



Defendants are entitled to a public trial.¹ Additionally, under the First and Fourteenth Amendments, the public and the press have a right to access court proceedings.² The right of public access includes access to jury selection, preliminary hearings, and the trial.³ However, the right of public access is not absolute; a court may limit access when necessary under the following procedure:⁴

1) Identify a specific interest that must be protected, i.e., the reason you are limiting public access.

- A compelling reason is required for a total closure; a substantial reason is required for a partial closure.

2) Determine that the specific interest outweighs the right of public access.

- This determination requires finding the overriding interest is likely to be prejudiced if access is granted.

3) Decide how to limit the public's access; denial of access must be narrowly tailored to accommodate the interest to be protected.

- The closure cannot be broader than necessary to protect the interest, i.e., the least restrictive means to adequately and effectively protect the interest must be used.
- The court must consider reasonable alternatives to closing the proceeding even if alternatives are not offered by the parties.

4) State on the record the specific reasons for the decision to limit access to the proceeding.⁵

The court must make findings adequate to support the closure. If the court enters an order limiting access to a proceeding that otherwise would be public, it must forward a copy of the order to the State Court Administrative Office.⁶

¹US Const, Am VI; Const 1963, art 1, § 20; MCL 600.1420; MCR 8.116(D)(1). See also the State Court Administrative Office's [table](#) regarding authority for public access to court proceedings and authority for court closures.

²*Richmond Newspapers, Inc v Virginia*, 448 US 555, 580 (1980).

³*Presley v Georgia*, 558 US 209, 213 (2010); *Press-Enterprise Co v Superior Court*, 478 US 1, 10 (1986); *Waller v Georgia*, 467 US 39, 46 (1984). Note that the United States Supreme Court has not recognized a right of public access to juvenile criminal proceedings; however, MCR 3.925(A) provides that juvenile proceedings on the formal calendar and preliminary hearings shall be open to the public.

⁴The authority for the steps a court must take to restrict public access listed on this benchcard is MCR 8.116(D)(1) and the caselaw discussing the requirements for limiting access to court proceedings; the caselaw construes provisions in both the United States Constitution and the Michigan Constitution that provide for a right of public access to court proceedings (US Const, Am I; US Const, Am VI; Const 1963, art 1, § 20); *Presley*, 558 US 209; *Waller*, 467 US 39; *Richmond Newspapers, Inc*, 448 US at 580; *People v Davis*, ___ Mich ___, ___ (2022); *People v Vaughn*, 491 Mich 642 (2012); *People v Russell*, 297 Mich App 707 (2012); *People v Kline*, 197 Mich App 165 (1992). See also [Public Right to Access Remote Hearings—Legal Analysis](#). Other procedures allowing the limitation of public access under certain circumstances are set forth in other court rules and statutes; however, this resource is intended to provide the procedure that applies in general, and specific proceedings governed by other authority should be analyzed under the applicable authority, keeping constitutional requirements in mind. See, e.g., MCL 766.9(1) (regarding closing preliminary examinations under certain circumstances involving specified offenses); MCL 712A.17(7) and MCR 3.925(A)(2) (testimony of child witness or victim). Note that there are also particular types of proceedings that are always closed, for example, some proceedings involving youthful trainees, MCL 762.14(4).

⁵The pinpoint citations for the authorities relied on in steps 1-4 are: *Presley*, 558 US at 214 (step 1, 2, 3); *Waller*, 467 US at 48 (step 1, 2, 3); *Richmond Newspapers*, 448 US at 580-581 (step 4); *Davis*, ___ Mich at ___ (step 2, 3, 4); *Vaughn*, 491 Mich at 653 (step 1, 2, 3); *Kline*, 197 Mich App at 170 (step 1); *Russell*, 297 Mich App at 720 (step 1); MCR 8.116(D)(1)(a) (step 1); MCR 8.116(D)(1)(b) (step 3); MCR 8.116(D)(1)(c) (step 4).

⁶MCR 8.116(D)(3).

Nonexhaustive List of Interests⁷

- The defendant’s right to a fair trial.⁸
- The government’s interest in inhibiting disclosure of sensitive information.⁹
- The exclusion of witnesses in the case when they are not testifying.¹⁰
- To protect a witness from harassment and undue embarrassment.¹¹
- To protect the privacy of a potential juror during voir dire.¹²
- To protect a crime victim’s constitutional right to be treated with fairness and respect for their dignity and privacy during the criminal justice process.¹³
- To prevent interference with the jury.¹⁴

Alternatives to Complete Closure When Using a Livestream to Grant Public Access¹⁵

- Reduce testimony to affidavit in lieu of live testimony;
- Interrupt video stream and temporarily permit only audio streaming;
- Provide a phone number for audio access only;
- Prohibit screen sharing of the exhibits on livestream;
- Testimony in chambers or in-chambers interview of a child in lieu thereof;
- Temporarily interrupt the livestream.

⁷Note that whether these interests are sufficient to justify limiting public access depends on the facts and circumstances of the particular case and the type of closure; this list is simply intended to provide examples of the types of interests that might require protective measures.

⁸*Presley*, 558 US at 213.

⁹*Presley*, 558 US at 213.

¹⁰ [MCL 600.1420](#) (recognized in the statute among other places; sequestration of witnesses is generally permitted under necessary circumstances, see, e.g., *Richmond Newspapers, Inc*, 448 US at 581 (noting sequestration of jurors as an alternative to total closure of a trial)).

¹¹ [MRE 611\(a\)\(3\)](#).

¹²*Press-Enterprise Co v Superior Court*, 464 US 501, 511-512 (1984).

¹³[Const 1963, art 1, § 24](#).

¹⁴*Davis*, ___ Mich at ___.

¹⁵These are presented in no particular order, and are suggestions that should only be used as permitted by applicable law. For example, if the livestream is the only method of public access it should not be interrupted without satisfying the procedure for limiting public access. Further, allowing video testimony over the defendant’s objection violates the defendant’s Confrontation Clause rights. *People v Jemison*, 505 Mich 352, 356 (2020). See [Livestream Bench Card, Texas \(May 2020\)](#); [Background and Legal Standards – Public Right to Access Remote Hearings During COVID-19 Pandemic, Texas \(May 2020\)](#).

Best Practices¹⁶

- Any objection or agreement to a request to limit public access (or to the court’s sua sponte decision to limit access) should be on the record, and the court should obtain the objection or agreement of all parties.
- If a court is using Zoom to conduct a remote proceeding and determines a portion of the livestream must be stopped, note that the Zoom livestream is delayed approximately 20 seconds so the court should pause the proceedings and wait to terminate the livestream for about 20 seconds to make sure no portion of the public proceedings is unintentionally omitted.

¹⁶See [Livestream Bench Card, Texas \(May 2020\)](#).