



# Virginia Department of Corrections

## Mental Health and Wellness Services

### Operating Procedure 730.6

#### *Mental Health and Wellness Services: Confidentiality*

#### **Authority:**

Directive 730, *Mental Health and Wellness Services*

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### REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

### COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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## **DEFINITIONS**

**Case File** - A confidential computer record maintained in VACORIS, ICOTS, and/or written record maintained in a P&P Office or Community Corrections Alternative Program regarding the probationer/parolee, that includes documentation of all action, which has occurred in the case.

**Limits of Confidentiality** - Circumstances under which a DOC Mental Health Clinician may share information related to the mental health status and/or treatment needs of an inmate/probationer/parolee without their consent.

**Mental Health Clinician** - An individual with at least a master's degree in psychology, social work, or relevant human services field with knowledge, training, and skills in the diagnosis and treatment of mental disorders, which may include a Psychiatric Provider, Social Worker, or Registered Nurse.

## PURPOSE

This operating procedure provides for the limits of confidentiality between Mental Health Clinicians and inmates/probationers/parolees within the Department of Corrections (DOC) including duty to protect requirements.

## PROCEDURE

- I. Confidentiality
  - A. The practice of establishing limits of confidentiality applies to an inmate's/probationer's/parolee's mental health records and information about an inmate's/probationer's/parolee's mental health status and treatment needs. (5-ACI-6C-03; 4-ACRS-4C-22)
  - B. Limits of confidentiality - A DOC Mental Health Clinician may share information related to the mental health status and/or treatment needs of an inmate/probationer/parolee without the inmate's/probationer's/parolee's consent in the following circumstances: (See *Duty to Protect* section of this operating procedure.)
    1. When the Mental Health Clinician considers the inmate/probationer/parolee to be a danger to self or to others.
    2. When the Mental Health Clinician considers the inmate/probationer/parolee to be a risk to the safe and secure operation of the facility.
    3. In the event of suspected or reported abuse, neglect, or exploitation of a child, when the child is under the age of 18 years.
    4. In the event of suspected or reported abuse, neglect, or exploitation of an aged or incapacitated adult per COV §63.2-1606, *Protection of aged or incapacitated adults; mandated and voluntary reporting*.
    5. In the event of suspected or reported sexual abuse or sexual assault of another inmate/probationer/parolee.
    6. In the event of a court ordered evaluation or other Court order.
    7. As required for the purposes of sexually violent predator evaluations in accordance with COV §37.2-905.2, *Access to records*; and
    8. As required by state or federal law, including but not limited to COV §53.1-40.10, *Exchange of medical and mental health information and records*.
- II. Duty to Protect "Duty to Take Precautions"
  - A. Per COV §54.1-2400.1, *Mental health service providers; duty to protect third parties; immunity*, a mental health service provider has a duty to protect third parties from violent behavior or other serious harm when the inmate/probationer/parolee has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of their profession, that the inmate/probationer/parolee has the intent and ability to carry out that threat immediately or imminently.
  - B. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to protect the child if the inmate/probationer/parolee threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in COV §18.2-67.10, *General definitions*.
  - C. The duty to protect does not apply unless the threat has been communicated to the provider by the threatening inmate/probationer/parolee while the provider is engaged in their professional duties.
  - D. The duty described above is discharged by a mental health service provider who takes one or more of the

following actions:

1. Seeks involuntary admission of the inmate/probationer/parolee under COV §53.1-40.2, *Involuntary admission of prisoners with mental illness* through §53.1-40.9, *Civil admission proceeding prior to release*.
  2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of 18.
  3. Makes reasonable efforts to notify a law enforcement official having jurisdiction in the inmate's/probationer's/parolee's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age 18, or both.
  4. Takes steps reasonably available to the provider to prevent the inmate/probationer/parolee from using physical violence or other means to harm others until the appropriate law enforcement agency can be summoned and takes custody of the individual.
  5. Provides therapy or counseling to the inmate/probationer/parolee in the session or as a follow up to the situation in which the threat has been communicated until the mental health service provider reasonably believes that the inmate/probationer/parolee no longer has the intent or the ability to carry out the threat.
  6. Notifies the receiving jail staff if the situation involves a Community Corrections Alternation Program (CCAP) probationer/parolee who is subsequently removed from the CCAP.
- E. Informing Supervisors when threat is made - When a threat to an identifiable or readily identifiable individual has been communicated to the Mental Health Clinician, the Mental Health Clinician will:
1. Inform and confer with their immediate Supervisor immediately after the threat was communicated. Notification must be made to the Mental Health Clinical Supervisor (MHCS) and the Chief of Mental Health and Wellness Services within one business day.
  2. Inform the Facility Unit Head or Administrative Duty Officer (ADO) and Institutional Investigator, if applicable, on the same day the threat was communicated by the inmate/probationer/parolee.
  3. In consultation with the Facility Unit Head or ADO, inform the Chief of Law Enforcement Services on the same day the threat was communicated by the inmate/probationer/parolee.
    - a. The Chief of Law Enforcement Services may assign a Special Agent to conduct an informal inquiry into the threat.
    - b. The assigned Special Agent will contact the Mental Health Clinician to gather additional information as needed.
    - c. The assigned Special Agent will confer with the Commonwealth's Attorney of the facility's jurisdiction to notify them of the threat and results of the informal inquiry.
    - d. The Office of Law Enforcement Services may conduct a formal investigation if circumstances warrant or as requested by the Commonwealth Attorney.
  4. Operating under the principles of confidentiality, the Mental Health Clinician and their Supervisor must ensure the only information necessary to preserve public safety, the health and safety of an inmate/probationer/parolee, other inmates/probationers/parolees, volunteers, visitors, or correctional staff is provided to those outside of mental health and wellness services. (5-ACI-6C-03)
- F. Notifying potential victims(s)
1. The Mental Health Clinician will check the inmate's/probationer's/parolee's VACORIS record and other relevant sources to see if contact information (phone number, address) for the potential victim is available.
  2. If no identifying information is found, the Mental Health Clinician will contact the Chief P&P Officer of the inmate's/probationer's/parolee's sentencing or supervising P&P District and the Victim Services Unit (VSU) to see if such information is available.

