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TO: State of Connecticut Judiciary Committee

FROM: WILLIAM WESELY PATTON, PROFESSOR AND J. ALLAN COOK
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RE: *Proposed Bill No. 6702*

DATE: FEBRUARY 21, 2009

I am aware of many of the problems currently inherent in Connecticut's dependency court system.¹ My and other experts' research have demonstrated that presumptively opening the courts not only fails to solve these problems, but it also creates great risk to abused children from being further emotionally traumatized by the system and by the public disclosure of abused children's most intimate facts.²

¹ Open court jurisdictions have as many systemic accountability and quality control problems as closed court jurisdictions. For instance, in Florida, an open court jurisdiction, the Department of Child and Family Services lost the location of hundreds of foster children, and Florida decided to place foster children at risk by cutting \$1.6 million in funds for attorneys to represent foster children. In addition, in another open court jurisdiction, Michigan, the federal government threatened a \$2.5 million fine because of the deplorably poor funding by the state legislature for the state foster care system. (Megan O'Matz (2003 WL 55284579); Jack Kresnak, *Workers Charged in Foster Child's Beating Death*, Detroit Free Press, May 13, 2003).

² I am an expert on the legal and pediatric psychiatric effects of opening child dependency proceedings to the press and public. I have testified in several different state legislatures, testified in court as an expert witness, debated this issue at dozens of different conferences with jurists, legislators, reporters, and other researchers [including at the University of Connecticut School of Law], and have published more on this topic than any other American legal scholar. I also teach a course, *Forensic Child and Adolescent Psychiatry*, at the UCLA David Geffen School of Medicine, Department of

I. **Raised Bill No. 6702 Is The Most Anti-Abused Child Bill Ever Introduced In Any State Legislature in the History of the United States.**

Raised Bill No. 6702 is a cruel bill because it will force many of the most fragile participants in Connecticut's legal system, its abused and neglected children, to suffer the humiliation, shame, peer bullying, and subsequent post traumatic stress disorder from disclosure of their most intimate and private facts. It is also cruel because it places **the burden** on these fragile children to prove that there is a "compelling reason" and no "less restrictive alternatives" available to protect the abused child's mental health.

Raised Bill No. 6702 will cost Connecticut **millions of dollars** to implement for a variety of reasons. First, the bill requires the court to consider whether to exclude any person in every child abuse proceeding on a "case-by-case basis". The only way a judge will have sufficient evidence to prove that there is a "**compelling reason**"³ is by holding an evidentiary hearing to find out what facts demonstrate the need to exclude a person or the public and press. The bill lists several examples of sufficient reasons, including "**harm**" to the child and/or whether the presence of a person will "**inhibit testimony**". In order to demonstrate psychological harm to a child, the moving party will need to introduce expert psychological data regarding the child and the effects of the publicity. The state costs of providing abused children with access to experts to prove that the hearing must be closed or individual persons excluded will be very expensive. Since the burden of proof for closure is "**a compelling reason**" and proof that there are "**no less restrictive alternatives**" is extremely high, in fact, much higher than in an ordinary civil case, the child and/or parent seeking closure will need to present high quality evidence.

But the cost of lengthening each child abuse hearing by providing time for closure motions and expert witness fees are not the only costs that Connecticut will have to bear. Individuals or media sources excluded from the proceedings will have a legal right to either appeal that ruling or to file an interlocutory writ to review the alleged abuse of judicial discretion. Often those appealing will seek a stay of the abuse proceeding until the judicial review of the closure motion is decided, thus frustrating one of the central

Psychiatry. I am deeply concerned with the safety of Connecticut's abused and neglected children under the open court pilot project described in *Proposed Bill No. 6702*. I am supplying your committee with copies of some of my articles on the effects of open court hearings, and I am available to assist you as this bill evolves.

³ The use of the term "compelling reason" is very problematic because that is language that the United States Supreme Court normally uses when discussing fundamental constitutional rights. In order to limit a fundamental right, the government must demonstrate by compelling reason why the right cannot be maintained by the use of less restrictive alternatives. This terminology will permit those who are excluded from a hearing a good argument that the judge abused his/her discretion because such a high burden of proof must be demonstrated in order to justify the exclusion.

goals of the child abuse system – rapid determinations of children’s safety and permanency.

