STATE OF VERMONT
VERMONT SUPREME COURT

SEPTEMBER TERM 2020

Order Promulgating Amendments to Rule 6(b)(5) of the Vermont Rules for Public Access to Court Records

Pursuant to the Vermont Constitution, Chapter 11, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 6(b)(5) of the Vermont Rules for Public Access to Court Records be amended, to provide as follows (new matter underlined):

RULE 6. CASE RECORDS

(b) **Exceptions.** The public does not have access to the following judicial-branch case records:

(5) The information and supporting affidavits filed to initiate a criminal proceeding if the judicial officer does not find probable cause <u>for all charges joined in the information</u> pursuant to Rule 4(b) or 5(c) of the Rules of Criminal Procedure.

Reporter's Notes—2020 Amendment

Rule 6(b)(5) is amended to provide clarification of the existing rule in the context of the enactment of amendments to the statutes governing expungement and sealing of criminal-history record information in cases where a judicial officer has found no probable cause for some, but not all, of the charges brought in a single information by the prosecuting attorney. Per 2019, No. 32, 13 V.S.A. § 7603(a)(1)(A) now provides that unless either party objects in the interests of justice, the court shall issue an order sealing the criminal history record related to the citation or arrest of a person within 60 days after the final disposition of the case if the court does not make a determination of probable cause at the time of arraignment. This amendment is consistent with Vermont Rule for Public Access to Court Records 6(b)(5) and its long-standing predecessor Rule 6(b)(24). However, 13 V.S.A. § 7606(c)(1) and (2) now provide that the court shall remove an expunged offense from any accessible database that it maintains, but that until all charges on a docket are expunged, the case file shall remain publicly accessible.

The present amendment clarifies that until all charges on a docket are expunged, the case file shall remain publicly accessible. Note that as to sealing and expungement and the timing thereof, pursuant to 13 V.S.A. § 7603(a)(2) and (g), the parties may now

stipulate to sealing or expungement of a criminal-history record that is otherwise subject to the provisions of Rule 6(b)(5) at any time.

2. That this rule as amended is prescribed and promulgated effective November 16, 2020. The Reporter's Notes are advisory.

3. That the Chief Justice is authorized to report this amendment to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 14th day of September, 2020.

Signed by the Vermont Supreme Court

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice