REPORT TO THE HOUSE AND SENATE

COMMITTEES ON JUDICIARY

FINDINGS AND RECOMMENDATIONS

OF THE ACCESS TO CRIMINAL HISTORY

RECORD INFORMATION COMMITTEE

JANUARY 15, 2007

Charge

The Legislature established[1] the Access to Criminal History Record Information Committee for the "purpose of making findings and recommendations regarding public access to statewide criminal history records from the Vermont crime information center and the dissemination of electronic criminal case record information by the court." The Committee is charged with considering "what [criminal history] information should be released, by what method and to whom, in a manner that is consistent, reliable, and sensitive to privacy issues." The Legislature also directed the Committee to address whether there should be "increased access to criminal history records by licensed private investigators and access to criminal history records by professional organizations for the purpose of licensing and certification."

Committee Members

The Committee members include:

Hon. John A. Dooley, Vt. Supreme Court Associate Justice (Chair)
Hon. John Bloomer, Jr., former State Senator
Hon. Sally Fox, former State Representative
Allen Gilbert, Executive Director, Vt. Chapter of the ACLU
Robert Paolini, Executive Director, Vt. Bar Association
Max Schlueter, Director, Vt. Crime Information Center

---

[1] Public Act No. 169 § 8(a) (2006) states:

> There is established an access to criminal history record information committee for the purpose of making findings and recommendations regarding public access to statewide criminal history records from the Vermont crime information center and the dissemination of electronic criminal case record information by the court. The committee shall consider what information should be released, by what method and to whom, in a manner that is consistent, reliable, and sensitive to privacy issues. The report shall address increased access to criminal history records by licensed private investigators and access to criminal history records by professional organizations for the purpose of licensing and certification.

Public Participation

The Committee invited people and organizations interested in criminal history record information to contribute to its consideration of the issues. The following people attended a committee meeting: Defender General Matthew Valerio, Director of the Office of Professional Regulation Chris Winters, Arlene Averill (Vt. Center for Crime Victim Services), Sarah Kenney (Vt. Network Against Domestic Violence), Anita Bobee and Peter D. Barton (Barton Agency), William Burgess (Vice President, Vt. Assoc. of Investigative and Security Services; President, Burgess Loss Prevention Associates), Daniel Coane (Chair, Vt. Board of Investigative and Private Security Services; President, DAC Investigative Services), Mike Donahue (Vt. Press Association), Marselis Parsons (News Director, WCAX TV Channel 3), Jeff Goode (Editor, Valley News), Randall Smathers (Editor, The Rutland Herald), and Phil White, Esq. (The Caledonian Record). The Committee received written comments from Anita Bobee (Barton Agency), Tom Kearney (The Stowe Reporter), Marselis Parsons (WCAX TV Channel 3), Jeff Goode (Valley News), and Ross Connelly (Editor & Co-publisher, The Hardwick Gazette).

Findings

Records Maintained by the Vermont Courts

The court system keeps records primarily to document the activities associated with individual cases. Case records are updated each time there is a new event in the case (e.g. a motion, hearing, or ruling). Records contain information about litigants, victims, witnesses, and family members. Records are used as needed to identify

individuals, notify them of proceedings, interact with executive branch agencies and memorialize evidence and rulings. Historically, all records were on paper, whether filed by a party or reflecting the work of the judge or staff. Now, most records prepared by the court are electronic, although records filed by litigants are not. Chief among the electronic records is the docket sheet, which has an electronic entry for each event in the case and which may be printed at any time.

Case records illustrate court procedures and outcomes. Records show whether a case was resolved by plea agreement, trial, or dismissal. Case records document pre-trial conditions of release, sentences, and restitution. Most questions about a criminal case can be answered by examining court records.

Criminal case records generally are open to the public, although by statute and rule, certain documents are confidential. If a record is public, it may be accessed by a member of the public for any reason or no reason at all. Citizens and organizations examine court records for many legitimate reasons, such as to find out information about individuals for employment or personal reasons, for research purposes to reveal the operations of the court system and provide oversight, and to provide victims information on their cases. However, people may also seek access in order to stalk others, to find addresses of individuals, for commercial solicitation or for curiosity.

Methods of Access to Court Records

Individuals may access court records, paper or electronic, by visiting courthouses or requesting copies through the mail. The Judiciary does not charge a fee for viewing original records, but does charge statutory fees for providing copies or for printing an

electronic record. People who work while courthouses are open find it difficult to visit courthouses to examine case records. People may hire private investigators or others to examine records on their behalf, but the cost may be prohibitive. Requesting copies of records by mail may be more convenient, but examining one record often leads to interest in another record, which then leads to supplemental requests by mail. While criminal case records are open to the public, time limitations and cost present very real barriers to access.

Although barriers exist, there are fewer barriers than ever before as a result of technological developments. Automobiles improved transportation to courthouses. The telephone and modern postal services improved the public's ability to communicate with the courts. Typewriters, photocopiers, and fax machines improved the Judiciary's ability to generate requested copies. And now, the internet presents an opportunity to disseminate electronic case records even more quickly and inexpensively.

The Judiciary began providing internet access to electronic court records in civil cases during December 2004 through a website known as VtCourtsOnline.[2] The website provides access to docket sheets only for cases in all superior courts, except the Chittenden Superior Court and Franklin Superior Court.[3] The website does not provide access to records filed by litigants because these records exist only in paper form.

A person with an internet connection and a credit card may access

---

[2] The web address for VtCourtsOnline is https://secure.vermont.gov/vtcdas/user.

[3] Chittenden County and Franklin County cases are not available because the superior courts in those counties do not use the Judiciary's computer system.

VtCourtsOnline. A credit card is required to pay the one-time registration fee ($10.00) and docket sheet fees ($0.50 per docket sheet). The credit card requirement provides a method of payment and a method of identifying who uses the service. VtCourtsOnline is capable of providing internet access to criminal case docket sheets too, but the Legislature has prohibited such access for the public prior to June 1, 2007.[4] Internet access to electronic records is and has been available to criminal justice agencies.

Currently, most of the Judiciary's records are stored on paper. The electronic records are limited to the court clerks' entries into the Judiciary's computer system. The entries for each case may be viewed on a computer screen or printed on paper in the format of a docket sheet. Docket sheets are not maintained as part of the paper case file, but are printed for the public upon request. A docket sheet outlines the history of a case, including a summary description of filings, hearings, and court orders. The docket sheet may also contain names and addresses of parties or non-parties, and in some instances, names of victims. If someone wants to read pleadings, affidavits, or other documents filed by a party, the paper file must be examined.

As technology continues to develop, more court records and eventually all court records likely will be created and stored electronically.

---

[4] Public Act No. 169 § 9 (2006) states:

> The Judiciary shall not permit public access via the internet to criminal case records or family court case records prior to June 1, 2007. The court may permit criminal justice agencies, as defined in 20 V.S.A. § 2056a, internet access to criminal case records for criminal justice purposes, as defined in section 2056a.

Electronic Access to Court Records

When the judiciary first began to consider electronic filing of case records by parties - a technological step it has not yet achieved - and electronic access to records over the internet, it recognized that it had to consider the privacy implications of these technological developments. Although public records acts existed throughout the country, and in Vermont, for executive branch records, there was no similar comprehensive policy for judicial branch records anywhere in the country. In 1998, the Vermont Supreme Court created the Committee to Study Public Access to Court Documents and Electronic Court Information, with broad membership (judges, court staff, Legislators, representatives of the news media, Director of the Center for Crime Victim Services, the Commissioner of Public Safety, the Governor's legal counsel, the state librarian, two attorneys, and a representative of the American Civil Liberties Union). That report led to the adoption in 2000 of the Rules for Public Access to Court Records (effective May, 2001, attached as Appendix B). These comprehensive rules covered all judicial records, whether in paper or electronic form, in all types of proceedings. They establish the baseline policy, following that of the Vermont Public Records Act, that all case records are open to public inspection unless specifically closed by statute or rule. The rules contain over thirty exceptions to the general policy; most of the exceptions are to protect privacy interests.

Following the adoption of the Rules for Public Access to Court Records, the Supreme Court in 2002 adopted the Rules Governing Dissemination of Electronic Case Records to deal specifically with the unique concerns about electronic access to court records, and specifically electronic access to court records over the internet (attached

as Appendix C). Specific provisions are directly related to this report. Thus, Rule 4 prohibits access to bulk data - that is, electronic case record compilations - limiting access solely to a case-by-case basis. Rule 3(b) excludes certain data elements from electronic access - social security numbers, street addresses, telephone numbers, and any personal identifying numbers like driver's license number or financial account numbers. Whatever electronic access might otherwise be allowed, this information can not be obtained electronically. It can be obtained from the paper records at the courthouse in many instances.

VCIC Records

A portion of the Judiciary's criminal case records is stored electronically by the Vermont Crime Information Center (VCIC). By law, access to VCIC records is restricted. Access may be provided: (1) to criminal justice agencies, 20 V.S.A. § 2056a; (2) to "bona fide persons conducting research related to the administration of criminal justice", 20 V.S.A. § 2056b; (3) to employers after offering employment or a volunteer position conditioned upon a record check, 20 V.S.A. § 2056c(c); (4) to an individual requesting his/her own record, 20 V.S.A. § 2056f; and (5) to licensed private investigators assisting criminal justice agencies and attorneys with criminal cases, or insurance companies with fraud investigations, 20 V.S.A. § 2056g.

VCIC records are identity-based, meaning that its records are associated with fingerprints and photographs. In simplest terms, all records for one person are aggregated, regardless of how many names that person may have used in the past. Various employers and private investigators may obtain criminal histories of individuals

(only convictions) for a fee.

Under the supervision of the Department of Public Safety, VCIC provides law enforcement agencies access to information about arraignments and criminal case dispositions. VCIC's records are maintained and disseminated to enhance public safety by facilitating informed decision making. VCIC's records are not maintained for the purpose of providing public access to criminal record information for criminal justice oversight. The latter purpose is the responsibility of the Judiciary.

Comparison of VCIC and Court records

Judiciary and VCIC records are indexed differently because they exist for different purposes. The Judiciary's purpose is to adjudicate cases. Each case has a docket number that allows the court to track the case to disposition. On the other hand, the VCIC records system was established to assist law enforcement agencies with criminal investigations. Identity-based records enable VCIC to provide a complete listing[5] of Vermont criminal case dispositions for any person with a criminal record.

Unlike VCIC records, court records are not identity-based. Court records are indexed according to docket number. Electronic court records may be searched by name, but the Judiciary does not tie together all cases for one individual. A person may have multiple cases under multiple names (e.g. former names and aliases). A complete listing of all court cases for one person cannot be obtained from the Judiciary without knowing all the names used to refer to that person in the electronic database.

Thus, the advantage of searching for a person's criminal history within VCIC

---

[5] VCIC has disposition records dating back to 1940.

records is that all records for the person are aggregated. Once the person is identified by name and date of birth, VCIC can produce all records for that person, regardless of how many other names that person may have used. However, VCIC records do not provide the detail found in Judiciary records. A Judiciary docket sheet describes the entire chronology of a case, not just the arraignment and disposition. Also, Judiciary paper files contain documents filed by parties and court orders that don't exist in the VCIC database.

Currently, the general public may not request a VCIC criminal record check, but may request the Judiciary to search the criminal history of a person based on name or name and date of birth. The person requesting the search of court records is responsible for providing any former names or aliases used by the person that is the subject of the search. The search is limited to case records in the county where the search is requested.

The fee for a Judiciary criminal history search is set at $10.00 by statute. The Judiciary conducted over 17,600 paid searches during fiscal year 2006, as indicated by the collection of over $176,000.00. Government agencies are exempt from paying the fee. The Judiciary conducted many searches for government agencies, but cannot deduce the number of searches since no fees were collected. The court administrator's office estimates that the staff time required to perform criminal history searches and related tasks (making copies of docket sheets, processing search fees, answering search questions, etc.) consumes the equivalent of one to two court staff members statewide.

