

33-601.901 Confidential Records.

(1) Inmate and offender access to records or information.

(a) Inmate and offender access to non-medical and non-substance abuse records or information.

1. No inmate or offender under jurisdiction of the Department shall have unlimited or routine access to any information contained in the records of the Department. Section 945.10(3), F.S., authorizes the Department of Corrections to permit limited access to information if the inmate or offender makes a written request and demonstrates an exceptional need for information contained in the Department's records and the information is otherwise unavailable. Such information will be provided by the Department when the inmate or offender has met the above requirements and can demonstrate that the request is being made under exceptional circumstances as set forth in Section 945.10(3), F.S.

2. It will be the responsibility of the inmate or offender to maintain such information, and repeated requests for the same information will not be honored. Copies of documents which have been previously provided to the inmate or offender under other rules of the Department will not be provided unless the inmate or offender can demonstrate that exceptional circumstances exist.

3. No inmate or offender shall have access to any other inmate or offender's file.

4. An inmate desiring access to non-medical or non-substance abuse information must submit a written request to their classification officer or officer-in-charge of a community facility. A supervised offender must submit the request to their supervising officer. If the request does not meet the requirements specified in Section 945.10(3), F.S., the request will be denied in writing. If the request meets the requirements specified in Section 945.10(3), F.S., the request will be approved without further review. If the request meets the requirements specified in Section 945.10(3), F.S., but details exceptional circumstances other than those listed, the classification officer or officer-in-charge will review the request and make a recommendation to the classification supervisor, who will be the final authority for approval or disapproval of requests from inmates. For supervised offenders, the recommendation will be submitted to the correctional probation circuit administrator or designee, who will be the final authority for approval or disapproval.

(b) Inmate and offender access to their own medical or substance abuse clinical files is addressed in Rule 33-401.701, F.A.C.

(2) Copy costs and special service charge for review of records.

(a) If the requested information requires duplication, the cost of duplication must be paid by the inmate or offender, and the inmate or offender must sign a receipt for such copies. The cost for copying is \$0.15 per page for single-sided copies. Only one-sided copies will be made for inmates; two-sided copies will not be made for inmates. Additionally, a special service charge will be assessed for providing information when the nature or volume of the records requested requires extensive clerical or supervisory assistance by Department personnel. "Extensive" means that it will take more than 15 minutes to locate, review for confidential information, copy, and refile the requested material. The special service charge will be computed to the nearest quarter of an hour exceeding 15 minutes based on the current rate of pay for the paygrade of the person who performed the service. Exceptions will not be made for indigent inmates or offenders; indigent inmates will be required to pay for copies.

(b) If the inmate requests copies of their own medical file under Section 766.204, F.S., copies will be provided in accordance with Rule 33-501.302, F.A.C. If funds are not available at the time of request, a lien will be placed on the requesting inmate's account for copies.

(3) The following records or information contained in Department files is confidential and will be released for inspection or duplication only as authorized in this rule or in Rule 33-401.701, F.A.C.:

(a) Protected health information of an inmate or offender. Protected health information refers to inmate or offender information that is created or received by the Department of Corrections, whether oral, recorded, transmitted, or maintained in any form or medium, that relates to the past, present, or future physical or mental health or condition of an inmate or offender, the provision of health care to an inmate or offender, or the past, present, or future payment for the provision of health care to an inmate or offender and such information identifies an inmate or offender or there is a reasonable basis to believe the information can be used to identify an inmate or offender. Records maintained by the Department that contain protected health information include: medical and hospital files as defined in Rule 33-401.701, F.A.C., medical reports, opinions, memoranda, charts or any other medical record or report of an inmate or offender, including medical, mental health, and dental information in classification reports; clinical drug treatment and assessment records; letters, memoranda or other documents containing opinions or reports on the description, treatment, diagnosis or prognosis of the medical or mental condition of an inmate or offender; the psychological screening reports contained in the admission summary; the psychological and psychiatric evaluations and reports on inmates or offenders; health screening reports; Mentally Disordered Sex Offender Status Reports; portions of inspector general reports containing medical and

