

NATIONAL CENTER FOR STATE COURTS

**MINNESOTA SUPREME COURT
STATE COURT ADMINISTRATOR'S
OFFICE**

**KEY FINDINGS FROM THE
EVALUATION OF OPEN HEARINGS
AND COURT RECORDS IN JUVENILE
PROTECTION MATTERS**

FINAL REPORT-VOLUME I

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Executive Summary

Introduction: On June 22, 1998, Minnesota joined sixteen other states that had opened up some portion of their juvenile protection proceedings and/or records to the public. The opening of child protection hearings and records to the public is a break with the tradition of confidentiality which has long been the hallmark of the juvenile court, but it is consistent with recent efforts to make the juvenile court more accountable for the decisions it renders (Snyder and Sickmund, 1999). Children in need of protection or services (CHIPS) cases in juvenile court (including permanent placement, termination of parental rights, and subsequent state ward reviews) were opened to the public in 12 Minnesota counties¹ for a three-year pilot project. The Minnesota Supreme Court Office of the State Court Administrator subsequently contracted with the National Center for State Courts (NCSC) for an evaluation of the Open Juvenile Protection Proceedings Pilot Project. The purpose of the evaluation was to provide decision-makers with relevant information to assist their deliberations regarding whether open hearings/records should be expanded statewide or whether the project should be terminated. To the best of our knowledge, no other state has conducted an evaluation of open hearings/records in child protection proceedings.

Methodology: The NCSC project team employed a multi-method approach to collect data and information regarding open hearings and records in child protection matters. The data and information collection methods included:

- Site visits, Interviews and Focus Groups
- Two waves of surveys of child protection professionals² and the media
- Logbooks, maintained by the courts, recording instances of closed hearings, protective orders, and records requests
- Court case files review
- Compilation of annual data on the number of dependency and neglect filings and appeals of Termination of Parental Rights (TPR) and CHIPS cases
- Compilation of newspaper articles on the subject of open hearings/records in child protection proceedings

Results: The impact of open hearings/records in child protection proceedings can be best understood by examining its effect on five critical subject areas: (1) hearings; (2) records access; (3) potential for harm; (4) public awareness and professional accountability; and (5) overall impact.

Hearings: To investigate the impact of open hearings on the conduct and nature of hearings, the following subjects were examined: (1) hearing participants; (2) instances of “closures” in child protection proceedings; (3) effects on the content of court documents

¹ Chisago, Clay, Goodhue, Hennepin, Houston, Le Sueur, Marshall, Pennington, Red Lake, Stevens, St. Louis, and Watonwan Counties.

² Professionals surveyed included judges/referees, county attorneys, court administrators, public defenders, guardians ad litem (GALs), and social workers.

(e.g., pleadings, reports, and exhibits); and (4) effects on court procedures and demands on court resources.

- **Finding:** In the opinion of the majority of child protection professionals responding to the survey, open hearings have led to a slight but noticeable increase in attendance at child protection proceedings. The majority of respondents to the professional surveys observed an increase in the number of people in the “courtroom audience.” Among the respondents reporting an increase in the size of the courtroom audience, 90 percent reported that the increase was five or fewer individuals per hearing. Most of the new participants are members of the extended family and foster parents, along with service providers. The data suggest that there may be an ongoing trend toward increased participation by these groups in open hearings.
- **Finding:** Closures of open child protection hearings occurred very infrequently in the pilot counties.
- **Finding:** In the opinion of the child protection professionals surveyed, the content of courtroom documents, exhibits, and statements has not been significantly affected by open hearings/records. Among the professionals, judges and county attorneys were slightly more likely to observe changes than other professionals. Narrative responses to the survey indicate a division of opinion regarding how documents, exhibits and statements have changed. Some judges and county attorneys report more reticence to include sensitive information (e.g., psychological evaluations, information on sexual assaults) while others report fewer unsubstantiated allegations and timelier, better-prepared court documents.
- **Finding:** Open hearings/records have not had much of an effect on court procedures. There is little evidence that the duration of hearings was appreciably affected nor is there compelling evidence that the nature of in-court discussions has changed. However, there has been a significant impact on the workload of administrative staff resulting from the record keeping requirements in the court order and the need to address public requests for documents.

Records Access: To investigate the effect of open hearings/records on record requests and processing, several issues were examined, including: (1) the types of documents requested; (2) the persons requesting documents; (3) the frequency of protective orders and appeals of protective orders; and (4) impact on court administrative practices and resources. Data to address these issues came from the surveys, from logbooks maintained by the courts, and from an in-depth file review of Hennepin County cases.

- **Finding:** The file review showed that orders, requests for the entire file, petitions, progress reports, and placement orders were the type of documents most frequently requested in Hennepin County. There was

no systematic pattern to the type of documents requested by individuals outside the courtroom workgroup³.

- **Finding:** Most requests for documents in Hennepin County continue to originate from within the courtroom workgroup, with requests from others accounting for only about 7 percent of all document requests. WATCH⁴ was prominent among the requesters from outside the courtroom workgroup. Because WATCH is less active in the pilot counties outside of Hennepin, document requests by WATCH in these counties can be expected to occur with much less frequency than in Hennepin County. Among the courtroom workgroup, the county attorneys, social workers and the Parental Fee Unit were the principal requesters.
- **Finding:** Protective orders are issued very infrequently and subsequent appeals of these orders occur with even less frequency.
- **Finding:** The very real demands⁵ made on court administrative staff as a result of open hearings/records appeared to have their greatest impact early after the project commenced and became less of a burden with the passage of time. The small number of records requests from the public helped to minimize the impact of these provisions on the workload of administrative staff.

Potential for Harm: Several aspects of open hearings/records with the potential to cause harm were investigated including: (1) instances of extraordinary harm to children and/or parents, (2) media reaction, (3) concerns about the privacy of parents and children, and (4) effects on the number of dependency/neglect cases filed and on the number appealed. Some hypothesized that open hearings/records might have a “dampening” effect on the number of filings of dependency/neglect cases since concern over privacy might inhibit families from seeking assistance from the courts and professionals from making referrals of clients to the courts (if they had concerns for clients’ privacy). On the other hand, an increase in the number of appeals might be the result of problems originating with open hearings/records.

- **Finding:** Open hearings/records have not resulted in documented direct or indirect harm to any parties involved in child protection proceedings, with the possible exception of a sensational case in Hennepin County.
- **Finding:** Evidence indicates that initial media interest in open hearings/records has waned. Regarding the quality of media coverage of child protection cases, professionals with a “case processing” orientation (court administrators, county attorneys, and judges) were

³ Includes the judge, county attorney, public defenders and privately retained counsel, social workers, and GALs.

⁴ WATCH is a volunteer nonprofit court monitoring and research organization in Hennepin County.

⁵ The principal demands were (1) file reorganization, (2) redacting specific information from active case files, (3) new procedures for captioning files, and (4) handling requests from the public for court records.

significantly more likely to report that the media had supplied responsible coverage than professionals with a “client-oriented” perspective (GALs, public defenders, and social workers). However, a review of newspaper articles found that media reporting of child protection subjects tends to be dominated by sensational cases, as was the case before open hearings/records. We found no evidence that open hearings/records has exacerbated this tendency, nor were we able to document more than a handful of instances where open hearings/records caused problems for parties to the case.

- **Finding:** Concerns about the privacy of children and parents involved in open hearings/records tend to be primarily associated with public defenders, consistent with the “client-oriented” perspective hypothesized to explain their opinions and attitudes. While the potential for abuse of parent and child privacy in open hearings/records certainly exists, we were unable to document any more than a handful of cases that possibly involved compromises of the privacy of children and families. The lack of participation by the public in open hearings/records has reduced the probability that any harmful consequences for the privacy of children and families would result from open hearings and records.
- **Finding:** Filings of dependency/neglect cases increased in eight of the 12 pilot counties, contrary to the expectations of the “dampening” hypothesis. The decrease in filings in the other counties involved small numbers of cases in each instance. Collectively, these results suggest that open hearings/records had minimal impact on dependency/neglect case filings in the pilot counties. Appeals of TPR cases, which include appeals of CHIPS cases,⁶ involved small numbers of cases in each pilot county, making it difficult to discern trends, but they did not increase dramatically in any of the pilot counties as some had suggested they might. Consequently, there is little evidence that open hearings/records had a significant effect on the number of appeals of family cases in the pilot counties.

Public Awareness and Professional Accountability: Changes in professional accountability are difficult to measure since they are based largely on perception. While the survey results suggest professional accountability has changed little as a result of open hearings/records, professionals responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability. In addition, information collected during site visits and in the narrative responses to the surveys show that many professionals felt that professional accountability had been enhanced.

- **Finding:** Though according to the survey, most child protection professionals feel that the accountability of the principal actors in the

⁶ This is a data collection convention employed in Minnesota.

child protection system has not been impacted, we found evidence that suggests that there has been somewhat of an increase in accountability. First, the publication of the WATCH report on open CHIPS cases is evidence of increased scrutiny of child protection proceedings, a necessary first step for securing greater professional accountability. Secondly, narrative comments provided by many of the professionals reflect the perception that accountability has increased, at least for some. Thirdly, increased attendance of extended family members, foster parents, and service providers also worked to increase professional accountability. Fourth, media respondents (to both the mailed and telephone surveys) were significantly more likely to feel that professional accountability (for every category of professional) had increased since open hearings/records had been implemented than any of the other professionals. The latter finding is significant given the critical role that media plays in securing professional accountability (see Figure 6 in Volume I). Additionally, all categories of professionals (including public defenders) responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability.

Overall Impact on Open Hearings/Records: In many ways, the impact of open hearings/records on the child protection system has been limited. The general public has generally declined to participate in open hearings and there have been few public requests for court documents in child protection cases. On the occasions when the public attends an open hearing or requests a document, it usually consists of members of the extended family, foster parents, or service providers interested in a specific case. Open hearings/records initially attracted the attention of the media, but their interest appears to have declined over time. The media continue to focus on sensational child protection cases, providing little coverage of major child protection policy issues, such as the need for additional resources and the availability of services for parents and children. Nonetheless, the media are one of the strongest proponents of open hearings/records in child protection proceedings, since they feel this policy enables them to do a better job of reporting. All things considered, however, the evidence suggests that open hearings/records, to date, have had virtually no effect on general public awareness of child protection issues.

- We were unable to document more than a handful of cases that possibly involved harm to children and families as a result of having their privacy compromised because of open hearings/records. However, many professionals, especially those with a “client oriented” perspective, such as public defenders, maintain that the potential still exists for harm to occur.
- Though according to the survey, most child protection professionals feel that the accountability of the principal actors in the child protection system has not been impacted, we found tentative evidence

of some improvements in professional accountability. This evidence comes from: (1) the publication of the WATCH report on open CHIPS cases; (2) narrative comments provided by many of the professionals reflecting the perception that accountability has increased; (3) increased attendance of extended family members, foster parents, and service providers; and (4) media respondents were significantly more likely to feel that professional accountability had increased since open hearings/records had been implemented than any of the other professionals.