Before proceeding to the Committee's recommendations, it's important to note

that the most significant issue presented relates to the *method* of dissemination of electronic criminal case records, not to the *legal right* of access. Electronic criminal case records are open to the public, but those records commonly are converted to paper docket sheets as the method of dissemination. Thus, in every county, the public has access to electronic case records by requesting and paying for copies of docket sheets in person at the courthouse or through the mail. Additionally, a second method of dissemination exists at the District Court in the counties of Bennington, Caledonia, Chittenden, and Rutland. At these four courthouses, an intranet computer terminal is available to the general public.

The intranet terminals offer advantages and disadvantages to the public as compared with dissemination of electronic case records through VtCourtsOnline. The intranet terminals are available without charge, while VtCourtsOnline is configured to provide access through fee-based user accounts. Each intranet terminal is located at a courthouse, which is convenient for people who want to delve into the details of the paper records after viewing electronic docket sheets. The intranet terminals do not log who searches for what records, while VtCourtsOnline tracks usage through password protected user accounts. Each intranet terminal is connected only to the case records for the county where the terminal is located, while VtCourtsOnline is connected to electronic records statewide. The intranet terminals serve one person at a time during court hours. VtCourtsOnline may serve multiple users at any time wherever internet service is available. A person using an intranet terminal may walk up to the court clerk's counter and pay cash to obtain a paper docket sheet, while a person using VtCourtsOnline must use a credit card.

Recommendations

In conducting its deliberations, the Committee considered the language of the legislative charge and the questions attached as Appendix A. The following findings and recommendations represent the view of a majority of Committee members. Minority views are described in footnotes.

1. Public Access to Statewide Criminal History Records from the Vermont Crime Information Center:

A. The Committee recommends[6] providing public access to criminal case

---

[6] Minority View (ACLU Executive Director Gilbert):

The ACLU believes that the public has a constitutional right of access to court records. The proceedings in a courthouse are public events, and what transpires there must be considered public business. Indeed, the full committee acknowledges that "Criminal case records are open to the public." This recognition lies in a shared belief of the public's right to hold the judiciary accountable – to make sure due process is provided, fair trials are held, and justice is done. At all times, the judiciary's actions must be transparent, and the public's access to court records helps to assure that.

We believe that the public should be allowed access to these records through courthouse visits over the Web as well as in person. We acknowledge that there may be limited instances where the complete contents of the paper record may not be available online. Exceptions should exist where the information is not needed to assess the accountability and transparency of the judiciary, and when it can be shown that an individual's right to privacy outweighs the public's right to view what would otherwise be part of the public record. (Examples are the publication of Social Security numbers, personal financial records information, and names of certain crime victims.)

The committee has taken the approach of recommending public online access to some court records through the Vermont Crime Information Center's electronic system. This recommendation is based on the belief that VCIC records are "clean" – that the records are accurate and identities are verified. However, the information provided through VCIC records is limited, and does not allow the public the tools it needs to assess the workings of the court system. The VCIC records have been shaped to help with the investigation of crimes. Public access was never intended. Access to these records should continue to be restricted to the law enforcement community unless a legitimate law enforcement purpose sought by non-law enforcement officials can be identified.

As contemplated in Recommendation 2, the proper approach for access to court records is for the Judiciary to allow the broadest online access to its files as feasible. Problems with accuracy of the records or verification of individuals' identity can be dealt with. Indeed, the publishing of such information online may help to correct the information, which is the very purpose of granting public access. Accountability of the judiciary can only be served through greater transparency of its work, which online access provides.

A final note. We disagree with the blanket determination that access should not be provided to so-called "bulk data." We believe that the Judiciary should allow batch releases of anonymous electronic data to bona fide researchers who sign a user agreement specifying data security requirements and

conviction records, but not other VCIC records.

When an individual's behavior is sufficiently threatening to the community that it is characterized as a crime and public law enforcement agencies must act in order to resolve the problem, then the public has a public safety interest in the behavior of that individual. As such, VCIC records should be available to any person.

If VCIC is to provide public access to its criminal records, it must do so in a manner that is consistent with the Legislature's concerns around data quality and privacy. Since VCIC's records are not maintained for public oversight purposes, it is appropriate for VCIC to place limits and restrictions on the dissemination of its records in the interests of balancing public safety needs with data quality and privacy concerns.

VCIC's function is to compile criminal histories of individuals, and this work is up to date and accurate. Conviction records already are public through the Judiciary. However, a criminal history search of VCIC records provides a potentially more complete listing of cases than a criminal history search of Judiciary records. By the time a case reaches conviction, both the State and the defendant have had full opportunity to litigate the relevant issues, removing the risk of unwarranted stigma.

The public has access to criminal conviction records through the Judiciary, but assembling a complete record of convictions is cumbersome and expensive. Under current law and practice, a statewide search would require contacting the district court in each of Vermont's 14 counties. Each county would charge the statutory fee of $10.00, a total of $140.00 for all counties. Even after compiling the 14 searches, there

---

restrictions on use of identifying information. Requests from the press for bulk data should be similarly treated.

is no guarantee that the search results will be complete. Criminal convictions in the superior court (unusual under current law and practice) or convictions under a defendant's former name or alias may be missing. Another 14 requests, and $140.00 in fees, can cure the problem with missing superior court convictions, but the name issue is more difficult to solve.

Essentially, a person seeking a complete conviction history through Judiciary records would have to do the work already performed by VCIC. A conviction history obtained through VCIC includes records from all Vermont courts under all former names and aliases. Since VCIC already has associated each conviction with an individual, and since the public already has a right to conviction records through the Judiciary, it is sensible to grant public access to VCIC conviction records. Denying public access through VCIC preserves substantial and unnecessary barriers to the public accessing criminal conviction records.

Therefore VCIC records should be disseminated to the public under the following conditions:

(1) All queries must be by Name and DOB.

(2) Only records which constitute an exact match to the query criteria will be returned. In the event that query criteria suggest a possible match, human review will determine whether or not the query criteria match a record in the repository.

(3) An electronic log will be kept of all transactions which will indicate the name of the requestor; the date of the request; the purpose of the request; and the result of the request (record / no record response). Although this log should not be available to the general public, any person may who has been the subject of a

request should have access to the relevant portion of the log.

(4) Only criminal conviction records prosecuted in District Court will be released.

(5) Public access to VCIC records will be provided by a secure Internet site. Copies of certified records will still be manually provided by VCIC.

(6) A person who wishes to conduct a record check using the VCIC Internet site must first establish a secure, on-line account (login and password). Issuance of the account is conditioned upon the user's willingness to accept a "User Agreement" which specifies the conditions under which record information is being released and specifies guidelines for the proper interpretation and use of the information.

(7) The VCIC Internet site will provide a mechanism for users to electronically notify VCIC of possible record errors.

(8) The VCIC Internet site will provide links to VCIC training information regarding best practices for the use of record checks as part of a full background research process.

(9) VCIC shall be authorized to charge a fee for each criminal record check query pursuant to statute.

(10) Bulk data may be provided only anonymously. Anonymous data (SID#, but not name) should be provided to bona fide researchers who are willing to sign a User Agreement, which specifies data security requirements and restrictions on use of identifying information. In particular, colleges, policy research foundations, and the news media should have access to anonymous batched data to further their public

interest research. Bulk data should be available at cost.

B. Conviction records should be available through VCIC, but pre-disposition arraignment[7] records should not.

VCIC records provide a definitive view of a person's criminal history. For pending cases, the public may not fully appreciate the importance of the presumption of innocence, and the defendant may endure unwarranted stigma.

Even if the public gives due deference to the presumption, little harm would result from delaying the inclusion of pre-disposition cases in the VCIC report. If the public wants access to pending cases, those records remain available through the Judiciary, albeit with the associated burden to identify any former names and aliases.

In sum, VCIC should provide public access only to criminal case conviction records, not to arraignment records. If and when VCIC develops the ability to provide access to the public via the internet, VCIC should provide access on similar terms as described below for the Judiciary.

2. Dissemination of Electronic Criminal Case Record Information by the Judiciary:

A. The Committee recommends providing public access to the Judiciary's electronic criminal case records through VtCourtsOnline with the following conditions:

(1) The names of victims shall be excluded. Victims' names should not be

---

[7] Minority View (Justice Dooley): The public should have access to pending criminal charges after a finding of probable cause has been made by a judge. A finding of probable cause helps protect the defendant from unwarranted stigma. The public generally understands that a defendant is presumed innocent until proven guilty by the evidence.

displayed on the internet for two reasons. First, victims may become unwilling to report crimes if they are worried about their names appearing on the internet. The public is better served by preserving some measure of privacy for victims, which may encourage victims to report crimes against them. Second, offenders may use the internet in an effort to re-locate their victims. If victims' names appear on the internet, victims may be at risk for subsequent victimization. Thus, victims' names should not be displayed in court records on the internet.

(2) The records shall not be searchable, except through the Judiciary's own search mechanism, which shall allow a search by party name or docket number.[8] Internet search engines should not have access to electronic case records. Instead, the Judiciary should control the method of searching case records. The Judiciary search mechanism should search only the data fields containing the defendant's name, defendant's date of birth, prosecutor's name, defense attorney's name, and docket number. Limiting the search to these fields will prevent someone from searching entire case records for names of people other than defendants and attorneys. More specifically, this would prevent someone from using search engines to identify witnesses, guardians ad litem, mental health screeners, physical custodians, employers, etc. However, names of people other than defendants and attorneys will continue to be recorded in the judiciary's paper records, unless prohibited by statute or rule.

---

[8] Minority View (Former Representative Fox and VBA Executive Director Paolini): The Judiciary's search mechanism should allow searches only by docket number (e.g. no name searches). This would allow people associated with a case, and therefore familiar with a docket number, to view electronic records on the internet. People would not be able to search the names of their neighbors, co-workers, etc., to satisfy idle curiosity.

(3) Access to bulk data[9] shall not be provided, except for public interest research. The Judiciary should not provide resellers access to bulk data. Data resellers may prefer to obtain a copy of an entire criminal case database, rather than request a criminal history search as needed for an individual. When data resellers possess an entire database, expunging or sealing case records becomes problematic. Also, there is no guarantee that data resellers will regularly update their databases with current events in pending cases. Thus, their data may become stale or even inaccurate over time.

Anonymous bulk data should be available to the public on similar terms as previously described with regard to VCIC data.

(4) People conducting searches shall obtain a website user account, and the Judiciary or website vendor shall keep a log of searches performed by each user. People who access case records via the internet should have to obtain a user account and the Judiciary or its website vendor should log each search. If someone uses information obtained from the internet in an illicit manner, the log may reveal how and when the information was obtained. Although the Judiciary traditionally has not logged record requests, a more cautious approach would be appropriate for internet records. Unlike requests made at the court clerk's counter, a person's face is not visible over the internet. Unlike requests received and returned by mail, the court has no return address or bank check for copying fees when records are accessed over the internet. Thus, an internet user account and search log would be appropriate. The

---

[9] ACLU Executive Director Gilbert's view related to bulk data applies equally to judiciary records and VCIC records.

request log should not be available to the general public, but a person who is the subject of a request should have access to the relevant portion of the log.

(5) The users shall pay reasonable fees associated with the cost of operating the website. The Judiciary should charge the cost of internet services to those who use the service. VtCourtsOnline currently requires a $10.00 one-time registration fee. Each time a registered user views a docket page, the user is charged $0.50. All fees have to be prepaid by credit card. This fee structure or a similar fee structure seems reasonable and appropriate. The fees should not be so high as to create a barrier to accessing court records.

(6) Records that are currently not open to the public by law or court rule should not be available on the internet. The final condition on access to electronic case records should be to exclude all records required to be kept confidential. This restriction is intended to incorporate statutes and court rules that prohibit access. For example, social security numbers[10] should not be available on the internet.

(7) When a person searches court records for a defendant's name, the website should display a warning prior to displaying the search results.[11] The warning should specify: (a) electronic access to court docketing information is intended for the purpose of reviewing court proceedings and not for the purpose of

---

[10] Rules for Public Access to Court Records § 6(b)(29).

