

POLICY TITLE: CONFIDENTIALITY OF PRISONER INFORMATION		PAGE 1 OF 10
POLICY NUMBER: 11.2		
CHAPTER 11: PRISONER RECORDS		
	STATE of MAINE DEPARTMENT OF CORRECTIONS	PROFESSIONAL STANDARDS:
	Approved by Commissioner: 	See Section VII
EFFECTIVE DATE: September 20, 2004	LATEST REVISION: June 27, 2016	CHECK ONLY IF APA []

I. AUTHORITY

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

II. APPLICABILITY

All Departmental Adult Facilities and Central Office

III. POLICY

All prisoner records shall be maintained in a confidential manner and all prisoner information shall be kept confidential, as required by legal mandates and Department policies, to prevent unauthorized access to information that is protected. This policy shall be reviewed on an annual basis and updated as necessary.

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VI. PROCEDURES

Procedure A: General Rules

1. Prior to disclosure of a record or the information 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 prisoner(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 prisoner(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 prisoner, 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 records generated by the Maine state agency providing mental health services may be discussed with the prisoner but only by Department of Corrections mental health staff. Also, third party school records may be discussed with the prisoner. Copies of these mental health or school records may not be provided by the Department of Corrections to the prisoner or any other person or agency. Finally, if the prisoner (or, if applicable, the prisoner'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 a prisoner obtained through observation or report shall be kept confidential with the exception that Department records or information shall be disclosed:

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- a. to employees of the Department and persons or agencies providing services to prisoner(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 prisoner, if he or she requests such disclosure;
 - 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 prisoner, if the prisoner does not have a guardian;
 - d. to a guardian of the prisoner, if the prisoner 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 prisoner and signed by that prisoner's guardian, if the prisoner 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

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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.

If there is any concern regarding a 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. If a prisoner is being released to supervision by the Department in the community, a summary of the prisoner's health care information may be disclosed to Adult Community Corrections staff authorized to receive such disclosure by an Authorization for Disclosure of Discharge Planning Information by the Department of Corrections form (Attachment A1) signed by the prisoner (and, if applicable, the prisoner's guardian) for the purpose of facilitating case planning and supervision in the community.

2. 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 prisoner. They may not be disclosed to or discussed with anyone other than a Department employee, not even persons or agencies providing services to prisoner(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 which processed the request.
 - a. information obtained for the purpose of evaluating a prisoner'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.

3. The results (whether positive or negative) of an HIV test may be disclosed only:
 - a. to the prisoner 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 prisoner tested (regardless of if the prisoner 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);
 - d. to the Bureau of Health; and

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- e. to Department of Corrections employees, provided that the recipient is authorized to receive those results (see Persons and Agencies Authorized to Receive HIV Test (AIDS Test) Results by the Commissioner of Corrections - Attachment B1).
4. 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 prisoner 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 the Provision of Substance Abuse Services by the Department of Corrections form (Attachment D) signed by the prisoner, if the prisoner does not have a guardian;
 - c. to the guardian of the prisoner, if the prisoner 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 prisoner 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.
5. The following types of records and information shall be disclosed to any person or agency requesting it:

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- a. all crime(s) for which the prisoner is currently incarcerated or on Supervised Community Confinement;
 - b. the sentence(s) received (including any conditions of probation or supervised release for sex offenders);
 - c. the dates of the prisoner's projected release and current release from institutional confinement or Supervised Community Confinement, as applicable;
 - d. name and aliases;
 - e. birth date;
 - f. physical description of the prisoner (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;
 - h. the facility at which the prisoner is housed or other location of the prisoner (including the current address of a prisoner on Supervised Community Confinement), unless the Commissioner determines that it would be detrimental to the welfare of a prisoner to disclose the information; and
 - i. addresses and dates of completed or scheduled furloughs.
6. In addition to information required to be provided to a victim who has a victim's request for notification of release, the following information shall be disclosed to a victim of the crime(s) for which the prisoner is currently incarcerated and who requests the information:
- a. whether the prisoner has been charged with committing any crime while incarcerated and, if so, the crime with which the prisoner has been charged; and
 - b. whether the prisoner has been disciplined while incarcerated, and, if so, the offense for which the disciplinary action was taken and the type of disciplinary action taken.
7. In relation to a fugitive (a person who has escaped or has been erroneously released from Department custody), 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. 5;
 - b. the fact that the person is a fugitive; and
 - c. the place and time the person escaped 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.
8. The following information may be disclosed to United States Immigration and Customs Enforcement in relation to a prisoner who is an alien:
- a. the information specified in Procedure B. 5;

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- b. the facility at which the prisoner is housed or other location of the prisoner;
 - c. the fact that the prisoner is an alien;
 - d. the date(s) of the prisoner's commitment to the custody of the Department of Corrections;
 - e. the relevant court(s) and docket number(s); and
 - f. the country of the alien's citizenship.
9. Police reports relating to a prisoner 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; and
 - b. to the Department of Health and Human Services if, but only if, such disclosure is necessary to carry out child or dependent adult protective services.
10. In relation to a prisoner 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, the Maine Department of Health and Human Services 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.
11. The following information may be disclosed to any state or federal agency in relation to a prisoner for the purpose of determining eligibility and billing for services and payments under federally funded programs administered by the agency:
- a. name and aliases;
 - 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

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- f. other information required for and to be used solely for audit or research purposes for those services provided by or through the Department.
12. Screening and assessment tools, including, but not limited to, substance abuse screening and assessment instruments, education and vocational assessments and tests, classification grid sheets, and health care screening and assessment instruments, may be disclosed only to:
- a. Department employees or persons or agencies providing services to prisoner(s) by agreement with or under contract to the Department;
 - b. a Maine state agency if, but only if, such disclosure is necessary to carry out a statutory function of that agency; and
 - c. a legislative committee or study commission with authority to examine issues related to mental health.
13. Intelligence and investigative records are considered operational records and not prisoner records. Intelligence and investigative information is generated in an effort to anticipate, prevent, detect, 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 prisoner(s) by agreement with the Department 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 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 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 prisoner accused of a crime or to the prisoner's attorney or, if the prisoner has a guardian, to the prisoner's guardian, if, but only if, it is for trial or sentencing purposes and the prisoner 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;

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- 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.
14. If the prisoner 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 prisoner’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 a request to disclose records or information, the concern shall be referred to the Department’s legal representative in the Attorney General’s office.

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 facilitate case planning and management of the prisoner; and
 - b. to assist the prisoner in obtaining SSI/SSDI upon release.
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 prisoner. Except in the case of substance abuse information, HIV test results, and information relating to pregnancy or a sexually transmitted disease, if the prisoner has a guardian, the form is also to be signed by the prisoner’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 is 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 prisoner(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 assist the prisoner in obtaining SSI/SSDI

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upon release, the information may also be disclosed to an agency or an administrative hearing officer reviewing the application for SSI/SSDI.

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.

Procedure D: Acknowledgement of Confidentiality of Information

1. All facility staff, whether Department employees or persons working at the facility 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 PowerDMS 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 prisoner 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

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The institution uses a "release of information consent form" that complies with applicable federal and state regulations. Unless the release of information is required by statute, the inmate signs the consent form prior to the release of information and a copy of the form is maintained in the inmate's case record.

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