

✓ RECORDS CONFIDENTIALITY

FOR

ADULT PROBATION OFFICES -- A GUIDELINE

January, 1980

✓ TEXAS ADULT PROBATION COMMISSION

812 San Antonio St., Suite 400, P.O. Box 12427
Austin, Texas 78711

67470

RECORDS CONFIDENTIALITY
FOR
ADULT PROBATION OFFICES -- A GUIDELINE

January, 1980

TEXAS ADULT PROBATION COMMISSION
812 San Antonio St., Suite 400, P.O. Box 12427
Austin, Texas 78711

FOREWORD

This guideline was prepared by James F. Jones under the sponsorship of the Texas Adult Probation Commission. It reflects a review and analysis of many federal and state laws, regulations, and policies on confidentiality of personal information. It presents what is hoped are useful suggestions for Texas adult probation offices in dealing with client personal information.

The guideline is designed to aid the local probation office in working with local legal counsel to establish policies and procedures for handling client personal information. An appendix of legal citations is included in the hope of aiding the local counsel in dealing with this matter.

The guideline is intended to assist the probation office. It should not be considered as a substitute for legal advice. Your local policies on record confidentiality should be adopted only after review and approval by the counsel responsible for your office's legal affairs.

The issue of confidentiality is complex. It is hoped that all information contained in this document is accurate. It has been reviewed by the Attorney General's Office, the Texas Commission on Alcoholism, the Texas Department of Community Affairs, the Texas Rehabilitation Commission, the National Association of State Alcohol and Drug Abuse Directors, and several adult probation departments. Substantive comments by these agencies were incorporated into the guideline document.

Editorial Note

The author fully recognizes that Texas Adult Probation Officers come in both sexes. A herculean effort was made to use "he/she", "his/hers" and similar devices to preclude an appearance of sex bias. The manuscript quickly became so cumbersome that it threatened to sink of its own weight, so the effort was abandoned. It is sincerely hoped that the reader understands that the use of male pronouns herein should be attributed to the problems in the English language, not to any bias on the author's part.

TABLE OF CONTENTS

<u>Section 1</u>	- Introduction
<u>Section 2</u>	- Key Terms
<u>Section 3</u>	- Acquiring Client Personal Information
<u>Section 4</u>	- Disclosing Client Personal Information
<u>Section 5</u>	- Laws, Regulations, and State Agency Policies -- A Summary
<u>Section-6</u>	- What if I get sued?
<u>Appendix A</u>	- List of Laws, Regulations, and State Agency Policies on Confidentiality
<u>Appendix B</u>	- Excerpts from Texas Adult Probation Law, TAPC Standards, and Adult Probation Officers' Code of Ethics
<u>Appendix C</u>	- Client consent

Section 1

INTRODUCTION

Major changes in public and governmental attitudes toward privacy have occurred during the past ten years. Formerly, handling of personal information was largely a local decision. Today there is a considerable body of law and precedent dealing with individual privacy.

Much of this law and precedent bears directly on the job of the probation officer. In today's environment, the probation officer is faced with daily decisions regarding the privacy of his clients. Specifically, he must acquire personal information and on occasions, disclose it, in the course of his job. His aim in this information exchange is to do the best job possible without hurting his client, the public, or himself.

Concerns expressed by probation officers throughout Texas had led the Texas Adult Probation Commission to publish this guideline document. Its purpose is twofold. First, it is intended to acquaint the adult probation officer with federal and state rules governing the handling of personal information. Second, and most important, it is designed to suggest a logical framework for decision making regarding the acquisition and disclosure of client personal information.

This decision-making framework is based on the fact that, despite the many and sometimes confusing rules on confidentiality, there are two basic questions in acquiring information, and three basic questions in disclosing it.

The two questions on acquiring the information are:

Can I get the information?

If so, How?

And in disclosing information, the three questions are:

Must I disclose the information?

Can I disclose the information?

Should I disclose the information?

Section 2 of this guideline document discusses acquiring information. As explained therein, the most effective way to obtain needed client personal information is: 1) to understand the rules under which the custodian of that information operates; 2) to approach him in a way that allows him to comply with these rules; and 3) to assure him that you will handle confidential information with the same care as he does. This section references into Section 5, which summarizes rules on confidentiality of various types of client information.

Section 3 discusses disclosing information. The "must I" question refers primarily to the Texas Open Records Act. The "can I" question deals with confidentiality rules, again referencing Section 5 for specific rules on disclosure. Finally, the "should I" question involves the question of civil liability, as given in further detail in Section 6.

Appendix A lists federal laws and regulations and state laws governing confidentiality of personal information. A number of laws on this topic were passed by the most recent legislative session, and at this writing have not yet been incorporated into standard law books. These are listed as House Bills and Senate Bills, and

are cross-referenced to existing law wherever possible.

Appendix B extracts pertinent parts of the law, Texas Adult Probation Commission Standards, and the Code of Ethics adopted by the Commission.

Appendix C suggest form and content of a client consent to the disclosure of personal information.

The guideline is in no way intended to supplant the legal advice of your local counsel. But it is hoped that it will provide a useful basis for discussion with your counsel in developing departmental procedures for handling client personal information within your jurisdiction.

Finally, you are asked to consider confidentiality regulations as aids to secure the privacy of probationers with whom you work. The breach of privacy in some cases, is unjustified, unnecessary and can even be harmful to the probationer. On the other hand, not sharing client information can inhibit the rehabilitation process. The community expects that persons on probation will be properly supervised and rehabilitated. Therefore, it is incumbent upon probation officers and treatment counselors to cooperate in efforts to assist the probationer. This means that both probation officers and treatment counselors should not use the lack of understanding of the confidentiality regulations to inhibit the flow of client information which is needed to rehabilitate the offender and to provide protection to the community.

All of us have a right to privacy, and cooperation among probation officers, treatment counselors and probationers is compatible with that right.

Section 2

KEY TERMS

There are many terms used in laws, regulations, and policies dealing with confidentiality, and no universal set of definitions. This guideline attempts to avoid use of "special-meaning" words, words that are given a definition beyond that assumed in ordinary use. However, there are a few that require definition as used in this guideline. They are:

1. Personal Information - Any information about an individual coupled with data that identifies the individual to whom the information pertains.

As used herein, personal information may be public information or it may be highly private. For example, the home address of the mayor is public information, but the home address of a policeman is not. The term personal information does not imply that it is sensitive information; it simply indicates that it is information about a known person.

Positive identification is sometimes cited as a criterion for whether information can be considered personal information or not. There is no hard and fast rule as to what constitutes identification. For our purposes, "data that identifies the individual" is interpreted as data that makes it reasonably easy to connect the information with the person.

2. Disclose - To give personal information, verbally or in writing, to another person or agency.

Various terms are used in laws and regulations, such as "release", "reveal", and "disseminate". For consistency, this guideline uses "disclose" alone.

3. Redisclose - To give to another person or agency personal information that has previously been disclosed to you. Again, several different terms are used for this in law and regulations, such as "disclosure to a third party" and "secondary dissemination". A single term was chosen for consistency.
4. Confidential - That information for which public disclosure is restricted or forbidden by statute or judicial decision. This term is usually employed in Texas law, and often in federal law and regulations, although no specific definition has been found in preparing this guideline. This term is used where necessary in place of more cumbersome terms such as "public information of a private nature", and "information which shall not be revealed to the public".

Section 3

ACQUIRING CLIENT PERSONAL INFORMATION

During pre-sentence investigations, and in supervising probationers, you may encounter problems getting information that used to be readily available to you. In some cases, such information as drug and alcohol abuse treatment data may be difficult or impossible to get. On the other hand, your judge may look to you for such information, and may be surprised when you say you don't have it.

Again, you as the probation officer may feel caught in the middle. But often, the holder of the information you need feels caught in the middle himself.

His problem is like yours--he is operating under a complex set of rules and laws that often seem to conflict with each other, and is concerned with breaking a rule, violating the privacy of his client, or incurring a personal liability for a damage suit. And often, giving no information appears to be the safest course.

What can you do to improve this situation?

One very important thing you can do is to make him aware that you are an arm of the court. This may sound trivial, because you know that you are an employee of the district court, under the direction of the district judge or judges. But not many of the general public know exactly for whom you work or what you do. To many people, you are an arm of law enforcement, or the Department of Corrections; to others, you are some sort of county or city agency.

What's important here is that he understand you are not looking for information to prosecute or "catch" an offender. He needs to understand that your client has already been prosecuted, and that your basic role--your measure of success-- is keeping him out of jail or prison. Also he needs to understand that you are acting on behalf of your judge--not the police or the prosecutor--in seeking information that will help the judge make a just decision.

Another important thing is to get some perspective on the rules under which he is working, some of which are the same as those that affect you. Given this understanding, you can then approach him in a way that will encourage his cooperation in providing you the information you need.

For example: information on drug and alcohol treatment patients is controlled by a stringent set of regulations as cited in Section 5 and Appendix A of this guideline. These regulations aim at the protection of the patients, which is a valid objective. But information on such treatment may be significant in a pre-sentence investigation report, or necessary in enforcing the conditions of probation.

In probation supervision, a review of the regulations reveals that drug and alcohol treatment information can be disclosed to you if: 1) participation in such a program is a condition of probation; and 2) the client has signed a consent agreement giving you access to this information. Given this knowledge, you could take two approaches.

In approach "A", you contact the treatment program, show them a blanket consent signed by the probationer, and ask for information regarding treatment. You get a cold "No".

Why: Because for one thing, a blanket consent does not suffice under these particular regulations. You will need a consent specifying exactly what will be disclosed to you, when the consent expires, and several other items. (See Appendix C). Without such a consent, the treatment program is barred from giving you the information. The second possibility is that the person you're talking to may not fully understand the rules he's working under. This is no insult; most of us have some confusion about the rules we work under or else this guideline would be unnecessary.

