

# Open Juvenile Courts in Georgia



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## PURPOSE



In response to public outcry for increased oversight and access to juvenile courts as well as media reports of various recent atrocities involving court involved children, the legislature passed SB 207 which sought to balance the competing interests of privacy of the children and families involved with Georgia's Juvenile Courts and the public's interest in transparency and the work of the court.

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## SB 207

- Passed in 2009, SB 207 amended then O.C.G.A. §§ 15-11-78, 15-11-79, 15-11-79.2 and 15-11-84 (currently O.C.G.A. §§ 15-11-700, 15-11-704, 15-11-701 and 15-11-710), became effective January 1, 2010.
- The Act intended to allow the general public access to both delinquent and dependent (at the time deprivation) hearings.
- Specified which hearings would be open to the general public, which could be closed, and which were discretionarily closed or partially closed.
- Provided a mechanism whereby hearings could be closed upon motion by a party, attorney, guardian ad litem for the child, or on the Court's own motion.
- Required the media not identify the child, family members or caretakers of the child involved.
- Permitted sharing of confidential information regarding the child between certain stakeholders.
- Required that certain juvenile records be sealed.

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### COMPETING INTERESTS

#### OPEN

- Proponents believed that opening juvenile proceedings to the general public would improve the child welfare system by providing greater accountability for juvenile courts and those involved in child welfare.
- Public oversight and transparency promote confidence in the system.

#### CLOSED

- Opponents believed that opening dependency proceedings to the general public would raise privacy and safety concerns for those involved in juvenile proceedings.
- Decreased openness from parties regarding matters of sexual abuse, medical information, treatment and progress.

The Implementation of Senate Bill 207  
Opening Juvenile Courts: The New Law and its Challenges  
Council of Juvenile Court Judges Permanency Planning Committee  
SB 207 Sub-Committee Report

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### CAPTA AND OPEN COURTS

- CAPTA – The Child Abuse Prevention and Treatment Act
  - Originally enacted in 1974 required near complete record confidentiality.
  - State Courts believed complete record confidentiality was too strictly interpreted and recommended openness in juvenile proceedings.
    - Federal officials did not approve of the State Courts' interpretation.
  - The CAPTA Reauthorization in 2003 allowed states to open juvenile dependency cases, at the discretion of individual states, provided the safety and well-being of the child, parents, and families could be protected.

National Center for State Courts Issue Brief *Public Access to Child Abuse and Neglect Proceedings* (May 2004)

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### Georgia Juvenile Courts Pre-SB 207

- O.C.G.A. § 15-11-78 – prohibited general public access to dependency cases except legitimation or child support cases.
  - Even the alleged dependent child could be temporarily excluded from the hearings.
- O.C.G.A. § 15-11-60 – prohibited the media from releasing identifying information regarding a child before the court.
- In 1995 State Legislature passed a law allowing public access to delinquent hearings involving acts which would be felonies if committed by adults, or those involving youth previously adjudicated delinquent.
  - Law also required notice to school officials of certain delinquent adjudications. (Juvenile Proceedings and Records; Juvenile Justice Reform Initiatives in the States 1994-1996; [http://www.ojdpd.gov/pubs/reform/ch2\\_1.html](http://www.ojdpd.gov/pubs/reform/ch2_1.html))

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### Georgia Juvenile Courts Pre-SB 207 (Continued)

- Open proceedings did not however translate to open records.
  - 1995 law required that certain delinquent petitions and informal adjustment be sealed.
  - Many organizations which provided services to children were not allowed access to the children’s records.
  - Other matters required motions and hearings to determine access to records.
  - (The Implementation of Senate Bill 207: Opening Juvenile Courts: The New Law and its Challenges; Council on Juvenile Court Judges Permanency Planning Committee SB 207 Sub-Committee Report)
- To facilitate the rehabilitation and reunification of families, which was believed best achieved in privacy, public access did not extend to dependency hearings. (The Implementation of Senate Bill 207: Opening Juvenile Courts: The New Law and its Challenges; Council on Juvenile Court Judges Permanency Planning Committee SB 207 Sub-Committee Report)

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### Case Law

- **Florida Publishing Company v. Morgan**, 253 Ga. 467; 322 S.E. 2d 233 (1984)
  - Delinquent hearing involving three juveniles arrested for commandeering a ferry and sailing to Florida. A reporter with Florida Publishing Company sought access to the hearing which was denied pursuant to then O.C.G.A. § 15-11-28. The statute allowed only the parties, their attorneys, witnesses, those accompanying the party for their assistance and those discretionarily admitted by the judge to attend juvenile hearings. The newspaper challenged the automatic closing of the juvenile proceeding.
  - The Georgia Supreme Court held that the while juvenile proceedings are presumed closed to the public and press, “for constitutional reasons, the presumption cannot be conclusive.” The public and/or press must be given an opportunity to show that the state’s or juvenile’s interest in a closed hearing is not outweighed by public’s or media’s interest in a public hearing. (Id at 473 and 233)
  - Required the judge to provide the media with an opportunity to present evidence and to be heard.
  - Required the judge to present written findings of fact and law to support his decision.
- Opened the door to challenges to closed hearings in other juvenile proceedings.
- Signaled a shift in thinking regarding privacy and juvenile proceedings.

