Alabama State Bar

Attorney Guide to Protecting Confidential Documents and Information When Filing in Alabama State Courts

Prepared by: Alabama State Bar Alacourt.com & Personal Identifying Information Task Force 2018-19
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INTRODUCTION

The following guide was created by the Alacourt.com & Personal Identifying Information Task Force appointed by then Alabama State Bar President Cole Portis and Chaired by Mike Ermert, Esq. The task force gratefully acknowledges the work performed by the trial court personnel and the Administrative Office of Courts staff who created the *Guide For Circuit and District Court Clerks: Scanning Case Files and Documents and Certain Information in Documents Not Open for Public Inspection* from which this guide was adapted.

As a general rule, documents filed in a court in this state are considered public records. Section 36-12-40, Ala. Code 1975, provides, in pertinent part, that "[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." Section 41-13-1, Ala. Code 1975, defines "public records" to include "any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office or officer."

Attorneys, however, must be cognizant of the exceptions to the aforementioned general rule. By law, some documents filed with a court are not subject to public disclosure or inspection. Some documents may be sealed by order of the trial court. Some statutes and court rules require confidentiality of certain information that is included in an otherwise public document.

Attorneys must also be aware that the law places a significant burden on the party filing a document with a court to safeguard from public disclosure information within that document that could be considered confidential. Rule 31(I) Ala. R. Jud. Admin., provides that it is the responsibility of the person filing a document with a court to take appropriate steps to protect any confidential contents of the filed document from public disclosure. Some examples: home or business addresses; phone numbers; dates of birth; tax returns; bank or financial account information; complete social security numbers; etc. The Supreme Court of Alabama has also adopted Rule 5.1, Ala. R. Civ. P., to provide parties with a procedure to redact certain personal identifying information in court documents filed in civil cases.

This guide provides attorneys and their staffs with guidance on filing documents that are not open to public inspection and on protecting sensitive information within a court filing that is not subject to disclosure. For purposes of this document, unless otherwise specified, the term "confidential" may mean confidential, not open to public inspection or disclosure, and/or sealed.

The information contained in this guide may not be all inclusive. There may be other documents or parts of documents that could be considered confidential. Ultimately, it is the

filer's responsibility to decide if the law requires that a document to be filed with a court is not subject to public disclosure or if certain information within a document should be treated as confidential information. If after consulting this guide and the relevant rules and statutes, you have any questions about whether a document is not subject to public disclosure or whether a document contains confidential information, it is recommended that you discuss your concerns with the judge and the other parties in the case prior to filing the information into a public file.

General Guidelines for Filing Confidential Documents or Public Documents that Contain Confidential Information

Electronic filing and online access in Alabama: The Alabama Administrative Office of Courts maintains a statewide electronic filing system for the circuit courts and the district courts in Alabama. Attorneys who are members of the Alabama State Bar can file documents electronically in circuit court and district court cases through the AlaFile system, which is a web-based application that can be accessed by going to the following URL: https://alafile.alacourt.gov. Self-represented parties who have registered through the AlaFile system may also file documents with the courts electronically. Online access to case documents and information is publically available through alacourt.com, a subscription service, except that cases that are confidential by law are not available for public viewing. In confidential cases, only attorneys of record in the case can access case images and data through alacourt.com. The public cannot. In the online case information, attorneys of record in a case may also be able to see personal identifying information of the parties (e.g. social security numbers) that cannot be seen by the public.

How to file electronically confidential documents or documents containing confidential information: Certain case files (e.g. most juvenile court cases and criminal cases where the youthful-offender adjudications) are confidential and not accessible to the public. Because these case types are already marked as confidential and not available for public access, attorneys can file documents electronically in these cases through AlaFile without the public disclosure of the documents. Attorneys, however, should take certain precautions when filing documents in a case that is open for public inspection but where the document is confidential or where the document contains confidential or personal identifying information. Any document which, as a whole, should remain confidential should not be filed electronically in a case that is open for public inspection. Unless a document is to be filed as confidential by virtue of existing law or local rules, the attorney should notify the court of the filer's request for the document to be treated as confidential by filing the appropriate motion with the court. If a document to be filed is a public document that contains confidential information (e.g., personal identifying information, financial account numbers, etc.), the filing party should redact that information before filing that document with the court. If that information is critical or necessary to the case, the filing party should file a redacted copy and an unredacted copy with the clerk in paper and should notify the clerk of the confidential nature of the filing. Special attention should be given to confidential documents and documents containing confidential information because any document filed electronically in a case that is open for public

inspection will be available immediately to the public. Additional instructions for using AlaFile is available in the AlaFile User Manual (see http://efile.alacourt.gov/media/1101/alafile-user-manual.pdf).

As of the date of this publication, attorneys of record have access to view confidential documents and information in alacourt.com. Access to certain other files or documents (e.g. documents and case files that have been sealed by order of the court) is not available online. Access to such records must be sought directly from the clerk or judge.

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I. Case Files or DOCUMENTS that are CONFIDENTIAL by Statute, Rule, Case Law or Order

The following outline contains descriptions of case files or documents that are confidential, citations to legal authority for this classification, and, generally, a listing of individuals who have access to the confidential file or confidential document. Note that this list may not be all inclusive and that it is the filer's responsibility to use his or her own judgment as to what should be treated as confidential.

A. Court Orders: Case files or documents ordered to be marked confidential or sealed by order of the trial court.

- Legal authority: The procedure for an attorney or party requesting a trial court to **seal** a record is controlled by Holland v. Eads, 614 So. 2d 1012 (Ala. 1993), in which the Supreme Court held:

> "In light of the public policy in favor of public access and the prevailing analysis of this presumption in most American courts, we hold that if a motion to seal is filed, then the trial court shall conduct a hearing. The trial court shall not seal court records except upon a written finding that the moving party has proved by clear and convincing evidence that the information contained in the document sought to be sealed:
>
> > "(1) constitutes a trade secret or other confidential commercial research or information; see Brown & Williamson Tobacco Corp., [710 F.2d 1165, 1179 (6th Cir.1983)]; or
> >
> > "(2) is a matter of national security; see Barron [v. Florida Freedom Newspapers, Inc., 531 So. 2d 113, 118 (Fla.1988)]; or
> >
> > "(3) promotes scandal or defamation; or
> >
> > "(4) pertains to wholly private family matters, such as divorce, child custody, or adoption; see [Nixon v. Warner Communications, Inc., 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed. 2d 570 (1978)]; [Ex parte Balogun, 516 So. 2d 606, 610 (Ala. 1987)]; Holcombe v. State ex rel. Chandler, 240 Ala. 590, 200 So. 739 (1941); or

> "(5) poses a serious threat of harassment, exploitation, physical intrusion, or other particularized harm to the parties to the action; or
>
> "(6) poses the potential for harm to third persons not parties to the litigation.
>
> "If any one of the above criteria is satisfied, then the trial court may seal the record, or any part of the record, before trial, during trial, or even after a verdict has been reached.
>
> "This approach limits, but does not abolish, the range of judicial discretion. There is a presumption in favor of openness, which can be overcome only by clear and convincing evidence that an individual's privacy interest (as set out above) rises above the public interest in access."

614 So. 2d at 1016.

- Who has access: Not specified by law. Access to a sealed case file or document is controlled by the terms of the order.