3. If contact information for the potential victim cannot be found through other sources, the Mental Health Clinician must contact the Chief of Law Enforcement Services to utilize law enforcement resources to locate contact information.
4. If contact information is found, the Mental Health Clinician will do the following:
  - a. If a phone number is available, the Mental Health Clinician will try to reach the potential victim by phone within one business day of the inmate/probationer/parolee communicating their intent to harm the individual. At least two attempts to contact the potential victim must be made and documented.
  - b. If a messaging device is reached, the Mental Health Clinician will leave a message that includes the following: their name, title, that they are a staff member of the DOC, the date and time of the call, phone number with area code, and a request that the individual return the call as the Mental Health Clinician has important information to provide.
  - c. Whether or not the intended victim is reached by phone, a certified letter, with a return receipt will be sent to the individual with copies sent as indicated in the sample letter within one business day of when the inmate/probationer/parolee communicated the intent to harm the individual; see Attachment 1 *Duty to Take Precautions Letter- Sample*.
  - d. A copy of the letter with the victim's address removed must be uploaded as an external document in the *Notes* Section of VACORIS with the note type *Special/Critical* with a copy placed in Section IV of the health record in VACORIS.
5. If the potential victim is another inmate/probationer/parolee at the same facility, the Mental Health Clinician must:
  - a. Notify the Supervisor and Facility Unit Head or ADO as directed above.
  - b. Notify Shift Commander and request General Detention of the inmate/probationer/parolee making the threat.
  - c. Write a *Disciplinary Offense Report* in accordance with Operating Procedure 861.1, *Inmate Discipline*, e.g., for making threatening statements.
  - d. Document actions taken in Section IV of the health record and in the *Notes* section of VACORIS.
6. The Mental Health Clinician must maintain confidentiality and not divulge any additional information to a third party.
  - a. If contacted by the victim, the Mental Health Clinician may indicate a serious threat of harm has been made, that information regarding the threat was provided to the appropriate investigator and refer them to the VSU to register for notifications.
  - b. If contacted by a criminal justice professional, the Mental Health Clinician may indicate a serious threat of harm has been made and refer them to the Institutional Investigator or supervising P&P Officer.

### III. Inmate Release Requirements

- A. The Mental Health Clinician will meet with the inmate within 30 days before release to reassess the threat.
  1. The Mental Health Clinician must notify the District Mental Health Clinician (DMHC), Regional Mental Health Clinician, and P&P District that a duty to protect notification was completed.
  2. If necessary, the Mental Health Clinician will request that adjusted days be rescinded.
- B. If the inmate is scheduled to be discharged from the facility before the notification and investigation can be completed, the Mental Health Clinician will take necessary steps to request that adjusted days be rescinded, i.e., by contacting one or more of the following individuals in Offender Management Services: Mental Health Central Classification Services (804) 887-8280; Manager of Classification and Records (804) 887-7894; Director of Offender Management Services, (804) 887-7991.
  1. An *Electronic Notification of Mental Health Inmate Transfer 730\_F11* indicating the existence of a duty to protect notification must be completed anytime an inmate/probationer/parolee is to be

transferred.

2. If the inmate is released to community supervision, the P&P District will:
  - a. Have the authority to approve or deny a home plan based on the location of the victim of the threat.
  - b. Reassess the threat made toward the victim and notify the DMHC if necessary - The DMHC will initiate the duty to protect procedure if the threat qualifies under COV §54.1-2400.1, *Mental health service providers; duty to protect third parties; immunity*.
  - c. Add an instruction that says the probationer/parolee cannot have direct or indirect contact with the victim.
  - d. Take the threat into consideration when determining level of supervision.
  - e. Take the threat into consideration when considering a travel request.
3. A Mental Health alert flag must be activated in VACORIS. A comment will be added to note that a duty to protect notification has been completed.

#### IV. Inmate/Probationer/Parolee Advisement of Limits of Confidentiality

- A. Upon reception into the DOC, inmates/probationers/parolees will be verbally advised of the *Limits of Confidentiality* when they are screened or assessed for the first time and annually thereafter by a Mental Health Clinician with documentation as follows:
  1. The date the information was provided to the inmate/probationer/parolee will be recorded on the *Limits of Confidentiality* 730\_F21.
  2. If an inmate/probationer/parolee refuses to sign the *Limits of Confidentiality* 730\_F21, the Mental Health Clinician will document this on the form.
  3. The *Limits of Confidentiality* 730\_F21 will be filed in the inmate's or CCAP probationer's/parolee's health record.
- B. A Mental Health Clinician will review the *Limits of Confidentiality* at least once per year with all inmates currently receiving mental health and wellness services. If an inmate refuses to sign the *Limits of Confidentiality* 730\_F21, the Mental Health Clinician will document this on the form. The completed *Limits of Confidentiality* 730\_F21 will be placed in Section IV of the health record.
- C. When an inmate/probationer/parolee is assigned to a facility where mental health and wellness services are available, and there is no *Progress Note* or other form in the inmate's or CCAP probationer's/parolee's health record documenting that *Limits of Confidentiality* was provided, the Mental Health Clinician will advise the inmate/probationer/parolee of the *Limits of Confidentiality* the first time the Mental Health Clinician meets with the inmate/probationer/parolee. A completed *Limits of Confidentiality* 730\_F21 will be placed in the inmate's or CCAP probationer's/parolee's health record. (CCAP probationers/parolees only meet with mental health and wellness staff if referred.)
- D. A copy of the *Limits of Confidentiality* will be posted in plain view in the office or workspace of each Mental Health Clinician.

#### V. Release of Information

- A. COV §53.1-40.10, *Exchange of medical and mental health information and records*, provides for the release of an inmate's/probationer's/parolee's medical and mental health information to the following entities without the inmate's/probationer's/parolee's approval:
  1. Facility administration when the information is necessary to maintain security and safety of the facility, staff, and other inmates/probationers/parolees. Disclosure must be limited to that necessary to ensure the safety and security of the facility.
  2. The Virginia Parole Board as needed to conduct release investigations.
  3. P&P Officers as needed for release planning and community supervision.

4. DOC officials as needed for programs and treatment.
  5. Public and private medical and mental health hospitals, facilities, community services boards, and other entities as needed for assessment, care, and treatment.
  6. For public health or safety reasons, including contagious diseases and reports of child or domestic abuse.
  7. Release of human immunodeficiency virus testing results is restricted by COV §32.1-36.1, *Confidentiality of test for human immunodeficiency virus; civil penalty; individual action for damages or penalty*.
- B. Upon receipt of a court order or official request from the Attorney General's office, medical, dental, and mental health information may be released to any criminal justice agency without inmate/probationer/parolee consent.
- C. The inmate/probationer/parolee may request that mental health information be released from their health record by completing a *Consent to Release Confidential Health and/or Mental Health Information 701\_F8* in accordance with Operating Procedure 701.3, *Health Records*.
- D. COV §8.01-413(B), *Certain copies of health care provider's health records of patient admissible; right of patient, his attorney and authorized insurer to copies of such health records; subpoena; damages, costs and attorney fees* and COV §32.1-127.1:03, *Health records privacy*, provide that any copies of an inmate's/probationer's/parolee's health record must not be furnished to the inmate/probationer/parolee or anyone authorized to act on the inmate's/probationer's/parolee's behalf when the treating Physician or Clinical Psychologist has included in the record a written statement that, in their professional judgment, providing the inmate/probationer/parolee with such information or allowing the inmate/probationer/parolee to review such information would be reasonably likely to endanger the life or physical safety of the inmate/probationer/parolee or another person, or that such record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to the referenced person. The inmate/probationer/parolee has the right to designate, in writing and at their expense, another reviewing Physician, or Clinical Psychologist, to determine whether the information can be provided to the inmate/probationer/parolee.

## REFERENCES

COV §8.01-413(B), *Certain copies of health care provider's records of patient admissible; right of patient, his attorney and authorized insurer to copies of such health records; subpoena; damages, costs and attorney fees*.

COV §18.2-67.10, *General definitions*.

COV §32.1-36.1, *Confidentiality of test for human immunodeficiency virus; civil penalty; individual action for damages or penalty*.

COV §32.1-127.1:03, *Health records privacy*.

COV §37.2-905.2, *Access to records*.

COV §53.1-40.2, *Involuntary admission of prisoners with mental illness*.

COV §53.1-40.9, *Civil admission proceeding prior to release*.

COV §53.1-40.10, *Exchange of medical and mental health information and records*.

COV §54.1-2400.1, *Mental health service providers; duty to protect third parties; immunity*.

COV §63.2-1606, *Protection of aged or incapacitated adults; mandated and voluntary reporting*.

Operating Procedure 701.3, *Health Records*

Operating Procedure 861.1, *Inmate Discipline*

## ATTACHMENTS

Attachment 1, *Duty to Take Precautions Letter - Sample*

## FORM CITATIONS





*Consent to Release Confidential Health and/or Mental Health Information 701\_F8*

*Electronic Notification of Mental Health Inmate Transfer 730\_F11*

*Limits of Confidentiality 730\_F21*

