

 Official Policy Manual	Date issued	6/12/2025	Page	1 of 5	Section #	QA-410
	Section:	Quality Assurance – Clinical Records				
	Directive:	Access to DCJS Records				
	Policy Owner:	Medical Informatics, Central Files				

A. Policy Statement

It is the policy of the Office of Mental Health that staff shall have access to all available information which may facilitate the most efficacious treatment of individuals in State-operated psychiatric centers, and which may assist in decision making concerning actions to protect the safety and welfare of the individual, other people being served by the facility, staff and the general public. One source of information is the criminal history data, which shall be obtained from the eJusticeNY portal, which was developed and is maintained by the Division of Criminal Justice Services (DCJS). Criminal history information that is pertinent to clinical decision making will assist staff in working with individuals to determine the appropriate care and treatment, including through the identification of risk and protective factors associated with violent criminal acts; developing methods to address any indicated risk factors; and deciding a course of action related to the planning of care and treatment, privileges and/or discharge.

If a person's case record contains information related to their criminal history, such information can only be provided, pursuant to Section 33.13 of the Mental Hygiene Law, to facilities or entities which are using the record explicitly to evaluate or address risk factors or for other clinical purposes.

This policy directive sets forth the criteria for accessing criminal history information, parameters for the use of such information, and confidentiality requirements. This policy directive applies only to State-operated psychiatric facilities serving adults which have been approved to receive criminal history information per the Use and Dissemination Agreement between OMH and DCJS.

Criminal history information may not be requested for juveniles admitted to or receiving treatment in an adult facility.

B. Relevant Statutes and Standards

Mental Hygiene Law (MHL) §7.09(j), Powers of the Office of the Commissioner; How Exercised
MHL § 7.17, Programs, Services, and Operation of Facilities in the Office of Mental Health
MHL§ 33.13, Clinical Records; Confidentiality
MHL§ 33.16, Access to Clinical Records
Executive Law Article 35, Division of Criminal Justice Services
9 NYCRR 6050, Right of Individual to Review Own Record; Right to Challenge; Appeals

C. Body of Directive

This policy directive consists of 3 components:

1. Administrative Responsibility
2. Use of Criminal History Records
3. Terminal Agency Coordinator

1) Administrative Responsibility

- (a) The Director of Quality Management (DQM), or other cabinet level staff designated by the Facility Director, shall have the overall responsibility for developing a plan for and the monitoring of the access, appropriate dissemination, use and confidentiality of criminal history information obtained from eJusticeNY.
- (b) Each facility must designate a minimum of two staff as Criminal History Information Officer(s). Such officer(s) shall be trained in how to access and appropriately interpret the information obtained from eJusticeNY. The officer(s) shall be available to assist other facility administrative and clinical staff in the review of criminal history information. The Criminal History Information Officer's responsibilities will fall under the supervisory responsibilities of the DQM or other cabinet member designated pursuant to paragraph (a) above.
- (c) Each Criminal History Information Officer must sign a statement acknowledging his/her understanding of the confidentiality requirements of the information and the penalties for the misuse of the information. They must also complete the required eJusticeNY training prior to first use of the system.
- (d) All appropriate facility staff shall be made aware of the confidentiality requirements associated with such criminal history records. Any staff person who is found to have improperly or knowingly misused the information obtained from eJusticeNY shall be subject to discipline pursuant to applicable law and/or collective bargaining agreements and may be subject to civil and criminal penalties under State and/or Federal statute.

2) Use of Criminal History Records

- (a) Staff conducting an admission for inpatient care must request that a Criminal History Information Officer process a criminal history check for each individual who is being admitted to the facility. Those individuals whose criminal history will be checked must be given written notice that:
 - i. criminal history information will be obtained,
 - ii. the opportunity exists to request the correction of any inaccurate criminal history information in accordance with regulations of the Division of Criminal Justice Services, and