So let's try Approach "B". Here, you have a signed client consent with all the information required by the regulations.* You take with you a copy of the court order specifying treatment as a condition of probation, and a citation of the part of the regulations authorizing you to have the information. You ask for the information, giving him a copy of both the consent and the court order. If necessary, you could cite the regulation. And you assure him that the information will only be used on the client's behalf and solely for the purpose of probation supervision. Chances are you'll obtain what you need.

In a pre-sentence investigation, it may be more difficult to obtain information as these regulations contain no specific authorization for disclosing information for this purpose. As a matter of fact, the regulations specifically forbid disclosure of information for use in an investigation that could lead to prosecution of a treatment patient.

*See Appendix C for consent requirements.

But the regulations do include a guide for dealing with situations ~~not~~ specifically covered. Again, knowledge of the regulations governing the treatment program can be an important element in getting your job done.

Again, in Approach "A", you could go to the treatment program identify yourself and say that you're doing a pre-sentence investigation, and show a blanket consent. And again, probably get a "No". The blanket consent could be the sole reason, or the holder of the information might not understand what a pre-sentence investigation is.

In Approach "B" you take along a copy of the specific consent, a copy of the judgment, and pertinent excerpts from the regulations. At the outset you make sure that he understands the prosecution is over, and that you are after information that may keep the client out of jail or prison.

The fact that the client was or is under drug or alcohol abuse treatment could be a positive factor in this respect. In other words, make sure the holder of the information understands that: 1) your investigation does not fall under the part of his regulations dealing with criminal investigations; and 2) disclosure to you would be in the interest of the patient. Chances are better with this approach that you will get what you need.

All of this may be done by mail in some cases, if so, the same principles apply.

One other item that might further encourage cooperation is a written agreement, based on his regulations (a treatment counselor, for example), stating that the information will be used by you and the court only for the purpose for which it was provided, and will not be disclosed in violation of his regulations.

This section has dealt with only one of the many information-gathering situations you encounter. But the same principles apply to almost every situation including the acquisition of educational and medical records. These principles are:

1. Know the rules by which the other person has to live;
2. Approach him in a way that complies with his rules; and
3. Give him assurance that you will treat the information as carefully as he would.

Again, your local counsel can guide you in implementing an approach that fits your local operations.

Section 4

DISCLOSING CLIENT PERSONAL INFORMATION

In the course of your work as an adult probation officer, you face many decisions about giving client personal information to others, and sometimes even to the client himself.

You are aware of many laws and regulations governing privacy, although you may not be familiar with them in detail. You may feel that the legal situation is so complex that the safest thing to do is to give no information out. But then you may find that there are hazards associated with this approach, too.

This chapter and the following ones aim at giving you an orderly way to deal with these situations--a framework for decision-making. The approach takes into account both personal information dealt with in present laws, and personal information for which no rules exist. Used in conjunction with the material contained in Sections 5 and 6, and most important, with the advice of your local legal counsel, this approach will make it easier to deal with decisions in disclosing client personal information.

The basis of a decision-making framework lies in three questions:

- 1) Must I disclose it?
- 2) Can I disclose it?
- 3) Should I disclose it?

Given a situation relating to possible disclosure of client personal information, your first decision is whether it must be disclosed under law, regulation, or court decision.

The Texas Open Records Act (V.A.C.S., Article 6252-17a) states that all records of governmental bodies are available to the public, with the exception of sixteen specified categories. A governmental body must disclose a record on request unless it falls within one of these exemptions. If the agency is not sure whether a record is exempt or not, it is required to submit the matter to the Attorney General of Texas for a decision.

One of these exemptions is information that has been deemed confidential by law. Therefore, where state or federal law or regulation restricts the disclosure of information, that information should fall within the exempt category, not subject to public disclosure.

None of the exemptions refer specifically to probation case files. Some deal with material that may be included in probation files; however, the Attorney General has held that an entire file cannot be deemed confidential simply because some parts of it are confidential, and that an agency cannot by its own rules designate matter confidential that is not deemed confidential by statute or court decision.

Therefore, if the probation case files are considered records of a governmental body, it appears that disclosure of client personal information would have to depend on an item-by-item analysis of the case file contents. Some information would fit the "must disclose" category, while some would not.

This would make for a cumbersome system. Fortunately, there is the possibility of a simpler approach.

Section 2 (1) of the Texas Open Records Act defines "Governmental Body". Paragraph (G) of this section specifically exempts the judiciary from this definition. Based on the statutes cited in Appendix B of this guideline, a strong case can be made for defining probation case files as records of the judiciary. According to another Attorney General's Open Record Opinion, a court can make its own decisions on release of information in its records, to the end of best serving justice.

This of course is a matter for local decision. But if an approach is chosen based on probation records of the judiciary, the "Must I disclose?" decision is much simpler.

There is one other consideration in this decision. In some cases, as specified in Section 5 of this guideline, statute requires that records be disclosed to the subject of those records, his attorney, or his parents/guardian. For example, a criminal history record must be made available to the individual for review and challenge. However, the only record originated by the probation office that must be disclosed by statute is the pre-sentence investigation report. Other records--criminal history, education, medical and others that may be in the file--were originated by other agencies. It may, therefore, be most appropriate to direct a client's request for disclosure to the originating agency. This would serve both your office's interests and the individual's; yours in simplifying your record disclosure policies, and his in assuring that the source record was examined, and if necessary corrected.

In this connection, some applicable federal laws and regulations require the originating agency to forward a record correction to any agencies

to which the record has been supplied. If the source record is corrected, the individual can be assured that any subsequent disclosure will contain correct information.

Thus, in the simplest case, the "must I disclose?" decision would have a "yes" answer only on pre-sentence investigation reports. But again, this requires interpretation by your own legal counsel based on your particular local situation, and possible decisions by your courts as to how they wish to handle records of the judiciary.

The next decision is "can I disclose?"

There is a bewildering array of laws and regulations covering confidentiality of personal information, as given in Appendix A of this guideline. Fortunately, only a few items covered by these are normally encountered by the probation officer. The key ones are summarized in chart form in Section 5. Specifically, rules on the following are presented:

- 1) Criminal History Record Information
- 2) Drug Abuse Treatment Records
- 3) Alcohol Abuse Treatment Records
- 4) Educational Records
- 5) Mental Health Treatment and Consultation Records

Again, if the probation case records are considered by your local legal counsel as records of the judiciary, your courts have some leeway in defining what you can disclose and what you cannot. In the case of criminal history records, a court decision can determine what can be disclosed without restriction. For some other records, a court decision can be more restrictive, but not less restrictive, than the laws or regulations provide. The charts in Section 5 detail the provisions of the

laws and regulations concerning court orders and decisions. These summary charts are intended to aid you, your local legal counsel, and your courts in setting up a workable policy for answering the "can I disclose?" decision.

If the answer to the "must I disclose?" decision is no, and to the "can I disclose?" decision is yes, then the third decision, "should I disclose?" is faced.

Here, your department must weigh two things. On one side of the balance is the client's right to privacy, and the harm he may suffer from disclosure of unfavorable information. On the other side is the public's right to be protected from crime.

In some situations, policy can be set to relieve the individual probation officer from having to decide whether to disclose client personal information. But in others, the decision must be made by the probation officer, based on the circumstances of the particular situation.

The risk here, where no law, regulation, or policy dictates, is that either the subject of the information or some member of the public will be hurt by disclosing (or failing to disclose) some specific information. The consequence of this could be an impairment of the rehabilitation of the individual. It could be actual harm to a member of the public. As a result of either, it could also be a successful lawsuit by either client or a member of the public against the probation office, or the officer himself.

Some answers to the "should I disclose?" question are suggested in Section 6. This section deals with the tort liability of the probation officer in general terms. It is intended as a basis for discussion with your local legal counsel in establishing local policy where information release is not covered by statute, regulation, state policy, or court decision. In such discussions, remember that he is the person who would likely be faced with defending you or your department in the event of such a suit. It is therefore his role to determine your posture in dealing with the "should I disclose?" decision.

Section 5
LAWS, REGULATIONS, AND STATE AGENCY
POLICIES ON CONFIDENTIALITY OF
PERSONAL INFORMATION

There are many federal and state laws, regulations, and policies dealing with confidentiality of personal information. The last legislature passed 12 new bills into law that deal with this subject. Appendix "A" presents a list of the laws, regulations, and policies considered in developing this guideline.

Fortunately, only a small number of these affect your work as a probation officer. This section summarizes the effect of the key ones on the probation officer's acquiring and releasing client personal information.

The section is organized according to the types of information with which the probation officer deals. Thus, for example, the summary on "Alcohol Abuse Treatment Information" takes into account both federal and state laws and regulations.

It could be said that federal law on confidentiality allows state law to be stricter than the federal, but forbids it being less strict. If a federal law permits release of information, a state law can forbid it. But if the federal law forbids it, a state law cannot require it. The discussion and charts take this into account.

It is important to understand that virtually none of the laws and regulations state that client personal information must be given to you. The exceptions are found in the Texas Open Records Act, the Federal Freedom of Information Act and similar legislation in other states. As a

rule, except where a subpoena or other compulsory process mandates it, the custodian of client personal information is not required to give you the information, even if you have a signed consent. This discussion, and the charts that accompany it, deal only with those parts of laws and regulations that bear directly on the probation officer's job. They should not be viewed as a complete analysis of the laws and regulations themselves, but only a distillation of the parts of most importance to you.

One principle that should be observed in connection with disclosure of information is consistency. For example, if an item of information must be disclosed under the Texas Open Records Act, it must be disclosed to anyone who asks for it, regardless of their purpose for asking. On the other hand, if a particular class of personal information is confidential, references to that class of information should be the same for all inquiries.