II. *Raised Bill No. 6702 Is The First American Statute To Provide Citizens A Presumptive Right to Publish Abused Children’s Private and Embarrassing Facts Regarding Their Abuse.*

Raised Bill No. 6702 provides the Connecticut public with a statutory right to publish any information gleaned in a child protection case, including **an abused child’s name, address, photograph, “or other personally identifiable information.”** The only way that a person who attends the hearing can have this statutory publication right terminated is if the court makes a finding that there is a **“compelling reason”** to take away spectators’ rights to publish that data. Again, the only way that a judge will not abuse his or her discretion is by holding a hearing on the danger of publishing identifying information. Those who want to stop publication will offer expert evidence in an attempt to meet the heavy burden of demonstrating “compelling reason” to stop publication. Those opposing the gag order will also want an opportunity to present evidence regarding the safety of disclosure. These hearings will be time consuming, and will, when cumulated in every child protection case, cost a great deal of money and will clog the court system with motions to deny publication and appeals from those motions prohibiting the publication of identifying data.

III. *Raised Bill No. 6702 Does Not Provide The Administrator Sufficient Funds Necessary to Investigate and Report on the Efficacy and Safety to Abused Children of Opening the Courts and Permitting Publication of Identifying Information.*

Bill No. 6702 as currently written provides none of the protections necessary in a pilot project to protect abused and neglected children from the consequences of open dependency proceedings. The bill does not discuss or allocate a budget for assuring that Connecticut’s open dependency proceedings do not violate Federal confidentiality requirements that are tied to the receipt of federal child abuse funds. In addition, since psychiatric literature demonstrates that abused children will have increased psychiatric problems caused either by testifying in court before strangers and/or from public disclosure of embarrassing private facts, the bill must allocate substantial new funding for psychological services to assist these children with attempting to achieve emotional equipoise. Further, although the bill calls for a report on the results of the open court pilot project, it does not require any level of quality in those reports. Since abused children who testify or those who do not testify but who have their private lives published do not physically manifest psychological symptoms for months after the court appearance, the bill must require a longitudinal study of parents and children who participate in the open pilot project, including any children whose cases are tried in public but who do not appear.⁴ In addition, since attorneys, social workers, and judges

⁴ Abused children’s trauma from public disclosure of or from testifying about their abuse may not fully manifest as post traumatic stress disorder for more than 18 months. This is called the “sleeper effect.”

lack the psychological training to intelligently assess the psychological impact of open proceedings, the bill should provide sufficient funding for child and adolescent psychiatrists to, at least in part, observe the proceedings and be involved in the preparation the Administrator's open court analysis and report.

IV. Empirical Data Demonstrates That Children Who Do Not Testify Suffer Psychological Trauma Both From the Fear of Disclosure of The Child's Intimate Facts Concerning the Abuse and From the Public's Reaction to That Private Information.

The Canadian government funded a four year longitudinal empirical study of the effects of open court proceedings on children **{both those who testified and those who did not}**. (*A Study of the Social and Psychological Adjustment of Child Witnesses Referred to the Child Witness Project* [hereinafter, "*Study*"].) Although each child faced the prospect of having to testify, approximately 40% of the abused children studied did not testify. (*Study*, at 29) The study interviewed children and their parents and conducted a series of psychological tests on the children prior to the scheduled trial and at several intervals up to 3 years after the completion of the trial. (*Study*, at 5).

"Ninety-five percent" of the children were "scared at the prospect" of testifying even if eventually they did not testify. (*Study*, at 88). During the pendency of the open court hearing the fear of having the public find out about their abuse resulted in the children "having difficulty concentrating on their school work", and they had great psychological pressure from fear that "their fellow students not know about the abuse...." (*Study*, at 91). The Study found that during the "pre-trial" phase, the children's fears of the open court process was an "arduous time" for many children who during that period had "[s]evere acting-out behaviors, depression or suicide attempts...." (*Study*, at 96).

Those children who were forced to testify in open court indicated that much of their difficulty resulted from "having strangers in the courthouse" and the "public nature of the proceedings", and one of the most frequent responses to the question of how to make the proceedings more child-friendly was "closing the courtroom to the public." (*Study*, at 112, 114, 117).

When questioned between three and four years after the trial, children indicated that disclosure of their abuse had had a significant impact on their relationships with their peers. "One quarter reported that the disclosure had been followed by a change in the extent to which they interacted with their peers and class mates." (*Study*, at 143). In addition, "**12 percent had been taunted by fellow students... [and] [t]hese taunts**

See, Robert M. Reece, TREATMENT OF CHILD ABUSE: COMMON GROUND FOR MENTAL HEALTH, MEDICAL, AND LEGAL PRACTITIONERS 25 (John Hopkins Univ. Press 2000); Susan V. McLeer, et. al., *Psychiatric Disorders in Sexually Abused Children*, 33 J. Am. Acad. Child & Adolescent Psych. 313, 313-314 (1994); David Pelcovitz, et. al., *Posttraumatic Stress Disorder in Physically Abused Adolescents*, 33 J. Am. Acad. Child & Adolescent Psych. 305, 306 (1994); Dean G. Kilpatrick, et. al., U. S. Dept. of Justice, YOUTH VICTIMIZATION: PREVALENCE AND IMPLICATIONS 7 (2003); John N. Briere and Diana M. Elliot, *Immediate and Long-Term Impacts of Child Sexual Abuse*, 4 Sexual Abuse of Children 54, 63 (1994).

were often homophobic references or hateful and hurtful comments about incest.” (*Study, at 91*). Even though the courts issued publication bans, in a few cases in which the names and/or addresses of the parties were published or in “high-profile” cases, the children had to suffer the public humiliation. (*Study, at 91-92*).

“Almost half” of those parents interviewed about the effects of open court proceedings on their children “were able to identify a lasting, negative consequence of having the case go to court.” (*Study, at 167*).

The Canadian study clearly demonstrates that even when children do not testify, the fear that the intimate and private facts surrounding their abuse might become public causes abused children a great deal of stress, and the effects of such disclosure often exacerbate their psychopathology when peers taunt them, especially when the sexual attacker was of the same sex as the child.

V. Can Judges in Presumptively Open Proceedings Protect Children By Excluding Particular Individuals Or By Closing the Courtroom to All Public and/or Press?

The National Center for State Courts empirical study of the Minnesota Open Court program clearly demonstrated that courts rarely close dependency courts to the press and public, even when children’s attorneys argue that closure is needed in order to protect the mental health of their abused child clients. (Fred L. Chessman, NATIONAL CENTER FOR STATE COURTS, KEY FINDINGS FROM THE EVALUATION OF OPEN HEARINGS AND COURT RECORDS IN JUVENILE PROTECTION MATTERS, Vol. 1, vii, 6-7 (Aug. 2001). The Study found that “[c]losures of open child protection hearings occurred very infrequently” even though children’s counsel routinely made motions to close the court proceedings. (*Id.*, at vii, 6-7). It should not be surprising that judges are reluctant to close presumptively open court proceedings since judges must not only justify the protective measure, but they must also suffer the political fallout from an angry press which has been denied a statutory right to attend the proceedings.

In a presumptively closed proceeding in which the juvenile court judge has discretion, on a case by case basis, to admit necessary individuals to attend the dependency court hearing, like in California, judges face little political heat from those who seek, but who are denied, court access. In California those seeking access must file a petition with the court demonstrating that they have a “direct and legitimate interest in the particular case or the work of the court.” (CA Welf. & Inst. Code § 346). The court then engages in a balancing of the attendance of non-parties with the best interests of the child. The court can consider all relevant evidence on the issue of who can attend court. For instance, the court could consider evidence of whether a member of the press has ever published confidential data, or whether the person attending will exacerbate the child’s mental state. Since the burden is on the moving party, rarely in California do those denied access seek appellate court review of the denial of court attendance since there is little likelihood of success on appeal regarding an “abuse of discretion” standard.

However, in a presumptively open court system, the burden shifts to the court to prove that an individual or media source should be denied access to the court proceedings. Since the burden shifts to the court to justify the denial of access, if a person or media source is forbidden access, they have a much greater incentive to appeal the decision since their appellate burden is significantly lower than in a presumptively closed system. It is one thing for a juvenile court judge to determine that a person has not sufficiently demonstrated a legitimate interest in attending a hearing, but quite a different process for the court to demonstrate that the evidence of potential harm to the child is sufficiently great to strip the press and/or public from their statutory right to attend a hearing.

