

Survey to Chief APOs

Issue: Confidentiality Guide

Question (from York County):

I am working on a Confidentiality Guide for my officers that guides what they can and cannot release to the public, other departments, etc. Does anyone already have something they would be willing to share?

Lancaster County

The attached was created by one of my former deputy chiefs who is an attorney and knowledgeable in CHRIA.

This is also what Sally and I distribute to new officers at the BTA "Probation & Parole Overview" class. (see Appendix)

7/15/2019

Lancaster County MEMORANDUM

TO: APPS Staff

FROM: JTH

SUBJECT: Confidentiality/Disclosure of CHRI and Protected Information

DATE: 8/28/15

PURPOSE: To provide staff with information and general policy on matters related to confidentiality and disclosure of protected information. Although no policy statement can cover comprehensively all matters relating to the subject, the officer will be provided with a framework and a method of analysis, based on applicable statutes, to enable analysis of questions surrounding rules for disclosure of protected information.

METHOD: Review of statutes pertinent to criminal history and treatment information as well as any statutory exceptions to the rules of confidentiality and to engage in discussion with officers using hypothetical scenarios or specific, fact based situations.

STATUTES:

1. Criminal History Record Information Act-18 Pa.C.S.A. § 9101 (CHRIA)
2. 23 Pa. C.S. § 5329 (Consideration of Criminal Conviction)
3. 42 Pa.C.S. § 1904 Availability of Criminal Charge Information in Child Custody Proceedings
4. Child Protective Services Act-23 Pa.C.S.A. § 6301 (CPSA)
5. Confidentiality of HIV-Related Information Act-35 P.S. § 7601 (HIV-ACT)

DISCUSSION: We begin with the principle that there are specific categories of information recognized at law and specific categories of agencies possessing or requesting such information. Our analysis begins with the proposition that any question of whether information may be disseminated is controlled by four factors: 1) the category in which the information falls, 2) the type of agency which possesses it, 3) the type of agency or entity requesting the information, and 4, exceptions.

There are four categories of information under the CHRIA § 9102:

"Criminal History Record Information - Information collected by criminal justice agencies concerning individuals, arising from the initiation of criminal proceedings, consisting of identifiable descriptions, dates and notations of arrests,

indictments, informations or other formal criminal charges and any dispositions arising therefrom."

"Treatment Information - Information concerning medical psychiatric, psychological or other rehabilitative treatment provided, suggested or prescribed for any individual charged with or convicted of a crime."

"Intelligence Information - Information concerning the habits, practices, characteristics, possessions, associations or financial status of any individual compiled in an effort to anticipate, monitor, investigate or prosecute criminal activity...."

"Investigative Information - Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information."

There are two types of agencies under the CHRIA, criminal justice agencies and non-criminal justice agencies. Probation offices are criminal justice agencies under the Act. "Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by State or Federal constitutions, specifically authorized to perform as its principle function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, but are not limited to: organized state and municipal police departments, local detention facilities, county, regional and state correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards and such agencies or subunits thereof, as are declared by the Attorney General to be declared criminal justice agencies..." CHRIA § 9102. (emphasis supplied)

ANALYSIS: When a probation officer receives a request for information from outside the office, the first determination which needs to be made is as to the type of information requested. The second inquiry deals with the type of entity which is requesting the information. The provisions of the CHRIA then control.

GENERAL RULES - CRIMINAL HISTORY RECORD INFORMATION

1) Criminal justice agencies shall exchange Criminal History Record Information. This means that information that qualifies as CHRI shall be given by Adult Probation to

another criminal justice agency upon request, no questions asked. 18 Pa.CSA § 9121(a)

2) Criminal justice agencies may disseminate Criminal History Record Information to a non-criminal justice agency that is providing a service for which the criminal justice agency is responsible. This means that Adult Probation may provide CHRI to a non-criminal justice agency such as a treatment provider, but only if the provider is performing a service for which we are responsible. 18 Pa. CSA § 9121 (a).

3) Only State or local police may disseminate CHRI to non-criminal justice agencies or individuals. 18 Pa. CSA § 9121 (b). Distinguish this from dissemination by any criminal justice agency to non-criminal justice agencies that provide a service for which we are responsible.