- We found little evidence that child protection hearings had changed significantly after having been opened to the public. Open hearings/records have not had much of an effect on court procedures...there is little evidence that the duration of hearings was appreciably affected nor is there compelling evidence that the nature of in-court discussions has changed. Closures of open child protection hearings occurred very infrequently in the pilot counties. In the opinion of the child protection professionals surveyed, opening hearings and records in child protection proceedings to the public has had very little impact on the content of courtroom documents, exhibits, and statements.
- Allowing public access to court records and exhibits from child protection proceedings has had a very significant impact on the workload of court administrative staff because of the record keeping requirements in the court order that established public access and also the need to address public requests for documents. However, requests for court documents from the general public have been rare. Likewise, protective orders restricting public access to court documents and exhibits have been rarely issued and appeals of these orders are even more rare.
- Opinions about the efficacy of open hearings/records in child protection proceedings were divided along professional lines in the second wave of surveys. Public defenders are adamantly opposed to open hearings/records (76 percent), as are large proportions of court administrators (48 percent). On the other hand, the majority of county attorneys (65 percent), GALs (73 percent), and social workers (56 percent) favored open hearings/records. Judges are divided in their opinions, though a large proportion (48 percent) are favorable.
- When survey responses from the single urban county among the pilot counties, Hennepin County, were compared to the responses from the other pilot counties, differences emerged which showed that respondents from Hennepin County were more favorably inclined toward open hearings/records than their counterparts from other counties.

Concluding Remarks: There are clearly costs attached to open hearings/records, especially for court administrative staff. Other costs may be paid by the parties to child protection cases, especially children and parents (and foster parents) who risk losing privacy.

On the other hand, real and potential benefits result from open hearings/records including enhanced professional accountability, increased public and media attention to child protection issues, increased participation by the extended family, foster parents and service providers in child protection proceedings, and openness of judicial proceedings in a free society. A critical factor that will influence the balance between the costs and benefits of open hearings/records in child protection proceedings will be the amount and type of attention that the public and the media pay to open hearings/records (see Figure 6 in Volume I), given the enhanced public access that results from this policy. To the extent that it is possible, child protection professionals should take the initiative to provide leadership and guidance to the public and the media as they begin to navigate the uncharted waters of open hearings/records.

I. Introduction

On June 22, 1998, Minnesota joined sixteen other states¹ that had opened up some portion of their juvenile protection proceedings and/or records to the public. The opening of child protection hearings and records to the public is a break with the tradition of confidentiality which has long been the hallmark of the juvenile court, but it is consistent with recent efforts to make the juvenile court more accountable for the decisions it renders (Snyder and Sickmund, 1999).

Proponents of opening child protection hearings and records cite the need for openness in a free society, the promise of increased professional accountability, and the need to increase public awareness of child protection issues (Rosario, 1998). Allowing public access to judicial proceedings is regarded by many as a necessary protection for the public against arbitrary courtroom decision-making. Further, by allowing public access to child protection hearings and records, some argue that the accountability of child protection professionals such as social workers, as well as the courtroom work group,² will be enhanced since their decisions and recommendations (previously confidential) become subject to public scrutiny. Proponents also argue that open hearings/records should enable the media to provide additional and more responsible coverage of child protection cases and issues and should also contribute to the education of the general public about the operation of the child protection system.

Opponents of open hearings/records cite concerns about possible compromises of the privacy of children and parents (Rosario, 1998). Such compromises might not only embarrass children and parents but could also interfere with therapeutic treatment of parties to the case and could potentially interfere with family reunification efforts.

Children in need of protection or services (CHIPS) cases in juvenile court (including permanent placement, termination of parental rights, and subsequent state ward reviews) were opened to the public in 12 Minnesota counties³ for a three-year pilot project. The Minnesota Supreme Court Office of the State Court Administrator subsequently contracted with the National Center for State Courts (NCSC) for an evaluation of the Open Juvenile Protection Proceedings Pilot Project primarily focusing on the impact of open hearings on: the welfare of children and families; child protection system professionals; court processes and operations; and public awareness. The purpose of the evaluation was to provide decision-makers with relevant information to assist their deliberations regarding whether open hearings/records should be expanded statewide or whether the project should be terminated. To the best of our knowledge, no other state has conducted an evaluation of open hearings/records in child protection proceedings.

¹ Arizona, Arkansas, Colorado, Florida, Indiana, Iowa, Kansas, Maryland, Michigan, Nebraska, New York, North Carolina, Ohio, Oregon, Texas, and Washington (Szymanski, 1997).

² Includes the judge, county attorney, public defenders and privately retained counsel, social workers, and GALs.

³ Chisago, Clay, Goodhue, Hennepin, Houston, Le Sueur, Marshall, Pennington, Red Lake, Stevens, St. Louis, and Watonwan Counties.

The following report summarizes the key results of the evaluation. After a description of the evaluation methodology, results pertinent to five aspects of open hearings/records are summarized: (1) hearings, (2) records access, (3) potential for harm, (4) public awareness and accountability, and (5) overall impact. The summaries are based on data analyzed and compiled in a companion volume to this report (“Evaluation Data: Open Hearings in Juvenile Protection Matters”⁴). Finally, concluding remarks are offered.

II. Methodology

The NCSC project team employed a multi-method approach to collect data and information regarding open hearings and records in child protection matters. The data and information collection methods included:

- Site visits, Interviews and Focus Groups
- Two waves of surveys of child protection professionals and the media
- Logbooks, maintained by the courts, recording instances of closed hearings, protective orders, and records requests
- Court case files review
- Compilation of annual data on the number of dependency and neglect filings and appeals of Termination of Parental Rights (TPR) cases
- Compilation of newspaper articles on the subject of open hearings/records in child protection proceedings

Each of the data collection methods and the techniques used to analyze the data are briefly discussed in the following.

Site Visits, Interviews, and Focus Groups: During the summer of 1999, the evaluation team conducted site visits at juvenile courts in each of the 12 pilot counties. While on site, project staff: (1) conducted face-to-face interviews with court personnel (judges, court administrators, and clerks); (2) facilitated focus groups with system stakeholders such as county attorneys, public defenders, social workers, and guardians ad litem (GALs); (3) observed CHIPS and Termination of Parental Rights (TPR) court proceedings; and (4) reviewed CHIPS and TPR court files.

Surveys of Child Protection Professionals and the Media: Survey instruments⁵ were designed collaboratively by the National Center for State Courts and the Minnesota Supreme Court, State Court Administration, with input from the Open Hearings Steering Committee for each of the following professional categories: judges/referees, court administrators, county attorneys, public defenders, GALs, social workers, and the news media. The instruments contained a combination of forced choice and free response questions. The instruments were pre-tested using a small group of professionals before they were finalized. The instruments were designed to capture the perceptions of system participants with respect to the impact of open hearings and records on (1) court operations, (2) the quality of court proceedings, (3) the work product of system

⁴ See Volume II, Evaluation Data.

⁵ The survey instruments are found in Volume III, Appendices.

participants, and (4) collaboration among system participants. The NCSC distributed the Round I surveys during June 2000 and Round II surveys during March 2001.

Of the 1,171 surveys in the first wave that were mailed and the 978 distributed, 267 were returned as of June 30, 2000, the specified cutoff date for return. Of the 267 returned surveys, 73 of the respondents answered that they had never participated in a child protection hearing that had been opened to the public and were subsequently eliminated from the analysis. Most of those eliminated were GALs and social workers (78 percent). Consequently the analysis was based on 194 useable surveys.

Of the 1,050 surveys sent out for distribution in the second wave, 458 were returned as of March 31, 2001, the specified cutoff date for return. Of the 458 returned surveys, 123 of the respondents answered that they had never participated in a child protection hearing that had been opened to the public and were subsequently dropped from the analysis. Most of those dropped were GALs and social workers (74 percent). Consequently the analysis was based on 335 useable surveys.

The responses to each question were cross-tabulated with Type of Professional to detect differences in response between the different types of professionals surveyed. A Chi-square statistic was used to test for statistical significance. Since the content of the media survey was much different than the other surveys, a separate analysis was conducted for the responses to this survey. Thematic responses were collected and entered into a separate database.

In response to a disappointing response rate to the mailed media survey, the research staff of the Minnesota Supreme Court developed a modification of the mailed media survey for the purpose of conducting a telephone survey of the media. Supreme Court personnel administered the survey instruments to members of the media via phone during the week of April 23, 2001. A total of 46 completed surveys were forwarded to the NCSC project team. The data were entered into a database and frequencies run for each of the items on the Media Telephone Survey.

Logbooks: As part of the data collection effort, the NCSC project team designed logbooks and requested that the twelve participating counties use them to record information about the occurrence of closed hearings, protective orders and records requests. This information was used to estimate the frequency of occurrence of these activities, to obtain specific information about the activity (e.g., the persons requesting records and the type of document requested), and to identify pertinent cases for the file review.

Court Case File Review: To achieve a more detailed examination of requests for court documents submitted since the implementation of the open records policy, approximately 180 requests were randomly selected from 1,109 record requests that were made between August 1998 and April 2001 in Hennepin County.⁶ Eventually this number was reduced

⁶ Hennepin County was selected as the site for file review because it had by far the largest number of requests for documents, enabling the research team to review the largest number of files in the shortest

to 157 (14.2 percent of the requests) as a result of missing files, incorrect SJIS (State Judicial Information System) numbers, and failure to find information about the documents being requested. This sample size is more than sufficient to insure the generalizability of the results reported herein. Data describing the requester, the document requested, demographics of the child involved in the case, the nature of the allegations in the petition, and information about protective orders related to the case were collected.

Compilation of Annual Data on the Number of Dependency and Neglect Filings and Appeals of Family Cases: It is possible that opening child protection proceedings and court records to the public might influence filing rates of dependency/neglect cases. For example, open hearings/records might have a “dampening” effect on the number of dependency/neglect cases filed, since concern over privacy might inhibit families from seeking assistance from the courts and professionals from making referrals of clients to the courts (if they had concerns for clients’ privacy). An increase in the number of appeals might be the result of problems originating with open hearings/records. Annual data on the number of (1) dependency/neglect case filings and (2) Termination of Parental Rights appeals (which includes appeals of CHIPs cases), by county, were obtained online from Minnesota’s CRIMNET website (<http://www.crimnet.state.mn.us/>). Data from 1996 through 2001 were available. Trends for these two types of cases during this time period were examined.

Compilation of Newspaper Articles: The court services staff of the Minnesota Supreme Court compiled newspaper articles published in the 12 pilot project counties between 1998 and May 2001 on the subject of child protection. These articles were carefully scrutinized by the evaluation team for evidence of (1) the flavor of the media’s handling of child protection cases and issues, (2) sensationalistic coverage of child protection cases, (3) compromises of parent and/or child privacy, and (4) trends over time in the extent of coverage of child protection cases and issues.

III. Results

The impact of open hearings/records in child protection proceedings can be best understood by examining its effect on five critical subject areas: (1) hearings; (2) records access; (3) potential for harm; (4) public awareness and professional accountability; and (5) overall impact. In the following, results pertinent to these five aspects of open hearings/records are summarized⁷ in turn. Data from the sources described in the methodology are used in conjunction with one another to make inferences about the effect of open hearings/records on each of these subjects.

amount of time. As will be explained later in the report, we feel that the results of the file review in Hennepin County are, for the most part, generalizable to the other pilot counties.

⁷ The summaries are based on data analyzed and compiled in Volume II, “Evaluation Data: Open Hearings in Juvenile Protection Matters”.

1. Effects on Hearings

The opening of hearings in juvenile protection matters to the public had the potential to affect the course of the hearings themselves, if for no other reason than the introduction of new, non-traditional actors to the courtroom. To investigate the impact of open hearings on the conduct and nature of hearings, the following subjects were examined: (1) hearing participants; (2) instances of “closures” in child protection proceedings; (3) effects on the content of court documents (e.g., pleadings, reports, and exhibits); and (4) effects on court procedures and demands on court resources. Much of the data that were used to address these issues were necessarily impressionistic (in the sense that it is derived from the opinions of child protection professionals solicited by means of a survey).

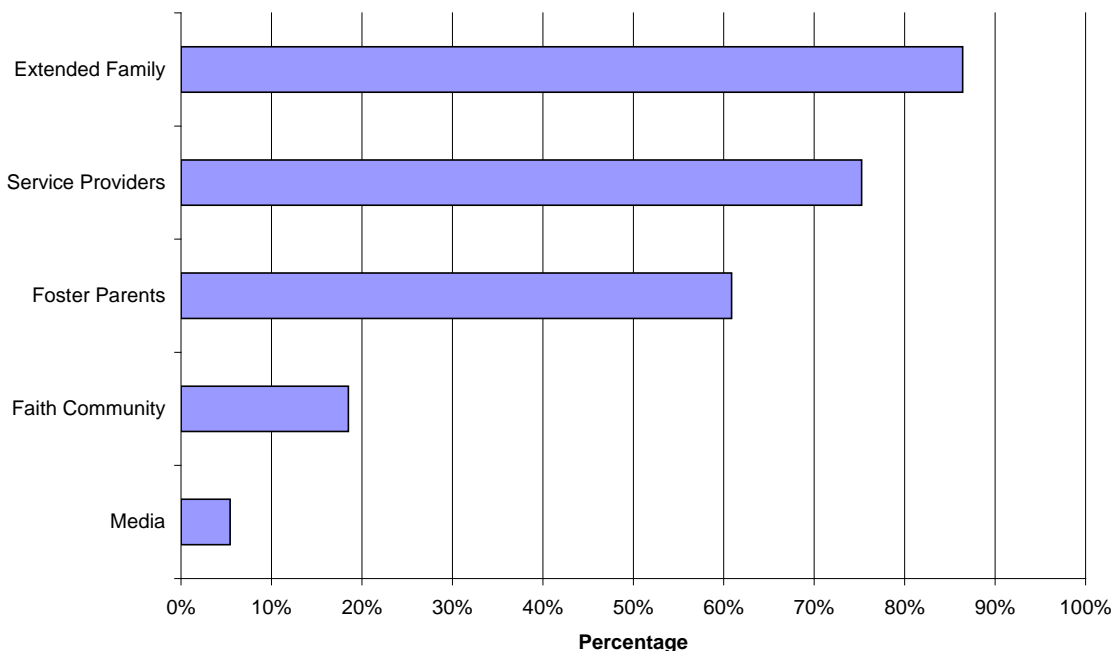
Hearing Participants: Most observers would agree that opening child protection hearings to the public created the possibility that the size and composition of the courtroom audience in these proceedings could change. The majority of respondents to the professional⁸ surveys observed an increase in the number of people in the “courtroom audience.” Among those reporting an increase in the size of the courtroom audience, 90 percent reported that the increase was five or fewer individuals per hearing. Though data are insufficient to establish a trend, respondents to the second wave of surveys were more likely to observe an increase in the number of people in the courtroom audience than respondents to the first wave (61 percent vs. 53 percent, respectively).⁹ Figure 1 shows the percent of respondents to the second wave of surveys who judged that certain members of the courtroom audience were “always” or “sometimes” present at open child protection hearings. The majority of survey respondents reported that members of the extended family, service providers, and foster parents were “always” or “sometimes” present at open hearings, while representatives from the faith community and the media were reported to be rarely or never present.

⁸ Professionals surveyed included judges/referees, county attorneys, court administrators, public defenders, GALs, social workers and the media.

⁹ Most respondents to both waves of the survey (about two-thirds in each instance) reported that audience members are “always” or “sometimes” asked by the judge to identify themselves.

Figure 1

Percent of Respondents Reporting that Group was "Always" or "Sometimes" Present at Hearing



- **Finding:** In the opinion of the majority of child protection professionals responding to the survey, open hearings have led to a slight but noticeable increase in attendance at child protection proceedings. The majority of respondents to the professional surveys observed an increase in the number of people in the “courtroom audience.” Among the respondents reporting an increase in the size of the courtroom audience, 90 percent reported that the increase was five or fewer individuals per hearing. Most of the new participants are members of the extended family and foster parents, along with service providers. The data suggest that there may be an ongoing trend toward increased participation by these groups in open hearings.

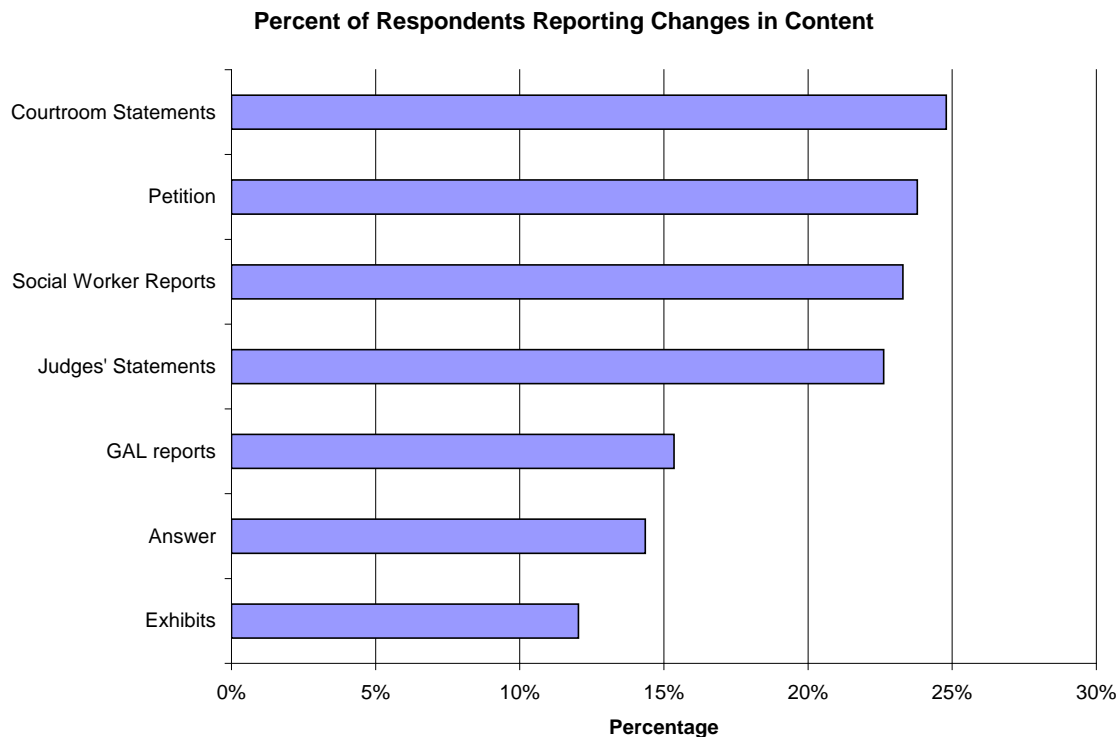
Closures of Open Hearings: While child protection proceedings were opened to the public by court order in the pilot counties, the order also established procedures whereby the proceedings could be closed to the public in exceptional cases. Logbooks maintained by the courts between May 2000 and March 2001 revealed that only six child protection hearings (one in Hennepin and five in Houston Counties) were closed. Data on this subject were not forthcoming from Clay, Goodhue, Marshall, and Red Lake Counties. Data from the surveys indicated, in the opinion of most professionals, that cases involving incest, sexual abuse, parents’ psychological condition, child death, cases where the identity of the child is readily discernable, cases involving HIV, and sensational cases are more likely to be closed than other types of cases. During the site visits, several judges expressed a reluctance to close hearings out of concern for the integrity of the open hearings pilot project. Also mentioned during the site visits (and documented in

newspaper articles) was that public defenders in some counties motioned to close almost all child protection proceedings after the open hearings project was first implemented. These early attempts at “blanket” closures were rebuffed by judges and apparently ceased early on in the project’s life.

- **Finding:** Closures of open child protection hearings occurred very infrequently in the pilot counties.

Content of Court Documents: The professional surveys inquired of respondents whether the content of documents (e.g., pleadings and reports), exhibits, and statements in the courtroom had changed since the advent of open hearings. Such changes could be reflective of changes in professional decision-making and attitudes resulting from opening child protection proceedings and records. Figure 2 below shows that most professionals noted no changes.

Figure 2



Some differences among the professionals were observed. County attorneys were significantly more likely to feel that the content of *petitions* had changed since the implementation of the open hearings/records policy than any other category of professional. Although the majority of all professional categories reported that there has been no change in the content of *exhibits*, judges and county attorneys were significantly more likely than the other professionals to notice such changes. Although the majority of all professional categories reported that there had been no change in the content of *social worker reports* and the differences between professional categories failed to reach statistical significance, large proportions of judges/referees and county attorneys noted

changes. The majority of all professional categories reported that there has been no change in the content of *judges' statements* but county attorneys and public defenders were significantly more likely than the other professionals to report change, in contrast to the first wave of surveys, which reported no significant differences. Narrative responses to these questions show that many feel that the content of statements and documents are generally more accurate since the introduction of open hearings/records, reflecting greater accountability. Others cite instances where documents and reports have been “softened” and/or shortened, leaving out potentially helpful but sensitive information, because of possible public scrutiny. Judges and county attorneys were more likely to notice changes in the content of documents, exhibits, and statements in the courtroom than other child protection professionals presumably because of their more frequent exposure to and greater attention to the content of these, as required by their position and enabled by their legal training.

- **Finding:** In the opinion of the child protection professionals surveyed, the content of courtroom documents, exhibits, and statements has not been significantly affected by open hearings/records. Among the professionals, judges and county attorneys were slightly more likely to observe changes than other professionals. Narrative responses to the survey indicate a division of opinion regarding how documents, exhibits and statements have changed. Some judges and county attorneys report more reticence to include sensitive information (e.g., psychological evaluations, information on sexual assaults) while others report fewer unsubstantiated allegations and timelier, better-prepared court documents.

Effects on Court Procedures and Demands on Court Resources: The advent of open hearings in child protection proceedings created the possibility that court procedures could change in response to this new reality. Survey data were used to examine this possibility and also to determine whether additional resources were required to support the changes in court procedures. Specifically, survey respondents were asked to gauge the impact of open hearings and records in child protection proceedings on (1) the length of hearings, (2) use of court resources, and (3) in-court discussions.

