

CHAPTER 2017-114

House Bill No. 1203

An act relating to public records; amending s. 945.10, F.S.; providing that certain protected health information held by the Department of Corrections is confidential and exempt from public records requirements; authorizing the release of protected health information and other records of an inmate to certain entities, subject to specified conditions and under certain circumstances; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 945.10, Florida Statutes, is amended, present paragraph (h) of that subsection is redesignated as paragraph (i), a new paragraph (h) is added to that subsection, subsection (2) of that section is amended, and subsection (6) is added to that section, to read:

945.10 Confidential information.—

(1) Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a)1. Mental health, medical, or substance abuse records of an inmate or an offender; and

2. Protected health information of an inmate or an offender. Protected health information, as used in this section, has the same meaning as provided in 45 C.F.R. s. 160.103. This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(h) The identity of any inmate or offender upon whom an HIV test has been performed and the inmate's or offender's test results, in accordance with s. 381.004. The term "HIV test" has the same meaning as provided in s. 381.004. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) The records and information specified in paragraphs ~~(1)(a)-(i)~~ ~~(4)(a)-(h)~~ may be released as follows unless expressly prohibited by federal law:

(a) Information specified in paragraphs (1)(b), (d), and (f) to the Executive Office of the Governor, the Legislature, the Florida Commission

on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under a contract, the Department of Legal Affairs, a state attorney, the court, or a law enforcement agency. A request for records or information pursuant to this paragraph need not be in writing.

(b) Information specified in paragraphs (1)(c), (e), and (i) ~~(h)~~ to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under contract, the Department of Legal Affairs, a state attorney, the court, or a law enforcement agency. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(c) Information specified in paragraph (1)(b) to an attorney representing an inmate under sentence of death, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(d) Information specified in paragraph (1)(b) to a public defender representing a defendant, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records or information pursuant to this paragraph need not be in writing.

(e) Information specified in paragraph (1)(b) to state or local governmental agencies. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(f) Information specified in paragraph (1)(b) to a person conducting legitimate research. A request for records and information pursuant to this paragraph must be in writing, the person requesting the records or information must sign a confidentiality agreement, and the department must approve the request in writing.

(g) Protected health information and records specified in paragraphs paragraph (1)(a) and (h) to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection or as authorized in s. 381.004.

(h) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to the Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including audits; civil, administrative, or criminal investigations; or

inspections relating to the provision of health services, in accordance with 45 C.F.R. part 164, subpart E.

(i) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to a state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation, if the inmate agrees to the disclosure and provides written consent or, if the inmate refuses to provide written consent, in response to an order of a court of competent jurisdiction, a subpoena, including a grand jury, investigative, or administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process as authorized by law, in accordance with 45 C.F.R. part 164, subpart E, provided that:

- 1. The protected health information and records sought are relevant and material to a legitimate law enforcement inquiry;
- 2. There is a clear connection between the investigated incident and the inmate whose protected health information and records are sought;
- 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. De-identified information could not reasonably be used.

(j) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) of an inmate who is or is suspected of being the victim of a crime, to a state attorney or a law enforcement agency if 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, in accordance with 45 C.F.R. part 164, subpart E, provided that:

- 1. Such protected health information and records are needed to determine whether a violation of law by a person other than the inmate victim has occurred;
- 2. Such protected health information or records are 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. The disclosure is in the best interests of the inmate victim, as determined by the department.

(k) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) 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, in accordance with 45 C.F.R. part 164, subpart E, provided that:

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

2. There is a clear connection between the criminal conduct and the inmate whose protected health information and records are sought; and

3. De-identified information could not reasonably be used.

(l) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) to the Division of Risk Management of the Department of Financial Services, in accordance with 45 C.F.R. part 164, subpart E, upon certification by the Division of Risk Management that such information and records are necessary to investigate and provide legal representation for a claim against the Department of Corrections.

