

**Minutes of Public Access Task Force  
Committee on Access to Court Records  
June 27, 2006**

The Committee on Access to Court Records met in the Supreme Court Attorney's Conference Room at 231 Capitol Avenue in Hartford on Tuesday, June 27, 2006 from 2:06 PM to 4:50 PM.

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

The meeting was called to order at 2:06 PM by Judge Alander. The first agenda item was the review and approval of the minutes. A correction was made to reflect that the Presentence Investigation Report is closed by rule only and not explicitly by statute. The minutes were approved as amended.

Continuing the previous discussion on Presentence Investigation Reports, Judge Alander asked the committee to consider whether the closing of these reports is the least restrictive method of protecting information in those reports. Staff will also check on the whether any statute closes the Presentence Investigation Reports to public access.

The committee then discussed the procedure for the sealing of affidavits filed in support of an application for a search warrant or arrest warrant. The rule provides for the sealing of an affidavit on an arrest warrant for up to two weeks from the date of arrest. At the end of the fourteen day period, the affidavit is automatically open by operation of law, unless a motion to extend the sealing is filed. That motion must be filed in court. It is not clear whether the same procedure applies to affidavits filed to obtain a search warrant. Conn.Pr.Bk. § 42-49A does not seem to apply to search warrant affidavits. Ms. Collins and Ms. Griffin said there is not consistency in the handling of access to these warrants by the clerks and there is a need to educate the staff on the related procedures.

There was then an extensive discussion regarding the distinction between the handling of arrest warrant affidavits and search warrant affidavits and whether such a distinction was necessary. The question as to the difference in the handling of these affidavits was raised. The point was made that before an arrest is made, it might be appropriate to make a distinction between the two, but once there is an arrest in a case, the search warrant affidavit should no longer be sealed. A discussion ensued as to the impact of opening the search warrant affidavit on an ongoing investigation or on a case where there are multiple defendants, and the potential impact on law enforcement of opening these affidavits. Concern was expressed as to the difficulty of keeping confidential sensitive information on a search warrant affidavit if the state is required to have a hearing in open court on the continuation of the sealing order. The discussion continued and a proposal was made that the committee recommend that:

1. No extension on the sealing of an affidavit in support of an arrest warrant or a search warrant can exceed fourteen days.
2. Any extension of the sealing of an affidavit in support of the search warrant subsequent to an arrest should be subject to the provisions of Conn.Pr.Bk. Sec. 42-49A.

3. Language should be added to the form "Unless extended, this sealing order expires on \_\_\_\_\_." Or "Unless the sealing order is extended, this affidavit is open on \_\_\_\_\_."

There was no consensus on this proposal. The staff will obtain copies of the forms and forward this proposal to the chief state's attorney to solicit feedback.

The next item considered was the automatic sealing of financial affidavits under Practice Book § 25-59A. Questions were raised as to the existence of any legitimate public interest in the personal financial information of individuals in uncontested dissolution actions, in contrast to the significant privacy interests. Judge Dewey emphasized that, unlike other civil matters, individuals have no choice but to institute judicial proceedings to obtain a dissolution. Ms. Griffin raised the question of public figures; is the public interest more compelling in those types of cases? Judge Alander stated that the guiding principles require everything be open unless there is a compelling interest to keep it closed, and expressed the view that family privacy is not a compelling interest. A discussion ensued as to the proper balance between privacy and openness in these matters. The suggestion was made to continue to seal the financial affidavits in an uncontested matter, but to provide an opportunity for the public to seek and obtain access to it when there is a strong public interest. A judge would decide whether or not to unseal the affidavit. A person would be able to intervene to gain access and the burden would be on the party seeking to keep the document confidential. After further discussion, there was no consensus on this issue.

After discussion, the committee recommended no changes to the following records or rules: rules on sealing of files and documents under Practice Book §§ 7-4A and 11-20A, lodged records under Practice Book §§ 7-4C and 77-2, the retention schedule for files and records under Practice Book §§ 7-10 – 7-16, the retention of short calendar records under Practice Book § 7-20, protective orders made in connection with discover under Practice Book §§ 13-5 (civil cases), 40-41 – 40-43 (criminal matters), the Protective Order Registry under C.G.S. § 51-5c, the sealing of court ordered subpoenas under Practice Book § 40-2, sealing the personal residence address of police officers and of witnesses upon written request under Practice Book § 40-13, records of an *in camera* proceeding under Practice Book § 40-42, the return of depositions under Practice Book § 40-53, and the judge's prohibition extra-judicial statements under Practice Book § 42-48. After discussion, the committee recommended no change to the rule on the destruction of exhibits under Practice Book § 7-21, but Ms. Griffin specifically abstained on this issue.

