



**PROBATION AND PAROLE BUREAU
STANDARD OPERATING PROCEDURES**

Procedure No.: P&P 40-1	Subject: OFFENDER RECORDS ACCESS AND RELEASE
Reference: P&P 10-5; P&P 20-5; P&P 30-1; DOC 1.5.5 2-6-101, MCA; 44-5-103, MCA; 44-5-301, 302, 303, MCA; 46-18-113, MCA; 53-1-203, MCA Montana Constitution, Article II, Sections 9 and 10	Page 1 of 6
Effective Date: 01/01/00	Revision Dates: 10/22/01; 06/29/12; 01/25/13
Signature / Title: /s/ Ron Alsbury, Probation & Parole Bureau Chief	

I. BUREAU DIRECTIVE:

Probation & Parole Bureau employees will follow the directives given in *DOC 1.5.5 Offender Records Management, Access and Release* regarding information contained in offenders' field files.

Employees will also follow established Bureau procedures to ensure that applicable federal and state laws concerning the public's right to know and an individual's right to privacy are observed with respect to information concerning offenders committed to the Department of Corrections.

II. DEFINITION:

ACCD-Adult Community Corrections Division Program/Facility – The Division includes the Adult Interstate Bureau, Missoula Assessment and Sanction Center (MASC), Treasure State Correctional Training Center (TSCTC), and the Probation and Parole Bureau which provides the following programs: Day Reporting Program (DRP), Intensive Supervision Program (ISP), and Enhanced Supervision Program (ESP). Contract facilities include Prerelease Centers (PRC), Sanction Treatment Assessment Revocation & Transition (START), Warm Springs Addiction Treatment & Change Program (WATCH), Connections Corrections Program (CCP), Passages Alcohol and Drug Treatment (Passages ADT), Passages Assessment, Sanction & Revocation Center (Passages ASRC), NEXUS Correctional Treatment Center (NEXUS), and Elkhorn Treatment Center (Elkhorn).

Bureau – The Montana adult Probation & Parole Bureau.

Confidential Criminal Justice Information – Criminal investigative information; criminal intelligence information; fingerprints and photographs; criminal justice information or records made confidential by law; and any other criminal justice information not clearly defined as public criminal justice information.

Criminal History – Information about an individual collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests, detentions, the filing of complaints, indictments, or information and dispositions arising there from sentences, correctional status, and release.

Criminal Justice Agency – Any court with criminal jurisdiction; any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; any other local government agency that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

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Criminally Convicted Youth – Any youth convicted in adult court pursuant to §41-5-206, MCA, except a youth convicted of crime that carries a possible punishment of life, death, or 100 years in prison.

Department – The Montana Department of Corrections.

Need to Know – The staff member requesting information must have that information in order to properly and adequately perform his/her job-related duties and responsibilities.

Offender Field File – The electronic and/or hard copy record used for offender management containing legal documents, reports, and offender records to include, but not limited to, material regarding custody, classification, treatment programs, and community supervision. Also referred to as “case record.”

Public Record for Adult Offenders – Information including, but not limited to, name, date of birth, race, gender; eligibility for parole; execution of warrant or sentence; term expiration; court documents, unless expressly sealed by court order; date of execution of warrant; FBI number; fine(s) imposed; jail credit time; supervising facility or program ; participation or non-participation in a court-ordered program; court docket number; and offense in accordance with §2-6-101, MCA.

III. PROCEDURES:

A. ADULT OFFENDER RECORDS

1. Records Release Restrictions

Information contained in an offender’s field file is public record except for information in which the offender or another person has a right to privacy that outweighs the public’s right to know as demonstrated in the following circumstances:

- a. The information threatens the security or safety of a person or institution;
- b. Medical or psychological information;
- c. The information is made confidential by law (i.e., Pre-Sentence Investigation and Report);
- d. Investigative information; or
- e. Youth offender records maintained within an adult offender record.

The Department’s Legal Services Unit (Legal) will determine if offender case record information is public or private on a case-by-case basis; therefore, any questions regarding a document, or information contained in a document, should be directed to Legal following the procedures set forth in *P&P 20-5 Legal Assistance for Staff*.

2. Exceptions to Restrictions

Release of information in which the offender or another person has a right to privacy that outweighs the public’s right to know contained in the offender’s field file is prohibited except for the following instances:

- a. Information required by Department employees on a need-to-know basis;
- b. Criminal justice agencies in conducting official activity;
- c. Information to an ACCD program/facility for screening or housing an offender;
- d. Court order releasing materials, such as a pre-sentence investigation report;

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- e. Information for which the offender has specifically authorized release to his/her attorney or other persons authorized by statute. A copy of the signed *DOC 1.5.5 (Attachment) Authorization for the Release of Information* will be placed in the offender's file;
- f. Records necessary for the Department to defend itself when an offender has made a claim against the Department or an employee; and
- g. Others specifically authorized in writing by the Bureau Chief.

Offender file material will not be removed from Department property or produced for any outside authority without written application to, and approval of the Regional Administrator (RA) or designee, or by court order.

3. Medical, Mental Health, and/or Treatment Information

Offender must sign the appropriate section of *DOC 1.5.5 (Attachment) Authorization for the Release of Information* when medical, mental health, and/or treatment information is to be obtained from, or released to, a provider or organization outside of the Department, not including ACCD contract facilities. A copy of the *Authorization* is placed in offender's field file.

Once the information has been received by the Bureau, an *Authorization* is not necessary for the information to be included in pre-sentence investigations, applications for interstate transfer of supervision, or applications for admittance to contracted facilities.

4. Adult Chronological History

An offender's chronological history is public information; however, certain information contained within the history may be marked as "confidential," or be deemed as private. When a request for the chronological history is received, the Probation & Parole (P&P) Officer and his/her supervisor will review the contents of the entries and redact information such as:

- a. Information protected by a right of privacy;
 - 1) medical, mental health, and treatment information,
 - 2) information that would impede an offender's supervision, rehabilitation and/or treatment/programming, and
 - 3) information that would interfere with victim rights and services.
- b. Information that, if released, would pose a threat to the security or safety of;
 - 1) an offender,
 - 2) informants (such as identification/location),
 - 3) victims of offenses, and
 - 4) an employee(s) of the Department.
- c. Information concerning a Bureau/Department investigation;
- d. Information made confidential by law;
- e. Information from youth court records; and
- f. Confidential criminal justice information;
 - 1) NCIC information, including criminal history,
 - 2) police reports,
 - 3) fingerprints,
 - 4) photos (may be deemed confidential), and
 - 5) information concerning a criminal investigation.

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If P&P Officer has any questions regarding information to be redacted, he/she may then contact Legal.

5. Offender's Address, Phone Number, and/or Employment

An offender's address, phone number and/or employment information may be given only to the following:

- a. Criminal justice agencies;
- b. Child Support Enforcement Division;
- c. Defense attorney; and
- d. Department of Public Health and Human Services.

When a request for this information is received from a source other than those entities listed above, the P&P Officer will inform the offender of the request in order for the offender to respond or not.

6. Tape Recording of Disciplinary Hearing

Requests for tape recordings of disciplinary hearings must be reviewed on a case-by-case basis, and responses to such requests may be different based on the nature of information discussed in the recording. Before being released, the tape must be listened to and reviewed by RA for any discussion that can be recognized as private or threatens the safety or security of a person or institution. If necessary, RA may consult with Legal. The Offender must sign the appropriate section of *DOC 1.5.5 (Attachment) Authorization for the Release of Information* to release the recording.

7. Pre-Sentence Investigations (PSI) and Report

Pursuant to §46-18-113, MCA, the PSI is a confidential court record and is distributed only to the following:

- a. Sentencing court (original);
- b. Prosecuting attorney;
- c. Defendant's attorney;
- d. Defendant;
- e. Agency or institution to which the offender is committed, including ACCD contract facilities; and
- f. Offender's field file.

Only the sentencing court may permit access to the PSI to other certain persons as needed for the offender's rehabilitation, such as treatment providers, mental health providers, and/or medical providers, as it considers necessary. A motion or petition requesting such access must be filed with the court unless the judgment contains a provision for further distribution.

Attachments to the PSI may not be released without the court order.

8. Predisposition Investigation

Pursuant to §46-14-301, MCA, when a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation

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in accordance with §§46-18-112 and 113, MCA. Therefore, the predisposition investigation is a confidential court record and will only be distributed to the persons listed in Section A.7.

B. RELEASE OF OFFENDER RECORDS

1. Media and Public Inquiry

Pursuant to *DOC 1.5.5 Offender Records Management, Access and Release* and *P&P 10-5 Media Relations*, designated public information officers (PIO) will respond to media and public inquiries for specific offender information. The procedures outlined in *DOC 1.5.5* will be followed with PIO providing information authorized for release.

For audit purposes, PIO will maintain a record of all such requests and include the date of request, person making request and disposition. A copy of this record will be filed in the offender's file.

2. Receipt of Subpoena for Release of Offender Record

Upon receipt of a subpoena for review/copy of offender files, contact Legal at CORLegalMailbox@mt.gov as soon as possible. Legal will, in conjunction with the P&P Officer and his/her supervisor, review and evaluate the entire file carefully, and redact or remove information contained in the offender's field file such as:

- a. Information protected by a right of privacy;
 - 1) medical, mental health, and treatment information,
 - 2) information that would impede an offender's supervision, rehabilitation and/or treatment/programming, and
 - 3) information that would interfere with victim rights and services.
- b. Information that, if released, would pose a threat to the security or safety of;
 - 1) an offender,
 - 2) informants (such as identification/location),
 - 3) victims of offenses, and
 - 4) an employee(s) of the Department.
- c. Information concerning a Bureau/Department investigation;
- d. Information made confidential by law (PSI, which is the Court's to disseminate);
- e. Information from youth court records; and
- f. Confidential criminal justice information;
 - 1) NCIC information, including criminal history,
 - 2) police reports,
 - 3) fingerprints,
 - 4) photos (may be deemed confidential), and
 - 5) information concerning a criminal investigation.

In addition, any medical, mental health or other treatment records, such as chemical dependency or sex offender treatment records, cannot be released without an authorization to release information from the third party provider.

3. Release to Criminal Justice Agency

Generally, all information from offender records may be released to criminal justice agencies with the exception of the PSI.

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4. Release of Criminal Justice Information

Offender information obtained from other criminal justice agencies may be released only to bona fide representatives of criminal justice agencies or produced in compliance with the order of a court of competent jurisdiction. Any concerns about release of this information should be directed to Legal.

5. Release to Offender or by Offender

- a. An offender may make written request to review his/her field file. Offender and supervising P&P Officer will sign and date the request and submit to RA. Access to non-confidential materials will be granted.
- b. An offender may grant authorization for review of his/her file by an Attorney of Record or other person authorized by statute. Offender is required to provide consent by signing the appropriate section of *DOC 1.5.5 (Attachment) Authorization for the Release of Information*. A copy of the *Authorization* is placed in offender's file.
- c. P&P Officer and his/her supervisor will review and evaluate all file information to be provided to offender as outlined in Section B.2.
- d. An offender will not be permitted access to the files of other offenders under any circumstances.
- e. Offender may only obtain confidential file material such as medical, psychological, or chemical dependency evaluations from the originating agency.

C. YOUTH OFFENDER RECORDS

Pursuant to *DOC 1.5.5 Offender Records Management, Access and Release*, youth records are maintained in a separate blue file within the offender's adult field file.

Information within youth records is not released except by court-order. P&P Officer will refer any persons requesting youth information without a court order to the clerk of court of the sentencing jurisdiction.

Records of criminally convicted youth will be treated as adult offender records unless directed otherwise by the Court or Juvenile Probation.

D. FEES

A copying fee of 50¢ per page may be charged. Payment should be received before copies are delivered to the requesting party. If copies are to be mailed, the requesting party may also be charged for the postage.

IV. CLOSING:

Questions regarding this procedure should be directed to the RA, Bureau Chief, or Legal.

Forms

DOC 1.5.5 Attachment Authorization for the Release of Information