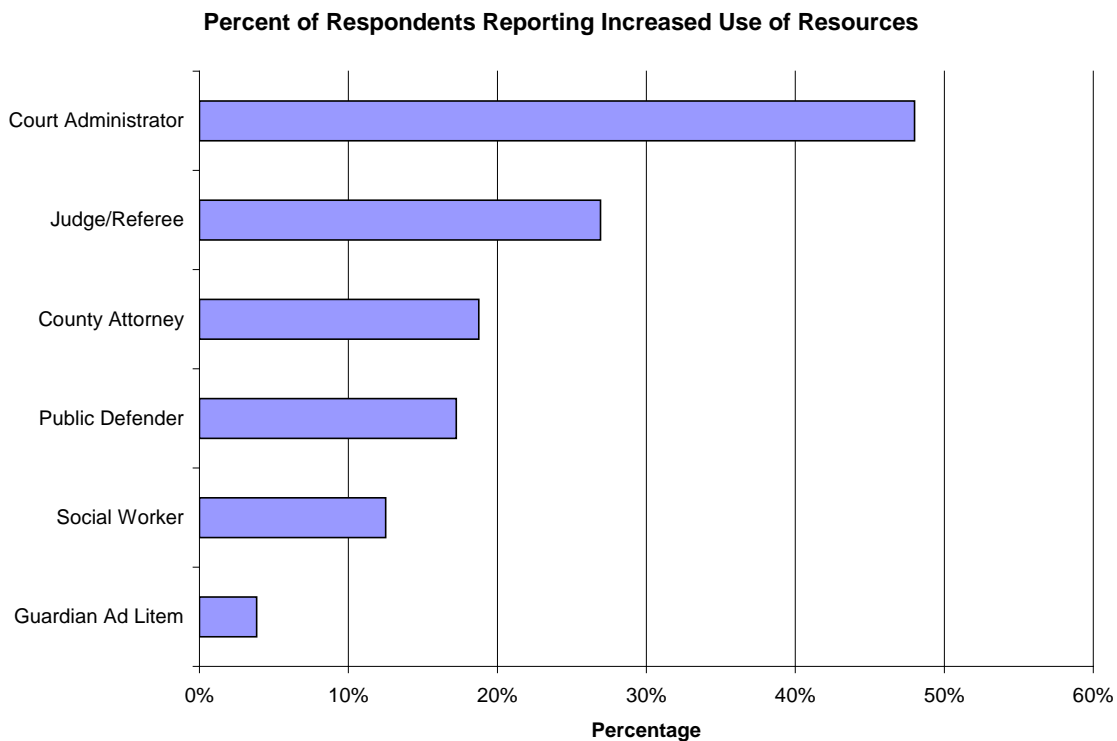
Length of Hearings: More than 90 percent of the survey respondents felt that the length of child protection hearings had not changed in response to their having been opened to the public. However, public defenders were significantly more likely than any of the other professionals to feel that hearings had become longer. Reasons given for longer hearings in the written responses include media presence, spectators who were not parties to the case but who seek to interject themselves into the proceedings, and extra time required for motions to close the proceedings. Others noted that while the length of most hearings is not affected, the effects can be very profound in sensational cases that attract media attention. Two narrative responses from the second wave of surveys, both from county attorneys, aptly summarize the impact of open hearings on the length of hearings:

The length of hearings has not changed at all. Number of persons appearing at hearings since the inception of this rule has changed very, very little.

Depends on the case. Most are not impacted, however, some are significantly impacted. In cases where there is testimony regarding psychological issues regarding children and other classmates of the juvenile may be in the courtroom, the court and attorneys have gone to great lengths to try to protect information from the other potential classmates that may be in the courtroom.

Use of Court Resources: While 81 percent of the survey respondents reported that open hearings/records had not affected the use of court resources, there were some differences among professionals, as shown in Figure 3. Judges and, especially, court administrators were significantly more likely to report an increase in the use of court resources (staff time, court space, etc.) than the other professions. Written responses to this question, along with information collected during the site visits, show that the greatest impact on the resources of professionals occurs with court administrative staff that must now redact documents, separate files, prepare written material to protect the child’s identity, and deal with requests for documents. Public defenders report more of their time is required to prepare clients for open hearings.

Figure 3



The following narrative responses are representative of those provided by many professionals regarding the impact of open hearings/records on court resources. A judge responded as follows:

To the extent that access to files is requested, time is spent responding to the requests. However, the number of requests is so very low that the increased use of resources is minimal.

A county attorney responded as follows:

Again - Most cases the resources are the same. However, there have been cases where a considerable amount of staff time has been used to "protect children" from having sensitive information disclosed in a public forum.

The following two responses from court administrators were typical:

Because of the changes, it takes longer to process cases. Cases are not accessible on TCIS so, when doing calendars, you have to first unconfidentialize (sic) then run calendars and go back in and make them confidential again. Very time consuming. It is also very time consuming if a member of the public wishes to review the file because the file has to be reviewed and redacted.

Initially increased a great deal to split open CHIPS records from closed. Delete status records stored in same physical file. Hired part-time employees for several matters. Significant time spent (40-60 hours) to respond to media requests for copies of all open CHIPS petitions for each of last 2 years. Moderate impact to respond to WATCH¹⁰ requests for file access, provide statistical reports, respond to inquiries from other media and agencies interested in CHIPS cases.

In-Court Discussions: The only information collected that was relevant to this issue is anecdotal from the site visits. Information from the site visit notes suggest that open hearings/records might have had somewhat of a chilling effect on in-court discussions among child protection professionals, at least in some counties (specifically mentioned in Chisago and Hennepin Counties). Several professionals expressed their concern that open hearings/records would tend to increase the number of “in-chambers” discussions among judges, county attorneys, and private attorneys (or public defenders) but we found no evidence to confirm such a trend.

- **Finding:** Open hearings/records have not had much of an effect on court procedures. There is little evidence that the duration of hearings was appreciably affected and there is no compelling evidence that the nature of in-court discussions has changed. There has been a significant impact on the workload of administrative staff resulting

¹⁰ WATCH is a volunteer nonprofit court monitoring and research organization in Hennepin County.

from the record keeping requirements in the court order and the need to address public requests for documents.

2. Records Access

The court order establishing open hearings/records incorporated the presumption that open juvenile protection proceedings are accessible “to any member of the public for inspection, copying, or release.” As a result of the order, records from child protection proceedings in the pilot counties became accessible to the public for the first time since 1911. To investigate the effect of this policy change, several issues were examined, including: (1) the types of documents requested; (2) persons requesting documents; (3) frequency of protective orders and appeals of protective orders; and (4) impact on court administrative practices and resources. Data to address these issues come from the surveys, from logbooks maintained by the courts and from an in-depth file review of Hennepin County cases. Hennepin County reported by far the largest number of document requests among the pilot counties. Because of the large number of cases examined, we feel that we have a good understanding of the types of documents requested in Hennepin County. Based on the information we collected during site visits and from the narrative responses to the survey, we feel that the results about requests for documents from Hennepin County are generalizable to the rest of the state with one exception. It is unlikely that document requests from WATCH occurred as frequently in the other pilot counties as they occurred in Hennepin County.

Types of Documents Requested: Table 1 shows the types of documents requested in Hennepin County between August 1998 and April 2001. Requests for court orders, court orders and petitions, and the entire file predominated (accounting for 69.1 percent of all requests), while requests for petitions and/or motions, progress reports and/or evaluations, and placement orders accounted for another 13.4 percent of the requests. Requests for other types of documents individually accounted for less than 2 percent of the total. There was no systematic pattern to the type of documents requested by individuals outside the courtroom workgroup.¹¹

¹¹Includes the judge, county attorney, public defenders and privately retained counsel, social workers, and GALs.

Table 1
Child Protection Document Requests in Hennepin County
August 1998 – April 2001

<u>Type of Document Requested</u>	<u>Frequency</u>	<u>Percent</u>
Order	589	53.1
Court Order and Petition	101	9.1
Case File	76	6.9
Petition and/or Motion	66	6.0
Progress Report and/or Evaluations	53	4.8
Placement Order	29	2.6
Findings	15	1.4
Dismissal	14	1.3
Affidavits	6	0.5
Change of Venue	6	0.5
Affirmation of Service	5	0.5
Placement Order and Petition	5	0.5
Certified Copies	4	0.4
Findings of Fact and Dismissal	4	0.4
Birth Certificate	2	0.2
Exhibit File	2	0.2
Warrant	1	0.1
Undetermined/Other	33	3.0
Missing	98	8.8
Total	1109	100.0

- **Finding:** Generally, orders, requests for the entire file, petitions, progress reports, and placement orders were the type of documents most frequently requested in Hennepin County. There was no systematic pattern to the type of documents requested by individuals outside the courtroom workgroup.

Persons Requesting Documents: Table 2 shows the persons requesting documents in Hennepin County between August 1998 and April 2001. Of the 1,109 record requests, 42 were excluded because there was no entry in the logbook describing the person/department making the request. Another 44 of the requesters who did not fit in any of the other categories were classified as “other.” Of the remaining valid 971 entries, the largest percentage – 24.9 percent – of requests were made by social workers. County Attorney’s office and Parental Fee Unit requests followed closely with 21.8 and 18.0 percent, respectively.

Table 2
Persons Requesting Child Protection Documents in Hennepin County
August 1998 – April 2001

<u>Requester</u>	<u>Frequency</u>	<u>Percent</u>
Social Worker	276	24.9
County Attorney	242	21.8
Parental Fee Unit	200	18.0
Department of Children and Family Services	50	4.5
Service Provider	48	4.3
Court Watch	40	3.6
Foster Care	30	2.7
Guardian Ad Litem	26	2.3
Probation	23	2.1
Relative	22	2.0
County Attorney's Office Early Intervention/Prevention Unit	16	1.4
Medical Assistance	13	1.2
Private Attorney	11	1.0
Child Protection	10	0.9
Media	7	0.6
Child Support Officer	3	0.3
Mental Health	3	0.3
Public Defender	3	0.3
Other	44	4.0
Missing	42	3.8
Total	1109	100.0

Relative requests (including those from parents) comprised only 2.0 percent of all document requests, while private attorneys were responsible for another 1.0 percent. Media requests accounted for less than one percent (.6 percent) of all requests. The largest number of requests from outside the courtroom work group were made by WATCH (3.6 percent of all requests made). Despite implementation of open hearings/records, the distribution of the persons requesting documents clearly indicates that the predominant number of requests for documents – 85 percent – continue to originate from within the courtroom work group. Private requests collectively totaled only 7.2 percent of all document requests.

- Finding:** Most requests for documents in Hennepin County continue to originate from within the courtroom workgroup, with requests from others accounting for only about 7 percent of all document requests. WATCH was prominent among the requesters from outside the courtroom workgroup. Because WATCH is less active in the pilot counties outside of Hennepin, document requests by WATCH in these counties can be expected to occur with much less frequency than in Hennepin County. Among the courtroom workgroup, the county attorneys, social workers and the Parental Fee Unit were the principal requesters.

Protective Orders and Appeals: The court order establishing the open hearings project also contained a provision that allowed judges to issue “an order prohibiting public access to juvenile case records that are otherwise accessible to the public when the court finds that there are exceptional circumstances supporting the issuance of the order.”

Appeals of these orders were also permitted. To examine the frequency of issuance of such orders and any subsequent appeals, the NCSC evaluation team conducted an in-depth examination of 157 requests (14.2 percent of all requests) randomly selected from the 1,109 record requests made between August 1998 and April 2001 in Hennepin County. Protective orders were issued in three of the cases reviewed (2.5 percent of the total). In one of these cases, a record access appeal was filed and it was denied.

