

HB 1203

2017

1                   A bill to be entitled  
2           An act relating to public records; amending s. 945.10,  
3           F.S.; providing that certain protected health  
4           information held by the Department of Corrections is  
5           confidential and exempt from public records  
6           requirements; authorizing the release of protected  
7           health information and other records of an inmate to  
8           certain entities, subject to specified conditions and  
9           under certain circumstances; providing a statement of  
10          public necessity; providing an effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14           Section 1. Paragraph (a) of subsection (1) of section  
15           945.10, Florida Statutes, is amended, present paragraph (h) of  
16           that subsection is redesignated as paragraph (i), a new  
17           paragraph (h) is added to that subsection, subsection (2) of  
18           that section is amended, and subsection (6) is added to that  
19           section, to read:

20           945.10 Confidential information.—

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

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

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 32 of 1995 in accordance with s. 119.15 and shall stand repealed on  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

35 (h) The identity of any inmate or offender upon whom an  
 36 HIV test has been performed and the inmate's or offender's test  
 37 results, in accordance with s. 381.004. The term "HIV test" has  
 38 the same meaning as provided in s. 381.004. This paragraph is  
 39 subject to the Open Government Sunset Review Act of 1995 in  
 40 accordance with s. 119.15 and shall stand repealed on October 2,  
 41 2022, unless reviewed and saved from repeal through reenactment  
 42 by the Legislature.

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

46 (a) Information specified in paragraphs (1) (b), (d), and  
 47 (f) to the Executive Office of the Governor, the Legislature,  
 48 the Florida Commission on Offender Review, the Department of  
 49 Children and Families, a private correctional facility or  
 50 program that operates under a contract, the Department of Legal

51 Affairs, a state attorney, the court, or a law enforcement  
52 agency. A request for records or information pursuant to this  
53 paragraph need not be in writing.

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

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

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

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

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

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

93 (h) Protected health information and mental health,  
 94 medical, or substance abuse records specified in paragraph  
 95 (1)(a) to the Executive Office of the Governor, the Correctional  
 96 Medical Authority, and the Department of Health for health care  
 97 oversight activities authorized by state or federal law,  
 98 including audits; civil, administrative, or criminal  
 99 investigations; or inspections relating to the provision of  
 100 health services, in accordance with 45 C.F.R. part 164, subpart

HB 1203

2017

101 E.

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

113 1. The protected health information and records sought are  
114 relevant and material to a legitimate law enforcement inquiry;

115 2. There is a clear connection between the investigated  
116 incident and the inmate whose protected health information and  
117 records are sought;

118 3. The request is specific and limited in scope to the  
119 extent reasonably practicable in light of the purpose for which  
120 the information or records are sought; and

121 4. De-identified information could not reasonably be used.

122 (j) Protected health information and mental health,  
123 medical, or substance abuse records specified in paragraph  
124 (1) (a) of an inmate who is or is suspected of being the victim  
125 of a crime, to a state attorney or a law enforcement agency if

126 the inmate agrees to the disclosure and provides written consent  
127 or if the inmate is unable to agree because of incapacity or  
128 other emergency circumstance, in accordance with 45 C.F.R. part  
129 164, subpart E, provided that:

130 1. Such protected health information and records are  
131 needed to determine whether a violation of law by a person other  
132 than the inmate victim has occurred;

133 2. Such protected health information or records are not  
134 intended to be used against the inmate victim;

135 3. The immediate law enforcement activity that depends  
136 upon the disclosure would be materially and adversely affected  
137 by waiting until the inmate victim is able to agree to the  
138 disclosure; and

139 4. The disclosure is in the best interests of the inmate  
140 victim, as determined by the department.

141 (k) Protected health information and mental health,  
142 medical, or substance abuse records specified in paragraph  
143 (1) (a) to a state attorney or a law enforcement agency if the  
144 department believes in good faith that the information and  
145 records constitute evidence of criminal conduct that occurred in  
146 a correctional institution or facility, in accordance with 45  
147 C.F.R. part 164, subpart E, provided that:

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

151 records are sought;

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

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

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

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

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

176 1. The provision of health care to the inmate;

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

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

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

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

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

188 (o) Protected health information and mental health,  
189 medical, or substance abuse records of an inmate as specified in  
190 paragraph (1)(a) to the Department of Children and Families and  
191 the Florida Commission on Offender Review, in accordance with 45  
192 C.F.R. part 164, subpart E, if the inmate received mental health  
193 treatment while in the custody of the Department of Corrections  
194 and becomes eligible for release under supervision or upon the  
195 end of his or her sentence.

196 (p) Notwithstanding s. 456.057 and in accordance with 45  
197 C.F.R. part 164, subpart E, protected health information and  
198 mental health, medical, or substance abuse records specified in  
199 paragraph (1)(a) of a deceased inmate or offender to an  
200 individual with authority to act on behalf of the deceased



201 inmate or offender, upon the individual's request. For purposes  
202 of this section, the following individuals have authority to act  
203 on behalf of a deceased inmate or offender only for the purpose  
204 of requesting access to such protected health information and  
205 records:

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

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

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

217 a. A surviving spouse.

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

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

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

226 following:

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

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

234 3. If made by a person authorized under subparagraph  
235 (p)3., a letter from the person's attorney verifying the  
236 person's relationship to the inmate or offender and the absence  
237 of a court-appointed representative and self-proved last will.

238  
239 Records and information released under this subsection remain  
240 confidential and exempt from the provisions of s. 119.07(1) and  
241 s. 24(a), Art. I of the State Constitution when held by the  
242 receiving person or entity.

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

245 Section 2. The Legislature finds that it is a public  
246 necessity that an inmate or offender's protected health  
247 information and HIV testing information held by the Department  
248 of Corrections pursuant to s. 945.10, Florida Statutes, remain  
249 confidential and exempt from public disclosure as the  
250 Legislature envisioned in this statute and as provided in

251 department rules. Allowing protected health information to be  
252 publicly disclosed would in some cases cause a conflict with  
253 existing federal law and would be a violation of an inmate or  
254 offender's privacy under the state constitution. Maintaining the  
255 confidentiality of an inmate or offender's HIV testing  
256 information is essential to his or her participation in such  
257 testing. Thus, the harm from disclosure would outweigh any  
258 public benefit derived therefrom. Appropriate records and  
259 protected health information are available, however, to various  
260 governmental entities in order for them to perform their duties.  
261 It is mandatory that prisons function as effectively,  
262 efficiently, and nonviolently as possible. To release such  
263 information to the public would severely impede that function  
264 and would jeopardize the health and safety of those within and  
265 outside the prison system.

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