I. PURPOSE:

The Programs and Facilities Bureau contracted facilities will follow established requirements for case records management of offenders under the supervision of the Department of Corrections to ensure that applicable federal and state laws concerning the public’s right to know and an individual’s right to privacy are observed.

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 or her job-related duties and responsibilities.

**OMIS-Offender Management Information System** – The Department’s electronic data collection and reporting system.

**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.

**Programs and Facilities Contract Manager** – The Department’s employee(s) who acts as the liaison for services and monitors the contractual agreements between the Department and PFB contract facilities.

**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. REQUIREMENTS:**

**A. GENERAL:**

1. All PFB contract facilities are required to maintain records of performance of duties pursuant to this requirement. Facilities will create and retain all records supporting the services rendered and/or supplies delivered for a period as outlined in contract.

2. Facilities shall maintain offender records and provide reports that conform to those of the Department in both format and content.

3. PFB contract facilities will provide the Department, the Legislative Auditor, or their authorized agents with access to any of these records necessary to determine requirement compliance.

4. Any breach of confidentiality by the facility or third party agents of the facility shall constitute good cause for the Department to cancel the contract with the facility, without liability. Any records and files delivered to the facility shall be returned to the Department.

5. Any Department waiver of an alleged breach of confidentiality by the facility or third party agents of the facility is not to imply a waiver of any subsequent breach.

6. Facility staff with OMIS access authority will follow the procedures of *PFB 6.1.205 OMIS-Provider Access and Use* in providing offender information to the Department through OMIS.
B. MANAGEMENT OF OFFENDER CASE RECORDS:

1. Facility shall maintain any hard-copy offender records on-site in a locked, secure area.

2. Facilities will ensure that all Information Technology systems utilized to maintain electronic records, access the internet, transmit files, or used to communicate with the Department shall meet the security standards established by the state of Montana. In the event the contractor’s Information Technology system becomes compromised, the contractor must notify the PFB Bureau Chief immediately at 406-580-7991 and shall restore such systems to the state’s standards within five (5) business days.

3. Offender case records include the following:
   a. offender’s program application and any attached documents;
   b. all screening documents and decisions;
   c. a substance-related disorder diagnosis and supporting documentation for diagnosis;
   d. documentation the offender was provided the facility’s offender handbook;
   e. documentation the offender was notified of all program requirements and components, including his/her rights under the Prison Rape Elimination Act of 2003, the facility’s rules, behavior management system, and grievance process;
   f. applicable releases of information;
   g. offender’s treatment plan;
   h. progress notes/summaries;
   i. aftercare plan;
   j. discharge summary;
   k. medical records, including documentation of health services provided, exam/lab results, medication records, and information from other healthcare facilities;
   l. copies of all correspondence related to the offender;
   m. all grievances filed by the offender and the applicable responses; and
   n. documentation of incentives or interventions administered through the program’s behavior management system.

4. Any copies of Department records kept by a facility will be returned when requested.

5. Facilities agree to advise in writing and notify all employees, agents, consultants, licensees, or subcontractors of the said requirements of confidentiality and of possible penalties and fines imposed by violation thereof, and secure from each an acknowledgment of such advisement and agreement to be bound by the terms of its contract with the Department as an employee, agent, consultant, licensee or subcontractors of the facility, as the case may be.

C. ACCESS TO OFFENDER CASE RECORDS:

1. Facilities will protect offender records so only authorized personnel with a need to know have access to the records.

2. Facilities will allow the Department access to offender records when requested.

3. Facility shall specifically keep confidential all records and files of Department offenders and shall obtain prior written approval from the Department before releasing or disclosing the contents of any such records or files. Facility further acknowledges that this requirement is in addition to
and not in lieu of any other laws respecting confidentiality of inmate and criminal justice files and records.

4. Facilities will not allow an offender access to view or handle another offender’s records.

5. Offenders may make written requests to review their case records materials and may be granted access to review non-confidential portions of their records. All information to be provided to an offender from a record must be evaluated by a designated facility employee to ensure that release of information will not endanger either the offender or others, or violate the privacy rights of the offender or others. The offender and supervising staff member will sign and date the request.

D. RELEASE OF OFFENDER CASE RECORDS:

1. 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; however, any information from Department records may not be released without proper authorization from the Department.
   a. Information protected by a right of privacy;
      1) medical, mental health, and substance use disorder and sexual offender 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 Department investigation;
   d. Information made confidential by law (i.e., the presentence investigation report, which is the courts to disseminate); and
   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:
      1) applies to criminally-convicted youth, 208 transfers, and extended jurisdiction transfers;
      2) information within youth records is not released except by court-order; and
      3) facility staff will refer any persons requesting youth information without a court order to the clerk of court of the sentencing jurisdiction.

2. Upon a release of information signed by the offender, the facility may release information to the public when requested.
3. Any questions about the dissemination of offender file information may be directed to one of the Department’s attorneys. The attorney will determine on a case-by-case basis whether offender record information is public or private.

IV. CLOSING:

Questions regarding this requirement should be directed to the Programs and Facilities Bureau.