



# POLICY STATEMENT

## D.C. Pretrial Services Agency

Policy Statement: 2400

Policy Area: Confidentiality

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### RELEASE OF SENSITIVE DEFENDANT INFORMATION

#### I. COVERAGE

This Policy Statement covers all employees, contractors and interns<sup>1</sup> of the D.C. Pretrial Services Agency (hereinafter referred to as “PSA personnel” or “Agency personnel”) who have access to sensitive information concerning defendants.

#### II. BACKGROUND

Agency personnel are privy to sensitive information concerning individuals who are or have been investigated and/or supervised by the Agency. Sensitive information maintained on such individuals is protected by federal and/or local laws and is classified in the following areas: 1) substance abuse treatment records; 2) general information including address, employment, drug test and criminal history; 3) mental health information; 4) HIV/AIDS, cancer and other health information; 5) juvenile records; and 6) sealed case information. This Policy Statement establishes specific procedures intended to ensure that Agency personnel handle disclosures of sensitive defendant information in accordance with applicable law.

#### III. POLICY

It is the Agency’s policy to ensure that sensitive information about a defendant is not released to anyone without: 1) a valid release of information (ROI) by the subject; or 2) as permitted by a routine use under the Privacy Act or other applicable statutory exception; or 3) in accordance with Agency policies.

By signing the “Non-Disclosure of Sensitive Defendant Information Policy Agreement,” (see Appendix B), Agency personnel acknowledge that they understand the following:

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<sup>1</sup> All subsequent references to “employees” should be read to include Agency contractors and interns to the extent that they have access to sensitive defendant information.

- The circumstances under which employees can release information, the persons to whom information can be released, the nature of the information that can be released, and their responsibilities in maintaining and releasing information;
- The penalties for improperly disclosing information; and
- That after separating from the Agency, personnel are obligated not to disclose any information obtained while employed by the Agency without the express written authorization of the Deputy Director of PSA or designee.

Any employee who violates this Policy Statement is subject to disciplinary action up to and including removal, and may also be subject to any civil and/or criminal penalties that apply.

#### IV. PROCEDURES

##### A. General Guidance Concerning the Disclosure of Defendant Information

It is the Agency's policy that a defendant's charge, release status, and court date may be disclosed to the general public without the consent of the defendant provided that the information is not a juvenile record or an adult matter under seal. A disclosure on release status is limited to stating that an individual was released or held and does not include the specific release conditions that may have been imposed or whether the defendant is in compliance with those conditions.

With limited exceptions, information concerning a defendant that is maintained by the Agency is considered sensitive information and can only be disclosed pursuant to Agency guidance with appropriate statutory authority or consent of the defendant. Agency personnel are authorized to disclose defendant information<sup>2</sup> without the consent of the defendant to other employees of the Agency only when there is a need for those records in the performance of their duties and the information does not pertain to HIV/AIDS and cancer.

Pursuant to the Privacy Act of 1974, the Agency has identified individuals/entities who may receive certain information regarding a defendant<sup>3</sup> without the consent of the defendant unless under seal by the court. [See section B(7)]. This type of disclosure is identified by the Privacy Act as a "routine use" of Agency information. As published in the *Federal Register*, the following are examples of individuals/entities who may receive defendant information for official purposes without a release of information or court order: 1) congressional office in response to an inquiry made at the request of a current or former defendant under PSA supervision; 2) Federal, state, local, or foreign criminal law enforcement agencies and officials for law enforcement purposes such as investigations or possible criminal prosecutions; 3) Federal, local and state courts, court personnel, prosecutors, defense attorneys, corrections, probation, parole, and other pretrial officials to the extent necessary to permit them to accomplish their assigned duties in any criminal matter; 4) entities that provide

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<sup>2</sup> A valid consent is needed in order to disclose HIV/AIDS and cancer information within the Agency.

<sup>3</sup> "Certain information" does not include 1) sealed information, 2) substance abuse treatment records, 3) mental health information obtained by a mental health professional, or 4) HIV/AIDS and cancer information. With limited exceptions, the latter three requires a release of information signed by the defendant or a court order in order to disclose the information.

supervision or treatment services to defendants under PSA supervision in order to facilitate those services; and 5) National Archives and Records Administration and the General Services Administration during a records management inspection conducted under 44 U.S.C. §§ 2904 and 2906.

Specific guidance regarding the disclosure of sensitive information by Agency personnel is found in the following sections as well as within the Disclosure of Sensitive Information Grid (see Management Instruction (MI) 2401, Use of Release of Information, Notice on Rediscovery, Revocation of Release, and Request for Drug Test Results, Specimen History Report, and Chain of Custody Forms). If the required information is not addressed in either document, PSA personnel are advised to consult with their supervisors. Supervisors must confer with the PSA Deputy Director or designee for guidance before a disclosure is made.

