November 01, 2010

TO: Special Committee on Review of Records Access to Circuit Court Documents

FR: Attorney Mary C. Delaney

RE: Concerns regarding Access

Dear Committee Members:

At the committee meeting on September 15, 2010, some changes in the laws governing the maintenance and management of records were proposed in order to mitigate some of the adverse collateral consequences of the dissemination of this information. Following are examples from other states addressing some of the issues previously raised.

SUNSET PROVISIONS/OTHER CONSIDERATIONS REGARDING DURATION OF RECORD RETENTION AND PROVISIONS FOR SEALING***: At the last committee meeting, concerns were raised that the long duration of record retention has an adverse impact on rehabilitation. Other states have limitations on duration of electronic records and provisions for sealing.***

- Arizona has max retention period for all electronic records at 25 yrs.

- Nevada has a provision for sealing records in criminal proceedings in cases where defendants were convicted of felonies but 15 years have elapsed since the date of the conviction:

Sealing Records of Criminal Proceedings (NRS 179.245)
If you were convicted of a felony and 15 years or more have elapsed from the date of your conviction (or release from actual custody if imprisoned), you may petition the court in which the conviction was obtained for the sealing of all records relating to the conviction. Please see NRS 179.245 for more information and restrictions regarding the sealing of a record. If you were convicted in Clark County, there is a self-help packet available online at:
NRS 179.245 Sealing records after conviction: Persons eligible; petition; notice; hearing; order.

1. Except as otherwise provided in subsection 5 and NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a person may petition the court in which the person was convicted for the sealing of all records relating to a conviction of:

(a) A category A or B felony after 15 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(b) A category C or D felony after 12 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(c) A category E felony after 7 years from the date of release from actual custody or discharge from parole or probation, whichever occurs later;

(d) Any gross misdemeanor after 7 years from the date of release from actual custody or discharge from probation, whichever occurs later;

(e) A violation of NRS 484C.110 or 484C.120 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, after 7 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later; or

(f) Any other misdemeanor after 2 years from the date of release from actual custody or from the date when the person is no longer under a suspended sentence, whichever occurs later.

2. A petition filed pursuant to subsection 1 must:

(a) Be accompanied by current, verified records of the petitioner's criminal history received from:

(1) The Central Repository for Nevada Records of Criminal History; and

(2) The local law enforcement agency of the city or county in which the conviction was entered;

(b) Include a list of any other public or private agency, company, official or other custodian of records that is reasonably known to the petitioner to have possession of records of the conviction and to whom the order to seal records, if issued, will be directed; and

(c) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

3. Upon receiving a petition pursuant to this section, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the person was convicted in a district court or justice court, the prosecuting attorney for the county; or

(b) If the person was convicted in a municipal court, the prosecuting attorney for the city.

3. The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

4. If, after the hearing, the court finds that, in the period prescribed in subsection 1, the petitioner has not been charged with any offense for which the charges are pending or convicted of any offense, except for minor moving or standing traffic violations, the court may order sealed all records of the conviction which are in the custody of the court, of another court in the State of Nevada or of a public or private agency, company or official in the State of Nevada, and may also order all such criminal identification records of the petitioner returned to the file of the court where the proceeding was commenced from, including, but not limited to, the Federal Bureau of Investigation, the California Bureau of Criminal Identification and Information, sheriffs' offices and all other law enforcement agencies reasonably known by either the petitioner or the court to have possession of such records.

5. A person may not petition the court to seal records relating to a conviction of a crime against a child or a sexual offense.

6. If the court grants a petition for the sealing of records pursuant to this section, upon the request of the person whose records are sealed, the court may order sealed all records of the civil proceeding in which the records were sealed.

7. As used in this section:

(a) "Crime against a child" has the meaning ascribed to it in NRS 179D.0357.

(b) "Sexual offense" means:

(1) Murder of the first degree committed in the perpetration or attempted perpetration of sexual assault or of sexual abuse or sexual molestation of a child less than 14 years of age pursuant to paragraph (b) of subsection 1 of NRS 200.030.

(2) Sexual assault pursuant to NRS 200.366.

(3) Statutory sexual seduction pursuant to NRS 200.368, if punishable as a felony.

(4) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(5) An offense involving the administration of a drug to another person with the intent to enable or assist the commission of a felony pursuant to NRS 200.405, if the felony is an offense listed in this paragraph.

(6) An offense involving the administration of a controlled substance to another person with the intent to enable or assist the commission of a crime of violence pursuant to NRS 200.408, if the crime of violence is an offense listed in this paragraph.

(7) Abuse of a child pursuant to NRS 200.508, if the abuse involved sexual abuse or sexual exploitation.

(8) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(9) Incest pursuant to NRS 201.180.

(10) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.

(11) Open or gross lewdness pursuant to NRS 201.210, if punishable as a felony.

(12) Indecent or obscene exposure pursuant to NRS 201.220, if punishable as a felony.

(13) Lewdness with a child pursuant to NRS 201.230.

(14) Sexual penetration of a dead human body pursuant to NRS 201.450.

(15) Luring a child or a person with mental illness pursuant to NRS 201.560, if punishable as a felony.

(16) An attempt to commit an offense listed in subparagraphs (1) to (15), inclusive.

(Added to NRS by 1971, 955; A 1983, 1088; 1991, 303; 1993, 38; 1997, 1673, 1803, 3159; 1999, 647, 648, 649; 2001, 1167, 1692; 2001 Special Session, 261; 2003, 312, 316, 319, 1385; 2005, 2355; 2007, 2751; 2009, 105, 418, 1884)

Nevada also has a provision for sealing records in certain circumstances for individuals who have successfully completed programming after being paroled

NRS 179.259 Sealing records after completion of program for reentry: Persons eligible; procedure; order; inspection of sealed records by professional licensing board.

1. Except as otherwise provided in subsections 3 and 4, 5 years after an eligible person completes a program for reentry, the court may order sealed all documents, papers and exhibits in the eligible person's record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order. The court may order those

records sealed without a hearing unless the Division of Parole and Probation of the Department of Public Safety petitions the court, for good cause shown, not to seal the records and requests a hearing thereon.

2. If the court orders sealed the record of an eligible person, the court shall send a copy of the order to each agency or officer named in the order. Each such agency or officer shall notify the court in writing of its compliance with the order.

3. A professional licensing board is entitled, for the purpose of determining suitability for a license or liability to discipline for misconduct, to inspect and to copy from a record sealed pursuant to this section.

4. A person may not petition the court to seal records relating to a conviction of a crime against a child or a sexual offense.

5. As used in this section:

(a) "Crime against a child" has the meaning ascribed to it in NRS 179D.0357.

(b) "Eligible person" means a person who has:

(1) Successfully completed a program for reentry to which the person participated in pursuant to NRS 209.4886, 209.4888, 213.625 or 213.632; and

(2) Been convicted of a single offense which was punishable as a felony and which did not involve the use or threatened use of force or violence against the victim. For the purposes of this subparagraph, multiple convictions for an offense punishable as a felony shall be deemed to constitute a single offense if those offenses arose out of the same transaction or occurrence.

(c) "Program for reentry" means:

(1) A correctional program for reentry of offenders and parolees into the community that is established by the Director of the Department of Corrections pursuant to NRS 209.4887; or

(2) A judicial program for reentry of offenders and parolees into the community that is established in a judicial district pursuant to NRS 209.4883.

(d) "Sexual offense" has the meaning ascribed to it in paragraph (b) of subsection 7 of NRS 179.245.

(Added to NRS by 2001, 1166; A 2003, 26, 2586; 2007, 2753)

NRS 179.265 Rehearings after denial of petition: Time for; number.

1. A person whose petition is denied under NRS 179.245 or 179.255 may petition for a rehearing not sooner than 2 years after the denial of the previous petition.

2. No person may petition for more than two rehearings.

(Added to NRS by 1971, 956)

NRS 179.275 Order sealing records: Distribution to Central Repository and persons named in order; compliance. Where the court orders the sealing of a record pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330, a copy of the order must be sent to:

1. The Central Repository for Nevada Records of Criminal History; and

2. Each public or private company, agency or official named in the order, and that person shall seal the records in his or her custody which relate to the matters contained in the order, shall advise the court of compliance and shall then seal the order.

(Added to NRS by 1971, 956; A 1991, 304; 1999, 2089; 2001, 1168; 2001 Special Session, 261; 2003, 312; 2009, 107, 420)

DURATION OF RETENTION OF RECORDS IN CASES OF DIVERSIONS:
At the last committee meeting, concerns were raised about the long duration of record retention infringing on the potential for rehabilitation particularly in cases where there have been a deferred prosecution. Currently, people who receive diversion programs have no avenue to have the information about their case removed even if they successfully complete the program. Other States have provisions addressing this issue.

Vermont has procedure for automatically sealing records after two years for those people who successfully complete a diversion program:

§ 164. Adult court diversion project.

(a) The attorney general shall develop and administer an adult court diversion project in all counties. The project shall be operated through the juvenile diversion project and shall be designed to assist adult first-time offenders. The attorney general shall adopt only such rules as are necessary to establish an adult court diversion project for adults, in compliance with this section.

(b) The adult court diversion project administered by the attorney general shall encourage the development of diversion projects in local communities through grants of financial assistance to municipalities, private groups or other local organizations. The attorney general may require local financial contributions as a condition of receipt of project grants.

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated.

(2) Alleged offenders shall be informed of their right to the advice and assistance of private counsel or the public defender at all stages of the diversion process, including the initial decision to participate, and the decision to accept the adult diversion contract, so that the candidate may give informed consent.

(3) The participant shall be informed that his selection of the adult diversion contract is voluntary.

