



Operating Procedure

Effective Date November 1, 2018	Number 730.6
Amended	Operating Level Department
Supersedes Operating Procedure 730.6 (11/1/15)	
Authority COV §8.01-413(B), §18.2-67.10, §32.1-36.1, §32.1-127.1:03, §37.2-905.2, §53.1-10, §53.1-40.10, §53.1-40.2 through §53.1-40.9, §54.1-2400.1, §63.2-1606	
ACA/PREA Standards 4-4396; 4-ACRS-4C-22	
Office of Primary Responsibility Chief of Mental Health Services	

Subject
**MENTAL HEALTH SERVICES:
CONFIDENTIALITY**

Incarcerated Offender Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Public Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Attachments Yes <input checked="" type="checkbox"/> #1 No <input type="checkbox"/>
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I. PURPOSE

This operating procedure provides for the limits of confidentiality between Qualified Mental Health Professionals and offenders within the Virginia Department of Corrections including duty to protect requirements.

II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

III. DEFINITIONS

Case File - A confidential computer record maintained in VACORIS, ICOTS, and/or written record maintained in a Probation and Parole Office or Community Corrections Facility regarding the offender which includes documentation of all action which has occurred in the case

Limits of Confidentiality - Circumstances under which a Department of Corrections Qualified Mental Health Professional (QMHP) may share information related to the mental health status and/or treatment needs of an offender without the offender's consent.

Qualified Mental Health Professional (QMHP) - An individual employed in a designated mental health services position as a Psychologist or Psychology Associate, Psychiatric Provider, Psychiatrist, Social Worker (Masters level) or Registered Nurse or an individual with at least a Master's degree in psychology, social work or relevant human services field with knowledge, training, and skills in the diagnosis and treatment of mental disorders.

IV. PROCEDURE

A. The practice of establishing limits of confidentiality applies to an offender's mental health records and information about an offender's mental health status and treatment needs. (4-4396, 4-ACRS-4C-22)

B. Limits of Confidentiality - A Department of Corrections Qualified Mental Health Professional (QMHP) may share information related to the mental health status and/or treatment needs of an offender without the offender's consent in the following circumstances: (see also *Duty to Take Precautions* section of this operating procedure)

1. When the QMHP considers the offender to be a danger to self or to others;
2. When the QMHP considers the offender to be a risk to the safe and secure operation of the facility;
3. In the event of suspected or reported abuse, neglect, or exploitation of a child, when the child is under the age of 18 years;

4. In the event of suspected or reported abuse, neglect, or exploitation of an aged or incapacitated adult per COV §63.2-1606;
5. In the event of suspected or reported sexual abuse or sexual assault of another offender;
6. In the event of a court ordered evaluation or other court order;
7. As required for the purposes of sexually violent predator evaluations in accordance with COV §37.2-905.2; and
8. As required by state or federal law, including but not limited to COV §53.1-40.10, *The Exchange of Medical and Mental Information and Records*.

C. Duty to Take Precautions

1. Per COV §54.1-2400.1, a mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm when the offender has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of their profession, that the offender has the intent and ability to carry out that threat immediately or imminently.
2. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the offender threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in COV §18.2-67.10.
3. The duty to take precautions does not attach unless the threat has been communicated to the provider by the threatening offender while the provider is engaged in their professional duties.
4. The duty described above is discharged by a mental health service provider who takes one or more of the following actions:
 - a. Seeks involuntary admission of the offender under COV §53.1-40.2 through §53.1-40.9
 - b. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of 18
 - c. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the offender's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age 18, or both
 - d. Takes steps reasonably available to the provider to prevent the offender from using physical violence or other means to harm others until the appropriate law-enforcement agency can be summoned and takes custody of the individual
 - e. Provides therapy or counseling to the offender in the session or as a follow up to the situation in which the threat has been communicated until the mental health service provider reasonably believes that the offender no longer has the intent or the ability to carry out the threat
5. Informing Supervisors When Threat is Made - When a threat to an identifiable or readily identifiable individual has been communicated to the QMHP, the QMHP will:
 - a. Inform and confer with their immediate supervisor immediately after the threat was communicated. Notification must be made to the Mental Health Clinical Supervisor (MHCS) and the Chief of Mental Health within one working day.
 - b. Inform the Unit Head or Administrative Duty Officer and Institutional Investigator, if applicable, on the same day the threat was communicated by the offender.
 - c. In consultation with the Unit Head or Administrative Duty Officer, inform the Chief of Investigations of the Special Investigations Unit (SIU) on the same day the threat was communicated by the offender.
 - i. The Chief of SIU may assign an agent to conduct an informal inquiry into the threat.
 - ii. The assigned agent shall contact the QMHP to gather additional information as needed.
 - iii. The assigned agent should confer with the Commonwealth Attorney of the unit's jurisdiction

- to notify them of the threat and results of the informal inquiry.
- iv. The SIU may conduct a formal investigation if circumstances warrant or as requested by the Commonwealth Attorney.
 - d. Operating under the principles of confidentiality the QMHP and their supervisor must ensure only that information necessary to preserve public safety, the health and safety of an offender, other offenders, volunteers/visitors, or correctional staff is provided to those outside of mental health services. (4-4396)
6. Notifying Potential Victims(s)
- a. The QMHP will check the offender's record and other relevant sources to see if contact information (phone number, address) for the potential victim is available.
 - b. If no identifying information is found, the QMHP will contact the Chief P&P Officer of the offender's sentencing or supervising P&P District and the Victim Services Unit to see if such information is available.
 - c. If contact information for the potential victim cannot be found through other sources, the QMHP must contact the Chief of Investigations to utilize law enforcement resources to locate contact information.
 - d. If contact information is found, the QMHP will do the following:
 - i. If a phone number is available, the QMHP will try to reach the potential victim by phone within one working day of the offender communicating their intent to harm the individual. At least two attempts to contact the potential victim must be made and documented.
 - ii. If a messaging device is reached, the QMHP will leave a message which includes the following: their name, title, that they are an employee of the DOC, the date and time of the call, their phone number with area code, and a request that the individual return the call as the QMHP has important information to provide.
 - iii. Whether or not the intended victim is reached by phone, a certified letter (See Attachment 1 for sample *Duty to Protect Letter*.) with a return receipt will be sent to the individual with copies sent as indicated in the sample letter within one working day of when the offender communicated the intent to harm the individual.
 - iv. A copy of the letter with the victim's address removed must be uploaded as an external document in the *Notes* Section of VACORIS with the note type *Special/Critical* with a copy placed in Section IV of the Health Record and the offender's Case File.
 - e. If the potential victim is another offender at the same facility, the QMHP must:
 - i. Notify the supervisor and Facility Unit Head or Administrative Duty Officer as directed above
 - ii. Notify Shift Commander and request General Detention of the offender making the threat
 - iii. Write a *Disciplinary Offense Report* in accordance with the *Offender Disciplinary Procedure*, e.g. for making threatening statements
 - iv. Document actions taken in Section IV of the Health Record and in the *Notes* section of VACORIS.
 - f. The QMHP should maintain confidentiality and not divulge any additional information to a third party.
 - i. If contacted by the victim, the QMHP may indicate a serious threat of harm has been made, that information regarding the threat was provided to the appropriate investigator, and refer them to the Victim Services Unit to register for notifications.
 - ii. If contacted by a criminal justice professional, the QMHP may indicate a serious threat of harm has been made and refer them to the facility investigator or supervising P&P Officer.
7. Additional Procedures
- a. The QMHP will meet with the offender within 30 days before release to reassess the threat.
 - i. The QMHP must notify the Community Corrections QMHP and P&P Office that a duty to protect notification was completed.

- ii. If necessary the QMHP should request the offender's adjusted days be rescinded.
- b. If the offender is scheduled to be discharged from the facility before the notification and investigation can be completed, the QMHP should take necessary steps to request that the offender's adjusted days be rescinded, i.e., by contacting one or more of the following individuals in Offender Management Services: Mental Health Central Classification Services (804) 887-8280; Manager of Classification and Records (804) 887-7894; Director of Offender Management Services, (804) 887-7991.
- c. An [Electronic Notification of Mental Health Offender Transfer](#) 730_F11 indicating that a duty to protect notification was done must be completed anytime an offender is to be transferred.
- d. If the offender is released to community supervision, the P&P Office will:
 - i. Have the authority to approve or deny a home plan based on the location of the victim of the threat
 - ii. Reassess the threat made toward the victim and notify the Community Corrections QMHP if necessary - The Community Corrections QMHP will initiate the duty to take precautions procedure if the threat qualifies under [COV](#) §54.1-2400.1.
 - iii. Add an instruction that says the offender is to not have direct or indirect contact with the victim.
 - iv. Take the threat into consideration when determining level of supervision.
 - v. Take the threat into consideration when considering a travel request.
- e. A Mental Health alert flag under "other" must be activated in VACORIS. A comment will be added to note that a duty to take precautions notification has been completed.

D. Offender Advisement of Limits of Confidentiality

1. Upon reception into the DOC, offenders will be verbally advised of the *Limits of Confidentiality* when they are screened or assessed for the first time by a QMHP with documentation as follows:
 - a. The date the information was provided to the offender will be recorded on the [Limits of Confidentiality \(DOC MH 5\)](#) 730_F21 ([Limits of Confidentiality \(DOC MH 5\) \(Spanish\)](#) 730_F21S).
 - b. If an offender refuses to sign the *Limits of Confidentiality*, the QMHP will document this on the form.
 - c. The *Limits of Confidentiality* will be filed in the offender's Health Record - Section IV.
2. Per Mental Health Services Protocol #6 (issued 4-20-98), When an offender who is receiving services is transferred into a facility where mental health services are available, and there is a *Progress Note*, or other form in the offender's Health Record documenting the *Limits of Confidentiality* were provided, the QMHP must advise the offender of these limits and document that this information was previously provided on the [Limits of Confidentiality \(DOC MH 5\)](#) 730_F21 [Limits of Confidentiality \(DOC MH 5\) \(Spanish\)](#) 730_F21S or as a notation in the Health Record..
3. When an offender is assigned to a facility where mental health services are available, and there is no *Progress Note* or other form in the offender's Health Record - Section IV documenting that *Limits of Confidentiality* was provided, the QMHP will advise the offender of the *Limits of Confidentiality* the first time the QMHP meets with the offender. A completed DOC MH 5 will be placed in offender's Health Record - Section IV.
4. A copy of the *Limits of Confidentiality* should be posted in plain view in the office or workspace of each QMHP.

E. Release of Information

1. [COV](#) §53.1-40.10 provides for the release of an offender's medical and mental health information to the following entities without the offender's approval:
 - a. Facility administration when the information is necessary to maintain security and safety of the facility, employees, and other offenders. Disclosure must be limited to that necessary to ensure

the safety and security of the facility

- b. Parole Board as needed to conduct release investigations
 - c. Probation and Parole officers as needed for release planning and community supervision
 - d. DOC officials as needed for programs and treatment
 - e. Public and private medical and mental health hospitals, facilities, community services boards, and other entities as needed for assessment, care, and treatment
 - f. For public health or safety reasons, including contagious diseases and reports of child or domestic abuse
 - g. Release of human immunodeficiency virus testing results is restricted by COV §32.1-36.1.
2. Upon receipt of a court order; official request from the Attorney General's office, medical, dental, and mental health information may be released to any criminal justice agency without offender consent.
 3. The offender may request that mental health information be released from their Health Record by completing a [Consent for Release of Confidential Health and/or Mental Health Information](#) 701_F8 in accordance with Operating Procedure 701.3, *Medical Records*.
 4. COV §8.01-413(B) and §32.1-127.1:03 provide that any copies of an offender's health records must not be furnished to the offender or anyone authorized to act on the offender's behalf when the treating physician or clinical psychologist has included in the record a written statement that, in their professional judgment, providing the offender with such information or allowing the offender to review such information would be reasonably likely to endanger the life or physical safety of the offender or another person, or that such record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to the referenced person. The offender has the right to designate, in writing and at his/her expense, another reviewing physician, or clinical psychologist, to determine whether the information can be provided to the offender.

V. REFERENCES

Operating Procedure 701.3, *Health Records*

VI. FORM CITATIONS

[Consent for Release of Confidential Health and/or Mental Health Information](#) 701_F8

[Electronic Notification of Mental Health Offender Transfer](#) 730_F11

[Limits of Confidentiality \(DOC MH 5\)](#) 730_F21

[Limits of Confidentiality \(DOC MH 5\) \(Spanish\)](#) 730_F21S

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years after the effective date.

Signature Copy on File

N. H. Scott, Deputy Director for Administration

8/31/18

Date