B. Juvenile Court Files (JU)

As a general rule, the entire case file should be treated as confidential. Subject to limited exceptions, juvenile court cases are considered to be confidential in the juvenile court, and juvenile court cases retain their confidential status when appealed to the circuit court for a trial de novo. **EXCEPTIONS:** In certain circumstances where an adult is a party in the juvenile court case, the case file, which will contain the JU prefix, might be open for public inspection. Examples include but are not limited to: Disabilities of Nonage Cases; Paternity/Support Cases (including Uniform Interstate Family Support Act Cases); Contempt Cases Against Adults; and Out-of-State Non-Dependency Custody Cases. Other examples include criminal charges against adults 18 years of age or older for the following offenses: Contributing to the Delinquency of a Child; Confidentiality Violations; Interfering with a Juvenile Probation Officer; Nonsupport; and School Law Violations. However, any identifying information relating to a child or the family of the child in the aforementioned cases shall remain confidential, except for nonsupport cases. Any identifying information pertaining to a child or the family of a child should be redacted before filing.

- Legal authority: See § 12-15-133, Ala. Code 1975, and Rule 28(B), Ala. R. Juv. P.

- Who has access pursuant to § 12-15-133(c), Ala. Code 1975: [1]

  - Juvenile Court Judge;

  - Juvenile probation officers and professional staff assigned to serve or contracted for service to the juvenile court;

  - Representatives of a public or private agency providing supervision or having legal custody of the child;

  - Parent (except when parental rights have been terminated), the legal guardian of the child, and the legal custodian of the child;

  - The subject of the proceedings and his or her counsel (child's attorney and criminal defense attorney) and guardian ad litem;

  - Judge, adult probation officers, prosecutor and other professional staff serving a court processing criminal cases for investigating or considering youthful offender applications;

  - Judge, adult probation officers, and other professional staff (including the prosecutor and the criminal defense attorney) serving a court processing criminal cases for completing sentencing standards worksheets and considering the sentence upon a person charged with a criminal offense;

  - In any criminal proceeding, including a criminal proceeding in which a person is adjudicated a youthful offender, as well as any juvenile proceeding pursuant to § 12-15-105, the prosecutor representing the State of Alabama shall have access to all juvenile legal files specified in subdivision (a)(1) on that person regardless of the jurisdiction from which the files originate;

  - The principal or representative of the school in which the child is enrolled shall file a written petition to the juvenile court setting forth the reasons why the safety or welfare, or both, of the school, its students, or personnel, necessitate production of the information and without which the safety and welfare of the school, its students, and personnel, would be threatened. NOTE: There are exceptions to a school principals or representatives having to file a written petition as follows:

    - § 12-15-217, Ala. Code 1975– **AUTOMATIC REPORTING OF** ADJUDICATIONS (not CHARGES) and dispositions of Class A & B felonies (required) and other offenses to schools (at the discretion of the juvenile court) to the superintendent of public-school district or principal of private school

  - §§ 15-20A-27(b)(1) and (2), Ala. Code 1975 – if schools get juvenile sex offender information;

[1] If a juvenile case has been **sealed** pursuant to § 12-15-136, Ala. Code 1975, access to that file is limited by the terms of that statute.

- The Alabama Sentencing Commission;

- Victims (but ONLY to petitions, motions, juvenile court notices, or dispositions);

- Although not listed in § 12-15-133(c), Ala. Code 1975, state and county children's services facilitation teams (multi-needs teams) have access to certain JU records pursuant to §§ 12-15-505(e)(3) and 12-15-506(e)(3), Ala. Code 1975.

PLEASE NOTE: By Order dated August 31, 2006, the Supreme Court of Alabama stated that the "criminal records" (it is assumed that this includes juvenile delinquency court records) of persons subsequently charged with a felony offense and previously adjudged a youthful offender or a juvenile delinquent shall be made available, statewide, to all judges, prosecutors, victim service officers, probation and parole officers, and court personnel for the sole purpose of completing the worksheets for sentencing standards without requiring a special hearing or an individual court order. OTHERWISE, no one shall have access to the juvenile or youthful offender records except as provided in §§ 12-15-133 or 15-19-7, Ala. Code 1975.

Any other person, prosecutor representing the State of Alabama, entity, agency, or department NOT LISTED in the law as being allowed "automatic access" shall file a written request with the juvenile court to access reports, records, and information in the juvenile court demonstrating a "legitimate need for access." See § 12-15-133(d), Ala. Code 1975. Form JU-3A (found under Juvenile Forms at eforms.alacourt.gov) was created for persons or entities to request juvenile records, reports, or information by demonstrating a "legitimate need for access."

C. **Adoption Records** (If an adoption case has been transferred from the probate court to the juvenile court on motion of any party pursuant to § 12-12-35(a), Ala. Code 1975, or for other reasons pursuant to §§ 12-15-115(a)(4), 26-10A-21 and 26-10A-24(e), Ala. Code 1975.)

This case type will be opened as a juvenile court file when transferred from probate court. At that point the file will be treated as other juvenile court cases described above. Besides authorized court personnel, only attorneys of record will be able to access the case file and information, and electronically-filed documents.

- Legal authority and who has access: See § 26-10A-31, Ala. Code 1975.

"(a) After the petition is filed and prior to the entry of the final decree, the records in adoption proceedings shall be open to inspection only by the petitioner or his or her attorney, the investigator appointed under Section 26-10A-19, any attorney appointed for the adoptee under Section 26-10A-22, and any attorney retained by or appointed to represent the adoptee. Such records shall be open to other persons only upon order of court for good cause shown.

"(b) All hearings in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel, except with leave of court.

"(c) After the final decree of adoption has been entered, all papers, pleadings, and other documents pertaining to the adoption shall be sealed, kept as a permanent record of the court, and withheld from inspection except as otherwise provided in this section and in subsection (c) of Section 22-9A-12. No person shall have access to such records except upon order of the court in which the decree of adoption was entered for good cause shown except as provided in subsection (c) of Section 22-9A-12 …."

D. Records and Information Concerning a Minor Requesting Waiver of Parental Consent to Perform an Abortion (JU case type).

This case type will be opened as a juvenile court file and treated as other juvenile court cases described above. Attorneys of record will be able to access the case file and information and sd documents.

- Legal authority: See § 26-21-8(a), Ala. Code 1975.

- Who has access: Currently, the judge, the local clerk's office, the minor, and the minor's attorney.

  NOTE: In Reproductive Health Services v. Marshall, 268 F. Supp. 3d 1261 (Dist. Court, MD Alabama 2017), the U.S. District Court for the Middle District of Alabama found to be unconstitutional portions of §26-21-4(c), Ala. Code 1975, the statute that authorizes disclosure of the identity of the minor to certain persons. Pursuant to this case, the identity of the child be may not be made known to any guardian ad litem, the district attorney or any representative of that office of the county where the minor is a resident or the county where the abortion is to be performed, any witness who has a need to know the identity, or any other person determined by the court who needs to know. Per the Court's order, the identity may be made known to the judge and any appropriate court personnel. At the time of publication of this Guide, Reproductive Health

Services remained on appeal in the U.S. Court of Appeals for the 11th Circuit, but the U.S. District Court's order had not been stayed. Section 26-21-4(o), Ala. Code 1975, provides that "[a]ll proceedings under this chapter shall be confidential and anonymous. In all pleadings or court documents, the minor shall be identified by initials only."

E. Youthful Offender Files

The Circuit Criminal (CC) or District Criminal (DC) file of a youthful offender should be treated as confidential.

- Legal authority: See § 15-19-7, Ala. Code 1975.

- Who has access: Judges statewide, prosecutors representing the State of Alabama, the local clerk's office and the attorneys of record in the case.

  NOTE: Even though law enforcement is not included in the list above, law enforcement (and other entities) DO have access to some information in youthful offender records similar to juvenile records as specified in this document.

