

CLOSING COURT PROCEEDINGS IN NORTH CAROLINA

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1. **Presumption of openness** — Generally court proceedings must be open to the public, including the news media, unless there is an overriding reason for closing the courtroom.
2. **Closing criminal proceedings** — Both the First and Sixth Amendments require criminal proceedings to be open.
 - a. The public has a First Amendment right to attend criminal trials, even if the prosecution and defense wish to close the proceeding. *Richmond Newspapers, Inc., v. Virginia*, 448 US 555 (1980).
 - i. The First Amendment right also applies to jury *voir dire*. *Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I)*, 464 US 501 (1984).
 - ii. The right also applies to preliminary hearings. *Press-Enterprise Co. v. Superior Court for the County of Riverside (Press-Enterprise II)*, 478 US 1 (1986).
 - b. The defendant has a right to an open proceeding. The Sixth Amendment provides that in a criminal prosecution “the accused shall enjoy the right to a speedy and public trial.”
 - i. The Sixth Amendment right extends to a suppression hearing. *Waller v. Georgia*, 467 US 39 (1984).
 - ii. The right also applies to jury *voir dire*. *Presley v. Georgia*, 558 US 209 (2010).
 - c. A criminal proceeding may not be closed unless doing so is necessary (a) to serve an overriding governmental interest (such as protecting witnesses, preserving a defendant’s right to a fair trial, or avoiding public disclosure of sensitive information); (b) there is no less restrictive means of protecting that interest; and (c) the scope and duration of the closure is kept as narrow as possible. The court must make findings sufficient to support the decision to close the court. *Waller v. Georgia; supra; Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 US 596 (1982).

In *State v. Rollins*, ___ NC App ___, 729 SE2d 73 (2012), the court held that the *Waller v. Georgia* standards apply to the trial court’s exclusion of spectators from the courtroom during the testimony of a rape or sex offense victim. See further discussion below in the section on “Excluding individuals.”

3. **Closing civil proceedings** — Although the United States Supreme Court has not addressed whether there is a First Amendment right of public access to civil proceedings, the North Carolina Supreme Court has recognized a qualified right of public access under Art. I, § 18 of the NC Constitution (“All courts shall be open . . .”). *Virmani v. Presbyterian Health Services Corp.*, 350 NC 449 (1999).

- a. The qualified right of public access may be overridden by a compelling public interest, but the court first must consider less drastic alternatives. *Virmani*.
- b. An agreement by the parties in a domestic case to maintain confidentiality in any proceeding against each other does not bind the court and does not by itself establish a compelling reason for closing the court proceeding. *France v. France*, ___ NC App ___, 705 SE2d 399 (2011).

4. **Excluding individuals** —

- a. Courts in other jurisdictions disagree over whether the standard for excluding individuals from the courtroom is the same as for closing the courtroom altogether. Some courts say that the same “overriding interest” standard (see the discussion above) applies to both situations; others say there need be only a “substantial reason” for excluding individuals. North Carolina appellate courts have not addressed the issue except in the application of GS 15-166 regarding exclusion of spectators in rape and sex offense cases (see below).
- b. The standard for excluding spectators from the courtroom during the testimony of a rape or sex offense victim under GS 15-166 is the same as for closing the courtroom, i.e., there must be an overriding governmental interest for doing so, the exclusion must be the least restrictive means of protecting that interest, and the exclusion must be kept as narrow as possible. *State v. Jenkins*, 115 NC App 520, *temp stay allowed*, 336 NC 784, *rev denied*, 337 NC 804 (1994); *Bell v. Jarvis*, 236 F3d 149 (4th Cir 2000). *Also see State v. Burney*, 302 NC 529 (1981); *State v. Register*, 206 NC App 629 (2010) (not abuse of discretion to exclude family members of defendant and family members of child victim other than parents, based on court’s concern for outbursts and hostile atmosphere, while allowing a high school class to remain during victim’s testimony).

In *State v. Rollins*, ___ NC App ___, 729 SE2d 73 (2012), the court held that the *Waller v. Georgia* standards apply to the trial court’s exclusion of spectators from the courtroom during the testimony of a rape or sex offense victim. The trial court erred in failing to make findings of fact supporting the exclusion of witnesses, but because the closing was limited to that one portion of the trial the Court of Appeals remanded the case rather than ordering a new trial. On remand, the trial court was to enter findings and determine whether closure was warranted, subject to further appeal by the defendant.

