

NOTICE OF SECOND COMMENT PERIOD

The Technology Committee submitted proposed amendments to Neb. Ct. R. § 6-1906 entitled “Interim rules for electronic access to presentence investigation reports by the prosecuting attorney, defense counsel, and the courts.” The Nebraska Supreme Court directed that the proposed amendments be published for a public comment period. That period ended June 5, 2019.

After further consideration, the Supreme Court has directed a second comment period on a revised version of the proposed amendments to Neb. Ct. R. § 6-1906.

The Nebraska Supreme Court invites interested persons to comment on the revised proposed amendments. Anyone desiring to comment on the revised proposed amendments should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via email to wendy.wussow@nebraska.gov no later than August 5, 2019.

The full text of the revised proposed amendments is available below, or a hard copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

CHAPTER 6: TRIAL COURTS

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Article 19: Nebraska Court Rules for Probation Practices.

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§ 6-1906. ~~Interim R~~ules for electronic access to ~~presentence investigation~~ reports by the prosecuting attorney, juvenile’s counsel, defense counsel, and the courts.

(A) Inspection of presentence reports under Neb. Rev. Stat. § 29-2261 and predispositional reports of juveniles under Neb. Rev. Stat. § 43-2,108(4) (“reports”) by the prosecuting attorney, juvenile’s counsel, and defense counsel shall be by electronic means as determined and developed by the Administrative Office of the Courts and Probation unless the trial court determines such access is not available ~~under the terms of the pilot project.~~

~~(A) Pilot Project. Beginning July 1, 2016, electronic inspection of presentence reports is authorized on a pilot project basis for specified probation districts and the respective district and county courts in Nebraska, as set forth in a schedule set by the Administrative Office of the Courts and Probation, as revised from time to time, with a timeline for statewide availability to be determined by the outcome of the pilot project. At the discretion of the presiding judge of the particular court, in consultation with the Chief Justice, electronic inspection of presentence reports may be suspended in certain courts that are experiencing technical difficulties.~~

(B) All probation districts shall follow a standardized procedure and process for creating, storing, inspecting, and sharing ~~presentence~~ reports. The Administrative Office of the Courts and Probation shall ~~ensure each~~ provide instruction on procedures so that each probation district ~~in the pilot project~~ is creating and sharing the same information in the same manner.

(C) Once a court orders a ~~presentence~~ report under § 29-2261 or § 43-281, and the report is completed for ~~an offender~~ criminal defendant or juvenile, the probation office shall convert the report, and any

~~substance abuse~~ evaluation(s), and/or ~~psychiatric~~ examination(s) into a portable document format (PDF), bearing the file extension “.pdf” containing a computer-readable image of a document, capable of being viewed with a recent version of Adobe Reader or similar software. If any officer of the court believes that some specific information should remain protected and not provided to the person who is the subject of the report, such officer shall notify the judge prior to completion of the report. The judge shall then take appropriate action.

(D) The Probation Office shall upload the report into the probation case management system. Once the document has been uploaded, it will be available for the judge to view via the court case management system and via the court-authorized service provider judge portal ~~submit the report directly to the judge via the Internet through the court-authorized service provider.~~

(E) Once the ~~presentence~~ report is received electronically, the judge may then open electronic access to the prosecuting attorney, juvenile’s counsel, and defense attorneys entered on the case, as specified in the court’s case management system, JUSTICE. Attorney access is via the Internet through the court-authorized service provider for E-Filing, Nebraska.gov. A judge may provide access to the report to another judge who may be sentencing the same individual in a different court and may provide access to the report to any other attorney authorized by statute to have such access.

(1) The report and its contents shall not be disclosed directly or indirectly by the attorneys or the trial judge absent a court order specifying to whom the report may be disclosed.

(2) Attorneys shall not permit others to use their ~~Nebraska.gov~~ log-in or password information to view or inspect ~~presentence~~ reports in the E-Filing portal.

(3) Except as set forth in subsection (5), attorneys shall not duplicate reports by printing, copying, saving, or through screen-shots, photographs, or other measures. Anyone determined to have duplicated a report by any means, or otherwise breached the confidentiality of a report, may be charged with contempt of court and/or referred to the Counsel for Discipline for further action.

~~(3) (4) After sentencing,~~ (4) The trial court shall determine when access to the report through Nebraska.gov by the named attorneys shall cease.

