

109 CMR: DEPARTMENT OF YOUTH SERVICES

109 CMR 3.00: ACCESS TO ALL RECORDS OF YOUTH DETAINED BY OR COMMITTED TO THE DEPARTMENT OF YOUTH SERVICES

Section

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3.01: Purpose and Scope

109 CMR 3.00 establishes rules for the management of and access to all Youth Records maintained by the Department of Youth Services (Department). The provisions of 109 CMR 3.00 shall apply to the following persons:

- (1) Each current or former Department employee;
- (2) Current or former Providers and their employees;
- (3) All Youth served by the Department;
- (4) Each person or entity to whom Department representatives disclose confidential Youth Records information; and
- (5) Each person or entity that requests Youth Records from the Department.

3.02: Applicability

109 CMR 3.00 is applicable to all records maintained by the Department of Youth Services regarding Youth, whether currently or previously detained by or committed to the Department. 109 CMR 3.00 does not apply to access to records sought in conjunction with Research as defined in 109 CMR 10.00: *Social Science Research by Outside Agencies or Persons*.

3.03: Definitions

Data Sharing Agreement. An agreement between the Department and another Executive Office of Health and Human Services Agency pursuant to 101 CMR 16.00: *Personal Data Use and Permitted Disclosures by and among the Executive Office of Health and Human Services and its Agencies* for the purposes of sharing data to assist assessment; service development, coordination, or provision; eligibility for or determinations of benefit amounts; or quality assurance activities.

Keeper of the Records. A person designated by the Department to administer all rules and regulations governing access to Youth Records.

Legal Unit. Those employees who report to the Department's general counsel, including any assistant general counsels, paralegals or administrative support staff.

Memorandum of Understanding or Agreement. A documented agreement between the Department and another agency or entity which may include agreements regarding the sharing of certain Youth Records.

Personal Data. As defined by M.G.L. c. 66A, § 1, information in any form which, because of name, identifying number, mark or description can be readily associated with a particular individual; provided, however, that such information is not contained in a public record, as defined in M.G.L. c. 4, § 7, clause 26 and shall not include intelligence information, evaluative information or criminal offender record information as defined in M.G.L. c. 6, § 167.

3.03: continued

Youth. Any person who is or has at any time been referred to, detained by or committed to the Department.

Youth Records. Any information maintained by the Department regarding the referral, detention or commitment of a Youth including, but not limited to, Personal Data as defined in 109 CMR 3.03.

3.04: Records of Youth Served by the Department of Youth Services

No Youth Records shall be disseminated to anyone other than an authorized Department employee or contracted Provider except as specifically authorized by the Commissioner pursuant to M.G.L. c. 120, § 21, or as follows:

- (1) A Youth may obtain a copy of his or her own records by submitting a written request to the Keeper of the Records.
- (2) A parent or guardian of a Youth who is currently younger than 18 years old may obtain a copy of the Youth's records by submitting a written request to the Keeper of the Records.
- (3) An attorney representing a Youth may obtain a copy of the Youth's records by submitting a written request to the Keeper of the Records, accompanied by authorization from the Youth.
- (4) Any person, agency or entity providing services to a Youth may obtain a copy of the Youth's records by submitting a request in writing to the Keeper of the Records, accompanied by authorization from the Client and the Client's legal guardian, if the Client is younger than 18 years old at the time of the request.
- (5) Any person, agency or entity empowered by statute, regulation or other applicable law to have access to Personal Data may obtain a copy of a Youth's records by submitting a written request to the Keeper of the Records that sets forth the legal bases and the scope of the authorization permitting the Department to release the records requested.
- (6) Any person who presents a written order from a court compelling release of Youth Records to that person may have access to Youth Records subject to the requirements set forth in 109 CMR 3.05.
- (7) Any agency authorized by law or ordered by a court to complete a presentence report may have access to Youth Records upon submission of a written request and a copy of any order to the Keeper of the Records.
- (8) Law Enforcement agencies, including the District Attorney's Offices, may have access to portions of Youth Records where the information sought is related to the investigation of a crime, or subject to the requirements set forth in 109 CMR 3.05, or as otherwise authorized by law.
- (9) Victims of crime may obtain access to such Personal Data of Youth as provided by M.G.L. c. 258B, § 3(t) and c. 6, § 178A.
- (10) In the case of a Youth's psychiatric or medical emergency that precludes Youth consent, a physician treating a Youth may obtain medical or psychiatric data in client records if necessary to treat the Youth. As soon as reasonably practical after said emergency, a Youth shall receive notice that his or her information was released for treatment purposes.
- (11) As provided for by law, any investigative agent of the Attorney General, State Auditor or the State Ethics Commission acting in furtherance of his or her duties may have access to Youth records to the extent necessary.

3.04: continued

(12) Nothing in 109 CMR 3.00 shall preclude the Department from entering into a Memorandum of Understanding or Data Sharing Agreement to allow the sharing of Youth Records pursuant to 101 CMR 16.00: *Personal Data Use and Permitted Disclosures by and among the Executive Office of Health and Human Services and its Agencies* with any other agency or provider regarding:

- (a) Eligibility determinations;
- (b) Determination of benefit amounts;
- (c) Assessment of Youth needs or the provision of services, insofar as the use or disclosure of Personal Data will assist the individual who is the subject of the Personal Data to access needed medical, social, educational, or other services, or will improve the coordination or management of services provided to the individual(s); and
- (d) Quality assurance activities.

3.05: Response to Compulsory Legal Process

Youth Records may be released in response to compulsory legal process; however, no Personal Data shall be made available in response to a demand under compulsory legal process unless the Client is reasonably notified so that he or she may seek to have the process quashed as provided in M.G.L. c. 66A, § 2(k), unless such notice may be withheld by law pursuant to M.G.L. c. 66A, § 2 (i).

(1) A subpoena for Youth Records can be accepted by an employee other than the one named on the subpoena. Employees eligible to accept service include employees of the Department's Legal Unit, regional administration, and program administration. Such an acceptance of service still creates an obligation to comply on the part of the person named in the subpoena.

(2) Upon accepting any subpoena for Youth Records, the person receiving the subpoena shall immediately notify the Department's Legal Unit.

(3) The Department's efforts to notify the Youth may be written or oral, including notice by telephone. The Department shall document in writing the efforts made to contact the Youth and if said contact is made. If the Department is unable to contact the Youth after multiple attempts, the Department shall release the records sought, after redacting Personal Data.

3.06: Audit Trails

The Department is required by M.G.L. c. 66A, § 2(f) to maintain records of every access to a Youth's Records by anyone other than Departmental employees or Providers acting within their official duties. All Department and Provider offices and facilities, where Youth Records are maintained shall keep a log which shows access to Youth Records by anyone other than Department or Provider employees and contain the following information in an audit trail:

- (1) the name of the person or entity granted access to the Youth's Records;
- (2) the purpose and date of the access; and
- (3) the name of the person who authorized inspection.

3.07: Training of Staff

The Legal Unit of the Department shall alert all Department personnel and Providers of 109 CMR 3.00 and shall conduct training sessions to acquaint staff with the requirements of 109 CMR 3.00 and M.G.L. c. 66A.

REGULATORY AUTHORITY

109 CMR 3.00: M.G.L. c. 18A; and c. 120, §§ 4, 12 and 21.