

# Supreme Court of Kentucky

2020-02

**IN RE: Authorization for the Open Courts Pilot Project**

## **ORDER**

### **I. Introduction and Purpose**

In 2016, the Kentucky General Assembly enacted SB 40 requesting that the Supreme Court of Kentucky institute a pilot project to study the feasibility and desirability of the opening or limited opening to the public of the following court proceedings, except if related to sexual abuse: Dependency, Neglect, and Abuse (DNA) proceedings under KRS Chapter 620 and Termination of Parental Rights (TPR) proceedings under KRS Chapter 625. The pilot project may be established in a minimum of three diverse judicial districts or circuits, or division(s) thereof, chosen by the Chief Justice and must last for four years, unless extended or limited by the General Assembly. The Open Courts Pilot Project has been operating pursuant to Supreme Court Administrative Order 2018-05.

For calendar year 2020, Divisions 1, 2, 5, and 6 of the 22nd Circuit Family Court (Fayette County) have been chosen by the Chief Justice to participate in the Open Courts Pilot Project. This Order hereby authorizes the courts referenced herein to open court proceedings related to DNA and TPR (except if related to sexual abuse) to the public.

### **II. Implementing Legislation**

Through 2016 SB 40, the Kentucky General Assembly enacted the following legislation: KRS 21A.190, "Pilot project to study the feasibility and desirability of conducting some open juvenile proceedings"; KRS 21A.192, "Procedures for courts participating in pilot project authorized by KRS 21A.190"; and KRS 610.072, "Attendance of public at hearings in courts participating in pilot project authorized by KRS 21A.190."

### **III. Authority**

This Order is entered under the authority granted to the Supreme Court of Kentucky by:

- A. Section 116 of the Kentucky Constitution to prescribe rules and issue orders of practice and procedure for the Kentucky Court of Justice; and,

- B. KRS 21A.190 to establish pilot projects in a minimum of three diverse judicial districts or circuits, or division(s) thereof, chosen by the Chief Justice for the purpose of studying the feasibility and desirability of opening some DNA and TPR proceedings to the public.

#### **IV. Observation and Evaluation**

- A. The observation period for the Open Courts Pilot Project for calendar year 2020 will last from January 27, 2020, to February 21, 2020 (Observation Period).
- B. During the Observation Period, the Administrative Office of the Courts (AOC) will be present and observe the four divisions chosen to participate in the Open Courts Pilot Project.
- C. Following the Observation Period and pursuant to KRS 21A.190(3), the AOC will evaluate the Open Courts Pilot Project to determine the following:
  - 1. Whether there are adverse effects resulting from the opening of DNA and TPR proceedings;
  - 2. Whether the Open Courts Pilot Project demonstrates a benefit to the litigants, the public, or both;
  - 3. Whether the Open Courts Pilot Project supports a determination that DNA and TPR proceedings should be presumptively open or, alternatively, whether they should be closed;
  - 4. How open proceedings under the Open Courts Pilot Project impact the child;
  - 5. The parameters and limits of the Open Courts Pilot Project;
  - 6. Suggestions for the operation and improvement of the Open Courts Pilot Project;
  - 7. Whether any Rules changes are needed if the Open Courts Pilot Project is to be made permanent and expanded to all courts; and
  - 8. Whether any statutory changes are recommended if the program is to be made permanent and expanded to all courts.

## **V. Implementation**

- A. For calendar year 2020, the AOC will collect data as follows:
  - 1. Court records will be gathered throughout the Observation Period.
  - 2. Surveys and court observation tools will be completed daily during the Observation Period.
  - 3. Focus groups will be conducted in February or March of 2020.
- B. All data collected from court records, surveys, court observation tools, and focus groups will be evaluated to determine the impact and effectiveness of the Open Courts Pilot Project.
- C. In accordance with KRS 21A.190(4), the AOC will provide an annual report to the Legislative Research Commission, the Interim Joint Committee on Health and Welfare, and the Interim Joint Committee on Judiciary with its statistics, findings, and recommendations on the Open Courts Pilot Project by September 1, 2020. The AOC will make periodic progress and statistical reports as deemed necessary by the Chief Justice.

## **VI. Procedure**

- A. Courts chosen to participate in the Open Courts Pilot Project must:
  - 1. Open all DNA and TPR proceedings (except if related to sexual abuse) to the public during the Observation Period only.
  - 2. Set parameters for members of the public related to attendance at open proceedings and information obtained during the proceedings;
  - 3. Establish a procedure to require each member of the public attending a proceeding not to disclose the name or personal identifying information of any person who is a party to, or is testifying at, the proceeding.
- B. Courts chosen for the Open Courts Pilot Project may close the hearing or any part thereof upon motion of a party or upon its own motion if the court determines that closure is in the best interest of the child, the public, or for other good cause shown. The party seeking closure will have the burden of proof.

1. The court must give priority to the best interest of the child.
2. The court must consider all relevant circumstances of the case, including but not limited to:
  - i. The nature of the allegations;
  - ii. The age and maturity level of the child;
  - iii. The benefit to the public of an open hearing;
  - iv. The effect of confidentiality on the fact-finding process;
  - v. The wishes of the parties, victims, and the parents of any child involved in the case; and,
  - vi. Whether reasonable alternatives to closure are available.
3. When determining whether to close a proceeding, the court must make written findings of fact and conclusions of law using form AOC-DNA-OC-1, Order Granting Denying Closure of Hearing to the Public Pursuant to KRS 21A.192. Any order of closure shall be no broader than is necessary to protect the interests asserted by the party seeking closure.

C. Courts chosen for the Open Courts Pilot Project **shall not**:

1. Release any record discussed during an open proceeding which is made confidential pursuant to law;
2. Permit any audio, visual, or other recording of the proceeding by any party to the proceeding or by any person who is attending or testifying at the proceeding;
3. Permit any audio, visual, or other recording of the proceeding made for official court purposes to be made a public record, copied, or released to the public; or
4. Permit any member of the public who is not a party to or testifying at the proceeding to disclose, outside the courtroom, the name or personal identifying information of any party or person testifying at the proceeding.

D. Taking notes and removing them from the courtroom is permitted provided that no name or personal identifying information of any minor who is a party to, or is testifying at, the proceeding shall be taken from the courtroom. This does not apply to, and does not limit the use or publication of, any information obtained by means other than attendance at an open proceeding authorized by this Order.

**VII. Limitations**

- A. The public shall not be permitted to attend DNA or TPR hearings:
  - 1. In a court that is not participating in the Open Courts Pilot Project, except as otherwise authorized by law;
  - 2. If the case is related to sexual abuse; or
  - 3. When the judge presiding over the case has determined that the hearing or any portion thereof shall be closed.

**VIII. Termination**

The Open Courts Pilot Project will be governed by this Order and all applicable statutes and rules not inconsistent with this Order.

This Order shall be effective upon entry, and until further Order of this Court.

Entered this 10th day of January 2020.

  
CHIEF JUSTICE