## B. Specific Guidance on the Disclosure of Various Types of Defendant Information

### (1) Substance Abuse Treatment Records

PSA personnel may disclose an individual's substance abuse treatment records without a release of information (ROI) directly to that individual. Similarly, substance abuse treatment records may be disclosed without an ROI between and among Agency personnel and between PSA and the Court Services and Offender Supervision Agency (CSOSA) when there is a need for such information in connection with duties that arise out of the provision of assessment/diagnosis, referral for treatment, treatment, and/or auditing/quality assurance. This information may not be disclosed outside PSA or CSOSA without an ROI unless some applicable exception exists (see below). Without an exception, Agency personnel must obtain an ROI from the individual in order to share substance abuse treatment records with any person(s) outside PSA or CSOSA, including an outside (or contract) treatment provider (see 42 C.F.R. Part 2, § 2.33).

The Pretrial Services Report (PSR) may contain appropriate recommendations for a substance abuse assessment without a release of information so long as the recommendation is not based on treatment records. With a release of information, the PSR also may contain compliance information obtained from PSA/CSOSA records (or any other source) regarding the defendant's compliance with previously imposed substance abuse treatment conditions, e.g., pending case.

The following exceptions permit the Agency to disclose substance abuse treatment information without a written consent. However, before disclosing any treatment information relating to exceptions to the written consent requirements in sections (d)-(g) below, Agency personnel must confer with their supervisor or designee. Supervisors must confer with the PSA Deputy Director or designee for guidance before a disclosure is made.

Exceptions to written consent requirement:

- (a) When Agency personnel discloses substance abuse treatment information that does not identify the individual;
- (b) When an individual is referred by the Agency for a substance abuse assessment and never reports, that fact may be communicated by the Agency without a court order or the individual's consent to, e.g. judicial officer, and defense attorney and prosecutor assigned to a defendant's criminal case;
- (c) When reporting information to medical personnel that is needed to address a medical emergency involving the treatment of a defendant;
- (d) When a court order determines that good cause exists to release the information, or that the information is required to protect against a threat to life or of serious bodily injury; or to investigate or prosecute an extremely serious crime (e.g., homicide, rape, kidnapping, armed robbery, child abuse, etc.);
- (e) When there is a crime on a PSA or contracted treatment program premises or against program personnel. In such a situation, without any special authorization, the Agency may disclose the circumstances of the incident to law enforcement, including the defendant's name, address, last known whereabouts, and status as a participant at the program;
- (f) When there is a request for substance abuse treatment information for research and audits (Agency personnel must comply with CSOSA/PSA Policy Statement 1201, Research and Evaluation); and
- (g) When reporting suspected child abuse and/or neglect.

(2) Drug/Alcohol Test Reports

Any drug/alcohol test performed by a non-Agency treatment program shall be handled in accordance with the guidance above as a substance abuse treatment record. Drug tests conducted by the PSA Forensic Laboratory to determine compliance with court-ordered release conditions, including PSA treatment programs, and comparable parole, probation, or supervised release conditions are considered supervision records as opposed to treatment records, and may be released pursuant to a routine use or with the subject's signed Privacy Act waiver or a court order.

Defendants, juvenile respondents and other individuals from Family Court who report to PSA for drug testing may receive their own drug test results. Any judge, prosecutor or defense attorney assigned to a defendant's criminal case may receive a defendant's drug test results without an ROI. Likewise, any pretrial, probation, parole agency or correctional facility providing pretrial incarceration or post-sentencing incarceration, e.g., halfway house, may receive drug test results without an ROI when the information is needed for official purposes. In order for any other law enforcement agency, e.g., police officers, to receive drug test results, the individual (e.g., defendant) must sign an ROI or there must be a court order authorizing the release.

In the event an employee learns that a defendant under PSA supervision is testing positive for and/or admits use of an illicit drug (e.g., cocaine or PCP) and is at that time employed in a job that, because of such drug use, might put the community at risk (e.g., professional driver, child care provider), the employee must consult immediately with his or her supervisor. Notification to an employer about a defendant's illicit drug use is not one of PSA's "routine uses" under the federal Privacy Act (which permits PSA to make certain disclosures without requiring the consent of a defendant). However, if an employee is assessing or supervising a defendant who performs a certain job in which his/her drug use could put others at risk, it is likely that the PSO, after conferring with his or her supervisor, will send an immediate notice to the court. Such a notice should advise the court of the defendant's type of employment and of the illicit drug use.

PSA is authorized to disclose illicit drug use information to a defendant's employer only if one of the following apply: 1) having the written consent of the defendant (using a Privacy Act release of information form); or 2) having an order<sup>4</sup> from a judge (either in writing or made on the record in court) that directs PSA to notify an employer of a defendant's illicit drug use or admission of illicit drug use; or 3) receiving authorization from the Agency Deputy Director, or designee, to make a disclosure in order to protect the health or safety of one or more specific individuals [see section IV(B)(9)]. If the court issues an order, the PSO should notify the Office of the Director so that any potential legal issues can be anticipated and resolved.

