Minutes of Public Access Task Force
Committee on Access to Court Records
July 11, 2006

The Committee on Access to Court Records met in the Supreme Court Attorney's Conference Room at 231 Capitol Avenue in Hartford on Tuesday, July 11, 2006 from 2:08 PM to 4:55 PM.

Those in attendance: Judge Alander, Dr. Cibes, Judge Clifford, Ms. Collins, Judge Dewey, Judge Lavine, and Judge Ment.

The meeting was called to order at 2:08 PM by Judge Alander. The first agenda item was the review and approval of the minutes. The amendment that had been made to the minutes distributed electronically had been added and distributed. The minutes as amended were approved.

The next item on the agenda was the presentation of information from Court Operations staff in connection with the posting of the criminal docket on the Internet. Mr. Larry D'Orsi, Deputy Director for Criminal Matters, discussed the contents of the docket that is posted on a daily basis. That docket contains the purpose/reason a case is on the docket, the number of times a case has appeared on the docket, the bond information, and the jail code. The jail code area may be left blank because it is not necessarily accurate, although it would be clear from the bail information whether an individual remained incarcerated. Judge Ment proposed that the committee recommend that this criminal docket information, along with the charges, be posted on the Internet as soon as practicable. (Charges are not included on the posting docket to conserve space.) It was suggested the capability to look up cases by name and date of birth also be added as soon as it is feasible. After further discussion, the committee added that the information would be posted from whatever time it is available the day before the docket (generally once court is closed for the day) and remain online for twenty-four hours. There was a consensus on this recommendation.

Judge Alander then brought up the possible posting of criminal conviction information. Staff indicated that the criminal conviction information is currently compiled and sold to credit bureaus and firms that provide background checks. The criminal conviction information goes back to 1999, the date of the last purge of the records. Currently the Branch does not provide that information individually. A discussion ensued as to what this conviction information would include, i.e., are other types of dispositions (nolles, dismissals, and not guilty verdicts) part of this information that is sold? There are statutory restrictions currently in place that prevent the disclosure of other criminal disposition information other than conviction information. The committee will discuss the posting of nonconviction information (C.G.S. §§ 54-142k, 54-142m, and 54-142n) at the next meeting.

Further discussion then ensued regarding the contents of the criminal conviction report that is available. Staff pointed out that the entire multi-count informations, on which there may be a conviction on only one count, would be disclosable. In response to the request of the committee for a list of what other information is provided in this report, staff reported that the information includes, among other items, motor vehicle operator license numbers, birth dates, home addresses of defendants, original charges, substituted charges, and race. The committee discussed the need for the collection and

inclusion of certain information in the records that are provided and staff indicated that reporting requirements necessitate the collection of information like social security numbers and motor vehicle operator license numbers. A question was raised as to the need to include race and the defendant's home address in connection with posting criminal conviction information. There was no consensus on the inclusion of these two items in the posting of criminal conviction information on the Internet. There is, however, a consensus on making criminal conviction information available online as soon as practicable to the extent that it is currently provided, with the exception of the information as to defendant's race and home address and the original charges, each of which will be discussed further. Staff indicated that changing the report to exclude certain information is fairly straightforward. In connection with the posting of this information, there was also discussion about the different issues raised by making information available on paper and available on the Internet.

The committee returned to its review of the potentially categorically excluded records. At the last meeting, the committee had left off discussion at juror questionnaires, on which there was no consensus. The next twelve items on the list all involved statutory privileges, i.e., psychiatrist/patient, and psychologist/patient. After a brief discussion, there was a consensus that no recommendation would be made to change any of these statutes. The next item on the list involved the handling of search warrant affidavits which had been discussed at an earlier meeting, without a consensus. A further discussion of these affidavits will be deferred until the next meeting. The next item was the sealing of a deposition that is taken to preserve testimony prior to the initiation of a civil case. After discussion as to when this process is used, the committee agreed that no recommendation to change this statute was needed. The next item was wiretap records. After discussion, the consensus was to make no recommendation for change. Next, there was a discussion of the records of grand jury proceedings and when, if ever, they could become open to the public. The consensus was to make no recommendation for change. The next three items involved pretrial diversionary programs. The committee reviewed the language prepared by staff regarding the proposal for opening these records. (A copy of that proposal is attached to and incorporated in these minutes.) An extensive discussion ensued regarding what might be included in these records, i.e., medical and treatment information, hospital records, and drug dependency information. Suggestions were made as to methods of protecting information that should not be made public while permitting access to other information that could be made public. Judge Alander suggested that such records should be open. He proposed recommending that any application for a pretrial diversionary program be open except for those records that deal with alcohol or drug abuse. The suggestion was then made that the committee recommend that upon application to a program, the next court date, the program applied for, the docket number, the date of birth, the address, the charge to which they have plead, and the next court date should remain available. Judge Ment offered to put together revised language for the committee's next meeting.

The next item discussed was Court Support Services Division files with exceptions, pursuant to C.G.S. § 54-63d. A discussion ensued as to the contents of these files, which may include juvenile record information, family relations interview information, and information from the Department of Correction, among other information. The consensus of the committee was that this statute should be looked at in detail in the

future because it seems to cover a broad range of information and this committee does not have sufficient time to go through all of the issues.

The next item was the treatment of youthful offenders pursuant to C.G.S. §§ 54 – 76c and 54-76l. This statute has recently been amended to make all records of youthful offenders presumptively sealed except for cases involving Class A felonies and certain sex crimes. Ms. Collins asked about the situation when a youth comes in as an adult and then the prosecutor reduces the charges so that the name disappears from the docket without further explanation, and there is no public access to that information. There was no consensus on this issue; further discussion will occur at the next meeting.

The committee then heard from Attorney Deborah Del Prete Sullivan, Executive Assistant Public Defender, regarding the position of public defender services on the disclosure of Presentence Investigation Reports to the public. A copy of the letter that was handed out to the committee is attached to and incorporated in these minutes. For the reasons discussed in detail in the letter, the Office of the Chief Public Defender does not support such public access. When asked if some portions of the PSI could be released without adverse effect, Attorney Del Prete Sullivan stated that the name, date of birth, and charges could be disclosed, but that other than those facts, much of the report involves subjective analysis and self-reported information, and matters of privacy and should not be released.

After discussion, the committee reached a consensus that no changes would be recommended to the statutes regarding: the handling of records of witnesses receiving or considered for receipt of protective service, identity, and location (C.G.S. § 54-82t), the statute regarding sexual assault victim names, address, and identifying information (C.G.S. § 54-86e), the statutes regarding HIV information and testing (C.G.S. §§ 54-102a, 54-102b, and 54-102c), and the statute protecting the name of the victim in the Sex Offender Registry (C.G.S. § 54-258). The committee agreed to refer the handling of Office of Victim Services records regarding sexual assault and domestic violence victims, confidential information in the compensation and restitution files, and victim requests for notification and victim mailing addresses (C.G.S. §§ 54-203 (b)(7)(J), 54-204, 54-228, and 54-230) and the statute regarding the financial statements of judges' spouses and dependent children (C.G.S. § 51-46a) to the committee on administrative records since these records are not court records. The statute regarding photographs and computerized images of individuals (C.G.S. § 1-17a) does not apply to a court record and is outside of this committee's charge.

After a brief break, the committee continued its review of the COSCA Guidelines.

The committee continued its review of the guidelines, beginning with Section 3.30, definition of remote access. That definition of remote access seemed to include the areas the committee has discussed. The definition of "in electronic form" in Section 3.40 was discussed. Dr. Cibes indicated that it seemed to include images and pictures that were discussed in connection with C.G.S. § 1-17a. In connection with Section 4.00 on the applicability of the rule, Dr. Cibes raised the issue of whether there should/may be a difference in the handling of paper records and electronic records. Further discussion of that issue will occur in connection with the sections on applying the definitions. Judge Ment directed the committee to articles from Florida and Ohio regarding this question.

Section 4.1 is a general access rule regarding information in a court record which basically requires that all records are accessible unless excluded in some other way either categorically or sealed by a judge in some other way. If something is not accessible, there must be an indication that a record exists although it is not accessible. Ms. Collins would like to add a requirement that the reason why the record is not accessible be stated. Discussion ensued and the suggestion was made that an addition could be made that would require the disclosure of the reason for the sealing of a record unless the reason would disclose the information itself. (i.e., drug and alcohol records)

Judge Alander asked that the committee read the guidelines and be prepared to vote on adopting them at the next meeting although the committee will continue to read through and discuss the guidelines today.

Judge Clifford pointed out that Section 4.10 (b) actually incorporated the suggested additions. Judge Alander suggested that the question then becomes what are situations that are covered by the subsection. Dr. Cibes pointed out that there is also Section 4.10 (c) on page 24 of the Guidelines, and the committee did not believe that the subsection was necessary in Connecticut. The committee will discuss this section further at the next meeting.