(5) An attorney may make one printed copy of a report or utilize one electronic copy of a report on a single electronic device by complying with all of the following conditions:

(a) The attorney’s name and bar number must appear on each page of the printed document or electronic copy;

(b) The printed copy or the electronic device must remain within the attorney’s possession and control at all times;

(c) The juvenile’s counsel or defense counsel shall not show or display the report to any person other than his or her client who is the subject of the report;

(d) The attorney shall not permit any person, including the client who is the subject of the report, to exercise possession or control of the report, or to copy any of its contents by any method;

(e) The attorney shall not transmit any such copy by any means to any person who has not been authorized by the judge to receive a copy;

(f) Immediately after sentence has been imposed in a criminal matter, the prosecuting attorney and defense counsel shall:

(1) Deliver the printed copy to a probation officer present at sentencing or to the local probation office for destruction, or comply with any alternative instructions of the sentencing judge to accomplish destruction;

(2) Shall immediately and permanently delete the electronic copy.

(g) Juvenile hearings.

(1) The court shall provide access to reports and evaluations of the juvenile to the juvenile's counsel and the prosecuting attorney prior to any hearing in which the report or evaluation will be relied upon;

(2) Juvenile counsel who maintain a printed or electronic copy of a report and/or evaluations to be used at a subsequent hearing are not in violation of this rule as long as the records are not distributed or confidentiality is not breached;

(3) If juvenile court jurisdiction is terminated, or the juvenile's counsel withdraws or is no longer counsel, the juvenile's counsel shall deliver any printed reports or evaluations to the probation office for destruction, or comply with any alternative instruction of the judge to accomplish such destruction, and shall permanently delete the electronic copy of any report and/or evaluation.

(6) Substitute attorney compliance and reporting violations.

(a) Any attorney who substitutes for the original attorney shall be responsible to comply with all of these conditions;

(b) Any probation officer or probation staff member who becomes aware of any failure to comply with any of these conditions shall promptly notify the district Chief Probation Officer, who shall notify the judge; and

(c) Any judge or attorney who becomes aware of any failure to comply with any of these conditions shall promptly take appropriate action, which may include reporting the same to the court and/or Counsel for Discipline.

(F) Once the Probation Office completes a ~~presentence~~ report, any addenda or supplements to the report shall be given to the Probation Office, even if personally received by the trial court, for inclusion in the report. If addenda or supplements are received by the court on the date of sentencing or disposition, then the court shall provide the original to the Probation Office as soon as practicable for inclusion in the report and may allow the prosecuting attorney and defense counsel to inspect a copy.

(G) Appeals. If the conviction, adjudication, disposition, and/or sentence is appealed, transfer of the presentence report to the appellate courts shall be electronic, in a manner prescribed by the Administrative Office of Courts and Probation, by the Probation Office sending a PDF of the report to the appellate courts through e mail to be uploaded to SCCALES. This procedure is temporary until a more permanent technological solution is implemented. This procedure shall be deemed to be in compliance with Neb. Ct. R. App. P. §§ 2-116(B)(1) and 2-216(B)(1) the provisions of chapter 2 of these rules.

~~(H) Once the report is uploaded to SCCALES, the appellate courts shall cause access to the presentence report for the State and defense counsel entered in the case as specified in the appellate court's case management system, SCCALES. Attorney access is via the Internet through the court authorized service provider, Nebraska.gov.~~

(1) The report and its contents shall not be disclosed directly or indirectly by the attorneys absent a court order specifying to whom the report may be disclosed.

(2) Attorneys shall not permit others to use their Nebraska.gov log in or password information to view or inspect presentence reports.

~~(3)~~ (1) Attorneys access is may also view presentence reports in the office of the Clerk of the Supreme Court and Court of Appeals using the terminal provided. The provisions of (E) (1), (2), and (3) shall apply to reports viewed in the appellate courts. No paper or electronic copies of reports shall be made for cases on appeal.

(4) (2) Whenever it appears in the appellate process that the need for access to the presentence report through Nebraska.gov by the named attorneys has concluded, access to the presentence report shall cease.

~~(H)~~ (H) Access to the presentence report by the appellate courts for cases on appeal shall be through the appellate courts' secure SCCALES and SharePoint systems.