(4) Each state's attorney, in cooperation with the adult court diversion project, shall develop clear criteria for deciding what types of offenses and offenders will be eligible for diversion; however, the state's attorney shall retain final discretion over the referral of each case for diversion.

(5) All information gathered in the course of the adult diversion process shall be held strictly confidential and shall not be released without the participant's prior consent (except that research and reports that do not require or establish the identity of individual participants are allowed).

(6) Information related to the present offense that is divulged during the adult diversion program shall not be used in the prosecutor's case. However, the fact of participation and success, or reasons for failure may become part of the prosecutor's records.

(7) (A) The adult court diversion project shall maintain sufficient records so that the reasons for success or failure of the program in particular cases and overall can be investigated by program staff. These records shall include a

centralized statewide filing system that will include the following information about individuals who have successfully completed an adult court diversion program:

(i) name and date of birth;

(ii) offense charged and date of offense;

(iii) place of residence;

(iv) county where diversion process took place; and

(v) date of completion of diversion process.

(B) These records shall not be available to anyone other than the participant and his or her attorney, state's attorneys, the attorney general and directors of adult court diversion projects.

(8) Adult court diversion projects shall be set up to respect the rights of participants.

(9) Subdivision (c)(9) effective until July 1, 2011; see subdivision (c)(9) and note set out below. Each participant shall pay a fee to the local adult court diversion project. The amount of the fee shall be determined by project officers or employees based upon the financial capabilities of the participant. The fee shall not exceed $300.00. The fee shall be a debt due from the participant, and payment of such shall be required for successful completion of the program. Fees under this subdivision shall be paid to the court diversion fund and shall be used solely for the purposes of the court diversion program.

(9) Subdivision (c)(9) effective July 1, 2011; see subdivision (c)(9) above and note set out below. Each participant shall pay a fee to the local adult court diversion project. The amount of the fee shall be determined by project officers or employees based upon the financial capabilities of the participant. The fee shall not exceed $300.00. The fee shall be a debt due from the participant, but shall not be grounds for exclusion from participation in the program. Fees under this subdivision shall be paid to the court diversion fund and shall be used solely for the purposes of the court diversion program.

(d) The attorney general is authorized to accept grants and gifts for the purposes of this section, such acceptance being pursuant to section 5 of Title 32.

(e) Within 30 days of the two-year anniversary of a successful completion of adult diversion, the court shall provide notice to all parties of record of the court's intention to order the sealing of all court files and records, law enforcement records other than entries in the adult court diversion project's centralized filing system, fingerprints, and photographs applicable to the proceeding. The court shall give the state's attorney an opportunity for a hearing to contest the sealing of the records. The court shall seal the records if it finds:

(1) two years have elapsed since the successful completion of the adult diversion program by the participant and the dismissal of the case by the state's attorney; and

(2) the participant has not been convicted of a subsequent felony or misdemeanor during the two-year period, and no proceedings are pending seeking such conviction; and

(3) rehabilitation of the participant has been attained to the satisfaction of the court.

(f) Upon the entry of an order sealing such files and records under this section, 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. Copies of the order shall be sent to each agency or official named therein.

(g) Inspection of the files and records included in the order may thereafter be permitted by the court only upon petition by the participant who is the subject of such records, and only to those persons named therein.

(h) The process of automatically sealing records as provided in this section shall only apply to those persons who completed diversion on or after July 1, 2002. Any person who completed diversion prior to July 1, 2002 must apply to the court to have his or her records sealed. Sealing shall occur if the requirements of subsection (e) of this section are met.

(i) Subject to the approval of the attorney general, the Vermont association of court diversion programs may develop and administer programs to assist persons under this section charged with delinquent, criminal, and civil offenses.

Added 1981, No. 206 (Adj. Sess.), § 2; amended 1983, No. 217 (Adj. Sess.); No. 229 (Adj. Sess.), § 1; 1995, No. 47, § 2, eff. April 20, 1995; 1999, No. 160 (Adj. Sess.), § 3; 2003, No. 157 (Adj. Sess.), § 12; 2009, No. 12, § 2.

Concerns were raised at the last committee meeting that there is confusion with regard to reporting requirement in cases where files have been expunged or sealed.

Massachusetts has a provision in its statute that addresses this issue:
Section 100A. Any person having a record of criminal court appearances and dispositions in the commonwealth on file with the office of the commissioner of probation may, on a form furnished by the commissioner and signed under the penalties of perjury, request that the commissioner seal such file. The commissioner shall comply with such request provided (1) that said person's court appearance and court disposition records, including termination of court supervision, probation or sentence for any misdemeanor occurred not less than ten years prior to said request; (2) that said person's court appearance and court disposition records, including termination of court supervision, probation or sentence for any felony occurred not less than fifteen years prior to said request; (3) that said person had not been found guilty of any criminal offense within the commonwealth in the ten years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars; (4) said form includes a statement by the petitioner that he has not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses, as aforesaid, and has not been imprisoned in any state or county within the preceding ten years; and (5) said person's record does not include convictions of offenses other than those to which this section applies. This section shall apply to court appearances and dispositions of all offenses provided, however, that this section shall not apply in case of convictions for violations of sections one hundred and twenty-one to one hundred and thirty-one H, inclusive, of chapter one hundred and forty or for violations of chapter two hundred and sixty-eight or chapter two hundred and sixty-eight A.
In carrying out the provisions of this section, notwithstanding any laws to the contrary:
1. Any recorded offense which was a felony when committed and has since become a misdemeanor shall be treated as a misdemeanor.
2. Any recorded offense which is no longer a crime shall be eligible for sealing forthwith, except in cases where the elements of the offense continue to be a crime under a different designation.
3. In determining the period for eligibility, any subsequently recorded offenses for which the dispositions are "not guilty", "dismissed for want of prosecution", "dismissed at request of complainant", "nol prossed", or "no bill" shall not be held to interrupt the running of the required period for eligibility.
4. If it cannot be ascertained that a recorded offense was a felony when committed said offense shall be treated as a misdemeanor.
When records of criminal appearances and criminal dispositions are sealed by the commissioner in his files, he shall notify forthwith the clerk and the probation officer of the courts in which the convictions or dispositions have occurred, or other entries have been made, of such sealing, and said clerks and probation officers likewise shall seal records of the same proceedings in their files.
Such sealed records shall not operate to disqualify a person in any examination, appointment or application for public service in the service of the commonwealth or of any political subdivision thereof; nor shall such sealed records be admissible in evidence

or used in any way in any court proceedings or hearings before any boards or commissions, except in imposing sentence in subsequent criminal proceedings. An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: "*An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with a sealed record on file with the commissioner of probation may answer 'no record' to an inquiry herein relative to prior arrests or criminal court appearances. (Emphasis added)* In addition, any applicant for employment may answer 'no record' with respect to any inquiry relative to prior arrests, court appearances and adjudications in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution." The attorney general may enforce the provisions of this paragraph by a suit in equity commenced in the superior court. *The commissioner, in response to inquiries by authorized persons other than any law enforcement agency, any court, or any appointing authority, shall in the case of a sealed record or in the case of court appearances and adjudications in a case of delinquency or the case of a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution, report that no record exists.*

EXAMPLES OF SPECIFIC PROVISIONS FOR SEALING IN THE CASE OF DISMISSALS:

Nevada Has A Specific Statute Providing for Sealing of Records in the Case of Dismissal or Acquittal:

NRS 179.255 Sealing records after dismissal or acquittal: Petition; notice; hearing; order.

1. If a person has been arrested for alleged criminal conduct and the charges are dismissed or such person is acquitted of the charges, the person may petition:

(a) The court in which the charges were dismissed, at any time after the date the charges were dismissed; or

(b) The court in which the acquittal was entered, at any time after the date of the acquittal, for the sealing of all records relating to the arrest and the proceedings leading to the dismissal or acquittal.

2. If the conviction of a person is set aside pursuant to NRS 458A.240, the person may petition the court that set aside the conviction, at any time after the conviction has been set aside, for the sealing of all records relating to the setting aside of the conviction.

3. A petition filed pursuant to subsection 1 or 2 must:

(a) Be accompanied by a current, verified record of the criminal history of the petitioner received from the local law enforcement agency of the city or county in which the petitioner appeared in court;

(b) Include a list of any other public or private agency, company, official and other custodian of records that is reasonably known to the petitioner to have possession of records of the arrest and of the proceedings leading to the dismissal or acquittal and to whom the order to seal records, if issued, will be directed; and

(c) Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.

4. Upon receiving a petition pursuant to subsection 1, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the charges were dismissed or the acquittal was entered in a district court or justice court, the prosecuting attorney for the county; or

(b) If the charges were dismissed or the acquittal was entered in a municipal court, the prosecuting attorney for the city.

 The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

5. Upon receiving a petition pursuant to subsection 2, the court shall notify:

(a) If the conviction was set aside in a district court or justice court, the prosecuting attorney for the county; or

(b) If the conviction was set aside in a municipal court, the prosecuting attorney for the city.

 The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.

6. If, after the hearing on a petition submitted pursuant to subsection 1, the court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal or dismissal which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

7. If, after the hearing on a petition submitted pursuant to subsection 2, the court finds that the conviction of the petitioner was set aside pursuant to NRS

458A.240, the court may order sealed all records relating to the setting aside of the conviction which are in the custody of the court, of another court in the State of

Nevada or of a public or private company, agency or official in the State of Nevada.

(Added to NRS by 1971, 955; A 1997, 3160; 2001, 1693; 2009, 1439)

NRS 179.285 Order sealing records: Effect; proceedings deemed never to have occurred; restoration of civil rights. Except as otherwise provided in NRS 179.301:

1. If the court orders a record sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330:

(a) All proceedings recounted in the record are deemed never to have occurred, and the person to whom the order pertains may properly answer accordingly to any inquiry, including, without limitation, an inquiry relating to an application for employment, concerning the arrest, conviction, dismissal or acquittal and the events and proceedings relating to the arrest, conviction, dismissal or acquittal.

