



Judges' Legal Guide: Courtroom Closures for Child Witnesses

Court Closures Generally¹

- Generally, court proceedings should be open to the public in keeping with the United States and Arkansas Constitutions' guarantees of a public trial. **U.S. Const. Amend. 6; Ark. Const. § 10.**
- The public itself does not have a right to attend a trial that is separate from the defendant's right to a public trial. An open trial is for the defendant's protection. ***Gannett Co. Inc. v. DePasquale*, 443 U.S. 368, 391 (1979).**
- The U.S. Supreme Court has held that trial courts are "obligated to take every reasonable measure to accommodate public attendance" at criminal proceedings. ***Presley v. Georgia*, 558 U.S. 209, 215 (2010).**
 - Measures to accommodate public attendance may include:
 - Reserving some seating in the courtroom for public attendance. ***Id.***
 - Dividing prospective jurors into smaller groups to prevent overcrowding. ***Id.***
 - Instructing prospective jurors to not interact with members of the audience. ***Id.***
- Violations of the right to a public trial are not subject to review for harmless error. Denial of a public trial warrants reversal without any required showing of prejudice. ***Waller v. Georgia*, 467 U.S. 39, 49 (1984); *Mitchell v. State of Arkansas*, 2019 Ark. 67, 5.**
- The right to a public trial extends to voir dire. ***Waller*, 467 U.S. at 45.**
- ***A closure of the courtroom is only appropriate when:***
 - The party seeking closure has an overriding interest likely to be prejudiced if the court is open. ***Id.***
 - The closure is no more expansive than necessary to protect that interest. ***Id.***
 - The trial court has considered reasonable alternatives to closure. ***Id.***
 - And the court makes adequate findings on the record to support the closure. ***Id.***

De Minimis Closures

- A closure that is de minimis in nature will not be considered a violation of the defendant's constitutional rights. ***Schnarr v. State of Arkansas*, 2017 Ark. 10, 14.**
- ***To determine whether a closure is de minimis and therefore not a constitutional violation, a court must consider and make findings on the record regarding:***
 - The length of the closure. ***Id.***
 - The significance of the proceedings that took place during the closure. ***Id.***
 - The scope of the closure. ***Id.***

¹ The information in this checklist applies to criminal proceedings against adults. Arkansas Code Annotated § 9-27-325 provides guidance on court closures in proceedings for juvenile delinquency, child maltreatment, and children in foster care.