[11] Minority View (ACLU Executive Director Gilbert): The ACLU does not agree with items (a) and (b) in subsection (7). The reason for the objection to (a) is that the ACLU does not support public access to VCIC records. Access to VCIC records is assumed in the wording of the item. The reason for the objection to (b) is that the ACLU does not agree that public access should be granted to VCIC records, and hence the item is moot.

conducting criminal record checks; (b) identity-based criminal record checks for a person from 1940 to the present date are available from the Vermont Crime Information Center, 802-244-8727; (c) caution should be used when reviewing the results of name searches because two or more different people may appear in court records under the same name and one person may appear in court records under two or more names.

(8) The judiciary must have a system for correcting inaccurate substantive information in court records (e.g. incorrect name or misidentification). The individual who is the subject of an inaccurate record may request the custodian of the record to correct the error. The person requesting a correction may be required to supply information to the court – either by mail or in person – to substantiate the inaccuracy and provide any information needed for the correction.

3. Increased Access for Private Investigators and Professional Organizations for the Purpose of Licensing and Certification.

The Committee makes no recommendation because these issues are rendered moot by the recommendations to grant access to both VCIC records and electronic criminal case records via the internet.

Respectfully Submitted for the Committee,

John A. Dooley, Chair

1/26/2007
Date

The Committee Members' individual signatures (obtained by fax) are available for inspection at the Supreme Court.

John Bloomer, Jr.	Date
Sally Fox	Date
Allen Gilbert	Date
Robert Paolini	Date
Max Schlueter	Date

Appendix A

QUESTIONS - CRIMINAL HISTORY RECORDS

1. Should General Public Access be allowed? Should electronic access be allowed? If yes to one or both, what restrictions should be placed on public access? (What information should be released, by what method and to whom?)

2. Should PI's have greater access than the public? If yes, are the current categories broad enough?

3. Should there be broader access for professional organizations for the purpose of licensing and certification?

QUESTIONS - DISSEMINATION OF ELECTRONIC CRIMINAL CASE RECORD INFORMATION

1. Should there be any dissemination of electronic case record information to the public?

2. If yes, should it be limited to printed copies of electronic records disseminated only at the court house or electronic records displayed on terminals at the court house? Should it be limited to only the county in which the court house sits?

3. If yes to the first question in 2, or no to the question in 1, should access to criminal justice agencies be continued? Should it be modified?

OTHERWISE

4. What restrictions, if any, should be placed on electronic dissemination to persons outside the courthouse? (What information?, what method?, to whom?). Specifically, should a password protected website be required? Should there be a fee? Should there be user identification? Should information be deleted?

5. Should a criminal record check under 32 V.S.A. § 1751(b) be available electronically? Should it include records from all counties? If yes, at what cost?

Appendix B

STATE OF VERMONT

VERMONT SUPREME COURT

OCTOBER TERM, 2000

RULES FOR PUBLIC ACCESS TO COURT RECORDS

§ 1. Purpose; Construction. These rules govern access by the public to the records of all courts and administrative offices of the Judicial Branch of the State of Vermont, whether the records are kept in paper or electronic form. They provide a comprehensive policy on public access to Judicial Branch records. They shall be liberally construed in order to implement the policies therein.

Reporter's Notes

These rules on public access to court records are proposed by the Committee to Study Public Access to Court Documents and Electronic Court Information. The Vermont Supreme Court established the committee on November 3, 1998, to study the legal, public policy and practical considerations surrounding the issue of public access to court information. The Court further charged the committee with the task of developing a policy to govern public access to court documents and court electronic information and proposing changes to court rules and procedures necessary

to implement that policy. The committee members broadly represent persons interested in judicial access policies and include: a Supreme Court Justice (chair), two trial court judges, a probate court judge, an assistant judge, two court managers, the Court Administrator, a state senator, a state representative, three representatives of the news media, the Director of the Center for Crime Victim Services, the Commissioner of the Department of Public Safety, the Governor's legal counsel, the state librarian, two attorneys, and a representative of the American Civil Liberties Union. The committee met frequently in 1999, and in January 2000 finalized its Report and Recommendations and this proposed rule.

Section 1 states the general purpose of these rules, which is to implement a comprehensive policy governing public access to the records of the courts and administrative offices of the Vermont judiciary. It is intended that these rules provide the public with reasonable access to all judicial branch records, whether in paper or electronic form, while protecting privacy interests. In addition, these rules are intended to provide direction to judicial personnel in order to

insure uniformity in responses to requests for judicial branch records.

These rules do not govern access to court proceedings, a subject not now covered by a comprehensive rule or statute. Note, however, that a record of a proceeding – for example, a transcript – is a record governed by these rules. See §§ 3(a) and 6(b)(30), (31). If the public has access to a proceeding, it has access to a record of the proceeding, unless that record is specifically exempted from disclosure under Sections 6 or 7 of these Rules.

These rules are intended to be comprehensive, reflecting all existing statutory and procedural rule provisions on public access to court records, as well as new provisions added in these rules. Where an existing procedural rule or statute establishes the law on public access to a particular record, these rules adopt it by reference so these rules are a complete inventory of access law, whatever its source. Because some access statutes may have been missed in drafting these rules, and access statutes will be adopted in the future, § 6(b)(33) adopts any other statutory access restrictions by reference, at least for case records. It is

expected that these rules will be maintained by a standing Supreme Court advisory committee.

The judiciary, like the other branches of state government, is accountable to the public. Open access to its records and proceedings is essential to maintaining public trust and confidence in the operation of the court system. The Vermont judiciary, however, has not had a comprehensive policy on public access to its records. As a result, responses to requests for records have been made on an ad hoc basis and may vary from court to court.

Court files are the largest state government repositories of information about Vermont citizens. The Vermont trial courts (superior, family, and district) and the Vermont probate courts open approximately 65,000 new cases every year, and have an open caseload of 40,000 cases. In most cases, the information in court records is theoretically available to the public upon request. However, as a practical matter, court records are not readily available. This is because they are kept in paper files in 62 separate courts and the Judicial Bureau, and those not retained by the courts are archived at the Division of Public Records. Public

access is further complicated by rapidly changing technologies and the fact that the volume of judicial branch records created and maintained in electronic format has increased significantly.

§ 2. Scope.

(a) *In General.* These rules govern access to judicial branch records where the right of access is solely that of a member of the public.

(b) *Specific Right of Access.* If, based on a statute, judicial rule or other source of law, a person, or an authorized officer or member of the Executive or Legislative Branch, claims a right of access greater than that available to a member of the public, the record custodian shall act in conformity with the applicable statute, rule or other source of law. If a person, or an authorized officer or member of the Executive or Legislative Branch, claims a right of access greater than that available to the public as a whole, but not based on a specific statute or rule, that claim shall be determined by the court administrator for administrative records or the presiding judge of the court involved for case records. In making that determination, the court administrator or judge shall be guided by these rules and any other relevant rules or statutes and shall weigh the special interest of the person or officer or member seeking the record against the interests protected by the restriction on public access. An appeal from such a determination may be made to the Supreme Court.

Reporter's Notes

Section 2(a) states the general rule that these rules govern requests for access to judicial branch records by members of the public. Except as provided in § 2(b), the remainder of these rules do not apply to a request for access from a person who claims a greater right of access than the public.

Section 2(b) governs specific rights of access. When a request is made by a person who claims a specific right of access to judicial branch records based on a statute, rule or other source of law, the record custodian is directed to comply with the relevant law. The most obvious example of such a right is that afforded a party, or a party's legal representative, by court procedural rules.

If the claim is not based on a specific right granted by statute or rule, the Court Administrator will make the

determination with respect to claims involving administrative records. The presiding judge will determine claims involving case records. If the claim is based on a constitutional provision, the decision-maker shall act in accordance with the constitutional requirement. In other cases the decision-maker shall be guided by this rule and other relevant authority and shall balance the interests involved.

Decisions under this section are appealable to the Supreme Court.

§ 3. Definitions.

(a) "Record" means any paper, letter, map, book, other document, tape, photograph, film, audio or video recording, court reporter's notes, transcript, data compilation, or other materials, whether in physical or electronic form, made or received pursuant to law or in connection with the transaction of any official business by the court. It includes all evidence received by the court in a case. All records are either administrative records or case records.

(b) "Case record" means any judicial branch record pertaining to a particular case or controversy. Any judicial branch record that fits within both this definition and the definition of an administrative record shall be considered a case record.

(c) "Administrative record" means any judicial branch record pertaining to the administration of the Judicial Branch or any court, board or committee appointed by the Supreme Court, or any other entity within the Judicial Branch.

(d) "Physical record" means a judicial branch record that exists in physical form, irrespective of whether it also exists in electronic form.

(e) "Electronic record" means a judicial branch record that exists in electronic form, irrespective of whether it also exists in physical form.

(f) "Record custodian" means the person responsible for the safekeeping of a record. In the absence of a designation to the contrary, the custodian of any judicial branch record (i) held by a court shall be the clerk of that court; (ii) held by the office of the court administrator shall be the director of the appropriate division of that office; or (iii) held by a board or committee appointed by the Supreme Court shall be the staff person assigned to that board or committee, or, if no staff person has been assigned, the court administrator.

(g) "Judge" means a justice of the Supreme Court; a district, superior, probate, environmental or assistant judge; a family court magistrate; or a judicial bureau hearing officer.

(h) "Presiding judge" means the district, environmental, probate or superior judge assigned to the court, and, if more than one such judge is assigned to the court, the judge designated as presiding by the administrative judge for trial courts. With respect to the Supreme Court, the "presiding judge" shall be the Chief Justice or a justice appointed by the Chief Justice to act as a presiding judge. With respect to the judicial bureau, "presiding judge" means a hearing officer of the bureau, as designated by the administrative judge for trial courts. With respect to a board or committee appointed by the Supreme Court, "presiding judge" means the chair of that board or committee.

(i) "Public" or "member of the public" means any individual, group, or entity, including the print or electronic media or their representatives, who seeks access to any judicial branch record.

(j) "Judicial branch record" means a record in the possession, custody, or control of the judiciary or was in the possession of the court for purpose of a court decision.

Reporter's Notes

Section 3(a) defines "record" as any information, whether in physical or electronic form, made or received by the judicial branch, including all evidence received by the court in a case. All "records" fall into one of two categories; administrative records or case records.

Section 3(b) defines "case record" as any judicial branch record relating to a case or controversy. If a judicial branch record fits the definition of both an administrative record and a case record, it is considered a case record.

Section 3(c) defines "administrative record" as any judicial branch record relating to the administration of the judicial branch, including the administration of the courts, Court committees or other entities within the judicial branch.

Section 3(d) defines "physical record" as judicial branch records in physical form (sometimes also referred to as "hardcopy"). A physical record remains a physical record if the information is also kept in electronic form.

Section 3(e) defines "electronic record" as a judicial branch record in electronic form. An electronic record remains an electronic record if the information is also kept in physical form.

Section 3(f) defines "record custodian" as the person who is responsible for the safekeeping of a record. Unless otherwise designated, the record custodian of judicial branch records: (1) held by a court, is the clerk of court; (2) held by the Court Administrator, is the director of the appropriate division of that office; and (3) held by a Court board or committee, is the staff person assigned to that board or committee, or in the absence of a staff member, it is the Court Administrator.

Section 3(g) defines "judge" as a justice of the Supreme Court, a district, superior, probate, environmental, or assistant judge, a family court magistrate, and a judicial bureau hearing officer.

Section 3(h) defines "presiding judge" as the district, environmental, probate, or superior judge assigned to the court. If more than one judge is assigned to a court, the presiding judge is the judge designated as the presiding judge by the administrative judge. The presiding judge of the Supreme Court is the Chief Justice or a justice appointed by the Chief Justice to act as a presiding judge. The presiding judge of the judicial bureau is a hearing officer designated by the administrative judge. The presiding judge of a Supreme Court board or committee is the chair of that board or committee.

Section 3(i) defines "public" and "member of the public" as any individual, group, or entity who seeks access to any judicial branch record. It makes clear that representatives of the news media are included within these terms. See Nixon v. Warner Communications, Inc., 435 U.S. 589, 609 (1978) ("The First Amendment generally grants the press no right to information about a trial superior to that of the general public.").

Section 3(j) defines "judicial branch record" to include both records which are in the possession, custody or control of the judiciary at the time the request is made, and those which were in the possession of the judiciary for purposes of a court decision.

