

DRAFT REPORT OF THE COMMITTEE ON ACCESS TO COURT RECORDS

EXECUTIVE SUMMARY

The Task Force on Public Access was convened in May of 2006 and charged by Senior Associate Justice David Borden with making concrete recommendations for the maximum degree of public access to the courts, consistent with the needs of the courts in discharging their core functions of adjudicating and managing cases. The Committee on Access to Court Records met eight times from June 6 through August 2, 2006 to consider the issues involved in providing public access to court records.

At the initial meeting of the Public Access Task Force, the members of the Task Force identified and categorized, through an affinity diagram exercise, issues that would fall within the scope of the charge delivered by Justice Borden. The exercise produced a long list of issues that were grouped under five general headings. To facilitate the work of the Task Force in reviewing, analyzing, and making recommendations on the numerous issues, three committees were formed and charged with addressing issues that fell within these five general headings. This chapter discusses the work of the Committee on Access to Court Records, which was charged with addressing the issues included under the fourth general heading: "Maximize and facilitate access to judicial records with proper regard for legitimate privacy interests."

The Committee on Court Records was composed of individuals from the various groups represented on the Task Force as a whole. The members of this committee were:

- Superior Court Judge Jon Alander, co-chair
- Dr. William J. Cibes, Jr., Hartford
- Judge Patrick Clifford, Chief Administrative Judge for Criminal Matters
- Heather Nann Collins, Court Reporter, *Journal Inquirer*, co-chair
- Superior Court Judge Julia DiCocco Dewey, Chief Administrative Judge for Family Matters
- Alaine Griffin, reporter, *The Hartford Courant*
- Appellate Court Judge Douglas Lavine
- Judge Trial Referee Aaron Ment

Prior to the first meeting of the committee, the list of issues that had been identified by the full Task Force as within the committee's ambit was reviewed and categorized by staff, again through an affinity diagram exercise. Each of these categories was then organized, providing the committee with a prioritized list of headings. This list and an explanation of the process used to create it were presented to the co-chairs of the Committee on Court Records on June 5, 2006, and then to the full committee at its first meeting on June 6, 2006. Additional issues were added to the list by members of the committee and placed in the appropriate categories.

Over the ensuing eight weeks, the committee met eight times. The Agendas and Minutes of each of these meetings are included in Part III of the Task Force Report. A review of the full list of issues and headings during the early stages of the committee's meetings permitted the committee to focus specifically on the issues that could fully and reasonably be addressed in the short time frame given to the committee by the Task Force. In the course of these meetings, extensive and vigorous discussions were held on each of the myriad issues encompassed by the broad topic of public access to court records.

In connection with its discussion of the issues, the committee sought input from a variety of sources and in a variety of ways. The committee directly sought input from the following in connection with specific questions on procedures and information:

Mr. Jack Brooks, the Director of Administration in the Court Support Services Division,
Attorney Deborah Del Prete Sullivan, Office of the Chief Public Defender
Attorney Ron Gold, Office of the Chief Public Defender
Mr. Bob Wannagot, Chief Probation Officer in New Haven
Mr. James Carollo, Probation Department
Mr. Steve Grant, Deputy Director Family Services
Mr. Larry D'Orsi, Deputy Director Criminal Matters, Superior Court Operations
Ms. Terry Walker, Manager, Criminal Justice Applications
Ms. Linda Cimino, Office of Victim Services
Office of the Chief State's Attorney
Attorney Michael Bowler, Statewide Bar Counsel
Attorney Mark DuBois, Chief Disciplinary Counsel
Mr. Patrick .J. Deak, Superior Court Operations Computer Systems Support

In addition, the committee sought general comments through an e-mail delivered via a list serve to Judges of the Superior Court and Appellate Court, and Justices of the Supreme Court as well as members of the media. The committee further sought comment through the Public Access Task Force website.

At the outset of its discussions, the Committee on Access to Court Records adopted a set of guiding principles to inform its deliberations. These guiding principles are identified in the body of this report. Two of the principles that informed the committee's decisions are that all court records are presumptively open and court records should be closed only if there is a compelling reason to do so. The committee, during its discussions, recognized various interests which the committee found to be compelling in certain instances, including the protection of individual privacy and security concerns.