(m) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) of an inmate who is bringing a legal action against the department, to the Department of Legal Affairs or to an attorney retained to represent the department in a legal proceeding, in accordance with 45 C.F.R. part 164, subpart E.

(n) Protected health information and mental health, medical, or substance abuse records of an inmate as specified in paragraph (1)(a) to another correctional institution or facility or law enforcement official having lawful custody of the inmate, in accordance with 45 C.F.R. part 164, subpart E, if the protected health information or records are necessary for:

1. The provision of health care to the inmate;

2. The health and safety of the inmate or other inmates;

3. The health and safety of the officers, employees, or others at the correctional institution or facility;

4. The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;

5. Law enforcement on the premises of the correctional institution or facility; or

6. The administration and maintenance of the safety, security, and good order of the correctional institution or facility.

(o) Protected health information and mental health, medical, or substance abuse records of an inmate as specified in paragraph (1)(a) to the

Department of Children and Families and the Florida Commission on Offender Review, in accordance with 45 C.F.R. part 164, subpart E, if the inmate received mental health treatment while in the custody of the Department of Corrections and becomes eligible for release under supervision or upon the end of his or her sentence.

(p) Notwithstanding s. 456.057 and in accordance with 45 C.F.R. part 164, subpart E, protected health information and mental health, medical, or substance abuse records specified in paragraph (1)(a) of a deceased inmate or offender to an individual with authority to act on behalf of the deceased inmate or offender, upon the individual's request. For purposes of this section, the following individuals have authority to act on behalf of a deceased inmate or offender only for the purpose of requesting access to such protected health information and records:

1. A person appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;

2. If a court has not made a judicial appointment under subparagraph 1., a person designated by the inmate or offender to act as his or her personal representative in a last will that is self-proved under s. 732.503; or

3. If a court has not made a judicial appointment under subparagraph 1. or if the inmate or offender has not designated a person in a self-proved last will as provided in subparagraph 2., only the following individuals:

a. A surviving spouse.

b. If there is no surviving spouse, a surviving adult child of the inmate or offender.

c. If there is no surviving spouse or adult child, a parent of the inmate or offender.

(q) All requests for access to a deceased inmate's or offender's protected health information or mental health, medical, or substance abuse records specified in paragraph (1)(a) must be in writing and must be accompanied by the following:

1. If made by a person authorized under subparagraph (p)1., a copy of the letter of administration and a copy of the court order appointing such person as the representative of the inmate's or offender's estate.

2. If made by a person authorized under subparagraph (p)2., a copy of the self-proved last will designating the person as the inmate's or offender's representative.

3. If made by a person authorized under subparagraph (p)3., a letter from the person's attorney verifying the person's relationship to the inmate

or offender and the absence of a court-appointed representative and self-proved last will.

Records and information released under this subsection remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution when held by the receiving person or entity.

(6) This section does not limit any right to obtain records by subpoena or other court process.

Section 2. The Legislature finds that it is a public necessity that an inmate or offender's protected health information and HIV testing information held by the Department of Corrections pursuant to s. 945.10, Florida Statutes, remain confidential and exempt from public disclosure as the Legislature envisioned in this statute and as provided in department rules. Allowing protected health information to be publicly disclosed would in some cases cause a conflict with existing federal law and would be a violation of an inmate or offender's privacy under the state constitution. Maintaining the confidentiality of an inmate or offender's HIV testing information is essential to his or her participation in such testing. Thus, the harm from disclosure would outweigh any public benefit derived therefrom. Appropriate records and protected health information are available, however, to various governmental entities in order for them to perform their duties. It is mandatory that prisons function as effectively, efficiently, and nonviolently as possible. To release such information to the public would severely impede that function and would jeopardize the health and safety of those within and outside the prison system.

Section 3. This act shall take effect on the same date that HB 1201 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Approved by the Governor June 14, 2017.

Filed in Office Secretary of State June 14, 2017.