(b) The person is immediately restored to the following civil rights if the person's civil rights previously have not been restored:

(1) The right to vote;

(2) The right to hold office; and

(3) The right to serve on a jury.

2. Upon the sealing of the person's records, a person who is restored to his or her civil rights must be given an official document which demonstrates that the person has been restored to the civil rights set forth in paragraph (b) of subsection 1.

3. A person who has had his or her records sealed in this State or any other state and whose official documentation of the restoration of civil rights is lost, damaged or destroyed may file a written request with a court of competent jurisdiction to restore his or her civil rights pursuant to this section. Upon verification that the person has had his or her records sealed, the court shall issue an order restoring the person to the civil rights to vote, to hold office and to serve on a jury. A person must not be required to pay a fee to receive such an order.

4. A person who has had his or her records sealed in this State or any other state may present official documentation that the person has been restored to his or her civil rights or a court order restoring civil rights as proof that the person has been restored to the right to vote, to hold office and to serve as a juror.

(Added to NRS by 1971, 956; A 1981, 1105; 1991, 304; 2001, 1169, 1694; 2001 Special Session, 262; 2003, 312, 316, 319, 2687; 2009, 108, 420)

NRS 179.295 Reopening of sealed records.

1. The person who is the subject of the records that are sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 may petition the court that ordered the records sealed to permit inspection of the records by a person named in the petition, and the court may order such inspection. Except as otherwise provided in this section and NRS 179.259 and 179.301, the court may not order the inspection of the records under any other circumstances.

2. If a person has been arrested, the charges have been dismissed and the records of the arrest have been sealed, the court may order the inspection of the records by a prosecuting attorney upon a showing that as a result of newly discovered evidence, the person has been arrested for the same or a similar offense and that there is sufficient evidence reasonably to conclude that the person will stand trial for the offense.

3. The court may, upon the application of a prosecuting attorney or an attorney representing a defendant in a criminal action, order an inspection of such records for the purpose of obtaining information relating to persons who were involved in the incident recorded.

4. This section does not prohibit a court from considering a conviction for which records have been sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 in determining whether to grant a petition pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 for a conviction of another offense.

(Added to NRS by 1971, 956; A 1981, 1105; 1991, 304; 1997, 3160; 2001, 1169, 1694; 2001 Special Session, 262; 2003, 312, 316, 319; 2009, 108, 420)

NRS 179.301 Inspection of sealed records by certain agencies.

1. The State Gaming Control Board and the Nevada Gaming Commission and their employees, agents and representatives may inquire into and inspect any records sealed pursuant to NRS 179.245 or 179.255, if the event or conviction was related to gaming, to determine the suitability or qualifications of any person to hold a state gaming license, manufacturer's, seller's or distributor's license or registration as a gaming employee

pursuant to chapter 463 of NRS. Events and convictions, if any, which are the subject of an order sealing records:

(a) May form the basis for recommendation, denial or revocation of those licenses.

(b) Must not form the basis for denial or rejection of a gaming work permit unless the event or conviction relates to the applicant's suitability or qualifications to hold the work permit.

2. A prosecuting attorney may inquire into and inspect any records sealed pursuant to NRS 179.245 or 179.255 if:

(a) The records relate to a violation or alleged violation of NRS 202.575; and

(b) The person who is the subject of the records has been arrested or issued a citation for violating NRS 202.575.

3. The Central Repository for Nevada Records of Criminal History and its employees may inquire into and inspect any records sealed pursuant to NRS 179.245 or 179.255 that constitute information relating to sexual offenses, and may notify employers of the information in accordance with NRS 179A.180 to 179A.240, inclusive.

4. Records which have been sealed pursuant to NRS 179.245 or 179.255 and which are retained in the statewide registry established pursuant to NRS 179B.200 may be inspected pursuant to chapter 179B of NRS by an officer or employee of the Central Repository for Nevada Records of Criminal History or a law enforcement officer in the regular course of his or her duties.

5. As used in this section:

(a) "Information relating to sexual offenses" means information contained in or concerning a record of criminal history, or the records of criminal history of the United States or another state, relating in any way to a sexual offense.

(b) "Sexual offense" has the meaning ascribed to it in NRS 179A.073.

(Added to NRS by 1981, 1105; A 1987, 1759; 1997, 1674; 2003, 2688, 2833; 2003, 20th Special Session, 16; 2005, 973)

At the last committee meeting, concerns were also raised that there is no provision for removal of records in the case of pardons.

MASSACHUSETTS HAS A PROVISION FOR SEALING RECORDS IF GOVENOR GRANTS PARDON:

Section 152. In a case in which the governor is authorized by the constitution to grant a pardon, he may, with the advice and consent of the council, and upon the written petition of the petitioner, grant it, subject to such conditions, restrictions and limitations as he considers proper, and he may issue his warrant to all proper officers to carry such pardon into effect. Such warrant shall be obeyed and executed instead of the sentence originally awarded.

If a sentence of death is imposed on a child under seventeen years of age, and if, before he reaches the age of seventeen, the governor pardons such child and commits him to the care of the department of youth services, said department shall assume control over him subject to the provisions of sections seventeen to twenty, inclusive, of chapter one hundred and twenty.

Every pardon petition shall, before its presentation to the governor, be filed with the parole board, acting as the advisory board of pardons, together with all statements and signatures appended thereto, and shall thereupon become a public record. Upon receipt, the advisory board of pardons shall process each petition in accordance with the applicable provisions of section one hundred and fifty-four.

In the case of a prisoner confined under sentence for a felony, no final action or vote shall be taken on such petition until after a public hearing has been held by the council. Such hearing shall be held as soon as practicable after the filing of such petition with the council. Any action taken by the council on such petition shall be taken by a roll call vote of the members present, recording and voting as yea or nay. The presence of a quorum and the vote of the majority of all members of the council present shall be necessary for the approval or disapproval of a petition. Within three days after such vote of the council, a certified copy of such roll call shall be filed with the state secretary for public inspection.

Upon approval of a petition for pardon, the governor shall direct all proper officers to seal all records relating to the offense for which the person received the pardon.

Such sealed records shall not disqualify a person in any examination, appointment or application for employment or other benefit, public or private, including, but not limited to, licenses, credit or housing, nor shall such sealed record be admissible in evidence or used in any way in any court proceeding or hearing before any board, commission or other agency except in imposing sentence in subsequent criminal proceedings or in any court proceeding or hearing in which an individual is accused of violating sections one, thirteen, thirteen B, thirteen C, thirteen F, thirteen G, thirteen H, fourteen, fifteen, fifteen A, fifteen B, sixteen, eighteen, eighteen A, eighteen B, twenty-two, twenty-two A, twenty-three, twenty-four, twenty-four B and twenty-six of chapter two hundred and sixty-five. *On any application or in an interview for employment, or in any other circumstances, where a person is asked whether he has been convicted of an offense, a person who has received a pardon for such offense may answer in the negative.(Emphasis Added)* The attorney general and the person so pardoned may

enforce the provisions of this paragraph by an action commenced in the superior court department of the trial court.
The governor, with the advice and consent of the council, may at any time revoke any pardon if he, with such advice and consent, determines that there is a misstatement of a material fact knowingly made at the time of the filing of the written petition of the petitioner, or that such pardon was procured by fraud, concealment or misrepresentation or that any provision of this section has not been complied with, and upon such revocation the governor may issue his warrant to all proper officers to take the person so pardoned into custody and return him to the institution where he was imprisoned at the time of the granting of the pardon.
Such warrant shall be obeyed and executed by the officers to whom it is issued, and the person whose pardon has been so revoked shall have the same standing in the penal institution to which he is returned as he would have had if said pardon had not been granted, except that the time during which he has been out of said penal institution upon such pardon, shall not be counted in determining the amount of his sentence remaining to be served upon such return to such institution.
The governor shall, at the end of each calendar year, transmit to the general court, by filing with the clerk of either branch, a list of pardons granted with the advice and consent of the council during such calendar year, together with action of the advisory board of pardons concerning each such pardon, and together with a list of any revocations of pardons made under this section.
The word "pardon" as used in this section shall be deemed to include any exercise of the pardoning power except a respite from sentence.

CONNECTICUT HAS STATUTORY PROVISION FOR ERASING RECORDS IN VARIOUS INSTANCES INCLUDING WHERE THERE IS AN ABSOLUTE PARDON AND WHEN A CRIMINAL CHARGE HAS BEEN DECRIMINALIZED:
Case information is erased under the following conditions:
Generally, police, court and prosecutorial records must be erased when:

- More than 20 days have elapsed after a defendant is acquitted or the dismissal of a criminal case, unless an appeal is taken, or 13 months have elapsed after a nolle is entered;
- A defendant is granted an absolute pardon;
- The offense for which the defendant was convicted is later decriminalized; or,
- The matter pertains to a person who has been adjudicated a youthful offender and has been discharged from the supervision of the court.

Clerk would respond that there is no public record of a case?
Generally, where:

- A criminal case was dismissed more than 20 days ago;
- A nolle was entered more than 13 months ago;
- More than 20 days ago, the case either ended in a finding of not guilty or a judgment of acquittal; or
- The records of a case have been erased.

In the event of a file sealed by court order, the clerk may acknowledge the existence of such a file, but indicate it as being sealed.

Connecticut Statutory provision for Erasure:

"Sec. 54-142a. (Formerly Sec. 54-90). Erasure of criminal records. (a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect.