- c. Courts have inherent authority to maintain proper order and decorum, including exclusion of disruptive individuals. GS 15A-1033 specifically authorizes the exclusion of a disruptive person from a criminal trial, and GS 15A-1035 declares that the court has inherent authority to maintain order in addition to the specific statutory authority.

For an example of exclusion of disruptive spectators see *State v. Dean*, 196 NC App 180 (2009), involving removal of gang members from a murder trial.

North Carolina appellate cases have not directly addressed the constitutionality of removal of spectators, but it would seem obvious that there is an overriding governmental interest in removing disruptive spectators.

- d. A defendant might argue that the due process right to a fair trial has been denied when the court fails to exclude spectators who attempt to influence jurors through demonstrative acts or dress. See *State v. Braxton*, 344 NC 702 (1996) (no error in failing to remove spectators wearing buttons with the victim's photograph); and *State v. Maness*, 363 NC 261 (2009) (police officers in uniform momentarily standing near jurors did not create mistrial in murder case with police officer victim).
5. **Statutes on closing proceedings** — A number of statutes specify whether particular proceedings are to be open or closed. Those statutes include:
- a. GS 7B-323(b) — A person who has been placed on the list of individuals responsible for child abuse or serious neglect may seek judicial review of that decision in district court. Upon a party's request the court may close the review proceeding.
 - b. GS 7B-801 — The court is to decide whether hearings on juvenile abuse, neglect and dependency, and termination of parental rights, are to be closed, taking into account the nature of the allegations, the age and maturity of the juvenile, the benefit to the juvenile of confidentiality, the benefit to the juvenile of an open hearing, and the extent to which confidentiality of the juvenile's file will be compromised by an open hearing. The hearing may not be closed if the juvenile asks that it be open.
 - c. GS 7B-2402 — Hearings related to undisciplined and delinquent juveniles are to be open unless the court closes for good cause, taking into account the nature of the allegations, the age and maturity of the juvenile, the benefit to the juvenile of confidentiality, the benefit to the public of an open hearing, and the extent to which confidentiality of the juvenile's file will be compromised by an open hearing. The hearing may not be closed if the juvenile asks that it be open.
 - d. GS 8C1, Rule 412(d) — An in camera hearing is required on admissibility of evidence of the sexual behavior of a complainant in a rape or sex offense case.
 - e. GS 15-166 — The courtroom may be closed during the testimony of rape or sex offense victim (see the discussion above).
 - f. GS 15A-623(e) — Grand jury proceedings are secret.
 - g. GS 15A-1033 — The court may remove a person disrupting a criminal trial.

- h. GS 15A-1034 — Access to the courtroom may be limited in a criminal case to ensure order and the safety of those present.
 - i. GS 48-2-203 — Adoption hearings are closed.
 - j. GS 66-156 — An in camera hearing may be held to protect trade secrets in litigation over misappropriation of trade secrets.
 - k. GS 90-21.8(d) — Court proceedings relating to a minor’s consent to abortion are confidential.
 - l. GS 122C-224.3(d) — The district court hearing to review the voluntary admission of a minor for mental illness or substance abuse is closed unless the minor’s lawyer requests that it be open.
 - m. GS 122C-267(f) — An outpatient mental illness commitment hearing is closed unless the respondent requests that it be open. (The same rule applies to supplemental hearings and rehearings.)
 - n. GS 122C-268(h) — An inpatient mental illness commitment hearing is closed unless the respondent requests that it be open. (The same rule applies to rehearings.)
 - o. GS 122C-268.1(g) — An inpatient commitment hearing held following an automatic commitment based on the defendant being found not guilty of a crime by reason of insanity is to be open.
 - p. GS 122C-286(f) — A substance abuse commitment hearing is closed unless the respondent requests that it be open.
6. **Suing for access to civil proceeding** — GS 1-72.1 allows any person claiming a right of access to a civil proceeding to file a motion for that purpose without having to intervene in the case. There is no comparable statute for criminal cases.