The committee was able to reach a consensus on many of its decisions and recommendations. Other decisions were decided by a majority vote of the committee. The committee was unable to reach any decision regarding one issue, that concerning the current Practice Book rule automatically sealing financial affidavits in family matters, because a motion to rescind the Practice Book rule failed on a tie vote.

The committee, in addressing the issues before it and in making its recommendations, also recognized that the implementation of an open and effective access policy requires a coordinated effort by the Judicial Branch, the Legislative Branch, and the Executive Branch. The committee is also aware that its recommendations require rules changes, statutory changes, and policy changes before any implementation can occur.

This report includes the recommendations developed by the Committee on Court Records for consideration by the full Task Force.

SUMMARY OF COMMITTEE RECOMMENDATIONS:

RECOMMENDATIONS ON POLICY AND RULE CHANGES

1. Recommendation on the adoption of a Policy on Access to Court Records

The committee recommends that the Judicial Branch adopt a Policy on Access to Court Records. A proposed policy is attached as Appendix A to this report. The committee used the CCJ/COSCA Policy on Access to Court Records as a template, and after extensive discussion, adopted many of the guidelines without substantial change and altered others to reflect the law and situation in Connecticut.

2. Recommendation on Judicial Branch Mission Statement

The committee recommends that the Judicial Branch add the word "open" to its mission statement.

3. Recommendation on posting of criminal docket information online

The criminal docket, including docket number, defendant's name, date of birth, and charges, shall be publicly accessible online as soon as it is available and shall remain available until the next posting.

4. Recommendation related to identity theft

In order to lessen the likelihood of identity theft, the committee recommends that the Judicial Branch insure that its forms do not request social security numbers, financial account numbers, or other information which may likely lead to identity theft unless such information is necessary for the adjudicatory process.

5. Recommendation on posting criminal conviction information

All criminal conviction information shall be made available to the public via the Judicial Branch's website. Such conviction information shall include charges and all other information currently contained in the monthly reports sold by the Judicial Branch Information Technology Division, except that operator license numbers and defendant addresses shall not be publicly available online. Conviction information should be searchable by defendant's name, date of birth, and docket number

6. Recommendation on arrest warrant affidavits

To insure that it is clear as to the date a sealing order terminates, the form requesting the sealing of an arrest warrant affidavit shall be revised to require the insertion of a specific date for the termination of the sealing order.

7. Recommendation on search warrant affidavits

Following an arrest, all requests to extend any order sealing or limiting the disclosure of search warrant affidavits must be done on the record for stated reasons as set forth in Practice Book Sec. 42-49A or for good cause shown. A request for an extension of such sealing or limited disclosure must be made to a date certain, not to exceed 90 days.

8. Recommendation on police reports used in determining probable cause

Any police report used as the basis for a judicial determination regarding probable cause, whether or not probable cause has been found, shall be made part of the court file and available to the public, unless the court, on its own motion or on motion of any party, shall order, for good cause shown, all or a portion of the report be sealed for a period of 14 days, subject to review and extension after that period.

9. Recommendation on scanners

The Judicial Branch should adopt and implement a written policy permitting the use of hand-held scanners to reproduce court documents provided such use is not disruptive to the clerk's office or the file itself.

10. Recommendation on the formation of a Judicial-Media Committee

The committee favors the creation of a permanent Judicial/Media Committee on Public Access that would have the following charge:

- (a) to foster and improve better understanding and relationships between the Judicial Branch and the media, both print and electronic; and
- (b) to discuss and, if possible, resolve problems incurred by the media in gaining access to court proceedings and documents.

RECOMMENDATIONS ON LEGISLATIVE CHANGES

11. Recommendation concerning certain pretrial diversion programs currently sealed upon application

A criminal case file should no longer be sealed upon the filing of an application under the Drug Education, School Violence Prevention and Alcohol Education pretrial diversion programs.

12. Recommendation on posting online certain case information regarding pending criminal cases

Other than the criminal docket, the Judicial Branch cannot make available online additional information concerning pending criminal cases, as it does for civil and family cases, because a pending criminal case file may be statutorily sealed upon the filing of an application under certain pretrial diversionary programs. If and when the Legislature adopts this committee's recommendation that files involving pretrial diversion programs not be sealed, then the Judicial Branch should make pending criminal case information publicly accessible online.

