

Proposed Revisions to Draft Report
Committee on Access to Court Records
August 22, 2006

Following the meeting of the Public Access Task Force on August 10th, the Committee met to address the concerns raised regarding the Committee recommendations. The areas identified for further discussion included the following: family financial affidavits, identity theft concerns in connection with the posting of criminal case information online, accessibility of police reports where there is no finding of probable cause, procedure for extending the sealing order on a search warrant affidavit, the automatic unsealing of competency reports, the handling of currently erased records, the online posting of real property liens, and the use of portable copiers. The following summary highlights revisions to the Committee draft report.

Family Financial Affidavits

The committee was unable to make a recommendation on the unsealing of these documents in its initial draft report. After additional discussion, the committee remains divided and will present to the Task Force the competing arguments along with letters from Judges and organizations concerning this issue.

Identity Theft Concerns – Recommendations #3 and #5

The original proposal included a recommendation for the posting of criminal docket and criminal conviction information online. That information would include the birth dates of the defendants. Based on the concerns voiced at the Task Force meeting, the committee discussed the issue of identity theft and recognized that the members did not have sufficient information to be certain whether a birth date and name alone were enough to permit identity theft. Therefore, the committee revised the proposal to include the following provision in both recommendations on posting of criminal information online:

If the Judicial Branch determines that there is a serious risk of identity theft in putting the date of birth online, then the Committee recommends that the Judicial Branch post a redacted version of the birth date, such as a listing of only the month and year of birth.

Public Access to Police Reports – Recommendation #8

The original recommendation of the committee was that a police report would become part of the court file upon its use by the Court in making a determination regarding probable cause. At the meeting of the Task Force, concern was expressed that police reports may contain potentially damaging information, such as rumor and innuendo, which should not be a part of the court file if there is no finding of probable cause because of the possible damage to an individual's reputation. The committee discussed this concern at length and determined that no change was warranted as the Judge could seal the police report pursuant to current Practice Book rules to prevent the public disclosure of inappropriate information.

Procedure for Extending Sealing of Search Warrant Affidavits – Recommendation #7

The original draft recommendation provides for the extension of a sealing order on a search warrant affidavit to be done on the record for stated reasons. Concern was expressed at the Task Force meeting regarding the potential for the disclosure in open court of information that might impede a continuing investigation or endanger someone. The suggestion was made to accept as sufficient the representation by the State's Attorney on the necessity for extending the sealing order. The committee considered the suggestion and has added the following language to the recommendation:

Depending on the circumstances, an oral representation by the State's Attorney that (1) the personal safety of a confidential informant would be jeopardized, (2) the search is part of a continuing investigation which would be adversely affected, or (3) the unsealing of the affidavits would require disclosure of information or material prohibited from being disclosed by chapter 959a (Wiretapping and Electronic Surveillance), may be sufficient to establish good cause. A request for an extension of such sealing or limited disclosure must be made to a date certain, with no single extension to exceed 90 days.

Scanner and Copiers – Recommendation #9

The draft recommendation was that the Branch should adopt and implement a written policy permitting the use of handheld scanners to reproduce court documents. At the Task Force meeting, the question was raised about allowing portable copiers as well. The committee discussed the inclusion of portable copiers and concluded that the use of a portable copier would entail the disassembling of the court file. Such a result was deemed unacceptable in terms of maintaining the integrity of the court file and insuring the efficient use of judicial resources.

Automatic Unsealing of Competency Evaluations - Recommendation #13

The original recommendation on competency recommendations was made to clarify that these documents would be filed under seal, but be automatically unsealed upon use by the Court. Concern was expressed at the Task Force meeting about the automatic unsealing of these documents, given that the evaluation contain psychiatric and other medical information and history and are frequently completed without the agreement of the defendant. The committee discussed these concerns and determined no change was warranted as a Judge could order all or part of the evaluation sealed if he/she believed it should not be open to the public. No change was made to this recommendation.

Erased Records - Recommendation #15

This proposal recommends that the legislature amend the law to permit certain information to remain available to the public after dismissals, nolle after thirteen months, declined prosecution pursuant to the Practice Book, pardons, and not guilty verdicts. This recommendation is based both on the public's right to know the disposition of a criminal case and because the concept of "erased" records is unrealistic in an electronic age. After the Task

Force meeting, the committee chair received an email suggesting that the recommendation on erased records be modified to provide the defendant with the option of keeping the record sealed or making the record open. The committee considered the suggestion but concluded that in light of the reasons behind the recommendation, it did not make sense to permit the defendant to have that option, both because it would impede the public's right to know and it would foster the erroneous belief that records are erased when the reality is that records do not disappear.

Real Property Liens – Policy #4.20

The original draft policy contained reference to real property liens in the section regarding records presumptively subject to public access. Concern was expressed at the Task Force meeting that the Judicial Branch could not provide access to such information because it did not have it. The committee revisited this provision and removed the reference to real property liens and limited the applicability of subsection (e) to civil and family cases, to make the section conform to Connecticut practice and law.

Juror Questionnaires – Policy #4.60 (b)(16)

The original draft policy continues to exclude juror questionnaires from public access. The committee reviewed a comment submitted by the Reporters Committee for Freedom of the Press regarding these questionnaires. The committee did not change its recommendation, but after discussion, did choose to add a caveat to the exclusion of juror questionnaires by means of the following note:

[NOTE: Nothing in this policy is intended to change the current policy of the Judicial Branch which is to provide public access to the name and town of the juror.]