§ 4. General Policy. Except as provided in these rules, all case and administrative records of the Judicial Branch shall be open to any member of the public for inspection or to obtain copies.

Reporter's Notes

Section 4 states the primary principle contained in these rules, which is that all judicial branch records are open to the public for inspection and copying. This carries forward the policy of 4 V.S.A. § 652(4) that the clerk of the superior court shall provide to any person "copies of . . . records, proceedings or minutes" in the clerk's office and 4 V.S.A. § 693 that the clerk of the district court shall provide records of the court to "parties interested" in the case involved for inspection and examination. See also 4 V.S.A. § 740 (family court). Note that for purposes of § 693, the public generally is included within the term "parties interested." State v. Tallman, 148 Vt. 465, 472-73, 537 A.2d 422, 427 (1987). These statutory access provisions are subject to the clerk's duty not to "disclose any materials or information required by law to be kept confidential." 4 V.S.A. §§ 652(4), 693. The exceptions created in statute, court procedural rules and these rules create the "law" that requires the clerk to keep certain records confidential.

The exceptions to this rule for administrative records are set forth in § 5, and the exceptions for case records are listed in § 6(b). This structure of a general rule with exceptions is modeled after the statutory access to public records in 1 V.S.A. §§ 315-320.

The National Center for State Courts recommends that state courts adopt a "default position" that "all records and court data should be open for public review and access" absent a "clear showing of countervailing public policy or public or individual harm." S. Jennen, et al., Privacy and Public Access to Electronic Court Information 26 (National Center for State Courts eds., 1995). This is generally the position taken in states that have explicitly adopted rules and guidelines relating to access to court files and documents.

A presumption of public access to court records and proceedings has been recognized under the common law and the United States and Vermont Constitutions.

In Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978), the United States Supreme Court acknowledged that "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." Id. at 597. However, the Court made clear it was describing a "common law" right, as

distinct from one arising under the First Amendment or other provision of the federal constitution, and noted that the right is "not absolute." Id. at 598. As the Court noted, "[e]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes." Id. (citing as examples of improper uses "to gratify private spite or promote public scandal" or to publish "painful and sometimes disgusting details of a divorce case").

Although the right articulated in Nixon is not constitutional, the Supreme Court has described the right to attend criminal trials as one that is "implicit in the guarantees of the First Amendment." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580 (1980) (plurality opinion) (citing Branzburg v. Hayes, 408 U.S. 665, 681 (1972)). Richmond Newspapers did not take up the question of access to civil proceedings, but Chief Justice Burger's plurality opinion noted that "historically both civil and criminal trials have been presumptively open." Id. at 681 n.17.

The Vermont Supreme Court has drawn an explicit link between access to court documents and "the public's First Amendment right of access." State v. Tallman, 148 Vt. at 473, 537 A.2d at 427 (holding that, in connection with pretrial criminal proceedings, an affidavit of probable cause becomes a public document subject to inspection). The Court has recognized a "presumption that pretrial proceedings and documents are open to the public," rebuttable upon a showing "that closure is essential to preserve higher values and is narrowly tailored to serve that interest." Id. at 474, 537 A.2d at 427-28 (emphasis added); see also Greenwood v. Wolchik, 149 Vt. 441, 442-43, 544 A.2d 1156, 1157 (1988) (declining to limit or modify Tallman and stressing that factors recognized by Supreme Court in deciding whether to limit access to courtroom proceedings "are equally applicable to documents").

In State v. Densmore, 160 Vt. 131, 624 A.2d 1138 (1993), the Court applied a "qualified First Amendment right of public access . . . to documents submitted by the parties in sentencing proceedings." Id. at 137, 624 A.2d at 1142. Access may be denied upon a showing that "(1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, that compelling interest would be harmed; and (3) there are no alternatives

to closure that would adequately protect that compelling interest." Id. at 138-39, 624 A.2d at 1142-43 (citations and internal quotation marks omitted) (acknowledging Sixth Amendment right to fair trial and "privacy interests of innocent third parties" as possible compelling interests). However, presentence investigation reports prepared at the request of the sentencing court are not subject to public disclosure on First Amendment grounds. See also State v. Schaefer, 157 Vt. 339, 599 A.2d 337 (1991); State v. LaBounty, 167 Vt. 25, 27, 702 A.2d 82 (1997); State v. Bacon, 167 Vt. 88, 702 A.2d 116 (1997).

§ 5. Administrative Records. The public shall have access to all administrative records in accordance with the provisions of this rule. The procedures, policies, and exemptions in 1 V.S.A. §§ 316, 317(c), and 318 shall apply to requests for inspection or to obtain copies of administrative records. The Court Administrator is designated as the "head of the agency" for purpose of appeals from decisions of the administrative record custodian. The Court Administrator shall inform all administrative record custodians of the fee schedule authorized by 1 V.S.A. § 316(d).

Reporter's Notes

Section 5 governs access to administrative records. The judicial branch's administrative records are similar in nature to executive branch records. Section 5 makes the relevant sections of the statutory access to public records applicable to administrative records. 1 V.S.A. § 317(c) sets out the exceptions to the general rule of open access to public records and 1 V.S.A. § 316 and § 318 set out the procedures for access to those records.

§ 6. Case Records.

(a) *Policy*. The public shall have access to all case records, in accordance with the provisions of this rule, except as provided in subsection (b) of this section.

(b) *Exceptions*. The public shall not have access to the following judicial branch records:

(1) Records on file with the probate court in connection with an adoption proceeding, unless disclosure is authorized pursuant to Article 6 of Title 15A;

(2) Records of sterilization proceedings pursuant to Chapter 204 of Title 18;

(3) Records of a grand jury and any indictment of a grand jury, as provided in Rule 6 of the Vermont Rules of Criminal Procedure;

(4) Records of the family court in juvenile proceedings governed by Chapter 55 of Title 33, except as provided in 33 V.S.A. § 5536;

(5) Records of the court in mental health and mental retardation proceedings under Part 8 of Title 18, not including an order of the court, except where the court determines that disclosure is necessary for the conduct of proceedings before it or that failure to make disclosure would be contrary to the public interest;

(6) A presentence investigation report as provided in Chapter 5 of Title 28 and Rule 32(c) of the Vermont Rules of Criminal Procedure;

(7) **RESERVED;**

(8) Records containing a description or analysis of the DNA of a person if filed in connection with a family court proceeding;

(9) Records produced or created in connection with discovery in a case in court, including a deposition, unless used by a party (i) at trial or (ii) in connection with a request for action by the court;

(10) Records containing financial information furnished to the court in connection with an application for an attorney at public expense pursuant to 13 V.S.A. § 5236(d) and (e), not including the affidavit submitted in support of the application;

(11) Records containing financial information furnished to the court in connection with an application to proceed in forma pauperis, not including the affidavit submitted in support of the application;

(12) Records representing judicial work product, including notes, memoranda, research results, or drafts prepared by a judge or prepared by other court personnel on behalf of a judge, and used in the process of preparing a decision or order;

(13) Any federal, state or local income tax return, unless admitted into evidence;

(14) **RESERVED;**

(15) Records of the issuance of a search warrant, until the warrant is executed and (i) property seized pursuant to the warrant is offered in a proceeding, or is subject to a motion to suppress; or (ii) a person, fetus or corpse searched for pursuant to the warrant has been located;

(16) Records of the denial of a search warrant;

(17) Records created as a result of treatment, diagnosis, or examination of a patient by a physician, dentist, nurse or mental health professional;

(18) **RESERVED;**

(19) An evaluation by a mental health professional to determine the competency to stand trial and/or sanity of a criminal defendant, if not admitted into evidence;

(20) Records filed or created in connection with a proceeding before the Judicial Conduct Board prior to the filing of a formal charge, as provided by Rule 6(7) of the Rules of Supreme Court for Disciplinary Control of Judges;

(21) Records filed or created in the professional responsibility program, except as provided in Rule 12(A), (B), of Administrative Order No. 9, Rules Governing Establishment and Operation of the Professional Responsibility Program;

(22) Records on file with the probate court in connection with a guardianship proceeding governed by 14 V.S.A. § 3068, if the court finds that the respondent is not mentally disabled;

(23) An evaluation submitted by a mental health professional to the probate court under 14 V.S.A. § 3067, in connection with a guardianship proceeding governed by that section;

(24) Records filed in court in connection with the initiation of a criminal proceeding, if the judicial officer does not find probable cause to believe that an offense has been committed and that defendant has committed it, pursuant to Rule 4(b) or 5(c) of the Vermont Rules of Criminal Procedure;

(25) Records filed or generated in connection with the filing of a civil action prior to service or disposition as provided in Rule 77(e) of the Vermont Rules of Civil Procedure;

(26) A will deposited with the probate court for safekeeping, and indices thereof, as provided by 14 V.S.A. § 2 and Rule 77(e) of the Vermont Rules of Probate Procedure;

(27) The complaint and affidavit filed pursuant to 15 V.S.A. §§ 1103, 1104, but not a temporary order, until the defendant has an opportunity for a hearing pursuant to 15 V.S.A. §§ 1103(b) or 1104(b);

(28) Records of criminal proceedings involving participants in an adult diversion program sealed pursuant to 3 V.S.A. § 164(e);

(29) Records containing a social security number of any person, but only until the social security number has been redacted from the copy of the record provided to the public;

(30) Records with respect to jurors or prospective jurors as provided in the Rules Governing Qualification, List, Selection and Summoning of All Jurors;

(31) Any transcript, court reporter's notes, or audio or videotape of a proceeding to which the public does not have access;

(32) Any evidence introduced in a proceeding to which the public does not have access; and

(33) Any other record to which public access is prohibited by statute.

(c) *Physical Case Records.* To the extent possible, physical case records that are not subject to public access under these rules shall be segregated from records to which the public has access. If a member of the public requests access to a case file, the record custodian shall remove from the file any record excepted from public access before access is provided to the file.

(d) *Electronic Case Records.* Judicial Branch records kept in electronic form shall be designated as open for public access or closed from public access in whole or in part. If designated as closed, the record shall not be available to the public on-line or shall be available only in a form that redacts the information that is excepted from public access.

(e) **RESERVED.**

(f) *Inspection Procedure*. A physical or electronic case record to which the public has access may be inspected and copied at any time when the office of the clerk of the court is open for business. The record custodian shall act on a request promptly within the time limits set in 1 V.S.A. § 318. If a copy of a physical or electronic case record is requested, 1 V.S.A. § 316(g) and (h) shall apply, and the record custodian shall charge the fees for copying and, if applicable, staff time in accordance with 1 V.S.A. § 316(b) - (d) and (f). If an electronic case record is available on line, it may be accessed or copied at any time, and the record custodian may require that it be accessed or copied on line.

(g) *Denial Procedure*. If a case record custodian denies access to all or part of a requested record, the custodian shall notify the person requesting the record of the decision, in the manner and within the time limit specified in 1 V.S.A. § 318(a)(2), and notify the person requesting the record of the grievance procedure provided by this rule.

(h) *Grievances*. Any person aggrieved by a decision made by a case record custodian with respect to a request for access to a physical or electronic case record or a part thereof, including any person about whom information has been requested, has a right to appeal that decision to the presiding judge within the time limit specified in 1 V.S.A. § 318(a)(3). If the decision appealed is to grant access to all or part of a record, the presiding judge may order the decision to be stayed pending a decision on appeal. The presiding judge shall give notice of the hearing to the grievant and may give notice to other interested persons. The appeal proceeding shall be set for hearing, if any, at the earliest practicable date and shall be decided as soon as possible. A decision of the presiding judge may be appealed to the Supreme Court.

(i) *Access During Appeals*. Records not publicly accessible under this rule remain inaccessible if the case is appealed to another court.

Reporter's Notes

Section 6 governs access to case records and states the general rule that all case records are open to the public, subject to the exceptions in § 6(b).

Section 6(b) lists specific limitations on access to case records. Each of these limitations is an exception to the general rule that case records are open. Case records often contain very sensitive and personal information about the parties and others involved in the case that would not normally be disclosed to the public. Some limitations on open case records are therefore necessary to protect the privacy of those persons.