mental health reports. Other persons may review medical and mental health records only when necessary to ensure that the inmate or offender's overall health care needs are met, or upon a specific written authorization from the inmate or offender whose records are to be reviewed, or as provided by law. If a request for inmate or offender protected health information, mental health, medical, or substance abuse records is submitted upon consent or authorization given by the patient inmate or offender, Form DC4-711B, Consent and Authorization for Use and Disclosure, Inspection and Release of Confidential Information, or, when appropriate, its Spanish-language version, Form DC4-711Bsp, or a HIPAA compliant release of protected health information form from another governmental agency must be used in accordance with Rule 33-401.701, F.A.C. Form DC4-711B is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-06699>. The effective date of this form is May, 2016. Form DC4-711Bsp is hereby incorporated by reference. Copies of this form are available from the Forms Control Administrator, 501 South Calhoun Street, Tallahassee, Florida 32399-2500, <http://www.flrules.org/Gateway/reference.asp?No=Ref-06698>. The effective date of this form is May, 2016. Offenders under supervision, or previously under supervision, who desire information from their own records will be referred to the agency or office originating the report or document to obtain such information.

(b) Preplea, pretrial intervention, presentence and postsentence investigation reports including supplements, addenda and updates, except as provided in Section 960.001(1)(g), F.S.

(c) Information regarding a person in the federal witness protection program.

(d) Florida Commission on Offender Review records which are confidential or exempt from public disclosure by law.

(e) Information which if released would jeopardize a person's safety.

(f) Information pertaining to a victim's statement or which reveals a victim's identity, address or phone number.

(g) The identity of an executioner or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection.

(h) The identity of any inmate or offender upon whom an HIV test has been performed and the inmate or offender's test results, in accordance with Section 381.004, F.S. The term "HIV test" has the same meaning as provided in Section 381.004, F.S.

(i) Records that are otherwise confidential or exempt from public disclosure by law. This confidentiality is not intended to prevent the use of the file material in management information systems or to limit the dissemination of information within the Department to health services staff having a need to know or to other criminal justice system agencies approved by the Department.

(j) Information or records held by the Department that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including persons or entities administering, compounding, dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with Chapter 922, F.S.

(4) Blueprints, detailed physical diagrams, photographs, and security system plans of institutions and facilities are confidential and can be released only as provided by law.

(5) Computer printouts containing information on inmates or offenders except those printouts specifically designated for public use are confidential and can be released only as provided in paragraph (6)(d) of this rule.

(6) Unless expressly prohibited by federal law, the following confidential records or information may be released to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Legal Affairs, the Department of Children and Families, a private correctional facility or program that operates under a contract, a state attorney, the court, or a law enforcement agency:

(a) Preplea, pretrial intervention, presentence and postsentence investigations along with attachments to such reports, except as provided in Section 960.001(1)(g), F.S.;

(b) Florida Commission on Offender Review records which are confidential or exempt from public disclosure by law;

(c) Information identifying or pertaining to a victim and the victim's statement;

(d) Other confidential information, if not otherwise prohibited by law, upon receipt of a written request demonstrating a need for the records or information.

(7) After victim information has been redacted, access to preplea, pretrial intervention, presentence or postsentence investigations is authorized as follows:

(a) To any other state or local government agency not specified in subsection (6) upon receipt of a written request which includes a statement demonstrating a need for the records or information;

(b) To an attorney representing an inmate who is under sentence of death, upon receipt of a written request which includes a

statement demonstrating a need for the records or information. Such reports on an inmate not represented by the attorney for an inmate under sentence of death shall not be provided;

(c) To a public defender upon request;

(d) Written requests under paragraphs (a) and (b), above, must be submitted to the Bureau Chief of Classification and Central Records or designee for approval if the request pertains to an inmate record. If the request pertains to a report in a supervision file, the request shall be submitted to the correctional probation circuit administrator or designee of the office where such record is maintained. If confidential protected health information is included in the presentence or postsentence investigation, authorization for release must be obtained from the inmate or offender as specified herein.