In lieu of a Privacy Act release of information that is signed by the defendant, investigators and interns who are employed by defense attorneys and prosecutors may receive drug test results and/or chain-of-custody reports without consent of defendants when they provide proper identification of employment<sup>5</sup> and a completed Request for Drug Test Results, Specimen History, and Chain of Custody forms that are signed by the prosecutors or defense attorneys. (See MI 2401.11 posted on the intranet.)

### (3) Mental Health Records

Any information concerning a defendant's mental health status (including medication taken) may be disclosed by PSA personnel pursuant to the Privacy Act without an ROI if the information is collected from the defendant or from any other individual (e.g., family member) who is not a mental health professional. For example, if a defendant informs a Diagnostic Pretrial Services Officer (PSO) of a mental health condition during the lockup interview, the PSO may disclose this information to the judge, prosecutor and defense attorney without an ROI when there is a need to disclose this information for official purposes. The PSR may contain an appropriate recommendation for a mental health assessment without a release of information so long as it is based on information collected

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<sup>4</sup> All orders that are received by the Agency must be documented in PRISM within the supervision log.

<sup>5</sup> An example of "proper identification of employment" is an official card that names the investigator or intern as an employee of: the Public Defender Service; Office of the Attorney General for D.C.; U.S. Attorney's Office; or certified Criminal Justice Act (CJA) investigator. If the aforementioned card does not have a picture, the investigator/intern must show a picture ID, e.g., driver's license. A business card is not an acceptable form of identification for this purpose.

by someone who is not a mental health professional. With a valid release of information, or alternatively with a court order, the PSR also may contain mental health information that is obtained from a mental health professional, e.g., the defendant's compliance with mental health release conditions in a pending case. Although it is the Agency's intention to always seek an ROI from the defendant before disclosing mental health assessment information, PSA personnel are authorized to disclose the results of a court-ordered mental health assessment to the judicial officer who ordered the examination without an ROI.

However, PSOs conducting mental health assessments in the Social Services and Assessment Center (SSAC), the psychologist(s) contracted by the Agency as well as his or her interns, Department of Mental Health (DMH) personnel, and other mental health treatment programs, are considered mental health professionals as defined by the D.C. Mental Health Information Act. Therefore, with limited exceptions, in order for the Agency to make a disclosure of any mental health information obtained by any of the aforementioned mental health professionals, the Agency must have an ROI or court order.

Upon receiving a written request from an individual for that individual's own mental health records (ROI not required), PSA personnel may disclose the requested information. However, an employee may limit a disclosure of mental health information to a defendant if the employee reasonably believes that such a refusal or limitation on disclosure is necessary to protect the defendant from a substantial risk of imminent psychological impairment or to protect the defendant or another individual from a substantial risk of imminent and serious physical injury. Prior to informing an individual of a refusal or limitation of access to the records, employees must confer with their supervisors or designees. Supervisors must confer with the PSA Deputy Director or designee for guidance before any disclosure is made.

PSA personnel may disclose a defendant's mental health information obtained from a mental health professional between and among Agency personnel and between PSA and CSOSA without an ROI to the extent necessary to facilitate the delivery of professional services to the defendant. (See D.C. Code § 7-1203.01.) With a few exceptions noted below, the Agency is prohibited from disclosing mental health information obtained from a mental health professional to any person or entity outside PSA and CSOSA without an ROI from the individual or a court order.

In the absence of an individual's ROI, PSA personnel may disclose mental health information obtained from a mental health professional to certain individuals<sup>6</sup> when there is an emergency. Before any disclosure is made, there must be a determination that the disclosure is necessary to initiate or seek emergency hospitalization of the individual or to protect the individual or another from a "substantial risk of imminent and serious physical injury." (See D.C. Code § 7-1203.03(a)). For example, if PSA has acquired mental health

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<sup>6</sup> See § 7-1203.03 of the D.C. Mental Health Act. Mental health information may be disclosed without the individual's consent on an emergency basis to one or more of the following: client's spouse, parent, legal guardian, a duly accredited officer or agent of the District of Columbia in charge of public health, the Department of Mental Health, a provider as defined in § 7-1131.02(27), an officer authorized to make arrests in the District of Columbia, or an intended victim.

information from a mental health professional that a defendant has or had suicidal ideations and the defendant is not willing or is unavailable to sign a new release of information, PSA personnel are authorized to disclose this information to the judicial officer so that a medical alert can be ordered should the defendant be held. Before making a non-consensual disclosure of mental health information obtained from a mental health professional on an emergency basis, employees must confer with their supervisors or designee. Supervisors must confer with the PSA Deputy Director or designee for guidance before a disclosure is made.

