

State of New York OFFICE OF MENTAL HEALTH <hr style="width: 20%; margin: auto;"/> OMH OFFICIAL POLICY MANUAL	Date Issued 7/03/95	T. L. 95-04	Section # QA-410
	Section Quality Assurance - Clinical Records		
	Directive Access to DCJS Records		

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 patients in State-operated psychiatric centers and which may assist in decision making concerning actions to protect the safety and welfare of the patient, other facility patients, staff and the general public. One source of information is the criminal history data which shall be obtained from the Division of Criminal Justice Services (DCJS). Criminal history information which is pertinent to clinical decision making will assist staff in determining risk 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 patient's case record contains information related to his or her 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. 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, Sections 7.09(j), 7.17, 33.13 and 33.16
Executive Law, Article 35
9 NYCRR 6050

C. Body of Directive

1) Administrative Responsibility

- a) The Director of Quality Assurance, 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 the Division of Criminal Justice Services.
- b) Each facility must designate appropriate staff as Criminal History Information Officer(s). Such officer(s) shall be trained in how to access and appropriately interpret the information obtained from the DCJS data base. 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 Director of Quality Assurance 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.
- d) All appropriate facility staff shall be made aware of the confidentiality requirements associated with such DCJS information.
- e) Any staff person who is found to have improperly or knowingly misused the information obtained from the DCJS data base 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 DCJS Information

- a) Staff of the admissions unit must request that a Criminal History Information Officer process a criminal history check for each individual who is being admitted to the facility. Such individuals 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.

Appropriate administrative and/or clinical staff shall also request that a criminal history be obtained on each patient prior to the assignment of privileges or implementation of the discharge planning process. If a criminal history on a patient was obtained upon a patient's admission, it is not necessary to obtain the additional criminal history information except as provided in (c)(vi).

- b) 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 DCJS must be logged out to a designated staff member of the patient's treatment team.
- c) The treatment team shall use any pertinent criminal history information which is obtained in making initial determinations regarding the appropriate placement of the patient within the facility, assigning privileges and assisting in the development of a treatment plan for the patient.
 - i) A summary of pertinent information from the criminal history document received from DCJS must be noted in the patient's uniform case record. This information may be retained in the patient's 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 or for other clinical purposes. The original document containing the DCJS information shall not be retained in the patient'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 patient's record.) The original document shall be kept in a secure and confidential area,

separate from the patient's case record, until it is returned to the Criminal History Information Officer.

- ii) Criminal history documents contain data elements which may not be directly pertinent to the clinical process. As such, only pertinent information obtained from the document should be incorporated into the clinical record. A Use and Dissemination Agreement with DCJS forbids the secondary disclosure of verbatim information.

The following information shall be included in the patient'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 may have occurred since the date of conviction. Staff shall also consider any information which 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 patient's psychiatric condition and risk for dangerous behavior. Decisions to incorporate information obtained from the criminal history document and associated sources should focus on clinical implications for the patient as well as the safety concerns of the patient, other patients, staff and the general public.

- iii) At an appropriate time during the development of the treatment plan, the criminal history information must be discussed with the patient. The patient, if possible, must be allowed to provide input regarding his/her criminal history. At the patient's request, the treatment team shall notify the Mental Hygiene Legal Service (MHLS) or other appropriate entity or individual to assist the patient in correcting any inaccurate information which exists in the DCJS data base, or, subsequently, in the patient's clinical record. Pursuant to DCJS requirements, facility staff may not give an original or photocopy of a criminal history information document to individuals, organizations, or entities outside the auspice of OMH.

- iv) If 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 take steps to gather additional 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 which was involved in the case in order 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 patient's family to obtain additional information.
 5. Request that any pertinent information be forwarded to the treatment team.
- v) If a specific offense did not result in a conviction, staff must always conduct a further evaluation of the offense prior to using the information to make clinical determinations.
 - vi) Criminal history documents are continuously updated by DCJS. Therefore, they are a dynamic document which may need to be accessed more than once during a patient's admission to OMH. Elements of the criminal history document that are not appropriate for inclusion in the clinical record, but which staff may find useful in updating and verifying offense information, may be obtained by requesting updated information.
 - vii) The treatment team shall utilize pertinent criminal history information as additional patient related information to assess any risk factors indicated by the information, develop methods to address the risk factors and use the information to assist in planning for treatment, any patient privileges and, eventually, discharge.
- d) The original copy of the criminal history document must be returned to the Criminal History Information Officer(s) upon the completion of the patient's treatment plan, but in any event no later than 11 days after receipt of the document. The Criminal History Information Officer(s) must log in the original document obtained from DCJS and then ensure that the document is immediately destroyed, either by shredding or by burning.
 - e) If in the process of reviewing the patient's criminal history information, it is noted that an active felony warrant has been issued or parole revocation proceedings have been initiated for a patient, the Director of Quality Assurance or administrator on call should immediately be notified. The Director of Quality Assurance or administrator on call must, as soon as possible, notify the appropriate law enforcement agency or parole office and the Terminal Agency Coordinator that such patient is at the facility and take appropriate actions in concert with such law enforcement agency or parole office and the Terminal Agency Coordinator. Each facility is encouraged to develop formal agreements with law enforcement agencies which establish working relationships related to the exchange of information and actions to be taken with regards to individuals for whom active felony warrants have been issued.

3) Terminal Agency Coordinator (TAC)

- a) The OMH shall designate an appropriate level staff person in Central Office as Terminal Agency Coordinator (TAC) to ensure that OMH and the authorized Criminal History Information Officers comply with laws, regulations and policies regarding access to dissemination and disposal of criminal history information.
- b) The TAC shall serve as the agency's liaison between the Division of Criminal Justice Services and each facility.

- c) The TAC shall have overall responsibility for:
 - i) Coordinating training for agency staff related to the access, dissemination and disposal of DCJS criminal history information; and
 - ii) Initiating periodic OMH audits and serving as a liaison for DCJS audits related to the security of the DCJS data base.