For example, if disclosure of a criminal history record is not authorized, the response to all inquiries should be the same whether or not a record exists. The same is true in the case of drug or alcohol abuse treatment information.

One "special case" in the latter class is the disclosure of drug and alcohol patient information to a prospective employer. Title 42 regulations authorized the disclosure by the treatment program to potential employers of patient information under certain circumstances. You may be asked for this information, and may recognize that the information would be a real help to your client in getting a job. However, if you refer the request to a treatment agency, you may be disclosing that the individual is under treatment, which you are not supposed to do.

There is no pat answer to this one. But one approach would be to answer all such requests with a listing of drug and alcohol treatment facilities, and a statement that you are prohibited by law from disclosing such information, whether actually receiving treatment or not.

CRIMINAL HISTORY RECORDS (TABLES 1-6)

There are four sources of guidance of the handling of criminal history record information. The first is Title 28 of the Code of Federal Regulations, Chapter 1, Part 20. The second is Policy .001.55.20.001-.16 of the Governor's Office, Criminal Justice Division. The third is an array of Open Records Decisions by the Texas Attorney General, and the fourth is a Texas Supreme Court decision involving the Houston Chronicle Publishing Company v. City of Houston.

Taken together, these have the practical effect of dividing criminal history record information--rap sheet information--into four categories, with different controls on each category.

The first is FBI-furnished information. This may be in the form of an FBI rap sheet, or specific out-of-state entries in a state or local rap sheet.

The second is non-FBI conviction information--that is, entries on arrests within the state that resulted in convictions.

The third is non-conviction information--arrests that did not result in a conviction, including arrests more than a year past with no disposition indicated on the rap sheet.

The fourth is information on an offense while the subject is still within the criminal justice system, even though he may not have been convicted.

In the first case, as a criminal justice agency, you can acquire FBI-furnished criminal history information. You can disclose this information to another criminal justice agency, but to no one else. In the second case, there are two interpretations. According to the federal regulations, there are no restrictions on disclosure of non-FBI conviction information. However, some authorities have read the Houston Chronicle decision as stating that no rap sheet information can be disclosed. The Attorney General's Open Records Decision No. 177 states that disclosure of such information is at the option of the custodian. Because this is not a clearcut matter, you should consult local counsel in establishing a policy on this type of information.

The third class of information, non-conviction information, is restricted by the federal regulations, and by rules and guidelines of the Criminal Justice Division, Office of the Governor. These apply to virtually all law enforcement agencies; by requiring an agreement between the law enforcement agency and anyone to whom it discloses criminal history information. The regulations effectively apply to adult probation departments. Restrictions on disclosure of non-conviction information are detailed in the accompanying chart. In general, you can disclose non-conviction information to other criminal justice agencies and agencies directly involved in research, client services, and client rehabilitation but not to potential employers or others not directly involved in rehabilitation.

For the fourth category, which may often be of concern to the probation officer, there are no restrictions on disclosure of information on the offense for which a client is under your supervision (or elsewhere in the criminal justice process).

There is one "special case" in which the law is not clear. This is the case of the person who has satisfactorily completed probation, and whose guilty adjudication has been set aside (or, who has served probation without being adjudicated guilty and been discharged). Under state law a record of that offense may become non-conviction information after he serves probation. Again, your local counsel should be consulted on this point.

One caution: under state law, a person's arrest can be expunged from the record under certain circumstances. The federal regulations require that you check with DPS before releasing or disclosing a criminal history record to verify that the record is current. Finally, nothing requires you to disclose criminal history record information. Under the Houston Chronicle decision, some specific information derived from an offense report must be disclosed under the Texas Open Records Act. But again, if your local counsel has deemed probation case files as records of the judiciary, you do not have to disclose any information from your files. If your files are so designated, disclosure is a matter for your courts to decide.

You are encouraged to keep in mind that with some cases you may be working with agencies which provide rehabilitation services. One such agency is the Texas Rehabilitation Commission. These agencies may have a need to know certain information about the probationer in order to determine his eligibility for the rehabi-

litation services. In cases where the exchange of confidential information needs to take place for the benefit of the client, proper consent agreements and attention to the tables in Section 5 will assist you in complying and cooperating. This mutual effort of community protection through the rehabilitation of offenders is a goal for which you are working as is the right to privacy of the probationer.

DRUG AND ALCOHOL ABUSE TREATMENT INFORMATION (TABLES 7-10)

Drug and alcohol abuse treatment information is restricted by federal regulations (42 CFR, Chapter 1, Subchapter A, Part 2) and state law (V.A.C.S. 5561c). Under the federal regulation, disclosure of such information is possible under several different circumstances.

As shown on the charts, there are circumstances under which a court order may authorize disclosure of information on drug and alcohol abuse patients. In the case of an individual committed to programs funded by the Texas Commission on Alcoholism, this is the only basis on which records can be released, by state law. Voluntary admissions to such programs require proper consent agreements for disclosure. (See Appendix C)

Title 42 CFR regulations, as cited in Appendix A, contain detailed provisions regarding the use of court orders in this regard. For example, the regulations state that the court can authorize disclosure of information only when good cause is shown in a hearing in

which all parties are represented. Further, such an order, if issued, would remove a prohibition to disclosure, but would not compel disclosure; a subpoena or other compulsory process would be required to compel disclosure, and such process would have to be justified under law.

In any given case, before a court order can be considered a possible means of obtaining information, local legal counsel should be consulted and asked to review both federal law and regulations and state law in light of the specific case at hand.

42 C.F.R also exempts certain communications from the definition of disclosure. However, none of these apply to a communication between a treatment program and a probation department.

MENTAL HEALTH COUNSELING AND TREATMENT RECORDS (TABLES 11-13)

Until the 66th session of the Legislature, disclosure of state hospital records on mental health treatment was controlled under provisions of V.A.C.S. 5547-87. The last legislature extended control to records of all registered physicians and registered psychologists in Texas. Generally, records can be released with patient consent. But provisions of the two laws on release without consent differ, and the differences have not been reconciled by state hospital policies yet. So, until such clarification is obtained, such situations should be handled on an individual basis with local counsel's aid.

EDUCATIONAL RECORDS (TABLES 14-15)

Disclosure by schools of educational records is governed by Title 20 of the United States Code, Section 1232g. Basically, this law prohibits disclosure by the school of other than "directory information"--the type of information that normally appears in annuals, athletic event programs, school directories, and the like--without parental permission for a student under 18, or the student's permission if 18 or over. There are a number of exceptions to the basic rule, but they do not appear to apply to the probation function.

Redisclosure of the information by the probation officer requires specific consent by the parents, or the student if he has reached 18.

Often your local school districts will have written policies based on the law and detailing local ground rules on disclosure of educational records. These should be consulted in dealing with such records.

MEDICAL RECORDS

(Not including mental health, alcoholism,
drug abuse, or mental retardation)

In general, medical records can be disclosed to you provided you have obtained a consent from the patient. However, the physician or hospital is not required to disclose such information to you. Typically, you will be seeking only those medical records that bear on his ability to work, or possibly those that might indicate future obligations. In both cases, access to the information would work to the benefit of the probationer in successfully completing his probation. Do not assume that the physician or hospital administrator understands this. Explain it to him, in terms of the client/patient's interests.

In turn, you may find it important to disclose such information to a prospective employer, a treatment agency, or someone else directly involved with your client. Should the client have a medical condition requiring treatment, or limiting his activities, it is difficult to conceive a circumstance in which your disclosing the information would not be in the client's interest.

EMPLOYMENT HISTORY

There is no overall governing authority on the release and disclosure of employment records. However, many employers are concerned with liability in this report. It is therefore wise to obtain a

consent specifically authorizing the release of employment information, including job performance appraisals, job attendance data, reasons for leaving, and other meaningful information. (See Appendix C)

If the company is a large one, the best approach may be through the facility security supervisor, rather than the front door of the personnel department. The security supervisor is usually more familiar with the workings of the criminal justice system, than are employees of the personnel department, and will understand your role in seeking information. He can often guide you to the source of the information you need.

MILITARY RECORDS

Although there is no statutory obligation to do so, the federal government usually honors a request by probation officers for an individual's military record, provided the request is accompanied by a signed consent.

Formal records requests are made to: The National Personnel Records Center (NPRC) Military Personnel Records (MPR) Chief Army (Navy, Air Force) Branch, 9700 Page Road, St. Louis, Mo. 63128. Informal requests for information may also be directed to units to which the individual has been assigned.

(Note--the Uniform Code of Military Justice apparently has rules, based on the privacy act of 1974, regarding release of disciplinary information; as of this writing, these rules are not available to this author, but will be obtained for a later revision.)

SOCIAL HISTORY

Confidential treatment of social history information is not specifically covered by law or regulation, except where it might deal with medical, psychological, drug, or alcohol treatment data covered elsewhere in this section.

**CRIMINAL HISTORY
RECORD INFORMATION**

OBTAINING INFORMATION

TABLE 1

<u>SOURCE</u>	<u>CIRCUMSTANCES</u>	<u>CONSENT REQUIRED?</u>	<u>OTHER AGREEMENT REQUIRED?</u>	<u>RESTRICTIONS ON FURTHER DISCLOSURE?</u>	<u>APPLICABLE LAWS, REGULATIONS, POLICIES</u>	<u>AG OPINIONS, DECISIONS?</u>	<u>CASES</u>
<i>Law en- forcement agencies</i>	<i>Pre-sentence Investigation and probation supervision</i>	<i>No</i>	<i>Compliance Agreement (Note 1)</i>	<i>Yes</i>	<i>28 CFR Ch. 1, Part 20, Subpart C Governor's office Rules and Guidelines of the Criminal Justice Division 001.55.20.001-.016</i>	<i>None</i>	<i>None</i>

Note 1— Compliance Agreement provides that receiving criminal justice agency will abide by the same rules in handling CHRI as apply to agency providing the CHRI.

