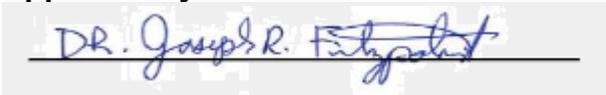


POLICY TITLE: CONFIDENTIALITY OF ADULT COMMUNITY CORRECTIONS CLIENT INFORMATION		PAGE 1 OF 10
POLICY NUMBER: 8.6		
CHAPTER 8: GENERAL ADMINISTRATION		
	STATE of MAINE DEPARTMENT OF CORRECTIONS Approved by Commissioner: 	PROFESSIONAL STANDARDS: See Section VII
	EFFECTIVE DATE: June 27, 2016	LATEST REVISION: April 4, 2018

I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to Title 34-A M.R.S.A. Section 1403.

II. APPLICABILITY

Adult Community Corrections and Central Office

III. POLICY

All adult community corrections client records shall be maintained in a confidential manner and all client information shall be kept confidential, as required by legal mandates and Department policies to prevent unauthorized access to information that is protected.

IV. CONTENTS

- Procedure A: General Rules
- Procedure B: Special Rules
- Procedure C: Rules for Obtaining Information
- Procedure D: Acknowledgement of Confidentiality of Information

V. ATTACHMENTS

- Attachment A: Authorization for the Disclosure of Information by the Department of Corrections - General (paper/online)
- Attachment B: Authorization for the Disclosure of Information Acquired by Virtue of HIV Testing (AIDS Testing) by the Department of Corrections (paper/online)
- Attachment C: Notice to Accompany Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services
- Attachment D: Authorization for the Disclosure of Information Acquired in Connection the Provision of Substance Abuse Services by the

- Attachment E: Department of Corrections (paper /online)
Authorization for the Disclosure of Information for the Purpose of Identity Verification (paper/online)
- Attachment F: Identity Verification Information
- Attachment G: Authorization for the Disclosure of Information to the Maine Department of Corrections (paper/online)

VI. PROCEDURES

Procedure A: General Rules

1. Prior to disclosure of a record or the information contained in a record, it shall be determined whether the record is a Department record or third party record. A Department record is a record that is generated by a Department of Corrections employee or by a person or an agency providing services to adult community corrections client(s) by agreement with or under contract to the Department. A record generated by any other person or agency is a third party record. In addition, a record generated upon court order, no matter who generates it (e.g. pre-sentence investigation), is considered a third party record.

2. Unless otherwise governed by this policy, third party records and information contained in those records shall be kept confidential with the exception that third party records or information contained in those records shall be disclosed to employees of the Department and persons or agencies providing services to adult community corrections client(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out a statutory function of the Department of Corrections.

Requests for disclosure made by other persons or agencies, including the client, shall be referred to the party that generated the record (or to the court if it was generated upon the order of a court). However, third party school records may be discussed with the client. Copies of these school records may not be provided by the Department of Corrections to the client or any other person or agency. Finally, if the client (or, if applicable, the client’s guardian) has already obtained a record from the party that generated it, the third party record may be discussed with that person.

3. Unless otherwise governed by this policy, Department records and information contained in those records and information about an adult community corrections client obtained through observation or report shall be kept confidential with the exception that Department records or information shall be disclosed:
- a. to employees of the Department and persons or agencies providing services to client(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out a statutory function of the Department of Corrections;
 - b. to the client, if he or she requests such disclosure;

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
8.6 Confidentiality of Adult Community Corrections Client Information	8. General Administration	Page 2 of 10 4/4/18R