Section 4.20 specifically discusses remote access by the public to court records in electronic format and references Section 4.50, which discusses records that are only available at the courthouse. The discussion on this section will be deferred until next week. Staff will provide the list and let the committee know if any of the information is not available online.

Section 4.30 regarding requests for the bulk distribution of records is a more long term issue. The committee agreed that it is not one about which it is possible to make a recommendation at this time.

Section 4.40 defines compiled information and public access to it. Discussion ensued regarding possible charges to the public for compilations of records, the risk of the public's being misled by raw data provided without explanation, and the appropriateness of the public's bearing the cost of using staff to compile data. Judge Clifford pointed out the last paragraph of the guidelines that references the appropriate use of judicial resources. Mr. D'Orsi referred to a statute requiring a requestor to pay the programming costs of compiling information. This guideline will be discussed further next week.

The next guideline, Section 4.50 concerns court records only publicly accessible at a court facility. Judge Alander asked if Connecticut should implement such a policy. The states to date have handled this issue differently. New York, for example, has the same policy for remote access as it has for paper access. The committee discussed the sensitive information that is contained in some records. Judge Lavery said that this is one of the most complicated issues facing the Branch today: balancing public access and with protecting materials that are personal and private. Attorney D'Alesio indicated that within the cases currently being electronically filed there is a great deal of information already available electronically. An extensive discussion ensued regarding the difficult issues that come up with respect to balancing the need for transparency and openness with the need to respect individual privacy and consider security interests of

individuals. Dr. Cibes said that the committee has already dealt with much of this information and he would prefer to go as far as possible rather than simply referring this issue back to the Branch. Judge Ment reminded the committee that it is not possible to answer all the questions at this time, but maybe the committee should craft a recommendation that acknowledges the difficulties and charges the branch over a period of time to expand access online while taking due notice of the privacy interests of individuals. There is no consensus at this point. Judge Alander is concerned that the committee should not appear to be providing guidance on remote access although it does not really have enough time to discuss the issues thoroughly. Ms. Collins concurs that the questions raised are involved and require additional study. Attorney D'Alesio suggested that the committee could recommend keeping the status quo with respect to access to electronically filed cases (access available only to attorneys with appearances in the file) in light of the fact that a great deal of information is already online. Judge Alander asked the committee to look at the guidelines and determine whether there are recommendations or suggestions, whether broad or specific, that the committee could make comfortably in this area. It will be discussed further at the next meeting.

Section 4.60 refers to court records that are categorically excluded from public access. Subsection (a) does not seem clear in that, for example, some entities are banned by federal law from disclosing information (i.e., IRS and tax records, universities and student records), but those laws do not appear to prohibit the release of such records by the courts. The committee could list in subsection (b) what it will recommend should be categorically excluded. The committee will return to a discussion of this section at the next meeting. Section 4.7 would be covered by the Practice Book rules on sealing files. These rules have already been discussed and by consensus, left as they are by the committee. Section 5.0 describes when records may be accessed. The committee will return to a discussion of whether the parameters regarding the time of access are sufficient at the next meeting.

Section 6.00 discusses fees; section 7.0 discusses the obligation of vendors, which will not be discussed by the committee. The remaining sections of the guidelines address the issues involved in education staff and the public about access policies and the availability of records. Judge Alander referred to the supplement to these guidelines and suggested that the committee read that supplement. Judge Ment indicated that the committee should want to get involved in the education aspects of access.

Judge Alander reminded the committee that it will meet on both Monday and Thursday next week. On Monday, the committee will attempt to reach a consensus on the outstanding issues. The committee report is due August 3rd. Additional meetings will be discussed at Monday's meeting. Currently, there is an additional meeting scheduled for August 1st.

Meeting is adjourned at 4:55 PM.

Language Drafted by Legal Services

1- All files relating to pretrial diversion programs currently sealed upon application or sealed upon granting shall remain open and available to the public for three days after such sealing. Thereafter, the file shall be sealed by operation of law. The parties may move to seal portions of the file relating to statutorily protected medical or psychiatric information within this three day period. Upon successful completion of the program and dismissal of the case, the disposition - including the underlying charge(s) - shall remain open and available to the public. For purposes of this recommendation, "pretrial diversion program" means pretrial family violence education, pretrial alcohol education, pretrial drug education and pretrial school violence prevention; but shall not include accelerated rehabilitation and youthful offenders. For cases involving accelerated rehabilitation, the disposition - including the underlying charge(s) - shall remain open and available to the public upon successful completion of the program and dismissal of the case.