With a court order (verbal or written), Agency personnel are authorized to disclose mental health information as directed by the court. Any verbal or written order that is received must be properly recorded within the PSA supervision record system.

For additional guidance concerning the disclosure of mental health information, employees should review the Disclosure of Sensitive Information Grid posted on the intranet.

#### (4) HIV/AIDS and Cancer Information

Agency personnel may disclose an individual's HIV/AIDS and cancer health records or status to that person without an ROI from the individual. Agency personnel may not disclose an individual's HIV/AIDS and cancer health records or status within PSA except with an ROI. Similarly, Agency personnel must obtain an ROI from the individual in order to share such records between PSA and any outside entity, e.g., CSOSA, defense attorney, treatment program, medical facility, etc.

If no ROI has been obtained, HIV/AIDS and cancer information may only be disclosed to a member of the public when there is a court order authorizing the release of the information. *Note: Before issuing the order, the court must grant the individual an opportunity to contest the disclosure, and then find by clear and convincing evidence that the disclosure is "essential to safeguard the physical health of others."* [See D.C. Code §7-302(2)].

#### (5) Other Health Records

The Agency has concluded that it is not a "covered entity" under the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191. HIPAA regulations apply to some Agency-contracted vendors as well as other non-contracted organizations with which the Agency interacts, e.g., hospitals, treatment programs, etc. Questions concerning HIPAA requirements should be referred to PSA's Deputy Director or designee.

Agency personnel may disclose other health records (excluding HIV/AIDS and cancer) without an ROI if the disclosure is a routine use of that information. Additional guidance on such disclosures may be found in the PSA Disclosure of Sensitive Information Grid.

Certain exceptions to the general prohibitions on non-consensual disclosure of health records are provided by HIPAA and the Privacy Act in order to protect the health or safety of an individual, or to perform a law enforcement function. Personnel who believe that a health-related disclosure may be necessary for one of these purposes should consult with their supervisor or designee. In turn, the supervisors must immediately alert the PSA Deputy Director or designee, who will provide guidance on handling the matter.

#### (6) Juvenile Records

Pursuant to D.C. law, juvenile records are categorized in three areas: law enforcement records, case records, and social records. There are varying degrees of sensitivity with the aforementioned classifications and disclosure of any of those records is restricted. The two types of juvenile records that PSA utilizes routinely are case records and social records. Juvenile case records are confidential records with respect to a juvenile in any delinquency matter containing one or more of the following: 1) notices filed with the court; 2) docket and entries therein; 3) complaints, petitions and other legal papers; 4) transcripts of proceedings; 5) findings, verdicts, judgements, orders, and decrees; and 6) other writings filed in proceedings before the court other than social records. The most carefully protected of the three juvenile records is social records. These records are made with respect to a child in any proceeding over which the Family Court of the D.C. Superior Court has jurisdiction, and include preliminary inquiries, predisposition studies, and examination reports (e.g., drug test results and mental health reports, etc.). For the purposes of this policy statement, juvenile case records are identified as “juvenile arrest records” and juvenile social records are referred to as “juvenile drug test results.”

PSA personnel may disclose an individual’s juvenile drug test results and juvenile arrest records without an ROI to the individual. PSA may disclose juvenile arrest records for official purposes to any judge, defense attorney or prosecutor where the defendant/respondent is charged in a criminal matter.

PSA is further authorized to disclose juvenile arrest records without an ROI to law enforcement personnel when necessary for the discharge of their official duties relating to a criminal matter. This type of disclosure includes any pretrial or probation agency preparing a bail report or presentence report, or providing supervision of the defendant in a criminal matter.

PSA is authorized to disclose juvenile drug test results to any judge for sentencing purposes, and to CSOSA or any other probation officer only for purposes of preparing a presentence report unless otherwise ordered by the court. This means that juvenile drug test results cannot be disclosed for any other purpose (including setting pretrial release conditions) unless ordered by the court.

For further guidance on authorized disclosures of juvenile drug test results and arrest records, PSA personnel should consult the PSA Disclosure of Sensitive Information Grid.

## (7) Sealed Case Information

Sealed case information may be disclosed to the defendant, defense attorney and prosecutor assigned to the sealed case, CSOSA for official purposes, and to any probation officer who is preparing a pre-sentence report for the sealed case. If a verbal disclosure of sealed case information is made to CSOSA, the PSA employee who makes the disclosure must ensure that CSOSA is informed that the information is sealed. Any other disclosure of sealed case information must be authorized by the judicial officer who sealed the case.

An ROI from the defendant will not permit Agency personnel to disclose sealed case information to any other person or entity outside the Agency.