13. Recommendation on competency evaluations

The committee recommends that competency evaluations completed pursuant to C.G.S. § 54-56d be filed under seal, but be automatically unsealed upon use by the court. The document will be considered "used by the court" if it is considered, read and/or reviewed by the court or if it is entered as an exhibit at a competency hearing. Parties, however, can move to seal such evaluations, in whole or in part pursuant to Practice Book Section 42-49A. Updated evaluations shall be treated in the same manner.

14. Recommendation on alternate incarceration assessment reports

Alternate incarceration assessment reports shall be made available to the public if an alternate incarceration plan is granted by the Court. C.G.S. §53a-39a; P.B. §§43-7 to 43-9.

15. Recommendation on erased records

The committee believes that greater disclosure is warranted regarding erased records in criminal cases both because the public has a right to know the disposition of a criminal case and because the concept of "erased" records is unrealistic in an electronic age where information remains widely available in the public domain after it is theoretically erased. The committee recommends that the following information should be made available to the public in the case of dismissals, nolle after thirteen months, declined prosecutions pursuant to the Practice Book, pardons, and not guilty verdicts: the docket number, the case name, date of birth, charges, the date of disposition, and the nature of the disposition. However, the underlying court records in such cases shall remain closed to the public.

RECOMMENDATIONS FOR FURTHER STUDY AND ACTION

1. The committee recommends further study of the issue of whether, and if so, how, non-parties should be able to intervene in a case in order to seek or restrict access to information.

2. In light of the complex issues of privacy and security involved in providing remote access by the public to court files and the short period of time that the committee had available to it, the committee recommends the convening of a committee that is specifically charged with analyzing and making recommendations on remote access to court records.
3. The committee recommends that the Judicial Branch adopt a written policy that allows for the administrative waiver of fees for copies for an indigent individual.
4. The committee recommends further study of the issues related to requests for bulk distribution of information contained in court records. Due to time constraints, the committee was unable to address this subject.
5. The committee recommends that the Judicial Branch consider developing a policy or court rule concerning the correction of inaccurate information in a court record.

GUIDING PRINCIPLES

- All court records are presumptively open.
- Court records should be closed to the public only if there is a compelling reason to do so.
- If there is a compelling reason not to open a record to the public, then that reason should be interpreted as narrowly as possible.
- The courts have an affirmative obligation not to collect information that will need to be sealed and to inform the parties not to file information that will need to be sealed unless needed for the adjudication process.
- There should be a clearly defined policy that is universally applied regarding public access to court records.
- Any decision to exclude public access shall be no broader than necessary to protect the compelling interest at issue.

Appendix A

Section 1.00 - Purpose of the Policy

- (a) The purpose of this policy is to provide a comprehensive policy on public access to court records.
- (b) This policy is intended to provide guidance to 1) litigants, 2) those seeking access to court records, and 3) judges, clerks, and court personnel responding to requests for access.

Section 2.00 - Who Has Access Under This Policy

Every member of the public will have the same access to court records as provided in this policy, except as provided in section 4.30 (b) and 4.40 (b).

- (a) "Public" includes:
 - 1. any person and any business or non-profit entity, organization or association;
 - 2. any governmental agency for which there is no existing policy defining the agency's access to court records;
 - 3. media organizations; and
 - 4. entities that gather and disseminate information for whatever reason, regardless of whether it is done with the intent of making a profit, and without distinction as to nature or extent of access.
- (b) Nothing in this policy is intended to alter substantively access to court records by the following:
 - 1. Judges, clerks, or court employees;
 - 2. People or entities, private or governmental, who assist the court in providing court services;
 - 3. Public agencies whose access to court records is defined by another statute, rule, order or policy; and
 - 4. The parties to a case or their lawyers regarding access to the court record in their case.

Section 3.10 - Definition of Court Record

For purposes of this policy:

- (a) "Court Record" includes:
 - (1) Any document, information, or other item that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;
 - (2) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case

management system created by or prepared by the court or clerk of the court that is related to a judicial proceeding;

(b) "Court Record" does not include:

- (1) Information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in Section 3.10 (a) (1);
- (2) Records representing judicial work product, including but not limited to notes, drafts, memoranda, or research prepared by a judge or prepared by other court staff on behalf of a judge.
- (3) Confidential notes prepared by a clerk or other court employee.
- (4) Administrative records, which includes the following information maintained by the Judicial Branch (which, for purposes of this definition, shall include any of its departments, offices, committee, or panels) pertaining to the Administration of the Judicial Branch with respect to, *inter alia*, its budget, personnel, facilities and physical operations which is not associated with any particular case and includes (a) summaries, indices, minutes and official records of any proceeding of the Judicial Branch, and (b) information maintained or stored by the Judicial Branch, not otherwise exempted, in all paper and electronic platforms and formats.