- c. to any person or agency authorized to receive such disclosure by an Authorization for Disclosure of Information by the Department of Corrections - General form (Attachment A) signed by the client, if the client does not have a guardian;
 - d. to a guardian of the client, if the client has a guardian and if the guardian requests such disclosure;
 - e. to any person or agency authorized to receive such disclosure by an Authorization for Disclosure of Information by the Department of Corrections - General form signed by the client and signed by that client's guardian, if the client has a guardian;
 - f. to any person or agency authorized to receive such disclosure by a court order, if approved by the Department's legal representative in the Attorney General's office (records shall not be provided in response to a subpoena);
 - g. to a Maine state agency if, but only if, such disclosure is necessary to carry out a statutory function of that agency;
 - h. to any criminal justice agency (at the federal, state or local level or at any level of the Canadian government) if, but only if, such disclosure is necessary in order for that agency to carry out the administration of criminal justice or the administration of juvenile criminal justice, or is necessary for criminal justice agency employment;
 - i. to any person or agency authorized to receive such disclosure pursuant to the determination of a hearing officer in an unemployment compensation proceeding relating to a state employee, in a state agency personnel action, or in a professional or occupational board licensure, certification, or registration proceeding, if approved by the Department's legal representative in the Attorney General's office;
 - j. to persons engaged in research, if approved by the Commissioner, or designee, and if identifying data is not disclosed by the researchers;
 - k. to victims as provided in this policy and other Department policies; and
 - l. to the Governor's office, a legislative committee, or a legislative study commission, if approved by the Commissioner, or designee. Information shall not be disclosed to an individual legislator without an appropriate authorization form.
4. Information identifying a victim and contact information for a victim, as well as information relating to another client of the Department (including a prisoner, resident, or adult or juvenile community corrections client), contained in a Department record shall not be disclosed to anyone other than a Department employee and shall be redacted from a record prior to its disclosure to anyone other than a Department employee, unless, after consultation with the Department's legal representative in the Attorney General's Office, it is determined necessary that the information be included.

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
8.6 Confidentiality of Adult Community Corrections Client Information	8. General Administration	Page 3 of 10 4/4/18R

If there is any concern regarding any request to disclose records or information, the concern shall be referred to the Department's legal representative in the Attorney General's office.

Procedure B: Special Rules

1. The following types of records and information may be disclosed only to Department of Corrections employees if, but only if, such disclosure is necessary to carry out a statutory function of the Department. Such records or information may not be disclosed to or discussed with the client. They may not be disclosed to or discussed with anyone other than a Department employee, not even persons or agencies providing services to client(s) by agreement with or under contract to the Department, another state agency, criminal justice agency, or a court, except that a victim's request for notice of release may be discussed with the office of the prosecuting attorney that processed the request.
 - a. information obtained for the purpose of evaluating a client's ability to participate in a community based program, such as community sentiment information;
 - b. information obtained from informants in connection with the possible or actual violation of facility rules; and
 - c. a victim's request for notice of release.

2. The results (whether positive or negative) of an HIV test may be disclosed only:
 - a. to the client tested;
 - b. to a person or agency authorized to receive those results by an Authorization for Disclosure of Information Acquired by Virtue of HIV Testing (AIDS Testing) by the Department of Corrections form (Attachment B) signed by the client tested (regardless of if the client has a guardian);
 - c. to any person or agency authorized to receive such disclosure by a court order, if approved by the Department's legal representative in the Attorney General's office (records shall not be provided in response to a subpoena); and
 - d. to the Bureau of Health.

3. The disclosure of information acquired during the provision of substance abuse treatment services by substance abuse treatment staff must be accompanied by the notice required by federal law, Notice to Accompany Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services (Attachment C).

Information acquired during the provision of substance abuse treatment services by substance abuse treatment staff may be disclosed only:

- a. to the client who received the substance abuse treatment services;
- b. to any person or agency authorized to receive such disclosure by an Authorization for the Disclosure of Information Acquired in Connection with

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
8.6 Confidentiality of Adult Community Corrections Client Information	8. General Administration	Page 4 of 10 4/4/18R

the Provision of Substance Abuse Services by the Department of Corrections form (Attachment D) signed by the client, if the client does not have a guardian;

- c. to the guardian of the client, if the client has a guardian and if the guardian requests such disclosure;
 - d. to any person or agency authorized to receive such disclosure by an Authorization for the Disclosure of Information Acquired in Connection with the Provision of Substance Abuse Services by the Department of Corrections form signed by the guardian, if the client has a guardian;
 - e. to any person or agency authorized to receive such disclosure by a court order, if approved by the Department's legal representative in the Attorney General's office (records shall not be provided in response to a subpoena);
 - f. to the Department of Health and Human Services if, but only if, the information disclosed consists solely of a report of suspected child abuse or neglect;
 - g. to medical personnel if, but only if, the information disclosed is needed by those personnel so that they can treat a condition which poses an immediate threat to health and which requires immediate medical intervention;
 - h. to a criminal justice agency if, but only if, the information disclosed consists of information about a crime committed or threatened to be committed during the course of substance abuse treatment or against substance abuse treatment staff; and
 - i. to persons engaged in auditing or program evaluation, if approved by the Commissioner, or designee, and if identifying data is not disclosed by the auditors or evaluators.
4. The following types of records and information shall be disclosed to any person or agency requesting it:
- a. all crime(s) for which the client is currently under supervision;
 - b. the sentence(s) received (including any conditions of probation or supervised release for sex offenders);
 - c. the date of the client 's projected release from supervision;
 - d. name and aliases;
 - e. birth date;
 - f. physical description of the client (e.g., sex, race, height, weight, build, eye color, hair color, scars, marks, tattoos, glasses, facial hair);
 - g. photo or fingerprints taken at the direction of a criminal justice agency; and
 - h. the client's current address, unless the Commissioner determines that it would be detrimental to the welfare of a client to disclose the information.

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
8.6 Confidentiality of Adult Community Corrections Client Information	8. General Administration	Page 5 of 10 4/4/18R

5. In relation to a fugitive (a person who has escaped or absconded or has been erroneously released from Department custody or supervision), the following information may be disclosed to any person or agency, to the general public, or to the press:
 - a. the information specified in Procedure B. 4;
 - b. the fact that the person is a fugitive; and
 - c. the place and time the person escaped, absconded, or was erroneously released.

In addition, there may be disclosed to a criminal justice agency any information about the fugitive which may be disclosed to such an agency under the other provisions of this policy.

6. The following information may be disclosed to United States Immigration and Customs Enforcement in relation to a client who is an alien:
 - a. the information specified in Procedure B. 4;
 - b. the client's current address;
 - c. the fact that the client is an alien;
 - d. the date(s) of the client's commitment to the custody or supervision of the Department of Corrections;
 - e. the relevant court(s) and docket number(s); and
 - f. the country of the alien's citizenship.

7. Police reports relating to an adult community corrections client may be disclosed only:
 - a. to a criminal justice agency (at the federal, state or local level or at any level of the Canadian government) if, but only if, such disclosure is necessary in order for that agency to carry out the administration of criminal justice or the administration of juvenile criminal justice, or is necessary for criminal justice agency employment;
 - b. to a sex offender treatment professional if, but only if, such disclosure is necessary for that professional to provide sex offender evaluation or treatment services to the client and provided victim contact information, including, but not limited to, home address, work address, and phone number, is redacted;
 - c. to a polygraph examiner if, but only if, such disclosure is necessary for that examiner to perform an examination of the client and provided victim contact information, including, but not limited to, home address, work address, and phone number, is redacted;
 - d. to a certified batterers intervention program if, but only if, such disclosure is necessary for that program to address domestic violence issues with the client and provided victim contact information, including, but not limited to, home address, work address, and phone number, is redacted; and

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
8.6 Confidentiality of Adult Community Corrections Client Information	8. General Administration	Page 6 of 10 4/4/18R

- e. to the Department of Health and Human Services (DHHS) if, but only if, such disclosure is necessary to carry out child and dependent adult protective services.
8. In relation to a client who is seeking employment eligibility verification, applying for identification, or applying for MaineCare or Social Security benefits, the following information may be disclosed, using the Authorization for the Disclosure of Information for the Purpose of Identity Verification form (Attachment E) and the Identity Verification Information form (Attachment F), to U.S. Citizenship and Immigration Services, Maine Secretary of State's Office (Division of Motor Vehicles), the prisoner's employer, DHHS and Social Security Administration, as applicable:
 - a. name and aliases;
 - b. date and place of birth;
 - c. social security number (and other social security numbers used);
 - d. citizenship status;
 - e. physical description; and
 - f. photo and signature.
 9. The following information may be disclosed to any state or federal agency in relation to a client for the purpose of determining eligibility and billing for services and payments under federally funded programs administered by the agency:
 - a. name;
 - b. date of birth;
 - c. social security number;
 - d. eligibility number for a federally funded service;
 - e. dates on which a federally funded service was received; and
 - f. other information required for and to be used solely for audit or research purposes for those services provided by or through the Department.
 10. Screening and assessment tools, including, but not limited to, substance abuse screening and assessment instruments, education and vocational assessments and tests, risk and needs assessment instruments, and health care screening and assessment instruments, may be disclosed only to:
 - a. Department employees or persons or agencies providing services to client(s) by agreement with or under contract to the Department; and
 - b. a Maine state agency if but only if, such disclosure is necessary to carry out a statutory function of that agency.
 11. Intelligence and investigative records (including probation "road notes") are considered operational records and not client records. Intelligence and investigative information is generated in an effort to anticipate, prevent, detect,

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
8.6 Confidentiality of Adult Community Corrections Client Information	8. General Administration	Page 7 of 10 4/4/18R

monitor or investigate known, suspected or possible criminal activity. This includes, but is not limited to, records concerning possible criminal activity, informant information, security plans and practices, critical incident plans and practices, investigative techniques and practices, and any information that would endanger safety if disclosed. Information contained within these records may be disclosed only:

- a. to employees of the Department and persons or agencies providing services to client(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out a statutory function of the Department;
 - b. to a criminal justice agency if, but only if, such disclosure is necessary in order for that agency to carry out the administration of criminal justice or the administration of juvenile criminal justice, or is necessary for criminal justice agency employment;
 - c. to the Department of Health and Human Services (DHHS) for use in the investigation of suspected abuse or neglect of a child or dependent adult;
 - d. to any person authorized to receive such disclosure by a court order after consultation with the Department's legal representative in the Attorney General's office;
 - e. to a client accused of a crime or to the client's attorney or, if the client has a guardian, to the client's guardian, if, but only if, it is for trial or sentencing purposes and the client is authorized to receive such information by the court or the prosecuting attorney in charge of the matter after consultation with the Department's legal representative in the Attorney General's office;
 - f. to a victim after consultation with the Department's legal representative in the Attorney General's office;
 - g. to a court after consultation with the Department's legal representative in the Attorney General's office; and
 - h. to any other person or entity if, but only if, necessary to conduct an investigation of criminal or juvenile criminal activity.
12. If the client is the subject of a court-ordered forensic evaluation, upon receipt of a copy of the court order and a written request from the court-appointed evaluator, the client's Department records and third party records, as requested, shall be provided to the evaluator. If it appears that the evaluator is requesting records that are not relevant to a forensic evaluation, the request shall be referred to the Department's legal representative in the Attorney General's office.

If there is any concern regarding any request to disclose records or information, the concern shall be referred to the Department's legal representative in the Attorney General's office.

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
8.6 Confidentiality of Adult Community Corrections Client Information	8. General Administration	Page 8 of 10 4/4/18R

Procedure C: Rules for Obtaining Information

1. Third party records and information, including substance abuse diagnosis, evaluations, treatment reports and discharge summaries, mental health diagnosis, evaluations, treatment reports and discharge summaries, educational records, and other records generated by third parties may be obtained for one or more of the following purposes:
 - a. to make recommendations to the court regarding sentencing or disposition of a client;
 - b. to assess the risk and supervision level of a client in order to develop and monitor a case plan; and
 - c. to monitor compliance with conditions of supervision, including those imposed as a result of probation, supervised release for sex offenders, Supervised Community Confinement, or parole.
2. Third party records and information shall be obtained by using the Authorization for the Disclosure of Information to the Maine Department of Corrections form (Attachment G). If the third party requires the use of its own consent form, the third party's form shall be completed, in addition to the Department's form.
3. The form is to be signed by the client. Except in the case of substance abuse information, HIV test results, and information relating to pregnancy or a sexually transmitted disease, if the client has a guardian, the form is also to be signed by the client's guardian.
4. In a case in which a guardian refuses to sign a consent form allowing the obtaining of third party records and information necessary for one of the purposes set out above, the matter shall be referred to the Department's legal representative in the Attorney General's office.
5. Third party records and information may be disclosed to employees of the Department and persons and agencies providing services to client(s) by agreement with or under contract to the Department if, but only if, such disclosure is necessary to carry out one of the purposes set out above. If a third party record or information is obtained to make recommendations to the court regarding sentencing or disposition of a client, the information may also be disclosed in conjunction with court proceedings and to the office of the prosecuting attorney. If a third party record or information is obtained to monitor compliance with conditions of probation or supervised release for sex offenders, the information may also be disclosed in conjunction with court proceedings and to the office of the prosecuting attorney. If a third party record or information is obtained to monitor compliance with parole conditions, the information may also be disclosed in conjunction with parole proceedings.

If there is any concern regarding a request to obtain third party records or information, the concern shall be referred to the Department's legal representative in the Attorney General's office.

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
8.6 Confidentiality of Adult Community Corrections Client Information	8. General Administration	Page 9 of 10 4/4/18R

Procedure D: Acknowledgement of Confidentiality of Information

1. All adult community corrections staff, whether employees or persons working under contract to or by agreement with the Department, and all Central Office staff shall be provided a copy of this policy.
2. Each staff member shall acknowledge in the Department's online document management system that he or she has received and read the policy.
3. If a staff member has any concern about this policy or the law relating to confidentiality of client information, it is the staff member's responsibility to use the appropriate channels to have the concern referred to the Department's legal representative in the Attorney General's office.

VII. PROFESSIONAL STANDARDS

None

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
8.6 Confidentiality of Adult Community Corrections Client Information	8. General Administration	Page 10 of 10 4/4/18R