## (8) WALES/NCIC-Warrant File/NCIC-III/NLETS

Agency personnel have access to a variety of automated criminal justice systems. All use of these systems is monitored. Automated criminal justice database systems are to be used for official criminal justice purposes only. NCIC records are available for use in domestic violence cases whether civil or criminal. Only the Agency's Freedom of Information Act (FOIA) staff may provide NCIC printout information (in response to written FOIA requests) to an individual who is not law enforcement or a court official, e.g., defendant. NCIC printout information may be exchanged among Agency employees only when there is an official, Agency-related, criminal justice need for the information.

As a routine use and without a release of information or court order, PSA personnel are authorized to disclose criminal history information that is obtained from WALES and NCIC to judicial officers, court personnel, and law enforcement agencies, e.g., U.S. Marshals Service, U.S. Attorney's Office, police officers, pretrial, probation, parole, corrections, halfway house personnel, etc., for official criminal justice purposes.

Criminal history information that is incorporated in a PSA-generated report, e.g., criminal history report, may be disclosed as a routine use and without a release of information or court order to certain individuals/entities who are not law enforcement, halfway house personnel, or court officials. Such individuals include defense attorneys who represent a defendant in a criminal case [also see section C(3)], and individuals/entities who provide supervision or treatment services to defendants under PSA supervision in order to facilitate those services, e.g., drug or mental health treatment programs, third party custodians, and entities contracted by the Agency to provide electronic monitoring and global positioning system (GPS) services for defendants.

Before disclosing criminal history information that contains an open warrant, sealed case, or juvenile arrest information to any person or entity outside of PSA or CSOSA, PSA personnel must refer to sections B(6-8) of this policy or the Disclosure of Sensitive Information Grid for additional guidance.

The Metropolitan Police Department controls PSA's access to WALES and NCIC; and with limited exceptions,<sup>7</sup> prohibits PSA personnel from disclosing outstanding warrant information from those records to individuals who are not law enforcement or court officials. For further guidance on permissible disclosures of WALES and NCIC information, employees should consult the Disclosure of Sensitive Information Grid.

Any misuse, inappropriate disclosure or dissemination of this information, including personal, non-official use, or use in civil cases, is strictly prohibited and may result in disciplinary action up to and including removal and/or individual or Agency-wide loss of access.

#### (9) Disclosures Involving the Health or Safety of an Individual

If Agency personnel believe they may have a situation involving compelling circumstances affecting the health or safety of a defendant or any other individual (e.g., in the presence of a PSO, a defendant indicates he will engage in violence against the victim in his domestic violence case), employees must immediately inform their supervisors or designee. Supervisors must immediately alert the PSA Deputy Director or designee, who will provide guidance on handling the matter.

### C. Guidance on Disclosing Defendant Information to Specific Individuals/Entities

#### (1) Defendants

As a general rule, individuals are entitled to obtain copies of information pertaining to them. The only restrictions include:

- Screen prints and/or printouts of WALES, NCIC/Wanted Person File, NCIC/III, and NLETS, which may only be obtained by defendants through a FOIA request;
- Information from confidential sources;
- Mental health information that is deemed potentially damaging to the individual; and
- Information originating from another agency, e.g., pretrial services report prepared by another jurisdiction.

Defendants may obtain copies of any Agency-generated report,<sup>8</sup> but these documents are provided only for the purposes for which they were produced and are not intended to serve as criminal history records checks.

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<sup>7</sup> PSA may disclose failure to appear warrant information from court and PSA records to defendants and their attorneys when conducting bench warrant investigations. Also, PSA personnel are authorized to disclose information on non-extraditable warrants issued from outside of D.C. to the defendant and his/her attorney. (See MI 2203, Warrant and Criminal History Record Checks.)

<sup>8</sup> A defendant and defense counsel may receive a copy of any PSA-generated report provided that any reference to an open arrest warrant from D.C. or an open extraditable warrant outside of D.C. is redacted. However, this restriction

## (2) Disclosure of Information between CSOSA and PSA

Agency personnel are prohibited from disclosing an individual's HIV/AIDS and cancer information between CSOSA and PSA without the written consent of the individual or as otherwise authorized by law.

Substance abuse treatment records may be disclosed between and among PSA and CSOSA personnel without an ROI when there is a need for such information in connection with duties that arise out of the provision of assessment/diagnosis, referral for treatment, treatment, and/or auditing/quality assurance. Similarly, mental health information obtained from a mental health professional may be shared between and among Agency personnel and between PSA and CSOSA without an ROI to the extent necessary to facilitate the delivery of professional services to the defendant.

PSA may disclose D.C. juvenile arrest records without an ROI to CSOSA when necessary for the discharge of their official duties. The Agency may disclose juvenile drug test results to CSOSA without an ROI only for presentence report preparation or as otherwise ordered by the court.

Sealed case information may be disclosed to CSOSA for official purposes without an ROI. Prior authorization from the judge who sealed the case is not required in order to share sealed case information with CSOSA.

All other information concerning a defendant (e.g., adult drug test results, criminal history) may be disclosed between CSOSA and PSA without an ROI when the information is required for the performance of official duties.

## (3) Counsel for Defendants

Agency personnel are prohibited from disclosing an individual's substance abuse treatment, mental health records, HIV/AIDS and cancer information without an ROI from the subject or as otherwise authorized by law. Other restricted information includes sealed case information,<sup>9</sup> screen prints and/or printouts of WALES, NCIC/Wanted Person File, NCIC/III, and NLETS, information from confidential sources, information on outstanding arrest warrants or extraditable out-of-state warrants, and information originating from another agency which may only be obtained by defense counsel through a FOIA request.

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does not apply when the defendant is in lockup or when the report is distributed to the defense counsel while the defendant is before the court in the presence of a U.S. Marshal, e.g., report is given to defense counsel when the defendant's case is called.

<sup>9</sup> Defense counsel representing defendants in the sealed case are entitled to the charge(s), release conditions and compliance (excluding substance abuse and mental health treatment without proper consents), pretrial services reports and court dates without any special authorization from the judge in the sealed case. However, if defense counsel are not assigned to the sealed case, they may only receive the aforementioned sealed case information with the consent of the judge who sealed the case. (See the PSA Disclosure of Sensitive Information Grid.)

Upon request of a defendant's attorney, PSA personnel are authorized to disclose the defendant's drug test results, specimen history reports, and chain-of-custody reports to counsel representing a defendant/respondent in a criminal case or Family Court matter without an ROI. However, before PSA releases such information, PSA must confirm the attorney is assigned to the case (via PRISM or IJIS) or receive a completed Request for Drug Test Results, Specimen History Report and Chain of Custody Report form from the attorney (see Form 2401.11 posted on the PSA intranet under Operations' Documents).

For further guidance on disclosing information concerning a defendant to defense counsel, employees should consult PSA's Disclosure of Sensitive Information Grid.

#### (4) Law Enforcement (e.g., police officers)

Any information contained in PSA's files, presented in its reports, or divulged during the course of any hearing shall not be admissible on the issue of guilt in any judicial proceeding [see D.C. Code § 23-1303(d)]. The Agency may share certain information concerning an individual with law enforcement personnel who provide appropriate identification (i.e., badge, credential, photo ID) and advise that the reason they seek the information is for a relevant law enforcement purpose. Examples of authorized disclosures without an ROI include address and employment information on a defendant to law enforcement conducting a criminal justice investigation and/or executing a warrant for the defendant or reference of the defendant. For other examples of authorized disclosures, see the PSA Disclosure of Sensitive Information Grid.

If an Agency employee becomes aware of a violation or potential violation of civil or criminal law by a defendant, the employee must immediately notify his or her supervisor. In turn, the supervisor must immediately notify the PSA Deputy Director, who will make a determination regarding any disclosure that is made to law enforcement or a public authority.

Some records require a properly executed ROI prior to disclosure and other records may not be disclosed even if there is an ROI, e.g., sealed case information. The release of drug test results, substance abuse treatment information, mental health information, and HIV/AIDS and cancer information to law enforcement<sup>10</sup> requires that the individual sign an appropriate ROI or that the disclosure is otherwise authorized by law.

#### (5) Media Requests for Offender/Defendant Information

Agency personnel shall refer all media inquiries to the PSA Director. Agency personnel are not authorized to release any sensitive information concerning an individual that can personally identify that person to members of the media without the express written consent of the individual and authorization from the PSA Director.

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<sup>10</sup> Drug test results may be disclosed without a release of information to correctional institutions, e.g., halfway houses, that are responsible for overseeing the detention of defendants.

#### (6) Requests for Defendant Information by Researchers

Certain Agency personnel are authorized to release information for research purposes to approved researchers/evaluators pursuant to the requirements in the CSOSA/PSA Policy Statement 1201, "Research and Evaluation" (located on the CSOSA and PSA intranets).

#### **D. Security of PSA's Business and Mission Critical Computer Systems**

The Federal Information Security Management Act of 2002 (FISMA), Public Law 107-347, Title III, provides the basic statutory requirements for securing PSA's business and mission critical computer systems. FISMA requires the Agency to inventory its major computer systems, to identify and provide appropriate security protections, and to develop, document, and implement an Agency-wide information security program. PSA is committed to maintaining comprehensive controls necessary for safeguarding its systems. In doing so, the Agency minimizes adverse impact to its mission, the people who serve the mission, and the stakeholders for whom the mission serves. For further information concerning PSA's computer system security, see Policy Statements 5500-5516 posted on the intranet. (See Policy Statement 1002, Safeguarding Personally Identifiable Information.)

#### **E. Prohibited Means of Disclosures**

After a determination is made that a disclosure of sensitive defendant information is authorized, Agency personnel must be mindful of the means by which the disclosure is made. PSA personnel are prohibited from leaving telephone messages containing sensitive information concerning a defendant on a non-Agency or outside answering machine and voicemail. No sensitive information may be sent via fax to an unattended fax machine. Sending e-mails with sensitive defendant information to an external e-mail address that is not secure such as AOL, Netscape, Hotmail, Yahoo, Cox, Comcast, etc., is prohibited.<sup>11</sup>

#### **F. Documentation of Disclosures**

The Privacy Act requires Agency personnel to keep an accurate accounting (record) of all disclosures of Privacy Act-protected defendant information. Each accounting must identify the recipient of the information, the recipient's address, describe the nature of information that is disclosed, the purpose for the disclosure, and the date. The Agency must retain the accounting for at least five years or the life of the record, whichever is longer. The Agency is not required to document an accounting of disclosures for the following:

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<sup>11</sup> For instructions on sending and receiving secure emails, see the PSA Office of Information Technology memorandum, PSA Secure Email, dated December 1, 2007 that is posted on the PSA infoweb.

- Disclosures required by the Freedom of Information Act, or
- Disclosures made within or between CSOSA and PSA on a need-to-know basis for authorized official purposes, or
- Disclosures that are automatically recorded in PRISM, e.g., PSR or any other PRISM-generated report, or
- Disclosure of a defendant's charge, release status, and court date provided that the information is not a juvenile record or an adult matter under seal.

#### G. Providing Notice Concerning Redisclosure

When executing an authorized disclosure (written, oral, or electronic) of substance abuse treatment information, mental health records, and/or HIV/AIDS and cancer information, the Agency must provide the recipient of the information with a written notice prohibiting any unauthorized redisclosure of the information (see Forms 2401.8 through 2401.10 posted on the PSA intranet). If the Agency makes a lawful disclosure of substance abuse treatment information, mental health records, and/or HIV/AIDS and cancer information that is verbally communicated to the recipient, the Agency must read the appropriate notice on redisclosure and inform the recipient that the Agency will also be sending a notice on redisclosure to the recipient. This notice is not required when sharing defendant information with CSOSA in connection with official duties [also see section C(2) regarding disclosures of substance abuse treatment and mental health information between CSOSA and PSA].

#### H. Criminal and Civil Penalties for Unauthorized Disclosure of Sensitive Information

Federal law 42 U.S.C. § 290ee-3(f) and 42 U.S.C. § 290dd-3(f) provides a criminal penalty (\$500 for a first offense and up to \$5,000 for each subsequent offense) for the unlawful disclosure of substance abuse treatment records. Violation of the Privacy Act may result in a misdemeanor conviction and a fine of up to \$5,000 (5 U.S.C. § 552a(i)). District of Columbia law provides for a misdemeanor conviction with a fine of up to \$5,000 and up to 90 days imprisonment, or both, for willful disclosure of HIV/AIDS records (D.C. Code § 7-304). The D.C. Mental Health Information Act provides a misdemeanor penalty or a fine of up to \$1,000, in addition to damages, court costs and attorney's fees, for unlawful disclosure of mental health records (D.C. Code §§ 7-1207.01 to 1208.01). District of Columbia law also provides for a fine of up to \$250 or imprisonment for not more than 90 days, or both, for unlawful disclosure of juvenile records (D.C. Code § 16-2336). Agency personnel may be subject to criminal contempt for any unauthorized disclosure of sealed case information. In addition to the above-noted penalties, Agency personnel may face personal civil liability and administrative sanctions up to and including removal as a result of any unauthorized disclosure of sensitive subject information.

## V. AUTHORITIES, SUPERSEDURES, REFERENCES, AND ATTACHMENTS

### A. Authorities

5 U.S.C. § 552a (Privacy Act)  
5 U.S.C. § 552a(b)(8) (Privacy Act; disclosures involving health or safety)  
44 U.S.C. §§ 2904 and 2906 (Records management by the Archivist of the United States and by the Administrator of General Services)  
67 F.R. 11816, as amended at 68 F.R. 38310 (Privacy Act System Notices)  
42 C.F.R. Part 2 (drug/alcohol treatment records regulations)  
28 C.F.R. Part 20, subpart C (Federal Systems and Exchange of Criminal History Record Information)  
D.C. Code §§ 7-1201.01 *et seq.* (D.C. Mental Health Information Act)  
D.C. Code §§ 7-302, 7-1601, 1605 (HIV/AIDS confidentiality)  
D.C. Code §§ 23-1301 to 1333 (D.C. Pretrial Services Agency statute)  
D.C. Code §§ 16-2318, 16-2331, 16-2332 (order of adjudication non-criminal; juvenile case record and social record confidentiality)  
Federal Information Security Management Act of 2002 (FISMA) (P.L. 107-347, Title III)

### B. Supersedures

None identified.