- **Finding:** Protective orders are issued very infrequently and subsequent appeals of these orders occur with even less frequency.

Court Administrative Practices and Resources: The court order establishing open hearings/records contained features that placed demands on the administrative staff of the juvenile court but did not provide these courts with additional resources to satisfy these demands. The principal demands were (1) file reorganization, (2) redacting specific information from active case files, (3) new procedures for captioning files, and (4) handling requests from the public for court records. The two main tasks of file reorganization were (1) separating CHIPS documents from delinquency case documents in active case files and (2) separating CHIPS documents into pre- (not accessible to the public) and post-open hearing sections (generally accessible to the public). According to information collected during site visits, the former task was much more time and labor intensive than the latter task. For example, separating case files into pre- and post-open hearings components was accomplished in Hennepin County by simply placing a pink sheet between documents filed before implementation of open hearing/records and those filed afterwards. Separating CHIPS documents from delinquency case documents was initially a much more daunting task, especially in the larger courts such as in Hennepin County. In the case of Hennepin County, work had already begun on this task prior to open hearings/records (for reasons unrelated to the pilot project) but implementation of the pilot project required substantial acceleration of the pace of work on this task. The work was very labor intensive and required many staff hours and the hiring of a temporary worker to complete. However, this was essentially a one-time only task, and once completed, did not need to be repeated. Further, as cases age, pre-open hearings files and files with pre-open hearings sections will be encountered less frequently.

The court order contained several redacting requirements that had to be satisfied before records could be released to the public. Among the information to be redacted was: (1) identities of reporters of abuse or neglect; (2) the face or other identifying features in a photograph of a child; (3) identity of minor victims of sexual assault (including the victim’s name and address); (4) any reference to HIV test results; and (5) identities of foster parents, foster care institutions, adoptive parents, and any other persons and institutions providing pre-adoptive care of the child. Court administrative staff were tasked with the job of redacting these items of information from any file that was

requested by a member of the public. This could be particularly burdensome when “mass” requests for files were made by groups such as the media and WATCH. During the site visits, and in narrative responses to the surveys, administrative staff frequently expressed concerns about the extra work required to satisfy the redaction requirements but also indicated that once these new procedures were built into their work routines, they were reasonably easy to manage, especially given the small number of requests for records from the public.

New procedures for captioning files required that files opened in a pilot project county after the open hearings/records pilot project was implemented are captioned in the name of the parent(s) or the child’s legal custodian or legal guardian. Previous to the pilot project, these files were usually captioned with the name of the child. Once again, according to information collected during site visits and from narrative responses, the new captioning procedure was initially burdensome but quickly became incorporated into the office routine.

Finally, court administrative staff (clerks) were charged with the responsibility of supplying court documents to the public upon request. Most courts independently developed specific forms to be used by the public to make such requests, requiring an initial investment of staff resources. While “mass” requests from the media and others were burdensome, the public has only infrequently requested court records, somewhat minimizing the impact of this requirement on the work of the court.

- **Finding:** The very real demands made on court administrative staff as a result of open hearings/records appeared to have their greatest impact early after the project commenced and became less of a burden with the passage of time. The small number of records requests from the public helped to minimize the impact of these provisions on the workload of administrative staff.

3. Potential for Harm

Bearing in mind that any change as profound as opening child protection hearings/records to the public has the potential to cause harmful, as well as helpful, effects, several aspects of open hearings/records with the potential to cause harm were identified and investigated. Potentially harmful aspects included: (1) instances of extraordinary harm to children and/or parents, (2) media reaction, (3) concerns about the privacy of parents and children, and (4) effects on the number of dependency/neglect cases filed and on the number of appeals of such cases.

Instances of Extraordinary Harm to Children and/or Parents: The data used to address this issue comes from the professional surveys and a review of newspaper articles published in Minnesota after implementation of the open hearings project (June 22, 1998), collected by Supreme Court staff. One of the most notorious cases occurred in Hennepin County, almost immediately after open hearings/records was implemented. This was a case which had been ongoing for two years prior to open hearings/records,

and which had already received considerable media attention. The case involved a Minnesota woman, formerly of Illinois, whose three children died over a two year period in Chicago during the mid-1980s: an 11-month-old boy who died of heat stroke and 8-month-old twins, whose deaths within 15 minutes of each other were attributed to sudden infant death syndrome. During proceedings in 1998, the deaths of those children were revisited in Hennepin County Juvenile Court as the woman attempted to regain custody of her last-born child, two years old at the time.

The judge closed hearings at the request of an assistant Hennepin County Public Defender, who criticized previous coverage of the case by the Chicago Tribune (as well as the St. Paul Pioneer Press for reprinting the story) as well as a local TV station for trying to interview the mother at her home. At one of the hearings, news crews from two local stations focused their TV cameras – through courthouse windows from the sidewalk outside – on the mother in the case as she walked through the lobby of the Hennepin County Juvenile Justice Center.

The fact that the case was already two years old when hearings were opened complicated the case and contributed to the decision of the judge to close the hearings. None of the documents or evidence from prior proceedings were available to reporters. The judge determined that this inability to understand context meant that reporting of ongoing hearings might produce a distorted view of the provocative case.

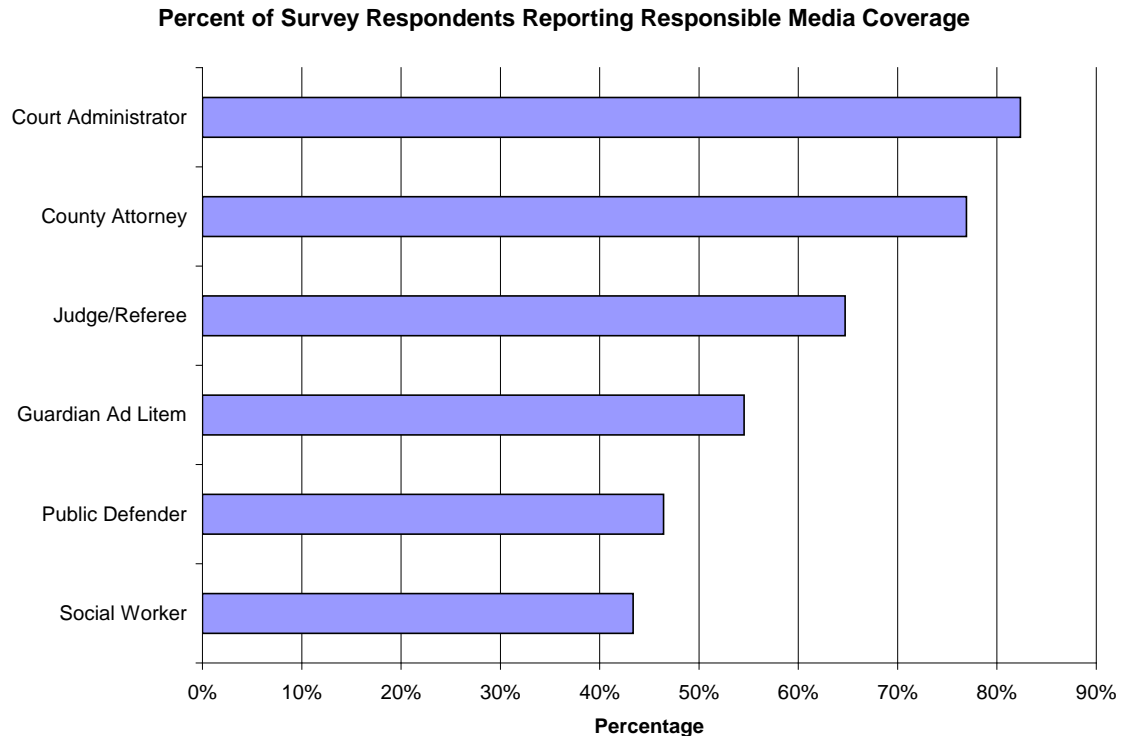
Although this case is an example of the “media frenzy” which many professionals feared, similar examples are difficult to come by. A review of newspaper articles and responses to the survey failed to turn up any other examples of gross irresponsibility on the part of the media in their coverage of open child protection proceedings. Further, we were unable to find other cases where open hearings/records were responsible for harm to any of the parties to the cases.

- **Finding:** Open hearings/records have not resulted in documented direct or indirect harm to any parties involved in child protection proceedings, outside of the sensational case described above.

Media Reaction: The potential exists for the media to exploit open hearings/records to pursue their objective of increased circulation or market share at the expense of the privacy of children and families. Consequently, the professional surveys were used to solicit opinions about how responsibly the media had covered child protection stories since the advent of open hearings/records. To begin with, about 63 percent of the respondents to the second wave of surveys reported that they rarely or never saw news stories about child protection cases, suggesting that the media has largely failed to avail itself of this new opportunity to attend hearings and obtain records in child protection cases. Information collected during the site visits and from narrative responses to the surveys suggest that media attention to child protection cases was high during the period immediately after the implementation of open hearings/records but quickly declined thereafter. When asked whether local media had covered child protection cases

responsibly, the opinions of survey respondents varied according to their professional affiliation as shown in Figure 4.

Figure 4



Court administrators, county attorneys, and judges were significantly more likely to report that the media had supplied responsible coverage than GALs, public defenders, and social workers. One can speculate that the different orientations of these two clusters of child protection professionals toward child protection cases may explain their different perceptions of media coverage. Court administrators, county attorneys, and judges tend to be more oriented toward the orderly processing of large numbers of cases through the justice system. This “case-processing” orientation contrasts with the more individualized, client-oriented justice approach associated with defense attorneys (including public defenders), GALs, and social workers. Perhaps professionals with the case-processing orientation feel that the potential benefits to the child protection system resulting from media coverage of open hearings/records (e.g., increased public attention to child protection matters and greater accountability of child protection system professionals) outweigh any isolated instances of individual harm caused by media coverage. To those professionals with a more client-oriented approach to child protection cases, the potential benefits that the child protection system might accrue from media coverage of open hearings seem outweighed by the potential for harm to individual children and families.

Based on responses to both the mailed and telephone surveys from the media and from a review of newspaper articles about child protection cases, it appears that there may have been a very few isolated instances where photographs, and names and addresses of

children and parents have been published. For example, three respondents (about 7 percent of the total) to the telephone survey of the media indicated that their media organization had published the image/photo of a child involved in a child protection proceeding, three respondents reported that their media organization had published the name of a child involved in a child protection proceeding, 16 respondents (about 35 percent) indicated that their media organization had published the name of a parent involved in a child protection proceeding, while 5 respondents (about 11 percent) indicated that their media organization had published the address of a child or parent involved in a child protection proceeding. It is important to keep in mind that the names of parents are not subject to confidentiality requirements of child protection proceedings if there is an accompanying criminal case. In our review of newspaper articles, we found only one case where the names of children and parents were given and there apparently was not an accompanying criminal case.