**CRIMINAL HISTORY
RECORD INFORMATION**

TABLE 2

**CRIMINAL HISTORY
RECORD INFORMATION—
FBI RAP SHEET**

DISCLOSING INFORMATION

<u>MUST DISCLOSE</u>	<u>CAN DISCLOSE</u>	<u>TO</u>	<u>CIRCUMSTANCES</u>	<u>CONSENT REQUIRED?</u>	<u>OTHER AGREEMENT REQUIRED?</u>	<u>APPLICABLE LAWS, REGULATIONS, POLICIES</u>	<u>AG OPINIONS, DECISIONS?</u>	<u>CASES</u>
	X	Other Criminal Justice agencies	For use in adminis- tration of criminal justice, or criminal justice employment	No	Compliance Agreement (Note 1)	28 CFR Ch. 1, Part 20, Subpart C Governor's Office, Rules and Guidelines of the Criminal Justice Division 001.55.20.001--.016	None	None

Note 1— Compliance Agreement provides that receiving criminal justice agency will abide by the same rules in handling CHRI as apply to agency providing the CHRI .

CRIMINAL HISTORY
RECORD INFORMATION
FBI RAP SHEET

TABLE 3

**CRIMINAL HISTORY RECORDS
INFORMATION—CONVICTION
DATA (Non-FBI)**

		DISCLOSING INFORMATION					CRIMINAL HISTORY RECORDS INFORMATION—CONVICTION DATA (Non-FBI)
MUST DISCLOSE	CAN DISCLOSE	TO	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER AGREEMENTS REQUIRED?	APPLICABLE LAWS, REGULATIONS, POLICIES	
	X	Anyone	Any	No	No	(Note 2)	ORD 77
X		Subject	For purpose of review and challenge	n/a	Written request by subject; positive identification	28 CFR Ch.016	None
							<u>Houston</u> <u>Chronicle vs.</u> <u>City of Houston</u>
							None

Note 2— 28 CFR Ch. 1, Part 20, defines "Conviction data", but places no restrictions on its disclosure or release, nor does it mandate disclosure or release.

CRIMINAL HISTORY RECORDS
INFORMATION—CONVICTION
DATA (Non-FBI)

DISCLOSING INFORMATION

TABLE 4

CRIMINAL HISTORY RECORD
INFORMATION—NON-CONVICTION
DATA OTHER THAN INFORMATION
ON OFFENSE FOR WHICH INDIVID—
UAL IS CURRENTLY IN CRIMINAL
JUSTICE SYSTEM

MUST DISCLOSE	CAN DISCLOSE	TO	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER AGREEMENTS REQUIRED?	APPLICABLE LAWS, REGULATIONS, POLICIES	AG OPINIONS, DECISIONS?	CASES
	X	Criminal Justice Agency	For use in admin- istration of criminal justice or criminal justice employment	No	Compliance Agreement (Note 1)	28 CFR ch. 1 Part 20, Sub- part B; Governor's Office..... 001.55- 20.001.016	None	None
	X	Service Organ- izations	If they are providing services required for the administration of Criminal Justice pursuant to a specific agreement with a cri- minal justice agency	No	Non-disclosure Agreement (Note 3)	28 CFR Ch. 1, Part 20, Subpart B; Governor's Office.....001.55- 20.001.016	None	None
	X	Research Organizations	For the express pur- pose of research, eval- uative, or statistical activities pursuant to a specific agreement with a criminal justice agency	No	Non-disclosure Agreement (Note 3)	28 CFR Ch. 1, Part 20, Subpart B; Governor's Office.....001.55- 20.001.016	None	None
X		Subject	For purpose of review and challenge	N/A	Written request by subject; posi- tive identification	28CFR Ch. 1, Part 20, Subpart B; Governor's office001.55-200.001.016	None	None

Note 1— Compliance Agreement provides that receiving criminal justice agency will abide by same rules in handling CHRI as apply to agency providing the CHRI.

Note 3— Non-disclosure Agreement provides that receiving agency will protect the CHRI, not disclose it outside the agency, use it only for the intended purpose, and destroy it when through.

CHRI—NON CONVICTION DATA

DISCLOSING INFORMATION

TABLE 5

CRIMINAL HISTORY RECORD
INFORMATION—NON-CONVICTION
DATA ON OFFENSE FOR WHICH
INDIVIDUAL IS CURRENTLY IN
CRIMINAL JUSTICE SYSTEM
(Non-FBI)

MUST DISCLOSE CAN DISCLOSE	TO	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER AGREEMENTS REQUIRED?	APPLICABLE LAWS, REGULATIONS, POLICIES	AG OPINIONS, DECISIONS?	CASES
X	Anyone	Any	No	No	28 CFR Ch. 1, Part 20, Subpart B; Governor's office001.55-20.001.016	ORD 77	<u>Houston Chronicle</u> <u>vs. City of Houston</u>
X	Subject	For purpose of review and chal- lenge	N/A	Written re- quest by subject; positive identifi- cation	27 CFR Ch. 1, Part 20, Subpart B; Governor's office001.55-20.001.016	None	None

CRIMINAL HISTORY RECORD
INFORMATION—NON-CONVICTION
DATA ON OFFENSE FOR WHICH
INDIVIDUAL IS CURRENTLY IN
CRIMINAL JUSTICE SYSTEM
(NON-FBI)

DISCLOSING INFORMATION

TABLE 6

CRIMINAL HISTORY RECORD
INFORMATION— DATA IN
COURT RECORDS OF PUBLIC
PROCEEDINGS AND COURT
OPINIONS, WANTED POSTERS AND
LISTS, POLICE BLOTTER ENTRIES,
DPS TRAFFIC OFFENSE RECORDS

MUST DISCLOSE CAN DISCLOSE	TO	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER AGREEMENTS REQUIRED?	APPLICABLE LAWS, REGULATIONS, POLICIES	AG OPINIONS, DECISIONS?	CASES
X	Anyone	Any	No	No	Note 4	No	No

Note 4— 28 CFR Ch. 1, Part 20 exempts these from records covered by these regulations.

CRIMINAL HISTORY RECORD
INFORMATION—DATA IN
COURT RECORDS OF PUBLIC
PROCEEDINGS AND COURT
OPINIONS, WANTED POSTERS
AND LISTS, POLICE BLOTTER
ENTRIES, DPS TRAFFIC
OFFENSE RECORDS

OBTAINING INFORMATION

TABLE 7

DRUG ABUSE TREATMENT INFORMATION

SOURCE	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER INSTRUMENT REQUIRED?	RESTRICTIONS ON FURTHER DISCLOSURE?	APPLICABLE LAWS, REGULATIONS, POLICIES	AG OPINIONS, DECISIONS?	CASES
Any treatment facility	Pre-sentence Investigation (Note 1)	Yes (Note 2)	No	Yes-only to officials directly concerned with results of pre- sentence investigation	42CFR Ch. 1, Part 2, Sec. 2.40	N/A	None
Any treatment facility	Probation supervision, if treatment a condition of probation (Note 1)	Yes (Note 2)	No	Yes-only to court, other probation officers involved in supervision	42 CFR Ch. 1, Part 2, Sec. 2.39	N/A	None
Any treatment facility	Any, if above two approaches fail	No	Court order (Note 3)	Yes (See Note 3)	42 CFR Ch. 1, Part 2, Subpart E	N/A	None

Note 1— Includes identity records, prognosis, records, diagnostic records, treatment records, attendance records, patient status information, and patient whereabouts information.

Note 2— Consent must contain name of disclosing program, name/title of person/organization to receive information, patient name, purpose or need for disclosure, extent or nature of information, statement that consent can be revoked (not retroactively), specific date, event, or condition upon which consent will expire unless revoked earlier, date signed and patient (or authorized individual) signature.

Note 3— Court order can only obtain objective data, but not communication between patient and treatment personnel. Notice must be given patient and treatment program. Order shall be issued only when good cause for disclosure shown, disclosure must be limited to information essential to objective for which order granted, and order must limit disclosure to only persons whose need for information is basis of order. Under HB 1163, such order can not compel doctor or licensed psychologist to reveal or confirm identity of his patients. Title 42 CFR regulations, as cited in Appendix A, contain detailed provisions regarding the use of court orders in this regard. For example, the regulations state that the court can authorize disclosure of information only when good cause is shown in a hearing in which all parties are represented. Further, such an order if issued would remove a prohibition to disclosure, but would not compel disclosure; a subpoena or other compulsory process would be required to compel disclosure and such process would have to be justified under law. In any given case, before a court order can be considered a possible means of obtaining information, local legal counsel should be consulted and asked to review both federal laws and regulations and state law in light of the specific case at hand.

TABLE 8

DRUG ABUSE TREATMENT
INFORMATION

MUST DISCLOSE	CAN DISCLOSE	DISCLOSING INFORMATION						
		TO	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER AGREEMENT REQUIRED?	APPLICABLE LAWS, REGULATIONS, POLICIES	AG OPINIONS, DECISIONS?	CASES
X		Judge, other probation officers	For use in probation supervision, where treat- ment is a condition of probation (Note 4)	Yes (cannot be revoked until probation either terminated or re- voked) (Note 2)	No	42 CFR Ch. 1, Part 2, Sec. 2.39	N/A	none
X		Officials di- rectly concerned with outcome of pre-sentence in- vestigation	As part of pre- sentence investi- gation (Note 1)	Yes (Note 2)	No	42 CFR Ch. 1, Part 2, Sec. 2.40	N/A	none
X		Medical Per- sonnel	When required to meet a bona fide medical emergency (Note 1)	No	No	42 CFR Ch. 1, Part 2, Sec. 2.51	N/A	none
N/A		Employers, Employment agencies	(Note 3)	N/A	N/A	42 CFR Ch. 1, Part 2, Sec. 2.38		

Note 1— Includes identity records, prognosis records, diagnostic records, treatment records, attendance records, patient status information, and patient whereabouts information.

Note 2— Consent must contain name of disclosing program, name/title of person/organization to receive information, patient name, purpose or need for disclosure, extent or nature of information, statement that consent can be revoked (not retroactively), specific date, event, or condition upon which consent will expire unless revoked earlier, date signed, and patient (or authorized individual) signature.

Note 3— Probation officer cannot release or disclose information to Employers or Employment agencies, but treatment program can, with patient consent. See Section 4 for discussion.

Note 4— Where treatment is not a condition of probation, information may still be disclosable under 42 CFR Ch. 1, Part 2, Sec. 2.40-1 with client consent and a treatment program director approval that disclosure is to client's benefit. Consult local legal counsel in such cases.

OBTAINING INFORMATION

TABLE 9

ALCOHOL ABUSE TREATMENT INFORMATION

SOURCE	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER INSTRUMENT REQUIRED?	RESTRICTIONS ON FURTHER DISCLOSURE?	APPLICABLE LAWS, REGULATIONS, POLICIES	AG OPINIONS, DECISIONS?	CASES
State hospital or any other facility in Texas where sub- ject is committed to Alcoholism Commi- ssion for alcoholism treatment guidance and rehabilitation	Any	No	Court Order (Note 3)	Per Court order	V.A.C.S., art. 5551c, Sec. 16	None	None
Any other treatment facility	Pre-sentence investigation (Note 1)	Yes (Note 2)	No	Yes-only to officials persons directly con- cerned with results of pre-sentence investigation	42 CFR Ch. 1, Part 2, Sec. 2.40	N/A	None
Any other treatment facility	Probation Supervision if treatment a con- dition of probation (Note 1)	Yes (Note 2)	No	Yes- only to court, other probation officers in- volved in supervision	42 CFR ch. 1, Part 2, Sec. 2.39	N/A	None

Note 1— Includes identity records, prognosis records, diagnostic records, treatment records, attendance records, patient status information, and patient whereabouts information.

Note 2— Consent must contain name of disclosing program, name/title of person/organization to receive information, patient name, purpose or need for disclosure, extent or nature of information, statement that consent can be revoked (not retroactively), specific date, event, or condition upon which consent will expire unless revoked earlier, date signed, and patient (or authorized individual) signature

Note 3— Court order can only obtain objective data, but not communication between patient and treatment personnel. Notice must be given patient and treatment program. Order shall be issued only when good cause for disclosure shown. Disclosure must be limited to information essential to objective for which order granted, and order must limit disclosure to only persons whose need for information is basis of order. Under HB 1163 such order can not compel doctor or licensed psychologist to reveal or confirm identity of his patient. Title 42 CFR regulations, as cited in Appendix A, contain detailed provisions regarding the use of court orders in this regard. For example, the regulations state that the court can authorize disclosure of information only when good cause is shown in a hearing in which all parties are represented. Further, such an order if issued would remove a prohibition to disclosure, but would not compel disclosure; a subpoena or other compulsory process would be required to compel disclosure, and such process would have to be justified under law. In any given case, before a court order can be considered a possible means of obtaining information, local legal counsel should be consulted and asked to review both federal law and regulations and state law in light of the specific case at hand.

MUST DISCLOSE
CAN DISCLOSE

DISCLOSING INFORMATION

TABLE 10

ALCOHOL ABUSE TREATMENT INFORMATION

	TO	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER AGREEMENT REQUIRED?	APPLICABLE LAWS, REGULATIONS, POLICIES	AG OPINIONS, DECISIONS?	CASES
X	Anyone specified in court order	When records are result of subject being committed to Texas state hospital or other facility for alcoholism treatment guidance and rehabilitation	No	Court order (Note 3)	42 CFR Ch. 1, Part 2, Subpart E; V.A.C.S. Art. 5561c, Sec. 16	None	None
X	Official directly concerned with pre-sentence in- vestigation	Part of pre-sentence in- vestigation, when re- cords come from other than above (Note 1) For use in probation supervision, when re- cords come from other than above, (Note 1), where treatment is a condition of pro- bation (Note 5)	Yes (Note 2)	No	42 CFR Ch. 1, Part 2, Sec. 2.46	N/A	None
X	Judge, other probation officers	When required to meet a bona fide medical emergency (Note 1)	Yes (cannot be revoked until probation termi- nated or revoked) (Note 2)	No	42 CFR Ch. 1, Part 2, Sec. 2.39	N/A	None
X	Medical Per- sonnel		No	No	42 CFR Ch. 1, Part 2, Sec. 2.51	N/A	None
N/A	Employer, Em- ployment agencies	(Note 4)	Yes	No	42 CFR Ch. 1, Part 2, Sec. 2.38	N/A	None

Note 1— Includes identity records, prognosis records, diagnostic records, Treatment records, attendance records, patient status information, and patient whereabouts information.

Note 2— Consent must contain name of disclosing program, name/title of person/organization to receive information, patient name, purpose or need for disclosure, extent or nature of information, statement that consent can be revoked (not retroactively), specific date, event, or condition upon which consent will expire unless revoked earlier, date signed, and patient (or authorized individual) signature.

Note 3— Court order can only obtain objective data, but not communication between patient and treatment personnel. Notice must be given patient and treatment program. Order shall be issued only when good cause for disclosure shown. Disclosure must be limited to information essential to objective for which order granted, and order must limit disclosure to only persons whose need for information is basis of order. Under HB 1163, such order can't compel doctor or licensed psychologist to reveal or confirm identity of patient. Title 42 CFR regulations, as cited in Appendix A, contain detail provisions regarding the use of court orders in this regard. For example, the regulations state that the court can authorize disclosure of information only when good cause is shown in a hearing in which all parties are represented. Further, such an order if issued would remove a prohibition to disclosure, but would not compel disclosure; a subpoena or other compulsory process would be required to compel disclosure, and such process would have to be justified under law. In any given case, before a court order can be considered a possible means of obtaining information, local legal counsel should be consulted and asked to review both federal law and regulations and state law in light of the specific case at hand.

Note 4— Probation officers cannot release or disclose information to employers or employment agencies, but treatment program sometimes can with patient consent. See section 4 for discussion.

Note 5— Where treatment is not a condition of probation, information may still be disclosable under 42 CFR, Ch. 1, Part 1, Sec. 2.40-1, with client consent and treatment program director approval that disclosure is to client's benefit. Consult local legal counsel in such cases.

ALCOHOL ABUSE
TREATMENT INFORMATION

OBTAINING INFORMATION

TABLE 11

MENTAL HEALTH COUNSELING AND TREAT- MENT RECORDS (Note 1) (Except Drug and Alcohol Abuse Treatment)

SOURCE	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER AGREEMENT REQUIRED?	RESTRICTIONS ON FURTHER DISCLOSURE?	APPLICABLE LAWS, REGULATIONS, POLICIES
<i>All Facilities of Texas Department of Mental Health & Mental Retarda- tion</i>	<i>Any</i>	<i>Yes</i>	<i>No</i>	<i>No, unless specified in consent</i>	<i>V.A.C.S. 5548.87 TDMHMR Rules 302.03.15.001-.011</i>
<i>"</i>	<i>When hospital board or head determines that disclosure would be in patients interest (Note 1)</i>	<i>No</i>	<i>No</i>	<i>No, unless specified by board or head</i>	<i>"</i>
<i>"</i>	<i>When court determines disclosure required in proceedings before court (Note 1)</i>	<i>No</i>	<i>Court Order</i>	<i>No, unless specified by board or head</i>	<i>"</i>
<i>Any other M.D. or licensed psychologist in Texas</i>	<i>Any (Note 1)</i>	<i>Yes</i>	<i>No</i>	<i>No, unless specified in consent</i>	<i>HB 1163</i>

Note 1— HB 1163, effective September 1, 1979, places restrictions on disclosure that have not yet been incorporated into TDMHMR Rules. If disclosure without client consent is sought by probation officer, he should first consult local legal counsel for advise on the specific case.

MENTAL HEALTH
COUNSELING AND TREAT-
MENT RECORDS (Note 1)
(Except Drug and Alcohol
Abuse Treatment)

TABLE 12

MENTAL EXAMINATION
RESULTS

OBTAINING INFORMATION

<u>SOURCE</u>	<u>CIRCUMSTANCES</u>	<u>CONSENT REQUIRED?</u>	<u>OTHER AGREEMENT REQUIRED?</u>	<u>RESTRICTIONS ON FURTHER DISCLOSURE?</u>	<u>APPLICABLE LAWS, REGULATIONS, POLICIES</u>	<u>AG OPINIONS, DECISIONS</u>	<u>CASES</u>
<i>M.D. or licensed psychologist in Texas</i>	<i>When court has ordered mental examination of defendant as part of PSI (See Note 2)</i>	<i>No</i>	<i>No</i>	<i>As specified in court order; also only to extent that disclosure is consistent with authorized purposes for which information was first obtained</i>	<i>HB 1163</i>	<i>None</i>	<i>None</i>
<i>M.D. or licensed psychologist in Texas</i>	<i>Any other except where examination performed under Medicare, Medicaid, Medical Assistance Programs, other DHR funded programs</i>	<i>Yes</i>	<i>No</i>	<i>No, unless prohibited by terms of consent</i>	<i>HB 1163; V.A.C.S. Art. 695c, Sec. 33(1) V.A.C.S. 5547-87</i>	<i>None</i>	<i>None</i>

Note 2— Subject must be warned before examination that his communications with the M.D. or psychologist will not be privileged. Court order shall impose appropriate safeguards against unauthorized disclosure.