(8) Parties establishing legitimate research purposes who wish to review preplea, pretrial intervention, presentence and postsentence investigation reports in the records of current or prior inmates or offenders must obtain prior approval from the Bureau Chief of Research and Data Analysis. Parties seeking to review records pursuant to this section shall be required to submit a written request to the Bureau Chief of Classification and Central Records or designee if the report pertains to an inmate, or to the correctional probation circuit administrator or designee of the office where the record is located if the report pertains to a supervised offender. The written request must disclose the name of the person who is to review the records; the name of any organization, corporation, business, school or person for which the research is to be performed; the purpose of the research; any relationship to inmates or offenders or the families of inmates or offenders; and a confidentiality agreement must be signed. After submitting the required written request, research parties must receive written approval as described in this section prior to starting the project.

(9) Unless expressly prohibited by federal law, protected health information and mental health, medical and substance abuse records as specified in paragraph (3)(a), may be released as follows:

(a) To the Department of Health and the county health department where an inmate plans to reside if they have tested positive for the presence of HIV as provided in Section 381.004, F.S.;

(b) To the Executive Office of the Governor, the Correctional Medical Authority, and the Florida Department of Health for health care oversight activities authorized by state or federal law.

(c) To a state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation, provided that the inmate or offender agrees to the release of the information and provides written consent or, if the inmate or offender refuses to provide written consent, in response to a court order, a subpoena, such as a grand jury, investigative, or administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process as authorized by law, if:

1. The protected health information is relevant and material to a legitimate law enforcement inquiry;

2. A clear connection exists between the investigation and the inmate or offender whose protected health information is being pursued;

3. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought; and

4. It would not be reasonable to use de-identified information.

(d) To a state attorney or law enforcement agency if the inmate is or is suspected of being the victim of a crime provided that the inmate agrees to the disclosure and provides written consent or if the inmate is unable to agree because of incapacity or other emergency circumstance, if:

1. The information is needed to determine whether a violation of law by a person other than the inmate victim has occurred;

2. The information is not intended to be used against the inmate victim;

3. The immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the inmate victim is able to agree to the disclosure; and

4. If the Department determines the disclosure is in the best interests of the inmate victim.

(e) To a state attorney or a law enforcement agency if the Department believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility, provided that:

1. The information disclosed is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought;

2. A clear connection exists between the criminal conduct and the inmate or offender whose information is being pursued; and,

3. It would not be reasonable to use de-identified information.

(f) To the Division of Risk Management of the Department of Financial Services, upon certification by the Division that the information is necessary to investigate and provide legal representation for a claim against the Department.

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(g) To the Department of Legal Affairs or to an attorney retained to represent the Department in a legal proceeding if the inmate or offender is bringing a legal action against the Department.

(h) To another correctional institution or facility or law enforcement official having lawful custody of the inmate, if the information is necessary for:

1. The provision of health care to the inmate;
2. The health and safety of the inmate, other inmates, officers, employees, others at the correctional institution or facility, or individuals responsible for transporting the inmate from one correctional institution, facility, or setting to another;
3. Law enforcement on the premises of the correctional institution or facility; or
4. The administration and maintenance of the overall safety and security of the institution or facility.

(i) To the Department of Children and Families and the Florida Commission on Offender Review, if the inmate received mental health treatment while in the custody of the Department and becomes eligible for release under supervision or upon the end of their sentence.

Rulemaking Authority 20.315, 944.09, 945.10 FS. Law Implemented 119.07, 944.09, 945.10, 945.25 FS. History—New 10-8-76, Amended 6-10-85, Formerly 33-6.06, Amended 1-12-89, 7-21-91, 9-30-91, 6-2-92, 8-4-93, 6-12-96, 10-15-97, 6-29-98, Formerly 33-6.006, Amended 9-19-00, 7-8-03, 2-9-06, 11-27-07, 11-14-10, 5-25-16, 9-5-18, 7-2-23.