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### Case Law Continued

- **In the Interest of T.G.Y., a child**, 279 Ga. App. 449; 631 S.E. 2d 467 (2006)
  - Involved a dependent matter in which a father’s parental rights were terminated. An adoption caseworker for DFCS was present at the hearing, and the father invoked the rule of sequestration and objected to the caseworker being permitted to remain in the courtroom. The judge overruled the objection, stating that the caseworker was not a witness therefore the rule did not apply to her. The father then questioned the ability of the caseworker to remain in the courtroom pursuant to the requirement in O.C.G.A. § 15-11-78 of closed dependent hearings, the judge still permitted the caseworker to remain for the hearing. The father appealed.
  - The Court held that the juvenile court judge is “vested with broad discretion” regarding who to allow to attend dependency hearings, over which appellate courts have no right to control absent a “manifest abuse of discretion.” (Id at 453 and 472)
- In holding that the lower court was not erroneous nor did it abuse its discretion in permitting the caseworker to remain present for the hearing, the T.G.Y. Court reiterated the position that the juvenile judge has discretion to open or close hearings even if presumed closed.

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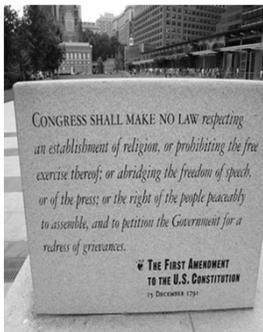
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### First Amendment Considerations



- While the Georgia Supreme Court has long recognized the First Amendment implications in denying access to delinquent hearings, the Court was reluctant to extend such protections to dependency proceedings.
- The privacy concerns of children and families involved in dependency actions, and the sensitive information routinely exchanged in dependency proceedings are often cited as of paramount concern.
- Courts wanted to ensure that the children and families would not suffer long term harm or be denied future benefits as a result of public access to dependency proceedings.
- As such, courts took precautions to balance the public's interest of access with the best interest of the child and the family's interest of privacy and anonymity.

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### Post 2010 Georgia Case Law

- Case law after the implementation of SB 207 is scarce, why?
  - Juvenile courts have opened up to the idea of open juvenile court proceedings.
    - Delinquent hearings have been open to some degree since as early as 1995 with very few adverse effects.
    - O.C.G.A. §15-11-78 as amended contains sufficient safeguards to protect the privacy interests of the parties, as well opportunities for the hearings to be closed where the best interests of the child and family require.
    - O.C.G.A. §15-11-78(i) provides safeguards to protect the identity of the child, the family and caretakers.
    - O.C.G.A. §15-11-79 includes safeguards regarding access to juvenile court records.

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### Why SB 207

- A group of local CASA volunteers was dissatisfied with the speed at which dependency matters progressed through the juvenile justice system.
- The volunteers captured the attention of local Senator John Wiles, who authored Senate Bill 207.
- The volunteers formed BetterCourtsForKids.org through which they lobbied lawmakers to open juvenile court proceedings for cases involving abused kids.
- One of the primary purpose cited by the volunteers for desiring open courts was to have some oversight of the juvenile court process, as in their opinion, "some judges were putting children in danger."
- The volunteers sought to have "as many people as possible get in to visit their juvenile court" to provide this oversight.

(Child Advocates Win Fight to Open Juvenile Courts; <http://www.11alive.com/story/news/local/investigations/dlcs/2014/03/06/>)

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### SB 207 as Passed

- SB 207 amended O.C.G.A. § 15-11-78(c) to allow the general public to attend dependency proceedings unless the judge closed the proceeding.
  - Closing the proceeding required the judge to make findings of fact on the record citing the reasons for the closings, as well as requiring the judge to issue a signed order. (O.C.G.A. §15-11-78 (f))
  - The motion to close the hearing could be made by any party, the child, the attorneys, the guardian ad litem for the child, or the court on its own motion could close the hearing. (O.C.G.A. §15-11-78 (d))
- SB 207 also provided that the judge could require the media to maintain the anonymity of the child by not releasing any identifying information regarding the child, family members, foster parents or other caretakers. (O.C.G.A. § 15-11-78 (i))

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### Information Sharing

- SB 207 also contained a provision which provided for information sharing between state child welfare agencies. (O.C.G.A. § 15-11-84 currently O.C.G.A. § 15-11-710)
- Open courts still does not mean open records:
  - The general public is not allowed to see court files from dependency proceedings, even if the proceeding was open to the public O.C.G.A. § 15-11-78 currently O.C.G.A. § 15-11-700.
  - Additionally, the court is allowed to seal any record which contains identifying information of a victim of a sexual offense, even if the general public is permitted to attend the proceeding. O.C.G.A. § 15-11-79.2 currently O.C.G.A. §15-11-701.
- Juvenile court records of a traffic conviction, and legitimation records are, however, now open to the general public. O.C.G.A. § 15-11-79 currently O.C.G.A. § 15-11-704.

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### OPEN OR CLOSED




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**Opposing Positions  
Examined Post SB 207**

- Proponents' belief that open courts would lead to greater oversight is scarcely a reality.
  - Most juvenile proceedings, both delinquent and dependency are generally relevant only to the parties and their immediate family and friends.
  - There has not been increased interest in and/or population of juvenile proceedings after SB 207 took effect January 1, 2014.
  - Only where juvenile proceedings, have gained the interest of the media have the general public taken advantage of "open courts" and even then, generally only media personnel seek attendance.
  - Even prior to SB 207 many juvenile courts across the State liberally permitted access to juvenile proceedings.

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**Opposing Positions  
Examined Post SB 207**

- Opponents' belief that open courts would lead to a decline in rehabilitation , reunification and treatment efforts and therefore decrease the number and/or rate of rehabilitation, reunification and or treatment has likewise not been realized.
  - The juvenile proceedings which garner media attention are so small in number, that the effect, if any, of their presence on the ultimate success or failure of the rehabilitation, reunification and or treatment efforts would likewise be miniscule at best.
  - Many of the necessary protections cited as reasons for requiring closed hearings exist as protections outlined in SB 207 with the discretion of the court to close certain proceedings, and the ability of the court to protect the identity of the children and families involved.
  - The feared media circus that would result from open courts have been minimized by the constraints which can be placed on media access by Courts.

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