answer is no.

¹ Senate Attorney Kelley Huff provided assistance with this memo.

² 733 F. 3d 510 (3rd Cir. 2013)

The relevant constitutional provision is Article I, Section 9 which is often referred to as an “open courts” clause. It provides:

All courts shall be open; and every man for an injury done him in his reputation, person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense. Suits may be brought against the State, according to such regulations as shall be made by law.

In *Husband C. v. Wife C*³, the Delaware Supreme reviewed on appeal the Superior Court’s decision granting the News Journal access to a sealed court file in a divorce action. The Court, finding a close relationship between access to judicial proceeding and records, examined Article I § 9 to determine if a constitutional right of public access exists.

The Court looked to the historical development of the open courts clause and found that Delaware has never had an unlimited right of public access to judicial proceedings and that public access has been limited when necessary to protect other legitimate concerns.⁴ Next, the Court traced the origin of the clause to Chapter 40 of the Magna Charta and found that the open courts clause “was not directed to the question of a public trial.”⁵ Chapter 40 of the Magna Charta states, in pertinent part, “We will sell to no man, we will not deny to any man, either justice or right.” Chapter 40 was meant to defend the independence of the judiciary from corrupt influence and meddling from the king and restore the integrity of the courts by prohibiting the selling of writs.⁶ Finally, the Court looked to Article I, Section 7 which specifically grants a right to a public trial in criminal cases and found that if the open courts clause intended to grant a right to a public trial, it would have specifically granted that right similar to Article I, Section 7.

³ 320 A.2d 717 (Del. 1974)

⁴ *Id.* at 723-728; *Hartley-Nagle v. State*, 887 A.2d 477 fn. 18 (Del. Ch. 2005).

⁵ *Id.* at 728.

⁶ See Jonathan M. Hoffman, *By the Course of the Law: The Origins of the Open Courts Clause of State Constitutions*, 74 *Or. L.Rev.* 1279, 1286, 1287 (1995); Randy J. Holland, *The Delaware State Constitution: A Reference Guide* 55-56 (2002).

Based upon these considerations, the Court determined that the open courts clause does not establish a constitutional right of public access to judicial proceedings and records. The precedent remains good law today.⁷

II. The Coalition Case

The Delaware Coalition for Open Government, Inc. sued the Court of Chancery over an arbitration process instituted by the Court to resolve certain business disputes. The arbitration process included a bar to public access, and that bar inspired the suit. The Federal District Court (the trial court) concluded that this arbitration process was “sufficiently like a trial,” and that the line of cases finding a First Amendment right of public access applied.⁸ The Third Circuit (the appeals court) agreed that the bar to public access was problematic, but for a different reason.

The Third Circuit applied the “experience and logic test” to the Coalition Case. Under this analysis,

a proceeding qualifies for the First Amendment right of public access when “there has been a tradition of accessibility” to that kind of proceeding, and when “access plays a significant positive role in the functioning of the particular process in question.”⁹

Applying the “experience” prong of the test, the Third Circuit found that the history of trials and arbitrations in this country militated in favor of granting public access to these arbitration proceedings. The “logic” prong required the Court to consider the benefits and drawbacks of public access. The benefits included:

*allowing stakeholders and the public a better understanding of how Delaware resolves business disputes;

⁷ *Hartley-Nagle v. State*, 887 A.2d 477 fn. 18 (Del.Ch. 2005)

⁸ *Del. Coalition for Open Gov’t v. Strine*, 894 F.Supp 2d 493, 500 (2012).

⁹ *Id.*, citing *Press-Enter, Co. v. Superior Court*, 478 U.S. 1, 10, 8 ((1086).

*allaying public concerns about a process only accessible to litigants who can afford the expense;

*discouraging perjury and misrepresentation.

The drawbacks included:

*confidential information (patented information, trade secrets, etc.) would be at risk (though the Court noted protection available under existing Court rule);

*Loss of prestige and good will (which the Court noted might be unpleasant but not debilitating);

*loss of privacy puts at risk the less hostile, more conciliatory approach in arbitration (the Court was not impressed with this argument).

The Court found that the benefits outweighed the drawbacks; thus, the logic prong favored public access as well.

Application of the “experience and logic” test to the Family Court matters presently closed to public access might result in a different conclusion. In Delaware, divorce and custody matters have been closed to the public, historically.¹⁰ Nationally, however, those kinds of cases have been public, with some exceptions. The national perspective, and the tenor of the Coalition Case decision, weigh in favor of public access.

III. Presumptively Public with Judicial Discretion to Bar Public

Delaware is close to unique in presuming that child custody and divorce cases are private. The general rule nationally is that these matters are public.¹¹ The United States Supreme Court has developed a line of cases, beginning with *Richmond Newspapers, Inc. v. Virginia*¹², holding that the public must have access to criminal

¹⁰ See *C. v. C.*, 320 A.2d 717, 725 – 726 (Del. 1974) (divorce)

¹¹ Hawaii keeps private child custody matters, but all other states presume these matters as public.