4) An exception to #3 can be argued under § 9104 (a) (1) and (3) relating to posters, announcements or lists for identifying or apprehending fugitives or wanted persons. See also § 9104(d). Where Adult Probation officers have made an arrest or effected the detention of an individual, such as by the on call team or the office arrest team, and where a record or log is prepared contemporaneously, that information may be disseminated to non-criminal justice agencies or individuals upon request where there is a legitimate interest and the record may be made available for public inspection. I argue that our on call team and office arrest team qualify under this limited exception for relatives or significant others or even employers at the time of arrest or immediately thereafter.

GENERAL RULES - INVESTIGATIVE AND TREATMENT INFORMATION

1) Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name and other identifying characteristic. § 9106 (c)(4) In other words, no dissemination of this type of information to non-criminal justice agencies is permitted with the exception of the instances listed below.

2) Secondary dissemination is prohibited. A criminal justice agency which possesses this type of protected information, but which is not the source of the information shall not disclose or disseminate the information to another criminal justice agency but shall refer the requesting agency to the agency which was the source of the information. **EXCEPTION:** This does not apply if the agency requesting the information is investigating or prosecuting a criminal incident in conjunction with the agency possessing the information. The word "conjunction" cannot be stretched to

include giving the police this type of information for purposes of prosecuting new crimes on their part and parole violations on our part.

It is difficult to imagine a situation where we would be the source of treatment information with the exception of instances where we contract with a psychiatrist to evaluate someone for us for purposes of supervision or prosecution of a violation.

EXCEPTION - DISSEMINATION IN CHILD CUSTODY CASES

Where a party seeks any form of custody, the court shall consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to any of the offenses in this section or an offense in another jurisdiction substantially equivalent to any of the offenses in this section. The court shall consider such conduct and determine that the party does not pose a threat of harm to the child before making any order of custody to that parent. (See 23 Pa.C.S. § 5329, (attached) and 42 Pa.C.S. § 1904). (1)

EXCEPTION – RISK TO CHILD

The Child Protective Services Law, 23 Pa.C.S.A. § 6346 (a) provides for cooperation between agencies when assistance is needed from law enforcement and other agencies for "conducting an investigation or an assessment of risk to a child". It is important that we do not define this too broadly, however. Investigation and assessment by C&Y does not mean monitoring a case or trolling for information. (2)

EXCEPTION – WAIVER

Waiver by offender. Release signed knowingly by the subject for the specific

1 The statute also provides for an evaluation by the court of any household member convicted of an enumerated offense to determine whether there a risk is posed to the child or the household member is in need of counseling. This would seem to suggest that treatment information would be disseminated.

2 Staff from the Attorney General indicated that if C&Y suspects there is reason to investigate the agency should initiate an investigation formally. If, for example, the police or D.A. is involved, then any request for information would be going to a criminal justice agency which is investigating a crime and a non-criminal justice agency such as C&Y would not be getting the information from us. We are strongly cautioned by the A.G. to be very careful in decision making regarding the dissemination of information to non-criminal justice agencies.

purpose intended.

GENERAL RULE - HIV-RELATED INFORMATION

1) HIV information is controlled by 35 P.S. § 7601. This information is strictly controlled. If the Act is followed to the letter, Adult Probation probably would not receive HIV information at all unless the client provided it to the officer voluntarily.

2) If we do receive such information we may not disclose it. Even to another officer who assumes supervision. (3)

PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 23. DOMESTIC RELATIONS
PART VI. CHILDREN AND MINORS
CHAPTER 53. CHILD CUSTODY

23 Pa.C.S. § 5329 (2011)

§ 5329. Consideration of criminal conviction.

(a) *Offenses.* --Where a party seeks any form of custody, the court shall consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to any of the offenses in this section or an offense in another jurisdiction substantially equivalent to any of the offenses in this section. The court shall consider such conduct and determine that the party does not pose a threat of harm to the child before making any order of custody to that parent when considering the following offenses:

18 Pa.C.S. Ch. 25 (relating to criminal homicide).

[18 Pa.C.S. § 2702](#) (relating to aggravated assault).