  Regarding youthful offender sex offenders, § 15-20A-35, Ala. Code 1975, provides as follows:

  "For the purposes of this chapter, a youthful offender sex offender who has not been previously adjudicated or convicted of a sex offense and who has not yet attained the age of 18 at the time of the offense shall be considered a juvenile sex offender. A youthful offender sex offender who has been previously adjudicated or convicted of a sex offense as a juvenile sex offender, youthful offender sex offender, or adult sex offender, or who has attained the age of 18 at the time of the offense shall be treated as an adult sex offender convicted of a sex offense. A youthful offender sex offender who is treated as a juvenile sex offender for purposes of this chapter may not be released from the jurisdiction of the sentencing court until the youthful offender sex offender has undergone sex offender treatment and a risk assessment as required by Section 15-20A-26."

F. Mental Health Records in Criminal Cases

- Legal authority: See Rules 11.5 and 25.5, Ala. R. Crim. P. These records include mental competency to stand trial reports filed "under seal" with the clerk pursuant to Rule 11.5 and results of mental examinations

pursuant to Rule 25.5 performed when a defendant has been found not guilty by reason of mental defect. The Rule 25 reports are not public records "unless otherwise ordered by the court."

- Who has access: The judge assigned to the case, the local clerk's office and the attorneys of record in the case.

- How to file: File in paper with notice to the clerk that the document needs to be marked as confidential.

G. Presentence Investigation (PSI) Reports & Reports of Physical or Mental Examinations

- Legal authority: Rule 26.5 (c), Ala. R. Crim. P. But see § 13A-5-47(b), Ala. Code 1975, which states that PSI reports in death penalty cases are public record.

- Who has access: Judges statewide, the local clerk's office and attorneys of record in the case.

- How to file: File in paper with notice to the clerk that the document needs to be marked as confidential.

H. Ex Parte Motions

An ex parte motion is one made to the court without notice being provided to the opposing party. As a general rule, ex parte motions are not confidential. However, some parties may request that an ex parte motion be treated as a confidential or sealed so that the opposing party or attorney does not have access to it.

- How to file: File through AlaFile as an ex parte motion.

I. In Camera Filings

In camera means that the judge will review a document or receive testimony in his or her private chambers, often outside the presence of the parties and their attorneys.

- How to file: Documents submitted in camera should be hand delivered to the judge. Do not electronically file as they would be immediately publicly accessible.

J. Pretrial Diversion Program Records

Section 12-17-226.6(g), Ala. Code 1975, provides that "[p]retrial diversion program records or records related to pretrial diversion program admission, with the exception of the statement of the applicant concerning his or her involvement in the crimes charged or other crimes, shall not be admissible in subsequent proceedings, criminal or civil, unless a court of competent jurisdiction determines there is a compelling public interest in disclosing the records. Communications between pretrial diversion program counselors and offenders shall be privileged unless a court of competent jurisdiction determines there is a compelling public interest in disclosing the communication." In addition, some counties have local acts that make these records expressly confidential.

- How to file: A motion should be filed with the court seeking admission of the records.

K. Adult in Need of Protective Services

Section 38-9-6(e), Ala. Code 1975, states that "[a]ny record of the department or other agency pertaining to such a person shall not be open for public inspection. Information in a record shall not be disclosed publicly in such a manner as to identify individuals, but may be made available on application for cause to persons approved by the commissioner of the department or by the court." A petition for the court to order protective placement or other protective services for an adult will be opened as a confidential case. The attorneys of record may access the case electronically in alacourt.com in the same manner as accessing a juvenile or youthful offender case. The attorney must be an attorney of record in the case and must setup a confidential access code within AlaFile.

- How to file: File in paper with notice to the clerk that the document needs to be marked as confidential.

II. Public Documents that Contain Confidential Information

The confidential information included in the public document should be redacted by the filing party before the document is filed with the court. If the confidential information must be included in the document, an unredacted copy may be filed in paper with the clerk. In those cases, please advise the clerk of the situation so they can be scanned correctly.

A. Identifying Information of a Child Under 18 Years of Age Who is a Victim of Sexual Abuse or Exploitation

- Legal authority: See § 15-1-2(b), Ala. Code 1975. Please see attached Exhibit A with a list of crimes covered by § 15-1-2(b).[2] All information identifying the victim is protected.

- Who has access: Judge statewide, the local clerk's office and attorneys of record in the case.

B. Victim Information Protected by Crime Victims' Rights Act (CVRA)

- Legal authority: See §§ 15-23-69(b), 15-23-60(7) and (19), Ala. Code 1975.

  The Act covers felonies and misdemeanors as enumerated in the definition of "abuse" in § 30-5-2(1), Ala. Code 1975 of the Protection from Abuse Act, and criminal cases as shown in attached Exhibit B which are classified as a "criminal offense," defined in the Crime Victims' Rights Act in § 15-23-60(7), Ala. Code 1975, as "[c]onduct that gives a law enforcement officer or prosecutor probable cause to believe that a felony involving physical injury, the threat of physical injury, or a sexual offense, or any offense involving spousal abuse or domestic violence has been committed." [3] Please see also Exhibit C listing confidential information protected in certain cases. See also Alabama Attorney General's Opinion 96-00104 dated January 19, 1996, to Honorable Frank Gregory, then-Administrative Director of Courts.

  - What is confidential: The victim's "address, phone number, place of employment, and other related information about the victim." [4] The Act does not apply to the victim's name.
  - Who has access: Judges statewide, the local clerk's office and attorneys of record in the case.

C. Sentencing Worksheets – "Personal Prison In/Out Worksheet" (Effective 10-1-2016)

- Legal authority: References in the sentencing worksheets to prior juvenile or youthful offender adjudications are confidential because these records

[2] The list of crimes where victims' information is protected in Exhibit A may not be exhaustive.
[3] The list of crimes where victims' information is protected in Exhibit B may not be exhaustive.
[4] The CVRA defines "victim" in § 15-23-60(19) as "[a] person against whom the criminal offense has been committed, or if the person is killed or incapacitated, the spouse, sibling, parent, child, or guardian of the person, except if the person is in custody for an offense or is the accused."

in general are considered confidential pursuant to § 12-15-133, Ala. Code 1975; Rule 28(B), Ala. R. Juv. P.; and § 15-19-7, Ala. Code 1975.

- Who has access: Judges statewide, the local clerk's office and attorneys of record in the case.

- How to file: Because of the difficulty of redaction, file in paper with notice to the clerk of the character of the filing.

D. Appellate Court Documents

Attorneys should be cognizant of the fact that documents, including exhibits, filed with the trial courts in cases that are appealed to the appellate courts may be made a part of the record on appeal. The appellate-court document filing system is separate and apart from AlaFile and alacourt.com. If a document or an exhibit with sensitive or confidential material is filed in the trial court, attorneys should remain vigilant that the same does not get included into the record on appeal that could be viewed by the public. If such a document or exhibit inadvertently is included in the record, attorneys should contact the proper appellate court clerk's office immediately.

Regarding documents to be filed directly with an appellate court, attorneys should be aware of Rule 56, Ala. R. App. P., which provides:

> "(a) Unless the court orders otherwise, any electronic or paper document filed with the appellate courts in accordance with the provisions of Rule 28 or Rule 32 of these rules that contains a Social Security number, a taxpayer-identification number, a financial-account number, date of birth, the name of an individual known to be a minor, or the home address of an individual, the person or entity making the filing shall redact the personal data identifiers to include only:
>
> "(1) the last four digits of a Social Security number or a taxpayer-identification number;
>
> "(2) the last four digits of a financial-account number;
>
> "(3) the year of a date of birth;
>
> "(4) the minor's initials; and
>
> "(5) the city and state of the home address.

