

To:

The Trial Court Public Access to Court Records Committee

From:

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Family Law Unit

Date:

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Subject:

Comments concerning access to publicly available court case records over the

internet

These comments are collectively submitted by seven agencies that provide civil legal services and/or other direct services to victims of domestic violence, sexual assault, and stalking.

Victims and survivors of domestic abuse and sexual assault and their children, vulnerable elders and incapacitated adults have a vested interest in protecting themselves from invasions of privacy, misuse of personal information and threats to their personal safety. These interests clearly outweigh the public's interest in a free flow of information over the internet. For this and other reasons listed below, we respectfully request that no information from Probate and Family Court cases, District Court, Superior Court and Boston Municipal Court (BMC) abuse prevention cases, Chapter 258E cases, and civil commitment proceedings be available to the public online.

Greater Boston Legal Services (GBLS) is a nonprofit legal aid program that provides free legal assistance in civil matters to low-income individuals and groups in Boston and thirty-one surrounding cities and towns. GBLS offers a full-range of legal assistance including but not limited to domestic relations matters involving care and custody of children, abuse prevention, divorce, paternity, financial support, conservatorship, guardianship, and financial exploitation of elders prevention. The GBLS Family Law Unit represents countless victims of domestic violence, elder abuse, and sexual assault in Probate and Family Courts and the District and Boston Municipal Courts. GBLS Attorneys also have drafted legislation, authored publications, and provided community trainings on the law related to domestic relations, family violence, elder law, and disabled children and adults.

Jane Doe, Inc. (JDI), the Massachusetts Coalition Against Sexual Assault and Domestic Violence, is a statewide organization of fifty-seven programs that provide direct services to victims and survivors of sexual and domestic violence. JDI advocates for responsible public policy, promotes collaboration, raises public awareness, and supports its member organizations to provide comprehensive prevention and intervention services. The victims and survivors of sexual and domestic violence served by JDI's member programs are frequently involved in a variety of court settings and privacy and confidentiality is essential to their safety and security.

Victim Rights Law Center (VRLC) was established in 2003 as the first nonprofit law center in the nation solely dedicated to serving the needs of rape and sexual assault 197 Friend Street, Boston, MA 02114 • Tel: 617.371.1234 • Fax: 617.371.1222 • TDD: 617.371.1228

victims. Through direct legal services, staff and pro bono attorneys help restore victims' lives after an attack, ensuring that they may stay in school; protecting their privileged and confidential mental health, medical and education records; preserving their employment; maintaining safe housing; securing or maintaining their immigration status; and swiftly accessing victim compensation and other benefits.

Boston Area Rape Crisis Center (BARCC) is one of the first rape crisis centers in the United States to advocate for and support survivors of sexual assault. BARCC's mission is to end sexual violence through healing and social change. BARCC provides comprehensive sexual assault services, including legal advocacy, to over 15,000 survivors, families, community members, and professionals each year in Boston and the 28 surrounding communities. BARCC's programming is based on survivors' voices, research, and best practices learned over a 42-year history of working to end sexual violence.

The Second Step is a comprehensive program for survivors of domestic violence. Founded in 1992, The Second Step offers transitional housing, advocacy, safety planning, mentoring, children's programs, legal representation, and an array of supportive services for families transitioning away from abuse.

Northeast Legal Aid and the Northeast Justice Center are not-for-profit legal aid programs that collaboratively provide civil legal services to low-income and elderly residents of northeastern Massachusetts. Among NLA's and NJC's clients are vulnerable groups such as victims of the most serious domestic violence (including those at the highest risk of being murdered by their abuser), physically and mentally disabled people, children of all ages and frail elders. NLA and NJC offer a wide variety of legal services to these groups such as divorce, paternity, custody, support, abuse prevention, conservatorship, guardianship, and financial exploitation prevention.

1. The Federal Violence Against Women Act ("VAWA") Prohibits Internet Publication of Key Protection Order Information.

VAWA provides that the identity and location of protected persons may not be published publically on the internet:

"A State... shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in ... the issuing or enforcing State..., if such publication would be likely to publicly reveal the identity or location of the party protected under such order...." 18 USC § 2265(d)(3).

This means that, at a minimum, court dockets should not note the name or address of any person who applies for an order of protection from abuse or harassment from any trial court.

Information "likely to publicly reveal the identity or location of the party protected" could include information beyond the name and address of the petitioner because other information contained in a court docket or file could be "likely... to reveal the identity or location of the

¹ This includes matters pursuant to G.L. c. 209A, G.L. c. 208, §§ 18, 34B, G.L. c. 209, § 32, G.L. c. 209C, § 15 heard in the Probate and Family Court and Chapters 209A and 258E heard in the Superior Court, District Court and Boston Municipal Court Departments and Chapter 258E matters heard in the Juvenile Court.

party protected". For example, revealing a defendant's name can flag a victim who is married to or otherwise, associated with the defendant.² Anyone familiar with the defendant can often easily determine the name of the petitioner. Revealing a venue or court location provides a clear indication of location of the petitioner.

Chapter 209A orders are not the only type of protective orders that fall under the VAWA rubric. Domestic relations cases can and do involve allegations of abuse and other maltreatment among family members. Motions and requests for Domestic Relations Protective Orders (DRPO's) pursuant to G.L. c. 208, §§ 18, 32, and 34B (the divorce and separate support statutes) and G.L. 209C, § 15 (the unmarried parents statute) are noted on the docket of those cases. Courts would be required to review thousands of divorce, separate support and Chapter 209C files to determine whether the case contains a past or present Domestic Relations Protective order and to redact VAWA protected information.

District Courts and the BMC issue protective orders pursuant to Chapters 209A (Abuse Prevention Act) and 258E (the anti-harassment statute). Many victims of sexual assault are not eligible for the protections of Chapter 209A but can get relief under Chapter 258E. District Courts and the BMC, therefore, are obligated under VAWA to take measures to be sure that no information likely to lead to the identity or location of victims is released online.

Probate and Family Court domestic relations cases are cross-referenced with any prior or existing orders of protection cases and are often consolidated with other matters concerning the same parties and families. Online availability of domestic relations matters is not just "likely" to publicly reveal identifying and location information of victims, it is <u>guaranteed</u> to do so. As such, to make these files accessible online would violate the protective provisions of VAWA.

2. <u>Internet Access to Court Records Will Have a Chilling Effect on Domestic Violence and Sexual Assault Victims in Need of Protection from the Courts.</u>

Allowing internet access to names, docket entries, and case information will have a chilling effect on the rights of victims to seek protection from abuse under Chapters 209A, 208, 209, 209C and 258E. People caught in dangerous and abusive situations or who have been sexually assaulted already find it difficult to approach the courts for protection for a variety of reasons including fear of retribution by the abuser, shame, and stigmatization. Knowing that court records can be found on the internet will further inhibit victims from reporting abuse or seeking help to escape the violence. This leads to prolonging the dynamics of abuse, which, in turn, adversely affects children exposed to domestic violence. Given what is known about the effect of witnessing domestic violence on children, and exposure to abuse correlating with battering as an adult, efforts to support victims early on in breaking the cycle of violence affects future generations.

² See, e.g., G.L. c. 209A, § 3 which permits a person suffering from abuse from a "family or household member" to file a complaint for protection which is defined as persons who "... are or were married to one another ..., are or were residing together in the same household ... are or were related by blood or marriage ... having a child in common ... or are or have been in a substantive dating or engagement relationship" G.L. c. 209A, § 1.

 The Privacy and Safety Interests of Domestic Violence and Sexual Assault Victims, Survivors and Their Children are Jeopardized by Public Access to Restraining Order and Domestic Relations Cases.

Abuse prevention and domestic relations case files contain sensitive information that should not be made public to protect the privacy and safety interests of victims and survivors. Such files can contain sworn statements (affidavits) outlining potentially embarrassing intimate information, pleadings with allegations of parenting deficits, mental illness, substance abuse, child abuse and Department of Children and Families involvement. Case files and dockets contain court orders requiring psychological evaluations, drug and alcohol screening, batterer's treatment and other remedies that obviously reveal negative family dynamics. Domestic abusers file documents with allegations that are patently false in an effort to gain control over litigation with the victim. Often, care and custody of children is a central issue in these matters and courts try to take pains to prevent children from being harmed by court proceedings. However, with unfettered access to dockets and records, these children will be exposed to information that can be psychologically devastating and cause strife in their relationships with their parents. Worse, if the information is discovered by others and disseminated, children may become the unwitting victims of public shaming, ridicule and bullying.

Batterers and stalkers are adept at using technology to further their aims of maintaining control of and finding their victims by employing a variety of telephone, surveillance, and computer technologies to harass, terrify, intimidate, coerce, and monitor former and current intimate partners. Examples include sending multiple emails or text messages a day; monitoring a victim's computer activity with Spyware; tracking the location of a victim's vehicle using GPS; watching the victim through hidden cameras; intercepting phone calls and messages; and impersonating the victim. Permitting unfettered access to court records online in domestic relations and protective order cases gives these perpetrators even more ammunition for their technology arsenal. Batterers and stalkers can also use highly personal information from family court files to publically humiliate victims, ruin their reputations, stifle employment opportunities, and use it for coercive purposes.

Victims may flee to Massachusetts to escape very dangerous situations, stalking and sexual assault, but their perpetrators will more easily find them if there is internet access to court records. The very existence of a restraining order case or domestic relations case reveals the general location of a victim due to venue of the court. Victims with children often find it necessary to get a court order for child custody, even if there is no parental relationship between the defendant and the children to obtain medical care, public benefits, passports, housing, and to enroll their children in schools. If this information is disclosed online, perpetrators will be able to find their victims more easily.

Although an impoundment proceeding is available to ask courts to keep individual cases confidential, this process is inaccessible to litigants without attorneys. It is estimated that almost 70% of litigants in Probate and Family Court are not represented by counsel. Pro se litigants are not told about the ability to impound a case file. Furthermore, a request to impound a case requires notice to the opposing party and a hearing to determine whether there is good cause to impound the case file and to give the opposing party an opportunity to convince the court that no

impoundment is needed. The impoundment procedure does nothing to protect the privacy and safety interests of victims.

4. Public Access to Restraining Order and Domestic Relations Cases Lead to Discrimination Against Victims of Domestic Abuse and Sexual Assault.

Despite widespread awareness of the dynamics of domestic abuse and resources available for victims/survivors of domestic abuse and sexual assault, victims may be discriminated against and stereotyped. Some people make negative assumptions about the dynamics of family violence, and/or blame victims for their predicaments. Employers may believe that hiring a victim/survivor poses a threat to the workplace or that the employee's "family drama" will lead to unsatisfactory work performance or excessive absences. Landlords may believe that the abuser will cause trouble at the property or that the victim has no financial stability and will be an unreliable rent payer. Online court docket information from the Housing Court is already used by some landlords to deny housing and/or services to any rental applicant whose name is in the MassCourts database. Making even more information that is private available online gives employers, property owners and others an increased ability to discriminate against victims of abuse and sexual assault, thereby, making it more difficult for victims to find housing or employment necessary to break the cycle of violence.

5. Incapacitated Individuals May Be Preyed Upon if Files Are Made Available Online.

The Probate and Family Court hears cases involving incapacitated persons and minor children such as guardianships, "Rogers" cases, and conservatorships. District courts also handle civil commitment proceedings. The very nature of these cases flags the existence of mental illness, substance abuse, dementia and other cognitive incapacity, and parental unfitness as well as financial information. The subjects of these matters are typically very vulnerable and in need of protective oversight, making them easy prey for unscrupulous scammers and criminals. In addition, people in need of intervention may be resistant to treatment and assistance if their private information will be made accessible online to anyone.

6. <u>Internet Access to Domestic Relations and Abuse Prevention Cases Would Increase the Use of Case Related Information for Purposes Unrelated to The Litigation or Public Oversight of the Judicial Process.</u>

a. Identity Theft

Public disclosure of court records online will facilitate identity theft by providing easy access to personal identifying information to unscrupulous persons. In Maricopa County, Arizona, the rate of identity theft skyrocketed after large numbers of public records were made remotely accessible. In Ohio, online court records were the source of identity

³ "Comments of District Columbia Domestic Violence and Privacy Advocates on Online Remote Access to Case Dockets", citing "CIO.com, Country Rife With Identity Theft Reconsiders Online Records (December 22, 2005)"October 19, 2007; retrieved from https://epic.org/privacy/dv/DC_Court_records.pdf on June 13, 2015.

information for a ring of identity thieves.⁴ The court should not increase the availability of resources for identity thieves.

b. Abuses by Data Brokers

Today's technology has enabled data brokers to amass vast amounts of information to aggregate and use for commercial interests. Brokers compile and sell information gathered from multiple sources, including court records. Once a victim's information is remotely lifted from a court file, there is no way to control further dissemination of the data, correct errors in data already viewed by others, or ways to expunge the information from these myriad databases. Providing this information to data brokers does not in any way further the court oversight public policy reasons for access to court files.

CONCLUSION

For the reasons stated herein, the signatories to these comments respectfully request that no case file information from the Probate and Family Court or from any protective order or civil commitment proceedings, from District, Superior, or Boston Municipal Courts be available to the public online. This is the only way to guarantee the privacy and safety of victims and survivors of domestic abuse, sexual assault, children, and vulnerable, incapacitated adults.

Respectfully Submitted,

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[&]quot;Comments of District Columbia Domestic Violence and Privacy Advocates on Online Remote Access to Case Dockets", citing Lisa Myers, Online Public Records Facilitate ID Theft, MSNBC, Feb. 5, 2007, 16813496, https://epic.org/privacy/dv/DC Court records.pdf on June 13, 2015.