(b) Whenever in any criminal case prior to October 1, 1969, the accused, by a final judgment, was found not guilty of the charge or the charge was dismissed, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased by operation of law and the clerk or any person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased; provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition for erasure with the court granting such not guilty judgment or dismissal, or, where the matter had been before a municipal court, a trial justice, the Circuit Court or the Court of Common Pleas with the records center of the Judicial Department and thereupon all police and court records and records of the state's attorney, prosecuting attorney or prosecuting grand juror pertaining to such charge shall be erased. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect.

(c) (1) Whenever any charge in a criminal case has been nolled in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, except that in cases of nolles entered in the Superior Court, Court of Common Pleas, Circuit Court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court or to the records center of the Judicial Department, as the case may be, to have such records erased, in which case such records shall be erased.

(2) Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney, and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be construed to have been nolled as of the date of termination of such thirteen-month period and such erasure may thereafter be effected or a petition filed therefor, as the case may be, as provided in this subsection for nolled cases.

(d) (1) Whenever prior to October 1, 1974, any person who has been convicted of an offense in any court of this state has received an absolute pardon for such offense, such person or any one of his heirs may, at any time subsequent to such pardon, file a petition with the superior court at the location in which such conviction was effected, or with the superior court at the location having custody of the records of such conviction or with the records center of the Judicial Department if such conviction was in the Court of Common Pleas, Circuit Court, municipal court or by a trial justice court, for an order of erasure, and the Superior Court or records center of the Judicial Department shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.

(2) Whenever such absolute pardon was received on or after October 1, 1974, such records shall be erased.

(e) (1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

(2) No fee shall be charged in any court with respect to any petition under this section.

(3) Any person who shall have been the subject of such an erasure shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

(f) Upon motion properly brought, the court or a judge thereof, if such court is not in session, may order disclosure of such records (1) to a defendant in an action for false arrest arising out of the proceedings so erased, or (2) to the prosecuting attorney and defense counsel in connection with any perjury charges which the prosecutor alleges may have arisen from the testimony elicited during the trial. Such disclosure of such records is subject also to any records destruction program pursuant to which the records may have been destroyed. The jury charge in connection with erased offenses may be ordered by the judge for use by the judiciary, provided the names of the accused and the witnesses are omitted therefrom.

(g) The provisions of this section shall not apply to any police or court records or the records of any state's attorney or prosecuting attorney with respect to any information or indictment containing more than one count (1) while the criminal case is pending, or (2) when the criminal case is disposed of unless and until all counts are entitled to erasure in

accordance with the provisions of this section, except that when the criminal case is disposed of, electronic records or portions of electronic records released to the public that reference a charge that would otherwise be entitled to erasure under this section shall be erased in accordance with the provisions of this section. Nothing in this section shall require the erasure of any information contained in the registry of protective orders established pursuant to section 51-5c. For the purposes of this subsection, "electronic record" means any police or court record or the record of any state's attorney or prosecuting attorney that is an electronic record, as defined in section 1-267, or a computer printout.

(h) For the purposes of this section, "court records" shall not include a record or transcript of the proceedings made or prepared by an official court reporter, assistant court reporter or monitor."

(1949 Rev., S. 8840; 1963, P.A. 482; 642, S. 72; 1967, P.A. 181; 663; 1969, P.A. 229, S. 1; 1971, P.A. 635, S. 1; 1972, P.A. 20, S. 2; P.A. 73-276, S. 1, 2; P.A. 74-52, S. 1, 2; 74-163, S. 1-3; 74-183, S. 152, 291; P.A. 75-541, S. 1, 2; P.A. 76-345; 76-388, S. 4, 6; 76-436, S. 10a, 551, 681; P.A. 77-429; 77-452, S. 40, 41, 42, 72; P.A. 81-218, S. 1; P.A. 83-486, S. 7; P.A. 91-3; P.A. 93-142, S. 3, 8; P.A. 95-133, S. 1; P.A. 96-63, 96-79, S. 1; P.A. 99-215, S. 18, 29; P.A. 02-132, S. 60; P.A. 08-151, S. 1.)

Connecticut CGS Sec. 54-142d. Destruction of record of decriminalized offense. Whenever any person has been convicted of an offense in any court in this state and such offense has been decriminalized subsequent to the date of such conviction, such person may file a petition with the superior court at the location in which such conviction was effected, or with the superior court at the location having custody of the records of such conviction or with the records center of the Judicial Department if such conviction was in the Court of Common Pleas, Circuit Court, municipal court or by a trial justice, for an order of erasure, and the Superior Court or records center of the Judicial Department shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be physically destroyed.

Connecticut CGS Sec. 54-142e. Duty of consumer reporting agency to update and delete erased criminal records. Judicial Department to make available information to identify erased records. (a) Notwithstanding the provisions of subsection (e) of section 54-142a and section 54-142c, with respect to any person, including, but not limited to, a consumer reporting agency as defined in subsection (h) of section 31-51i, who purchases criminal matters of public record, as defined in said subsection (h), from the Judicial Department, the department shall make available to such person information concerning such criminal matters of public record that have been erased pursuant to section 54-142a. Such information may include docket numbers or other information that permits the person to identify and permanently delete records that have been erased pursuant to section 54-142a.

(b) Each person, including, but not limited to, a consumer reporting agency, that has purchased records of criminal matters of public record from the Judicial Department shall, prior to disclosing such records, (1) purchase from the Judicial Department, on a monthly basis or on such other schedule as the Judicial Department may establish, any updated criminal matters of public record or information available for the purpose of complying with this section, and (2) update its records of criminal matters of public record to permanently delete such erased records. Such person shall not further disclose such erased records.

Maryland, California, Connecticut, Minnesota and Vermont have general procedures for requests to destroy, seal or redact segments of court records. Some have provisions for sealing records from outset of case under certain circumstances:

Maryland has a general provision for removal of records from outset:
Rule 16-1009. COURT ORDER DENYING OR PERMITTING INSPECTION OF CASE RECORD
(a) Motion
(1) Any A party to an action in which a case record is filed, including any a person who has been permitted to intervene as a party, and any a person who is the subject of or is specifically identified in a case record may file a motion:
(A) to seal or otherwise limit inspection of a case record filed in that action that is not otherwise shielded from inspection under these the Rules in this Chapter, or
(B) to permit inspection of a case record filed in that action that is not otherwise subject to inspection under these the Rules in this Chapter
(2) The motion shall be filed with the court in which the case record is filed and shall be served on:
(A) all parties to the action in which the case record is filed; and
(B) each identifiable person who is the subject of the case record.
(b) Preliminary Shielding
Upon the filing of a motion to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue.
(c) Temporary Order Precluding or Limiting Inspection
(1) The court shall consider a motion filed under this Rule on an expedited basis.
(2) In conformance with the provisions of Rule 15-504 (Temporary Restraining Order), the court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that -(-±-)- (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection, and ((B) immediate, substantial, and irreparable harm will result to the person seeking the relief if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.
(3) A court may not enter a temporary order permitting inspection of a case record that is not otherwise subject to inspection under these the Rules in this Chapter in the absence of an opportunity for a full adversary hearing.
(d) Final Order
(1) After an opportunity for a full adversary hearing, the court shall enter a final order:
(A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection under these the Rules in this Chapter;

(B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under these the Rules in this Chapter; or
(C) denying the motion.
(2) In determining whether to permit or deny inspection, the court shall consider:
(A) if the motion seeks to preclude or limit inspection of a case record that is otherwise subject to inspection under these the Rules in this Chapter, whether a special and compelling reason exists to preclude or limit inspection of the particular case record; and
(B) if the petition or motion seeks to permit inspection of a case record that is otherwise not subject to inspection under the Rules in this Chapter, whether a special and compelling reason exists to permit inspection.
(3) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.
(e) Filing of Order
A copy of any preliminary or final order shall be filed in the action in which the case record in question was filed and shall be subject to public inspection.
(f) Non-Exclusive Remedy
This Rule does not preclude a court from exercising its authority at any time to enter an order that seals or limits inspection of a case record or that makes a case record subject to inspection.
Source: This Rule is new.
NOTE: There are a number of PIA and other statutory exceptions that have not been specifically included in these Rules, largely because of the desire to have a judge determine whether those exceptions should apply to specific case records, rather than to create a blanket exception that may be too broad or to leave the matter to the discretion of a clerk. Some of those exceptions may well be the proper basis for a protective order; e.g., records that "relate to welfare for an individual" (Code, State Government Article, §10-616 (c)), certain student records (Code, State Government Article, §10-616 (k)), sociological information (Code, State Government Article, §10-617 (c)), confidential commercial information (Code, State Government Article, §10-617 (d)), financial information (Code, State Government Article, §10— 617 (f)), inter-agency and intra-agency memoranda (Code, State Government Article, §10-618 (b)), examination information relating to the issuance of licenses (Code, State Government Article, §10-618 (c)), State research projects (Code, State Government Article, §10-618 (d)), certain real property appraisals (Code, State Government Article, §10-618 (e)), certain investigative files (Code, State Government Article, §10—618 (f)).
Apart from statutory exceptions, there are other kinds of information that, in particular cases, may be the proper subject of a protective order. Identifying information regarding empaneled jurors or victims of or witnesses to violent crimes or acts of domestic violence is an example. Although prosecutors or other interested persons may be able to demonstrate a need for having that information shielded in certain cases, there is no statutory basis for a blanket exclusion. See NOTE to Rule 16
Rule 16-1011. RESOLUTION OF DISPUTES BY ADMINISTRATIVE OR CHIEF JUDGE

(a) If, upon a request for inspection of a court record, a custodian is in doubt whether the record is subject to inspection under these the Rules in this Chapter, the custodian, after making a reasonable effort to notify the person seeking inspection and each person to whom the court record pertains, may apply for a preliminary judicial determination whether the court record is subject to inspection.
(1) If the record is in an appellate court or an orphans' court, the application shall be to the chief judge of the court.
(2) If the record is in a circuit court, the application shall be to the county administrative judge.
(3) If the record is in the District Court, the application shall be to the district administrative judge.
(4) If the record is in a judicial agency other than a court, the application shall be to the Chief Judge of the• Court of Appeals, who may refer it to the county administrative judge of a circuit court.
(b) After hearing from or making a reasonable effort to communicate with the person seeking inspection and each person to whom the court record pertains, the court shall make a preliminary determination of whether the record is subject to
(c) If the court determines that the record is subject to inspection, the court shall file an order to that effect. If a person to whom the court record pertains objects, the judge may stay the order to permit inspection for not more than five working days in order to allow the person an opportunity to file an appropriate action to enjoin the inspection. An action under this section shall be filed within 30 days after the order is filed. If such an action is timely filed, it shall proceed in accordance with Maryland Rules 15-501 through 15-505.
(d) If the court determines that the court record is not subject to inspection, the court shall file an order to that effect and the person seeking inspection may file an action under the Public Information Act or on the basis of these the Rules in this Chapter to compel the inspection. An action under this section shall be filed within thirty days after the order is filed.
(e) If a timely action is filed under section (C) or (d) of this Rule, the preliminary determination by the court shall not be regarded as having have a preclusive effect under any theory of direct or collateral estoppel or law of the case. If a timely action is not filed, the order shall be final and conclusive.