Once the press has a statutory right to attend a hearing, what is the likely response once a judge excludes the media? The media is very likely to immediately seek a temporary injunction or writ of prohibition and/or mandate against the juvenile trial court judge. Since it will be relatively simple to obtain a temporary injunction based upon the court's denial of the statutory right of the media to attend the hearing, the result will be that the dependency court process which is attempting to decide the best interest of the abused child will come to a halt. The central goal of modern child dependency proceedings, **rapid permanency** for abused children, will be frustrated during the weeks that it will take to finalize the media's appellate procedures. Again, in presumptively closed proceedings, since the media and public lack a right to attend the hearing and because those seeking access have a difficult burden to prove the court erred, appeals are extremely rare.

The Canadian system is very illustrative of the difficulty of closing presumptively open juvenile courtrooms. Canadian juvenile court judges have discretion to close those proceedings if "it would be in the interest of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the court room...." (R.S.C., C. Y-1, S. 39; S.C., c. 1, s. 132). However, court closures are rare since the court must justify that drastic remedy. For instance, the court in *R. v. C. (T)* (2006 NSPC 61, 251 N.S.R. (2d) 86, 802 A.P.R. 86 (2006), issued a 15-page written opinion justifying the exclusion of the press and public from a juvenile court proceeding. The court stated that it had statutory discretion to close the hearings "if the court considers that the person's presence is *unnecessary* to the conduct of the proceedings *and* the court is of the opinion that *either* any evidence or information presented to the court would be *seriously injurious or seriously prejudicial* to the young person *or* it would be *in the interest of the proper administration of justice* to exclude any or all members of the public from the court room." The court in *R. v. C. (T)* noted that hearings will be closed only in "rare circumstances" where "[t]here are no alternative measures" available to both permit public attendance and prevent "a serious risk to the administration of justice...."⁵

⁵ The *R. v. C (T)* court ordered the hearing closed because the proceeding was a voluntary hearing in which witnesses were not required to testify under oath, and therefore, had the public attended the experts would not have participated since public disclosure of confidential information would have violated the experts' professional ethics.

The bottom line is that there is no empirical evidence from any presumptively open juvenile dependency system that demonstrates that judges have, in fact, excluded members of the public and/or press from those hearings in any meaningful way. The evidence from Minnesota and Canada demonstrates that closing the courts in which the press and public have a statutory right to attend is politically difficult for judges, procedurally time-consuming, and almost non-existent

VI. A Short History of Closed Dependency Hearings in the United States.

The modern trend in child dependency law is to keep child abuse dependency proceedings presumptively closed to the press and public in order to both protect abused children from being retraumatized by the system and to permit courts to maintain their ability to control and/or to hold in contempt of court those individuals or media sources that publish confidential identifying information regarding abused children.

A super-majority of states, approximately two-thirds, have presumptively closed dependency proceedings. Of those states with presumptively open systems, most were opened between 1875 and 1990 before pediatric psychiatric literature demonstrated the jurogenic effects of opening the proceedings on the psychopathology of abused children. Some of those open court states, such as Oregon, never even engaged in an analysis of the consequences of opening their dependency courts because their state constitutions required that all court proceedings be open to the press and public. In fact, the modern trend has been to either maintain closed courtrooms or to provide trial courts on a case-by-case basis discretion to open the proceedings if it will not harm the abused child's best interest. Based upon pediatric psychiatric evidence of serious potential harm to children, four states, California, Connecticut, Illinois and Kentucky have within the past few years rejected presumptively open dependency court proceedings.⁶

A. The Reasons That States Have Rejected Presumptively Open Dependency Courts.

States have relied on **four reasons** for rejecting open dependency courts: (1) Child and Adolescent research clearly demonstrates that open proceedings exacerbate abused children's psychopathology; (2) presumptively open courts strip judges' power to control spectators from publishing embarrassing identifying information regarding the abused child and/or her family; (3) opening the courts is expensive because it substantially increases the case processing time and substantially increases the costs and time of support personnel to redact documents and testimony that violates federal and/or state confidentiality laws; and, (4) Empirical studies demonstrate that open proceedings

⁶ Two separate open court bills were defeated in California, SB 1391 (1990) and AB 2627 (2004). Two previous open dependency court bills were defeated in Connecticut. For a history of Connecticut HR 555 (2004), see, William Wesley Patton, *The Connecticut Open-Court Movement: Reflection and Remonstrance*, Connecticut Public Interest Law Journal (2004), at 8-24. In 2008, the Kentucky legislature rejected a presumptively open dependency court bill, RS BR 1234, which would have created a new statute, KRS § 610 (2008).

do not increase system accountability and do not improve the quality of social worker, attorney, and/or judicial services.