[18 Pa.C.S. § 2706](#) (relating to terroristic threats).

[18 Pa.C.S. § 2709.1](#) (relating to stalking).

[18 Pa.C.S. § 2901](#) (relating to kidnapping).

[18 Pa.C.S. § 2902](#) (relating to unlawful restraint).

3 Because APPS staff handles bodily fluids, we may fall into the exception the Act creates for those who can demonstrate a compelling need to know such information.

[18 Pa.C.S. § 2903](#) (relating to false imprisonment).

[18 Pa.C.S. § 2910](#) (relating to luring a child into a motor vehicle or structure).

[18 Pa.C.S. § 3121](#) (relating to rape).

[18 Pa.C.S. § 3122.1](#) (relating to statutory sexual assault).

[18 Pa.C.S. § 3123](#) (relating to involuntary deviate sexual intercourse).

[18 Pa.C.S. § 3124.1](#) (relating to sexual assault).

[18 Pa.C.S. § 3125](#) (relating to aggravated indecent assault).

[18 Pa.C.S. § 3126](#) (relating to indecent assault).

[18 Pa.C.S. § 3127](#) (relating to indecent exposure).

[18 Pa.C.S. § 3129](#) (relating to sexual intercourse with animal).

[18 Pa.C.S. § 3130](#) (relating to conduct relating to sex offenders).

[18 Pa.C.S. § 3301](#) (relating to arson and related offenses).

[18 Pa.C.S. § 4302](#) (relating to incest).

[18 Pa.C.S. § 4303](#) (relating to concealing death of child).

[18 Pa.C.S. § 4304](#) (relating to endangering welfare of children).

[18 Pa.C.S. § 4305](#) (relating to dealing in infant children).

[18 Pa.C.S. § 5902\(b\)](#) (relating to prostitution and related offenses).

[18 Pa.C.S. § 5903\(c\)](#) or (d) (relating to obscene and other sexual materials and performances).

[18 Pa.C.S. § 6301](#) (relating to corruption of minors).

[18 Pa.C.S. § 6312](#) (relating to sexual abuse of children).

[18 Pa.C.S. § 6318](#) (relating to unlawful contact with minor).

[18 Pa.C.S. § 6320](#) (relating to sexual exploitation of children).

Section 6114 (relating to contempt for violation of order or agreement).

The former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance).

75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs).

Section 13(a)(1) of the act of April 14, 1972 (P.L. 233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, to the extent that it prohibits the manufacture, sale or delivery, holding, offering for sale or possession of any controlled substance or other drug or device.

(b) *Parent convicted of murder.* --No court shall award custody, partial custody or supervised physical custody to a parent who has been convicted of murder under [18 Pa.C.S. § 2502\(a\)](#) (relating to murder) of the other parent of the child who is the subject of the order unless the child is of suitable age and consents to the order.

(c) *Initial evaluation.* --The court shall provide for an evaluation to determine whether:

(1) the party or household member who committed an offense under subsection (a) poses a threat to the child; and

(2) counseling is necessary for that party or household member.

(d) *Counseling.*

(1) Where the court determines under subsection (c) that counseling is necessary, it shall appoint a qualified professional specializing in treatment relating to the particular offense to provide counseling to the offending individual.

(2) Counseling may include a program of treatment or individual therapy designed to rehabilitate the offending individual which addresses, but is not limited to, issues regarding physical and sexual abuse, the psychology of the offender and the effects of the offense on the victim.

(e) *Subsequent evaluation.*

(1) At any time during or subsequent to the counseling under subsection (d), the court may require another evaluation to determine whether further counseling is necessary.

(2) If the court awards custody to a party who committed an offense under subsection (a) or who shares a household with an individual who committed an offense under subsection (a), the court may require subsequent evaluations on the rehabilitation of the offending individual and the well-being of the child subsequent to the order. If, upon review of a subsequent evaluation, the court determines that the offending individual poses a threat of physical, emotional or psychological harm to the child, the court may schedule a hearing to modify the custody order.

(f) *Costs.* --The court may order a party to pay all or part of the costs of the counseling and evaluations under this section.