

ALASKA COURT SYSTEM
OFFICE OF THE ADMINISTRATIVE DIRECTOR
ADMINISTRATIVE BULLETIN NO. 53
(AMENDED EFFECTIVE October 1, 2019)

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SUBJECT: IMPLEMENTATION OF VICTIM'S RIGHTS ACT OF 1991

Date: September 5, 2019
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/s/
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Administrative Director

Original Bulletin issued effective September 16, 1991; amended July 1, 1992; amended February 14, 1994; Amendment No. 1 issued March 1, 1994, incorporated into September 23, 1994 amendment; amended November 19, 2008; amended January 30, 2009, amended March 1, 2015; amended September 1, 2019.

The October 1, 2019, revision eliminates the requirement that the clerk screen court-generated documents to determine if the document contains VRA confidential information and, if so, create a sanitized version of the document for the public file.

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I. Implementation Policy

The Victims' Rights Act of 1991 (VRA) became effective September 15, 1991. (Chapter 57 SLA 1991.) It is the court system's policy to apply the VRA to court files which were opened and documents which came into the possession of the court system on or after September 15, 1991. The following policies and procedures apply to all such files and documents.

The VRA makes the following information confidential:

- The residence address, business address and telephone numbers of a victim¹ or witness to any crime *unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.* AS 12.61.110 and AS 12.61.130(b).
- The name of a victim¹ of a sexual offense listed in AS 12.61.140. These offenses are:

AS 11.41.300(a)(1)(C)	Kidnapping by restraining with intent to inflict physical injury upon or sexually assault the restrained person.
AS 11.41.410	Sexual assault in the first degree.
AS 11.41.420	Sexual assault in the second degree.
AS 11.41.425	Sexual assault in the third degree.
AS 11.41.427	Sexual assault in the fourth degree.
AS 11.41.434	Sexual abuse of a minor in the first degree.
AS 11.41.436	Sexual abuse of a minor in the second degree.
AS 11.41.438	Sexual abuse of a minor in the third degree.
AS 11.41.440	Sexual abuse of a minor in the fourth degree.
AS 11.41.450	Incest.
AS 11.41.452	Online enticement of a minor.
AS 11.41.455	Unlawful exploitation of a minor.
AS 11.41.458	Indecent exposure in the first degree.
AS 11.41.460	Indecent exposure in the second degree.

The VRA prohibits disclosure of confidential information as follows:

- Parties may not include VRA confidential information in documents filed with the court. AS 12.61.130(b).

¹ See AS 12.61.900 and AS 12.55.185 for the definition of "victim."

- The court may not release VRA confidential information to the public. AS 12.61.110.
- Notwithstanding Administrative Rule 37.5's definition of "confidentiality," courts cannot release the addresses and telephone numbers of a victim or witness to defendants except as provided in AS 12.61.120:
 - If defendant is represented by counsel, the protected information may be disclosed to the defendant's counsel, but the court must order the defendant's counsel not to disclose the information to the defendant.
 - If defendant is not represented by counsel and the court finds that the defendant may pose a continuing threat to the victim or witness to one of the offenses listed in AS 12.61.120(b),² the court must protect the addresses and phone numbers as provided in that statute.

If the procedures in this bulletin have been followed by the court and parties, there should be no VRA protected information in the public portion of criminal case files. However, there may be VRA protected information in confidential documents such as confidential attachments to motions like medical records, police reports, and documents filed for in-camera review.

IMPORTANT: Before releasing confidential documents to defendants, clerks must determine whether the defendant wants a redacted or un-redacted copy of the confidential record. If the defendant requests un-redacted records, the clerk must route the file to a judicial officer for consideration. Otherwise, the clerk must redact addresses and telephone numbers before giving the records to the defendant.

The procedures outlined in this bulletin are adopted in order to ensure compliance with the VRA. These procedures must be followed in all criminal cases.

² The offenses listed in AS 12.61.120(b) are: AS 11.41 (homicide; assault and reckless endangerment; kidnapping, custodial interferences, and human trafficking; sexual offenses; and robbery, extortion, and coercion); AS 11.46.300-.330 (burglary 1st and 2nd, possession of burglary tools, criminal trespass 1st and 2nd); AS 11.56.740 (violating a protective order); AS 11.56.807 & .810 (terroristic threatening 1st and 2nd); AS 11.61.190-210 (misconduct involving a weapon 1st - 4th) and a crime involving domestic violence.

