

State ex rel St. Louis Post Dispatch 179 S.W.3d 899 (SC 2005)

- Juvenile Court Judge Garvey closed the Certification hearing for a juvenile
- His rationale- this wasn't the trial regarding the A Felony, only whether the juvenile should be charged as an adult
- Newspaper appealed, writ of prohibition to prevent Judge from closing the courtroom
- Court held: Statute is clear, all phases of the case are open to the public since juvenile was charged with an A or B Felony

Abuse/Neglect cases 211.319 RSMo & Rule 122.01

- ► All cases under 211.031.1(1) and TPR shall be open to the public
- Except: when parent has consented to adoption via child placing agency

Who *has* to be present?

- Court must provide due process, and cannot proceed without all parties present, with some exceptions.
- Parties:
- Child who is subject of the proceedings
- Parents, guardian and custodian
 - But NOT foster parents
- Juvenile Officer
- Children's Division Representative when they are providing services or have custody
- Any other person denominated by statute or court order
 - Includes Guardian ad Litem and CASA, grandparents if intervene

Presence and Exclusion CA/N SC Rule 124.03

- Juvenile and parents have the right to be present at all hearings
- Court can exclude parents and proceed without them
 - Fail to appear after proper service
 - ► For good cause, or exception circumstances or best interests of child
- Court may exclude juvenile if it serves the juvenile's best interest
 - See also 211.171.2 Court may proceed in absence of the child
- Juveniles over 12 should be present at their hearings,
 - See 211.135 and 210.564.3(7)

What about Foster parents? Per 211.171 RSMo Foster parents have right to notice and opportunity to be heard in any hearing with respect to a child in their care 2020 Amendment They may also participate in hearings Right to present evidence? Cross examine witnesses?



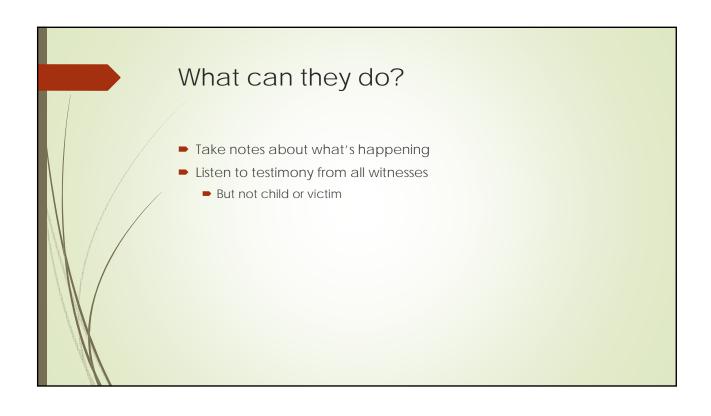
There's always a but

- Court may exclude any person from the hearings
 - Requires good cause shown, to protect the welfare and best interests of the child
 - And for exceptional circumstances
- Any party to a juvenile court proceeding may file a motion to exclude general public from the proceeding
 - Exception: that State can't file such a motion
- Court shall hear argument, but no evidence
- Court shall make a finding on the record

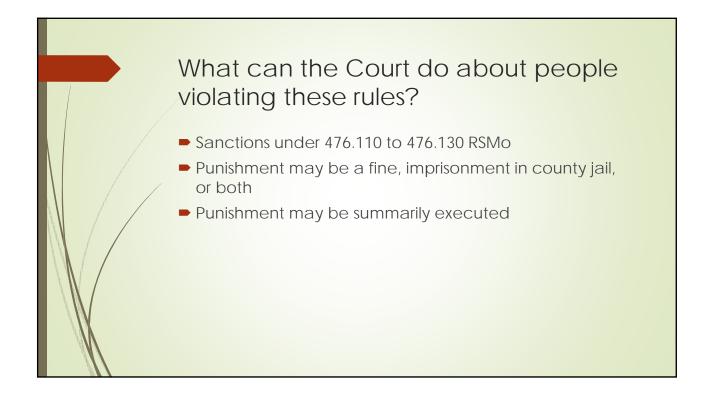
And a Notwithstanding... 211.319.2 RSMo

- General public shall be excluded during the testimony of any child or victim, and only such persons with a direct interest in the case or work of the court will be admitted
- Does that also exclude parents/alleged abusers?
- Well no, but actually maybe

