

## No Kids in Court?

\*\*This post was written by SOG faculty member Jeff Welty (although I made a few very minor edits) and posted on the NC Criminal Law Blog on April 30, 2019.

A few weeks ago, WRAL reported that a courtroom deputy and district court judge told a woman waiting in district court that she needed to remove her child from the courtroom. According to the report, the judge and deputy told the woman that no children under 12 were allowed in the courtroom.

These are the facts as reported by WRAL. Media reports are not always accurate. But whatever happened in this particular instance, what's the law on the general question of whether a judge may exclude young children from court?

**Law.** The law regarding a judge's authority to exclude children from court is not very clear. As far as I know, no North Carolina case, statute, or provision of the Code of Judicial Conduct addresses the issue directly. Several legal provisions are obliquely relevant. For example, G.S. 15A-1033 state that "[t]he judge in his discretion may order any person other than a defendant removed from a courtroom when his conduct disrupts the conduct of the trial." And the Code of Judicial Conduct requires that judges "respect and comply with the law," Canon 2(A); that judges "maintain order and decorum," Canon 3(A)(2); and that judges be "patient, dignified and courteous" to litigants and others, Canon 3(A)(3). Closing a courtroom altogether is permitted only in narrow circumstances, at least during criminal trials, see *generally Weaver v. Massachusetts*, U.S. , 137 S.Ct. 1889 (2017), but excluding children is not the same thing as excluding everyone. Finally, in the particular circumstance that inspired this post, G.S. 14-190.9 may be pertinent. It is the indecent exposure statute and it provides in part that "[n]otwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be." Of course, that provision won't be relevant to most children in court.

There is some case law on point from other jurisdictions. For example, *In re Judicial Qualifications Commission Formal Advisory Opinion No. 239*, 794 S.E.2d 631 (Ga. 2016), contains a discussion of whether excluding children from court violates constitutional guarantees of public access. The opinion notes that some Georgia judges prohibit court attendance by children, by people unrelated to litigants, or even by all people other than litigants and their attorneys.

The court states that "[a]ll of the above practices are, generally, improper" because although judges have the authority "to maintain the integrity and decorum of the courtroom" and are not expected to permit "loud or unruly children or adults to disrupt court proceedings," the law

“requires that such disruptions to public proceedings be dealt with on a case-by-case basis.” Yet later in its opinion, the court waffles on the question:

[W]hether children are constitutionally entitled to the same extent as adults to attend court seems to be an open and debatable question. Indeed, although some courts have found that the exclusion of children in some circumstances may violate the right of public access, see, e.g., *United States v. Rivera*, 682 F.3d 1223 (9th Cir. 2012) (exclusion of defendant’s seven-year-old son), a few courts have concluded otherwise, even when the children excluded had a

close relationship with a party, see, e.g., *United States v. Perry*, 479 F.3d 885, 890–891 (II) (A) (D.C. Cir. 2007) (exclusion of eight-year-old son of accused), and when children as a class were excluded. See, e.g., *State v. Lindsey*, 632 N.W.2d 652, 660–661 (II) (Minn. 2001) (blanket exclusion of children, which led to removal of two children of unknown age and unknown relationship to the accused). Given the current state of the law, fair-minded jurists may reasonably disagree about the extent to which the constitutional guarantee of the right of public access to judicial proceedings requires the admittance of children of tender years, and decisions to admit or exclude children do not, without more, implicate [Georgia’s Code of Judicial Conduct].

See also *United States v. Short*, 41 M.J. 42 (U.S. Ct. Mil. App. 1994) (the defendant’s mother-in-law entered the courtroom with the defendant’s three children, all under three years old; the judge ordered them out, stating that “[t]his is not a waiting room for babies”; on appeal, the defendant contended that this violated his Sixth Amendment right to a public trial; the reviewing court disagreed, finding that a judge may “exclude specific persons from the courtroom” if the judge has “reason to believe that persons are disorderly and may continue to be so”; here, “[a]lthough the transcript does not affirmatively reflect it, the conduct and demeanor of these very young children may well have given the military judge reason to believe that their continued presence may be disruptive”; however, the appellate court criticized the trial judge for being “less than courteous” and indicated that the judge should have made specific findings regarding the reason for the exclusion of the children).

In the absence of definitive law, some North Carolina judges have adopted individual policies regarding the presence of children. (I skimmed the local rule book and did not immediately see any local rules on point, but please let me know if I missed something.) These policies may be posted on the courtroom door or announced at the beginning of a session. It is not uncommon for judges to prohibit young children from attending court, whether to minimize disruption or to prevent the children from being exposed to unpleasant affairs. In Mecklenburg County the burden is reduced by the presence of [Larry King’s Clubhouse](#), a free drop-in daycare for children “whose family members are conducting business at the courthouse or serving as jurors.” I don’t know whether other counties offer anything similar.

**Conclusion.** Given the state of the law, it is hard to reach a firm conclusion on whether a judge may categorically prohibit young children from coming to court. However, a cautious jurist might

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choose to recommend, rather than require, that parents not bring their young children to court, or to grant exceptions to a general rule barring young kids. In fact, even the Supreme Court of the United States says that children may attend court, though “given the formal nature of Court sessions, it is not recommended for infants or small children.” The proceedings may sometimes be too dull even for the Justices, so this is probably sound advice.