2010 California Rules of Court
Rule 2.550. Sealed records
(a) Application
(1) Rules 2.550-2.551 apply to records sealed or proposed to be sealed by court order.
(2) These rules do not apply to records that are required to be kept confidential by law.
(3) These rules do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings. However, the rules do apply to discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings.
(Subd (a) amended effective January 1, 2007.)
(b) Definitions
As used in this chapter:
(1) "Record." Unless the context indicates otherwise, "record" means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court.
(2) "Sealed." A "sealed" record is a record that by court order is not open to inspection by the public.
(3) "Lodged." A "lodged" record is a record that is temporarily placed or deposited with the court, but not filed.
(Subd (b) amended effective January 1, 2007.)
(c) Court records presumed to be open
Unless confidentiality is required by law, court records are presumed to be open.
(d) Express factual findings required to seal records
The court may order that a record be filed under seal only if it expressly finds facts that establish:
(1) There exists an overriding interest that overcomes the right of public access to the record;
(2) The overriding interest supports sealing the record;
(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
(4) The proposed sealing is narrowly tailored; and
(5) No less restrictive means exist to achieve the overriding interest.
(Subd (d) amended effective January 1, 2004.)
(e) Content and scope of the order
(1) An order sealing the record must:
(A) Specifically state the facts that support the findings; and
(B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.
(2) Consistent with Code of Civil Procedure sections 639 and 645.1, if the records that a party is requesting be placed under seal are voluminous, the court may appoint a referee and fix and allocate the referee's fees among the parties.
(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2004.)

Rule 2.550 amended and renumbered effective January 1, 2007; adopted as rule 243.1 effective January 1, 2001; previously amended effective January 1, 2004.

Advisory Committee Comment

This rule and rule 2.551 provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on NBC Subsidiary (KNBC-TV), Inc. v. Superior Court (1999) 20 Cal.4th 1178. These rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. The rules do not apply to records that courts must keep confidential by law. Examples of confidential records to which public access is restricted by law are records of the family conciliation court (Family Code, § 1818(b)), in forma pauperis applications (Cal. Rules of Court, rule 985(h)), and search warrant affidavits sealed under People v. Hobbs (1994) 7 Cal.4th 948. The sealed records rules also do not apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication. (See NBC Subsidiary, supra, 20 Cal.4th at pp. 1208-1209, fn. 25.)

Rule 2.550(d)-(e) is derived from NBC Subsidiary. That decision contains the requirements that the court, before closing a hearing or sealing a transcript, must find an "overriding interest" that supports the closure or sealing, and must make certain express findings. (Id. at pp. 1217-1218.) The decision notes that the First Amendment right of access applies to records filed in both civil and criminal cases as a basis for adjudication. (Id. at pp. 1208-1209, fn. 25.) Thus, the NBC Subsidiary test applies to the sealing of records.

NBC Subsidiary provides examples of various interests that courts have acknowledged may constitute "overriding interests." (See id. at p. 1222, fn. 46.) Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute "overriding interests." The rules do not attempt to define what may constitute an "overriding interest," but leave this to case law.

IN CONNECTICUT: Case information may be sealed under order of the court. There is also provision for review of order to seal within 72 hours:
Conn. General Statute (CGS) 51-164X
Sec. 51-164x. Review of order prohibiting attendance at court session; review of certain orders sealing or limiting disclosure to court documents, affidavits or files.

(a) Any person affected by a court order which prohibits any person from attending any session of court, except any session of court conducted pursuant to section 46b-11, 46b-49, 46b-122 or 54-76h or any other provision of the general statutes under which the court is authorized to close proceedings, whether at a pretrial or trial stage,
shall have the right to the review of such order by the filing of a petition for review with the Appellate Court within seventy-two hours from the issuance of such court order.

(b) No order subject to review pursuant to subsection (a) of this section shall be effective until seventy-two hours after it has been issued, and the timely filing of any petition for review shall stay the order.

(c) Any person affected by a court order that seals or limits the disclosure of any files, affidavits, documents or other material on file with the court or filed in connection with a court proceeding, except (1) any order issued pursuant to section 46b-11 or 54-33c or any other provision of the general statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents or materials, whether at a pretrial or trial stage, and (2) any order issued pursuant to a court rule that seals or limits the disclosure of any affidavit in support of an arrest warrant, shall have the right to the review of such order by the filing of a petition for review with the Appellate Court within seventy-two hours from the issuance of such court order.

(d) The Appellate Court shall provide an expedited hearing on such petitions filed pursuant to subsections (a) and (c) of this section in accordance with such rules as the judges of the Appellate Court may adopt, consistent with the rights of the petitioner and the parties to the case.

(P.A. 80-234, S. 1; P.A. 81-89; June Sp. Sess. P.A. 83-29, S. 39, 82; P.A. 97-178, S. 1.)

History: P.A. 81-89 exempted any session of court conducted pursuant to Sec. 46b-11, 46b-49, 46b-122 or 54-76h or any other provision under which court is authorized to close proceedings, and added provision that petition for review shall be filed within 72 hours from issuance of court order and specified that the appellate session of the superior court shall provide hearing in accordance with rules adopted by judges of the superior court; June Sp. Sess. P.A. 83-29 deleted reference to appellate session of the superior court and added reference to appellate court; P.A. 97-178 amended Subsec. (a) by changing right to "appeal" order to right to "the review of" order, amended Subsec. (b) by changing reference to "such order" to "order subject to review pursuant to subsection (a) of this section" and by requiring "timely" filing of petition, and added Subsec. (c) re review of orders sealing or limiting disclosure of files, affidavits, documents or other material on file with the court and exceptions and amended Subsec. (d), formerly Subsec. (c), re expedited hearing on petitions filed pursuant to Subsecs. (a) and (c).

Cited. 208 C. 365. Cited. 222 C. 331. Cited. 230 C. 441. Cited. 233 C. 44. Cited. 237 C. 339. Cited. 240 C. 623. Cited. 18 CA 273. Cited. 23 CA 433. Cited. 26 CA 758. Cited. 43 CA 851. Cited. 45 CA 142. Section does not provide expedited review of protective order issued pursuant to Sec. 13-5 of the Practice Book. 51 CA 287. Confers jurisdiction for court to review order permitting use of pseudonyms regardless of whether the order is separate or connected to an order sealing a file or any portion thereof. Subsec. (c) provides court with jurisdiction to review a court order that limits disclosure of any material on file. Defendants' names are "material on file" and omitting those names and permitting them to be replaced with pseudonyms constitutes limiting their disclosure. Whole purpose of statute is to afford expedited review of a court order that limits disclosure, and its express provisions do not contain an exception for nondisclosure of the identity of others. 96 CA 399.

Order for closure too broad where included presentation of evidence on newspaper circulation, prior publicity and publishing policies. 37 CS 627. Cited. Id., 705. Cited. 38 CS 546. Subsec. (a): Cited. 229 C. 178.

VERMONT:
ULE GR 15
DESTRUCTION, SEALING, AND REDACTION OF COURT RECORDS
(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.
(b) Definitions.
(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).
(2) "Court record" is defined in GR 31(c)(4).
(3) Destroy. To destroy means to obliterate a court record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.
(4) Seal. To seal means to protect from examination by the public and unauthorized court personnel. A motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.
(5) Redact. To redact means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.
(6) Restricted Personal Identifiers are defined in GR 22(b)(6).
(7) Strike. A motion or order to strike is not a motion or order to seal or destroy.
(8) Vacate. To vacate means to nullify or cancel.
(c) Sealing or Redacting Court Records.
(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or

community supervision over the affected adult or juvenile.

No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).
(2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:
(A) The sealing or redaction is permitted by statute; or
(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or
(C) A conviction has been vacated; or
(D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or
(E) The redaction includes only restricted personal identifiers contained in the court record; or
(F) Another identified compelling circumstance exists that requires the sealing or redaction.
(3) A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (2) above.
(4) Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, section (d) shall apply. The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.
(5) Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:
(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records;
(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and
(C) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the public.
(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(6) Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).
(d) Procedures for Vacated Criminal Convictions. In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type with the notification "DV" if the case involved domestic violence, the adult or juvenile's name, and the notation "vacated."
(e) Grounds and Procedure for Requesting the Unsealing of Sealed Records.
(1) Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record.
(2) Criminal Cases. A sealed court record in a criminal case shall be ordered unsealed only upon proof of
compelling circumstances, unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of
this rule except:
(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).
(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.
(3) Civil Cases. A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing no longer exist, or pursuant to RCW 4.24 or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.
(4) Juvenile Proceedings. Inspection of a sealed juvenile court record is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(23). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(16).
(f) Maintenance of Sealed Court Records. Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.
(g) Use of Sealed Records on Appeal. A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.
(h) Destruction of Court Records.

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.
(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile.
(3) When the clerk receives a court order to destroy the entire court file the clerk shall:
(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.
(B) The accounting records shall be sealed.
(4) When the clerk receives a court order to destroy specified court records the clerk shall;
(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Order Destroyed" for the docket entry;
(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and
(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.
(5) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.
(i) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if all parties so stipulate in writing and the court so orders.
(j) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor in the exercise of duties conferred by statute.
[Adopted effective September 22, 1989; amended effective September 1, 1995; June 4, 1997; June 16, 1998; September 1, 2000; amended effective October 1, 2002; amended effective July 1, 2006.]
Some jurisdictions have provision restricting access from the outset of a case under particular circumstances.

MINNESOTA:
(CRIMINAL) Rule 25.03 Restrictive Orders

Subd. 1. Scope. Except as provided in Rules 25.01, 26.03, subd. 6, and 33.04, this rule governs the issuance of any court order restricting public access to public records relating to a criminal proceeding.

Subd. 2. Motion and Notice.

(a) A restrictive order may be issued only on motion and after notice and hearing.

(b) Notice of the hearing must be given in the time and manner and to interested persons, including the news media, as the court may direct. The notice must be issued publicly at least 24 hours before the hearing and must afford the public and the news media an opportunity to be heard.

Subd. 3. Hearing.

(a) At the hearing, the moving party has the burden of establishing a factual basis for the issuance of the order under the conditions specified in subd. 4.

(b) The public and news media have a right to be represented and to present evidence and arguments in support of or in opposition to the motion, and to suggest any alternatives to the restrictive order.

(c) A verbatim record of the hearing must be made.

Subd. 4. Grounds for Restrictive Order. The court may issue a restrictive order under this rule only if the court concludes that:

(a) Access to public records will present a substantial likelihood of interfering with the fair and impartial administration of justice.

(b) All reasonable alternatives to a restrictive order are inadequate.

A restrictive order must be no broader than necessary to protect against the potential interference with the fair and impartial administration of justice.

Subd. 5. Findings of Fact. The Court must make written findings of the facts and reasons supporting the conclusions on which an order granting or denying the motion is based. If a restrictive order is granted, the order must address possible alternatives to the restrictive order and explain why the alternatives are inadequate.

Subd. 6. Appellate Review.

(a) Anyone aggrieved by an order granting or denying a restrictive order may petition the Court of Appeals for review. This is the exclusive method for obtaining review.

(b) The Court of Appeals must determine whether the moving party met the burden of justifying the restrictive order under the conditions specified in subd. 3. The Court of Appeals may reverse, affirm, or modify the district court's order.

Comment—Rule 25

The Rules of Public Access to Records of the Judicial Branch generally govern access to case records of all judicial courts. However, Rule 4, subd. 1(d) and Rule 4, subd. 2 of those rules provide that the Rules of Criminal Procedure govern what criminal case records are inaccessible to the public and the procedure for restraining access to those records.

Rule 25.01 (Motion to Exclude Public) setting forth the procedure and standard for excluding the public from pretrial hearings is based on Minneapolis Star and Tribune Co. v. Kammeyer, 341 N.W.2d 550 (Minn.1983). For a defendant an overriding interest includes interference with the defendant's right to a fair trial by reason of the dissemination of evidence or argument presented at the hearing. As to the sufficiency of the alleged overriding interest to justify closure of the hearing see Waller v. Georgia, 467 U.S. 39 (1984) (Closure of suppression hearing over the defendant's objection), Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984) (Closure of voir dire proceedings), and Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) (Closure of courtroom when the minor victim of a sex offense testifies). This determination would include the situation in which the news media agreed not to disseminate these matters until completion of the trial. The provision for appellate review is intended to give the defendant, as well as any person aggrieved, standing to seek immediate review of the court's ruling on exclusion.

This rule does not interfere with the power of the court in any pretrial hearing to caution those present that dissemination of certain information by means of public communication may jeopardize the right to a fair trial by an impartial jury.

The procedure in Rule 25.03 is based upon Minneapolis Star and Tribune Co. v. Kammeyer, 341 N.W.2d 550 (Minn.1983) and Northwest Publications, Inc. v. Anderson, 259 N.W.2d 254 (Minn.1977). Rule 25.03 governs only the restriction of access to public records concerning a criminal case. It does not authorize the court under any circumstances to prohibit the news media from broadcasting or publishing any information in their possession relating to a criminal case.

Possible alternatives to a restrictive order indicated in Rule 25.03, subd. 3(b) are the following:

- a continuance or change of venue under Rule 25.02;
- sequestration of jurors on voir dire under Rule 26.02, subd. 4(2)(b);
- regulation of use of the courtroom under Rule 26.03, subd. 3;
- sequestration of jury under Rule 26.03, subd. 5(1);
- exclusion of the public from hearings or arguments outside of the presence of the jury under Rule 26.03, subd. 6;
- cautioning or ordering parties, witnesses, jurors, and judicial employees and sequestration of witnesses under Rule 26.03, subds. 7 and 8;
- admonitions to jurors about exposure to prejudicial material under Rule 26.03, subd. 9.

(CIVIL) 26.03 Protective Orders

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the court;

(f) that a deposition, after being sealed, be opened only by order of the court;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. Rule 37.01(d) applies to the award of expenses incurred in connection with the motion.

At last committee meeting, there were discussions about penalties for misuse of public records:

- Maryland has made efforts to provide some safeguards against unlawful or inappropriate use of their public records: In Maryland Electronic Access to Court Records must be applied for and consideration is given to "whether there is a substantial probability that information retrieved through the program may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning court records or individuals who are the subject of court records and, if so, whether there are procedures that may be implemented to prevent misuse and dissemination of inaccurate or misleading information. . ."16-1008 (c) (2)(C)(iv)

- NMSA 1978, Sec 14-3-15.1 (1995)

NEW MEXICO HAS CRIMINAL PENALITIES FOR UNAUTHORIZED USE OF INFORMATION ON ITS DATABASE:

Records of state agencies; public records; copy fees; computer databases; criminal penalty.

A. Except as otherwise provided by federal or state law, information contained in information systems databases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency that has inserted that information into the database, in accordance with the Public Records Act [this article], upon the payment of a reasonable fee for the service.

B. The administrator shall recommend to the commission the procedures, schedules and technical standards for the retention of computer databases.

C. The state agency that has inserted data in a database may authorize a copy to be made of a computer tape or other medium containing a computerized database of a public record for any person if the person agrees:

(1) not to make unauthorized copies of the database;

(2) not to use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database;

(3) not to use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;

(4) not to allow access to the database by any other person unless the use is approved in writing by the state agency that created the database; and

(5) to pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database.

D. If more than one state agency is responsible for the information inserted in the database, the agencies shall enter into an agreement designating a lead agency.

If the agencies cannot agree as to the designation of a lead state agency, the commission shall designate one of the state agencies as the lead agency to carry out the responsibilities set forth in this section.

E. Subject to any confidentiality provisions of law, any state agency may permit another state agency access to all or any portion of a computerized database created by a state agency.

F. If information contained in a database is searched, manipulated or retrieved or a copy of the database is made for any private or nonpublic use, a fee shall be charged by the state agency permitting access or use of the database.

G. Except as authorized by law or rule of the commission, any person who reveals to any unauthorized person information contained in a computer database or who uses or permits the unauthorized use or access of any computer database is guilty of a misdemeanor, and upon conviction the court shall sentence that person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand dollars ($5,000) or both. That person shall not be employed by the state for a period of five years after the date of conviction.

Minnesota's electronic records access law: (*Like 09AB 340 and 663, Minnesota limits access to records pre-disposition for any except parties and attorneys. However, there are exceptions in particular cases*):
http://www.mncourts.gov/default.aspx?page=511#publicAccess

MINNESOTA:
Rule 8. Inspection, Copying, Bulk Distribution and Remote Access.

Subd. 1. Access to Original Records. Upon request to a custodian, a person shall be allowed to inspect or to obtain copies of original versions of records that are accessible to the public in the place where such records are normally kept, during regular working hours. However, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection if access to the original records would: result in disclosure of information to which access is not permitted;
provide remote or bulk access that is not permitted under this rule; jeopardize the security of the records; or prove otherwise impractical. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

Subd. 2. Remote Access to Electronic Records.

(a) Remotely Accessible Electronic Records. Except as otherwise provided in Rule 4 and parts (b) and (c) of this subdivision 2, a custodian that maintains the following electronic case records must provide remote electronic access to those records to the extent that the custodian has the resources and technical capacity to do so.

(1) register of actions (a register or list of the title, origination, activities, proceedings and filings in each case [MINN. STAT. § 485.07(1)]);

(2) calendars (lists or searchable compilations of the cases to be heard or tried at a particular court house or court division [MINN. STAT. § 485.11]);

(3) indexes (alphabetical lists or searchable compilations for plaintiffs and for defendants for all cases including the names of the parties, date commenced, case file number, and such other data as the court directs [MINN. STAT. § 485.08]);

(4) judgment docket (alphabetical list or searchable compilation including name of each judgment debtor, amount of the judgment, and precise time of its entry [MINN. STAT. § 485.07(3)]);

(5) judgments, orders, appellate opinions, and notices prepared by the court.