The review of newspaper articles found evidence of ongoing media infatuation with sensationalistic child protection cases, frequently involving the death or severe abuse and torture of children. This was certainly true before the implementation of open hearings/records and we found no evidence that open hearings/records in any way exacerbated this tendency on the part of the media. Media coverage of sensationalistic child protection proceedings can be problematic for several reasons. First, the privacy of parties involved in such child protection proceedings may be seriously compromised. Secondly, by focusing attention on the “horror” stories in the child protection system, the media distracts from and pays little heed to the many successes of child protection professionals, risking the creation of a seriously distorted public image of how the child protection system operates. Unfortunately, distorted public images can lead to the formation of dubious public policy.

- **Finding:** Evidence indicates that initial media interest in open hearings/records has waned. Regarding the quality of media coverage of child protection cases, professionals with a “case processing” orientation (court administrators, county attorneys, and judges) were significantly more likely to report that the media had supplied responsible coverage than professionals with a “client-oriented” perspective (GALs, public defenders, and social workers). However, a review of newspaper articles found that media reporting of child protection subjects tends to be dominated by sensational cases, as was the case before open hearings/records. We found no evidence that open hearings/records has exacerbated this tendency, nor were we able to document more than a handful of instances where open hearings/records caused problems for parties to the case.

Concerns About the Privacy of Parents and Children: Several respondents to the surveys repeatedly expressed concerns that open hearings/records compromised the privacy of children and parents. To some, identifying parents and children in the media is never acceptable under any circumstances. Although some members of every professional category expressed these sentiments, they were particularly apt to originate

from public defenders. Narrative survey responses by public defenders that capture this concern follow:

Client (child) confidentiality. These children, for no reason having anything to do with anything they've done wrong, are in the court system and matters critical to their well being must be discussed. I see little benefit in opening these hearings to the public.

Child protection cases are for the protection of the child. Additional opportunity for open access increases the chances to stigmatize the child; thwart rehabilitative efforts. If you want "accountability" this is NOT the answer.

These are private family matters for which due process is provided. Public knowledge or the threat of it can be very damaging to fragile families trying to put their lives back together. The public has no business knowing the specifics of these cases.

The expression of such sentiments by public defenders is consistent with the “client-oriented” perspective. Because public defenders tend to assume this orientation, it is not surprising that they would express concern about the privacy of individual children and families, regardless of what benefits might accrue from open hearings/records in child protection proceedings.

Though the potential for compromises of the privacy of children and parents by open hearings/records is undeniable, lack of participation by the public in open hearings/records reduces their probability. Further, we were unable to document any more than a handful of cases that possibly involved compromises of the privacy of children and families involved in child protection proceedings during our review of newspaper articles and from the responses to the professionals survey.

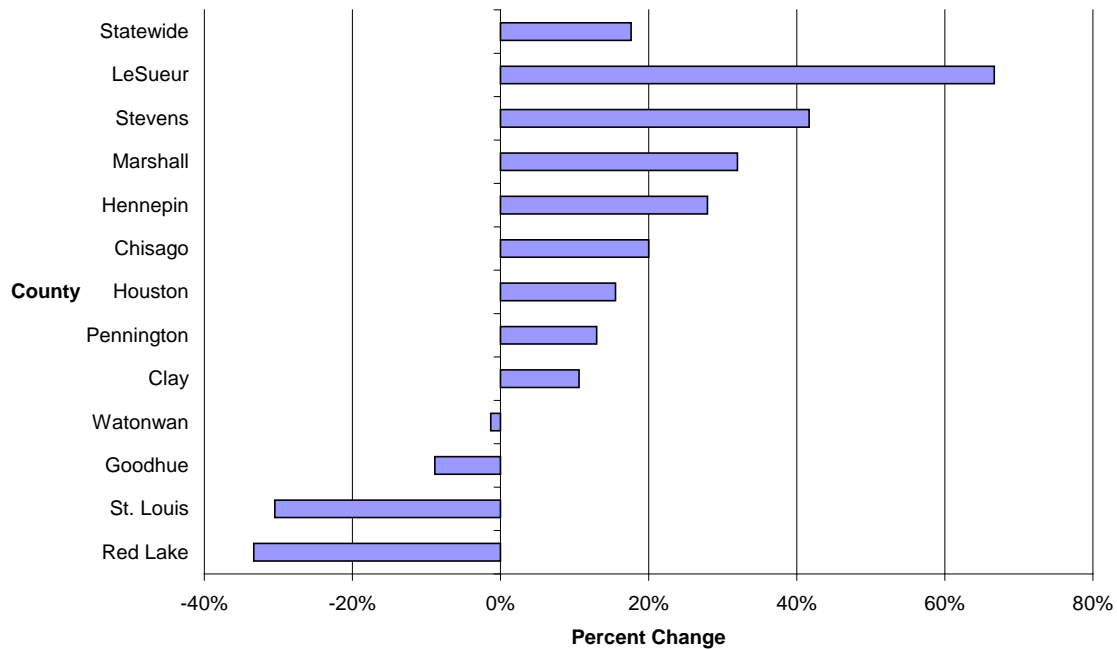
- **Finding:** Concerns about the privacy of children and parents involved in open hearings/records tend to be primarily associated with public defenders, consistent with the “client-oriented” perspective hypothesized to explain their opinions and attitudes. While the potential for abuse of parent and child privacy in open hearings/records certainly exists, we were unable to document any more than a handful of cases that possibly involved compromises of the privacy of children and families. The lack of participation by the public in open hearings/records has reduced the probability that any harmful consequences for the privacy of children and families would result from open hearings and records.

Effect on the Number of Dependency/Neglect Cases Filed and the Number Appealed: Some hypothesized that open hearings/records might have a “dampening” effect on the number of filings of dependency/neglect cases since concern over privacy might inhibit families from seeking assistance from the courts and professionals from making referrals of clients to the courts (if they had concerns for clients’ privacy). This

possible effect does not appear to have materialized. Figure 5 gives the percentage change in dependency/neglect filings when the number of filings for the first two full years after open hearings/records (1999 and 2000) were compared to the number for the last two full years prior to open hearings/records (1996 and 1997). It can be seen that filings increased in eight of the 12 pilot counties. There was a very slight decrease in Watonwan County, and more substantial percentage decreases in three other counties.

Figure 5

Percent Change in Dependency/Neglect Filings, 1999 and 2000 Compared to 1996 and 1997



Figures A through T in Volume 2, *Evaluation Data: Open Hearings and Court Records in Juvenile Protection Matters* Section II(A) provide the number of dependency/neglect filings for 1996 – 2001¹² for each county participating in the pilot project. For purposes of comparison, the number of dependency/neglect filings for the State Judicial District containing the county (-ies) in question is also presented. The filings for the pilot counties were removed from the totals for each district, to permit a more unbiased comparison. Large differences in the trend of dependency/neglect cases filed between the pilot counties and the other counties in their respective districts could be the result of the impact of open hearings/records.

In the First District, when filings from 1996 and 1997 are compared to filings from 1999 and 2000, Goodhue County registered a slight decrease in dependency/neglect filings (9 percent) and filings in LeSueur County increased substantially (67 percent), while the trend in filings for the rest of the counties in the district was relatively flat (5 percent

¹² The figure for 2001 is a 12-month rolling total, current through May 2001. The totals for the other years are based on calendar years. Consequently, the total number of filings for 2001 is not strictly comparable to the totals for the other years.

increase). In the Third District, dependency/neglect filings for Houston County increased (16 percent) while the other counties in the district displayed an almost flat trend (2 percent increase). Watonwan County in the Fifth District displayed a nearly flat trend in filings (1 percent decrease), while the rest of the counties in that district displayed a slightly decreasing trend (7 percent decrease). Filings in St. Louis County and in the rest of the counties in the Sixth District displayed decreasing trends, 31 percent and 12 percent, respectively. In the Seventh District, Clay County and the rest of the counties in the district displayed slightly increasing trends in filings, 11 percent and 6 percent, respectively. Filings in Stevens County increased substantially, 42 percent, but were almost flat in the rest of the counties in the Eighth District (.8 percent decrease). Filings after 1998 in Marshall and Pennington Counties showed similar, increasing trends (32 and 13 percent, respectively) as did the rest of the counties in the Ninth District (12 percent increase), with the exception of Red Lake County, which showed a decreasing trend (33 percent decrease but the number of filings in Red Lake County was small). Finally, it can be seen that Hennepin County displayed increasing trends of dependency/neglect case filings, similar to Ramsey County and the other urban counties in Minnesota (Anoka, Carver, Dakota, Scott, and Washington). Thus, contrary to the expectation of some that dependency/neglect filings would decrease in the pilot counties, they increased in eight of the twelve counties. In one county, Watonwan, there was almost no change. In the other three counties, decreases were more substantial although the numbers of filings in one of these, Red Lake County, was very small. Collectively, these results provide no indication of a strong, consistent impact of open hearings/records on filings of dependency/neglect case filings since filings increased in some pilot counties while they decreased in others.¹³

The number of appeals of Termination of Parental Rights (TPR) cases, which include appeals of CHIPS cases,¹⁴ in the Court of Appeals was also examined. An increase in the number of appeals might be the result of problems originating with open hearings/records. As can be seen in Table 3 below, the number of appeals from most counties was small, which makes trends more difficult to discern. There does not appear to be a strong and consistent trend for appeals to have increased since open hearings/records has been implemented.

¹³Even if there were a strong consistent trend in filings of dependency/neglect cases in the pilot counties, it would not be possible to tell with any degree of certainty whether the changes in dependency/neglect filings were the result of open hearings/records or some other phenomenon, such as population growth, changes in local filing practices, or some other change occurring among the counties, without gathering additional information.

¹⁴ This is a data collection convention employed in Minnesota.

Table 3

Number of TPR and CHIPS Case Appeals in Pilot Counties, 1996 - 2000

County	Year				
	1996	1997	1998	1999	2000
Chisago	0	1	1	0	1
Clay	0	1	1	2	0
Goodhue	0	0	0	0	2
Hennepin	6	10	9	5	12
Houston	0	0	0	0	0
LeSueur	0	0	0	0	0
Marshall	0	0	0	0	0
Pennington	0	0	0	0	0
Red Lake	0	0	0	0	0
St. Louis	0	0	1	0	1
Stevens	0	0	0	0	0
Watonwan	0	0	0	0	0

- **Finding:** Filings of dependency/neglect cases increased in eight of the 12 pilot counties, contrary to the expectations of the “dampening” hypothesis. The decrease in filings in the other counties involved small numbers of cases in each instance. Collectively, these results suggest that open hearings/records had minimal impact on dependency /neglect case filings in the pilot counties. Appeals of TPR and CHIPS cases involved small numbers of cases in each pilot county, making it difficult to discern trends, but they did not increase dramatically in any of the pilot counties as some had suggested they might. Consequently, there is little evidence that open hearings/records had a significant effect on the number of appeals of TPR and CHIPS cases in the pilot counties.

4. Public Awareness and Professional Accountability

Figure 6 presents a hypothesis of how open hearings/records might ultimately lead to increased accountability of child protection professionals and to a garnering of additional resources for the child protection system. This representation is based on inferences made by NCSC evaluators on the basis of information obtained from site visits, interviews, and focus groups. Clearly many of the professionals we encountered subscribed to this hypothesis. For example, in the Advisory Committee comments accompanying the order promulgating the rule on public access to records relating to open juvenile protection proceedings (C2-95-1476), it was stated (p.5) that:

The advisory committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem, which become case records, is an integral component of the increased accountability that underlies the pilot project.

