



Generally, court proceedings must be open to the public.<sup>1</sup> However, a court may limit access under an applicable statute or court rule or as necessary under the following procedure:

- 1) **Identify a specific interest to be protected.**
- 2) **Determine that the specific interest outweighs the right of public access.**
- 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, i.e., the court must use the least restrictive means to adequately and effectively protect the interest.
- 4) **State on the record the specific reasons for the decision to limit access to the proceeding.**  
[MCR 8.116\(D\)\(1\)\(a\)-\(c\).](#)

“Any person may file a motion to set aside an order that limits access to a court proceeding under [\[MCR 8.116\(D\)\]](#), or an objection to entry of such an order.” [MCR 8.116\(D\)\(2\)](#). 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. [MCR 8.116\(D\)\(3\)](#).

#### Authority Specific to Probate Proceedings

Upon request by the individual/their counsel:

- Hearings on the issue of incapacity “may be determined at a closed hearing without a jury[.]” [MCL 700.5304\(6\)](#); [MCL 700.5306a\(1\)\(k\)](#) (appointing guardian for incapacitated individual).
- Hearings on conservator appointment/protective order for a minor “may be determined at a closed hearing or without a jury[.]” [MCL 700.5406\(5\)](#). Any person may request permission to participate in the proceeding, and if the court grants permission it may attach conditions. [MCL 700.5406\(6\)](#).
- Guardianship proceedings for persons with developmental disabilities conducted pursuant to Chapter 6 of the Mental Health Code, [MCL 330.1001 et seq.](#), “may be closed to the public[.]” [MCL 330.1617\(3\)](#).

**Note** that these statutes require a request by the individual or their attorney; they do not provide courts with sua sponte ability to close a proceeding. See [MCL 700.5304\(6\)](#); [MCL 700.5306a\(1\)\(k\)](#); [MCL 700.5406\(5\)-\(6\)](#); [MCL 330.1617\(3\)](#).

#### Nonexhaustive List of Interests That May Warrant a Closure<sup>2</sup>

These interests are general interests. Statutes applicable to specific proceedings may identify interests applicable to that type of proceeding. See, e.g., [MCL 700.5406\(5\)](#).

- The exclusion of witnesses in the case when they are not testifying.<sup>3</sup>
- The exclusion of minors “in actions involving scandal or immorality” if the minor is not a party or witness.<sup>4</sup>
- To protect a witness from harassment and undue embarrassment.<sup>5</sup>
- To protect the privacy of a potential juror during voir dire.<sup>6</sup>

#### Alternatives to Complete Closure When Using a Livestream to Grant Public Access<sup>7</sup>

- 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.

## Best Practices<sup>8</sup>

- 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.

<sup>1</sup>[MCR 8.116\(D\)\(1\)](#) (court generally may not limit public access to court proceedings); [MCL 600.1420](#) (sittings of every court must be open to the public except under specified circumstances); [MCR 3.925\(A\)\(1\)](#) (generally juvenile proceedings on the formal calendar and preliminary hearings must be open to the public). In the context of criminal proceedings, the right to public access is constitutionally mandated. US Const, Ams I and VI; [Const 1963, art 1, § 20](#). However, no binding legal authority has explicitly decided whether the public right of access is *constitutionally* required in the context of civil proceedings. For a detailed discussion, see [Public Right to Access Remote Hearings—Legal Analysis](#). Note that the law regarding public access to court proceedings is not affected by whether the proceedings occur in a physical courtroom or virtually with access granted by livestream or other remote means.

<sup>2</sup>Note that whether these interests are sufficient to justify limiting access depends on the facts of the particular case; this list merely provides examples of interests that may justify a closure.

<sup>3</sup>[MCL 600.1420](#) (recognizing circumstances for sequestering witnesses); [MRE 615](#) (exclusion of witnesses).

<sup>4</sup>[MCL 600.1420](#).

<sup>5</sup>[MRE 611\(a\)\(3\)](#).

<sup>6</sup>*Press-Enterprise Co v Superior Court*, 464 US 501, 511-512 (1984).

<sup>7</sup>These 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. See [Livestream Bench Card, Texas \(May 2020\)](#); [Background and Legal Standards – Public Right to Access Remote Hearings During COVID-19 Pandemic, Texas \(May 2020\)](#).

<sup>8</sup>See [Livestream Bench Card, Texas \(May 2020\)](#).