Section 3.20 - Definition of Public Access

"Public access" means that the public may inspect and obtain a copy of the information in a court record, including a copy obtained by use of a scanner, provided such use is not disruptive to the clerk's office or to the file itself.

Section 3.30 - Definition of Remote Access

"Remote Access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.

Section 4.00 - Applicability of Rule

This policy applies to all court records, regardless of the physical form of the court record, the method of recording the information in the court record or the method of storage of the information in the court record.

Section 4.10 - General Access Rule

- (a) Information in the court record is accessible to the public except as prohibited by Section 4.60 or Section 4.70 (a).

- (b) There shall be a publicly accessible indication of the existence of information in a court record to which access has been prohibited, which indication shall not disclose the nature of the information protected.

Section 4.20 - Court Records in Electronic Form Presumptively Subject to Remote Access by the Public

The following information in court records should be made remotely accessible to the public if it exists in electronic form, unless public access is restricted pursuant to Section 4.60 or 4.70 (a):

- (a) Litigant/party indices to cases filed with the court
- (b) Listings of new case filings, including the names of the parties
- (c) Case detail information for civil and family cases showing what documents have been filed in a case
- (d) Calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of the hearing;
- (e) Entry of judgments, orders, or decrees in a case and liens affecting title to real property; and
- (f) Conviction information.

[NOTE: Nothing in this section is intended to address or authorize remote access by the public to court files generally because such access involves complex issues that require further study and must be addressed by the Judicial Branch separately.]

Section 4.30 - Requests for Bulk Distribution of Court Records

Bulk distribution is defined as the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation.

[NOTE: The development of specific policies regarding requests for bulk distribution of court records is a long-term project that is reserved for further study.]

Section 4.40 - Access to Compiled Information From Court Records

- (a) Compiled information is defined as information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record.
- (b) Any member of the public may request compiled information that consists solely of information that is publicly accessible and that is not already available pursuant to section 4.20 or in an existing report. The court may compile and provide the information if it determines, in its discretion, that providing the information meets criteria established by the court, that the resources are available to compile the information and that it is an appropriate use of public resources.

- (c) (1) Compiled information that includes information to which public access has been restricted may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes.
- (2) The request shall:
 - (i) Identify what information is sought
 - (ii) Describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and
 - (iii) Explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.
- (3) The court may grant the request and compile the information if it determines that doing so meets criteria established by the court and is consistent with the purposes of the access policy, the resources are available to compile the information, and that it is an appropriate use of public resources.
- (4) If the request is granted, the court may require the requestor to sign a declaration that:
 - (i) The data will not be sold or otherwise distributed, directly or indirectly, to third parties, except for journalistic purposes,
 - (ii) The information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes, and
 - (iii) There will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.

Section 4.60 - Court Records Excluded from Public Access

The following information in a court record is not accessible to the public:

- (a) Information that is not to be accessible to the public pursuant to federal law;
- (b) Information that is not to be accessible to the public pursuant to state law, court rule, or case law, including but not limited to:
 - (1) Records maintained in juvenile matters
 - (2) Health and medical information filed with the court pursuant to P.B. sec. 7-18, 15-4, and 25-55.
 - (3) Files/documents sealed by court order
 - (4) Lodged records, P.B. §§7-4C, 77-2
 - (5) Family Division evaluations, studies and reports, P.B. §25-60, C.G.S. §46b-38c

- (6) Records related to pretrials, mediations, settlement negotiations and plea bargaining, including attempts at reconciliation in action for dissolution, separation, annulment, C.G.S. §46b-10, conciliator records, C.G.S. §46b-53, mediation program records, C.G.S. §46b-53a and non-court ordered mediation, C.G.S. §52-235d, unless such records are filed with the court during a public hearing or trial of the case.
- (7) Discovery documents or objects subpoenaed into Court pursuant to P.B. §40-2
- (8) Personal residence addresses of police or correction officer when a witness in a criminal case, P.B. §40-13
- (9) Record of In Camera Proceeding (criminal), P.B. §40-42
- (10) Return of Deposition (criminal), P.B. §40-53
- (11) Presentence investigation reports and assessments, P.B. §§43-7 to 43-9, C.G.S. §§54-91b, 54-142g(a)
- (12) Erased records, C.G.S. §54-142c
- (13) Youthful offender records, C.G.S. §§54-76c, 54-76f, 54-76o
- (14) Requests for nondisclosure of location information (family), C.G.S. §46b-115s
- (15) Nondisclosure of location/identifying information (support), C.G.S. §46b-212x
- (16) Juror questionnaire, C.G.S. §51-232
- (17) Civil deposition for purposes of preserving the testimony of a witness, C.G.S. §52-156
- (18) Wiretap records, C.G.S. §§54-41a, et seq.
- (19) Record of grand jury proceedings, C.G.S. §§54-45, et seq.
- (20) Information, files and reports held by Court Support Service Division under C.G.S. §54-63d
- (21) Witnesses receiving or considered for receipt of protective services, identity and location, C.G.S. §54-82t
- (22) Name, address and identifying information of sexual assault victim, C.G.S. §54-86e
- (23) HIV information and testing, C.G.S. §§54-102a, 54-102b, 54-102c
- (24) Nonconviction information, C.G.S. §§54-142k, 54-142m, 54-142n
- (25) Motion for leave to withdraw appearance of appointed counsel under Practice Book § 23-41
- (26) Privileged communications pursuant to statute or case law
- (27) OVS records (C.G.S. §§ 54-203(b)(7)(J), 54-204, 54-228, and 54-230)
- (28) Sex offender registry name of victim (C.G.S. § 54-258)
- (29) Records of proceedings pursuant to Practice Book Sec. 2-56 (Grievance Proceedings - Inactive Status of Attorney)

Section 4.70- Request to Prohibit Public Access to Information in Court Records or to Obtain Access to Restricted Information

- (a) Information in a court record may be sealed by court order pursuant to P.B. §§ 11-20A, 25-59A, 36-2 and 42-49A or as otherwise provided by law

- (b) A party to a case may file a request to prohibit public access to information in a court record or to obtain access to sealed information in a court record pursuant to P.B. §§ 7-4B, 11-20A, 25-59A, 36-2 and 42-49A or as otherwise provided by law.
- (c) A non-party has a right to oppose a party's request to seal information pursuant to P.B. §§ 7-4B, 11-20A, 25-59A, 36-2 and 42-49A or as otherwise provided by law.

[NOTE: The process by which a non-party may intervene in a court case in order to be heard on an issue of public access to information in a court record requires further study by the Judicial Branch.]

Section 5.00-When Court Records May Be Accessed

- (a) Court records will be available for public access in the courthouse during hours established by the court. Court records in electronic form to which the court allows remote access under this policy will be available for access at least during the hours established by the court for courthouse access, subject to unexpected technical failures or normal system maintenance announced in advance.
- (b) Upon receiving a request for access to information, the court will respond within a reasonable time regarding the availability of the information and provide the information within a reasonable time. If a request for access is denied, a reason for the denial shall be provided.

Section 6.00-Fees for Access

The Office of the Chief Court Administrator may charge a reasonable fee for access to court records or for compiled information, but the Judicial Branch shall adopt a policy on waiving such fee when the person seeking such access or information is an indigent individual.

Section 7.00-Information and Education Regarding Access Policy

Section 7.10-Dissemination of Information to Litigants about Access to Information in Court Records

The Office of the Chief Court Administrator will advise litigants and the public that court records containing personal information are accessible to the public and will further advise litigants and the public as to the procedure for requesting restriction on the manner of access or for prohibiting such public access.

Section 7.20 - Dissemination of Information to the Public about Accessing Court Records

The Office of the Chief Court Administrator will develop and distribute to the public information about how to obtain access to court records.

Section 7.30-Education of Judges and Court Personnel about an Access Policy

The Office of the Chief Court Administrator will educate Judicial Branch personnel about the access policy and train such personnel to comply with the policy so that all such personnel respond to requests for access to information in the court record in a manner consistent with this policy.

The Office of the Chief Court Administrator shall insure that all judges are informed about the access policy.