

**STATE OF VERMONT
VERMONT SUPREME COURT
FEBRUARY TERM, 2026**

Promulgation Order Amending Rule 6(b) of the Vermont Rules for Public Access to Court Records

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

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

RULE 6. CASE RECORDS

(a) **Policy.** The public has access to all judicial-branch case records, in accordance with the provisions of this rule, except as provided in subdivision (b).

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

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(18) Any document filed with respect to an inquest proceeding, including: an application for an inquest, an affidavit providing the grounds for the inquest, any request for a subpoena in connection with the inquest, any document supporting the request for a subpoena, the court’s decision on the request for the inquest, any court order issued with respect to the application and any subpoena request, and any response from the person or entity on which the subpoena is served.

(19) Records of the issuance of a nontestimonial identification order under V.R.Cr.P. 41.1, including but not limited to the application, supporting affidavit(s), any testimony, and inventory, until the filing of the return on the order, unless sealed by order of court; and records of the denial of a nontestimonial identification order, unless opened by order of the court.

Reporter’s Notes—2026 Amendment

Rule 6(b)(18) is added to clarify that documents filed in connection with inquest proceedings are not publicly accessible. An inquest is essentially a discovery procedure used “to determine whether sufficient evidence exists to prosecute a criminal matter.” In re D.L., 164 Vt. 223, 225-26, 669 A.2d 1172, 1174-75 (1995). Inquests are governed by 13 V.S.A. §§ 5131-5136. The state’s attorney or the attorney general institutes an inquest by applying in writing to a judge of the superior court. 13 V.S.A. § 5131. “If the judge decides to conduct an inquest, the judge may issue ‘necessary process’ to require witnesses to give evidence related to the investigation.” In re D.L., 164 Vt. at 225, 669 A.2d at 1174 (quoting 13 V.S.A. § 5132).

Traditionally, an inquest was an in-person proceeding at which the prosecutor would examine witnesses, and a stenographer would

record the examination. Id. at 226. Section 5134 of Title 13 makes an inquest hearing, and the transcript thereof, secret.

Inquests of this type are now rare, however. “Instead the ‘inquest’ has become primarily a method of obtaining documentary or physical evidence from a witness who will provide the document or physical evidence on receipt of a subpoena for it thereby obviating any need for a hearing of any kind In the modern ‘inquest’ there is no evidentiary hearing with witnesses testifying to facts relevant to the commission of the crime. If there is an evidentiary hearing, it involves only the validity of the subpoena.” In re VSP-TK / 1-16-18 Shooting, 2019 VT 47, ¶¶ 43-44, 210 Vt. 435, 217 A.3d 560 (Dooley, J., concurring).

There is no statute or rule addressing the modern use of the inquest subpoena, or the public-access status of documents filed with the court in that process. There is also no statute or rule addressing the public-access status of documents filed in a traditional inquest proceeding, other than the transcript of the evidentiary hearing.

New Rule 6(b)(18) clarifies that all documents filed in connection with an inquest proceeding, whether it is a traditional in-person proceeding or the modern inquest subpoena process, are exempt from public access. This conforms with existing practice in the superior court. The court retains discretion to grant access to all or part of such records under Rule 9(c)-(d), unless otherwise prohibited by statute.

Similarly, Rule 6(b)(19) is added to clarify that records of requests for nontestimonial identification orders (NTOs) are not publicly accessible. Vermont Rule of Criminal Procedure 41.1 provides the authority for NTOs. It requires that an NTO be issued by a judicial officer based on a sworn affidavit establishing that there is probable cause to believe an offense has been committed, reasonable grounds to believe the subject of the NTO committed the offense, and the results of the NTO will be of material aid in determining whether the suspect committed the offense. V.R.Cr.P. 41.1(c). The order may be issued prior to the arrest of a suspect, after arrest and prior to trial, or during trial if warranted by special circumstances. Id. 41.1(b). The order may require the suspect to appear at a specified time and place for identification by, among other things, fingerprints, blood specimens, urine specimens, saliva samples, hair samples, handwriting examples, or voice samples. See V.R.Cr.P. 41.1(d), (m)(3). Criminal Rule 41.1 “is intended to provide a procedure equivalent to a search warrant for obtaining nontestimonial identification evidence.” Reporter’s Notes, V.R.Cr.P. 41.1. Rule 41.1 does not state whether records of pre-charge NTO proceedings are

confidential, and the Vermont Supreme Court has not addressed the issue.

New Rule 6(b)(19) clarifies that such records are exempt from public access, consistent with current superior court practice and the exemption for search warrants. See V.R.P.A.C.R. 6(b)(2). The court retains discretion to grant access to all or part of such records under Rule 9(c)-(d), unless otherwise prohibited by statute.

3. That these amendments be prescribed and promulgated, effective on **July 1, 2026**. The Reporter's Notes are advisory.

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

Dated in Chambers at Montpelier, Vermont, this 10th day of February, 2026.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

Christina E. Nolan, Associate Justice

Michael P. Drescher, Associate Justice