> "(b) In the event a document is filed that has been redacted in compliance with this rule and the document contains private or confidential information that cannot be adequately redacted so as to reasonably protect the private or confidential nature of the information contained therein and the need to protect the privacy or confidentiality of the information contained therein clearly exceeds the merits of public disclosure, the front cover of the document being filed shall be clearly identified by the filer in accordance with the provisions of Rule 28(d)(8), Rule 32(a)(2)(F), or Rule 32(a)(3)(C) of these rules.
>
> "(c) The records and papers filed, or caused to be filed, in the appellate court by the parties in any proceeding subject to section (b) of this rule shall be open for inspection only to counsel of record, and, upon order of the appellate court, to others having a proper interest therein."

See also Rule 52, Ala. R. App. P., which states:

> "In any case involving a juvenile who has been the subject of a proceeding in the juvenile court system, a person granted youthful-offender status, a victim of child abuse, or a victim of a sex offense, the appellate court shall make reasonable efforts to preserve the anonymity of such a person. This anonymity shall be observed in the body of any opinion, in the styling of the case, and in any documents filed with the appellate courts. The front cover of the document being filed shall be clearly identified by the filer in accordance with the provisions of Rule 28(d)(8), Rule 32(a)(2)(F), or Rule 32(a)(3)(C) of these rules.
>
> "The records and papers filed, or caused to be filed, in the appellate court by the parties in any proceeding subject to this rule shall be open for inspection only to counsel of record, and, upon order of the appellate court, to others having a proper interest therein."

III. Other Confidential Documents that are NORMALLY Not Part of a Case File

These documents will normally not be made part of a case file. If filing one of these documents, file the document in paper with notice to the clerk of the character of the filing.

A. Unexecuted Original Warrants[5] (grand jury, search and arrest).

- Legal authority: See Alabama Attorney Opinions 90-00067, dated December 7, 1989, to the Honorable Samuel H. Monk, II, then-Circuit Judge, Seventh Judicial Circuit ("An unexecuted arrest warrant and supporting affidavits are not matters of public record, regardless of where such documents are filed") and 1985-00013 dated October 10, 1984, to the Honorable George W. Edgar, then-Clerk, District Court, Mobile County ("The search warrant and accompanying affidavit should be filed in the clerk's office after they are executed and returned."), for search and arrest warrants; §§ 12-16-210 and 15-8-72, Ala. Code 1975, for grand jury indictments.

- Who has access: Local clerk's office only.

B. Incident/Offense (I/O) Reports.

These documents should not be filed unless submitted as an exhibit.

- Legal authority:

  See Alabama Attorney General Opinions 2000-225, dated August 30, 2000, to Honorable S. Wayne Fuller, Attorney, City of Cullman ("Information gathered about a victim, who is also a witness to a crime, and reported on the front side of the Uniform Incident/Offense Report can be protected from disclosure under longstanding and well-recognized exceptions to general rule that the information recorded on the front side of the report is public information.");

  2000-203, dated August 8, 2000, to Honorable D.T. Marshall, then-Montgomery County Sheriff ("Information gathered about a victim who is also a witness to a crime is protected from disclosure. No portion of the back side of the Incident/Offense Report is a public record.");

  2000-004, dated October 7, 1999, to Honorable Tommy Ed Roberts, Alabama State Senator ("Section 12-21-3.1 of the Code of Alabama does not alter the long-standing and well-established principle that the information contained on the front of the Alabama Uniform Incident/Offense Report should be available for public inspection."); and

  97-00043, dated November 27, 1996, to Honorable M.E. "Mac" Holcomb, Sheriff, Marshall County ("Uniform Incident/Offense Report is public

[5] Once a warrant has been executed, the case is docketed and the warrant and supporting affidavit becomes a part of the public file. See Ala. R. Crim. P. Rule 3.1(d).

record, portions of which may be withheld from public disclosure to protect police investigations, witnesses, innocent persons, and the right of the accused to a fair trial").

- Who has access: Depends on the case type.

- How to file: If this document is filed as an exhibit, the second page should be redacted before filing.

C. Criminal depositions/affidavits (used by magistrates to make probable cause determinations).

- Legal authority: Copies of unexecuted arrest warrants and supporting affidavits are not court records subject to public disclosure, regardless of where they are filed. An arrest warrant and supporting affidavits become a matter of public record only after the arrest warrant has been executed. See Alabama Attorney Opinion 90-00067, dated December 7, 1989, to the Honorable Samuel H. Monk, II, then-Circuit Judge, Seventh Judicial Circuit.

- Who has access: Depends on the case type.

- Because depositions, affidavits, and executed warrants can contain private information of victims, they should be examined for redaction and care exercised before filing to comply with the Crime Victim's Rights Act.

D. Juror questionnaires in criminal cases.

- Legal authority: See Rule 18.2, Ala. R. Crim. P., and the Committee Comment to Amendment Effective August 1, 2002. Juror questionnaires should not be made part of the case file and should be kept confidential. The only exception would be if they are introduced as an exhibit or if made part of the case file by order of the court.

- Who has access: Depends on the case type.

- How to file: File in paper with notice to the clerk of the character of the filing.

E. Affidavits of paternity (also known as acknowledgments of paternity)

- Legal Authority: Affidavits of paternity should not be made part of any case file unless filed with a pleading, ordered by a court, or introduced as an exhibit in court proceedings. These affidavits are considered confidential records pursuant to § 26-17-313, Ala. Code 1975.

- Who has access: Local clerk's office only.

IV. Other Confidential or Sensitive Information

Rule 31(I), Ala. R. Jud. Admin. governs who is responsible for protecting confidential or sensitive information contained within an otherwise public document. As explained in this Rule, it is the filer's responsibility to take appropriate steps to protect such information in an otherwise public file. Some examples: home or business addresses; phone numbers; dates of birth; tax returns; bank or financial account information; social security numbers; etc.

When an otherwise public document contains protected information, that information should be redacted prior to filing with the court. In cases where the information is necessary to the case, a redacted copy <u>and</u> an unredacted copy should be paper filed with notice to the clerk so they can be properly scanned into the case file.

V. FREQUENTLY ASKED QUESTIONS

1. **What about records or documents produced as part of the mediation process? For example – position papers of the parties, report of the mediator, etc.**

   See Alabama Civil Court Mediation Rule 11. These documents should not be filed or made part of the court record unless introduced as an exhibit or made part of the court record by order of the court. If they are filed by a party in the case (for example as an exhibit), access will be determined based on the case type – subject to the order of the court.

2. **What about Medical Records, Psychological Records, Education Records, Drug & Alcohol Patient Records and Records Protected by the Individuals with Disabilities Education Act?**

   If these records are filed by the party or attorney (frequently as part of a discovery dispute, as an exhibit to a motion or at trial), the party or attorney bears the responsibility of taking the appropriate action to protect these documents or information. They should be properly redacted or appropriate steps taken to protect the documents.

3. **How should I handle otherwise public documents that contain confidential information?**

   Generally speaking, if the information is protected by statute, rule, case law or order, an attorney should file a redacted copy with the clerk. If the redacted information must be part of the case record, the attorney or party may also file an unredacted copy with the clerk. In that case, the documents should be filed in paper and the clerk notified that redacted and unredacted copies are being submitted.