All other electronic case records that are accessible to the public under Rule 4, and that have been in existence for not more than ninety (90) years, shall not be made remotely accessible but shall be made accessible in either electronic or in paper form at the court facility.

(b) Certain Data Not To Be Disclosed. Notwithstanding Rule 8, subd. 2 (a), the public shall not have remote access to the following data fields in the register of actions, calendars, index, and judgment docket, with regard to parties or their family members, jurors, witnesses (other than expert witnesses), or victims of a criminal or delinquent act:

(1) social security numbers and employer identification numbers;

(2) street addresses except that street addresses of parties may be made available by access agreement in a form prepared by the state court administrator and approved by the Judicial Council;

(3) telephone numbers;
(4) financial account numbers; and
(5) in the case of a juror, witness, or victim of a criminal or delinquent act, information that either specifically identifies the individual or from which the identity of the individual could be ascertained.

Without limiting any other applicable laws or court rules, and in order to address privacy concerns created by remote access, it is recommended that court personnel preparing judgments, orders, appellate opinions and notices limit the disclosure of items (2), (3) and (6) above to what is necessary and relevant for the purposes of the document.

Under MINN. GEN. R. PRAC. 11, inclusion of items (1) and (4) in judgments, orders, appellate opinions and notices is to be made using the confidential information form 11.1. Disclosure of juror information is also subject to MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd. 2, and MINN. R. CIV. P. 47.01.

(c) *Preconviction Criminal Records. The Information Technology Division of the Supreme Court shall make reasonable efforts and expend reasonable and proportionate resources to prevent preconviction criminal records and preconviction or preadjudication juvenile records from being electronically searched by defendant name by the majority of known, mainstream automated tools, including but not limited to the court's own tools. A "preconviction criminal record" is a record, other than an appellate court record, for which there is no conviction as defined in MINN. STAT. § 609.02, subd. 5 (2004), on any of the charges. A "preconviction or preadjudication juvenile record" is a record, other than an appellate court record, for which there is no adjudication of delinquency, adjudication of traffic offender, or extended jurisdiction juvenile conviction as provided in the applicable Rules of Juvenile Delinquency Procedure and related Minnesota Statutes, on any of the charges. (Emphasis Added.)* For purposes of this rule, an "appellate court record" means the appellate court's opinions, orders, judgments, notices and case management system records, but not the trial court record related to an appeal.

(d) "Remotely Accessible" Defined. "Remotely accessible" means that information in a court record can be electronically searched, inspected, or copied without the need to physically visit a court facility. The state court administrator may designate publicly-accessible facilities other than court facilities as official locations for public access to court records where records can be electronically searched, inspected or copied without the need to physically visit a court. This shall not be remote access for purposes of these rules.

(e) *Exceptions*.

(1) Particular Case. After notice to the parties and an opportunity to be heard, the presiding judge may by order direct the court administrator to provide remote electronic access to records of a particular case that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.

(2) Appellate Briefs. The State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs provided that the following are redacted: appendices to briefs, data listed in Rule 8, subd. 2(b) of these rules, and other records that are not accessible to the public.

(3) E-mail and Facsimile Transmission. Any record custodian may, in the custodian's discretion and subject to applicable fees, provide public access by e-mail or facsimile transmission to publicly accessible records that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.

(f) Delayed Application. To reduce the burden and costs of modifying existing case management systems scheduled to be replaced by MNCIS, the remote access provisions of Rule 8, subd. 2, shall only apply to the individual district courts to the extent that they have transferred case management to MNCIS, provided that:

(1) such courts shall not modify the remote access to case records that they are providing as of the issuance of this order other than to comply with any other rules or laws limiting access to records or in preparation of compliance with Rule 8, subd. 2; and (2) such courts shall comply with Rule 8, subd. 3, as if Rule 8, subd. 2, were in effect.

Subd. 3. Bulk Distribution of Court Records. A custodian shall, to the extent that the custodian has the resources and technical capacity to do so, provide bulk distribution of its electronic case records as follows:

(a) *Preconviction criminal records and preconviction or preadjudication juvenile records shall be provided only to an individual or entity which enters into an agreement in the form approved by the state court administrator providing that the individual or entity will not disclose or disseminate the data in a manner that identifies specific individuals who are the subject of such data. If the state court administrator determines that a bulk data recipient has utilized data in a manner inconsistent with such agreement, the state court administrator shall not allow further release of bulk data to that individual or entity except upon order of a court. (Emphasis Added.)*

(b) All other electronic case records that are remotely accessible to the public under Rule 8, subd. 2 shall be provided to any individual or entity.

Subd. 4. Criminal Justice and Other Government Agencies.

(a) Authorized by Law. Criminal justice agencies, including public defense agencies, and other state or local government agencies may obtain remote and bulk case record access where access to the records in any format by such agency is authorized by law.

(b) Discretionary Authorization for Statewide Access to Certain Case Records. Except with respect to race data under Rule 4, subd. 1(e), Minnesota County attorneys, Minnesota state public defenders, Minnesota state and local corrections agencies, and Minnesota state and local social services agencies may obtain remote and bulk access to statewide case records in MNCIS that are not accessible to the public and are classified as Civil Domestic Violence, Juvenile, and Parent/Child Relationship case records, if the recipient of the records:

(1) executes a nondisclosure agreement in form and content approved by the state court administrator; and

(2) the custodian of the records reasonably determines that the recipient has a legitimate business need for the records and disclosure to the recipient will not compromise the confidentiality of any of the records.

Subd. 5. Access to Certain Evidence. Except where access is restricted by court order or the evidence is no longer retained by the court under a court rule, order or retention schedule, documents and physical objects admitted into evidence in a proceeding that is open to the public shall be available for public inspection under such

conditions as the court administrator may deem appropriate to protect the security of the evidence.

Subd. 6. Fees. When copies are requested, the custodian may charge the copy fee established by statute but, unless permitted by statute, the custodian shall not require a person to pay a fee to inspect a record. When a request involves any person's receipt of copies of publicly accessible information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies. The custodian may grant a person's request to permit the person to make copies, and may specify the condition under which this copying will be permitted.

Advisory Committee Comment-2005

The 2005 addition of a new Rule 8, subd. 2, on remote access establishes a distinction between public access at a court facility and remote access over the Internet. Subdivision 2 attempts to take a measured step into Internet access that provides the best chance of successful implementation given current technology and competing interests at stake. The rule limits Internet access to records that are created by the courts as this is the only practical method of ensuring that necessary redaction will occur. Redaction is necessary to prevent Internet access to clear identity theft risks such as social security numbers and financial account numbers. The rule recognizes a privacy concern with respect to remote access to telephone and street addresses, or the identities of witnesses or jurors or crime victims. The identity of victims of a criminal or delinquent act are already accorded confidentiality in certain contexts [MINN. STAT. § 609.3471 (2004) (victims of criminal sexual conduct)], and the difficulty of distinguishing such contexts from all others even in a data warehouse environment may establish practical barriers to Internet access.

Internet access to preconviction criminal records may have significant social and racial implications, and the requirements of Rule 8, subd. 2(c) are intended to minimize the potential impact on persons of color who may be disproportionately represented in criminal cases, including dismissals. The rule contemplates the use of log-ins and other technology that require human interaction to prevent automated information harvesting by software programs. One such technology is referred to as a "Turing test" named after British mathematician Alan Turing. The "test" consists of a small distorted picture of a word and if the viewer can correctly type in the word, access or log in to the system is granted. Presently, software programs do not read clearly enough to identify such pictures. The rule contemplates that the courts will commit resources to staying ahead of technology developments and implementing necessary new barriers to data harvesting off the courts' web site, where feasible.

Some district courts currently allow public access to records of other courts within their district through any public access terminal located at a court facility in that district. The definition of "remote access" has been drafted to accommodate this practice. The scope of the definition allows statewide access to the records in Rule 8, subd. 2, from any single courthouse terminal in the state, which is the current design of the new district court computer system referred to as MNCIS.

The exception in Rule 8, subd. 2(e), for allowing remote access to additional documents, is intended for individual cases when Internet access to documents will significantly reduce the administrative burdens associated with responding to multiple or voluminous access requests. Examples include high-volume or high-profile cases. The exception is intended to apply to a specific case and does not authorize a standing order that would otherwise swallow the rule.

The 2005 addition of a new Rule 8, subd. 3, on bulk distribution, complements the remote access established under the preceding subdivision. Courts have been providing this type of bulk data to the public for the past ten years, although distribution has mainly been limited to noncommercial entities and the media. The bulk data would not include the data set forth in Rule 8, subd. 2(b), or any case records that are not accessible to the public. The bulk data accessible to the public would, however, include preconviction criminal records as long as the individual or entity requesting the data enters into an agreement in the form approved by the state court administrator that provides that the individual or entity will not disclose or disseminate the data in a manner that identifies specific individuals who are the subject of such data.

The 2005 addition of new Rule 8, subd. 4(a), regarding criminal justice and other governmental agencies, recognizes that the courts are required to report certain information to other agencies and that the courts are participating in integration efforts (e.g., CriMNet) with other agencies. The access is provided remotely or via regular (e.g., nightly or even annually) bulk data exchanges. The provisions on remote and bulk record access are not intended to affect these interagency disclosures. Additional discretionary disclosures are authorized under subd. 4(b).

The 2005 changes to Rule 8, subd. 5, regarding access to certain evidence, are intended to address the situation in which the provisions appear to completely cut off public access to a particular document or parts of it even when the item is formally admitted into evidence (i.e., marked as an exhibit and the record indicates that its admission was approved by the court) in a publicly accessible court proceeding. See, e.g., MINN. STAT. § 518.146 (2004) (prohibiting public access to, among other things, tax returns submitted in dissolution cases). The process for formally admitting evidence provides an opportunity to address privacy interests affected by an evidentiary item. Formal admission into evidence has been the standard for determining when most court services records become accessible to the public under Rule 4, subd. 1(b), and this should apply across the board to documents that are admitted into evidence.