Many of these exceptions are currently in statutes and court rules. This rule adopts these limitations by incorporating the statutes and rules by reference and does not change existing law or practice.

Under the Vermont Constitution, court procedure and administration are areas of shared responsibility between the legislative and judicial branches. Therefore, in areas where the Legislature has not acted, the Court has acted independently to protect sensitive and personal information in its case records by adopting additional limitations which are also contained in this section.

Section 6(b)(1) is an exception for records filed in adoption proceedings, Title 15A. Under 15A V.S.A. § 6-102 all adoption records on file with the court are confidential and may not be inspected except under the limited circumstances set forth in Article 6 of Title 15A. See In re Margaret Susan P., 169 Vt. 252, 733 A.2d 38 (1999), for a discussion of the confidentiality of adoption records and of the right of access of an adult adoptee to adoption records held by the private adoption agency that placed the adoptee with an adoptive family. This exception also incorporates by reference the access restrictions contained in V.R.P.P. 77(e)(3) (papers pertaining to an adoption) and (4) (a written relinquishment).

Section 6(b)(2) is an exception for records in sterilization proceedings, Chapter 204 of Title 18. Under 18 V.S.A. § 8713 sterilization proceedings are closed to the public, and the records are sealed unless the respondent requests that the records be opened.

Section 6(b)(3) is an exception for grand jury records and any grand jury indictment. Under V.R.Cr.P. 6(f) grand jury proceedings, and court records in connection with these proceedings, are closed to the public.

Historically grand jury records have not been open to the public. This rule continues that practice. See State v. Lapham, 135 Vt. 393, 399, 377 A.2d 249, 253 (1977). In Greenwood v. Wolchik, 149 Vt. 441, 544 A.2d 1156 (1988), the Court stated (quoting Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211, 218-19 (1979)):

> [We] have noted several distinct interests served by safeguarding the confidentiality of grand jury proceedings. First, if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule.

Id. at 443, 544 A.2d at 1157.

Section 6(b)(4) is an exception for records in juvenile proceedings, Chapter 55 of Title 33. Under 33 V.S.A. § 5523 juvenile proceedings are closed to the public, and under 33 V.S.A. § 5536 these records are not open to the public. A variety of exceptions to this limitation are found in 33 V.S.A. § 5523 and § 5523a.

The Vermont Supreme Court has frequently recognized the confidentiality of juvenile proceedings. See Camp v. Howe, 132 Vt. 429, 321 A.2d 71 (1974); In re J.S., 140 Vt. 458, 438 A.2d 1125 (1981); In re J.R., 146 Vt. 185, 499 A.2d 1155 (1985); In re K.F., 151 Vt. 211, 559 A.2d 663 (1989); and In re R.D., 154 Vt. 173, 574 A.2d 160 (1990).

Section 6(b)(5) is an exception for records of the family court in involuntary commitment proceedings, Part 8 of Title 18. Under 18 V.S.A. § 7103(a) all records and clinical information, other than an order of the court, in involuntary commitment proceedings are confidential, except:

> (1) as the individual identified or his legal guardian, if any (or, if he be a minor, his parent or legal guardian) shall consent in writing; or

> (2) as disclosure may be necessary to carry out any of the provisions of this part; or (3) as a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest.

The exceptions in 18 V.S.A. § 7103(a)(2) and (3) are repeated in § 6(b)(5) to emphasize the need for court discretion in order to balance the confidentiality of these records with the court's inherent power and obligations and the public's interest in these proceedings.

18 V.S.A. § 7615(e) provides that "the court may exclude all persons not necessary for the conduct of the hearing." In State v. Koch, 169 Vt. 109, 730 A.2d 577 (1999), the Court interpreted this section

> as requiring the court to exercise its discretion by balancing the competing interests at stake – the public's interest in the restrictions placed on a mentally ill patient in the community and the defendant's right to privacy concerning his mental health status. Thus, the court erred when it permitted defendant to make the unfettered decision to stop the flow of information to the public concerning his mental condition, dangerousness, and custody status.

Id. at 116, 730 A.2d at 582.

In Koch the Court also held that because 18 V.S.A. § 7103 specifically exempts court orders from its confidentiality provisions, the trial court does not have the discretion to redact from its order of hospitalization or nonhospitalization terms or conditions that disclose confidential, clinical information. See id. at 117, 730 A.2d at 583.

Section 6(b)(6) is an exception for presentence investigation reports. By statute, 28 V.S.A. § 204(d), and rule, V.R.Cr.P. 32, presentence investigation reports are not open to the public and are disclosed only to the prosecution and the defense.

In State v. Densmore, 160 Vt. 131, 137, 624 A.2d 1138, 1142 (1993), the Court held that "a qualified First Amendment right of public access attaches to documents submitted by the parties in sentencing proceedings," but did not decide whether such a right attaches to presentence reports because that issue was not before the Court. In State v. LaBounty, 167 Vt. 25, 702 A.2d 82 (1997), that issue was reached by the Court. The Court held that presentence investigation reports are not subject to a qualified right of access under the First Amendment and that they are confidential and should not be open to the press and public. The Court stated: "PSIs are not court documents in the usual sense; they are not prepared or filed by the parties . . ., and they do not become part of the public record of a case. In light of these unique characteristics, any right of access to PSIs must be evaluated separately from the public's right to attend sentencing proceedings and inspect documents filed by the parties in those proceedings." Id. at 30, 702 A.2d at 85.

But, "the confidentiality of PSIs is not absolute." State v. Bacon, 167 Vt. 88, 91, 702 A.2d 116, 119 (1997). There may be unique circumstances that require disclosure of at least part of a presentence report, as there were in Bacon. In general, however, these special circumstances will create special rights of access covered by § 2(b) rather than this exception. In Bacon, defendant's accomplice sought access to defendant's PSI. The Court held that "a defendant seeking access to another individual's PSI must support the request with a plausible showing of materiality; upon such a showing, the district court should review the PSI and disclose only that information, if any, that is material to guilt or punishment." Id. at 90, 702 A.2d at 118.

Section 6(b)(7) is reserved for future use.

Section 6(b)(8) is an exception for records containing a description or analysis of the DNA of a person if filed in any family court proceeding. No statute or rule restricts access to records containing DNA information filed in family court proceedings, such as in child support or parentage cases. DNA information is extremely personal and sensitive. This exception reflects the Committee's determination that the balance of interests is clearly on the side of protecting the privacy of the DNA record. DNA is defined in 18 V.S.A. § 9331(2) and 20 V.S.A. § 1932(3).

Section 6(b)(9) is an exception for discovery records, including depositions, in cases in any court unless used by a party in connection with a request for action by the court, or at trial. No statute or rule limits access to records produced in discovery in family and civil cases, although court decisions suggest such records are not public unless filed with the court. In Herald Association, Inc. v. Judicial Conduct Board, 149 Vt. 233, 544 A.2d 596 (1988), the Court denied access to discovery material in the possession of, but not filed with, the Judicial Conduct Board. The Court stated (quoting from Seattle Times Co. v. Rhinehart, 467 U.S. 20, 33 (1984)):

> [P]retrial depositions and interrogatories are not public components of a civil trial. Such proceedings were not open to the public at common law, . . . and, in general, they are conducted in private as a matter of modern practice. Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information.

Id. at 238-39, 544 A.2d at 600.

In practice, most discovery records are not introduced into evidence in the case. Moreover, pursuant to V.R.C.P. 5(d), most discovery requests and responses are not filed unless they will be used in a proceeding. Because these records are not considered by the court in resolving contested issues in the case, and are now considered to be private rather than public, they are not subject to the general rule on disclosure of court records. However, any discovery that is used in the case will be open under this section.

Section 6(b)(10) is an exception for records containing financial information furnished to the court to supplement an application for an attorney to be provided in a criminal case at public expense pursuant to 13 V.S.A. § 5236(d) and (e). The affidavit submitted with the application is excluded from this exception and is therefore public. Under 13 V.S.A. § 5236(f) this type of supplementary financial information is confidential and is "available for

review only by the clerk or judicial officer or the person submitting the financial information."

Section 6(b)(11) is an exception for records containing financial information furnished to the court in connection with an application to proceed in forma pauperis. The affidavit submitted with the application is excluded from this exception. No statute or rule restricts public access to records in connection with an application to proceed in forma pauperis in a case. Under this exception the application is open, but any supplementary financial information is confidential. The financial information here is the same kind of information that is kept confidential in § 6(b)(10) and should be treated the same. See V.R.C.P. 3.1 (Proceedings in Forma Pauperis). Information in any files relating to personal finances is exempt from public inspection under 1 V.S.A. § 317(c)(7).

Section 6(b)(12) is an exception for records of judicial work product used by a judge in preparing a decision or order. Although no statute or rule restricts public access to these records, in practice and under common law they are not open to the public. Of course, any action by the court that results in the creation of an order, decision, or similar record, is open. This exception is patterned on Rule 123(d)(3) of the Rules of the Supreme Court of Arizona on Public Access to Judicial Records of the State of Arizona.

Section 6(b)(13) is an exception for any federal, state, or local income tax return, unless the return is submitted into evidence as an exhibit. No statute or rule specifically restricts public access to income tax returns filed in a case in any court. However, this is the kind of private financial information that should not be made public unless it is introduced into evidence. Tax returns are confidential under 32 V.S.A. § 3102 and are exempt from public inspection under 1 V.S.A. § 317(c)(6).

Section 6(b)(14) is reserved for future use.

Section 6(b)(15) is an exception for records of the issuance of a search warrant. In any case, the records of the issuance of a search warrant will not become accessible before the warrant is executed. In the case of a warrant issued to search for property, records of the warrant will become accessible only if property is seized pursuant to the

warrant and the property is offered in a civil or criminal proceeding, or is subject to a motion to suppress its admission. In the case of a warrant issued to search for a person, fetus or corpse, see V.R.Cr.P. 41(b)(4), records of the warrant will become accessible only when the person, fetus or corpse has been located by the person who requested the warrant.

No statute or court rule restricts access to records of the issuance of search warrants, but most courts deny access at least until a warrant is executed. The exception is broader than the current practice to ensure that public knowledge of a warrant, or application, does not interfere with an ongoing investigation.

Section 6(b)(16) is an exception for records of the denial of a search warrant by a judicial officer. The permanent exception for these records is justified by the need to protect an ongoing investigation, as well as the privacy interests of persons whose property was inappropriately targeted for a search. No statute or court rule restricts access to records of the denial of a search warrant. However, this exception is consistent with the practice in most courts, which is to deny access if the warrant is not executed.

"Judicial officer" is defined in V.R.Cr.P. 54(c)(4).

Section 6(b)(17) is an exception for a patient's record created as a result of treatment, diagnosis or examination of the patient by a physician, dentist, nurse or mental health professional. No statute or court rule restricts public access to these types of records. This limitation on access to medical records reflects the Court's recognition of the uniquely personal nature of medical information. This recognition is also contained in the public records act, 1 V.S.A. § 317(c)(7).

Section 6(b)(18) is reserved for future use.

Section 6(b)(19) is an exception for records of an evaluation by a mental health professional to determine if a defendant in a criminal case is competent to stand trial or is insane pursuant to Chapter 157 of Title 13. This exception does not apply if the evaluation is admitted into evidence. No statute or rule restricts public access to these records.

However, in practice, these evaluations have not been open to the public. This exception continues the current practice.

Section 6(b)(20) is an exception for records in Judicial Conduct Board proceedings that are created prior to filing of a formal charge. Under Rule 6(7) of the Rules of Supreme Court for Disciplinary Control of Judges, records of complaints to the Judicial Conduct Board and records relating to the complaint and investigation, including all papers, files, transcripts and communications in proceedings before the Board are confidential unless a formal charge is filed. If a formal charge is filed against the judge, the formal charge and all proceedings thereafter are open to the public. See id. Rule 6(15).

In Herald Association, Inc. v. Judicial Conduct Board, 149 Vt. 233, 544 A.2d 596 (1988), the Court denied a Vermont newspaper access to certain discovery material in a judicial conduct case pending before the Judicial Conduct Board. Referring to the confidentiality provisions in Rule 6 the Court stated: "In common with all other states, we hold confidential complaints, and investigations of such complaints, unless they result in formal charges. Denial of public access to this stage protects 'judges from the injury which might result from publication of unexamined and unwarranted complaints.'" Id. at 241, 544 A.2d at 601 (quoting Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 835 (1978)). See also In re Hill, 152 Vt. 548, 568 A.2d 361 (1989).

Section 6(b)(21) is an exception for records filed or created in the professional responsibility program. Under Rule 12(b) of Administrative Order 9, Rules Governing Establishment and Operation of the Professional Responsibility Program, all records generated in connection with a complaint are confidential unless they are submitted to a hearing panel after the filing of formal charges.

Section 6(b)(22) is an exception for probate court records in a guardianship proceeding governed by 14 V.S.A. § 3068, upon a finding by the court that the respondent is not mentally disabled. Under 14 V.S.A. § 3068(e), if the court finds that the respondent is not mentally disabled, the petition for guardianship is dismissed and the court seals the records of the proceedings. This exception is consistent with the statute.

Section 6(b)(23) is an exception for the record of a mental health professional's evaluation submitted in probate court in a guardianship proceeding governed by 14 V.S.A. § 3067. Under Rule 77(e)(5) of the Vermont Rules of Probate Procedure, mental health evaluations submitted by a mental health professional pursuant to 14 V.S.A. § 3067 and § 3068 are confidential.

Section 6(b)(24) is an exception for records filed in court in connection with the initiation of a criminal case whenever the judicial officer does not find probable cause. No statute or rule restricts public access to such records. This exception is based on the Committee's determination that records filed in court in connection with the initiation of a criminal case should not be open to the public until and unless a judicial officer finds that "there is probable cause to believe that an offense has been committed and that the defendant has committed it." V.R.Cr.P. 4(b).

"Judicial officer" is defined in V.R.Cr.P. 54(c)(4).

Section 6(b)(25) is an exception for records filed or generated in connection with the filing of a civil action prior to service or disposition. This restriction is contained both in statute, 4 V.S.A. § 652(4), and in V.R.C.P. 77(e). A contemporaneous amendment to V.R.C.P. 77(e) defines when service of process has been completed for purposes of the rule and statute.

Section 6(b)(26) is an exception for a will deposited with the probate court for safekeeping and any index of the will. Under 14 V.S.A. § 2(e), wills deposited for safekeeping, or any index of wills so deposited, are not open to the public. Under Rule 77(e)(1) of the Vermont Rules of Probate Procedure, a will deposited in the office of the register for safekeeping is not open to public inspection.

Section 6(b)(27) is a limited exception for the complaint and affidavit filed in abuse prevention proceedings, Chapter 21 of Title 15, pursuant to 15 V.S.A. § 1103 (requests for relief) or § 1104 (emergency relief). The exception does not apply once the defendant has an opportunity for a hearing. No statute or rule limits access to complaints and affidavits filed in abuse prevention proceedings. This exception is based on the Committee's

determination that such records should not be open to the public until the defendant has had an opportunity to contest the allegations in the complaint and affidavit.

Section 6(b)(28) is an exception for adult diversion records that are sealed pursuant to 3 V.S.A. § 164(e). Once these records are sealed they are not open to the public and further, under 3 V.S.A. § 164(g), "the proceedings in the matter under this section shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry in any matter."

Section 6(b)(29) is an exception for records containing a person's social security number, but only until the social security number has been redacted. Under federal law social security numbers are confidential. Section 405(c)(2)(C)(viii)(I) of the Social Security Act provides that: "Social security account numbers and related records that are obtained or maintained by an authorized person pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security number."

Social security numbers are easily blocked out on a record so that they cannot be recognized. Therefore, if access to an otherwise open record containing a social security number is requested, that record can easily be provided to the public without the social security number.

A contemporaneous addition has been made to V.R.C.P. 5, V.R.Cr.P. 49 and V.R.P.P. 5 to require parties to redact social security numbers from any papers they file unless the court has requested the number. These provisions will aid the record custodian, who would otherwise have to examine every document filed to be sure it does not contain a social security number which must be redacted. The custodian will have to search only for records which contain social security numbers because the court has required that they be filed.

Section 6(b)(30) is an exception for records with respect to jurors or prospective jurors as provided in the Rules Governing Qualification, List, Selection and

Summoning of All Jurors. There is currently no clear policy on public access to juror information. The Committee recommends that personal information obtained from jurors or prospective jurors, such as address, date of birth, and telephone number, not be open to the public. The Committee further recommends that the Rules Governing Qualification, List, Selection and Summoning of All Jurors be amended accordingly.

Section 6(b)(31) is an exception for the transcript, court reporter's notes, or audio or videotape of a proceeding that is closed to the public. A transcript, court reporter's transcript, notes, and an audio or videotape of a proceeding are all records as defined in § 3(a) of this rule. It would serve little or no purpose to close a proceeding if the transcript or other record of the proceeding was available to the public. Therefore, this exception is necessary to carry out the intent of a statute, rule or court order that authorizes closure of the proceeding. Note that this rule is limited to records and does not cover closure of proceedings.

Section 6(b)(32) is an exception for any evidence introduced in a proceeding that is closed to the public. Evidence received by the court in a case is a record as defined in § 3(a) of this rule. In order to carry out the intent of any statute, rule or court order that authorizes the closure of a proceeding it is also necessary to restrict public access to evidence introduced in that proceeding.

Section 6(b)(33) is an exception for any record to which public access is prohibited by statute. Although these rules have attempted to identify all instances where access to court case records are restricted by statute, there may be others which were not considered. Moreover, new restrictions are likely to be created. Therefore, it is necessary to provide this general exception to cover restrictions not covered by a specific exception. This exception is modeled after Rule 4(f) of the Minnesota Rules of Public Access to Records of the Judicial Branch.

Section 6(c) requires that physical case records that are not open to the public be kept separate from case records that are open. If access to a case record is requested, any part of the record that is exempt from public access shall be removed before access to that record is provided.

Section 6(d) requires that electronic records be designated as either open for public access or closed, in whole or in part. Closed electronic records will not be available to the public on-line or will be available only if information in the record that is exempt from public access is redacted.

Section 6(e) is reserved.

Section 6(f) establishes a procedure for inspection of physical and electronic case records. This procedure is much the same as the procedure for inspection of executive branch public records with the provisions of 1 V.S.A. § 316(b-d), (f), (g) and (h) and the time limit provisions in 1 V.S.A. § 318 incorporated by reference. The record custodian must allow inspection without charge, but may impose reasonable restrictions on inspection to protect security of the record. If the person seeking access to a record requests that it be copied, the custodian will do so on court equipment charging the fees authorized by 1 V.S.A. § 316. If an electronic record is available on-line, the record custodian may require that it be inspected and copied on-line to minimize use of court staff.

Section 6(g) establishes a procedure if access to a case record is denied. The person requesting access must be notified of the denial within the time limit specified in 1 V.S.A. § 318(a)(2) and of the grievance procedure in § 6(h) of this rule.

Section 6(h) establishes a grievance procedure for persons aggrieved by a decision made by a case record custodian in response to a request to access a physical or electronic case record. The aggrieved person, including any person about whom information has been requested, has a right to appeal that decision to the presiding judge within the time limit specified in 1 V.S.A. § 318(a)(3). The presiding judge may stay a decision that granted access to the record to preserve the status quo. Notice shall be given to the grievant and may be given to other interested persons. The intent is to give notice to any person who is interested in the access decision. The presiding judge has discretion whether or not to have a hearing on the appeal. If a hearing is scheduled, it must be scheduled at the earliest practicable date. The appeal must be decided as soon as possible. An appeal from the decision of the presiding judge is to the

Supreme Court, even if the decision was made by a member of that Court.

Section 6(i) provides that records that are not accessible to the public remain closed if the case is appealed to another court. The appeal and transfer of the record to another court do not change the public access status of a case record. For example, if a case record in the district court is not open to the public, it continues to be closed if the case is appealed to the Supreme Court.

§ 7. Exceptions.

(a) *Case Records*. Except as provided in this section, the presiding judge by order may grant public access to a case record to which access is otherwise closed, may seal from public access a record to which the public otherwise has access or may redact information from a record to which the public has access. All parties to the case to which the record relates, and such other interested persons as the court directs, have a right to notice and hearing before such order is issued, except that the court may issue a temporary order to seal or redact information from a record without notice and hearing until a hearing can be held. An order may be issued under this section only upon a finding of good cause specific to the case before the judge and exceptional circumstances. In considering such an order, the judge shall consider the policies behind this rule. If a statute governs the right of public access and does not authorize judicial discretion in determining to open or seal a record, this section shall not apply to access to that record.

(b) *Administrative Records*. Subsection (a) of this section shall also apply to an administrative record, except that the determination shall be made by the court administrator.

(c) *Appeals*. Appeals from determinations under this section shall be made to the Supreme Court.

Reporter's Notes

Section 7(a) states an exception to the general access policy stated in § 4 of these rules. Under this provision the presiding judge is authorized to allow access to an otherwise closed record or to seal, or redact information contained in, an open record. It also sets forth the process and standards that apply whenever the court considers such actions. Records may be sealed on the court's own motion: for example, the court may act to protect the interests of a person not before the court because those interests are not adequately protected by the parties before the court. The exception permits the court to use its discretion when

addressing special situations that can not be anticipated and specifically dealt with in these rules. However, this authority should be exercised by the court only in truly exceptional situations and only for good cause. It is not intended that this exception be used to create new categories of records or information that are generally closed to the public. This exception does not apply if the access issue is governed by a statute that does not authorize judicial discretion. It is important to note that this section does not govern the authority of the court to open or close specific proceedings, a subject not covered by this rule.

For a discussion of the court's authority to grant access to a closed record, to deny access to or seal an open record, to redact information contained in an open record, and the standards and process necessary to exercise that authority, see State v. Tallman, 148 Vt. 465, 537 A.2d 422 (1987); Greenwood v. Wolchik, 149 Vt. 441, 544 A.2d 1156 (1988); State v. Schaefer, 157 Vt. 339, 599 A.2d 337 (1991); State v. Densmore, 160 Vt. 131, 624 A.2d 1138 (1993); State v. LaBounty, 167 Vt. 25, 702 A.2d 82 (1997); State v. Bacon, 167 Vt. 88, 702 A.2d 116 (1997); and State v. Koch, 169 Vt. 109, 730 A.2d 577 (1999).

Section 7(b) extends the exception, process and standards stated in subsection (a) of this section to the Court Administrator with respect to administrative records.

Section 7(c) grants a right of appeal to the Supreme Court from a decision under this section, even if the decision was made by a member of that Court.

§ 8. Statistical Reports. Nothing in this rule shall prohibit the court administrator or a record custodian from providing a statistical abstract of information contained in records not publicly accessible, provided that the abstract does not identify any person described in the records.

Reporter's Notes

Section 8 makes it clear that statistical compilations of nonidentifying information from records that are not open to the public are not prohibited by this rule. The rule is an authorization; it does not require the Court Administrator or a record custodian to make a statistical compilation of any information in judiciary files. This section is similar to the provisions of 32 V.S.A. § 3102(g), which authorizes

publication of statistical information about Vermont income tax returns so long as the data do not identify a particular person.

These rules, as adopted, are prescribed and promulgated to become effective on May 1, 2001.

The Chief Justice is authorized to report these rules to the General Assembly in accordance with the provisions of 12 V.S.A. § 1.

Dated in Chambers at Montpelier, Vermont, this ____ day of October, 2000.

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Appendix C

STATE OF VERMONT

VERMONT SUPREME COURT

MARCH TERM, 2002

RULES GOVERNING DISSEMINATION OF ELECTRONIC CASE RECORDS

§ 1. Scope. These Rules govern the release of case record information held by the Vermont Judiciary, or any component thereof, in electronic form whether the record is to be released in electronic or paper form. These Rules supplement the Rules for Public Access to Court Records adopted by the Vermont Supreme Court effective May 1, 2001. In case of conflict, the Rules for Public Access to Court Records control.

§ 2. Definitions.

(a) *Case Record*. A judicial branch record pertaining to a particular case or controversy. Rules for Public Access to Court Records § 3(b).