VI. EXHIBITS to the ATTORNEY GUIDE: Protecting Confidential Documents and Information When Filing in Alabama State Courts

Exhibit A: List of Criminal Offenses Where Victim's Information is Confidential

1. Section 15-1-2 (Child Victim Identifying Information)

List of Applicable Crimes (Not Exhaustive):

- **Section 13A-6-41** Unlawful imprisonment in the first degree. (A Misdemeanor) (if the victim is a minor, and the record of conviction reflects the intent of the unlawful imprisonment was to abuse the minor sexually)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)
- **Section 13A-6-42** Unlawful imprisonment in the second degree. (C Misdemeanor) (if the victim is a minor, and the record of conviction reflects the intent of the unlawful imprisonment was to abuse the minor sexually)
- **Section 13A-6-43(a)(4)** Kidnapping in the first degree. (A Felony) (if the intent of the abduction is to violate or abuse the victim sexually)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-6-61** Rape in the first degree. (A Felony)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-6-62** Rape in the second degree. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- S**ection 13A-6-63** Sodomy in the first degree. (A Felony)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-6-64** Sodomy in the second degree. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- **Section 13A-6-65** Sexual misconduct. (A Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)

- **Section 13A-6-65.1** Sexual torture. (A Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)
- **Section 13A-6-66** Sexual abuse in the first degree. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 13A-6-67** Sexual abuse in the second degree. (A Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor); 2nd and subsequent offenses within one year (C Felony).
- **Section 13A-6-68** Indecent exposure. (A Misdemeanor); third or subsequent offenses (C Felony)
- **Section 13A-6-69** Enticing child to enter vehicle, house, etc., for immoral purposes. (C Felony)
- **Section 13A-6-69.1** Sexual abuse of a child less than 12 years old. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- **Section 13A-6-71** Foster parent engaging in sex act with a foster child. (B Felony); foster parent engaging in sexual conduct with a foster child. (C Felony); foster parent soliciting a sex act or sexual conduct with a foster child. (A Misdemeanor)
- **Section 13A-6-72(a)** Distributing a private image (first conviction). (A Misdemeanor).
- **Section 13A-6-72(e)** Distributing a private image (second or subsequent convictions). (C Felony).
- **Section 13A-6-73(a)** Sexual extortion. (B Felony)
- **Section 13A-6-75(a)(1)** Directing a child to engage in sexual intercourse or deviate sexual intercourse. (A Felony)
- **Section 13A-6-75(b)(1)** Directing a child to engage in sexual contact. (C Felony)
- **Section 13A-6-81** School employee engaging in a sex act with a student under the age of 19 years. (B Felony)
- **Section 13A-6-82** School employee having sexual contact with a student under the age of 19 years. (C Felony); school employee soliciting a sex act with a student under the age of 19 years. (A Misdemeanor)
- **Section 13A-6-82.1** School employee distributing obscene material to a student. (A Misdemeanor)
- **Section 13A-6-111** Transmitting obscene material to a child by computer. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)

- **Section 13A-6-121** Facilitating solicitation of unlawful sexual conduct with a child. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 13A-6-122** Electronic solicitation of a child. (B Felony)
- **Section 13A-6-123** Facilitating the on-line solicitation of a child. (B Felony)
- **Section 13A-6-124** Traveling to meet a child for an unlawful sex act. (A Felony)
- **Section 13A-6-125** Facilitating the travel of a child for an unlawful sex act. (A Felony)
- **Section 13A-6-152** Human trafficking in the first degree provided the offense involved sexual servitude. (A Felony)
- **Section 13A-6-153** Human trafficking in the second degree provided the offense involved sexual servitude. (B Felony)
- **Section 13A-12-111** Promoting prostitution in the first degree. (B Felony)
- **Section 13A-12-112** Promoting prostitution in the second degree. (C Felony)
- **Section 13A-12-121** Committing an act of prostitution. (A Misdemeanor)
- **Section 13A-12-121.1 Committing an act of prostitution with a minor, etc. (B Felony)**
- **Section 13A-12-191** Dissemination or public display of obscene matters containing visual depiction of persons under 17 years of age involved in obscene acts. (B Felony)/ Section 13A-4-1 Solicitation to commit this offense (C Felony)/ Section 13A-4-2 Attempt to commit this offense. (C Felony)
- **Section 13A-12-192** Possession and possession with intent to disseminate obscene matter containing visual depiction of person under 17 years of age involved in obscene acts. (B Felony); (C Felony)
- **Section 13A-12-196** Parent or guardians permitting children to engage in production of obscene matter. (A Felony)
- **Section 13A-12-197** Production of obscene matter containing visual depiction of person under 17 years of age involved in obscene acts. (A Felony)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-12-200.2** Distribution, possession with intent to distribute, production, etc. of obscene material. (a)(1) and (a)(2) (first offenses). (A Misdemeanor Section 13A-4-2 Attempt to commit (a)(1). (A

Misdemeanor); (a)(1) and (a)(2) (second and subsequent offenses). (C Felony); (a)(3). (C Felony) /Section 13A-4-2 Attempt to commit. (B Misdemeanor)

- **Section 13A-12-200.5** Distribution, possession with intent to distribute, display for sale, etc. material harmful to minors. [(1) (A Misdemeanor); (2)a. (A Misdemeanor); (4) (C Felony)
- **Section 13A-13-3** Incest. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 14-11-31** Custodial sexual misconduct. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 13A-4-1** Criminal solicitation to commit the above sex offenses (unless a specific charge code for solicitation to commit a certain offense is provided above):
  - Class B felony if the offense solicited is a Class A felony.
  - Class C felony if the offense solicited is a Class B felony.
  - Class A misdemeanor if the offense solicited is a Class C felony.
  - Class B misdemeanor if the offense solicited is a Class A misdemeanor.
  - Class C misdemeanor if the offense solicited is a Class B misdemeanor.
  - Violation if the offense solicited is a Class C misdemeanor.
- **Section 13A-4-2** Attempt to commit the above sex offenses (unless a specific charge code for attempt to commit a certain offense is provided above):
  - Class B felony if the offense attempted is a Class A felony.
  - Class C felony if the offense attempted is a Class B felony.
  - Class A misdemeanor if the offense attempted is a Class C felony.
  - Class B misdemeanor if the offense attempted is a Class A misdemeanor.
  - Class C misdemeanor if the offense attempted is a Class B misdemeanor.
  - Violation if the offense attempted is a Class C misdemeanor.
- **Section 13A-4-3** Criminal conspiracy to commit the above sex offenses (unless a specific charge code for conspiracy to commit a certain offense is provided above):
  - Class B felony if an object of the conspiracy is a Class A felony.
  - Class C felony if an object of the conspiracy is a Class B felony.
  - Class A misdemeanor if an object of the conspiracy is a Class C felony.
  - Class B misdemeanor if an object of the conspiracy is a Class A misdemeanor.
  - Class C misdemeanor if an object of the conspiracy is a Class B misdemeanor.
  - Violation if an object of the conspiracy is a Class C misdemeanor.

Exhibit B: Crime Victims' Rights Act*

List of Applicable Crimes (<u>Not Exhaustive</u>)

<u>Felonies Involving Physical Injury or Threat of Physical Injury:</u>

- **Section 13A-5-40(a)** – Capital Offenses (A Felony):
  - (1) Murder by the defendant during a kidnapping in the first degree or an attempt thereof committed by the defendant.
  - (2) Murder by the defendant during a robbery in the first degree or an attempt thereof committed by the defendant.
  - (3) Murder by the defendant during a rape in the first or second degree or an attempt thereof committed by the defendant; or murder by the defendant during sodomy in the first or second degree or an attempt thereof committed by the defendant.
  - (4) Murder by the defendant during a burglary in the first or second degree or an attempt thereof committed by the defendant.
  - (5) Murder of any police officer, sheriff, deputy, state trooper, federal law enforcement officer, or any other state or federal peace officer of any kind, or prison or jail guard, while such officer or guard is on duty, regardless of whether the defendant knew or should have known the victim was an officer or guard on duty, or because of some official or job-related act or performance of such officer or guard./Section 13A-4-2 Attempt to commit this offense.
  - (6) Murder committed while the defendant is under sentence of life imprisonment.
  - (7) Murder done for a pecuniary or other valuable consideration or pursuant to a contract or for hire/Section 13A-4-3 Conspiracy to commit this offense.
  - (8) Murder by the defendant during sexual abuse in the first or second degree or an attempt thereof committed by the defendant.
  - (9) Murder by the defendant during arson in the first or second degree committed by the defendant; or murder by the defendant by means of explosives or explosion/Section 13A-4-3 Conspiracy to commit this offense.
  - (10) Murder wherein two or more persons are murdered by the defendant by one act or pursuant to one scheme or course of conduct.
  - (11) Murder by the defendant when the victim is a state or federal public official or former public official and the murder stems from or is caused by or is related to his official position, act, or capacity.
  - (12) Murder by the defendant during the act of unlawfully assuming control of any aircraft by use of threats or force with intent to obtain any valuable consideration for the release of said aircraft or any passenger or crewmen thereon or to direct the route or movement of said aircraft, or otherwise exert control over said aircraft.
  - (13) Murder by a defendant who has been convicted of any other murder in the 20 years preceding the crime; provided that the murder which constitutes the capital crime shall be murder as defined in subsection (b) of this section; and provided

further that the prior murder conviction referred to shall include murder in any degree as defined at the time and place of the prior conviction.
  - (14) Murder when the victim is subpoenaed, or has been subpoenaed, to testify, or the victim had testified, in any preliminary hearing, grand jury proceeding, criminal trial or criminal proceeding of whatever nature, or civil trial or civil proceeding of whatever nature, in any municipal, state, or federal court, when the murder stems from, is caused by, or is related to the capacity or role of the victim as a witness.
  - (15) Murder when the victim is less than fourteen years of age.
  - (16) Murder committed by or through the use of a deadly weapon fired or otherwise used from outside a dwelling while the victim is in a dwelling.
  - (17) Murder committed by or through the use of a deadly weapon while the victim is in a vehicle.
  - (18) Murder committed by or through the use of a deadly weapon fired or otherwise used within or from a vehicle.
  - (19) Murder by the defendant where a court had issued a protective order for the victim, against the defendant, pursuant to Section 30-5-1 et seq., or the protective order was issued as a condition of the defendant's pretrial release.
  - (20) Murder by the defendant in the presence of a child under the age of 14 years at the time of the offense, if the victim was the parent or legal guardian.
  - Capital murder. /Section 13A-4-3 Conspiracy to commit capital murder.
  - Remanded capital case.

- **Section 13A-6-2** Murder. /Section 13A-4-1 Solicitation to commit murder. /Section 13A-4-2 Attempted murder. /Section 13A-4-3 Conspiracy to commit murder. (A Felony)
- **Section 13A-6-3** Manslaughter. (B Felony)/Section 13A-4-2 Attempt to commit manslaughter. (C Felony)
- **Section 13A-6-4** Criminally negligent homicide. (only in cases in which the criminally negligent homicide is caused by the driver or operator of a vehicle or vessel who is driving or operating the vehicle or vessel is in violation of Sections 32-5A-191 or 32-5A-191.3, C Felony)
- **Section 13A-6-5(a)** Homicide by vehicle or vessel. (C Felony)
- **Section 13A-6-20** Assault in the first degree. (B Felony) /Section 13A-4-1 Solicitation to commit this offense other than (a)(5). (C Felony)/Section 13A-4-2 Attempt to commit this offense other than (a)(5). (C Felony)/Section 13A-4-3 Conspiracy to commit this offense other than (a)(5). (C Felony)
- **Section 13A-6-21** Assault in the second degree. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)/Section 13A-4-3 Conspiracy to commit this offense. (A Misdemeanor)
- **Section 13A-6-26** Compelling streetgang membership. (C Felony) except if defendant is over 18 and person compelled is under 18, A Felony)
- **Section 13A-6-27** Use of pepper spray, etc. (C Felony)
- **Section 13A-6-28** Cross or American flag burning. (C Felony)

- **Section 13A-6-29** Administration of medication by owner, operator, or employee of child care facility. [(C Felony) except if it was near fatality, dismemberment, or permanent disability, B Felony; death of child, A Felony]
- **Section 13A-6-43** Kidnapping in the first degree [except for (a)(4)]. (A Felony)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-6-44** Kidnapping in the second degree. (B Felony)/Section 13A-4-1 Solicitation to commit this offense. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)
- **Section 13A-6-90** Stalking in the first degree. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 13A-6-91** Aggravated stalking in the first degree. (B Felony)
- **Section 13A-6-130** Domestic violence in the first degree. (A Felony) (assault); (aggravated stalking)/Section 13A-4-2 Attempt to commit domestic violence in the first degree (assault) (B Felony)
- **Section 13A-6-131** Domestic violence in the second degree (all but domestic violence criminal mischief in the first degree). (B Felony) ((burglary 2nd/3rd); (stalking); (assault); (intimidating a witness); (burglary 2nd); (general); (burglary 3rd))/ Section 13A-4-2 Attempt to commit domestic violence in the second degree (assault) (C Felony)
- **Section 13A-6-132** Domestic violence in the third degree (3rd or subsequent conviction). (C Felony) (only domestic violence assault in the third degree, menacing, reckless endangerment, criminal coercion, and harassment /Section 13A-4-2 Attempt to commit. (A Misdemeanor)
- **Section 13A-6-138** Domestic violence by strangulation or suffocation. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)
- **Section 13A-6-192** Elder abuse and neglect - first degree. (A Felony)
- **Section 13A-6-193** Elder abuse and neglect - second degree. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)
- **Section 13A-7-5** Burglary in the first degree. (A Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-7-6** Burglary in the second degree. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- **Section 13A-7-7** Burglary in the third degree. (a)(1) (dwelling); (a)(2) (occupied building); (a)(3) (unoccupied building) (C Felony) /Section 13A-4-2 Attempt to commit (a)(2), (a)(2), and (a)(3). (A Misdemeanor)/Section 13A-4-3 Conspiracy to commit (a)(1) and (a)(3). (A Misdemeanor)
- **Section 13A-8-41** Robbery in the first degree. (A Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony) /Section 13A-4-2 Attempt to commit this offense. (B Felony)

- **Section 13A-8-42** Robbery in the second degree. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony) /Section 13A-4-2 Attempt to commit this offense. (C Felony)
- **Section 13A-8-43** Robbery in the third degree. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (A Misdemeanor) /Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 13A-8-112(b)(4)** Computer tampering (if the committed offense causes physical injury to any person who is not involved in the act). (A Felony)
- **Section 13A-10-15** Making terrorist threat. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)/Section 13A-4-3 Conspiracy to commit this offense. (A Misdemeanor)
- **Section 13A-10-31** Escape in the first degree. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- **Section 13A-10-52(c)** Fleeing or attempting to elude law enforcement officer. (C Felony involving death or injury)
- **Section 13A-10-123** Intimidating a witness. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 13A-11-270(c**) Airbag fraud. (C Felony)
- **Section 13A-11-290(c)(5) and (c)(6)** Leaving child or incapacitated person unattended in motor vehicle. (serious physical injury - C Felony; death – B Felony)
- **Section 22-8B-4** Providing aid in dying. (C Felony) [(a); (b)]
- **Section 25-8-59(q)** Employer in violation of subsection (c) involving serious injury to or death of a minor (Second or subsequent convictions – C Felony)
- **Section 26-15-3** Torture, willful abuse, etc. of child under 18 years of age by responsible person. (C Felony) /Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)/Section 13A-4-3 Conspiracy to commit this offense. (A Misdemeanor).
- **Section 26-15-3.1** Aggravated child abuse. (B Felony); under the age of six – A Felony).
- **Section 26-15-3.2** Chemical endangerment of exposing a child to an environment in which controlled substances are produced or distributed. (a)(1) (C Felony); (a)(2) (B Felony); (a)(3) (A Felony)/Section 13A-4-2 Attempt to commit (a)(1) (C Misdemeanor); Section 13A-4-2 Attempt to commit (a)(1). (A Misdemeanor).
- **Section 38-9-7** Unlawful abuse, neglect, exploitation, or emotional abuse of any protected person. (intentional abuse/neglect with serious physical injury– B Felony; reckless abuse/neglect with serious physical injury – C Felony; intentional abuse/neglect with physical injury – C Felony)