B. The Psychopathological and Neurobiological Effects of Increasing Abused Children's Trauma in Open Hearings.

Child and adolescent psychiatric evidence is undisputed that emotionally fragile abused children may be substantially retraumatized by having their private affairs aired in public. A recent poll of pediatric psychiatrists indicated that 97% believe that dependency proceedings should not be presumptively open to the press and public. The general expert opinion of mental health experts is clearly summarized by one psychiatrist's testimony in the California legislature:

The notion that publicizing this process [child dependency] will somehow benefit the child is hard to fathom. Publicity in the area of child maltreatment makes the child vulnerable to wide ranging humiliation, it leads to repetition of original trauma allowing the legal process to redress grievance, to become part of an extended pattern of psychological abuse.⁷

Children are affected in two ways by open proceedings. First, children who testify in court in front of strangers suffer increased levels of stress both pre-trial [the anticipation of having to testify before strangers] and post-trial [the shame and embarrassment of having exposed themselves before strangers].⁸ “[D]isclosing the abuse publicly in court could increase a child’s feelings of stigmatization...”⁹ “Clinicians have long reported that victims of abuse or trauma are often haunted by feelings of shame”, and studies have found that such shame can predict in children risky behavior, drug use, and unsafe sexual practices.¹⁰ Psychotherapists have determined that abused children who feel shame and guilt must develop trust with another adult and must have a sense of control¹¹ over their lives before they can successfully begin to examine

⁷ This pediatric Psychiatrist's testimony appears at, *Dependency Proceedings: Open Court and Public Access: Hearing on A.B. 2627 Before the Senate Judiciary Committee, 2003-2004 Leg., Reg. Sess. 7 (Ca 2004)*.

⁸ “Not surprisingly, the prospect of testifying in open court rather than via CCTV was associated with children experiencing greater pretrial anxiety.” Goodman, Tobey, Batterman-Faunce, et. al., *Face to Face Confrontation: Effects of Closed-Circuit Technology on Children's Eyewitness Testimony and Jurors' Decisions*, 22 *Law and Human Behavior* 165, 197-198 (1998). See, also, K. J. Saywitz & R. Nathanson, *Children's Testimony And Their Perceptions of Stress In and Out of the Courtroom*, 17 *Child Abuse and Neglect* 613 (1993).

⁹ Jessica Liebergott Hamblen and Murray Levine, *The Legal Implications and Emotional Consequences of Sexually Abused Children Testifying as Victim-Witnesses*, 21 *Law & Psychology Rev.* 139 (1997).

¹⁰ June Price Tangney, Jeff Stuewig, and Debra J. Mashek, *Moral Emotions and Moral Behavior*, 58 *Annual Review of Psychology* 345, 354, 357 (2007); George A. Bonano, et. al., *Context Matters: The Benefits and Costs of Expressing Positive Emotion Among Survivors of Childhood Sexual Abuse*, 7 *Emotion* 824, 826 (2007).

¹¹ Abused children experience a lack of control of their lives, and testifying before strangers in court increases their lack of control. “[E]xperiences of lack of control in the early environment lead to the

their abuse. "There is a general acknowledgement in the literature that...a premature focus on exposure to the trauma may result in a worsening of symptoms" and that psychological treatment, to be successful, must be "a stage-based approach to treatment."¹² Thus, forcing abused children to testify before strangers can increase those children's mental health problems and make therapy more difficult and prolonged. **Second**, even if children do not actually testify or appear in court, the knowledge that their most intimate secrets will be disclosed to the general public and/or press, creates significant psychological stress upon the child. Even adults fear public exposure of abuse. In a poll by the National Women's Study, 69% of adult rape victims feared public exposure and public reaction.¹³ The manner in which the abuse is disclosed and the abused child's perceptions of the reactions of family, peers and the community to the disclosure critically affect the child's mental health. "[D]isclosure-related events may be even more strongly related to the long-term consequences of childhood sexual abuse than are the characteristics of the abuse itself."¹⁴

