



**DEPARTMENT OF CORRECTIONS
PROBATION AND PAROLE DIVISION
OPERATIONAL PROCEDURE**

Procedure:	PPD 1.5.500 OFFENDER RECORDS ACCESS AND RELEASE
Effective Date:	06/17/2019 Page 1 of 5
Revision Date(s):	
Reference(s):	DOC 1.1.8; DOC 1.5.5; 2-6-1003, MCA; 41-5-208, MCA; 41-5-Part 16, MCA; 44-5-103, MCA; 44-5-301, 302, and 303, MCA; 46-18-113, MCA; Montana Constitution, Article II, Sections 9 and 10
Signature / Title:	/s/ Kevin Olson, Probation and Parole Division Administrator

I. PURPOSE:

The employees of the Probation and Parole Division programs will follow established procedures for the access and release of offender case records. This will 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 under the supervision of the Department of Corrections.

II. DEFINITIONS:

208 Transfer – Transfer of a youth's supervisory responsibility to District Court after a juvenile disposition, pursuant to §41-5-208, MCA.

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.

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.

Extended Jurisdiction Transfer – Transfer of a youth's supervisory responsibility to District Court when the stayed District Court order is imposed pursuant to §41-5-Part 16, MCA.

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 Case Record – The primary records for offenders that may include, but are not limited to, certified documents that authorize the Department to maintain legal custody and/or supervise the offender, reports, classification, treatment programs, and grievances; utilized to provide basic physical, biographical, or historical information about an offender, and to aid placements, custody, classification, treatment, and supervision.

PFB-Programs and Facilities Bureau – The Bureau oversees the facilities providing assessments and sanctions, prerelease, and treatment services.

PPD-Probation and Parole Division – The Division oversees the Probation & Parole regional offices and interstate transfers.

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, 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 §2-6-1003, MCA.

III. PROCEDURES:

A. OFFENDER RECORDS:

1. **Restrictions on Release of Records/Information:** Information contained in an offender's case record 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. 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 PPD/Department investigation;
 - d. Information made confidential by law (i.e., the presentence investigation report, which is the court's to disseminate);
 - e. 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.
 - f. Youth offender records related to Youth Court orders and maintained in blue file within an adult offender hard copy field file:
 - 1) information within youth records is not released except by court-order; and
 - 2) P&P Officer will refer any persons requesting youth information without a court order to the clerk of court of the sentencing jurisdiction.
2. The Department's Legal Office (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 *DOC Policy 1.1.9, Legal Assistance for Staff*.

- 3. Exceptions to Restrictions:** Release of information contained in the offender's case record in which the offender or another person has a right to privacy that outweighs the public's right to know 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 an official activity;
 - c. Information to a PFB program/facility for screening or housing an offender;
 - d. Court order releasing materials, such as a presentence investigation report;
 - e. Information for which the offender has specifically authorized release to his/her attorney or other persons authorized by statute. A signed *DOC 1.5.5 (Attachment) Authorization for the Release of Information* will be placed in the offender's field 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 PPD Administrator.
- 4. On-Site Hard Copy Offender Field Files:** Probation & Parole (P&P) offender file material will not be removed from Department property or produced for any outside authority without written application to, and approval of the Deputy Chief (DC) or designee, or by court order.
- 5. Medical, Mental Health, and/or Treatment Information:**

 - a. 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 PFB contract facilities.
 - b. In addition, any medical, mental health or other treatment records, such as substance use disorder or sex offender treatment records, cannot be released without an authorization to release information from the third party provider.
 - c. Once the information has been received, an *Authorization* is not necessary for the information to be included in presentence investigations, applications for interstate transfer of supervision, or applications for admittance to PFB contract facilities.
- 6. Adult Chronological History:**

 - a. 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 P&P Officer and his/her supervisor will review the contents of the entries and redact information that is restricted from release.
 - b. If P&P Officer and/or supervisor have any questions regarding information to be redacted, he/she may then contact Legal.
- 7. Offender's Address, Phone Number, and/or Employment:**

 - a. An offender's address, phone number and/or employment information may be given only to the following:
 - 1) Criminal justice agencies;
 - 2) Child Support Enforcement Division;
 - 3) Defense attorney; and
 - 4) Department of Public Health and Human Services.
 - b. 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.

- 8. 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 the DC for any discussion that can be recognized as private or threatens the safety or security of a person or institution. If necessary, DC 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.
- 9. Presentence Investigation Report (PSI):**
- a. Pursuant to §46-18-113, MCA, the PSI is a confidential court record and is distributed only to the following:
 - 1) Sentencing court (original);
 - 2) Prosecuting attorney;
 - 3) Defendant's attorney;
 - 4) Defendant;
 - 5) Agency or institution to which the defendant is committed; and
 - 6) Offender's OMIS record.
 - 7) The prosecuting attorney may disclose the contents of the PSI to a victim of the offense.
 - b. Only the sentencing court may permit PSI access 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. In addition, attachments to the PSI may NOT be released without a court order.
- 10. 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 disorder 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 in accordance with §§46-18-112 and 113, MCA. The predisposition investigation is a confidential court record and will only be distributed to the persons listed in section A.9 above.

B. RELEASE OF OFFENDER RECORDS/INFORMATION:

1. Media and Public Inquiry:

- a. Pursuant to *DOC Policy 1.5.5, Offender Records Management, Access and Release* and *DOC Policy 1.1.8, Media Relations*, designated public information officers (PIO) will respond to media and public inquiries for specific offender information, providing information authorized for release.
- b. 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 placed in the offender's field file.

2. Receipt of Subpoena for Release of Offender Record:

- a. Upon receipt of a subpoena for review/copy of offender records, 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 record carefully, and redact or remove information contained in the offender's records that is restricted from release.
- b. 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.
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 case record. Offender and supervising P&P Officer will sign and date the request and submit to the DC. Access to non-confidential materials will be granted.
 - b. An offender may grant authorization for review of his/her record 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 field file.
 - c. P&P Officer and his/her supervisor will review and evaluate all case record information to be provided to offender as outlined in Section B.2.
 - d. An offender will not be permitted access to the records of other offenders under any circumstances.
 - e. Offender may only obtain confidential record material such as medical, psychological, or chemical dependency evaluations from the originating agency.

C. FEES:

1. A copying fee of 25¢ per page may be charged. Payment should be received before copies are delivered to the requesting party.
2. 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 Deputy Chief, Probation & Parole Bureau Chief, or the Legal Office.

V. FORMS:

DOC 1.5.5 Attachment Authorization for the Release of Information