Section 13A-4-1 Criminal solicitation to commit the above offenses:

- Class B felony if the offense solicited is a Class A felony.
- Class C felony if the offense solicited is a Class B felony.
- Class A misdemeanor if the offense solicited is a Class C felony.
- Class B misdemeanor if the offense solicited is a Class A misdemeanor.
- Class C misdemeanor if the offense solicited is a Class B misdemeanor.
- Violation if the offense solicited is a Class C misdemeanor.

Section 13A-4-2 Attempt to commit the above offenses:

- Class B felony if the offense attempted is a Class A felony.
- Class C felony if the offense attempted is a Class B felony.
- Class A misdemeanor if the offense attempted is a Class C felony.
- Class B misdemeanor if the offense attempted is a Class A misdemeanor.
- Class C misdemeanor if the offense attempted is a Class B misdemeanor.
- Violation if the offense attempted is a Class C misdemeanor.

Section 13A-4-3 Criminal conspiracy to commit the above offenses (unless a specific charge code for conspiracy to commit a certain offense is provided above):

- Class B felony if an object of the conspiracy is a Class A felony.
- Class C felony if an object of the conspiracy is a Class B felony.
- Class A misdemeanor if an object of the conspiracy is a Class C felony.
- Class B misdemeanor if an object of the conspiracy is a Class A misdemeanor.
- Class C misdemeanor if an object of the conspiracy is a Class B misdemeanor.
- Violation if an object of the conspiracy is a Class C misdemeanor.

<u>Sexual Offenses (Felonies and Misdemeanors):</u>

- **Section 13A-6-41** Unlawful imprisonment in the first degree. (A Misdemeanor) (if the victim is a minor, and the record of conviction reflects the intent of the unlawful imprisonment was to abuse the minor sexually)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)
- **Section 13A-6-42** Unlawful imprisonment in the second degree. (C Misdemeanor) (if the victim is a minor, and the record of conviction reflects the intent of the unlawful imprisonment was to abuse the minor sexually)
- **Section 13A-6-43(a)(4)** Kidnapping in the first degree. (A Felony) (if the intent of the abduction is to violate or abuse the victim sexually)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)

- **Section 13A-6-61** Rape in the first degree. (A Felony)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-6-62** Rape in the second degree. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- **Section 13A-6-63** Sodomy in the first degree. (A Felony)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-6-64** Sodomy in the second degree. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- **Section 13A-6-65** Sexual misconduct. (A Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)
- **Section 13A-6-65.1** Sexual torture. (A Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)
- **Section 13A-6-66** Sexual abuse in the first degree. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 13A-6-67** Sexual abuse in the second degree. (A Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor); 2nd and subsequent offenses within one year (C Felony).
- **Section 13A-6-68** Indecent exposure. (A Misdemeanor); third or subsequent offenses (C Felony)
- **Section 13A-6-69** Enticing child to enter vehicle, house, etc., for immoral purposes. (C Felony)
- **Section 13A-6-69.1** Sexual abuse of a child less than 12 years old. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- **Section 13A-6-71** Foster parent engaging in sex act with a foster child. (B Felony); foster parent engaging in sexual conduct with a foster child. (C Felony); foster parent soliciting a sex act or sexual conduct with a foster child. (A Misdemeanor)
- **Section 13A-6-72(a)** Distributing a private image (first conviction). (A Misdemeanor).
- **Section 13A-6-72(e)** Distributing a private image (second or subsequent convictions). (C Felony).
- **Section 13A-6-73(a)** Sexual extortion. (B Felony)
- **Section 13A-6-75(a)(1)** Directing a child to engage in sexual intercourse or deviate sexual intercourse. (A Felony)
- **Section 13A-6-75(b)(1)** Directing a child to engage in sexual contact. (C Felony)

- **Section 13A-6-81** School employee engaging in a sex act with a student under the age of 19 years. (B Felony)
- **Section 13A-6-82** School employee having sexual contact with a student under the age of 19 years. (C Felony); school employee soliciting a sex act with a student under the age of 19 years. (A Misdemeanor)
- **Section 13A-6-82.1** School employee distributing obscene material to a student. (A Misdemeanor)
- **Section 13A-6-111** Transmitting obscene material to a child by computer. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)
- **Section 13A-6-121** Facilitating solicitation of unlawful sexual conduct with a child. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 13A-6-122** Electronic solicitation of a child. (B Felony)
- **Section 13A-6-123** Facilitating the on-line solicitation of a child. (B Felony)
- **Section 13A-6-124** Traveling to meet a child for an unlawful sex act. (A Felony)
- **Section 13A-6-125** Facilitating the travel of a child for an unlawful sex act. (A Felony)
- **Section 13A-6-152** Human trafficking in the first degree provided the offense involved sexual servitude. (A Felony)
- **Section 13A-6-153** Human trafficking in the second degree provided the offense involved sexual servitude. (B Felony)
- **Section 13A-12-111** Promoting prostitution in the first degree. (B Felony)
- **Section 13A-12-112** Promoting prostitution in the second degree. (C Felony)
- **Section 13A-12-121** Committing an act of prostitution. (A Misdemeanor)
- **Section 13A-12-191** Dissemination or public display of obscene matters containing visual depiction of persons under 17 years of age involved in obscene acts. (B Felony) / Section 13A-4-1 Solicitation to commit this offense. (C Felony) /Section 13A-4-2 Attempt to commit this offense. (C Felony)
- **Section 13A-12-192** Possession and possession with intent to disseminate obscene matter containing visual depiction of person under 17 years of age involved in obscene acts. (B Felony); (C Felony)
- **Section 13A-12-196** Parent or guardians permitting children to engage in production of obscene matter. (A Felony)
- **Section 13A-12-197** Production of obscene matter containing visual depiction of person under 17 years of age involved in obscene acts. (A Felony)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-12-200.2** Distribution, possession with intent to distribute, production, etc. of obscene material. [(a)(1) and (a)(2) (first offenses). (A Misdemeanor); (a)(1) and (a)(2)

(second and subsequent offenses). (C Felony); (a)(3). (C Felony) /Section 13A-4-2 Attempt to commit. (B Misdemeanor)/Section 13A-4-2 Attempt to commit. (A Misdemeanor)

- **Section 13A-12-200.5** Distribution, possession with intent to distribute, display for sale, etc. material harmful to minors. [(1) (A Misdemeanor); (2)a. (A Misdemeanor); (4) (C Felony)
- **Section 13A-13-3** Incest. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 14-11-31** Custodial sexual misconduct. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)

Section 13A-4-1 Criminal solicitation to commit the above sex offenses:

- Class B felony if the offense solicited is a Class A felony.
- Class C felony if the offense solicited is a Class B felony.
- Class A misdemeanor if the offense solicited is a Class C felony.
- Class B misdemeanor if the offense solicited is a Class A misdemeanor.
- Class C misdemeanor if the offense solicited is a Class B misdemeanor.
- Violation if the offense solicited is a Class C misdemeanor.

Section 13A-4-2 Attempt to commit the above sex offenses (unless a specific charge code for attempt to commit a certain offense is provided above):

- Class B felony if the offense attempted is a Class A felony.
- Class C felony if the offense attempted is a Class B felony.
- Class A misdemeanor if the offense attempted is a Class C felony.
- Class B misdemeanor if the offense attempted is a Class A misdemeanor.
- Class C misdemeanor if the offense attempted is a Class B misdemeanor.
- Violation if the offense attempted is a Class C misdemeanor.

Section 13A-4-3 Criminal conspiracy to commit the above sex offenses (unless a specific charge code for conspiracy to commit a certain offense is provided above):

- Class B felony if an object of the conspiracy is a Class A felony.
- Class C felony if an object of the conspiracy is a Class B felony.
- Class A misdemeanor if an object of the conspiracy is a Class C felony.
- Class B misdemeanor if an object of the conspiracy is a Class A misdemeanor.
- Class C misdemeanor if an object of the conspiracy is a Class B misdemeanor.
- Violation if an object of the conspiracy is a Class C misdemeanor.

Offenses Involving Spousal Abuse or Domestic Violence (including acts in the definition of "abuse" in Section 30-5-2(1), Ala. Code 1975. NOTE: Offenses in this Exhibit already included above are not listed here as well. Also, the following offenses only apply if against a "victim" as defined in Section 30-5-2(7), Ala. Code 1975:

- **Section 13A-6-22** Assault in the third degree. (A Misdemeanor) /Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)/Section 13A-4-3 Conspiracy to commit this offense. (B Misdemeanor)
- **Section 13A-6-23** Menacing. (B Misdemeanor)
- **Section 13A-6-24** Reckless endangerment. (A Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)
- **Section 13A-6-25** Criminal coercion. (A Misdemeanor)
- **Section 13A-6-41** Unlawful imprisonment in the first degree. (A Misdemeanor)/ Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)
- **Section 13A-6-42** Unlawful imprisonment in the second degree. (C Misdemeanor) (UIP2)
- **Section 13A-6-90.1** Stalking in the second degree. (B Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (C Misdemeanor)
- **Section 13A-6-91.1** Aggravated stalking in the second degree. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)
- **Section 13A-6-131** Domestic violence in the second degree. (domestic violence criminal mischief in the first degree) (B Felony)
- **Section 13A-6-132** Domestic violence in the third degree. (3rd or subsequent conviction – (C Felony) (only criminal surveillance, harassing communications, criminal trespass in the third degree, criminal mischief in the second or third degrees, and arson in the third degree)
- **Section 13A-6-132** Domestic violence in the third degree. (assault 3rd), (harassing communications), (criminal mischief 2nd/3rd), (criminal coercion), (general), (harassment), (menacing), (arson 3rd), (reckless endangerment), (criminal surveillance), (criminal trespass), (criminal mischief 2nd), (criminal mischief 3rd)) (A Misdemeanor)/Section 13A-4-2 Attempt to commit domestic violence in the third degree (assault 3rd). (B Misdemeanor)
- **Section 13A-6-137** Interference with a domestic violence emergency call. (B Misdemeanor)
- **Section 13A-6-142.** Violation of a domestic violence order. (A Misdemeanor)
- **Section 13A-7-2** Criminal trespass in the first degree. (A Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)
- **Section 13A-7-3** Criminal trespass in the second degree. (C Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (Violation)/Section 13A-4-3 Conspiracy to commit this offense. (B Misdemeanor)
- **Section 13A-7-4** Criminal trespass in the third degree. (Violation)/Section 13A-4-2 Attempt to commit this offense. (Violation)

- **Section 13A-7-4.1** Criminal trespass by motor vehicle. (C Misdemeanor)
- **Section 13A-7-41** Arson in the first degree. (A Felony)/Section 13A-4-1 Solicitation to commit this offense. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (B Felony)/Section 13A-4-3 Conspiracy to commit this offense. (B Felony)
- **Section 13A-7-42** Arson in the second degree. (B Felony) /Section 13A-4-1 Solicitation to commit this offense. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- **Section 13A-7-43** Arson in the third degree. (A Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)
- **Section 13A-8-3** Theft of property in the first degree. (B Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (C Felony)/Section 13A-4-3 Conspiracy to commit this offense. (C Felony)
- **Section 13A-8-4** Theft of property in the second degree. (C Felony)/Section 13A-4-2 Attempt to commit this offense. (A Misdemeanor)/Section 13A-4-3 Conspiracy to commit this offense. (A Misdemeanor)
- **Section 13A-8-4.1** Theft of property in the third degree. (D Felony)/ (A Misdemeanor)/Section 13A-4-2 Attempt to commit the A Misdemeanor offense. (B Misdemeanor)/Section 13A-4-3 Conspiracy to commit the A Misdemeanor offense. (B Misdemeanor)/Section 13A-4-2 Attempt to commit the D Felony offense. (A Misdemeanor)
- **Section 13A-8-5** Theft of property in the fourth degree. (A Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (B Misdemeanor)
- **Section 13A-11-8** Harassment. (C Misdemeanor)/Section 13A-4-2 Attempt to commit this offense. (Violation)
- Section 13A-4-2 Attempt to commit the above offenses:
    - Class B felony if the offense attempted is a Class A felony.
    - Class C felony if the offense attempted is a Class B felony.
    - Class A misdemeanor if the offense attempted is a Class C felony.
    - Class B misdemeanor if the offense attempted is a Class A misdemeanor.
    - Class C misdemeanor if the offense attempted is a Class B misdemeanor.
    - Violation if the offense attempted is a Class C misdemeanor.

Exhibit C: Protected Information in Certain Cases

Information to be kept CONFIDENTIAL	**Statute**	**Mandatory or Discretionary**
Victim's address, phone number, place of employment, and other related information in court file	15-23-69(b) "shall not be public record"	Mandatory
Information received by district attorney or domestic violence facility that would identify individuals or domestic violence facilities	30-6-8 "is confidential and exempt from Section 36-12-40"	Mandatory
Present address or whereabouts of a party or child in UCCJEA proceeding if safety of party or child would be jeopardized by disclosure	30-3B-209(e) "must be sealed and may not be disclosed to the other party or the public"	Mandatory
Specific identifying information in UIFSA proceeding if safety of party or child would be jeopardized by disclosure	30-3D-312 "must be sealed and may not be disclosed to the other party or the public"	Mandatory
Law enforcement investigative reports	12-21-3.1(b) "not public records"	Mandatory
Court records of child under 18 who is victim of sexual abuse or exploitation	15-1-2(b) "shall not be open to the public, but shall be kept in the same manner as juvenile offender records are kept"	Mandatory
Information received by a victim relating to substance of a criminal case	15-23-65 "shall be confidential"	Mandatory

Home and business addresses/phone numbers of plaintiff; plaintiff's family or household member(s); domestic violence shelter address	30-5-5(f)(1) "shall not be contained on any court document made available to the public and the defendant by the circuit clerk's office"	Mandatory
Pursuant to a court order, address of child or victim of family or domestic violence (whether or not visitation is allowed)	30-3-135(c) "to be kept confidential"	Discretionary
Pursuant to a court order, specific residence address and telephone number of a child or the person having custody of or rights of visitation with a child and other identifying information in conjunction with a proposed change of principal residence of the child or change of principal residence of the person	30-3-167(a)(1) "shall not be disclosed in the pleadings, other documents filed in the proceeding, or in any order issued by the court, except for in camera disclosures"	Discretionary