

June 27, 2018

Notice of Change

**DEPARTMENT OF CORRECTIONS**

RULE NO.:      RULE TITLE:

33-601.901      Confidential Records

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 44 No. 99, May 21, 2018 issue of the Florida Administrative Register. Changes to the rule are made in response to written comments provided by the Joint Administrative Procedures Committee in their correspondence dated June 5, 2018.

THE CHANGES TO THE TEXT OF THE PROPOSED RULE ARE:

**33-601.901 Confidential Records.**

(1) – (8) No Changes.

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

(a) – (b) No Changes.

(c) To a state attorney, a state court, or a law enforcement agency conducting ~~an ongoing a continuing~~ 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 critical~~ to a ~~legitimate valid~~ law enforcement inquiry;

~~(2)~~ An ~~clear obvious~~ 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 ~~or beneficial~~ 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)~~ An clear ~~obvious~~ connection exists between the criminal conduct and the inmate or offender whose information is being pursued; and,

~~(3)~~ It would not be reasonable or beneficial to use de-identified information.

(f) through (g) No Changes.

(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) No Changes.