(b) *Electronic Case Record*. An electronic record pertaining to one case or controversy or to cases which have been joined by the court.

(c) *Electronic Case Record Compilation*. An electronic record pertaining to more than one electronic case record.

(d) *Electronic Case Record Report*. An electronic case record compilation that extracts and displays data from more than one electronic case record for the purposes of providing information about the operation of the Vermont judiciary, or any of its components.

(e) *Electronic Data Dissemination Contract*. An agreement between the Court Administrator and any entity, except a court or court employee, that is provided information which is not publicly accessible under this policy or the Rules for Public Access to Court Records. The data dissemination contract shall specify terms and conditions, as approved by the Vermont Judiciary Technology Committee, concerning the data including but not limited to restrictions, obligations, and cost recovery.

(f) *Electronic Record*. A judicial branch record that exists in electronic form, irrespective of whether it also exists in physical form. Rules for Public Access to Court Records § 3(c).

(g) *Public Purpose Agency*. An agency or department of state or local government or a nonprofit agency whose principal function is research or to provide services to the public.

(h) *Statistical Report*. An electronic case record compilation which complies with § 8 of the Rules for Public Access to Court Records.

(i) *VCAS*. A part of the judicial branch data warehouse that delivers VTADS2 data on a case-by-case basis.

(j) *Vermont Judiciary Data Warehouse*. A central repository of information extracted from electronic case records in all courts and capable of creating electronic case record reports.

(k) *VTADS2*. The case management system used by the judicial branch to create and manage electronic case records and including the capacity to create both standardized and ad hoc electronic case record reports. VTADS2 contains docket entries, scheduling information, information about parties and lawyers and some court orders. It does not contain records filed with the court.

(l) *VTADS2 Standardized Report*. An electronic case records report which is produced from VTADS2 data by selection from a menu of preprogrammed reports.

§ 3. Access to Electronic Case Records

(a) The public shall have access to electronic case records from VTADS2, VCAS or a similar system, on a case by case basis, subject to the limitations specified in (b) and (c) of this section. The court administrator may provide such access from terminals at judicial branch facilities or on line from any remote location over the internet. If the court administrator provides access on line, such access shall be phased in beginning with civil cases, then criminal cases and finally family cases.

(b) The public shall not have access to the following data elements in an electronic case record with regard to parties or their family members: social security numbers; street addresses; telephone numbers; and any personal identification numbers, including motor vehicle operator's license numbers and financial account numbers. In providing access pursuant to subsection (a), the court administrator shall ensure that the above information is not provided.

(c) Except for notices, decisions and orders of the court, the public shall not have electronic access to case records filed electronically or to scanned images of the case records.

§ 4. Access to Electronic Case Record Compilations

Because these rules provide public access on a case-by-case basis, the judiciary does not provide electronic case record compilations, either in electronic or printed form, unless a compilation is an electronic case record report made publically accessible by § 5. In enabling public access to electronic case records pursuant to this policy, the court administrator shall ensure that no person may obtain an electronic case record compilation. The court administrator may waive this policy pursuant to a data dissemination contract governed by § 6 of these rules.

§ 5. Access to Electronic Case Record Reports

(a) The public shall have access to any VTADS2 standardized report created from electronic case records provided it does not include any of the data elements specified in § 3(b). The information shall be provided in electronic or printed form at the option of the person requesting the information, but shall not be available on line.

(b) The public shall not have access to any other electronic case record report unless pursuant to a data dissemination contract governed by § 6 of these rules or pursuant to subsection (c) of this section.

(c) The court administrator may, on request, provide a non-standardized VTADS2 or data warehouse report from electronic case records, in either electronic or printed form, upon a finding that compliance with the request will not be unduly burdensome. Compliance is unduly burdensome if it may strain system capacity through extensive use of computer processing time to locate, aggregate and download data; may cause delay in services provided by the Research and Information Services unit of the Court Administrator's office or other units of the judiciary; or require extensive employee work hours to complete the report. Reports provided under this subsection may not include the data elements excluded by § 3(b) of these rules. The court administrator shall refuse a request based on a finding that the purpose of the request is to obtain personal information about litigants or other persons appearing in court, and not to obtain information about the operation of the Vermont judiciary. This subsection shall also apply to statistical reports.

(d) The court administrator shall designate the content of standardized reports from the Vermont Judiciary Data Warehouse, providing information equivalent to that of VTADS2 standardized reports but from more than one court, and make those designations available to all persons who are authorized to create data warehouse reports. Subsection (a) shall apply to such reports.

§ 6. Electronic Data Dissemination Contract

A public purpose agency may seek access to judicial branch electronic case record information not accessible to the public pursuant to these rules. The public purpose agency must identify the information requested and the proposed use of the information. In reviewing the request, the court administrator shall consider: (a) the extent to which access will result in efficiencies in the operation of a court or courts; (b) the extent to

which access will enable the fulfillment of a legislative mandate; (c) the extent to which access will result in efficiencies in other parts of the justice system or in the delivery of human or educational services; (d) the extent of the need for the information; (e) the risk that the information will be misused for purposes other than those intended; and (f) the methods that will be used to ensure the security and confidentiality of the data. If the court administrator decides to grant such access, it shall be authorized only pursuant to an electronic data dissemination contract between the court administrator and the agency. At a minimum, the contract shall specify the data to which access is granted; specify the uses which the agency may make of the data; and include the agency's agreement that its employees will access the data only for the uses specified and maintain its confidentiality as to third parties. Violation of the terms of a contract, including using data in an unauthorized manner, shall be grounds for termination of the agreement.

This section does not authorize exceptions from the Rules for Public Access to Court Records. However, the court administrator may provide a public purpose agency access to records not publicly accessible under those rules upon a finding that the agency has a specific right of access under § 2(b) of those rules.

§ 7. Procedure

All requests for information pursuant to these rules shall be made to the records custodian as defined in § 3(f) of the Rules for Public Access to Court Records. For the purposes of these rules, the court administrator is the records custodian for VCAS and the Vermont Judiciary Data Warehouse case records and reports. Unless the court administrator is the records custodian, appeals of decisions under this policy may be made to the court administrator. The decisions of the court administrator shall be final.

Reporter's Notes

These Rules can be traced to a study conducted by the Technology Committee appointed by the Vermont Supreme Court. The Committee was charged with making recommendations with regard to the direction of the court system over the next three years with a focus on technological developments affecting the court system and automation. With the move toward "electronic litigation" and enhanced court record systems, a major concern was electronic access to court records, particularly to those cases filed electronically.

As a result of the study which was approved by the Supreme Court October 13, 1998, the Court appointed a Committee to Study Public Access to Court Documents and Electronic Court Information. That Committee issued a report which included recommendations to the Court to adopt Rules for Public Access to Court Records. On October 27, 2000, the Court adopted the vast majority of the rules recommended by the Public Access Committee, to become effective May 1, 2001. The Court did not adopt three proposed recommended rules in § 6 which governed access only to electronic records. In its order of October 27, the Court established an Advisory Committee on the

Rules of Public Access to Court Records to "review the operation and effectiveness of the Rules for Public Access . . . and recommend to the Supreme Court amendment to these Rules or other appropriate actions which it finds advisable." A focus of the Committee has been to consider the impact of electronic case records and internet access to judicial case records on the privacy interests and economic security of the parties. The goal of the Committee has been to protect important party interests while, at the same time, preserving the general right of public access set forth in § 4 of the Rules for Public Access.

In the meantime, the Technology Committee was meeting to implement improved systems for compiling, storage, and centralization of records and preparation of reports from electronic records, and recommend a policy governing dissemination of electronic case records. A policy to govern access to electronic case records was adopted by the Technology Committee and submitted to the Advisory Committee on Public Access in July, 2001 for its consideration. These Rules governing access to electronic records or paper copies of electronic records are based on the policy drafted by the Technology Committee with only relatively minor modifications.

As §1 of these Rules provides, the Rules supplement, but do not supercede, the Rules on Public Access. These Rules create additional limitations on access to electronic records or a printed copy of a judicial record obtained from an electronic record. The Rules cover the actual filings and orders of the court, parts of the judicial record itself, as well as reports or compilations generated by the court system from the record itself. Examples of the latter are docket sheet entries and the reports and compilations defined in § 2 of these Rules. The Rules are thus drafted to reflect the fact that the judiciary maintains or will maintain two levels of electronic records, one of which might be described as the primary case documents which consist of the party filings and orders of the court. The second level of electronic records consists of the docket sheets, reports and compilations prepared by the court system. See §§ 4-6. Privacy concerns are particularly acute with respect to the primary level records because of the wealth of sensitive personal, financial and identifying data contained in these records. With regard to the second level records, much of the data which appears in primary records and affects privacy and security issues will not be included in reports and compilations. Some such data will necessarily be included in such second level records if the records are to be useful for judicial record keeping and planning purposes, but that data can be redacted prior to granting public access in a manner which balances public access and party interests. See § 3(b).

To the extent possible, these Rules were drafted to anticipate developments in the planning for or implementation of electronic record keeping undertaken by the Vermont judiciary. For example, the Vermont Judiciary Data Warehouse defined in § 2(j) was under construction at the time these Rules were adopted and, when completed, will supercede the report generation function of VTADS2 defined in § 2(k). Similarly, electronic filing and scanning of records referenced in § 3(c) was not implemented at the time the Rules were adopted. When the courts implement a system for electronic primary case records, the system will be implemented in stages, beginning with

categories of cases which raise the least problematic privacy concerns. At the time these Rules were adopted, only the docket sheet entries were available electronically, but not in all Vermont courts. Docket sheet entries were available from terminals at or near the clerks' offices in approximately half the courts, typically in the high volume courts. The policy reflected in § 3, especially § 3(c), should be revisited when primary case record documents are available electronically.

Public access to record compilations and reports is governed by §§ 4-6 of these rules. The former is more circumscribed. See §§ 4, 5(c) & 6. The public shall have access to standardized reports, subject to redaction of the data elements enumerated in § 3(b). See § 4(a). Non-standardized reports can be requested pursuant to § 5(c). This criteria in § 5(c) are in part based upon Rule 15(f) of the Washington State Court Rules governing data dissemination of computer-based court information (JISCR). Similarly, § 6 governing data dissemination contracts is based upon the Washington State policy. See JISC Data Dissemination Policy § IID, amended February 27, 1998.

These rules, as adopted, are prescribed and promulgated to become effective on June 1, 2002.

The Chief Justice is authorized to report these rules to the General Assembly in accordance with the provisions of 12 V.S.A. § 1.

Dated in Chambers at Montpelier, Vermont, this 6th day of March, 2002.

_____
Jeffrey L. Amestoy, Chief Justice

_____
John A. Dooley, Associate Justice

_____
James L. Morse, Associate Justice

_____
Denise R. Johnson, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice

Appendix D

HOW TO READ A CRIMINAL CONVICTION REPORT

A criminal conviction report contains:

1. Information regarding the date and time of the report, as well as information about the agency that requested the report. This information is coded and meant for tracking and audit purposes.
2. Identifying information such as the name, aliases (if applicable), date of birth, alias dates of birth (if applicable), place of birth, and occupation of the subject, and the subject's State Identification Number.
3. Criminal Justice information for crimes which have been disposed in a Vermont District Court. This information will include Date of arrest, arresting agency and case number, date of arraignment, charge(s), case disposition, sentence information, and docket number and court. The information is provided in the report in columns which are read from left to right. Each docket is listed separately between dotted lines.
4. An indication of the end of the record, and other important notices regarding the record. This statement may change from time to time. It is extremely important to read the information provided in this statement.