After discussion, the committee agreed that the rule regarding nondisclosure of the statement of the amount in demand under Practice Book § 16-19 is not an issue because the document itself is a public record. Similarly, objections to disclosure under Practice Book § 40-8 are not an issue because they are not sealed from the public.

The next item was the motion for leave to withdraw as court appointed counsel under Practice Book § 23-41. After discussion, Ms. Griffin requested time to review this section before any recommendations are made.

After a brief break, the committee reconvened to discuss presentence investigation reports. Staff provided information regarding the handling of these reports in other states which indicates that the vast majority of states keep these reports closed (copy attached to and incorporated into these Minutes). Some states that indicate the PSI is open (i.e., Kansas) exclude most of the material in the report from public access.

Attorney Ron Gold, from the public defender's office was in attendance and addressed the committee. The position of the public defender is that the report as a whole should remain confidential. The office had not discussed the release of selected information in the report. Attorney Gold indicated that there is a great deal of information, including education and military records, medical records, substance abuse treatment records, family background and history, employment records, and mental health records, contained in these reports. His clients execute a limited release, giving Probation access to these records for the purposes of preparing the report only. The release does not contemplate public access to this information. If the form were modified to provide for public access, he would probably advise a client not to sign the form. He also said that making these reports public would chill the open disclosure of information to Probation by others, including employers, for example. Another concern Attorney Gold raised was the hearsay contained in these reports, i.e., the victim impact statement, and the lack of a process to make corrections to these presentence investigation reports. He indicated that if the committee is interested in looking at something less than disclosure of the full report, the public defenders could certainly submit something with respect to what should or should not be disclosed from their perspective.

There was an extensive discussion about various aspects of these reports, their status as a court record, and the impact of making them open to the public. Judge Clifford pointed out that probation officers do not make specific sentencing recommendations in these reports. The point was made that not all probation officers prepare the reports in the same way; therefore, different information and different levels of detail may be found in different reports. Also, Attorney Gold stated that he would have to canvass a client on whether they understood that all this information would be made public before recommending that they provide information for a presentence investigation report. The committee will follow up on the earlier requests for input from probation and the chief state's attorney. There is currently no consensus on the status of these reports.

The next item discussed was erased records. Under various statutes, certain records are erased, i.e., upon the completion of a program or after a pardon or after a finding of not guilty in a criminal case. The point was made that this concept is unrealistic in an electronic age, where information remains out in public after it is theoretically erased. There was an extensive discussion about erased records and the ability of people to download information and retain it so that it cannot be erased. The point was made that these records still exist in the records of other law enforcement agencies even after they are "erased" by statute.

Ms. Collins raised the question about having a criminal docket from a prior date remain available for more than a single day. The clerks are required to redact certain information before the docket can be released. The original docket cannot be released to the public. The committee agreed to defer further discussion on this issue until it discussed the posting of the criminal docket. Ms. Collins also indicated that there should

be access to the information that someone has been admitted to a diversionary program, i.e., alcohol education program. After brief discussion, Judge Ment agreed to look at the programs available and provide the committee with information at the next meeting.

The committee has meetings scheduled on July 6<sup>th</sup>, July 11<sup>th</sup>, and July 18<sup>th</sup>. The meeting scheduled for July 18<sup>th</sup> will be changed to July 17<sup>th</sup>.

The meeting was adjourned at 4:50 PM.