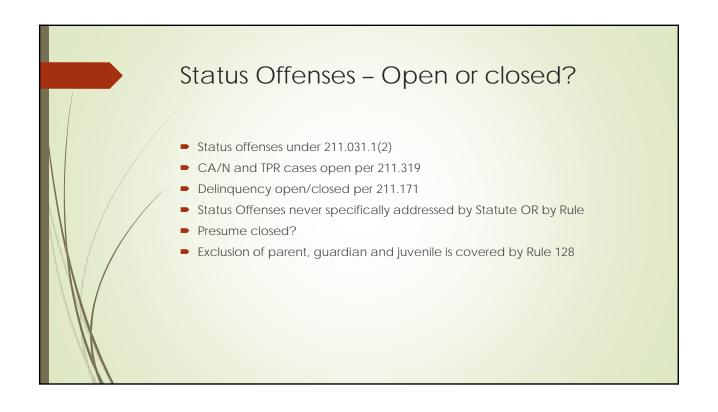
Exclusion from hearings SC Rule 123.04 Court may exclude parents from a hearing for good cause, exceptional circumstance or if it's in the juvenile's best interests Court may still exclude any unruly/disruptive person



What can't people do Rule 122 cont General public can't record hearings can't take photos of witness or a party Court must give specific authorization for CD, foster parents, residential placement to Submit juvenile to audio or video recordings Permit public to photograph or record the juvenile



Access to Hearings Delinquency Delinquency cases are closed to the general public, EXCEPT when juvenile is charged with an A or B Felony – 211.171 Also includes if Juvenile was previously adjudicated of 2 or more unrelated A B or C Felonies Corner case: Juvenile adjudicated of a B Felony, but not certified. Comes back on a D Felony, Misdemeanor or even probation violation Are these later hearings open?



Presence and Exclusion Status and Delinquency 128.01

- Parents and juvenile have the right to be present at all times
- Can't hold the hearing without the juvenile's presence
 - Unless waived by juvenile's counsel
- Detention hearing can be held without juvenile if:
 - Waived by juvenile's counsel, OR
 - Court determines juvenile's presence is not warranted
- Runaway juvenile Court may continue with the trial
- If parents are served and don't show up Court may proceed
- Court may exclude parents and unruly/disruptive persons

Quick recap on hearings

- Abuse/Neglect Open to everyone
 - Except when child victim is testifying
 - Except when the Court moves to close
 - Except when a party moves to close
 - But not the state
- Status Offense Presume closed
- Delinquency generally closed
 - Open if charged with A or B Felony
 - If C Felony and 2 prior adjudicated, unrelated C and up Felonies

Questions and Examples

- Juvenile Office files a particularly horrendous abuse case, where child victim was found next to a now dead sibling. Media gets wind of the case and wants to attend the Protective Custody hearing.
- Who can attend?
- Can they be excluded?
- Media records the sibling arriving at the courthouse
 - Any issue there?
 - What if media doesn't know that's the subject child in background?
 - Who gets in trouble?