MENTAL EXAMINATION
RESULTS

TABLE 13

**MENTAL HEALTH COUNSELING
AND TREATMENT RECORDS
(EXCEPT DRUG AND ALCOHOL
ABUSE INFORMATION) (NOTE 1)**

MUST DISCLOSE
CAN DISCLOSE

X

RELEASING INFORMATION

<u>TO</u>	<u>CIRCUMSTANCES</u>	<u>CONSENT REQUIRED?</u>	<u>OTHER AGREEMENT REQUIRED?</u>	<u>APPLICABLE LAWS, REGULATIONS, POLICIES</u>	<u>AG OPINIONS DECISIONS</u>	<u>CASES</u>
<i>Anyone</i>	<i>Any</i>	<i>Advisable; Depends on redisclosure restrictions imposed by your source</i>	<i>Depends on redisclosure restrictions imposed by your source</i>	<i>V.A.C.S. 554.87 HB 1163</i>	<i>None</i>	<i>None</i>

NOTE 1—

HB 1163, effective September 1, 1979, places restrictions on disclosures that have not yet been incorporated into TDMHMR Rules. Local Counsel should advise on specific case.

**MENTAL HEALTH COUNSELING
AND TREATMENT RECORDS
(Except Drug and Alcohol Abuse
Information) (Note 1)**

TABLE 14

EDUCATIONAL RECORDS
(Notes 1, 2)

OBTAINING INFORMATION

<u>SOURCE</u>	<u>CIRCUMSTANCES</u>	<u>CONSENT REQUIRED?</u>	<u>OTHER AGREEMENT REQUIRED?</u>	<u>RESTRICTIONS ON FURTHER DISCLOSURE?</u>	<u>APPLICABLE LAWS, REGULATIONS, POLICIES</u>	<u>AG OPINIONS, DECISIONS?</u>	<u>CASES</u>
<i>Educational agencies and institutions receiving federal funds</i>	<i>Any</i>	<i>Parents if student under 18; student if 18 or over</i>	<i>No</i>	<i>Yes- consent required</i>	<i>20 CFR Sec. 1232g</i>	<i>N/A</i>	<i>None</i>
<i>Educational agencies and institutions receiving federal funds</i>	<i>Any</i>	<i>No</i>	<i>Court order or subpoena (Note 3)</i>	<i>Yes- consent required</i>	<i>20 CFR Sec. 1232g</i>	<i>N/A</i>	<i>None</i>

Note 1— Directory Information--name, address, telephone listing, date and place of birth, major field of study, participation in official activities and sports, athletes, weight, height, dates of attendance, degree and awards, and most recent educational agency or institution attended -- can be disclosed, unless parents have previously forbidden release.

Note 2— If student is 18 or over, or is attending post-secondary education institution, record of treatment by doctor, psychiatrist, psychologist, or other recognized professional or para-professional, cannot be disclosed to probation officer.

Note 3— Parents and students must be notified of court orders or subpoenas in advance of compliance therewith by educational agency or institution.

EDUCATIONAL RECORDS
(Notes 1, 2)

TABLE 15

EDUCATIONAL
RECORDS (NOTE 1,2)

DISCLOSING INFORMATION

MUST DISCLOSE X CAN DISCLOSE	TO	CIRCUMSTANCES	CONSENT REQUIRED?	OTHER AGREEMENT REQUIRED?	APPLICABLE LAWS, REGULATIONS, POLICIES	AG OPINIONS DECISIONS	CASES
	Anyone	Any	Yes-specific consent to your redis- closure of record	No	20 C.F.P. Sec. 1232 g	None	None

Section 6

WHAT IF I GET SUED?

One of the concerns often expressed by adult probation officers is the possibility of getting sued. Caselaw in this area is almost non-existent. However, there is one case in another state, in which a trial court did award a judgement against a probation officer in connection with personal information about a client. A growing apprehension among probation officers, and others in the criminal justice system, is they are being asked to unduly expose themselves to lawsuits in the course of doing their jobs.

Fortunately, the system is not that unfair. You are charged by law with certain duties that require you to make decisions--and sometimes, to "go out on a limb"--in order to serve the public and your client. The law takes this into account.

As an adult probation officer, you are a public employee and an arm of the court. In both these roles, you enjoy a measure of immunity from suit, provided certain basic (and sensible) conditions are met. If you do your job in a way that meets those conditions, the possibility of a successful suit against you is very remote.

Immunity falls into two classes. The first is called "absolute immunity", and the second, "conditional immunity".

Absolute immunity is enjoyed by judges when acting in the capacity of judges. In other words, a judge cannot be sued for damages resulting from any action he takes in a court.

A judge does not necessarily enjoy absolute immunity for all of his actions. For example, a county judge presiding over a meeting of

county commissioners may be involved in actions that have nothing to do with the judicial functions. But as long as he's functioning in a judiciary capacity, he is immune from suit.

A "quasi-judicial" immunity has sometimes been extended by the courts to court officials other than the judge--prosecutors, for example. As a court employee, the probation officer might be extended this immunity. But caselaw is too scarce for this to be considered an established principle.

The second kind of immunity, "conditional immunity", is enjoyed by public officials and employees under certain conditions. A major factor in these conditions is the type of duties he is performing: "ministerial" duties or "discretionary" duties.

A ministerial duty is one that is specified by law in such a manner that there is no judgement or discretion involved in its exercise. For example, the law directs the clerk to record a deed in the public records. As long as he does it, he is safe from suit. But if he fails to do it, or does it negligently, and someone is damaged by his failure or negligency, he has no immunity whatsoever.

A discretionary duty, is one which requires the exercise of discretion and judgement in its performance. For example, a probation officer must use a great deal of discretion and judgement in the supervision and rehabilitation of a probationer.

A public official or employee, in carrying out a discretionary duty, enjoys a conditional immunity from lawsuit. "Conditional" means that he must be acting:

- a. within the scope of his duties;
- b. in good faith; and
- c. without discrimination.

The first condition is the act in question must be within the scope of that person's official duties. An adult probation officer collecting client information during a pre-sentence investigation is clearly within the scope of his duties, since Texas law states that he will perform such an investigation when so ordered by the judge. Obtaining information to supervise and rehabilitate the probationer, and to enforce the conditions of probation, is also within the scope of his duties set out by law.

These provisions of the law are broad, and in many ways indefinite. But under the law, the Adult Probation Commission is charged with publishing rules that further explain the duties of the adult probation officer. These rules take the form of Standards and a Code of Ethics. Both cast considerably more light on the nature of the probation officer's duties. And further, they direct that each probation office issue policies and procedures to govern the department's internal operations.

Appendix "B" outlines the key provisions of the law (V.C.C.P., Art. 42.12, 42.121), the current T.A.P.C. Standards, and the Code of Ethics that relate to probation officers' duties in dealing with personal information. Provisions for written policies and procedures are also cited. Taken together, these excerpts make it evident that: 1) handling client personal information is an integral part of the probation officer's duties, and 2) even with more detailed local written policies and procedures, he will be called on to exercise judgement in dealing with this information.

So, the first requirement for conditional immunity is the act be within the scope of your duties as defined by law, TAPC Standards, the Code of Ethics, and your local policies and procedures based thereon.

The second requirement is the act be done in good faith--that is acting with honest intentions, under law, in the absence of fraud, deceit, collusion, or gross negligence. In other words, there should be no dishonest or illegal "hidden agenda" in an exchange of information that could work to the detriment of the client, or that could personally benefit the probation officer or any other person.

Most all of us act in good faith most all the time in both our personal and professional lives. In a sensitive matter, though, it is important that the act not only is made in good faith, but there be no liklihood that it appears to have other than good faith involved.

The term "gross negligence" is difficult to define generally. Your local legal counsel should be your final authority on this and other legal matters in this document. However, one useful concept is that negligence involves disregard for consequences, while gross negligence involves knowing disregard for consequences. In other words, if you fail to recognize the consequences of an act, and damages occur, you may be found negligent. But if you recognize the consequences and commit the act in spite of those known consequences, you may be found grossly negligent.

The third condition is that the act must not show discrimination; that is, your decisions on acquiring/disclosing or releasing personal information must not take into account the client's race, creed, color, etc.

A final consideration--sometimes a condition to immunity and always a good idea--is the use of good judgement.

This one scares a lot of people, because some of us mistakenly define good judgement in terms of the way a situation finally turns out. Good judgement, the best judgement, can't anticipate everything that happens after a decision is made. If it could, we would all have gotten rich on the stock market a long time ago.

Out in the business world, there is something called "scientific management". It is a whole set of sophisticated, computer-based decision techniques based on decision making in the presence of uncertainty, because that is the real world of business management.

In the probation field, it is no different. You are called on to make decisions in the presence of uncertainty, and there is a finite probability that a decision you make on, say, disclosing information on one of your clients will have a bad outcome.

Maybe you disclose a piece of information that causes an employer to fire your client. Or maybe you withhold a piece of information from that employer, and the client commits an act that the employer might have foreseen if he had that piece of information.

Caught in the middle? No. Again, the law recognizes that you cannot anticipate everything that might happen after you take an action. But it does expect you to consider what might result from your actions. And to be reasonably prudent in arriving at a decision.

Take the case of the client and employee mentioned above. Say the piece of information was he had been caught with his hand in the till in three previous jobs, and his present employment is working a cash register.

You have two choices: to give the employer the information, or to withhold it from him. If you give it to him, two things can happen: either the employer can keep him on, or discharge him. If he keeps him on, he has assumed the risk based on a knowledge of the client's past acts. If he discharges him, it is because he does not want to take the risk.

If you withhold the information, two things can happen. Either the client will leave the employer's money alone, or he will steal some of it. If he steals some of it, either the loss will be detected or it will not. If the loss is detected, either the employer will recover the money or he will not.

Now you are on the spot. You are responsible for rehabilitating the client--and the job is important to his rehabilitation--but you are also responsible for protecting the public from further crime. If the client is fired, he is damaged. If money is stolen from the employer and he does not recover it, he is damaged. What do you do?

As far as vulnerability to lawsuit, what you've already done is very important. You have thought out the consequences, in a logical and orderly way. Along the way you will have consciously or unconsciously assigned some probabilities to the "either-or" choices. And when you finally come down to a decision--whatever it is--it will be after weighing these possibilities.

That is what good judgement is, even if one of the "bad" outcomes happens. The big danger is not that it comes out badly despite your thinking the matter through; the danger occurs when you disregard possible outcomes, particularly when you consciously disregard them.

So in summary, your best protection against successful lawsuit consists of:

- 1) following rules where rules exist;
- 2) where rules don't exist, making every decision based on acting within the scope of your defined duties, acting in good faith, and acting without discrimination; and
- 3) using good judgement, by thinking the problem through.

This may sound very obvious, and you probably practice these principles every day. But in the unlikely event you should ever find yourself on the stand in your own defense, being able to say that you considered each of these matters--scope of duties, good faith, non-discrimination--and being able to demonstrate that you used an orderly decision-making process--will stand you in extremely good stead.

One other question--what about libel or slander?

Given the real world situation of a probation officer exchanging information about many clients, it would seem almost inevitable that sooner or later he would release or disclose an erroneous piece of client personal information. And that erroneous information could damage the client. Given the release/disclosure of wrong information coupled with damages, the probation officer is a sitting duck for a successful lawsuit, right?

Fortunately, this is wrong. At least if he has acted in good faith, in giving the information to someone with whom he shared a valid interest in the client without malice.

Let's take this step at a time. First, comes good faith, which we have already discussed.

Second, he must have passed the information on to another person sharing a common interest in the matter. This could apply to a treatment program, a potential employer, or anyone else, involved in the probation supervision and rehabilitation process. If these two conditions are met, i.e., good faith and shared interest, the communication is privileged, which provides an absolute defense against libel or slander.

An exception occurs, however, if the subject of the statement can prove malice, the defense of privileged communication does not hold.

So again, if you have: 1) acted in good faith; 2) communicated only with those persons sharing a valid interest with you in the client; and 3) acted without malice, you have protected yourself well against a successful libel or slander suit--even if the communication turns out to be in error.

APPENDIX A
Laws, Regulations, and Policies
on
Confidentiality of Information

United States Code

5 U.S.C. 552	Privacy Act of 1974
5 U.S.C. 552(a)	Freedom of Information Act
20 U.S.C. Sec. 1232g	Family Education & Privacy Rights
42 U.S.C. Sec. 302(a)(7)	Old Age Assistance Client Information
42 U.S.C. Sec. 602(a)(9)	Aid to Families with Dependent Children Client Information
42 U.S.C. Sec. 1306(d)(e)	Medicare and Medicaid Client Information
42 U.S.C. Sec. 1396a(a)(7)	Medical Assistance Program Client Information
42 U.S.C. Sec. 1397b(d)(I)	
(B)	Social Services Program Client Information

Code of Federal Regulations

7 C.F.R. Sec. 272.1(c)	Food Stamp Program Client Information
7 C.F.R. Sec. 2020(e)(8)	Food Stamp Program Client Information
28 C.F.R. Ch. 1 Part 0	Disclosure of FBI Identification Records to Federally Chartered or Insured Banks, etc.
28 C.F.R. Ch. 1 Part 16	Department of Justice Regulations Implement- ing Privacy Act of 1974
28 C.F.R. Ch. 1, Part 20	Handling of Criminal History Records
42 C.F.R. Ch. 1, Subch. A	Handling of Alcohol and Drug Abuse
Part 2	Treatment Patient Records
42 C.F.R. Sec. 431.300	Medicaid (Title XIX) Client Information

45 C.F.R. Subtitle A, Part 5	Availability of Department of HEW Information under Freedom of Information Act
45 C.F.R. Subtitle A, Part 5b	Department of HEW Privacy Act Regulations
45 C.F.R. Sec. 99.1 et seq.	Privacy Rights of parents and students
45 C.F.R. Sec. 228.10	Title XX of Social Security Act, Client Information
45 C.F.R. Sec. 228.48	Drug and Alcohol Abusers
45 C.F.R. Sec. 302.18	Child Support Program Client Information
45 C.F.R. Ch.IV Part 1631	HEW Client Information

Vernon's Annotated Civil Statutes

V.A.C.S. 41a	(See SB 797 re Applicant and Hearing Records at Board of Public Accountancy)
V.A.C.S. 304 et seq.	(See SB 281 re Board of Law Examiners Character Investigations)
V.A.C.S. 320a-1	(See SB 287 re State Bar Records of Grievances, and Records of Board of Legal Specialization)
V.A.C.S. 695c Sec. 6-A(d)	Information on Persons Affected by Economic Opportunities Act of 1964
V.A.C.S. 695c Sec. 18-B(H)	Information on Child Support Collection, Parent Locator Services, Paternity Determination Services
V.A.C.S. 695c Sec. 33(1)	Dept. of Human Relations Client Information
V.A.C.S. 695c	(See also HB 673 re Child Abuse Reports)
V.A.C.S. 695j-1 Sec. 10	Public or Medical Assistance Client Information

V.A.C.S. 4413 (29bb)	Licensed Private Investigators, Dis-
Sec. 28(a)	closure of Investigative Data
V.A.C.S. 4445 Sec. 7	Information & Reports on Persons In-
	fected with Venereal Disease
V.A.C.S. 4447d Sec. 2	Identity of Subjects in Immunization
	Surveys
V.A.C.S. 4447d Sec. 3	Records and Proceedings of Hospital
	Committees, Medical Organization Com-
	mittees, Extended Care Facility Com-
	mittees
V.A.C.S. 4476-5 Sec. 5.02(c)	Disclosure of Name or Identity of Drug
	Abuse Patients or Research Subjects
	by Medical Practitioners
V.A.C.S. 4550	Investigative Files and Records of State
	Board of Dental Examiners
V.A.C.S. 5506a	(See SB 209 re Hospital Record of Treat-
	ment, Care, and Maintenance of Injured
	Persons)
V.A.C.S. 5521a-6	(See SB 623 re Personnel Employment
	Service Files)
V.A.C.S. 5547-12a	County Clerk's Records Concerning
	Mentally Ill Persons
V.A.C.S. 5547-87	Mental Hospital Patient Records (See
	Also SB 193 re Deceased Mental Patients)
V.A.C.S. 5547-202 Sec. 2.23	Mentally Retarded Persons, Client Information

V.A.C.S. 5547-300	Mentally Retarded Patients, Patient Information (See also SB 194 re Deceased Mentally Retarded Persons)
V.A.C.S. 5561c	Persons Committed for Alcoholism Treatment, Guidance, Rehabilitation, Client Information
V.A.C.S. 6252-17a	Texas Open Records Act (see Also HB 1969 re access and copying service)
V.A.C.S. 6701d	Department of Public Safety Accident Reports
V.A.C.S. 8306	(See SB 434 re Hospital Records of Injured Persons)
V.A.C.S. 8307 Sec. 9a	Information in Workman's Compensation Claim File, Industrial Accident Board

Vernon's Annotated Texas Statutes

V.A.T.S. Insurance Code Art. 20A. 17(c)(2)	Health Maintenance Organization Enrollee Medical, Health, Treatment Records
V.A.T.S. Insurance Code Art. 20A-25	Health Maintenance Organization Applicant or Enrollee Diagnosis, Treatment, or Health Information
V.A.T.S. Tax-Gen. Art. 1.031	Comptroller's Examination of Records re Persons, Firms, Agents, and Corporations Authorized to Do Business in Texas

Vernon's Code of Criminal Procedure

V.C.C.P. Art. 38.101	Persons Involved Voluntarily in Treatment or Examination for Drug Abuse, Information
V.C.C.P. Art. 42.12 Sec. 27	Inmate Records (TDC, BPP, TAPC)

V.C.C.P. Art. 55.01

Expunction of Arrest Records (See
also SB 374)

Vernon's Texas Codes Annotated

V.T.C.A. Alcoholic Beverage

Expungement of Records of Liquor

Code Sec. 106.12

Code Violations by Minors

V.T.C.A. Education Code

(See SB 1255 re TRC access to BPP

Art. 30.42

and TDC Inmate Records)

V.T.C.A. Education Code

Lists, Names, Information on Persons

Art. 30.47

Applying for or Receiving Rehabilitation
at TRC

V.T.C.A. Family Code

Sealing of Adoption Records

Art. 11.17

V.T.C.A. Family Code

Child Abuse Reports & Investigations

Art. 34.08

V.T.C.A. Family Code

Disclosure of Court, Clerk, Prosecutor

Art. 51.14

Records on Juveniles

V.T.C.A. Family Code

Sealing of Juvenile Files on Delinquent

Art. 51.16

Conduct and Conduct Indicating Need for
Supervision (See also SB 46 re Destruction
of Juvenile Court Records)

Acts of 66th Legislature

SB 46

Destruction of Juvenile Court Records

(V.T.C.A. Family Code

Art. 51.16)

S.B. 193

Records on Deceased Mental Patients

(V.A.C.S. 5547-87)

SB 194 (V.A.C.S. 5547-300)	Records on Deceased Mentally Retarded Persons
SB 209 (V.A.C.S. 5506a)	Hospital Records of Treatment, Care, and Maintenance of Injured Persons
SB 374 (V.C.C.P. 55.01)	Expunction of Criminal History Records
SB 434 (V.A.C.S. 8306)	Hospital Records of Injured Persons
SB 623 (V.A.C.S. 5521a-6)	Personnel Employment Service Files
SB 1255 (V.T.C.A. Education Code Art. 30.42)	Texas Rehabilitation Commission Access to BPP and TDC Inmate Records
HB 628 (V.A.C.S. 4413 (29aa))	Peace Officers Psychological Test Scores and Declaration of Results as to Fitness
HB 673 (V.A.C.S. 695c)	Child Abuse Reports
HB 1163 (V.A.C.S. 5561h)	Mental/Emotional Health Consultations and Interviews (including Drug and Alcohol Abuse)
HB 1969 (V.A.C.S. 6252-17a)	Access to and Copying Service for Public Records
<u>Governor, Office of The</u> 001.55.20.001 - .016	Rules and Guidelines of the Criminal Justice Division; Criminal Justice In- formation Systems - Security and Privacy

Human Resources, Texas Department of

Section 7113

Social Services Handbook

Section 3100

Administrative Management Handbook

Mental Health and Mental Retardation, Department of

302.03.15.001 -.011

Rules of the Commission of MHMR affecting other Agencies and the Public; Rules Governing the Disclosure of Client Identifying Information Contained in Records of Mental Health and Drug and Alcohol Abuse Clients of the TDMHMR.