EXAMPLE OF A CRIMINAL CONVICTION REPORT: (Reference the numbers above for explanation)

```
MRI-0930808
VCHR 1313 13:15 20JUN06
SP23 0126 13:15 20JUN06
FR.VTVSP0000.SP23,VTVSP0008.
PUR/L.ATN/EMPLOYMENT TEST.NAM/PUBLIC,JOHN.DOB/19500101
```

1

```
Vermont SID #   999999

Name: Public, John Q Jr
 DOB: 01/01/50      POB:  City: Atlanta          State/Country: GA
AKA: James Wellington Private, Maddog Public, Mitchell Wilson
DOBS: 01/01/49, 06/10/45
Occupations: Construction Worker, Electrical Worker, Mason
```

2

```
==========================================================================================
AGENCY
CASE #                                                                  COURT OF RECORD
DATE OF OFF        ARRAIGNMENT/CHARGE              DISPOSITION          DOCKET #
------------------------------------------------------------------------------------------
Brandon PD         07/01/03   EMBEZZLEM ENT-BY   04/27/04  Felony     Rutland Co.
                      EXECUTOR,ADMINISTRATOR        Conviction         District Court
12345                                              Sentenced To       123-4-03
06/25/03                                           Incarceration For:
                                                   10 years
                                                   All Suspended With
                                                   Probation
                                                   Fined:  $1,500

==========================================================================================
AGENCY
CASE #                                                                  COURT OF RECORD
DATE OF OFF        ARRAIGNMENT/CHARGE              DISPOSITION          DOCKET #
------------------------------------------------------------------------------------------
Barre City P.D     01/11/03   ALCOHOL-    01/26/03  Misdemeanor        Washington Co.
                   MINOR-POSSESSION          Conviction               District Court
1201-03-12345                                Fined:  $103.50          456-7-03
12/31/02
```

3

John was arrested by the Brandon PD on June, 25, 2003 for Embezzlement by an administrator . He was arraigned on July 1, 2003, and convicted on April 27, 2004. He was sentenced to jail for 10 years, all suspended with probation

```
                              END OF RECORD
ONLY MOTOR VEHICLE OFFENSES WHICH WERE ARRAIGNED IN A VERMONT
DISTRICT COURT AFTER SEPTEMBER 1, 1995 ARE INCLUDED IN THIS RECORD.
The criminal record information provided above represents case disposition data reported
by courts indicated.  Charges that are supported by fingerprints are designated with a "Y"
in the "FP" column.  All responses are based on file search criteria provided by the requestor
at the date/time of the request.  This information is provided exclusively for the use stated
in the request and is not to be used for any other purpose.
Authorized:  M. Schlueter - Director, Vermont Criminal Information Center
                            Waterbury, Vermont
```

4

Appendix E

The following information is an example of the judiciary's electronic record for a criminal case. All names and addresses have been removed and replaced with descriptive text and gray highlighting.

Docket No. 5-1-06 Cncr	State vs. Defendant Name	5-1-06 Cncr

Vermont District Court
Unit 2, Chittenden Circuit

Prosecutor:	Prosecutor Name	Defendant:	Defendant Name
		DOB:	Defendant Date of Birth
Motions pdg:		POB:	Defendant Place of Birth
Bail set:		Atty:	Defense Attorney Name
Incarcerated:	released		
	Conditions:	Aliases:	
Case Status:		Address:	Defendant Street Address
Disposed			Defendant City, State, Zip
Next Hearing:			

Dspt	Docket No.	Ct.	Statute	F/M/O	
1	5-1-06 Cncr	1	13 1043(a)(1) ASSAULT-AGG DOMESTIC-1ST DEG	fel	08/21/06 Plea guilty

01/03/06

5730391 - cfile - status set to ipar
Information and Affidavit filed on 1 dispute.
5730400 - charge
Dispute 1 for Docket No. 5-1-06 Cncr Count #1, ASSAULT-DOMESTIC, Misdemeanor, 13 V.S.A. 1042. Alleged offense date: 12/31/05. Arrest/citation date: 12/31/05 Burlington PD.
5730404 - hrgset
Arraignment set for 01/03/06 at 10:30 AM.
5730406 - bailord
Surety bond or cash set by Court Staff Name on dispute 1. Bail Amount: 750.00 pre.
5730721 - hrgheld
Arraignment held by Judge Name. (TAPE).
5730723 - pcfound
Probable Cause found by Judge Name on dispute 1.
5730724 - rule5
Copy of Affidavit and Information given to defendant. 24 hour rule waived.
5730725 - plea - status set to aptr
Reading of Information waived. Defendant pleads not guilty on dispute 1. Pre-trial discovery order issued.
5730728 - chgamend
Charge amended to ASSAULT-AGG DOMESTIC-1ST DEG, Felony, 13 V.S.A. 1043(a)(1) on dispute 1.
5730737 - rule5
Copy of Affidavit and Information given to defendant. 24 hour rule waived.
5730738 - plea - status set to aptr
Reading of Information waived. Defendant pleads not guilty on dispute 1. Pre-trial discovery order issued.
5730740 - bailord

Conditions set by Judge Name on dispute 1. Bail Amount: 0.00 set. Condition[s] 1-5,9-12,14,31-33 imposed. No.4: released into the custody of Custodian Name; No.5: to report to BPD on daily by 8 a.m. - 10 a.m; No.11: Curfew: 6 p.m. - 6 a.m. except for work; No.14: not to have contact with Victim Name & her children; Other conditions: Defendant shall not be within 500 feet of victim, victim's residence, vehicle, or place of employment. Deft to live with his brother Custodian Name at Custodian's Address Abide by Family Court orders.

5730755 - pdasg

Attorney assigned: Public Defender PD.

5730756 - pdord

Request granted for public defender. 25.00 to be paid; Payment Order No. 76334.

5730757 - hrgset

Calendar Call set for 01/25/06 at 01:00 PM.

01/05/06

5734012 - pdasg

Attorney assigned: Defense Attorney Name.

5738535 - document

1 document filed for party : Copy of Final Relief from Abuse Order.

01/09/06 New address for party 1 filed.

01/25/06

5758481 - hrgheld

Calendar Call held by Court Staff Name, Caseflow Coordinator. (OFFREC).

5758483 - entorder

Entry Order: Discovery in progress.

5758484 - hrgset

Calendar Call set for 02/22/06 at 01:00 PM.

02/02/06

5769998 - motion

Motion for Reduction of Bail filed by Attorney Defense Attorney Name for Defendant Defendant Name on dispute 1. Motion for Reduction of Bail to be set for hearing.

02/06/06

5774903 - bailord

Conditions set by Judge Name on dispute 1. Bail Amount: 0.00 amend. Condition[s] 1-3,5,9-12,14,31-33 imposed; No.5: to report to BPD on daily by 8 a.m. - 10 a.m; No.11: Curfew: 6 p.m. - 6 a.m. except for work; No.14: not to have contact with Victim Name & her children; Other conditions: Defendant shall not be within 500 feet of victim, victim's residence, vehicle, or place of employment. Deft to live with his brother Custodian Name at Custodian Address St Abide by Family Court orders.

02/13/06

5785175 - motion

Motion to Amend conditions of release filed by Attorney Defense Attorney Name for Defendant Defendant Name on dispute 1. Motion to Amend conditions of release given to judge.

02/14/06

5789202 - motdisp

Motion 2 (to Amend conditions of release) Other by Judge Name. condition #5-denied BPD will only accept alcosensor cases between 8 and 10 am in the morning condition #11-add exception to attend Day One only-go home immediately afterward.

5789205 - bailord

Conditions set by Judge Name on dispute 1. Bail Amount: 0.00 amend. Condition[s] 1-3,5,9-12,14,31-34 imposed; No.5: to report to BPD on daily by 8 a.m. - 10 a.m; No.11: Curfew: 6 p.m. - 6 a.m.

except for work; No.14: not to have contact with Victim Name &
her children; Other conditions: Defendant shall not be within 500
feet of victim, victim's residence, vehicle, or place of employment.
Deft to live with his brother Custodian Name at Custodian Address St Abide by
Family Court orders ***Exc. to curfew: to attend Day One only and to
go home immediately after.

02/22/06

5795672 - couappr
Appearance entered by Prosecutor Name.
5795673 - hrgheld
Calendar Call held by Court Staff Name, Caseflow Coordinator.
(OFFREC).
5795674 - entorder
Entry Order: Discovery in progress. Motions by next date.

5795676 - hrgset
Calendar Call set for 03/29/06 at 01:00 PM.

03/21/06 Tax referral on Payment #79889 Order #76334.

03/27/06

5838443 - document
1 document filed for party : Copy of Final Relief from Abuse
Order.

03/29/06

5842097 - hrgheld
Calendar Call held by Court Staff Name, Caseflow Coordinator.
(OFFREC).
5842098 - entorder
Entry Order: No motions to file. Set for draw if not resolved
next date.
5842103 - hrgset
Calendar Call set for 04/19/06 at 01:00 PM.

04/18/06

5872264 - motion
Motion to Modify Conditions of Release filed by Attorney Defense Attorney Name
for Defendant Defendant Name on dispute 1. Motion to Modify
Conditions of Release is set for hearing.

04/19/06

5872053 - hrgheld
Calendar Call held by Court Staff Name, Caseflow Coordinator.
(OFFREC).
5872054 - entorder
Entry Order: Motion to Amend conditions reportedly filed
April 17. Set for draw.
5872056 - hrgset - status set to atri
Jury Drawing set for 06/26/06 at 08:30 AM.
5872058 - hrgset
Review of Conditions set for 04/21/06 at 10:30 AM.

04/21/06

5875200 - hrgheld
Review of Conditions held by Judge Name. (TAPE).
5875204 - bailord
Conditions set by Judge Name on dispute 1. Bail Amount:
0.00 amend. Condition[s] 1-3,5,9-12,14,31-34,36-38 imposed; No.5: to
report to BPD on daily by 8 a.m. - 10 a.m; No.11: Curfew: 6 p.m. - 6
a.m. except for work; No.14: not to have contact with Victim Name
& her children; Other conditions: Defendant shall not be
within 500 feet of victim, victim's residence, vehicle, or place of
employment. Deft to live with his brother Custodian Name at Custodian Address
Abide by Family Court orders ***Exc. to curfew: to attend Day One
only and to go home immediately after Attend and satisfactorily
complete Maple Leaf Program Reporting condition and curfew are suspe

nded on 4/26/06 at 3:00pm and will resum e when he is released from Maple Leaf Farm Sign a waiver so that Maple Leaf Farm will disclose to State whether deft is at Maple Leaf.

04/27/06

5885694 - couwith
Attorney Defense Attorney Name withdraws.
5885695 - pdasg
Attorney assigned: Defense Attorney Name.

06/26/06

5952171 - hrgheld
Change of plea held by Judge Name. (TAPE).
5952172 - entorder
Entry Order: IDAP referral Plea agreement recommends - 18mo-3yrs to serve VAPO 6mo-12months to serve If IDAP not accepted state capped at 18m o-3yrs deft free to argue for less.
5952174 - hrgset
Sentencing Hearing set for 08/14/06 at 03:00 PM.
5952175 - cop - status set to apsn
Defendant pleads guilty on dispute 1. Plea agreement filed. Judge Judge Name accepts plea after finding it to be voluntary and made with knowledge and understanding of the consequences and after a knowing waiver of constitutional rights. Plea found to have a factual basis. Adjudication of guilty entered.
5952197 - hrgset
Sentencing Hearing set for 08/21/06 at 02:00 PM.
5952198 - hrgcan
Sentencing Hearing scheduled for 08/14/06 cancelled.

06/27/06

5953845 - note
Note: IDAP referral, paperwork sent to P&P.

08/03/06

6002840 - couappr
Appearance entered by Prosecutor Name.

08/21/06

6022260 - hrgheld
Sentencing Hearing held by Judge Name. (TAPE).
6022282 - sentence
Sentence on dispute 1: to serve 18 month(s) to 3 year(s)

6022282 - sentence
to start on 08/21/06 per Judge Judge Name. Credit for time served time served. PAF-IDAP Sentencing Mittimus to Commissioner of Corrections issued. $22.00 surcharge assessed.

6022283 - jailmitt
.
6022288 - chgdisp
Judgment of Guilty entered by Judge Judge Name on dispute 1.
6022289 - close - status set to dis
Case closed.
6022290 - motdisp
Motion 1 (for Reduction of Bail) rendered moot; Motion 2 (to Amend conditions of release) rendered moot; Motion 3 (to Modify Conditions of Release) rendered moot.
6022319 - finpay
Payment Order no. 80820 paid in full.

09/15/06

6057809 - document
1 document filed for party : Sentence Calculation Notification.