It is hypothesized that the policy of open hearings and records will lead to increased public and media attention to the child protection system. Two possible benefits are posited to result from the increased attention to the child protection system: (1) increased accountability of system agencies and professionals and (2) increased public interest and awareness of child protection issues and the need for augmented system resources (e.g., staff, training, funding for additional programming). These two benefits will ultimately lead to improved performance of the child protection system and improved outcomes for children and families.

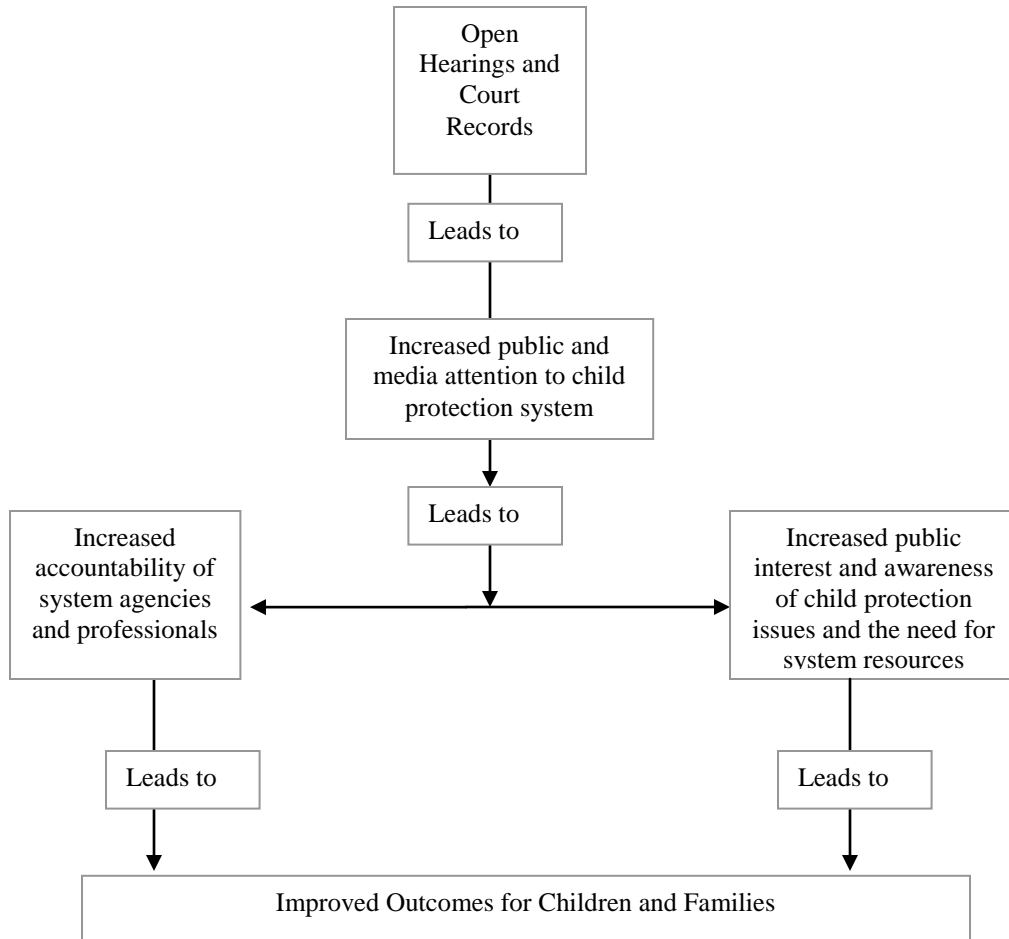
This representation suggests that the key to improved system performance is through both increased public and media attention to the child protection system. Media attention is especially important for bringing about reform on a large, statewide scale. Court watching and reporting organizations such as WATCH are also important to this process.

We can distinguish between two types of “public.” On the one hand, there is the “general public” with no personal stake in the child protection system and whose impressions of the child protection system are formed principally by the media. There was never an expectation that the “general public” would avail themselves of open hearings/records. On the other hand, there is an “interested public” who have stakes in the child protection system such as members of the extended families of those involved in child protection proceedings, foster parents, and service providers. Attention by the interested public is important for local reform and innovation, and could ultimately contribute to a “grassroots” campaign for changes in the child protection system. Both the media and the interested public are key to increasing professional accountability along with public interest and awareness of child protection issues. Advocates of open hearings/records should focus their attention on these two groups.

There are problems with the roles ascribed to both the media and organizations like WATCH for mobilizing public opinion. The problem with the role of the media in this hypothesis is their ongoing infatuation with sensationalistic child protection cases at the expense of their coverage of the broader issues of child protection, which is generally limited. WATCH, on the other hand, has clearly taken advantage of open hearings/records to improve their monitoring of child protection cases, having recently released a report on the subject. However, our review of record requests showed that WATCH accounted for only three to six percent of the records requested in Hennepin County between August 1998 and April 2001 and, outside of Hennepin County, WATCH seems to have little presence. Thus, it would appear that the role of organizations such as WATCH for drawing public attention to child protection issues will be limited by their relatively small size and limited resources.

Figure 6

Hypothesis of Improved Child Protection System Performance Resulting from Open Hearings and Records



There are also problems with the role ascribed to the public for mobilizing public opinion about child protection issues. Participation by the interested public in open hearings/records has definitely increased since its implementation but this group has yet to coalesce into an effective voice for reform of the child protection system.

Survey results disclosed that most professionals did not feel that the professional accountability of judges, county attorneys, court administrators, public defenders, GALs, or social workers had changed as a result of open hearings/records. Interestingly, all professionals reported enhanced professional accountability when the results from the second wave of surveys were compared to the results from the first wave of surveys. Media respondents from both the mailed and telephone surveys were much more likely than other respondents to feel that professional accountability had been enhanced, which is significant given the media's importance for insuring professional accountability. Indeed, the media (as reported in the mailed and telephone surveys) enthusiastically supports open hearings/records and feels that it has allowed them to do a better job

reporting child protection cases and issues. The following response from a member of the media to the second wave of surveys is indicative of this position:

There has definitely been increased attention to child protection issues and policies. Recently, there has been a lot of coverage in the media about the lack of guardians ad litem for the majority of child protection cases across the state. Increased funding is currently being sought and efforts to encourage volunteerism in this area as well. WATCH has written an article about the need for more attention to children and the services they are provided in our newsletter. This article resulted in conversations and meetings with child protection system professions. We (and the Star Tribune) have also written about the impact of new permanency timelines.

While the survey results suggest professional accountability has changed little as a result of open hearings/records, professionals responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability. In addition, information collected during site visits and in the narrative responses to the surveys show that many professionals felt that professional accountability had been enhanced. Some examples of these narrative responses follow:

From a judge: The prospect or potential of having more eyes watching and people scrutinizing the legal process of all individuals circled as having increased accountability, results in greater accountability.

From a county attorney: The decisions of the court and on occasion the county attorney are under greater scrutiny. Decisions to remove or reunify, in particular, are weighed more carefully.

From a court administrator: The county attorney and court administration are more accountable as far as content of the petition and attachments and scheduling of cases timely.

From public defenders: All of this works to make a heretofore system that used confidentiality to cloak incompetence or negligence much more accountable and focused on positive nurturing plans to help families and children with all parties held to an increasing standard of due care.

Judges actually read the file before the hearing and the lawyers (for county) for child, for parents are prepared.

From a GAL: Parties appear more sensitive to claim that they failed to perform duties and obligations. Not much more sensitive, but some.

From social workers: I need to keep up to date on my contact with the child and parents, keep accurate documentation, stay up to date on case plans and reports, following time lines, as well.

When reporters, etc. appear, all seem more open to other suggestions.

Social workers more attuned to accurate, detailed, and documented information. GALS must be more thorough. Service providers more involved with court proceedings to document what they are or have done for the client.

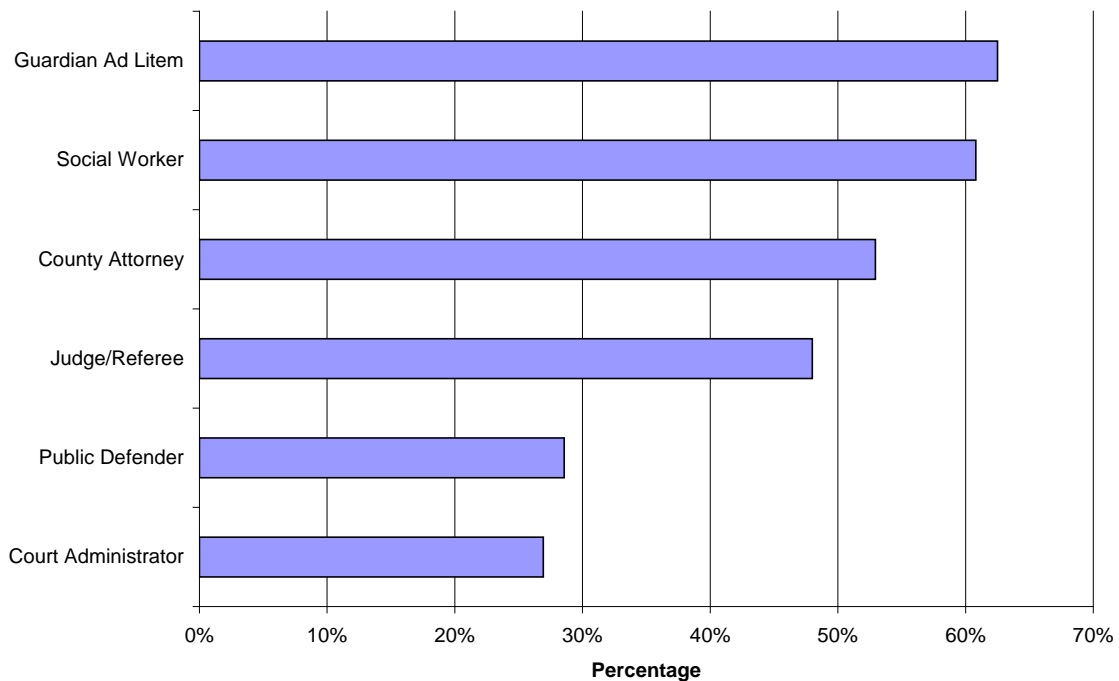
Additional evidence of enhanced professional accountability comes from the recently published (May 23, 2001) report by WATCH, "WATCH's Monitoring of Open CHIPS Cases in Hennepin County Juvenile Court." Much of the information collected by WATCH would not have been accessible prior to open hearings/records. The WATCH report contains many useful recommendations and is an example of the type of scrutiny to which child protection professionals may be subjected in the future. WATCH feels that open hearings/records has enabled them to do a better job of monitoring child protection cases, as reflected in their narrative response to the first wave of surveys:

Though WATCH is not a media organization, with the increased information about children in need of protection or services (CHIPS) cases obtained from our court monitoring and research, we are now more able to report on child protection issues and policies. We are also more able to identify problem areas and make suggestions for improvements. For example, we have pointed out the need for juvenile court personnel on the dynamics of domestic violence and for addressing the frequent delays encountered by participants in hearings and interested observers. We intend to write a comprehensive report on all our observations/suggestions by February 2001. Recognizing that some child protection departments in the state are short on funds, it becomes even more important for the public to have information about how the system operates and the types of cases it oversees.

As shown in the accountability hypothesis (Figure 6), public awareness has a role in improving the accountability of child protection professionals. However, professional opinion about whether greater efforts should be made to inform the public about open hearings/records is divided, as shown in Figure 7.

Figure 7

Percent Favoring Increasing Public Awareness of Open Hearings/Records



More than half of the GALs, social workers, and county attorneys, respectively, and almost half of the judges were in favor of increasing public awareness of open hearings/records. Only 29 percent of the public defenders and 27 percent of the court administrators were in favor of increasing public awareness. Based on the narrative comments and site visit notes, it appears that social workers and GALs welcome the lifting of the traditional veil of secrecy that has prevented them from sharing their work with the public. The following comment from a social worker captures this sentiment:

I would like the public to have a greater understanding of the system and the difficult role child protection social workers have. Most people have a very unrealistic picture. Most, if they knew, would support the system and the social workers more. We have a bad PR rep.

The responses of the public defenders and county attorneys are consistent with their respective “case-processing” and “client-oriented” perspectives on the treatment of child protection cases. We speculate that county attorneys feel that the benefits to the child protection system resulting from open hearings/records outweigh any isolated instances of harm to individuals. Public defenders are opposed to any policy that could potentially harm their clients. Court administrators oppose increasing public awareness of open hearings/records presumably because of the additional work this initiative might bring to their staffs (without providing them with additional resources). The following response from a court administrator captures this sentiment:

Opening hearings to the public has only caused more time and effort for court administration personnel. When we didn't have to worry about what remained confidential in a file, it alleviated the time spent checking and re-checking a file to make sure everything was redacted that needed to be.

Interestingly, even though judges were more likely to respond that they wanted child protection hearings and records open to the public than not open, a slight majority was in favor of not increasing efforts to inform the public of this policy. Similarly, even though almost two-thirds of the county attorneys were in favor of open hearings/records, only slightly more than half of this group was in favor of increasing efforts to inform the public of this policy. While 52 percent of the court administrators were either in favor of open hearings/records or had no opinion, 73 percent were against increasing efforts to inform the public of this policy. Thus while judges and county attorneys are generally in favor of open hearings/records, they share the reluctance of court administrators to increase efforts to educate the public about the policy.

- **Finding:** Though according to the survey, most child protection professionals feel that the accountability of the principal actors in the child protection system has not been impacted, we found evidence that suggests that there has been somewhat of an increase in accountability. First, the publication of the WATCH report on open CHIPS cases is evidence of increased scrutiny of child protection proceedings, a necessary first step for securing greater professional accountability. Secondly, narrative comments provided by many of the professionals reflect the perception that accountability has increased, at least for some. Thirdly, increased attendance of extended family members, foster parents, and service providers also worked to increase professional accountability. Fourth, media respondents (to both the mailed and telephone surveys) were significantly more likely to feel that professional accountability (for every category of professional) had increased since open hearings/records had been implemented than any of the other professionals. The latter finding is significant given the critical role that media plays in securing professional accountability (see Figure 6 in Volume I). Additionally, all categories of professionals (including public defenders) responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability.

As suggested by the accountability hypothesis (shown in Figure 6), responsible and sustained reporting of child protection issues by the media, scrutiny of the child protection system by court watch groups such as WATCH, and increased public awareness of open hearings/records and child protection issues in general are the keys to improving the accountability of child protection system professionals. Until the participation of these groups in the child protection system

increases, the accountability hypothesis will not receive a fair test. Given the reluctance of many child protection professionals to publicize open hearings/records, any efforts to publicize should be carefully crafted and designed to educate the public about child protection issues.

5. Overall Impact on Open Hearings/Records

In many ways, the impact of open hearings/records on the child protection system has been limited. The general public has generally declined to participate in open hearings and there have been few public requests for court documents in child protection cases. On the occasions that the public attends an open hearing or requests a document, it usually consists of members of the extended family, foster parents, or service providers interested in a specific case. Open hearings/records initially attracted the attention of the media, but their interest appears to have declined over time. The media continue to focus on sensational child protection cases, providing little coverage of major child protection policy issues, such as the need for additional resources and the availability of services for parents and children. Nonetheless, the media are one of the strongest proponents of open hearings/records in child protection proceedings, since they feel this policy enables them to do a better job of reporting. All things considered, however, the evidence suggests that open hearings/records, to date, have had virtually no effect on general public awareness of child protection issues.

We were unable to document more than a handful of cases that possibly involved harm to children and families as a result of having their privacy compromised because of open hearings/records. The lack of participation by the public in open hearings/records has reduced the probability that any harmful consequences for the privacy of children and families would result from open hearings and records. However, many professionals, especially those with a “client-oriented” perspective, such as public defenders, maintain that the potential still exists for harm to occur.

Though according to the survey, most child protection professionals feel that the accountability of the principal actors in the child protection system has not been impacted, we found tentative evidence of some improvements in professional accountability. The publication of the WATCH report on open CHIPS cases and the narrative comments from many of the professionals are evidence that accountability has been increased, at least for some professionals. Increased participation by the “interested public” (including extended family members, foster parents, and service providers) is also a very important and positive trend that acts to increase professional accountability. It is also notable that media respondents were significantly more likely than any of the other professionals to feel that professional accountability (for every category of professional) had increased since open hearings/records had been implemented, given the critical role that media plays in securing professional accountability (see Figure 6 in Volume I). Additionally, professionals responding to the second wave of surveys were more likely to feel that accountability had been enhanced than respondents to the first wave, suggesting a movement toward perceptions of greater accountability.

We found little evidence that child protection hearings had changed significantly after having been opened to the public. Open hearings/records have not had much of an effect on court procedures...there is little evidence that the duration of hearings was appreciably affected nor is there compelling evidence that the nature of in-court discussions has changed. Closures of open child protection hearings occurred very infrequently in the pilot counties. In the opinion of the child protection professionals surveyed, opening hearings and records in child protection proceedings to the public has had very little impact on the content of courtroom documents, exhibits, and statements.

Allowing public access to court records and exhibits from child protection proceedings has had a very significant impact on the workload of court administrative staff because of the record keeping requirements in the court order that established public access and also the need to address public requests for documents. However, requests for court documents from the public have been rare. Likewise, protective orders restricting public access to court documents and exhibits have been rarely issued and appeals of these orders are even more rare.

Opinions about the efficacy of open hearings/records in child protection proceedings were divided along professional lines in the second wave of surveys. Public defenders are adamantly opposed to open hearings/records (76 percent), as are large proportions of court administrators (48 percent). On the other hand, the majority of county attorneys (65 percent), GALs (73 percent), and social workers (56 percent) favored open hearings/records. Judges are divided in their opinions, though a large proportion (48 percent) are favorable. Professionals in favor cite increased professional accountability, real and potential, and the general need for openness in all public matters in a free society. Those opposed cite concern about the privacy of children and families. As a trend, responses across all professional categories, including public defenders, from the second wave of surveys were more favorable to an open hearings/records policy in child protection proceedings than those from the first wave.

There are several possible explanations of the differences in opinion among the professionals about opening hearings and records in child protection cases to the public. It is hypothesized that court administrators tend to oppose open hearings/records because of the additional work that is required from their offices without (to date) additional resources (principally staff). Based on the narrative comments and site visit notes, it appears that social workers and GALs are favorably disposed toward open hearings/records because they welcome the lifting of the traditional veil of secrecy that has prevented them from being able to explain their decisions and recommendations to the public. Court administrators and judges tend to be oriented toward the orderly processing of large numbers of cases through the justice system. This “case-processing” orientation contrasts with the more individualized, client-oriented justice approach associated with defense attorneys, including public defenders. Perhaps professionals with the case-processing orientation feel that the potential benefits of open hearings/records (e.g., increased public attention to child protection matters and greater accountability of child protection system professionals) outweigh any isolated instances of individual harm

caused by this policy. To those professionals with a more client-oriented approach to child protection cases, the potential benefits that the child protection system might accrue from open hearings seem outweighed by the potential for harm to individual children and families.

When survey responses from the single urban county among the pilot counties, Hennepin County, were compared to the responses from the other pilot counties, differences emerged which showed that respondents from Hennepin County were more favorably inclined toward open hearings/records than their counterparts from other counties. Across all professional categories, respondents from Hennepin County were more likely to favor making child protection hearings and records accessible to the public, to feel that the quality of child protection hearings had improved since open hearings had been implemented, were more likely to feel that the accountability of (every type of) child protection professional had increased, and were more likely to favor increasing efforts to inform the general public about open hearings/records than their counterparts from other counties. These differences may reflect that open hearings/records has had a more significant impact on the child protection system in Hennepin County than in the other counties. Perhaps the closer proximity of major media outlets, the nearby presence of WATCH, and a more organized child protection community or lobby in Hennepin County than in the other counties created an atmosphere more conducive to the fulfillment of the accountability hypothesis (Figure 6) in Hennepin than in the other counties. There may also be a threshold effect associated with open hearings/records such that the size of the child protection caseload in a county must be sufficiently large to enable open hearings/records to have an impact.

It is also possible that the differences between Hennepin and the other counties are due more to perceptions than to actual program effects. Child protection professionals in Hennepin County deal with much larger child protection caseloads than their counterparts in other counties and consequently have many more opportunities to observe the impact of open hearings/records than their counterparts. Media stories about child protection cases are also more frequent in a large metropolitan area such as Hennepin County, helping to keep open hearings/records on the minds of child protection professionals. The child protection system in Hennepin has frequently been the focus of media attention and criticism. Child protection professionals in Hennepin may welcome open hearings/records as a means to blunt such criticism. It may also be the case that the “case-processing” orientation is more pervasive in Hennepin County, across all professional types, than in the other counties because the size of Hennepin’s caseload requires orderly movement of large numbers of child protection cases. As we hypothesized earlier, professionals with a “case-processing” orientation tend to be more favorably inclined toward open hearings/records than professionals with a “client-oriented” orientation.

IV. Concluding Remarks

There are clearly costs attached to open hearings/records, especially for court administrative staff. Other costs may be borne by the parties to child protection cases, especially children and parents (and foster parents), who risk losing privacy. During the course of the data collection, the NCSC project team did not encounter any cases where harm to children or parents irrefutably resulted from open hearings/records although many professionals expressed concern for the potential of such harm.

On the other hand, real and potential benefits result from open hearings/records, including enhanced professional accountability, increased public and media attention to child protection issues, and openness of judicial proceedings in a free society. A critical factor that will influence the balance between the costs and benefits of open hearings/records in child protection proceedings will be the amount and type of attention that the public and the media pay to open hearings/records (see Figure 6), given the enhanced public access that results from this policy. To the extent that it is possible, child protection professionals should take the initiative to provide leadership and guidance to the public and the media as they begin to navigate the uncharted waters of open hearings/records. Such an initiative would benefit from a formal plan for public and media education, developed by all stakeholders in the child protection system, including children and parents. Policy makers should carefully judge the balance between the real and potential costs and benefits of open records/hearings in child protection proceedings as they decide the future of this policy, and, to the extent that they can, initiate efforts to ensure that benefits will far outweigh costs.

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