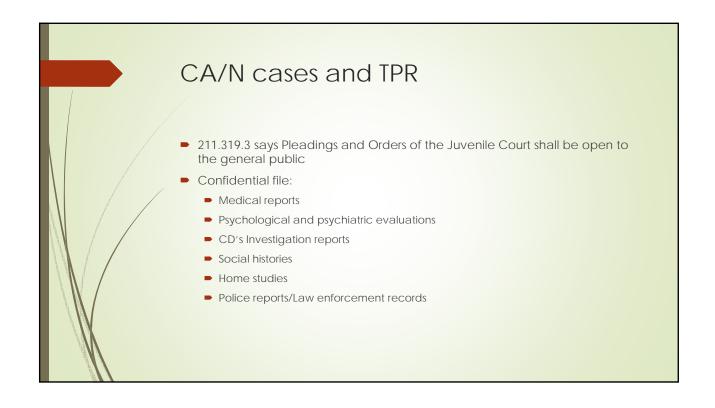
More Questions

- Juvenile is charged with B Felony of Robbery 2nd and D Felony of Tampering 1st for getting caught in a stolen car
 - Who can attend hearings?
- Juvenile admits to the Offense, put on probation
- Juvenile comes back to us for a C Felony of Distribution of Drugs
 - Hearing open or closed?

Even more questions Juvenile is part of a family under jurisdiction for Neglect Juvenile is 15 and gets caught driving a stolen car (D Felony) Can the cases be heard together? Post Delinquency disposition, may the Court hear any probation review issues during the mandated Neglect Case Reviews? Would the Court have to close that portion of the hearing?

Records of Juvenile Proceedings 211.319 and 211.321 Cases heard under 211.031.1(1) RSMo and TPR under 211.447 Open hearing, Open pleadings, Closed record Cases heard under 211.031.1(2) Status Offense Closed hearing?, Closed pleadings?, Closed record Cases heard under 211.031.1(3) Delinquency Some hearings open, some hearings closed, some records open, some records closed

What IS the Juvenile Court record? Recorded hearings and evidence presented to the Court Includes written Pleadings, Motions*, Orders of the Court, exhibits used for trial and hearings Also includes the verbal motions, arguments and presentation of evidence made during hearings Evidence may include 3rd party records, social histories, police reports Record is defined by what must be included and omitted per the Rules on Appeals – 81.16 and 81.20



Status Offenses 211.321.2 RSMo Records of the court as well as all information obtained and social records prepared in the official discharge of duty shall be kept confidential and shell be open to inspection only by order of the Judge of Juvenile Court, or as otherwise provided by statute. What about pleadings and orders? Covered by Juvenile court records – they're closed



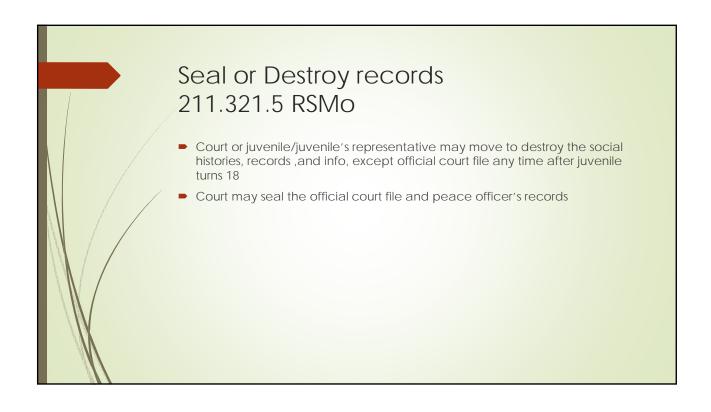
Delinquency cases 211.321.2

- The records of the juvenile court as well as all information obtained and social records prepared in the discharge of official duty for the court shall be kept confidential and may be open to inspection without court order only as follows:
- Juvenile Officer may:
 - Provide info or discuss matters to the victim, witnesses, school officials, Police, prosecutors, any person or agency to have custody/placement
 - This info shall not be released to general public
 - Make public info concerning the offense, substance of petition, status of proceedings
 - But cannot specifically identify the child or child's family

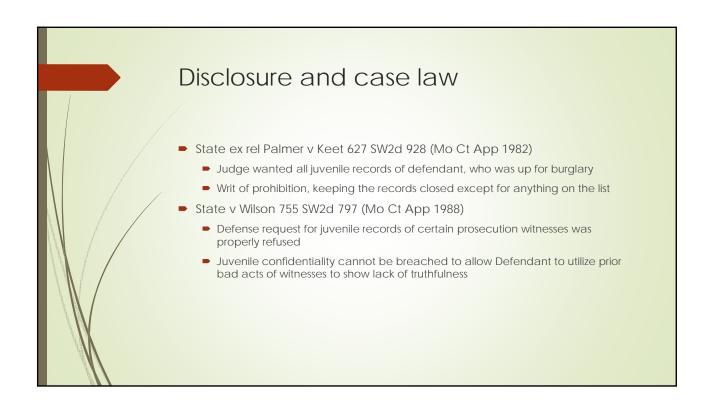
Open records though? 211.321.2(2)

- After a delinquent has been adjudicated of a Felony, the records of the dispositional hearing shall be open to the public to the same extent records of criminal proceedings are open to the public
- However, social summaries, investigations or presentence investigations, status reports etc are still closed

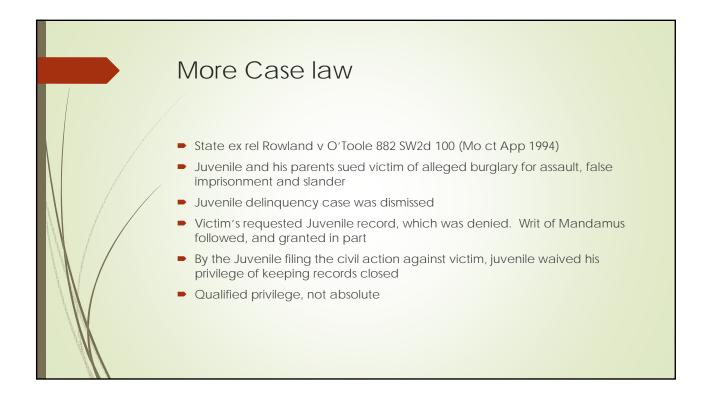
Peace Officers records Rept separate from records of persons 18 and over Not open to inspection or contents disclosed except by order of the Court Does not apply to certified juveniles Does not apply to Civil Forfeiture actions under 195.140 RSMo Court can still release info and data to people who compile crime stats relating to juveniles Children's names and identities shall be kept confidential though



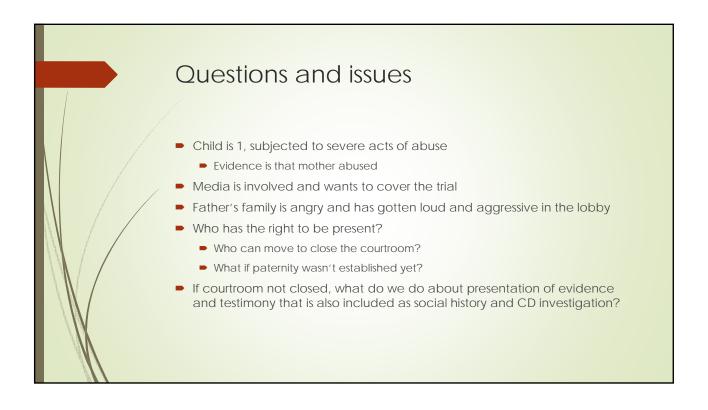
Mandatory disclosure: Presentence Investigation - Section 557.026 requires a disclosure of certain juvenile violations - Rape - Sodomy - Murder - Kidnapping - Robbery - Arson - Burglary - Acts involving the rendering of threat of serious bodily harm

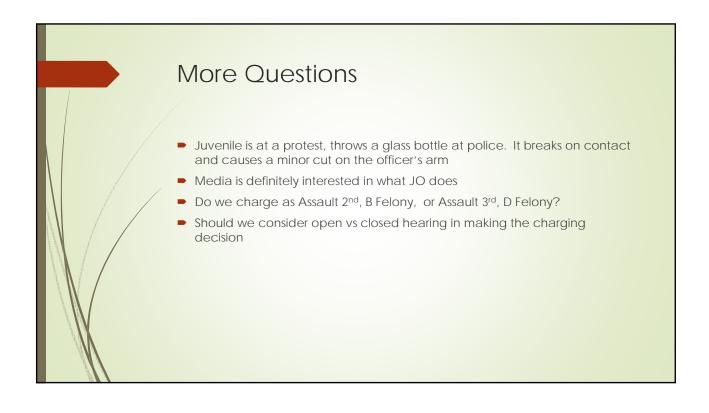


More case law on closed records! State v Scott 651 SW2d 199 (Mo Ct app 1983) Use of juvenile fingerprint records to identify him as individual whose fingerprint was found at scene of a murder did not violate 211.32 or Rule 122.03 Use was restricted to local investigation by the agency that originally took the prints Mason v State 368 SW3d 182 (Mo Ct App 2012) Trial court properly considered sodomy appellant's prior juvenile adjudication in California for lewd and lascivious conduct with a child under 14



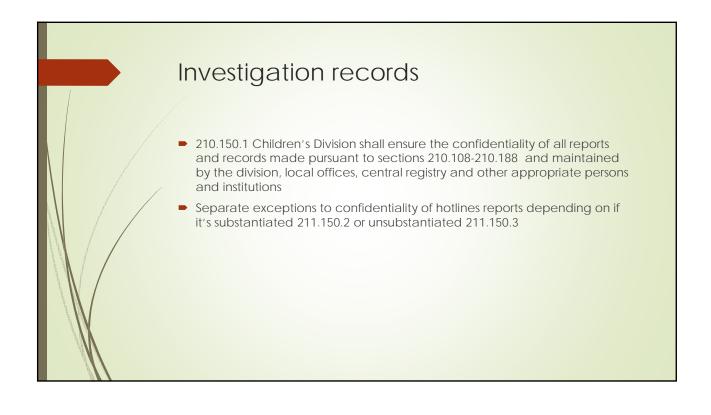
Recap: Closed vs Open - CA/N and TPR - Hearings are open to public - Record is closed to public - Status Offense - Hearings are closed to public? - Record is closed to public - Delinquency - A/B Felony hearings are open to public, all other closed - Record is closed to public, unless felony is sustained, and then only some records are open to public - Some offenses must be disclosed as part of adult presentence investigation







Family Support Team Meetings 210.147 RSMo Family Support Team Meetings All info provided at FSTM is confidential Except: Parent or part may waive confidentiality for him/herself Parent has absolute right to video/audio record FSTM to the extent permitted by law No parent/party shall be required to sign a confidentiality agreement before testifying or providing information at such meetings Anyone, other than parent/party, who does not agree to maintain confidentiality may be excluded from team meetings



Substantiated hotline 210.150.2 Allowed to have access to investigative records in Central Registry 13 subsections, here's the major areas Law enforcement Doctors Division staff Grand Jury, Juvenile Officer, prosecutor, Juvenile Court, Law enforcement investigating child abuse/neglect, other court conducting child protective proceedings or child custody proceedings Some restrictions may apply

Substantiated Hotline now with restrictions! Child named in report as victim, their legal representative, parent (but not the alleged perpetrator) Must redact reporter's name and identifying information CD shall determine whether releasing the info may place a person's life or safety is in danger Alleged perpetrator Same redactions of reporter name But cannot release if there are pending criminal charges until indictment is returned or information is filled

Substantiated hotlines more people, more restrictions

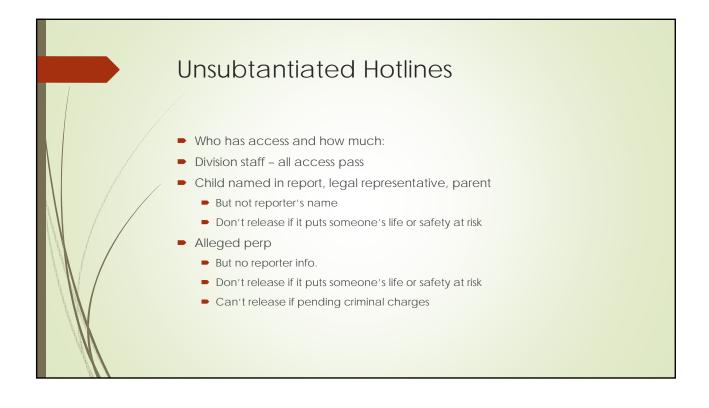
- People involved in bona fide research purposes
 - But no info identifying the child victim, or reports,
 - Unless it's essential to the research or parent provides written permission
- Child care facility, child placing agency, residential care facility, schools, any place having temporary care ore custody of a child
 - May request examination of Central Registry for employees, volunteers or prospective employees and volunteers
 - May request, CD response in writing
 - No identifying info, except that of the alleged perpetrator

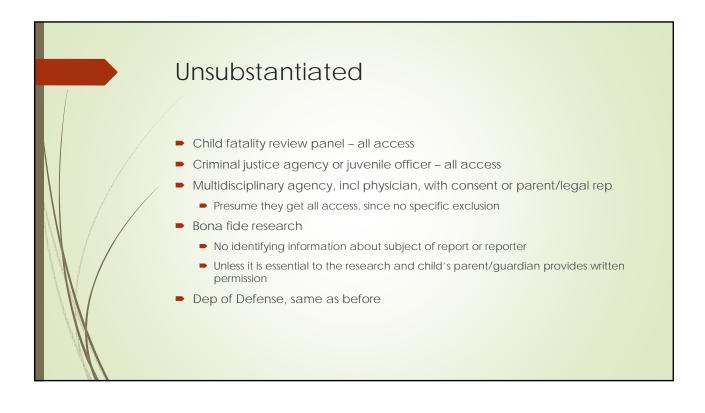
Substantiated Hotlines

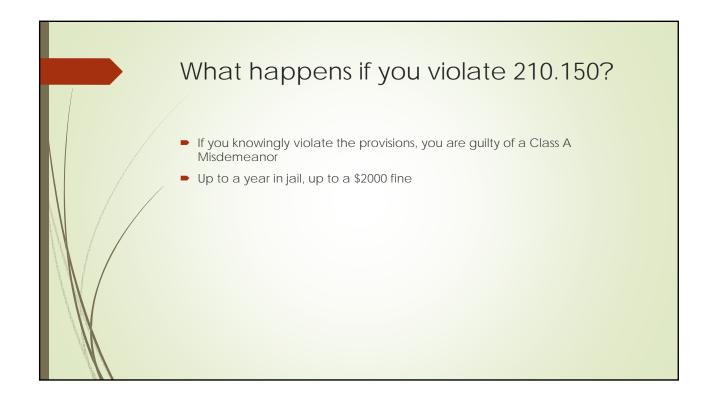
again

- A parent who inquires about a report involving a specific person or childcare facility
 - Request made in writing, must be accompanied by a release from the person or child-care facility
 - No identifying info provided except alleged perpetrator
- Any person may inquire about an investigation for a child care facility, school, etc,
 - Information limited to the nature and disposition of the report, and no identifying information
- Any state agency regarding licensure of a person, institution for child-care
- Child fatality review panel

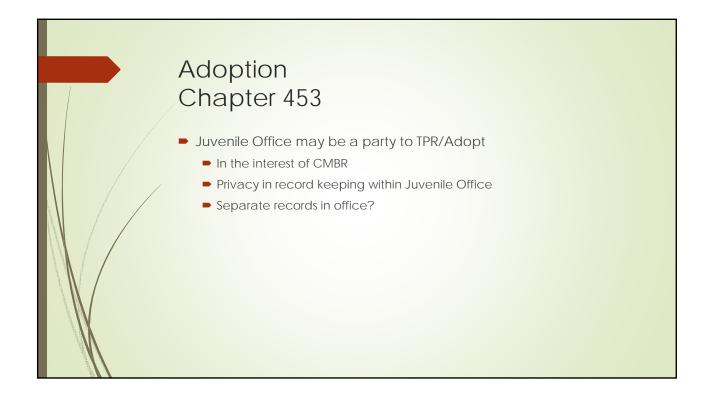
Substantiated Hotlines Ienure-track professors or full-time research faculty Must have a plan for maintaining confidentiality cannot release any identifying information for individual cases Dept of Defense Staff responding to requests under 10 USC 1787 when alleged perp is a member of military or armed forces





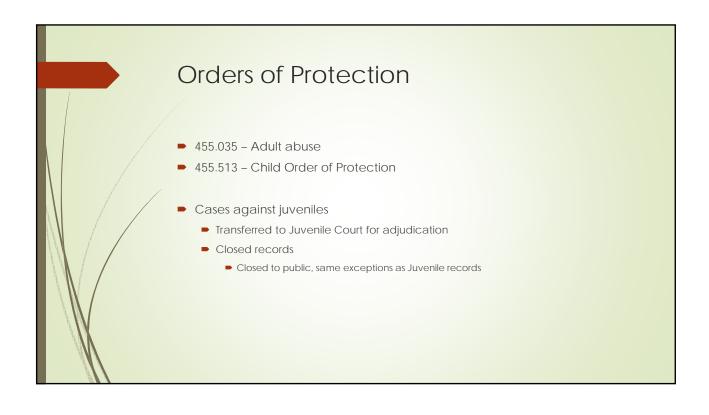


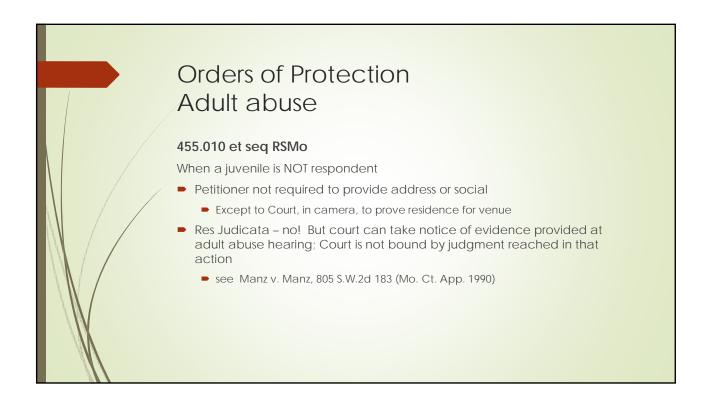
Questions and issues for CD records Can the JO use information obtained at a FSTM at the trial on the Petition? What about later hearings? JO needs the reporter to testify at trial about the child abuse case Can JO get the reporter's identifying information Can JO disclose this person is the reporter? What do we do?



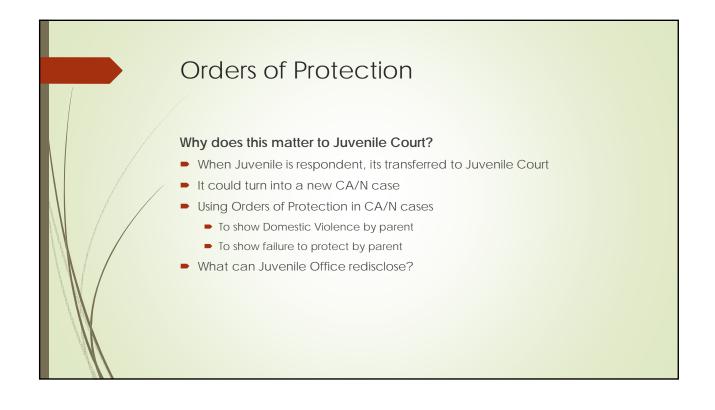








Child Order of Protection 455.500 Et seq Who may file for Child Order of Protection? Parent/Guardian of victim child Court appointed Guardian ad Litem Juvenile Officer Petitioner not required to provide current address on petition May be required to provide current address to court, in camera, for purposes of venue May be required to provide mailing address, unless it endangers the child or other household members



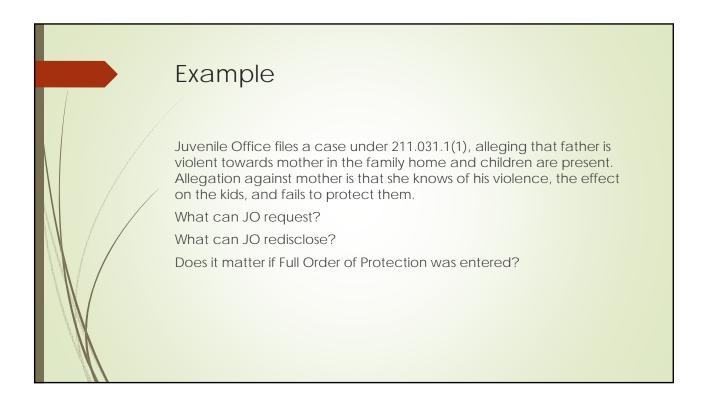
Domestic Violence Shelters

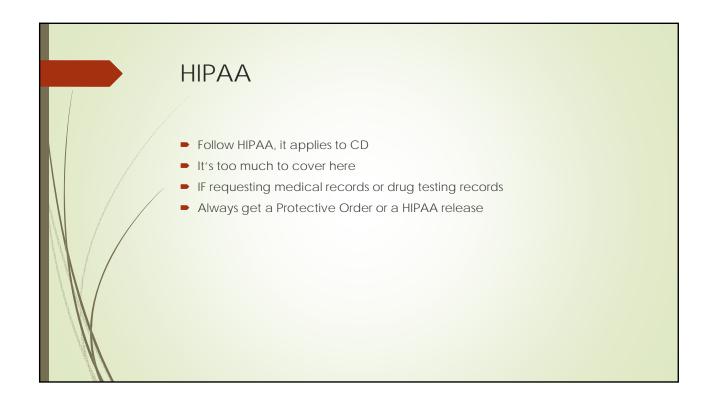
455.200 et seq

- Domestic Violence Shelters have strict confidentiality requirements in order to qualify for funding
- Records are confidential, shelter employees must maintain strict confidentiality of information that would identify a recipient of services
- Shelter employee is incompetent to testify unless confidentiality is waived, in writing, by individual served by the Shelter

State ex Rel Hope House v Merrigan 133 SW3d 44 (Mo SC 2004)

- Juvenile Office subpoenaed DV shelter records of parent
- Shelter filed motion to quash on behalf of parent
- Court denied shelter's motion, citing 210.140, Privileged communication
- Court Held:
 - Juvenile Court limited privilege does not apply here, as 455.220 applies to an entire body of information, not just an individual's information
 - Shelter services recipient cannot waive confidentiality until testimony is sought regarding shelter records
 - the confidentiality requirements serve the broader purpose of preserving strict confidentiality of shelter records for the benefit of other shelter residents and the people that assist them.





Privilege and confidentiality 210.140 RSMo Privileged communication generally prevents someoned.

- Privileged communication generally prevents someone from testifying about a topic
- Only two that apply in Juvenile Court are
- Attorney-Client Privilege
- Communications to Clergy
- Medical communications privilege does NOT apply
- Nor does Spousal privilege

Safe Schools Act 167.115 Requires JO to notify the juvenile's school when we file certain charges Certain violent offenses and sexual offenses must be reported Must disclose a description of what the juvenile has cone, but does not name the victim After disposition, JO must notify school what happened, incl a brief summary of the Court's findings Schools must forward to a juvenile's new school after moving