II. Documents Filed by Parties

Criminal Rule 44(f) requires that all documents filed with the court contain a VRA certification in the form prescribed by the Administrative Director. The rule authorizes the Administrative Director to exempt categories of documents from the certification requirement.

A. Certification Requirement

1. Certificate

- a. Unless specifically exempted by this bulletin, all documents filed in a criminal case except presentence reports must include the following certification:

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

Date

Signature of Party or Attorney

Type or Print Name

- b. Presentence Reports. All presentence reports must include the following certification:

VRA CERTIFICATION. I certify that this document and its attachments do not contain a residence or business address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

Date

Signature of Party or Attorney

Type or Print Name

- c. These certificates apply to the document and its attachments, for example: exhibits, photographs, affidavits, copies of police reports, copies of psychiatric or psychological reports, etc.
2. This certification may be attached to or printed on the document. If printed on the document, the certification must be on the first page of the document between the title of the pleading or paper and the beginning of the text. The certification need not be enclosed in a box and need not be indented from the document's margins. It must be printed in a type size no smaller than 9 points. A pre-printed certificate (form CR-101) is available at clerk's offices.
3. If the certification is printed on the document, the certification does not have to be dated and signed separately from the document. The person signing the document is signing the certification.
4. The clerk is authorized to reject for filing any document which does not include the required VRA certification.
5. The certification promulgated by the September 16, 1991 version of this bulletin may be used until February 28, 1994. Commencing March 1, 1994, the certification set out in the February 14, 1994, version of the bulletin must be used. Commencing October 1, 1994, the certification set out in this version of the bulletin must be used.

B. Documents Exempt from the Certification Requirement

The documents listed below are exempt from the certification requirement. The clerk is authorized to accept these documents for filing without the VRA certification.

1. All citations charging misdemeanors and Class C felonies except citations charging any crime listed in AS 12.61.140. This exemption from the certification requirement does not apply to other charging documents (complaints, information and indictments).
2. All court-produced forms which have the words "Exempt from VRA Certif." pre-printed in the upper-right corner.
3. The following documents filed by parties:
 - a. Entry of Appearance by Attorney

- b. Consent to Misdemeanor Proceedings in Defendant's Absence
- c. Consent to Trial by Magistrate
- d. Waiver of Preliminary Examination
- e. Waiver of Indictment
- f. Waiver of Trial by Jury
- g. Waiver of Speedy Trial
- h. Waiver of Extradition
- i. Bonds and Affidavit/Justification of Sureties
- j. Notice of Deferred Prosecution
- k. Notice of Intent to Call Expert Witness
- l. Notice of Intent to Impeach
- m. Notice of Dismissal
- n. Petitions to revoke probation (and attached documents) if the petition is based solely on the defendant's failure to comply with the requirements of his/her sentence concerning the following:
 - (1) alcohol or drug screening or treatment,
 - (2) other treatment programs,
 - (3) community work service, or
 - (4) imprisonment.

This exemption does not apply to any other petitions to revoke probation and their accompanying documents.
- o. Certificate of Service and Affidavit of Mailing
- p. Satisfaction of Judgment
- q. Notice of Reinstitution of Deferred Prosecution and Accompanying Affidavit, if the Affidavit never includes a victim's or witness' name, address or telephone number.
- r. Stipulation for Substitution of Counsel filed by the Public Defender Agency and Office of Public Advocacy

4. All documents filed by government agencies or their designees concerning a defendant's compliance or non-compliance with the requirements of his/her sentence. This includes, but is not limited to, such documents filed by the following agencies:
 - a. Alcohol Safety Action Program (ASAP) offices
 - b. Jails
 - c. Community Work Service offices
 - d. Driver education programs

This exemption does not apply to Petitions to Revoke Probation and accompanying documents except those listed in paragraph 3 above.

5. Confidential Documents

Except for presentence reports, court-ordered psychiatric and psychological reports³ and all other documents which are confidential or sealed by statute, regulation or court rule are exempt from the certification requirement. Presentence reports must comply with the Victims' Right Act⁴ and must include the certification requirement set out in paragraph A of this section.

