

**LIST OF AUTHORITIES DESIGNATING
MATERIAL AS IMPOUNDED, CONFIDENTIAL,
OR NOT AVAILABLE FOR PUBLIC INSPECTION (June 2015)**

The following list is an overview of the material that a statute, court rule, or standing order designates must be withheld as “impounded,” “withheld from public inspection,” “not available for public inspection,” “confidential,” “segregated,” or “sealed.” The list is not an exhaustive compilation of such matters under Massachusetts law. Attorneys and self-represented litigants must conduct their own research prior to filing any papers to ensure full compliance with the law governing impoundment.

Abortion consent forms and materials. “The said consent form and any other forms, transcript of evidence, or written findings and conclusions of a court, shall be confidential and may not be released to any person except by the pregnant woman's written informed consent or by a proper judicial order, other than to the pregnant woman herself, to whom such documents relate, the operating physician, or any person whose consent is required pursuant to this section, or under the law.” (G. L. c. 112, § 12S).

Abuse Prevention Orders. If the plaintiff or defendant is a minor in an action arising under G. L. c. 209A, the records “shall be withheld from public inspection except by order of the court; provided, that such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney, and to the plaintiff and the plaintiff's attorney, or any of them.” (G. L. c. 209A, § 8) The plaintiff's residential address, residential telephone number and workplace name, address and telephone number “shall be confidential and withheld from public inspection” when pursuing an action under 209A. (G. L. c. 209A, § 8).

Address Confidentiality Program Affidavits. Affidavits giving the actual address of litigants who wish to employ in civil litigation the post office box address that has been assigned to them by the Secretary of State's Address Confidentiality Program (S.J.C. Rule 1:20). The actual address of the program participant may be used by court personnel in the furtherance of their official duties, but such address shall not be used for purposes of mailing any documents, notices or orders. The affidavit shall be impounded by operation of this rule without any further judicial action. The Clerk shall segregate the impounded affidavit from the other papers and shall not make the information contained therein available to other parties. (G. L. c. 9A; 950 Code Mass. Regs. § 130).

Adoptions. “All petitions for adoption, all reports submitted there under and all pleadings, papers or documents filed in connection therewith, docket entries in the permanent docket and record books shall not be available for inspection, unless a judge of probate of the county where such records are kept, for good cause shown, shall otherwise order.” (G. L. c. 210, § 5C).

Affidavits of Indigency. “[B]y order of the Supreme Judicial Court, as required by G. L. c. 261, § 27B, the financial information contained in an affidavit of indigency, pursuant to both G. L. c. 261, § 29 (inmate), and G. L. c. 261, § 27B (non-inmate), may not, except by order of the recipient court, be disclosed to anyone other than authorized court personnel, the applicant, the applicant's counsel or anyone authorized in writing by the applicant.” Kordis v. Superintendent, Souza Baronowski Correctional Ctr., 58 Mass. App. Ct. 902, 904 (2003). The affidavit of indigency form states that, “[b]y

order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.”

Alcohol and drug abuse program and treatment records. A party's release form and/or court order may be needed to access records. (42 U.S.C. § 1175, 290 dd-3).

Appeals from the Sex Offender Registry Board. “The court shall keep proceedings conducted pursuant to this paragraph and records from such proceedings confidential and such proceedings and records shall be impounded.” (G. L. c. 6, § 178M).

Board of Bar Overseers proceedings. "Except as the Court shall otherwise order or as otherwise provided in this rule, the Board and the Bar Counsel shall keep confidential all information involving allegations of misconduct by a lawyer and all information that a lawyer's physical or mental condition may adversely affect his or her ability to practice law until the occurrence" of an enumerated event. (S.J.C. Rule 4:01, § 20(1)).

Child Protection Orders. Any protection of children proceeding conducted pursuant to G. L. c. 119, § 1 to § 37 cannot be open to the general public and the name of the individual involved cannot be published. (G. L. c. 119, § 38).

Child in Need of Services/Child Requiring Assistance. Petitions seeking a determination that a child is in need of services shall be confidential and not open to the public. (G.L. c. 119, § 39E - 39I).

Commission on Judicial Conduct proceedings. “Except as provided in this section, all proceedings of the commission shall be confidential until there has been a determination of sufficient cause and formal charges have been filed with the supreme judicial court.” (G.L. c. 211C, § 6).

Delinquency Proceedings. “The record of a **youthful offender** proceeding conducted pursuant to an indictment **shall be open to public inspection** in the same manner and to the same extent as adult criminal records. All other record of the court in **cases of delinquency** arising under sections fifty-two to fifty-nine, inclusive, **shall be withheld from public inspection** except with the consent of a justice of such court; provided however, that such records shall be open, at all reasonable times, to inspection by the child proceeded against” (G. L. c. 119 § 60A) (emphasis added).

Department of Workforce Development Hearings (unemployment hearings). All information “secured pursuant to this chapter is confidential and for the exclusive use and information of the department in the discharge of its duties. Such information is not a public record nor admissible in any action or proceeding, except as provided in this section. This information is absolutely privileged and shall not be made the subject matter or basis in any action of slander, libel or emotional distress.” (G. L. c. 151A, § 46).

Expunged Records. See Commonwealth v. S.M.F., 40 Mass. App. Ct. 42, 43-45 (1996) (Where the sealing statutes are not applicable, a trial court may use its inherent judicial power to order expungement).

Financial statements. Statements submitted by parties in the Probate and Family Court shall be impounded or kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the courts, the attorneys (whose appearances are entered in the case), the parties to the case, the registers, assistant registers, members of the Probation Department of the Probate Courts and to employees of the Mass. Dept. of Revenue, where necessary. (Supplemental Probate and Family Court Rule 401(d)).

Grand Jury minutes or documents. “Any grand jury transcript or document citing or describing grand jury testimony filed with any court shall be filed and maintained under seal, unless the paper is filed in a criminal prosecution for perjury before a grand jury.” (G. L. c. 268, § 13D(e)).

Guardian ad Litem Reports. “Unless otherwise ordered by the court, all guardian ad litem reports except those filed in cases involving accounts, licenses to sell and estate plans are impounded.” (Probate and Family Court Standing Order 2-08).

Harassment Prevention Orders. The records of cases arising out of actions in which the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court; provided, however, that such records shall be open, at all reasonable times, to the inspection of the minor, such minor's parent, guardian and attorney and to the plaintiff and the plaintiff's attorney. The plaintiff's residential address, residential telephone number and workplace name, address and telephone number, contained within the court records shall also be withheld with the same exception. All confidential portions of the records shall be accessible at all reasonable times to the plaintiff and plaintiff's attorney, to others specifically authorized by the plaintiff to obtain such information and to prosecutors, victim-witness advocates as defined in section 1 of chapter 258B, sexual assault counselors as defined in section 20J of chapter 233 and law officers, if such access is necessary in the performance of their duties. (G. L. c. 258E, § 10).

Inquest Report and Transcript. See G. L. c. 38, § 10; In re Globe Newspaper Co., Inc., 461 Mass. 113 (2011).

Juror Questionnaires. Jurors' confidential questionnaires or criminal records are not public records. (G.L. c. 234A, §§ 23, 33).

Juvenile Trials. Juvenile trials must exclude the public. Courts shall designate a juvenile session with a separate docket and record for the hearing of cases of children under eighteen years of age. The session shall be separate from that for the trial of criminal cases. The court shall exclude the general public from juvenile sessions admitting only such persons as may have a direct interest in the case, except in cases where the Commonwealth has proceeded by indictment. (G. L. c. 119, §§ 52, 60A, 65; G.L. c. 276, § 100B). However, records of adults prosecuted for criminal offenses in the Juvenile Court shall be open to the public.

Mediator Records. “All memoranda, and other work product prepared by a mediator and a mediator's case files shall be confidential and not subject to disclosure in any judicial or administrative proceeding involving any of the parties to any mediation to which such materials apply. Any communication made in the course of and relating to the subject matter of any mediation and which is

made in the presence of such mediator by any participant, mediator or other person shall be a confidential communication and not subject to disclosure in any judicial or administrative proceeding; provided, however, that the provisions of this section shall not apply to the mediation of labor disputes.” (G. L. c. 233, § 23C).

Medical Certificates and Clinical Team Reports. These reports must be filed when seeking temporary guardianship on the grounds of mental illness or physical incapacity or for conservatorship on the grounds of mental weakness. These reports are impounded, held separate from the file, and not available for public inspection. Access to inspect the reports is limited to the court, attorneys of record, parties, guardians ad litem, and any probation officer assigned to the case. The order specifically prohibits use for any purpose other than consideration of the petition. The certificate, by the terms of this standing order, is substituted for records that are protected by the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-19 1 (“HIPAA”) and would require a release form the person over whom guardianship is sought by the petition. (Probate and Family Court Standing Order 5-08).

Medical, Health and Hospital Records. A party's release form or court order is needed to access records. G. L. c. 111, § 70, § 70E(b). HIPAA Health providers may only release personal health information if the release signed by a party complies with the provisions of the federal law. Even if no statutory privilege applies to the information sought, the provider or keeper of other records (e.g., unlicensed support group leaders, batterer intervention programs) may also request a written release from their client.

Mental Health Reports. Mental health examination and commitment records (G. L. c. 123, §§ 1-18, 35), other than ordinary entries on the criminal docket, except on a judge's order.

