

## Access to Court Records in Criminal Cases

(1) Unless provided otherwise by statute, rule, chief justice directive, or court order, court records in criminal cases are presumed to be open to the public. The court may deny the public access to a court record or to any part of a court record only when it does so in compliance with this rule.

**(a) Motion Requesting to Limit Public Access.** Either party may file a motion requesting that the court limit public access to a court record or to any part of a court record by making it inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public. A motion requesting to limit public access must be served on the court and the opposing party.

**Discussion items: Do we want to state that the opposing party has a certain amount of time to respond? What time period? Do we want to define “public?” Or, do we want to state that only court, staff, parties and attorneys have access? Public is already defined in the CJD.**

**(b) Contents of the Motion.** A motion to limit public access shall identify the record(s) or any part of the record(s) whose public access the moving party wishes to limit, state the reason(s) for the request, and specify how long the information identified should remain inaccessible to the public.

**Discussion items: Should we state that the motion shall be filed under seal? The motion may necessarily have to contain information that is the subject of the motion to seal.**

**(c) Hearing.** When a motion to limit public access is filed, the court may conduct a hearing if it determines that more information is required or that a hearing is otherwise appropriate. Notice of the hearing shall be provided to the parties.

**Discussion items: Should the rule state that the hearing shall be a closed hearing? It will be necessary for the court and the parties to be discussing the items that are the subject of the request.**

**(d) When Request Granted.** The court shall not make a court record or any part of a court record inaccessible to the public without a written order. The court's order shall:

- (1) specifically identify one or more compelling interest(s) that would be served by making the court record inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public;
- (2) explain how taking such action would serve the compelling interest(s) identified;
- (3) explain why there would be a substantial probability of harm to the compelling interest(s) identified if such action is not taken;
- (4) find that no less restrictive means reasonably exist to achieve or protect the identified compelling interest(s); and
- (5) conclude that the identified compelling interest(s) outweigh(s) the right of public access to the court record or to an unredacted copy of it.

**Discussion items: Do we want to use the compelling interest standard? Is (2) redundant of (1)?**

**(e) Duration.** Any order limiting public access to a court record or any part of a court record shall indicate how long the order will remain in effect.

**(f) Preservation.** Any court record that the court orders inaccessible to the public shall be maintained in the court's electronic file or in the clerk's office records department and marked as "Inaccessible to the Public." If the court orders that only a redacted copy of a court record will be accessible to the public, an unredacted copy of it shall be maintained in the court's file with a note indicating that only a redacted copy of it has been made accessible to the public.

**Discussion items: Is this paragraph necessary? It is more of an instruction to court staff.**

**(g) Review.** The court shall review any order issued pursuant to this rule at the time of the expiration of the order or earlier upon motion of one of the parties.

**Discussion items: Do we want to state a specific time for review?**

**(h) Sua Sponte Orders.** The court may sua sponte make a court record inaccessible to the public or order that only a redacted copy of it be accessible to the public. If the court does so, it must notify the parties and comply with paragraphs (d), (e), (g), and (f) of this rule. In its discretion, the court may hold a hearing before sua sponte ordering a court record or any part of a court record inaccessible to the public.

**Discussion items: Should this be in a separate section or incorporated into section (a)?**

**General discussion items: do we want to include an effective date? Do we want to include a section that states that any request for access goes to the judge presiding over the case? Do we need to have judges who previously entered orders on a case revisit and enter an order consistent with this rule? Or, have them do so when access is requested?**