The changes also recognize that evidentiary items may be subject to protective orders or retention schedules or other orders. As indicated in Rule 4, subd. 2, and its accompanying advisory committee comment, the procedures for obtaining a protective order are addressed in other rules. Similarly, as indicated in Rule 1, the disposition, retention and return of records and objects is addressed elsewhere.

Advisory Committee Comment-2007

The 2007 modifications to Rule 8, subd. 2(b), recognize the feasibility of controlling remote access to identifiers in data fields and the impracticability of controlling them in text fields such as documents. Data fields in court computer systems are designed to isolate specific data elements such as social security numbers, addresses, and names of victims. Access to these isolated elements can be systematically

controlled by proper computer programming. Identifiers that appear in text fields in documents are more difficult to isolate. In addition, certain documents completed by court personnel occasionally require the insertion of names, addresses and/or telephone numbers of parties, victims, witnesses or jurors. Examples include but are not limited to appellate opinions where victim or witness names may be necessary for purposes of clarity or comprehensibility, "no-contact" orders that require identification of victims or locations for purposes of enforceability, orders directing seizure of property, and various notices issued by the court.

The use of the term "recommends" intentionally makes the last sentence of the rule hortatory in nature, and is designed to avoid creating a basis for appeals. The reference to other applicable laws and rules recognizes that there are particular provisions that may control the disclosure of certain information in certain documents. For example, the disclosure of restricted identifiers (which includes social security numbers, employer identification numbers, and financial account numbers) on judgments, orders, decisions and notices is governed by MINN. GEN. R. PRAC. 11. Rules governing juror-related records include MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd. 2, and MINN. R. CIV. P. 47.01.

The 2007 modifications to Rule 8, subd. 2(c), recognize that criminal cases often involve a conviction on less than all counts charged, and that appellate records that have long been remotely accessible have included pretrial and preconviction appeals. The clarification regarding automated tools recognizes that the participant index on the court's case management system is included in the scope of the limits on remote searching of preconviction records.

The 2007 modification to Rule 8, subd. 2(d), authorizes the state court administrator to designate additional locations as court facilities for purposes of remote access. For example, a government service center, registrar of titles office or similar location that is not in the same building as the court's offices could be designated as a location where the public could have access to court records without the limitations on remote access. In some counties, these types of offices are located in the courthouse and in other counties they are in a separate building. This change allows such offices to provide the same level of access to court records regardless of where they are located.

The 2007 addition of Rule 8, subd. 2(e)(3), is intended to reinstate the routine disclosure, by facsimile transmission or e-mail, of criminal complaints, pleadings, orders, disposition bulletins, and other documents to the general public. These disclosures were unintentionally cut off by the definition of remote access under Rule 8, subd. 2(d), which technically includes facsimile and e-mail transmissions. Limiting disclosures to the discretion of the court administrator relies on the common sense of court staff to ensure that this exception does not swallow the limits on remote and bulk data access. The rule also recognizes that copy fees may apply. Some but not all courts are able to process electronic (i.e., credit card) fee payments.

ACCESS RULE 8, subd. 4(b), authorizes disclosure of certain records to executive branch entities pursuant to a nondisclosure agreement. Minnesota Statutes § 13.03, subd. 4(a) (2006), provides a basis for an executive branch entity to comply with the nondisclosure requirements. It is recommended that this basis be expressly recognized in the nondisclosure agreement and that the agreement limit the executive

branch agency's use of the nonpublicly-accessible court records to that necessary to carry out its duties as required by law in connection with any civil, criminal, administrative, or arbitral proceeding in any federal or state court, or local court or agency or before any self-regulated body.

Advisory Committee Comment-2008

The 2008 modifications to Rule 8, subd. 2(a), recognize that privacy concerns in regard to remote access, such as identity theft, subside over time while the historical value of certain records may increase. The rule permits remote access to otherwise publicly accessible records as long as the records have been in existence for 90 years or more. This provision is based in part on the executive branch data practices policy of allowing broader access to records that are approximately a lifetime in age. See Minn. Stat. § 13.10, subd. 2 (2006) (private and confidential data on decedents becomes public when ten years have elapsed from the actual or presumed death of the individual and 30 years have elapsed from the creation of the data; "an individual is presumed to be dead if either 90 years elapsed since the creation of the
data or 90 years have elapsed since the individual's birth, whichever is earlier, except that an individual is not presumed to be dead if readily available data indicate that the individual is still living").

The 2008 modifications to Rule 8, subds. 2(c) and 3, recognize that certain juvenile court records are accessible to the public and that the remote access policy for preconviction criminal records needs to be consistently applied in the juvenile context. There are both adjudications and convictions in the juvenile process. Delinquency adjudications are governed by MINN. R. JUV. DEL. P. 15.05, subd. 1(A), and MINN. STAT. § 260B.198, subd. 1 (Supp. 2007); traffic offender adjudications are governed by MINN. R. JUV. DEL. P. 17.09, subd. 2(B) and MINN. STAT. § 260B.225, subd. 9 (2006); and extended jurisdiction juvenile convictions are governed by MINN. R. JUV. DEL. P. 19.10, subd. 1(A) and MINN. STAT. § 260B.130, subd. 4 (2006). Juvenile records that are otherwise publicly accessible but have not reached the appropriate adjudication or conviction are not remotely accessible under Rule 8, subds. 2(c) and 3.

Rule 9. Appeal from Denial of Access.

If the custodian, other than a judge, denies a request to inspect records, the denial may be appealed in writing to the state court administrator. The state court administrator shall promptly make a determination and forward it in writing to the interested parties as soon as possible. This remedy need not be exhausted before other relief is sought.

Advisory Committee Comment-2005

The 2005 deletion of the phrase "by mail" in Rule 9 recognizes that a determination is often issued in electronic format, such as e-mail or facsimile transmission.

Rule 10. Contracting With Vendors for Information Technology Services.

If a court or court administrator contracts with a vendor to perform information technology related services for the judicial branch: (a) "court records" shall

include all recorded information collected, created, received, maintained or disseminated by the vendor in the performance of such services, regardless of physical form or method of storage, excluding any vendor-owned or third-party-licensed intellectual property (trade secrets or copyrighted or patented materials) expressly identified as such in the contract; (b) the vendor shall not, unless expressly authorized in the contract, disclose to any third party court records that are inaccessible to the public under these rules; (c) unless assigned in the contract to the vendor in whole or in part, the court shall remain the custodian of all court records for the purpose of providing public access to publicly accessible court records in accordance with these rules, and the vendor shall provide the court with access to such records for the purpose of complying with the public access requirements of these rules.

Advisory Committee Comment-2005

The 2005 addition of Rule 10 is necessary to ensure the proper protection and use of court records when independent contractors are used to perform information technology related services for the courts. Where the service involves coding, designing, or developing software or managing a software development project for a court or court administrator, the court or court administrator would typically retain all record custodian responsibilities under these rules and the contract would, among other things: (a) require the vendor to immediately notify the court or court administrator if the vendor receives a request for release of, or access to, court records; (b) prohibit the disclosure of court records that are inaccessible to the public under these rules; (c) specify the uses the vendor may make of the court records; (d) require the vendor to take all reasonable steps to ensure the confidentiality of the court records that are not accessible to the public, including advising all vendor employees who are permitted access to the records of the limitations on use and disclosure; (e) require the vendor, other than a state agency, to indemnify and hold the court or court administrator and its agents harmless from all violations of the contract; (f) provide the court or court administrator with an explicit right to injunctive relief without the necessity of showing actual harm for any violation or threatened violation of the contract; (g) be governed by Minnesota law, without giving effect to Minnesota's choice of law provisions; (h) include the consent of the vendor to the personal jurisdiction of the state and federal courts within Minnesota; and (i) require all disputes to be venued in a state or federal court situated within the state of Minnesota.

Rule 11. Immunity.

Absent willful or malicious conduct, the custodian of a record shall be immune from civil liability for conduct relating to the custodian's duties of providing access under these rules.

Advisory Committee Comment-2005

The 2005 addition of Rule 11 is intended to allow record custodians to promptly and effectively discharge their obligations under these rules without undue concern over liability for inadvertent errors. The burden of redacting each and every reference to specific pieces of information from voluminous records is a daunting task, and the threat

of liability could turn even the more routine, daily access requests into lengthy processes involving nondisclosure/indemnity agreements. The court has established immunity for records custodians in other contexts. See, e.g., R. BD. JUD. STDS. 3 (members of the Board on Judicial Standards are absolutely immune from suit for all conduct in the course of their official duties); R. LAWYERS PROF. RESP. 21(b) (Lawyers Professional Responsibility Board members, other panel members, District Committee members, the Director, and the Director's staff, and those entering agreements with the Director's office to supervise probation are immune from suit for any conduct in the course of their official duties); MINN R. ADMISSION TO THE BAR 12.A. (the Board of Law Examiners and its members, employees and agents are immune from civil liability for conduct and communications relating to their duties under the Rules of Admission to the Bar or the Board's policies and procedures); MINN. R. BD. LEGAL CERT. 120 (the Board of Legal Certification and its members, employees, and agents are immune from civil liability for any acts conducted in the course of their official duties); MINN. R. CLIENT SEC. BD. 1.05 (the Client Security Board and its staff are absolutely immune from civil liability for all acts in the course of their official capacity). Rule 11 does not, however, avoid an administrative appeal of a denial of access under Rule 9, declaratory judgment, writ of mandamus, or other similar relief that may otherwise be available for a violation of these rules.