Examples of Access to  
Pre-sentence Investigation Reports in Other Jurisdictions

Alabama	Closed; but shall be made available to the court, the district attorney, defendant's attorney, pro se defendant, and victim. Code of Alabama §§13A-5-5, 13A-5-47; 15-23-73; Rule 26 of the Rules of Criminal Procedure
Alaska	Closed; but can further disclose to agents of state's attorney, defense attorney, any reviewing court and agencies having charge of defendant's rehabilitation.
Arizona	Open; Reports prepared under Rules 26.4 [pre-sentence report], 26.5 [diagnostic evaluation and mental health examination] and 26.7(c) [pre-hearing conference report] are matters of public record unless otherwise provided by the court or made confidential by law. Rule 26.6 of the Rules of Criminal Procedure. (Copy attached.)
California	Open to the public for 60 days from sentencing. California Penal Code § 1203.05 (Copy attached.)
Connecticut	Closed
Delaware	Closed; Administrative Directive No. 2000-5
Florida	Closed; disclosure only to parties.
Georgia	Closed.
Hawaii	Sealed; Criminal LR 32.1 Sentencing Procedure
Idaho	Sealed; Criminal Rule 32
Illinois	Sealed; 730 ILCS 5/ § 5-3-4 (Disclosure of Reports)
Indiana	Closed; Rule 9 (G)(1)(b)(viii) of the Indiana Administrative Rules (Access to Court Records)
Iowa	Closed; Iowa Code § 901.4

Kansas	Open. The presentence report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessment and drug and alcohol reports and assessments shall be accessible only to the parties, the sentencing judge, the department of corrections, and if requested, the Kansas sentencing commission. K. S. A. §21-4714, as amended by Section 3 of Senate Bill 434 of 2006. (Copy attached.)
Kentucky	Closed; copy given to defense counsel, K.R.S. § 532.050
Louisiana	Closed; La. Rev. Stat. Ann. §15:574.12
Maryland	Closed; Maryland Code §6-112
Massachusetts	Closed to public, but open to parties for inspection/no copies; Rule 28 of the Rules of Criminal Procedure
Michigan	Closed to public, but open to defendant's lawyer, pro se defendant and prosecutor. Certain portions of the report can be ordered exempt from disclosure by the court. Michigan Administrative Code R 791.9910; Court Rules §6.425
Minnesota	Closed to public, but written report available to defendant, defendant's attorney and prosecutor. Report shall not disclose confidential sources, unless otherwise directed by court. Minnesota Statutes §6-9.115
Montana	Closed, part of court record but not open to public inspection; MCA 46-18-113(1)
Nebraska	Closed
Pennsylvania	Closed; Rule 703 of the Rules of Criminal Procedure
Utah	Private, but public if subject give written permission.
Vermont	Closed; 28 V.S.A. §204 (d)
Wisconsin	Confidential, unless opened by court.

**CALIFORNIA**  
*California Penal Code*

§ 1203.05

Any report of the probation officer filed with the court, including any report arising out of a previous arrest of the person who is the subject of the report, may be inspected or copied only as follows:

(a) By any person, from the date judgment is pronounced or probation granted or, in the case of a report arising out of a previous arrest, from the date the subsequent accusatory pleading is filed, to and including 60 days from the date judgment is pronounced or probation is granted, whichever is earlier.

(b) By any person, at any time, by order of the court, upon filing a petition therefor by the person.

(c) By the general public, if the court upon its own motion orders that a report or reports shall be open or that the contents of the report or reports shall be disclosed.

(d) By any person authorized or required by law to inspect or receive copies of the report.

(e) By the district attorney of the county at any time.

(f) By the subject of the report at any time.

*California Rules for Criminal Cases in the Superior Court*

RULE 4.411.5. PROBATION OFFICER'S PRESENTENCE INVESTIGATION REPORT

(a) [Contents] A probation officer's presentence investigation report in a felony case shall include at least the following:

(1) A face sheet showing at least: (i) the defendant's name and other identifying data; (ii) the case number; (iii) the crime of which the defendant was convicted; (iv) the date of commission of the crime, the date of conviction, and any other dates relevant to sentencing; (v) the defendant's custody status; and (vi) the terms of any agreement upon which a plea of guilty was based.

(2) The facts and circumstances of the crime and the defendant's arrest, including information concerning any co-defendants and the status or disposition of their cases. The source of all such information shall be stated.

(3) A summary of the defendant's record of prior criminal conduct, including convictions as an adult and sustained petitions in juvenile delinquency proceedings. Records of an arrest or charge not leading to a conviction or the sustaining of a petition shall not be included unless supported by facts concerning the arrest or charge.

(4) Any statement made by the defendant to the probation officer, or a summary thereof, including the defendant's account of the circumstances of the crime.