### C. Procedural References

CSOSA/PSA Subpoenas, Warrants, Garnishments and Other Legal Process  
CSOSA/PSA Freedom of Information/Privacy Act  
CSOSA/PSA IT Account Management - Policy Statement 2003  
CSOSA/PSA Release of Defendant/Offender Drug Test Information- Policy Statement 4007  
CSOSA/PSA Research and Evaluation- Policy Statement 1201  
Management Instruction 2401, Use of Release of Information, Notice on Rediscovery, Revocation of Release, and Request for Drug Test Results, Specimen History Report, and Chain of Custody Forms  
Management Instruction Document 2401.13, Disclosure of Sensitive Information Grid  
Management Instruction 2203, Warrant and Criminal History Record Checks  
Policy Statement 1002, Safeguarding Personally Identifiable Information  
Policy Statements 5500-5516 (PSA Information Technology Security Policy Statements)  
PSA Secure Email (PSA Office of Information Technology memorandum, dated December 1, 2007)

### D. Attachments

Appendix A. Definitions

Appendix B. Non-Disclosure of Sensitive Defendant Information Policy Agreement

APPENDIX A  
DEFINITIONS

**Accounting of Disclosure-** written and/or electronic records which document the Agency's release of an individual's information.

**Disclosure-** written, oral, or electronic communication of information.

**Federal Register-** the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

**Individual-** a person to whom sensitive information applies; for purposes of this Policy Statement, either a defendant, or juvenile respondent.

**Juvenile Case Records-** confidential records with respect to a juvenile in any delinquency matter containing one or more of the following: 1) notices filed with the court; 2) docket and entries therein; 3) complaints, petitions and other legal papers; 4) transcripts of proceedings; 5) findings, verdicts, judgments, orders, and decrees; and 6) other writings filed in proceedings before the court other than social records.

**Juvenile Social Records-** confidential records made with respect to a child in any proceeding over which the Family Court of the D.C. Superior Court has jurisdiction, which include preliminary inquiries, predisposition studies, and examination reports (e.g., drug test results, mental health reports, etc.).

**Mental Health Information-** written, recorded, or oral information acquired by a mental health professional in a professional capacity (e.g., mental health assessment/evaluation conducted by the Agency) which identifies the individual and relates to the diagnosis or treatment of the individual's mental or emotional condition. Such information includes, among other things, sex offender treatment, anger management classes, and domestic violence treatment.<sup>12</sup>

**NCIC/III (National Crime Information Center/Interstate Identification Index, or "Triple I")-** automated system of records maintained by the FBI that is used by law enforcement officials to conduct a nationwide criminal history check for an individual.

**NCIC/Wanted Person (National Crime Information Center/Wanted Person)-** automated system of records maintained by the FBI that is used by law enforcement officials to check national warrants.

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<sup>12</sup> Information provided to an individual who is not a mental health professional concerning an individual's mental health that is self-reported by an individual or obtained from a collateral source who is not acting as a mental health professional (e.g., family member) is not considered "mental health information." This information would not require an ROI in order for the Agency to redisclose it as a "routine use."

**NLETS (National Law Enforcement Telecommunications System)**- automated messenger system maintained by a private organization in Arizona used by law enforcement officials to conduct a variety of queries, including a criminal history check.

**Redisclosure**- a subsequent written, oral, or electronic communication of information that was originally obtained by another source.

**Release of Information (ROI)**- CSOSA or PSA forms that are designed to satisfy individual statutes covering certain types of sensitive information. An individual signs the form after it is fully completed by Agency personnel. The form authorizes the release of sensitive information concerning that individual to an identified party for an identified purpose within an identified timeframe.

**Routine Use**- the non-consensual disclosure of a Privacy Act-protected record for a purpose that is compatible with the purpose for which it was collected.

**Sealed Case**- the contents of a court case jacket that are restricted by court order from external access.

**Sensitive Information**- written, oral, or electronic information concerning an individual that is not publicly available and may only be provided to a requester with either the written consent of the subject, a court order, or other exception under applicable law.

**System Notices**- published notice of the systems of records maintained and used by a federal executive branch agency as required by the Privacy Act.

**System of Records**- a group of any records (manual or automated) under the control of the Agency from which information is retrieved by the name of the individual or by some identifying number assigned to the individual.



APPENDIX B

District of Columbia Pretrial Services Agency  
Non-Disclosure of Sensitive Defendant Information Policy Agreement

I understand PSA's Release of Sensitive Defendant Information Policy and my responsibilities as an employee in accessing, maintaining and releasing information. I also understand the respective penalties for violating this Policy pursuant to law enforcement regulations, and District of Columbia and federal law.

Employee's Name: (Please Print)
Employee's Signature:
Date: