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1
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:

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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 32 of 1995 in accordance with s. 119.15 and shall stand repealed on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 40 accordance with s. 119.15 and shall stand repealed on October 2,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

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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.

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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

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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

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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

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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:

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- 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

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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

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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

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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.