(5) Information concerning the victim of the crime, including: (i) the victim's statement or a summary thereof, if available; (ii) the amount of the victim's loss, and whether or not it is covered by insurance; and (iii) any information required by law.

(6) Any relevant facts concerning the defendant's social history, including but not limited to those categories enumerated in section 1203.10, organized under appropriate subheadings, including, whenever applicable, "Family," "Education," "Employment and income," "Military," "Medical/psychological," "Record of substance abuse or lack thereof," and any other relevant subheadings.

(7) Collateral information, including written statements from: (i) official sources such as defense and prosecuting attorneys, police (subsequent to any police reports used to summarize the crime), probation and parole officers who have had prior experience with the defendant, and correctional personnel who observed the defendant's behavior during any period of presentence incarceration; and (ii) interested persons, including family members and others who have written letters concerning the defendant.

(8) An evaluation of factors relating to disposition. This section shall include: (i) a reasoned discussion of the defendant's suitability and eligibility for probation, and if probation is recommended, a proposed plan including recommendation for the conditions of probation and any special need for supervision; (ii) if a prison sentence is recommended or is likely to be imposed, a reasoned discussion of aggravating and mitigating factors affecting the sentence length; and (iii) a discussion of the defendant's ability to make restitution, pay any fine or penalty which may be recommended, or satisfy any special conditions of probation which are proposed. Discussions of factors affecting suitability for probation and affecting the sentence length shall refer to any sentencing rule directly relevant to the facts of the case, but no rule shall be cited without a reasoned discussion of its relevance and relative importance.

(9) The probation officer's recommendation. When requested by the sentencing judge or by standing instructions to the probation department, the report shall include recommendations concerning the length of any prison term that may be imposed, including the base term, the imposition of concurrent or consecutive sentences, and the imposition or striking of the additional terms for enhancements charged and found.

(10) Detailed information on presentence time spent by the defendant in custody, including the beginning and ending dates of the period(s) of custody; the existence of any other sentences imposed on the defendant during the period of custody; the amount of good behavior, work, or participation credit to which the defendant is entitled; and whether the sheriff or other officer holding custody, the prosecution, or the defense wishes a hearing be held for the purposes of denying good behavior, work, or participation credit.

(11) A statement of mandatory and recommended restitution, restitution fines, other fines, and costs to be assessed against the defendant, including chargeable probation

services and attorney fees under section 987.8 when appropriate, findings concerning the defendant's ability to pay, and a recommendation whether any restitution order shall become a judgment under section 1203(j) if unpaid.

(b) [Format] The report shall be on paper 8-½ by 11 inches in size and shall follow the sequence set out in subdivision (a) to the extent possible.

(c) [Sources] The source of all information shall be stated. Any person who has furnished information included in the report shall be identified by name or official capacity unless a reason is given for not disclosing the person's identity.

## **ARIZONA**

### *Arizona Rules of Criminal Procedure*

Rule 26.6. Disclosure of the pre-sentence, diagnostic, and mental health reports.

a. Disclosure to the parties. The court shall permit the prosecutor and defense counsel, or if without counsel, the defendant, to inspect all presentence, diagnostic and mental health reports. A portion of any report not made available to one party shall not be made available to any other. Once the pre-sentence report is made available to the defendant, the court shall permit the victim to inspect it except those parts excised by the court or made confidential by law.

b. Date of disclosure. Reports ordered under rules 26.4 and 26.5 shall be made available to the parties at least 2 days prior to the date set for sentencing. Reports ordered under Rule 26.7(c) shall be made available no more than 2 days after delivery to the court and no less than 2 days prior to the pre-sentencing hearing unless agreed otherwise by the parties.

c. Excision. The court may excise from the copy of the pre-sentence, diagnostic and mental health reports disclosed to the parties:

(1) Diagnostic opinions which may seriously disrupt a program of rehabilitation,

(2) Sources of information obtained on a promise of confidentiality and,

(3) Information which would disrupt an existing police investigation. When a portion of the pre-sentence report is not disclosed, the court shall inform the parties and shall state on the record its reasons for making the excision.

d. Disclosure after sentencing. (1) After sentencing, all diagnostic, mental health and pre-sentence reports, other than those portions excised under (c)(2) and (c)(3), shall be furnished to persons having direct responsibility for the custody, rehabilitation, treatment and release of the defendant, the unexcised reports shall be made available to a reviewing court when a relevant issue has been raised and to a court sentencing the defendant after a subsequent conviction.

(2) Neither a pre-sentence report nor any statement made in connection with its preparation shall be admissible as evidence in any proceeding bearing on the issue of guilt.

e. Public disclosure of pre-sentence diagnostic and mental health reports. Reports prepared under Rules 26.4, 26.5 and 26.7(c) are matters of public record unless otherwise provided by the court or made confidential by law.

(Amended May 7, 1975, effective Aug. 1, 1975; amended Sept. 24, 1992, effective Sept. 30, 1992; amended Feb. 25, 1993, effective June 1, 1993; amended July 28, 1993, effective Dec. 1, 1993.)

### *Arizona Statutes*

#### 12-253. Powers and duties

The adult probation officer shall:

1. Make and file a complete record of persons placed under suspended sentence by the court, and of all reports made to the officer in writing or in person, in accordance with the conditions imposed by the court.
2. Exercise general supervision and observation over persons under suspended sentence, subject to control and direction by the court.
3. Serve warrants, make arrests and bring persons before the court who are under suspended sentences. The officer has the authority of a peace officer in the performance of the officer's duties.
4. Investigate cases referred to the officer for investigation by the court in which the officer is serving and report to the court. In an investigation for a presentence report, the adult probation officer shall promptly inquire into the circumstances of the offense, the convicted person's history of delinquency or criminality, social history, employment history, family situation, economic status, including the ability to contribute to reimbursement for the costs of the person's legal defense pursuant to section [11-584](#), education and personal habits. The presentence report shall contain a recommendation by the officer regarding contribution by the convicted person toward the costs of legal defense pursuant to section [11-584](#). The officer shall also promptly inquire into the physical, emotional and financial impact of the offense on the victim and the emotional and financial impact of the offense on the immediate family of the victim and shall notify the victim or the immediate family of the victim of the right to appear personally or by counsel at any aggravation or mitigation proceeding.
5. Secure and keep a complete identification record of every person released under a suspended sentence and a written statement of the conditions of the suspension.
6. Obtain and assemble information concerning the conduct of persons placed under suspended sentence and report the information to the court.

7. Bring defaulting probationers into court when in his judgment the conduct of the probationer justifies the court to revoke suspension of the sentence.

## **KANSAS**

K.S.A. [21-4714](#).

(a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

(b) Each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction.

(2) If the defendant desires to do so, a summary of the defendant's version of the crime.

(3) When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.

(4) An appropriate classification of each crime of conviction on the crime severity scale.

(5) A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal history on the criminal history scale and the source of information regarding each listed prior conviction and any available source of journal entries or other documents through which the listed convictions may be verified. If any such journal entries or other documents are obtained by the court services officer, they shall be attached to the presentence investigation report. Any prior criminal history worksheets of the defendant shall also be attached.

(6) A proposed grid block classification for each crime, or crimes of conviction and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block which presumes imprisonment, the presumptive prison term range and the presumptive duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the presumptive prison term range and the presumptive duration of the nonprison sanction as it relates to the crime severity scale and the court services officer's professional assessment as to recommendations for conditions to be mandated as part of the nonprison sanction.

(9) For defendants who are being sentenced for a conviction of a felony violation of K.S.A. [65-4160](#) or [65-4162](#), and amendments thereto, and meet the requirements of K.S.A. 2005 Supp. [21-4729](#), and amendments thereto, the drug and alcohol assessment as provided in K.S.A. 2005 Supp. [21-4729](#), and amendments thereto.

(c) The presentence report will become part of the court record and shall be accessible to the public, except that the official version, defendant's version and the victim's statement, any psychological reports, risk and needs assessments and drug and alcohol reports and assessments shall be accessible only to the parties, the sentencing judge, the department of corrections, and if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with K.S.A. [75-5220](#) and amendments thereto to the warden of the state correctional institution to which the defendant is conveyed.

(d) The criminal history worksheet will not substitute as a presentence report.

(e) The presentence report will not include optional report components, which would be subject to the discretion of the sentencing court in each district except for psychological reports and drug and alcohol reports.

(f) The court can take judicial notice in a subsequent felony proceeding of an earlier presentence report criminal history worksheet prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993.

(g) All presentence reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas sentencing commission.