Scientists are just beginning to understand how the stress of child abuse affects the neurobiological development of children and how the circumstances surrounding the treatment of abused children after that abuse have a lasting impact upon the physical health and mental and emotional capacity and competence of these children. "[E]arly maltreatment may have neurobiological consequences that last into adulthood and that increase the risk of psychopathology."¹⁵ Of particular importance to the public disclosure of the embarrassing facts of child abuse is the significant impact of such disclosure on children's level of stress. The general public's and their peer's attitudes toward the abused child have a significant effect upon the child's stress level and upon the child's self-image: "[c]hildren's stress responses are also sensitive to social experiences beyond the context of the family. Negotiating peer interactions in school settings is a potent challenge to the stress system, particularly at the stage in development when social skills are just emerging."¹⁶ In addition, the most important factor is the child's perception of social responses to the abuse, not the reality of the response: "[s]ubjective perceptions to stigmatization may be as important as objective exposure to discrimination in predicting

perception of subsequent events as similarly uncontrollable, resulting in the development of anxiety problems." Julie B. Kaplow and Cathy Spatz Widom, *Age Onset of Child Maltreatment Predicts Long-Term Mental Health Outcomes*, 116 *Journal of Abnormal Psychology* 176, 183-184 (2007).

¹² Jacqueline N. Cohen, *Using Feminist, Emotion-Focused, And Developmental Approaches To Enhance Cognitive-Behavioral Therapies For Posttraumatic Stress Disorder Related To Childhood Sexual Abuse*, 45 *Psychotherapy Theory, Research, Practice, and Training* 227, 237 (2008).

¹³ Deborah W. Denno, *Perspectives on Disclosing Rape Victim's Names*, 61 *Fordham L. Rev.* 1113, 1125 (1993).

¹⁴ Lynn Sorsoli and Maryam Kia-Keating, *"I Keep That Hush-Hush": male Survivors of Sexual Abuse and the Challenges of Disclosure*, 55 *Journal of Counseling Psychology* 333, 334 (2008). "It is through the experience of being accepted even after sharing their most secret and shameful feelings and thoughts that these children come to accept themselves." David A. Crenshaw and Kenneth V. Hardy, *The Crucial Role of Empathy in Breaking the Silence of Traumatized Children in Play Therapy*, 16 *International Journal of Play Therapy* 160, 164 (2007).

¹⁵ Megan Gunnar and Karina Quevedo, *The Neurobiology of Stress and Development*, 58 *Annual Review of Psychology* 145, 159 (2007).

¹⁶ *Id.*, at 163.

adverse health-relevant outcomes among the stigmatized.”¹⁷ The “social environment” substantially affects abused children’s “stress hormones”, such as cortisol levels, which alter “typical pathways and organization of the young brain.”¹⁸ Cortisol is a hormone secreted to increase a human’s survival skills; however, high cortisol levels can delay and/or alter brain development and can increase physical disease.¹⁹ Since abused children fear that disclosure of their abuse may result in peer rejection, even if that rejection does not transpire, they are subject to increased cortisol levels; “higher levels of cortisol levels in children for whom sociometric measures indicated peer rejection.”²⁰ Child abuse victims suffering from post traumatic stress disorder (PTSD) exhibit “elevated cortisol levels...”²¹ The problem is that abused children suffer from the “cumulative effects” of the original stress caused by the abuse and any additional exposure to stress. Thus, abused children who know that they must testify in court before strangers and/or know that their abuse will be published to the general public will suffer stress in addition to that already caused by the initial abuse. That cumulative stress will cause neurobiological results that will affect their physical, emotional, and mental growth, competence, and capacity.

The only two empirical studies that supported a conclusion that open dependency proceedings do not harm abused children, the **NATIONAL CENTER FOR STATE COURTS MINNESOTA STUDY**²² and the **ARIZONA OPEN COURT STUDY**²³ have proven to be so methodologically flawed that the National Council of Juvenile and Family Court Judges, the premier juvenile judges organization, has cautioned against reliance on the empirical data and warned that those results cannot be generalized to different state dependency statutory schemes.²⁴ In addition, in a California trial, after the authors of both the Minnesota and Arizona studies were examined, the court found that both empirical studies were seriously methodologically flawed, and the court refused to order the proceedings open to the press and public.²⁵

¹⁷ Brenda Major and Laurie T. O'Brien, *The Social Psychology of Stigma*, 56 Annual Review of Psychology 393, 410 (2005).

¹⁸ *Id.*, at 164.

¹⁹ Kipling D. Williams, *Ostracism*, 58 Annual Review of Psychology 425, 433 (2007).

²⁰ *Id.*, at 434.

²¹ Megan Gunner, *supra.*, note 10, at 161.

²² Fred L. Chessman, NATIONAL CENTER FOR STATE COURTS, KEY FINDINGS FROM THE EVALUATION OF OPEN HEARINGS AND COURT RECORDS IN JUVENILE PROTECTION MATTERS (Aug. 2001).

²³ Gregory B. Broberg, ARIZONA OPEN DEPENDENCY HEARING PILO STUDY: FINAL REPORT (March 5, 2006).

²⁴ Dionne Maxwell, Kim Taitano, and Julie A. Wise, *To Open Or Not Open: The Issue Of Public Access In Child Protection Hearings*, National Council of Juvenile and Family Court Judges, Permanency Planning For Children Department 13, June 2004.

²⁵ *In re San Mateo County Human Services Agency v. Private Defender Program, San Mateo County Bar Association*, San Mateo Superior Court, Dept. 5, March 3, 2005, Judge Marta S. Diaz (Reporter's Transcripts reported by Janice Scott, CSR 10561).

C. Presumptively Open Court Proceedings Abrogate Courts' Ability to Protect the Child's Confidentiality.

A **second reason** that states have refused to promulgate presumptively open juvenile dependency bills is because they, in effect, abrogate the courts' ability to control the dissemination of confidential and/or identifying information regarding the abused child. The United States Supreme Court has held that the press and public lack a constitutional right to attend juvenile court proceedings.²⁶ Courts, thus, have the ability not only to prohibit the attendance by press and public, but courts can also issue contempt citations for those who illegally obtain confidential dependency court data. However, once a state makes its dependency court proceedings presumptively open and provides that right to the press and public, it can no longer punish or hold in contempt those who publish any data disclosed in that open dependency court proceedings.²⁷ Therefore, many states, like California, have promulgated bills that provide the court with discretion on a case by case basis to open the proceedings upon a finding that it will not harm the best interest of the abused child.²⁸ States, like California, have statutes that permit family members and/or foster parents to attend dependency hearings and strike a **cost/benefit balance** between protection of children's privacy and mental health and access for those with specific interests implicated in the hearing.²⁹ Since a person or media does not have a constitutional right to enter the dependency proceeding, the court can have those individuals sign non-disclosure agreements, and if a person or the media publishes data in the hearing, the court then has actual cause not to permit that person or media source into future dependency court proceedings. In presumptively open dependency court systems the court loses much of its power to protect abused children from the publication of embarrassing data that will exacerbate the child's already fragile psychopathology.³⁰

D. Opening Dependency Proceedings Is Very Expensive.

A **third reason** why jurisdictions do not presumptively open their proceedings is because it is **expensive**. For example, when New York opened its hearings, the Governor estimated that in 1996/1997 alone that it would cost \$5.6 million dollars to retrain employees and make necessary changes to the child protection and court systems. However, those 1997 budget costs did not include unexpected increased costs to court staff. For instance, the National Center for State Courts study of the Minnesota open court pilot project (Aug. 2001), found that: "[T]here has been a significant impact on the workload of administrative staff..." (NCFSC, at iii); "[t]here have been cases when a

²⁶ *Press-Enterprise Co. v. Superior Ct.*, 464 U.S. 501, 510 (1984); *Globe Newspaper Co. V. Super. Ct.*, 457 U.S. 596, 607-09 (1982); *Richmond Newspapers, Inc. v. Virginia*, 448 U. S. 555, 580-81 (1980).

²⁷ *Bartnicki v. Vopper*, 532 U.S. 514 (2001 [holding that the court cannot punish an individual or company that publishes information that it legally obtains]).

²⁸ See, *California Welfare & Institutions Code* § 346.

²⁹ See, e.g., *California Welfare & Institutions Code*, §§ 291, 346. *California Rules of Court, Rule 5.530* permits attendance by "a parent, de facto parent, guardian, or relative of the child..." For De Facto parents' rights to attend hearings, see (*In re Kieshia E.*, 23 Cal. Rptr. 2d 775 (1993); *In re Matthew P.*, 84 Cal. Rptr. 2d 269 (1999).

³⁰ William Wesley Patton, *Revictimizing Child Abuse Victims: An Empirical Rebuttal To The Open Juvenile Dependency Court Reform Movement*, 38 *Suffolk University Law Review* 303-350 (2005)

considerable amount of time has been used to ‘protect children’ from having sensitive information disclosed in a public forum.” (NCFSC, at 9). If courts are serious about protecting abused children from being retraumatized by the hearings, then a substantial amount of time/expense is necessary to assure that the abused children are not needlessly harmed by the proceedings. Often, the press and public will have to be removed during the discussion of confidential information or testimony. In addition, since social workers’ information and records that will be admitted in the proceedings will contain confidential data not to be released to the public, that agency and its lawyers will have to spend a considerable amount of extra time preparing for hearings. Further, those attorneys who represent parents and children will, as they have in other open court jurisdictions like Minnesota, file many motions to have the hearings closed based upon the best interest of the child. These hearings will increase the courts’ calendars and often will require expert testimony by pediatric psychiatrists in order to determine the likely emotional impact on the abused child of having a public hearing. And finally, since it is certain that a percentage of these abused children will suffer more emotional trauma from having their lives publicly exposed, the system must allocate substantial additional money to help treat these abused children whose psychological conditions will be exacerbated by the process. Not to provide such funding would be in callous disregard for the state sanctioned re-abuse of these children. Therefore, the Connecticut Legislature should be prepared to add millions of dollars to the budget to cover added administrative staff costs, the costs of hundreds of hearings by parents’ and children’s counsel to close hearings to protect abused children, and the cost of providing substantial additional pediatric psychiatric services to abused children further traumatized by the publicity of the intimate details of their abuse.

E. Open Proceedings Do Not Result In Better Systemic Accountability, And Do Not Improve the Quality of Social Worker, Attorney, or Judicial Services.

A **fourth reason** for rejecting presumptively open proceedings is based upon empirical evidence that opening dependency proceedings has no effect on accountability, on improving the quality of social workers, attorneys, or judges, on the public’s understanding of the system, or on the public’s willingness to increase tax dollars to support a more efficient and effective child dependency system. For instance, the National Center on State Courts study of the Minnesota open court pilot project found that:

1. “[T]he evidence suggests that open hearings...have had virtually no effect on general public awareness of child protection issues”, at 29;
2. “Most respondents [to the study] noted no change in the quality of child protection hearings since the implementation of open hearings....” at 96;
3. “[M]ost professionals did not feel that the professional accountability of judges, county attorneys, court administrators, public defenders, GAL’s, or social workers had changed as a result of open hearings....” at 24.

One member of the Minnesota open court commission, Esther Wattenberg, expressed her frustration that not only did opening the courts not “bring a wave of child protection

reform”, but that “[t]here is not a shred of evidence to support” the assumption that opening hearings leads to greater accountability or an increase in system quality

Therefore, one must ask, if presumptively open courts do not better protect abused children, but rather place them at risk of exacerbating already existing psychopathology, if open proceedings cost a great deal of money in administrative and court time and in additionally needed pediatric psychiatric services, and if open courts do not increase system accountability and quality, why should one support presumptively open dependency court proceedings? The cost/benefit analysis clearly points to rejecting presumptively open hearings. However, that does not mean that there is not a legitimate reason for supporting a system that provides judges with discretion on a case by case basis to open those proceedings if it will not harm the best interest of the abused child. In addition, there are other alternatives, such as creating a joint media/public-member board that has access to the dependency system for observation and that has an obligation to publish white papers on suggested systemic improvements.³¹

I appreciate your consideration of my research, and I am here to assist your Legislature in any way that I can during its consideration of *Proposed Bill No. 6702*.



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³¹ See, e.g., William Wesley Patton, *Pandora’s Box: Opening Child Protection Cases To The Press and Public*, 27 Western State L. Rev. 181, 199-209 (1999-2000).

