

# **SUPREME COURT OF COLORADO**

## **OFFICE OF THE CHIEF JUSTICE**

### **RETENTION, TRANSMISSION, AND VIEWING OF SENSITIVE RECORDS**

This directive sets forth the Colorado Judicial Department’s policy governing the retention, transmission, and viewing of sexually exploitative material, visual depictions involving the use of a minor engaging in sexually explicit conduct, and child pornography. It seeks to protect these Sensitive Records while also permitting courts and other authorized persons to access them in a manner that is consistent with state and federal law. All such records shall be retained, transmitted, and viewed pursuant to this policy.

#### **DEFINITIONS**

##### **Section 1.00 – CHILD PORNOGRAPHY DEFINED**

“Child pornography” has the same meaning as defined in 18 U.S.C. § 2256(8) (2015).

##### **Section 1.01 – MINOR DEFINED**

“Minor” has the same meaning as defined in 18 U.S.C. § 2256(1).

##### **Section 1.02 – SENSITIVE RECORD DEFINED**

“Sensitive record” means any photograph, motion picture, video, recording, computer-generated image, or other record whose release or transmission is restricted by section 16-9-601, C.R.S. (2015), 18 U.S.C. § 2252 (2015), or 18 U.S.C. § 2252A (2015). This includes sexually exploitative material, visual depictions involving the use of a minor engaging in sexually explicit conduct, and child pornography.

##### **Section 1.03 – SEXUALLY EXPLICIT CONDUCT DEFINED**

“Sexually explicit conduct” has the same meaning as defined in 18 U.S.C. § 2256(2).

**Section 1.04 – SEXUALLY EXPLOITATIVE MATERIAL DEFINED**

“Sexually exploitative material” has the same meaning as defined in section 18-6-403(2)(j), C.R.S. (2015).

**Section 1.05 – VISUAL DEPICTION DEFINED**

“Visual depiction” has the same meaning as defined in 18 U.S.C. § 2256(5).

**PROCEDURES**

**Section 2.00 – EVIDENCE ADMITTED AT HEARING OR TRIAL**

- (a) If a trial court admits a Sensitive Record into evidence during a hearing or trial, the court or other appropriate court personnel shall seal the Sensitive Record in an envelope and write the case number, the exhibit number(s) or letter(s), the name of the defendant (criminal case) or juvenile (juvenile delinquency case), and the words “SENSITIVE RECORD” on the outside of the envelope. The court shall issue an order precluding anyone from opening the sealed envelope absent a court order. The court or other appropriate court personnel shall affix the order to the sealed envelope and secure the evidence in the courthouse’s locked evidence room or another secure courthouse location deemed appropriate by the court. This location must be one that is not accessible by the public and is accessible by as few court personnel as reasonably possible.
- (b) When entering information into the court's case management system regarding a Sensitive Record, the court or other appropriate court personnel shall list the Sensitive Record by exhibit number or letter without any further description and shall indicate that the court has sealed the exhibit, that the exhibit is secured in the locked evidence room or other appropriate location designated by the court, and that the exhibit may only be viewed pursuant to a court order.

**Section 2.01 – APPELLATE RECORD – TRIAL COURT PROCEDURE**

- (a) The trial court appeals clerk or other clerk designated by the clerk of court to prepare the appellate record shall not include a Sensitive Record in the record submitted to the appellate court unless ordered to do so pursuant to Section 2.02(a).
- (b) If the trial court record includes a Sensitive Record that the clerk is not transmitting to the appellate court, the clerk shall include the following statement in bold in the certificate of filing of record: **“Exhibits containing sexually exploitative material, child pornography, or visual depictions that involve the use of a minor**

**engaging in sexually explicit conduct have not been included as part of the record submitted on appeal and shall be retained by the trial court, under seal, unless those items are specifically ordered by the appellate court to be included with the appellate record.”**

- (c) Under no circumstances may a clerk or any other court personnel personally transport a Sensitive Record from the trial court to the appellate court.

### **Section 2.02 – APPELLATE RECORD – APPELLATE COURT PROCEDURE**

- (a) An appellate court may order the trial court to submit a Sensitive Record for inclusion in the appellate record. In doing so, the appellate court shall either order a specific law enforcement agency to transport the Sensitive Record to the appellate court clerk’s office or order the trial court to direct an appropriate law enforcement agency to transport the Sensitive Record to the appellate court clerk’s office.
- (b) During the pendency of the appeal, the appellate court(s) shall store any Sensitive Record in a secure courthouse location deemed appropriate by the court when the record is not in use. This location must be one that is not accessible by the public and is accessible by as few court personnel as reasonably possible. Absent a legitimate business reason, court personnel shall not view such record.
- (c) At the conclusion of the appeal, the appellate court may retain the Sensitive Record in a secure location or return it to the trial court. If the appellate court wishes to return a Sensitive Record to the trial court, it shall issue an order directing an appropriate law enforcement agency to transport the record to the trial court. Under no circumstances may a court clerk or any other court personnel personally transport a Sensitive Record from the appellate court to the trial court.

### **Section 2.03 – RESTRICTIONS ON ELECTRONIC TRANSMISSION, UPLOADING, AND DOWNLOADING**

Under no circumstances may a court, court personnel, a party, an attorney for a party, or any other person:

- (a) upload a Sensitive Record into an electronic case file;
- (b) upload a Sensitive Record to any electronic device connected to the Judicial Department’s network;
- (c) download a Sensitive Record onto any electronic device connected to the Judicial Department’s network; or

- (d) transmit a Sensitive Record to or from any electronic device connected to the Judicial Department's network.

**Section 2.04 – VIEWING SENSITIVE RECORDS IN ELECTRONIC FORMAT**

- (a) If a party or an attorney for a party wishes to electronically display a Sensitive Record to the trial court or jury during a trial or hearing, the party must display such record utilizing a computer or other electronic device supplied by a party.
- (b) If an appellate court or any person authorized by an appellate court wishes to view a Sensitive Record that is in an electronic format, the record shall be viewed at the Ralph L. Carr Colorado Judicial Center on an un-networked, isolated computing device and only after the court arranges such viewing through the Information Security Manager of the ITS Division at the State Court Administrator's Office.

This directive is amended effective April 7, 2017.

Done at Denver, Colorado this 7th day of April, 2017

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Nancy E. Rice, Chief Justice