USE OF PSEUDONYM TO PROTECT THE VICTIM'S IDENTITY IN A CRIMINAL CASE : **THE PROCESS**

START

Law Enforcement (L.E.) Records

Has the victim reported the crime to L.E.?

- **NO** → Upon reporting, ask L.E. to identify the victim by a pseudonym in the police report and other public records.
- **YES** → Did L.E. identify the victim by his/her name in the police report or other public records?
  - **YES** → Ask L.E. to redact the victim's name in the police report and other public records and replace with a pseudonym.
  - **NO** → GO TO "Prosecutor & Court Records" Step

Upon reporting, ask L.E. to identify the victim by a pseudonym in the police report and other public records.

- **L.E. say "Yes."** → GO TO "Prosecutor & Court Records" Step
- **L.E. say "No."** → File a petition for a writ of mandamus/prohibition with the court to request an order that (1) directs L.E. to identify the victim by a pseudonym in the police report and all public records maintained by L.E.; (2) redacts the victim's name from existing records and substitutes a pseudonym; and (3) protects from public disclosure any record that identifies the victim by both his/her real name and pseudonym.

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- **L.E. say "Yes."** → GO TO "Prosecutor & Court Records" Step
- **L.E. say "No."** → File a petition for a writ of mandamus/prohibition with the court to request an order that (1) directs L.E. to identify the victim by a pseudonym in the police report and all public records maintained by L.E.; (2) redacts the victim's name from existing records and substitutes a pseudonym; and (3) protects from public disclosure any record that identifies the victim by both his/her real name and pseudonym.

If you find references to the victim's real name online, contact the source — Google, news websites, Westlaw, blogs, etc. — and ask that they redact and substitute with a pseudonym. If a website links to (or has uploaded a copy of) a public record with the real name, ask the website to replace with the pseudonym version ASAP.

For more on this topic, visit the

LAW LIBRARY

Prosecutor & Court Records

Has the charging instrument (i.e., indictment or information) been filed?

- **NO** → Ask the prosecutor to identify the victim by a pseudonym in the charging instrument and all future documents and proceedings
- **YES** → Does it refer to the victim by his/her name?
  - **YES** → Ask the prosecutor to: (1) prepare an amended (superseding) charging instrument that identifies the victim by a pseudonym; (2) file the superseding charging instrument; and (3) file a motion for an order that (a) seals the original charging instrument; (b) directs all parties to use a pseudonym going forward; and (c) directs all parties to refrain from disclosing the victim's name to third parties.
  - **NO** → File a motion (or ask the prosecutor to file a motion) with the court to seek an order that (1) directs all future references to the victim by any party be to the pseudonym; and (2) directs all parties to refrain from disclosing the victim's name to third parties.

Ask the prosecutor to: (1) prepare an amended (superseding) charging instrument that identifies the victim by a pseudonym; (2) file the superseding charging instrument; and (3) file a motion for an order that (a) seals the original charging instrument; (b) directs all parties to use a pseudonym going forward; and (c) directs all parties to refrain from disclosing the victim's name to third parties.

- **Prosecutor says "Yes."** → File a motion (or ask the prosecutor to file a motion) with the court to seek an order that (1) directs all future references to the victim by any party be to the pseudonym; and (2) directs all parties to refrain from disclosing the victim's name to third parties.
- **Prosecutor says "No."** → File a motion (or petition for a writ of mandamus/prohibition) with the court to request an order that (1) seals the original charging instrument; (2) directs all parties to use a pseudonym going forward; (3) directs the prosecutor to redact the victim's name in the charging instrument, substituting a pseudonym, and refile the amended (superseding) charging instrument; and (4) directs all parties to refrain from disclosing the victim's name to third parties.

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- **Prosecutor says "Yes."** → Ask the prosecutor to identify the victim by a pseudonym in the charging instrument and all future documents and proceedings
- **Prosecutor says "No."** → File a motion (or petition for a writ of mandamus/prohibition) with the court to request an order that (1) seals the original charging instrument; (2) directs all parties to use a pseudonym going forward; (3) directs the prosecutor to redact the victim's name in the charging instrument, substituting a pseudonym, and refile the amended (superseding) charging instrument; and (4) directs all parties to refrain from disclosing the victim's name to third parties.

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If the court denies any motion or petition, seek appellate

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