- iii. the opportunity exists to challenge the accuracy of such information maintained in the patient's clinical record, to the extent authorized by Section 33.16 of the Mental Hygiene Law.
- (b) Appropriate administrative and/or clinical staff shall also request that a criminal history record be obtained on each person prior to the assignment of privileges or implementation of the discharge planning process.
- (c) The Criminal History Information Officer(s) must provide the requested information as soon as practicable and appropriate, but no later than 24 hours following the request. The original criminal history document received from eJusticeNY must be logged out to a designated staff member of the individual's treatment team.
- (d) The treatment team shall use any pertinent criminal history information obtained from eJusticeNY in making initial determinations regarding the appropriate placement of the individual within the facility, assigning privileges and assisting in the development of a treatment plan for the person.
 - i. A summary of pertinent information from the criminal history record obtained from eJusticeNY must be noted in the person's medical record. This information may be retained in the record and, pursuant to Section 33.13 of the Mental Hygiene Law, provided to facilities or entities which are using the record explicitly to evaluate or address risk factors, increase protective factors or for other clinical purposes. The original document obtained from eJusticeNY shall not be retained in the individual's record. Photocopies of the criminal history document shall not be made. (In order to avoid the possibility of secondary disclosure, OMH has agreed with the Division of Criminal Justice Services that originals or photocopies of the "rap sheet" shall not be included in the individual's record.) The original document shall be kept in a secure and confidential area, separate from the patient's medical record, until it is returned to the Criminal History Information Officer.
 - ii. Criminal history documents contain data elements that may not be directly pertinent to the clinical process. As such, only pertinent information obtained from the criminal history record should be incorporated into the medical record. A Use and Dissemination Agreement with DCJS forbids the secondary disclosure of verbatim information.

The following information shall be included in the person's record and, when appropriate, utilized in the process for treatment, privileging and discharge planning:

- New York Statewide Identification Number (NYSID)
- Total number of offenses noting frequency and patterns of occurrence.

- Date, location, type and nature of offenses. Special consideration shall be given to past convictions for offenses of a violent nature or offenses which may present an indication of the potential for violence, including violent felonies. Staff shall consider any mitigating factors which that may have occurred since the date of conviction. Staff shall also consider any information which that might indicate a risk of escape such as, but not limited to past history of escapes from correctional facilities or bail revocation. Further, staff shall consider the age of an offense when evaluating its relevance to the individual's clinical condition.
- Disposition information, indictment, conviction, acquittal and sentencing information (incarceration and parole status).
- Information concerning outstanding warrants.

The entry of this information should be completed in the context of the individual's psychiatric condition and risk for dangerous behavior. Decisions to incorporate information obtained from the criminal history and associated sources should focus on clinical implications for the person as well as the safety concerns of the people, other people in care of the facility, staff and the general public.

- iii. At an appropriate time during the assessment period and the development of the therapeutic relationship, the criminal history information must be discussed with the individual. The person, if possible, must be allowed to provide input regarding their criminal history. At the individual's request, the treatment team shall notify the Mental Hygiene Legal Service (MHLS) or other appropriate entity or individual to assist the person in correcting any inaccurate information that exists in eJusticeNY, or, subsequently, in the clinical record. Pursuant to DCJS requirements, facility staff may not give an original or photocopy of a criminal history record to individuals, organizations, or entities outside the auspice of OMH.
- iv. the criminal history information indicates that further evaluation of the nature of the crime is indicated, the treatment team leader, or a designated staff member, shall request the individual in care sign a consent to share personal health information (PHI) in order to take necessary steps to gather additional criminal history information including, as appropriate, the following actions:
 - 1. Contact the appropriate district attorney's office to ascertain the circumstances of the offense, any dispositions which were made and to determine if any psychiatric evaluations were completed. Staff may also contact the defense attorney, if known.
 - 2. Contact the police department that was involved in the case to obtain police reports pertinent to the criminal incident.
 - 3. If necessary, contact the appropriate court to determine if a psychiatric

evaluation had been requested.

4. Contact the individual's family to obtain additional information.
 5. Request that any pertinent information be forwarded to the treatment team.
- v. The treatment team shall utilize pertinent criminal history information to assess any risk factors, protective factors, develop treatment interventions to address the risk factors and increase protective factors, and use the information to assist in planning for treatment, any patient privileges and, eventually, discharge.
- (e) The original copy of the criminal history document must be returned to the Criminal History Information Officer(s) upon completion of the person's treatment plan, but no later than 11 days after receipt of the document. The Criminal History Information Officer(s) must log in the original document obtained from eJusticeNY and then ensure that the document is immediately destroyed via shredding.
- (f) If in the process of reviewing the person's criminal history information, it is noted that an active felony warrant has been issued or parole revocation proceedings have been initiated for a individual, the DQM or administrator on call should be notified. Prior to any discharge, release, or unescorted furlough from the Facility, the DQM or administrator on call, with Counsel's Office, must determine if releasing information, limited to identifying information and the fact of pending discharge, release, or unescorted furlough, regarding a person with active warrants to the appropriate law enforcement agency or parole office is reasonable, appropriate and permissible under Mental Hygiene Law § 33.13. This determination will need to consider the specific facts of the offense or alleged offense, and the Facility should consult with Counsel's Office prior to either releasing information or releasing the individual without notifying the appropriate law enforcement agency or parole office.