



I Can't Tell You, It's Confidential

Confidentiality and privacy issues related to Juvenile Court

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Objectives

- Applicable statutes & Case Law
- Child Abuse & Neglect
- Status Offense
- Delinquency
- Adoption
- Orders of Protection
- Potential pitfalls



Applicable Statutes and Rules

Specific to Juvenile Court Practice

- 211.171 – access to juv hearings
- 211.319 – juv hearings
- 211.321 – juv records
- 210.109 – can registry
- 210.150 - hotlines
- 210.147 – FST meetings
- SC Rule 122



Applicable Statutes and Rules


- HIPAA
- 453.060 – adoptive parents names not appear
- 453.120 – closed adoption records
- 455.004 – child ord prot see also 455.500 et seq
- 455.230 – DV shelter confidentiality see also Fed rules
- Local Rules:



Juvenile Court


- Open Hearings, Closed records
- Closed hearings, Open records

Wait, what?



211.171 RSMo

- Subs 5 All cases of children shall be heard separately from trials against adults
- Subs 7 – General Public shall be excluded and only those with a direct interest in the case or the work of the court shall be admitted
- UNLESS, juvenile charge with A or B Felony, or C Felony if previously adjudicated on 2 or more A/B or C felonies



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?



Can just anyone come into a CA/N Hearing?!


- Aunts/Uncles?
- Nosy Neighbor?
- Media reporters?
- Accused Abuser?

- Yes, but...



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 they do?

- ▶ Take notes about what's happening
- ▶ Listen to testimony from all witnesses
 - ▶ But not child or victim




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




What can the Court do about people violating these rules?

- Sanctions under 476.110 to 476.130 RSMo
- Punishment may be a fine, imprisonment in county jail, or both
- Punishment may be summarily executed



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?



Status Offenses – Open or closed?


- Status offenses under 211.031.1(2)
- CA/N and TPR cases open per 211.319
- Delinquency open/closed per 211.171
- Status Offenses never specifically addressed by Statute OR by Rule
- Presume closed?
- Exclusion of parent, guardian and juvenile is covered by Rule 128

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



CA/N cases and TPR


- 211.319.3 says Pleadings and Orders of the Juvenile Court shall be open to the general public
- Confidential file:
 - Medical reports
 - Psychological and psychiatric evaluations
 - CD's Investigation reports
 - Social histories
 - Home studies
 - Police reports/Law enforcement records



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 shall 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

211.321.1 RSMo

- All records closed except by order of court
 - Except:
 - Sustained A Felony
 - Murder 1
 - Murder 2
 - Additional exception in 211.321.2



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

- Kept 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




Seal or Destroy records 211.321.5 RSMo

- Court or juvenile/juvenile's representative may move to destroy the social histories, records ,and info, except official court file any time after juvenile turns 18
- Court may seal the official court file and peace officer's records



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



Disclosure and case law

- State ex rel Palmer v Keet 627 SW2d 928 (Mo Ct App 1982)
 - Judge wanted all juvenile records of defendant, who was up for burglary
 - Writ of prohibition, keeping the records closed except for anything on the list
- State v Wilson 755 SW2d 797 (Mo Ct App 1988)
 - Defense request for juvenile records of certain prosecution witnesses was properly refused
 - Juvenile confidentiality cannot be breached to allow Defendant to utilize prior bad acts of witnesses to show lack of truthfulness



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



More Case law

- State ex rel Rowland v O'Toole 882 SW2d 100 (Mo ct App 1994)
- Juvenile and his parents sued victim of alleged burglary for assault, false imprisonment and slander
- Juvenile delinquency case was dismissed
- Victim's requested Juvenile record, which was denied. Writ of Mandamus followed, and granted in part
- By the Juvenile filing the civil action against victim, juvenile waived his privilege of keeping records closed
- Qualified privilege, not absolute




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



Questions and issues

- Child is 1, subjected to severe acts of abuse
 - Evidence is that mother abused
- Media is involved and wants to cover the trial
- Father's family is angry and has gotten loud and aggressive in the lobby
- Who has the right to be present?
 - Who can move to close the courtroom?
 - What if paternity wasn't established yet?
- If courtroom not closed, what do we do about presentation of evidence and testimony that is also included as social history and CD investigation?



More Questions

- ▶ Juvenile is at a protest, throws a glass bottle at police. It breaks on contact and causes a minor cut on the officer's arm
- ▶ Media is definitely interested in what JO does
- ▶ Do we charge as Assault 2nd, B Felony, or Assault 3rd, D Felony?
- ▶ Should we consider open vs closed hearing in making the charging decision



Children's Division

- ▶ Family Support Team Meetings
- ▶ Investigation records
- ▶ Records kept in course of business for Child Abuse/Neglect case management
- ▶ Lots of confidentiality issues that come up that affect us



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



Investigation records

- ▶ 210.150.1 Children's Division shall ensure the confidentiality of all reports and records made pursuant to sections 210.108-210.188 and maintained by the division, local offices, central registry and other appropriate persons and institutions
- ▶ Separate exceptions to confidentiality of hotlines reports depending on if it's substantiated 211.150.2 or unsubstantiated 211.150.3

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 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 filed

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 child-care 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

- Tenure-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




Unsubstantiated Hotlines

- Who has access and how much:
 - Division staff – all access pass
 - Child named in report, legal representative, parent
 - But not reporter's name
 - Don't release if it puts someone's life or safety at risk
- Alleged perp
 - But no reporter info.
 - Don't release if it puts someone's life or safety at risk
 - Can't release if pending criminal charges



Unsubstantiated

- Child fatality review panel – all access
- Criminal justice agency or juvenile officer – all access
- Multidisciplinary agency, incl physician, with consent or parent/legal rep
 - Presume they get all access, since no specific exclusion
- Bona fide research
 - No identifying information about subject of report or reporter
 - Unless it is essential to the research and child's parent/guardian provides written permission
- Dep of Defense, same as before



What happens if you violate 210.150?

- If you knowingly violate the provisions, you are guilty of a Class A Misdemeanor
- Up to a year in jail, up to a \$2000 fine



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?



Adoption Chapter 453

- Juvenile Office may be a party to TPR/Adopt
 - In the interest of CMBR
 - Privacy in record keeping within Juvenile Office
 - Separate records in office?



Adoption Records

453.120 RSMo

- Adoption records are closed
- Class C Misdemeanor if allow to inspect or copy



Adoption Records

453.121 RSMo

- Identifying info vs non-identifying info
 - Non-identifying info provided to prospective adoptive parents
 - Includes info about bio parents and siblings
- Application to open Adoption records
 - Available to adopted adult and their lineage
- Full open vs partial open
 - Child placing agency OR Juvenile Court
 - Confidential inquiry to biological parents before providing identifying info
 - 3 months to notify them
 - In re Application of George, 625 S.W.2d 151 (Mo. Ct. App. 1981)

Orders of Protection

- ▶ 455.035 – Adult abuse
- ▶ 455.513 – Child Order of Protection
- ▶ Cases against juveniles
 - ▶ Transferred to Juvenile Court for adjudication
 - ▶ Closed records
 - ▶ Closed to public, same exceptions as Juvenile records

Orders of Protection Adult abuse

455.010 et seq RSMo

When a juvenile is NOT respondent

- ▶ Petitioner not required to provide address or social
 - ▶ Except to Court, in camera, to prove residence for venue
- ▶ Res Judicata – no! But court can take notice of evidence provided at adult abuse hearing; Court is not bound by judgment reached in that action
 - ▶ see *Manz v. Manz*, 805 S.W.2d 183 (Mo. Ct. App. 1990)



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



Orders of Protection

Why does this matter to Juvenile Court?

- When Juvenile is respondent, its transferred to Juvenile Court
- It could turn into a new CA/N case
- Using Orders of Protection in CA/N cases
 - To show Domestic Violence by parent
 - To show failure to protect by parent
- What can Juvenile Office redisclose?



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.



Example

Juvenile Office files a case under 211.031.1(1), alleging that father is violent towards mother in the family home and children are present. Allegation against mother is that she knows of his violence, the effect on the kids, and fails to protect them.

What can JO request?

What can JO redisclose?

Does it matter if Full Order of Protection was entered?



HIPAA


- Follow HIPAA, it applies to CD
- It's too much to cover here
- IF requesting medical records or drug testing records
- Always get a Protective Order or a HIPAA release



Privilege and confidentiality

210.140 RSMo

- ▶ 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 done, 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



The End

▀ Questions?

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