[Note: There was no consensus with respect to cases that are nolled (after the 13-month period expires) and cases that are terminated because of dismissals (i.e. charges dropped b/c of lack of evidence) or not guilty verdicts (after trial).]

2- All criminal docket information shall be made available to the public via the Judicial Branch's website. This shall include currently available information (docket number, name, DOB, arrest date, defense attorney, bond & arresting agency code) plus the charge(s) and shall be broken down by court location (JD). Such information shall be available the evening prior to the scheduled hearing date and shall remain available until it is updated or until the next posting the following evening. Moreover, all conviction information shall be available online.

State of Connecticut

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July 11, 2006

Hon. Richard N. Palmer
Connecticut Supreme Court
Drawer N, Station A
Hartford, CT 06106

Re: Connecticut Judicial Branch – Public Access Task Force – Committee on Access to Court Records

Dear Justice Palmer:

This letter is in regard to the recent discussions pertaining to whether the Presentence Investigation Report (PSI) of a defendant should be disclosed to the public and the media. Please be advised that the Office of Chief Public Defender would not be in support of such disclosure due to the nature of the content of the information contained within such reports. The PSI contains much information which is confidential and/or privileged pursuant to state and/or federal law. In addition, this office has concerns that if such reports were disclosable to the public and the press it would inhibit the information currently exchanged between the persons providing such to the probation officer conducting the investigation. The result would diminish, if not eliminate, the types and amount of information currently available to the sentencing judge.

The PSI contains the social history of the defendant which can detail personal information which pertains not only to the defendant, but his/her family members, friends, employment, education and military background. Family members, employers, employees, teachers and others may decide not to provide information if they know the information will be made public. In matters which involve family members, this may be especially true. On occasion, the PSI contains personal and confidential information pertaining to counseling and treatment sessions in which persons other than the defendant participated.

Page 2 of 3 July 11, 2006
Re: Connecticut Judicial Branch – Public Access Task Force – Committee on Access to Court Records

The PSI can be a source of the identity and much personal information pertaining to the victim in the matter. Especially in a case where the victim is a child, such information can be extremely sensitive in nature. Disclosure of such information and/or the identity of the child could substantially impact upon the child to his/her detriment.

The PSI may contain information pertaining to juvenile and youthful offender court involvement. It may also contain information pertaining to the family of the juvenile or youthful offender which details their involvement with or investigations by the Department of Children and Families, all which is currently confidential by law. As many of the PSIs contain information obtained from the family and any other support system of the juvenile or youthful offender, public disclosure of such could inhibit involvement and/or information normally provided freely.
A PSI usually contains information which is confidential and/or privileged pursuant to state and/or federal law. The medical, psychological and psychiatric history of a defendant is typically included. In addition, substance abuse and mental health records pertaining to counseling and treatment that the defendant has undergone may be contained within the PSI. Pursuant to current law, such privileged and/or confidential information is not accessible by the probation officer except with the authorization of the defendant.

In addition, a PSI may contain hearsay or inaccurate information. The current system provides time for review of the PSI by counsel for the defendant and the ability to correct any inaccuracies. If the PSI were made public, such information may be prejudicial not only to the defendant and his/her family, but to the victim and his/her family and other individuals. Further, if the PSI was made public, there would be no process for anyone who has provided information to object to the release of such to the public. This office is concerned that disclosure of the PSI could result in a “chilling effect” on voluntary disclosure from persons and a lack of cooperation from the defendant in the gathering of information. This “chilling effect” could decrease, or even eliminate, the amount of information that is currently provided to the court for its consideration at sentencing.

Any attempt to develop a system wherein only certain information from the PSI would be disclosed is fraught with problems. Such a system may necessitate hearings, which may need to be closed from the public, to decide what information may be made public. This could be costly and lead to inconsistent results.

Lastly, this office is concerned about those cases in which a conviction is overturned or an innocent person is convicted and subsequently exonerated. There is no way to take back or erase the information contained in a PSI once it has been released to the public.

Page 3 of 3 July 11, 2006
Re: Connecticut Judicial Branch – Public Access Task Force – Committee on Access to Court Records

For these reasons, it is believed that the current process is preferable. Therefore, the Office of Chief Public Defender respectfully requests that the Public Access Task Force permit the current process to continue in which the confidentiality of the PSI is maintained.

Very truly yours,

Deborah Del Prete Sullivan
Legal Counsel/
Executive Assistant Public Defender

cc: Gerard A. Smyth, Chief Public Defender
Susan O. Storey, Deputy Chief Public Defender