6. Appellate Court Docketing Statements

7. All documents relating to writs of execution issued to the State of Alaska or a municipality for purposes of collecting fines, costs of appointed counsel, costs of imprisonment or any other debts owed under a judgment in the file (for example, forfeited bonds and restitution). This includes, but is not limited to, the following documents:

Information for Issuance of Writ of Execution (CIV-501)
Creditor's Affidavit (CIV-505)
Directions for Service of Writ
Return of Service of Writ
Writ of Execution (CIV-500, CIV-525)
Return of Service of Notice to Debtor
Notice to Debtor (CIV-510)
Claim of Exemptions (CIV-515)

³ Criminal Rule 49(b)

⁴ Criminal Rule 32.1(b)(1)

III. Documents Filed By Persons Other than Parties, Counsel, Police and Other Government Agencies

This section applies to documents such as letters to the court from victims and others concerning sentencing, and statements or billings concerning restitution.

Such documents are not required to have a VRA certificate. Instead, if the judge determines that a documents containing VRA confidential information, the judge is encouraged to direct the clerk to sanitize the document as explained in Section IX.B below.

IV. Search Warrants

See Administrative Bulletin 86 for procedures for protecting VRA information in search warrant records.

V. Court-Generated Documents

This section concerns documents signed by a judge or clerk (for example, temporary orders, judgments, bail orders, warrants, summonses, etc.) and documents in the case file prepared or used by court personnel (for example, 120-day Rule Cards, Stop/Stay Cards, log notes, witness lists, exhibits lists, jury-related material, etc.) These court-generated documents are not required to contain a VRA certification.

Judicial officers are encouraged to refrain from including any VRA confidential information in any court-generated document. Judicial officers are encouraged to use the initials rather than the name of a victim of a sexual offense listed in AS 12.61.140. If a judge includes any VRA confidential information in a document, the judge is encouraged to order the document made confidential and direct staff to prepare a sanitized copy of the document as explained in Section IX.B for use by the public.

VI. Other Court Records

Examples of other court records are accounting records and computer records.

Before allowing public inspection of such documents, the clerk must screen each document for VRA confidential information. If a document contains VRA confidential information, the clerk must make a sanitized copy as provided in Section IX.B. Only the sanitized version of the document may be released to the public.

If possible, VRA confidential information should not be included in other court records which are open to the public. When preparing such records, court

personnel should use initials, if possible, instead of the name of a victim of a sexual offense listed in AS 12.61.140 (see list of offenses on page 3).

VII. Court Hearings

- A. Hearings in criminal cases are open to the public unless otherwise ordered by the court. The public may hear VRA confidential information which is disclosed during the hearing. See AS 12.61.150.
- B. When a witness takes the stand during a court proceeding in a criminal matter, the in-court clerk must not ask the witness to state his or her address or telephone number. See AS 12.61.130(a).
- C. If the court determines that a witness must answer a question asking for the witness' address or telephone number (because the information is necessary and relevant to the facts of the case), the in-court clerk must not write the address or telephone number in the log notes.
- D. In log notes and witness lists, the in-court clerk must use the initials instead of the name of any victim of a sexual offense listed in AS 12.61.140 (see list of offenses on page 3).
- E. The VRA provides that before ordering disclosure, the court must take appropriate measures to minimize the risk of personal harm to the victim or witness that would result from the disclosure. AS 12.61.130(a). If a victim's address is needed, e.g., for restitution purposes, judicial officers are encouraged to ask for it off record and to direct that the information be placed in a Confidential Envelope (TF-350).

VIII. Audio Recordings and Transcripts

Audio recordings and transcripts of public court hearings are reproductions of those hearings. Therefore, because the public's access to public hearings is not restricted by the VRA, it is the court system's policy that recordings and transcripts of public court hearings are not subject to the confidentiality provisions of the VRA and may be released at any time to the public. It is not necessary to identify or sanitize audio recordings and transcripts containing VRA confidential information.

IX. Exhibits (Items offered as evidence at trial or other court hearing)

- A. A request by a member of the public to inspect an exhibit must be made in writing to the judge. If the judge grants the request and determines that the exhibit contains VRA confidential information, the judge should direct the clerk to prepare a sanitized copy as explained in paragraph B below. Only the sanitized version of the document may be released to the public.

- B. To sanitize a document, the clerk must do the following:
 - 1. Make a copy of the document or the page containing the VRA confidential information.
 - 2. Black out the VRA confidential information on the copy.
 - 3. Place the original document or page in a Confidential Envelope (TF-350) and file it with other confidential documents.
 - 4. Place the sanitized copy of the document in the case file.