

CAN I ATTEND THE COURT PROCEEDING?

Access to Minnesota courts by victims, advocates, and family members

Questions about whether the courtroom is open to the public and who can attend court proceedings frequently come up. An individual's ability to attend a court proceeding differs by type of proceeding and the status of the person who is attempting to attend the proceeding. The following is a summary of the Minnesota laws and rules related to ability to attend various court proceedings.

CRIMINAL MATTERS

In general, criminal court hearings are open to the public, a principle made clear by the U.S. Supreme Court.ⁱ

Excluding persons from the courtroom:

Even with the presumption of openness in our courts, a judge has the ability to close a court proceeding. To deny access to criminal trial proceedings, the U.S. Supreme Court has ruled that states must show that the denial is necessitated by a **compelling state interest** and that the denial is narrowly tailored to serve that interest. *Globe Newspaper Co. v. Superior Court*, 457 US 596 (1982).

Minnesota's Rules of Criminal Procedure state that the court can exclude the public from portions of a criminal trial held outside the presence of an unsequestered jury when there is a substantial likelihood the matters discussed, if disseminated, may interfere with a fair trial by an impartial jury. Minn. Rules of Criminal Procedure 26.03, subd. 6.

In addition, Minnesota identifies some situations where persons may be excluded from a criminal proceeding. For example, minors who are not witnesses or who do not have an interest in the criminal proceeding may not be present at trial. Minn. Stat. § 631.04. A judge also has the ability to exclude spectators from the courtroom in child pornography cases and criminal sexual conduct cases involving a minor victim. Minn. Stat. § 631.045.

FAMILY COURT CASES

In general, family court proceedings, including order for protection (OFP) hearings, are open to the public. Minnesota Rules of Family Court Procedure 364.07 states: "All hearings are open to the public, except as otherwise provided in these rules or by statute. For good cause shown, a child support magistrate may exclude members of the public from attending a hearing." Examples of **good cause** might include if a child is testifying, if there are safety concerns, or if the observer causes a disruption or interferes with the proceeding.

CHIPS CASES IN JUVENILE COURT

In July 2002, following a three-year open-court pilot project, the Minnesota Supreme Court opened all child in need of protection (CHIPS) proceedings to the public. The court still has the discretion to close a proceeding for good cause.

DELINQUENCY CASES IN JUVENILE COURT

In general, the public cannot attend juvenile delinquency proceedings unless they have a direct interest in the case or in the work of the court. Victims of a child's delinquent act have a right to attend any related delinquency proceeding, however, the court may exclude them if they are a witness or during portions of a certification hearing where psychological material or other evidence not accessible to the public is being discussed. Minn. Stat. § 260B.163, subd. 1(c).

Hearings are open to the public in delinquency or extended jurisdiction juvenileⁱⁱ proceedings where the child was at least 16 years of age at the time of the offense and is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult. Minn. Stat. § 260B.163, subd. 1(c).

CIVIL COMMITMENT CASES

The public may attend civil commitment hearings; however, the court has the ability to exclude individuals from the hearing who are not necessary for the conduct of the proceedings. The court cannot exclude those requested to be present by the proposed patient. Minn. Stat. § 253B.08, subds 2 and 3.

SPECIAL CONSIDERATIONS FOR VICTIMS AND WITNESSES

In general, victims and witnesses are members of the public and therefore have the right to attend court proceedings as described above, with certain exceptions. For example, witnesses may be sequestered or excluded from the proceedings in which they will be called to testify. See Minnesota Rules of Court 11.11 and 26.03, subd. 7; Minnesota Rules of Evidence 615.

Although victims, as members of the public, may attend criminal proceedings, Minnesota law specifically gives victims rights to be present at the plea presentation hearing and the sentencing hearing. Minn. Stat. § 611A.03, subd. 1(b).

Victims of crimes committed by a juvenile have the same rights as those cases in which the offender is an adult. Minn. Stat. § 611A.015. In addition, Minnesota law specifically provides that the victim of a child's delinquent act may attend any delinquency proceeding. Id. § 260B.163, subd. 1(c). Further, the victim in this proceeding has a right to have a support person present during the victim's testimony. Id. § 260B.163, Subd. 3.

A prosecuting witness under the age of 18 has a right to a "support person" in child abuse, violent crime, fifth degree assault, and domestic assault cases during the testimony of that prosecuting witness. Minn. Stat. § 631.046, subd. 1. A prosecuting witness in criminal sexual conduct cases may be accompanied by a supportive person to the omnibus hearing or other pretrial hearings. Id. subd. 2.

FAMILY MEMBERS AND VICTIM ADVOCATES

Family members of a minor, incapacitated, incompetent, or deceased victim are considered "victims" and have the same rights of access to the courts as described in the previous section. Minn. Stat. § 611A.01, subd. 1(b). Although "family member" is not defined, this section indicates that if it would be impracticable to have all family members accorded all of the rights under 611A (including attending a hearing), a prosecutor can establish a reasonable procedure to give effect to the rights under 611A, however, it cannot limit the number of victim impact statements submitted to the court. Id.

Members of the victim's family and community-based victim advocates are members of the public. The rules and laws related to access to court proceedings described above apply to them in that status, unless specifically provided for otherwise.

Victim advocates who are part of a prosecutor's office are able to attend both open and closed proceedings as a member of that office.

ⁱ The U.S. Supreme Court has made this principle clear in a number of cases. See *Richmond Newspapers, Inc. v. Virginia*, 488 US 555, 580 (1980) (First Amendment affords the public and the press a constitutional right of access to criminal trials). In addition to trials, other cases have similarly held that there is a presumption for openness in voir dire, pretrial suppression hearings, and other preliminary hearings. In *Press-Enterprise v. Superior Court*, 464 US 501 (1984), the U.S. Supreme Court stated, "The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system."

ⁱⁱ An extended juvenile jurisdiction (EJJ) proceeding is one in which the child is 14-17 years old at the time of the offense, and the child is alleged to have committed an offense for which the presumptive sentence is a commitment to prison or the child is alleged to committed a felony and used a firearm. Minn. Stat. § 260B.130.