

By the Committee on Rules; and Senator Bracy

595-04447-17

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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 section,
22 the following records and information held by the Department of
23 Corrections are confidential and exempt from the provisions of
24 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

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

27 2. Protected health information of an inmate or an
28 offender. Protected health information, as used in this section,
29 has the same meaning as provided in 45 C.F.R. s. 160.103. This

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30 subparagraph is subject to the Open Government Sunset Review Act
31 in accordance with s. 119.15 and shall stand repealed on October
32 2, 2022, unless reviewed and saved from repeal through
33 reenactment by the Legislature.

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39 with s. 119.15 and shall stand repealed on October 2, 2022,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

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

45 (a) Information specified in paragraphs (1) (b), (d), and
46 (f) to the Executive Office of the Governor, the Legislature,
47 the Florida Commission on Offender Review, the Department of
48 Children and Families, a private correctional facility or
49 program that operates under a contract, the Department of Legal
50 Affairs, a state attorney, the court, or a law enforcement
51 agency. A request for records or information pursuant to this
52 paragraph need not be in writing.

53 (b) Information specified in paragraphs (1) (c), (e), and
54 (i) ~~(h)~~ to the Executive Office of the Governor, the
55 Legislature, the Florida Commission on Offender Review, the
56 Department of Children and Families, a private correctional
57 facility or program that operates under contract, the Department
58 of Legal Affairs, a state attorney, the court, or a law

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59 enforcement agency. A request for records or information
60 pursuant to this paragraph must be in writing and a statement
61 provided demonstrating a need for the records or information.

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

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

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

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

86 (g) Protected health information and records specified in
87 paragraphs ~~paragraph~~ (1)(a) and (1)(h) to the Department of

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88 Health and the county health department where an inmate plans to
89 reside if he or she has tested positive for the presence of the
90 antibody or antigen to human immunodeficiency virus infection or
91 as authorized in s. 381.004.

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

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

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

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

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

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

121 (j) Protected health information and mental health,
122 medical, or substance abuse records specified in paragraph
123 (1)(a) of an inmate who is or is suspected of being the victim
124 of a crime, to a state attorney or a law enforcement agency if
125 the inmate agrees to the disclosure and provides written consent
126 or, if the inmate is unable to agree because of incapacity or
127 other emergency circumstance, in accordance with 45 C.F.R. part
128 164, subpart E, provided that:

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

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

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

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

140 (k) Protected health information and mental health,
141 medical, or substance abuse records specified in paragraph
142 (1)(a) to a state attorney or a law enforcement agency if the
143 department believes in good faith that the information and
144 records constitute evidence of criminal conduct that occurred in
145 a correctional institution or facility, in accordance with 45

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146 C.F.R. part 164, subpart E, provided that:

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

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

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

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

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

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

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- 175 1. The provision of health care to the inmate;
176 2. The health and safety of the inmate or other inmates;
177 3. The health and safety of the officers, employees, or
178 others at the correctional institution or facility;
179 4. The health and safety of the individuals or officers
180 responsible for transporting the inmate from one correctional
181 institution, facility, or setting to another;
182 5. Law enforcement on the premises of the correctional
183 institution or facility; or
184 6. The administration and maintenance of the safety,
185 security, and good order of the correctional institution or
186 facility.
- 187 (o) Protected health information and mental health,
188 medical, or substance abuse records of an inmate as specified in
189 paragraph (1) (a) to the Department of Children and Families and
190 the Florida Commission on Offender Review, in accordance with 45
191 C.F.R. part 164, subpart E, if the inmate received mental health
192 treatment while in the custody of the Department of Corrections
193 and becomes eligible for release under supervision or upon the
194 end of his or her sentence.
- 195 (p) Notwithstanding s. 456.057 and in accordance with 45
196 C.F.R. part 164, subpart E, protected health information and
197 mental health, medical, or substance abuse records specified in
198 paragraph (1) (a) of a deceased inmate or offender to an
199 individual with authority to act on behalf of the deceased
200 inmate or offender, upon the individual's request. For purposes
201 of this section, the following individuals have authority to act
202 on behalf of a deceased inmate or offender only for the purpose
203 of requesting access to such protected health information and

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204 records:

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

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

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

216 a. A surviving spouse.

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

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

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

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

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

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

237
238 Records and information released under this subsection remain
239 confidential and exempt from the provisions of s. 119.07(1) and
240 s. 24(a), Art. I of the State Constitution when held by the
241 receiving person or entity.

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

244 Section 2. The Legislature finds that it is a public
245 necessity that an inmate's or offender's protected health
246 information and HIV testing information held by the Department
247 of Corrections pursuant to s. 945.10, Florida Statutes, remain
248 confidential and exempt from public disclosure as the
249 Legislature envisioned in this statute and as provided in
250 department rules. Allowing protected health information to be
251 publicly disclosed would in some cases cause a conflict with
252 existing federal law and would be a violation of an inmate's or
253 offender's privacy under the State Constitution. Maintaining the
254 confidentiality of an inmate's or offender's HIV testing
255 information is essential to his or her participation in such
256 testing. Thus, the harm from disclosure would outweigh any
257 public benefit derived therefrom. Appropriate records and
258 protected health information are available, however, to various
259 governmental entities in order for them to perform their duties.
260 It is mandatory that prisons function as effectively,
261 efficiently, and nonviolently as possible. To release such

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262 information to the public would severely impede that function
263 and would jeopardize the health and safety of those within and
264 outside the prison system.

265 Section 3. This act shall take effect on the same date that
266 SB 1604 or similar legislation takes effect, if such legislation
267 is adopted in the same legislative session or an extension
268 thereof and becomes law.