Rehabilitation Commission, Texas

RSM 20-1

Confidentiality of Client Records

RSM 08-10

Confidentiality of Client School Records

Youth Council, Texas

APPENDIX B

EXCERPTS FROM LAW, TAPC STANDARDS, AND TAPC CODE OF ETHICS

Texas Adult Probation officers are an arm of the District Courts. Under state law, "...For the purpose of providing adequate probation services, the district judge or district judges having original jurisdiction...shall...employ...district personnel as may be necessary..." (VCCP, Art. 42.12, Sec. 10a). They are specifically court employees. The law states "personnel of the respective district probation departments shall not be deemed state employees..." (VCCP Art. 42.12 Sec. 10b).

The adult probation officers might thus be considered to have quasi-judicial immunity as is usually the case with court personnel under the common law. And, as public employees, they enjoy a qualified immunity.

The scope of their duties is set forth by statute. It consists of three elements: "...to conduct pre-sentence investigations, supervise and rehabilitate probationers, and enforce the terms and conditions of misdemeanor and felony probation". (VCCP Art. 42.12, Sec. 10a)

Their duties with respect to pre-sentence investigation are covered in more detail. "When directed by the court a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Wherever practical such investigation shall include a physical and mental examination of the defendant". (VCCP Art. 42.12, Sec. 4)

Further definition of the role and responsibilities of the adult probation officer is made the responsibility of the Texas Adult Probation Commission. VCCP Art. 42.121, Sec. 3.01, states that "The Commission shall promulgate reasonable rules: 1) Establishing minimum standards for caseloads, programs, facilities, and equipment, and other aspects of the operation of a probation office necessary for the provision of adequate and effective probation services; 2) Establishing a code of ethics for probation officers and providing for the enforcement thereof".

The standards promulgated by the Texas Adult Probation Commission provide for each department developing its own manual of objectives, policies and procedures: "Probation Departments should develop an administrative manual defining general purpose and functional objectives, incorporating all written policies and procedures, assuring that they are distributed to all staff members. These policies and procedures should be reviewed and revised at least annually". (TAPC Standard .010d) Such a manual will contain policies and procedures on case records: "Probation departments should develop written administrative policies and procedures regarding case record management assuring that each case record should contain a chronological recording of all significant actions, decisions, services rendered and periodic evaluation." (TAPC Standard .030e) And the topic of case record confidentiality should be dealt with in these policies and procedures: "Case records including criminal history should remain confidential and departmental policy should clearly state the circumstances under which information could be released from the files." (TAPC Standard .030f)

The case record files, properly maintained, will contain a wide variety of client information on probation supervision and other topics arising out of rehabilitation programs "including but not limited to employment placement, academic and vocational education, physical and mental health treatment, and counseling". (TAPC Standard .050f) The confidentiality issue may arise in any of these areas. In some cases, existing law or regulation addresses this issue. In others, departmental policy will provide specific guidance. But inevitably, situations will arise in which the probation officer must exercise his own discretion and judgement in dealing with disclosure or release of case file information.

Some guidance in this regard is given in the code of ethics adopted by the Texas Adult Probation Commission. Regarding the probation officer's responsibility to the probationers, the following apply: "Probation officers will respect and protect the civil and legal rights of all probationers".

"Each probation officer will maintain the integrity of private information; he will neither seek personal data beyond that needed to perform his responsibilities, nor reveal case information to anyone not having proper professional use for such."

Regarding the probation officer's responsibility to the public: "Probation officers will respect and protect the right of the public to be safeguarded from criminal activity."

Finally, the code of ethics reflects the fact that the probation officer will be called upon to weigh the client's rights against the public's needs in considering the disclosure or release of client information:

"Each probation officer will be diligent in his responsibility to record and make available for review any and all case information which could contribute to sound decisions affecting a probationer or the public safety."

"Subject to the probationer's rights of privacy, probation officers will respect the public's right to know and will share information with the public with openness and candor."

Thus, state statute, statute-authorized TAPC Standards, and the statute-authorized code of ethics establish the following:

- 1.) The probation officer is an arm of the court and a public employee.
- 2.) The scope of his duties is defined generally by statute, and expanded on by statute-authorized TAPC Standards.
- 3.) His handling of release or disclosure of client personal information requires discretion and judgement in balancing the rights of the client against the rights of the public. His actions in this respect are guided, but not defined by a statute-authorized code of ethics. They may also be guided by and in some cases defined by local written policy. But absent specific instructions, he must rely on his own discretion and judgement.

Appendix "C"

Client Consent

In years past, much sensitive or potentially sensitive personal information was disclosed to insurance companies, employers, and others on the basis of "blanket consent", signed by the individual to whom the information pertained, authorizing disclosure of information by anyone for any purpose. Sometimes such a consent was incorporated in the small print of a contract, employment application, credit application, or similar document.

With the increasing concern for privacy, however, laws and regulations have become more stringent regarding the form and content of the consent, and the circumstances under which it is granted. In addition, concerned with possible civil liability, employers and others have become increasingly wary of disclosing personal information on the basis of a "blanket consent". And, in some recent major federal regulations dealing with privacy, disclosure of certain types of criminal history record information outside the criminal justice community is not allowed even with the subject's consent.

It is safe to assume that the trend will continue and the custodians of information will become even more reluctant to release personal information unless they are certain that 1) the client wants the specific information disclosed for a specific purpose, and 2) the information can legally be disclosed.

It is therefore wise for the probation department to review the form and content of its present consent forms, and consider the use of very specific ones if it is not already doing so. There

is no "model" consent form, but the following information must be included:

1. Organization or individual to whom request for personal information is addressed.

This should not be a class of organizations or individuals (e.g. "former employers" or "physicians"), but the specific organizations from which information is to be requested. An individual form for each could be used, or the consent form could provide space for a listing.

2. Identification of the individual who is the subject of the information.

This may vary according to the information which is being requested. The identification should be in context with the relationship between the client and the organization or individual to whom the request is addressed (e.g. "former employee", "former patient".)

3. Specific information to be disclosed.

Again, the source of information is concerned that the individual is aware of exactly the type of information to be disclosed. The consent should recite this in as much detail as is appropriate (e.g. "dates of employment, positions held, salary, opinions of associates and supervisors as to performance and stability, reason for termination", etc.)

4. Specific purpose for which the information is to be used.

This should state the benefit or potential benefit to the client, as well as naming (where possible) the persons or agencies who will have access to the information.

5. Name, (or names) or title(s) of individuals or organization to whom the information will be disclosed.

6. Authority (where it exists) under which information can be disclosed.

This can be helpful when the source of information is uncertain as to whether he can release the information. It also may give you the opportunity to give him an interpretation of his own rules that he may not have made himself.

Where there is no law, regulation, policy or court order governing his disclosure of information, it may be helpful to cite the law dealing with your role as a probation officer.

7. Statement by the individual that he has read and understood the consent, and that it was executed freely, voluntarily, and without coercion.

8. Signature of individual and date executed.

In some cases, it may also be appropriate to include a statement that the consent can be revoked at any time, non-retroactively, and a statement of the date, event, or condition under which it will expire without express revocation. Under federal regulations on drug and alcohol abuse treatment information, such a statement is required. However, under these same regulations, a probationer may not revoke the consent during the period of his probation supervision. These regulations also require that items one through six and item eight above be included. Finally the consent can be notarized if it is felt that this will facilitate disclosure of the needed information.

In many cases, use of a detailed and specific consent as suggested here may put an intolerable burden on limited local resources. In other cases, such an approach may already be used. The local probation office, under the guidance of local legal counsel, must make its own decisions on consent forms based on what it can practically do. It is hoped that this discussion will be of help in making those decisions.

SAMPLE

**Authorization of Disclosure
Notification Consent Form**

I, _____,
(client/patient name)

authorize _____ to notify and inform

of my presence in the facility.

In addition, I authorize the acknowledgement of my presence in this facility to callers and visitors.

The purpose of the disclosure authorized herein is to provide information to parties personally interested in my whereabouts.

This consent may be revoked by me at any time except to the extent that action has been taken in reliance thereon. This consent (unless expressly revoked earlier) expires upon my formal discharge from this facility.

Signature of client-patient

Date

Signature of witness

Date

Signature of parent, guardian, or legal representative

Date

Specify relationship

SAMPLE

Consent for the Release of Confidential Information

I, _____ authorize _____
(name of patient or participant) (name of the program)
_____ to disclose to _____
making the disclosure) (name of person or organization to which disclosure is to be made)
_____ the following information _____

(nature of the information)

I understand that my records are protected under the Federal Confidentiality Regulations and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it (e.g. probation, parole, etc.) and that in any event this consent expires automatically as described below.

Specification of the date, event, or condition upon which this consent expires. _____

Executed this _____ day of _____, 19____.

Signature of patient or participant

Signature of witness

Signature of parent, guardian, or authorized representative (when required, see Book I, pp. 17 & 20, Minor and Incompetent Patients)