Medical Peer Review Committee. “Except as otherwise provided in this section, the proceedings, reports and records of a medical peer review committee shall be confidential and shall be exempt from the disclosure of public records under G. L. c. 66 § 10 but shall not be subject to subpoena or discovery, or introduced into evidence, in any judicial or administrative proceeding.” (G. L. c. 111, § 204).

Paternity actions. “In an action to establish paternity or in which paternity of a child is an issue, all complaints, pleadings, papers, documents or reports filed in connection therewith, docket entries in the permanent docket and record books shall be segregated and unavailable for inspection only if the judge of the court where such records are kept, for good cause shown, so orders or the person alleged to be the father is adjudicated not to be the father of the child; provided, however, that the child, the child's mother, the person adjudicated to be the father and the department of transitional assistance, the department of children and families, the division of medical assistance or any other public assistance program and the IV-D agency as set forth in chapter 119A, when the child who is or was the subject of the complaint is a recipient of public assistance of the attorney for any of them, and the department of children and families, when the child who is or was the subject of the complaint is within the care and protection of the department of children and families, is the subject of a petition for such care of protection pursuant to chapter 119 or is the subject of a petition to dispense with consent for adoption pursuant to subsection (b) of section 3 of chapter 210, shall have access to and the right to obtain copies of the papers, docket books and judgments in actions pursuant to this chapter.” (G. L. c. 209C, § 13).

Pending or Denied Criminal Complaint Applications. Alphabetical indices, dockets, contents of case files, exhibits put in evidence, and tape recordings (if any) of proceedings should presumptively be closed to the public unless the clerk-magistrate or a judge concludes that the legitimate interest of the public outweighs the privacy interests of the accused. District Court Standards of Judicial Practice, The Complaint Procedure §§ 3:15 and 5:02 (rev. 2008).

Personal Medical Information. See Probate and Family Court Standing Order 1-09, Article V of G. L. c. 190B.

Photographs of unsuspecting nude person. “A photograph, videotape or other recorded visual image, depicting a person who is nude or partially nude that is part of any court record arising from a prosecution under this section, shall not be open to public inspection and shall only be made available by court personnel to a law enforcement officer, prosecuting attorney, defendant's attorney, defendant, or victim connected to such prosecution for inspection, unless otherwise ordered by the court.” (G. L. c. 272, § 105(g)).

Presentence Probation Reports. "In extraordinary cases, the judge may except from disclosure parts of the report which are not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons." See Mass. R. Crim. P. 28(d)(3); Commonwealth v. Martin, 355 Mass 296 (1969).

Probation Records. The information obtained and recorded shall not be regarded as public records and shall not be open for public inspection but shall be accessible to the justices and probation officers of the courts, to the police commissioner for the city of Boston, to all chiefs of police and city marshals, and to such departments of the state and local governments as the commissioner may determine. (G. L. c. 276, § 100).

Psychotherapist Treatment Records. See G. L. c. 112 § 129A, except as provided by G. L. c. 233, § 20(b).

Qualified Domestic Relation Orders. These reports are impounded, held separate from the file, and not available for public inspection. Access to inspect the reports is limited to the court, attorneys of record, and parties. (Probate and Family Court Standing Order 3-08).

Records deposited with the clerk-magistrate as potential exhibits. Materials that are not yet introduced in evidence or filed as an attachment to a pleading or motion, including business records produced pursuant to G. L. c. 233, § 79J, hospital records produced pursuant to G. L. c. 233, § 79, and records produced pursuant to the protocol of Commonwealth v. Dwyer, 448 Mass. 122, 148-149 (2006).

Rights afforded victims, witnesses, or family members. “To provide victims a meaningful role in the criminal justice system, victims and witnesses of crime, or in the event the victim is deceased, the family members of the victim, shall be afforded the following basic and fundamental rights, to the greatest extent possible and subject to appropriation and to available resources, with priority for services to be provided to victims of crimes against the person and crimes where physical injury to a person results:

* * * *

(h) for victims and witnesses, to be informed of the right to request confidentiality in the criminal justice system. Upon the court's approval of such request, no law enforcement agency, prosecutor, defense counsel, or parole, probation or corrections official may disclose or state in open court, except among themselves, the residential address, telephone number, or place of employment or school of the victim, a victim's family member, or a witness, except as otherwise ordered by the court. The court may enter such other orders or conditions to maintain limited disclosure of the information as it deems appropriate to protect the privacy and safety of victims, victims' family members and witnesses;” (G. L. c. 258B, § 3(h)).

Sealed Records. Records that have been properly sealed by a justice or by statute or the commissioner of probation, or in conjunction with a pardon granted by the Governor of the Commonwealth. See G. L. c. 276, §§ 100A, 100B and 100C.

School records. A party who has shared or sole legal custody may authorize release of records, except for a parent or party whose access is restricted by a Chapter 209A or other court order. (G. L. c. 71, § 34H; G. L. c. 208, § 31).

Search Warrants. Between issuance and return, a search warrant, the application for search warrant, and any supporting affidavits are not publically available. (G. L. c. 276, § 2B).

Social Worker records. “All communications between a social worker licensed pursuant to the provisions of § 132 or a social worker employed in a state, county or municipal governmental agency, and a client are confidential.” (G. L. c. 112, § 135A).

Trade secrets and other matters in connection with discovery. “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 county or judicial district, as the case may be, 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: . . . (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way” (Mass. R. Civ. P. 26(c)(7)).

Victim's Name in Sexual Assault Record. The portion of the records of a court or any police department which contains the name of the victim in an arrest, investigation, or complaint for rape or assault with intent to rape in certain specified offenses, shall be withheld from public inspection, except with the consent of a justice of such court where the complaint is or would be prosecuted. Except as otherwise provided it shall be unlawful to publish, disseminate or otherwise disclose the name of any individual identified as an alleged victim of the specified offenses. (G. L. c. 265, § 24C). The sexual assault offenses referenced in § 24C include:

- Indecent assault and battery on a child under age 14 (G. L. c. 265, § 13B)
- Indecent assault and battery on a child under 14 during commission of certain offenses or my mandated reporters (G.L. c. 265, § 13B ½)

- Indecent assault and battery on a child under 14 by certain previously convicted offenders (G.L. c. 265, § 13B ¾)
- Rape or aggravated rape (G. L. c. 265, § 22)
- Forcible rape of a child (G. L. c. 265, § 22A)
- Rape of a child during commission of certain offenses or by force (G.L. c. 265, § 22B)
- Rape of a child through use of force by certain previously convicted offenders (G.L. c. 265, § 22C)
- Statutory rape (G. L. c. 265, § 23)
- Rape and abuse of a child aggravated by age difference between defendant and victim or by mandated reporters (G.L. c. 265 § 23A)
- Rape and abuse by certain previously convicted offenders (G.L. c. 265 § 23B)
- Assault with intent to rape (G. L. c. 265, § 24)
- Assault on a child under 16 with intent to commit rape (G. L. c. 265, § 24B)
- Trafficking of persons (G.L. c. 265, § 50)
- Victim program locations. Locations of battered women's shelters, domestic violence, and rape crisis programs may not be disclosed by court order, or otherwise. (G. L. c. 233, § 20J, 20K).

ADDITIONAL MATERIAL THAT CAN BE PROTECTED:

Confidentiality Agreements in the Superior Court's Business Litigation Sessions. See Superior Court's "Formal Guidance of the Business Litigation Sessions Regarding Confidentiality Agreements."

Criminal Offender Record Information (CORI). The Massachusetts Criminal Offender Record Information Act (CORI), G. L. c. 6, §§ 167-168, regulates the collection and dissemination of criminal records. CORI includes records and data in any communicable form compiled by a Massachusetts Criminal Justice Agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pretrial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to that recorded as a result of the initiation of criminal proceedings or any consequent proceedings related thereto. See G.L. c. 6, § 167. For additional information, see Department of Criminal Justice Information Services (DCJIS) at <http://www.mass.gov/eopss/agencies/dcjis/>; the District Court Department's "A Guide to Public Access, Sealing & Expungement of District Court Records" appendix A (revised September 2013), at <http://www.mass.gov/courts/docs/courts-and-judges/courts/district-court/pubaccesscourtreports.pdf> and the Massachusetts Trial Court Law Libraries, Massachusetts

Law About Criminal Records at <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/cori.html>

Court Activity Record Information (CARI) and Warrant Management System

Information (WMS). "'CARI' means the Court Activity Record maintained by the Commissioner of Probation. "Court activity record information (CARI) records are compiled by the Department of Probation and include an individual's criminal offender record information (CORI) and all court appearances related to juvenile delinquency and civil protective order proceedings." *Commonwealth v. Humberto H.*, 466 Mass. 562, n.7 (2013), citing *Commonwealth v. Boe*, 456 Mass. 337, 341 n. 8, 924 N.E.2d 239 (2010); Standing Order 1-11 of the Probate and Family Court("Probate and Family Court's Use of Information Contained in the Court Activity Record Information (CARI) Report," effective June 1, 2011).

Judicial Deliberations. There exists an absolute privilege covering "a judge's mental impressions and thought processes in reaching a judicial decision, whether harbored internally or memorialized in other nonpublic materials . The privilege also protects confidential communications among judges and between judges and court staff made in the course of and related to their deliberative processes in particular cases." See In re Enforcement of a Subpoena, 463 Mass.162, 174 (2012).

Sexually Dangerous Person Proceeding. The case file in a sexually dangerous person proceeding is not automatically impounded. (G. L. c. 123A).