

March 21, 2023

## Notice of Proposed Rule

### DEPARTMENT OF CORRECTIONS

RULE NO.:      RULE TITLE:

33-601.901      Confidential Records

PURPOSE AND EFFECT: The proposed rule amendment implements the recent amendment to section 945.10, Florida Statutes, making confidential and exempt certain information and records related to the identity of individuals and entities participating in executions conducted pursuant to Chapter 922, Florida Statutes, including those participating in the manufacture and supply of drugs and other materials necessary to conduct such executions.

SUMMARY: The proposed rule amendment implements the recent amendment to section 945.10, Florida Statutes, making confidential and exempt certain information and records related to the identity of individuals and entities participating in executions conducted pursuant to Chapter 922, Florida Statutes including those participating in the manufacture and supply of drugs and other materials necessary to conduct such executions. The proposed amendment also corrects grammar and typographical errors in the existing rule.

### SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department used an itemized checklist to conduct an economic analysis and determine if there is an adverse impact or regulatory cost associated with this rule that exceeds the criteria. Upon review of the proposed changes to the rule, the Department has determined that the amendments will not exceed any one of the economic analysis criteria in a SERC as set forth in s. 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 20.315, 944.09, 945.10, F.S.

LAW IMPLEMENTED: 119.07, 944.09, 945.10, 945.25, F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Lauren Sanchez, Paralegal Specialist, 501 S. Calhoun Street, Tallahassee, FL 32399 (850)717-3610, [lauren.sanchez@fdc.myflorida.com](mailto:lauren.sanchez@fdc.myflorida.com). If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Office of the General Counsel, Attn. FDC Rule Correspondence, 501 South Calhoun Street, Tallahassee, Florida 32399, [FDCRuleCorrespondence@fdc.myflorida.com](mailto:FDCRuleCorrespondence@fdc.myflorida.com).

THE FULL TEXT OF THE PROPOSED RULE IS:

#### **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~~ shall 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

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set forth in section 945.10(3), F.S.

2. It ~~will shall~~ be the responsibility of the inmate or offender to maintain such information, and repeated requests for the same information ~~will shall~~ not be honored. Copies of documents which have been previously provided to the inmate or offender under other rules of the ~~D~~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 inmate's~~ or offender's file.

4. An inmate desiring access to non-medical or non-substance abuse information ~~must shall~~ submit ~~a~~ the written request to ~~their his or her~~ classification officer or officer-in-charge of a community facility; ~~A~~ supervised offender ~~must shall~~ submit the request to ~~their his or her~~ supervising officer. If the request does not meet the requirements specified in section 945.10(3), F.S., the request ~~will shall~~ be denied in writing. If the request meets the requirements specified in section 945.10(3), F.S., the request ~~will shall~~ 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 shall~~ review the request and make a recommendation to the classification supervisor, who ~~will shall~~ be the final authority for approval or disapproval of requests from inmates; ~~F~~for supervised offenders, the recommendation ~~will shall~~ be submitted to the correctional probation circuit administrator or designee, who ~~will shall~~ 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 ~~R~~rule 33-401.701, F.A.C.

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

(a) If the ~~requested~~ information ~~being requested~~ requires duplication, the cost of duplication ~~must shall~~ be paid by the inmate or offender, and the inmate or offender ~~must will~~ 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 his~~ own medical file under section 766.204, F.S., copies will be provided in accordance with ~~R~~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 ~~D~~department files ~~is shall be~~ confidential and ~~will shall~~ be released for inspection or duplication only as authorized in this rule or in ~~R~~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 inmate's~~ or offender's overall health care needs are met, or upon a specific written authorization from the inmate or

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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 shall~~ be ~~used utilized~~ in accordance with ~~R~~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 ~~shall~~ be referred to the agency or office originating the report or document to obtain such information.

(b) through (g) No change.

(h) The identity of any inmate or offender upon whom an HIV test has been performed and the ~~inmate inmate's~~ 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 ~~D~~department to health services staff having a need to know or to other criminal justice system agencies approved by the ~~D~~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) through (8) No Change.

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

(b) through (c) No change.

(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. through 3. No change.

4. If the ~~D~~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 ~~D~~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. through 3. No change.

(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 ~~D~~department.

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

(h) No change.

(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 ~~D~~department and becomes eligible for release under

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supervision or upon the end of their ~~his or her~~ 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,*

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NAME OF PERSON ORIGINATING PROPOSED RULE: Hope Gartman, Assistant Deputy Secretary of  
Institutions

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Ricky D. Dixon, Secretary

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: February 22, 2023

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: 11/1/2022