¹² 448 U.S. 555 (1980)

trials, with limited exceptions. Several lower federal and state courts find that civil cases should be treated similarly.¹³

In Pennsylvania the Superior Court has held that though divorce matters are presumed public, the public may be excluded from those matters “where such access may become a vehicle for harmful or improper purposes.”¹⁴ In that case, the Court explained that privacy may be protected in matters of trade secrets, privacy and reputation of innocent parties, national security and to protect against unfair trial by adverse publicity. The Court held that a divorce proceeding may bar public access for “good cause,” meaning that closure is warranted where “disclosure will work a clearly defined and serious injury to the party seeking closure.”¹⁵ That same Court, in a different case, described the constitutional analysis of the public access question in this way: the presumption of openness to the public is rebutted where (1) the denial of public access serves an important governmental interest and (2) no less restrictive means to serve that interest exists.¹⁶

The California Court of Appeals held unconstitutional a California statute that required a court to seal any divorce pleading that lists and provides the location or identifying information about the financial assets and liabilities of parties. That statute was not the least restrictive means of protecting the privacy interests at stake for the parties.¹⁷ The standard applicable in California cases is that the matter is presumed public and that presumption is rebutted only when:

- 1 – the trial court provides notice of contemplated closure;
- 2 – the court holds a hearing and finds that:
 - i) there exists an overriding interest supporting closure;
 - ii) there is a substantial probability that the interest will be prejudiced absent closure;

¹³ See *New Jersey Div. of Youth and Fam. Svcs. v. J.B.*, 576 A.2d. 261 (N.J. 1990); *Burkle v. Burkle*, 37 Cal.Rptr.3d 805 (Ct App. 2006)

¹⁴ *Katz v. Katz*, 514 A.2d 1374 (Pa. Super. 1986)

¹⁵ *Id.*, at 1380

¹⁶ *In Re: M.B.*, 819 A.2d 59, 63 (Pa Super. 2003)

¹⁷ *Burkle v. Burkle*, 37 Cal.Rptr.3d 805 (Ct App. 2006)

- iii) the proposed closure is narrowly tailored to serve the overriding interest; and
- iv) there is no less restrictive means available.¹⁸

There are several other court decisions commenting upon the characteristics of a controversy that provide a compelling governmental interest militating against public access to all information. The characteristics include:

- *safeguarding the physical and psychological well-being of a minor;¹⁹
- *protecting minors from the trauma and embarrassment of testifying in public;²⁰
- *protecting psychological evaluations in child custody disputes;²¹
- *the avoidance of identity theft or other crimes relating to the misuse of personal financial information;²²

An approach to divorce and child custody matters that allows the Court to determine that barring public access serves an important or compelling governmental interest in the least restrictive manner, would be consistent with the current state of constitutional interpretation on this question.

IV. Consent of the Parties – Does it Make a Difference?

The North Carolina Court of Appeals addressed the case of a party agreement to keep private the matter of a post-divorce property division, finding that the parties' right to contract for privacy in such a proceeding is inferior to the public's right to access.²³ There does not appear to be any authority that supports the contrary view. Parties cannot make a deal that trumps the First Amendment to the U.S. Constitution.

¹⁸ *NBC Subsidiary, Inc. v. Superior Court*, 86 Cal.Rptr2d 778 (Cal.App. 1999)

¹⁹ *J.B.*, 576 A.2d at 265

²⁰ *In Re: M.B.*, 819 A.2d at 61;

²¹ *People v. Dixon*, 56 Cal.Rptr.3d 33, 42 (Ct. App 4th Cal. 2007)

²² *Burkle*, at 821

²³ *France v. France*, 705 S.E.2d 399 (NC App. 2011)

V. Conclusion

The Delaware Constitution does not confer unqualified public access to divorce and child custody matters litigated in the Family Court; however, the First Amendment to the U.S. Constitution requires that most trials are public matters. Delaware's tradition of private divorce and custody trials is likely vulnerable to a challenge similar to that which the Court of Chancery recently experienced. Nationally, most jurisdictions that have passed constitutional muster have two qualities in common: the trials are presumed public and the court employs a balancing test to the question to determine whether to bar the public.

MEMORANDUM

TO: Family Court Task Force
FROM: Caitlin Del Collo, Chris Kelly, Tanner Polce- Legislative Fellow Staff
DATE: 02/27/14
RE: Further Information on Open Access to Family Court

This memo provides the following information on open access to Family Court proceedings:

- Brief synopses of how New York, Rhode Island, Connecticut, and Oregon handle public access to family court proceedings;
- Appendices (A-E) showing individual case type comparisons between Delaware and the states outlined above, as well as additional contextual information from Connecticut pilot study and the State of Utah;
- A chart compiled by the *SACHS Literature Review: Open Juvenile Dependency Courts* (2011) that illustrates the circumstances under which other states allow open proceedings;
- A review of unintended consequences of opening family court proceedings and quality of the research that has been conducted on this issue.

NEW YORK²⁴

In the state of New York the Family Court is operated at the county level, except in New York City, where each of the five boroughs operates its own Family Court.

Family Court is open to members of the public (including news media), meaning that the public has access to all courtrooms, lobbies, public waiting areas, and other common areas. The general public or any individual person can be excluded from a courtroom only if the presiding judge determines, on a “case-by-case basis, based upon supporting evidence,” that exclusion is warranted. The judge may consider, among other factors, the following in making his/her decision to exclude:

1. The person is causing or is likely to cause a disruption in the proceedings;
2. The presence of the person is objected to by one of the parties, including the law guardian, for a compelling reason;
3. The orderly and sound administration of justice, including the nature of the proceeding, the privacy interests of the individuals before the court, and the need for

²⁴ 22 NYCRR 205.4

protection of the litigants, in particular, children, from harm requires that some or all observers be excluded from the courtroom;

4. Less restrictive alternatives to exclusion are unavailable or inappropriate to the circumstances of the particular case.

If a judge utilizes his/her discretion in excluding a person or persons from a proceeding or part of a proceeding, the judge shall make the findings prior to ordering the exclusion.

Given the criteria listed above, it appears that Family Court judges have a great deal of discretion in determining the likelihood of a person being disruptive, whether the parties' wishes for exclusion are compelling, and whether litigants require protection and privacy.

Personal communication with Diane Jenkins, Senior Court Clerk at the New York State Adoption Office, reveals that adoption cases are handled differently. These cases are essentially closed but may be attended by other attorneys and/or interns. If other attorneys and/or interns wish to sit in on a hearing, verbal consent is obtained by the parties involved. If consent is given, the attorneys and/or interns are allowed to observe and take notes, but are instructed not to write down the names of anyone involved in the case. Adoption hearings are purposely scheduled early in the morning, typically between 9 and 9:30 am, to facilitate gatekeeping.

RHODE ISLAND

In Rhode Island Family Court proceedings are closed to the general public:

§ 14-1-30 Conduct of hearings. – In the hearing of any case, the general public shall be excluded; only an attorney or attorneys, selected by the parents or guardian of a child to represent the child, may attend, and *only those other persons shall be admitted who have a direct interest in the case, and as the justice may direct.* All cases involving children shall be heard separately and apart from the trial of cases against adults (emphasis added).

The language emphasized above indicates that judges can exercise discretion in allowing persons other than attorneys to attend proceedings.

CONNECTICUT

In Connecticut the Superior Court divides cases between the Family Division and the Juvenile Matters subdivision. Family Division cases include divorce, child custody (relating to divorce), child support, relief from abuse (restraining orders), juvenile delinquency, child abuse

and neglect, and termination of parental rights. These cases are open to the public, as is made clear by the following statute:

§ 46b-11. (Formerly Sec. 51-335). Closed hearings and records. Any case which is a family relations matter may be heard in chambers or, if a jury case, in a courtroom from which the public and press have been excluded, *if the judge hearing the case determines that the welfare of any children involved or the nature of the case so requires*. The records and other papers in any family relations matter may be ordered by the court to be kept confidential and not to be open to inspection except upon order of the court or judge thereof for cause shown (emphasis added).

All Juvenile Matters cases involve either the care of a minor child or the child's behavior, including: termination of parental rights, emancipation of a minor, delinquency (crimes committed by a minor under age 16), neglect, and families with service needs (FWSN) (a family with a child under age 16 who exhibits bad behavior). Hearings for such cases are closed to the public, and court documents are confidential. The corresponding statute states:

§46b-122. (Formerly Sec. 51-303). Juvenile matters separated from other court business when practicable. Exclusion of persons from hearing. Exceptions. (a) All matters which are juvenile matters, as defined in section 46b-121, shall be kept separate and apart from all other business of the Superior Court as far as is practicable, except matters transferred under the provisions of section 46b-127, which matters shall be transferred to the regular criminal docket of the Superior Court.

(b) Except as provided in subsection (c) of this section, any judge hearing a juvenile matter may, during such hearing, exclude from the room in which such hearing is held any person whose presence is, in the court's opinion, not necessary, except that in delinquency proceedings, any victim shall not be excluded unless, after hearing from the parties and the victim and for good cause shown, which shall be clearly and specifically stated on the record, the judge orders otherwise. For the purposes of this section, "victim" means a person who is the victim of a delinquent act, a parent or guardian of such person, the legal representative of such person or a victim advocate for such person under section 54-220.

(c) Any judge hearing a juvenile matter, in which a child is alleged to be uncared for, neglected, abused or dependent or in which a child is the subject of a petition for termination of parental rights, 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.

OREGON

The *SACHS* report (2011) lists Oregon as a state in which Family Court proceedings are open. According to Oregon statute:

1.040 Sittings of court to be public; when may be private. The sittings of every court of justice are public, except that upon the agreement of the parties to a civil action, suit or proceeding, filed with the clerk or entered in the appropriate record, the court may direct the trial, or any other proceeding therein, to be private; upon such order being made, all persons shall be excluded, except the officers of the court, the parties, their witnesses and counsel. [Amended by 1985 c.540 §18]

This language suggests that if the concerned parties file an agreement with the clerk, the proceeding may be closed, without any other considerations.

Potential Consequences

Empirical studies detailing the consequences of opening family court judicial proceedings to the public are nearly nonexistent. Research has been conducted on pilot programs that opened

juvenile hearings to the public in Minnesota, Arizona, and Connecticut, although concerns have been raised regarding the methodology of the first two studies.

According to a literature review conducted by the Southern Area Consortium of Human Services, concerns raised by opponents of open juvenile courts include an inability to ensure the privacy of participants and to regulate media reporting standards, inconsistent closure of cases, and increased financial strain due to expert fees, training of staff, pilot projects, and administrative costs.²⁵

A policy specialist with the National Center for State Courts mentioned that financial and workload data is typically not tracked by states when they transition to an open court system because the primary concerns of the policy makers are related to issues such as privacy, transparency, accountability, and the well-being of the participants.²⁶ While he could not provide any empirical data, he did expect that opening the courts to the public would increase costs, particularly during the implementation stage, that security would have to be increased, and that the impact on the workload would be unique to each state due to a variety of systemic features.

Minnesota Study

In June of 1998, Minnesota began a three-year pilot program during which they allowed the public to attend cases related to children in need of protection or services within the juvenile court system in 12 counties.²⁷ Evaluators from the National Center for State Courts utilized a survey of child protection professionals and the media, observation, and analysis of reports to evaluate the program. The findings of this analysis included:

²⁵ Southern Area Consortium of Human Services. (2011, February). *Literature Review: Open Juvenile Dependency Courts*. San Diego: San Diego State University School of Social Work. Retrieved from San Diego State University School of Social Work.

²⁶ Conversation occurred on February 25, 2014 with William Rafferty, a Knowledge and Information Systems analyst with the NCSC that focuses on researching caseload and workflow management in state courts.

²⁷ Cheesman, F. L. (2001). *Key Findings from the Evaluation of Open Hearings and Court Records in Juvenile Protection Matters*. National Center for State Courts.

- Significant increase in workload for administrative staff, particularly during the early stages of the pilot, due to record keeping requirements and requests
- The media rarely reported on hearings after the initial implementation, although there was one confirmed instance of an organization publishing the names of a child and their parents in a newspaper
- Slight increase in attendance of hearings with 90 percent of survey respondents noting that it was five or fewer individuals, and that attendees were primarily extended family, service providers, and foster parents
- Conduct in the courtroom, length of hearings, and content of documents were not altered in any substantial way
- Very few cases were actually closed to the public, with only 6 being closed between May 2000 and March 2001

While the evaluators also examined the impact that open proceedings would have on the participants' well-being and privacy, and determined that it would cause minimal harm, the methodology used has been called into question. The evaluators failed to interview the children directly involved, their parents, or psychologists, established an extremely high-standard for the definition of harm, and failed to incorporate literature that shows media attention on traumatic life events can be harmful.²⁸

Arizona Study

In 2004, Arizona began a pilot program during which 15 of its county juvenile court jurisdictions allowed public access to between five and ten percent (dependent on population of county) of their dependency hearings. The pilot program was evaluated by a graduate student from Arizona State University.²⁹ Notable results from this evaluation included:

- Of the 4,026 public hearings that were held, 74 were closed
- A total of 1,768 extra individuals, attended the public hearings during the pilot program
- Of the 1,768 extra individuals, 60 percent were relatives or current caregivers, with less than one percent being members of the media
- 85 percent (43 individuals, 3 non-response for question) of satisfaction survey respondents said that these hearings added 10 minutes or less to average court time

²⁸ Patton, W. W. (2005). *Revisiting Child Abuse Victims: An Empirical Rebuttal to the Open Juvenile Dependency Court Reform Movement*. Retrieved from Suffolk University Law Review: <http://www.cga.ct.gov/2009/kiddata/Tmy/2009ZZ-00000-R000219-William%20Wesley%20Patton,%20Professor-TMY.PDF>

²⁹ Broberg, G. (2006, March 5). *Arizona Open Dependency Hearing Pilot Study: Final Report*. Retrieved from Arizona Judicial Branch: <http://www.azcourts.gov/LinkClick.aspx?fileticket=MIqR1UH59Q4%3D&tabid=2023>

- 82 percent (41 individuals, 4 non-response for question) of satisfaction survey respondents said that open hearings had no impact on the amount of time required to prepare for the case
- 69 percent (35 individuals, 3 non-response for question) of satisfaction survey respondents believed that the quality of child protection hearings had not been affected by the open hearings
- 74 percent (37 individuals, 4 non-response for question) of satisfaction survey respondents noted that there was no noticeable change in content or courtroom documents
- 75 percent (36 individuals, 6 non-response for question) of satisfaction survey respondents believed that the open hearings had no impact on the parents involved with the case

There were 54 total respondents to the satisfaction survey, and they included 13 CPS case managers, 8 assistant attorney generals, 28 parents’ attorneys, and 15 CASA volunteers. An analysis was also conducted on the impact that open hearings had on the children involved, but the findings are considered flawed because it utilized the methodology used in the Minnesota study.

Connecticut Study

In 2010, Connecticut conducted an evaluation of their pilot program that increased public access to the Child Protection Session in the Middlesex Judicial District, which is under the Juvenile Division of the Connecticut Superior Court.³⁰ The advisory board concluded that the pilot program should be ended due to a lack of empirical evidence from states with open courts regarding increased accountability and the impact that this policy can have on the judicial system. Members of the advisory board were also concerned that public proceedings could be harmful to the children involved, and that no empirical evidence existed to discredit these fears, although, they noted that states that have implemented open proceedings have not reversed course. However, the advisory board determined that “there is some benefit to expanded access... [and further recommended that the appropriate statutes be amended to] permit the court to grant access to individuals or entities with an established legitimate interest in the proceedings”. To determine what defines legitimate interest, the advisory board supported the creation of a

³⁰ Juvenile Access Pilot Program Advisory Board. (2010, December 31). *Report to the Connecticut General Assembly*. Retrieved from Connecticut Judicial Branch: http://www.jud.ct.gov/committees/juv_access/Final_report_123010.pdf

“legitimate interest standard”³¹. Legislation in states such as Illinois, California, Colorado, Georgia, and New York along with the District of Columbia was identified as striking an “appropriate balance between openness and court discretion”³².

³¹ The “legitimate interest” standard can be found under sub-heading C in the previously included section on Connecticut

³² For list of, and details on this legislation as depicted in the Connecticut Juvenile Access Pilot Program Advisory Board’s *Report to the Connecticut General Assembly*, see Appendix D

Delaware Family Court System v. New York State Family Court System
Individual Case Type Comparison

Delaware Family Court System			New York Family Court System		
Case Type	Currently Presumed Open/Closed	Justification/ Source	Case Type	Currently Presumed Open/Closed	Justification/ Source
<i>Adoption</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§924	<i>Adoption</i>	Refer to Memo: (Presumed OPEN)	22 NYCRR 205.4
<i>Paternity</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§8-105	<i>Paternity</i>	Refer to Memo: (OPEN)	22 NYCRR 205.4
<i>Divorce/ Alimony/ Property Division</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§1516	<i>Divorce/ Alimony/ Property Division</i>	Not Family Court- heard in Supreme Court	Nycourts.gov
<i>Custody/ Visitation</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§726	<i>Custody/ Visitation</i>	Refer to Memo: (OPEN)	22 NYCRR 205.4
<i>Third Party Visitation</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§2406	<i>Custody/ Visitation</i>	Refer to Memo: (OPEN)	22 NYCRR 205.4
<i>Termination of Parental Rights</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§1107	<i>Termination of Parental Rights</i>	Refer to Memo: (OPEN)	22 NYCRR 205.4
<i>Permanent Guardianship</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§2355	<i>Guardianship</i>	Refer to Memo: (OPEN)	22 NYCRR 205.4
<i>Guardianship</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§2327	<i>Guardianship</i>	Refer to Memo: (OPEN)	22 NYCRR 205.4
<i>Child Support</i>	Presumed Open (PUBLIC)	Del. Code Title 10§1063	<i>Child Support</i>	Refer to Memo: (OPEN)	22 NYCRR 205.4
<i>DSCYF Custody</i>	Presumed Closed (PRIVATE)	Del. Code Title 10§1063; Del. Code Title 13§2506	<i>Foster Care Approval & Review</i>	Refer to Memo: (OPEN)	22 NYCRR 205.4
<i>Protection from Abuse</i>	Presumed Open (PUBLIC)	Del. Code Title 10§1063	<i>Child Protection Proceedings</i>	Refer to Memo: (OPEN)	22 NYCRR 205.4
<i>Child Protection Registry Matters</i>	Presumed Closed (PRIVATE)	Del. Code Title 10§1063	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>

Delaware Family Court System v. Rhode Island Family Court System
Individual Case Type Comparison

Delaware Family Court System			Rhode Island Family Court System		
Case Type	Currently Presumed Open/Closed	Justification/Source	Case Type	Currently Presumed Open/Closed	Justification/Source
<i>Adoption</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§924	<i>Adoption of Minors</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Paternity</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§8-105	<i>Paternity</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Divorce/ Alimony/ Property Division</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§1516	<i>Divorce/ Legal Separation/ Alimony/ Div of Property</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Custody/ Visitation</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§726	<i>Child Custody/ Child Visitation</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Third Party Visitation</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§2406	<i>Child Custody/ Child Visitation</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Termination of Parental Rights</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§1107	<i>Termination of Parental Rights</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Permanent Guardianship</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§2355	<i>Guardianship/ Conservatorships</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Guardianship</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§2327	<i>Guardianship/ Conservatorships</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Child Support</i>	Presumed Open (PUBLIC)	Del. Code Title 10§1063	<i>Child Support</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>DSCYF Custody</i>	Presumed Closed (PRIVATE)	Del. Code Title 10§1063; Del. Code Title 13§2506	<i>Regulation of Child Care Providers/Child Placing Agencies</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Protection from Abuse</i>	Presumed Open (PUBLIC)	Del. Code Title 10§1063	<i>Child Neglect/ Child Abuse</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30
<i>Child Protection Registry Matters</i>	Presumed Closed (PRIVATE)	Del. Code Title 10§1063	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>
<i>Juvenile Misdemeanors/ Felonies</i>	Presumed Open (PUBLIC)	Del. Code Title 10§1063; Delaware Constitution of 1897, Article I, Section 7	<i>Juvenile Delinquency</i>	Refer to Memo: (CLOSED)	Title 14 G.L. 1956, § 14-1-30

Delaware Family Court System v. Connecticut Family Court System
Individual Case Type Comparison

Delaware Family Court System			Connecticut Family Court System		
Case Type	Currently Presumed Open/Closed	Justification/Source	Case Type	Currently Presumed Open/Closed	Justification/Source
<i>Adoption</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§924	<i>Adoption</i>	Refer to Memo: Juvenile Court (Presumed Closed)	§46b-122
<i>Paternity</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§8-105	<i>Paternity</i>	Refer to Memo: Family Court (Presumed Open)	§46b-11
<i>Divorce/ Alimony/ Property Division</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§1516	<i>Divorce/ Legal Separation/ Annulment/ Name Changes</i>	Refer to Memo: Family Court (Presumed Open)	§46b-11
<i>Custody/ Visitation</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§726	<i>Custody of Children</i>	Refer to Memo: Family Court (Presumed Open)	§46b-11
<i>Third Party Visitation</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§2406	<i>Visitation of Children</i>	Refer to Memo: Family Court (Presumed Open)	§46b-11
<i>Termination of Parental Rights</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§1107	<i>Termination of Parental Rights</i>	Refer to Memo: Juvenile Court (Presumed Closed)	§46b-122
<i>Permanent Guardianship</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§2355	<i>Guardianship</i>	Refer to Memo: Juvenile Court (Presumed Closed)	§46b-122
<i>Guardianship</i>	Presumed Closed (PRIVATE)	Del. Code Title 13§2327	<i>Transfer of Guardianship</i>	Refer to Memo: Juvenile Court (Presumed Closed)	§46b-122
<i>Child Support</i>	Presumed Open (PUBLIC)	Del. Code Title 10§1063	<i>Child Support</i>	Refer to Memo: Family Court (Presumed Open)	§46b-11
<i>DSCYF Custody</i>	Presumed Closed (PRIVATE)	Del. Code Title 10§1063; Del. Code Title 13§2506	<i>Juvenile Oversight of Custody</i>	Refer to Memo: Juvenile Court (Presumed Closed)	§46b-122
<i>Protection from Abuse</i>	Presumed Open (PUBLIC)	Del. Code Title 10§1063	<i>Child Protection Proceedings</i>	Refer to Memo: Juvenile Court (Presumed Closed)	§46b-122
<i>Child Protection Registry Matters</i>	Presumed Closed (PRIVATE)	Del. Code Title 10§1063	<i>Not Applicable</i>	<i>Not Applicable</i>	<i>Not Applicable</i>

***In Connecticut the Superior Court divides cases between the Family Division and the Juvenile Matters subdivision.

Legislation Mentioned as Appropriately Balancing Openness and Judicial Discretion by the
Juvenile Access Pilot Program Advisory Board of Connecticut

Illinois: 705 Ill. Comp. Stat. § 405/1-8. Confidentiality and accessibility of juvenile court records.

705 Ill. Comp. Stat. § 405/1-8 excludes the general public from any hearing except representatives of the news media, representatives of agencies and/or associations who, in the opinion of the court, have a direct interest in the case or in the work of the court. However, the court may, for the child's safety and protection, and for good cause shown, prohibit any person or agency present in court from further disclosing the child's identity.

District of Columbia: D.C. Code Ann. § 16-2316. Conduct of hearing: evidence

D.C. Code Ann. § 16-2316 [e] excludes the general public from hearing except in hearing to declare an adult in contempt of court. Only persons necessary to the proceedings shall be admitted but the Division may, pursuant to court rule, admit such other persons, including members of the press, as have a proper interest in the case or the work of the court on condition that they refrain from disclosing information identifying the child or members of the child's family involved in the proceedings. Attendees shall be bound by the confidentiality requirements of the law and shall be informed of said requirements and the penalties for their violation.

California: Cal. Welf. & Inst. Code § 346. Admission of public and persons having interest in case.

Cal. Welf. & Inst. Code § 346 provides that unless requested by the parent, guardian or minor and consented to by the minor, the public is not admitted. The court may, nevertheless, admit relatives and anyone the court deems to have a "direct and legitimate" interest in a particular case or work of the court. By case law, the press has been recognized as a person with a "direct and legitimate" interest. The media can attend on a condition that it does not publish the name of the child, any likeness of the child, interview any child without an attorney present, interview the child's caretakers in the presence of the child, interview any mental health professional to whom the minor had been referred, and does not do any act which might interfere in the future with reunification or have a negative impact on the provision of reunification services. While the last set of requirements is not in the statute, it is presumably in a rule of court.

Colorado: Colo. Rev. Stat. § 19-1-106. Hearings-procedure-record.

Pursuant to Colo. Rev. Stat. § 19-1-106 (2), the general public shall not be excluded unless the court determines that doing so is in the best interest of the child or community, and in such an event, court shall admit only those with an interest in the case or the work of the court including those persons the attorney for the state, the child or the parents or guardian wish to be present.

Georgia: Ga. Code Ann. § 15-11-78. Exclusion from public from hearings: exceptions.

Ga. Code Ann. § 15-11-78 establishes that the general public shall be excluded and only the parties, their attorneys, witnesses and persons accompanying a party for his/her assistance or any person who the court finds has proper interest in the proceedings or work of the court may be admitted. Court has discretion to open any dispositional hearing to the general public.

New York: N.Y. Comp. Codes R. & Regs. Tit. 22, § 205.4. Access to Family Court proceedings.

N.Y. Comp. Codes R. & Regs. Tit. 22, § 205.4 (a) – (b) provides that members of the public, including the news media, shall have access to all courtroom, lobbies, waiting areas and other common areas of the family court. The general public or any person may be excluded from the courtroom only if the judge determines, on a case-by-case basis based upon supporting evidence, that such exclusion is warranted. The court may consider whether (1) the person is causing or is likely to cause a disruption in the proceedings; (2) the presence of the person is objected to by a party for a compelling reason; (3) the orderly and sound administration of justice, including the nature of the proceedings, the privacy interests of individuals before the court, and the need for protection of the litigants, in particular, children, from harm, requires that some or all observers be excluded from the courtroom; and (4) less restrictive alternatives to exclusion are unavailable or inappropriate to the circumstances of the case. The judge must make such findings prior to ordering the exclusion. When necessary to preserve the decorum of the proceedings, the judge shall instruct representatives of the news media and others regarding the permissible use of the courtroom and other facilities of the court, the assignment of seats to media representatives on an equitable basis and any other matters that may affect the conduct of the proceedings and the well-being and safety of the litigants.

Utah³³

In the State of Utah, the Juvenile Court is required to admit any person to an abuse, neglect or dependency hearing unless the court finds, upon the record, that their presence would:

³³ Utah State Legislature. (2008). *Utah Code: Title 78A Chapter 6 Section 114*. Retrieved March 18, 2014, from Utah State Legislature: http://le.utah.gov/code/TITLE78A/htm/78A06_011400.htm

1. be detrimental to the best interest of a child who is a party to the proceeding
2. impair the fact-finding process
3. be otherwise contrary to the interests of justice

The court is able to exclude individuals for these reasons on either its own motion, or on the motion of a party involved with the proceedings.

For delinquency cases, the court is authorized to admit all individuals with a direct interest to the proceedings, along with individuals that have had their presence requested by the parent or guardian, unless the minor is 14 years or older, in which case, the proceedings are defaulted to be open, unless they are closed by the court for the following conditions:

1. the minor has been charged with an offense that would be a felony if committed by an adult
2. the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult

This statute is an update to the Rules of Juvenile Procedure, which states that “in abuse, neglect, and dependency cases the court shall exclude all persons who do not have a direct interest in the proceedings”³⁴. According to Allison Adams-Perlac, a lawyer with the Administrative Office of the Courts in Utah, the Rules of Juvenile Procedure will be updated on May 1, 2014 to reflect the current statute.

³⁴ Utah State Courts. (n.d.). *Rule 50. Presence at Hearings*. Retrieved March 19, 2014, from Utah Rules of Juvenile Procedure: <http://www.utcourts.gov/resources/rules/urjp/URJP50.html>

Appendix H

Final Worksheet

A	B	C	D	E	F
<u>CASE TYPE</u>	<u>CURRENTLY PRESUMED OPEN/CLOSED</u>	<u>WHY CHANGE</u> (per public input)	<u>WHY NEEDS TO REMAIN AS IS</u>	<u>CAN WE OVERCOME ISSUES</u>	<u>RECOMMENDATION of Task Force</u>
Adoption	Presumed Closed (PRIVATE)		*Ensure safety of adoptive family. Private matter;		Continue presumption of PRIVATE (CLOSED) with discretion to open ² .
Del. Code Title 13 §924; Family Court Rules of Civil Procedure 90.1(c) and 42.2.					
Paternity	Presumed Closed (PRIVATE)	Accountability for litigants and attorneys.			Change to presumption of PUBLIC (OPEN) with discretion to close ² .
Del. Code Title 13 §8-105; Family Court Rules of Civil Procedure 90.1(c) and 42.2.					
Divorce/Alimony/ Property division	Presumed Closed (PRIVATE)	*Support for litigants, demeaning behavior between spouses, support of friends, Pro se' would benefit by going to court and learning how to rep self. Accountability for litigants and for attorneys; "it's harder to lie in front of many people;"	*Safety, id theft, private info being exposed. People forced to share personal facts about selves and children, court has a duty to protect citizen's privacy; These proceedings can be emotionally charged, from public safety perspective keep them closed; It's a bunch of he said, she said that the public has no business with; Divorce is not usually friendly and should be between the parties, not airing laundry.	*Can we change to presumed open with discretion of closing it by Judge, in best interest of child and/or agreement of litigants?	Change to presumption of PUBLIC (OPEN) but with discretion to close ² .
Del. Code Title 13 §1516; Family Court Rules of Civil Procedure 90.1(c) and 42.2.					
Custody/Visitation	Presumed Closed (PRIVATE)	*perjury minimized, Judges act differently when public present; more honest proceedings if open; family should be allowed in for support.	*protect mental health and abuse issues, children could be present. Private matters, media circus created; these concern only the family, no one else has right to "listen in." New boyfriend/girlfriend would make it more tense. *Chilling testimony for some. *very personal and should be private, nothing wrong with court system.	*How can we open but protect children? Adults only? What are the unintended consequences? Child testimony could continue to be private. Family Law professionals could hold seminars to teach pro se' litigants. Videos and mock trial for pro se' beneficial too.	Continue presumption of PRIVATE (CLOSED) with discretion to open ² .
Del. Code Title 13 §726; Family Court Rules of Civil Procedure 90.1(c) and 42.2.					
Third Party Visitation	Presumed Closed (PRIVATE)				Continue presumption of PRIVATE (CLOSED) with discretion to open ² .
Del. Code Title 13 §2406; Family Court Rules of Civil Procedure 90.1(c) and 42.2.					
Termination of Parental Rights	Presumed Closed (PRIVATE)				Continue presumption of PRIVATE (CLOSED) with discretion to open ² .
Del. Code Title 13 §§1107, 1204; Family Court Rules of Civil Procedure 90.1(c) and 42.2.					

15	Permanent Guardianship	Presumed Closed (PRIVATE)				Continue presumption of PRIVATE (CLOSED) with discretion to open ² .
16	Del Code Title 13 §2355; Family Court Rules of Civil Procedure 90.1(c) and 42.2.					
17	Guardianship	Presumed Closed (PRIVATE)				Continue presumption of PRIVATE (CLOSED) with discretion to open ² .
18	Del Code Title 13 §2327; Family Court Rules of Civil Procedure 90.1(c) and 42.2.					
19	Adult Criminal	Presumed Open (PUBLIC)				Continue presumption of PUBLIC (OPEN) with discretion to close ² .
20	Delaware Constitution of 1997, Article I, Section 7; Family Court Rules of Civil Procedure 62 and 24.					
21	Juvenile Felonies	Presumed Open				Continue presumption of PUBLIC (OPEN) with discretion to close ² .
22	Del. Code Title 10 §1063(a); Family Court Rules of Civil Procedure 62 and 24.					
23	Juvenile Misdemeanors	Presumed Open (PUBLIC)				Continue presumption of PUBLIC (OPEN) with discretion to close ² .
24	Del. Code Title 10 §1063; Family Court Rules of Civil Procedure 62 and 24.					
25	Child Support	Presumed Open (PUBLIC)				Continue presumption of PUBLIC (OPEN) with discretion to close ² .
26	Del. Code Title 10 §1063; Family Court Rules of Civil Procedure 303.					
27	DSCYF Custody	Presumed Closed (PRIVATE)			Some youth want to be involved.	Continue presumption of PRIVATE (CLOSED) with discretion to open ² .
28	Del. Code Title 10 §1063; Del. Code Title 13 §2506; Family Court Rules of Civil Procedure 90.1, 42.2 and 208.					