



Operating Procedure

Effective Date November 1, 2018	Number 102.7
Amended 11/1/18, 5/1/19	Operating Level Department
Supersedes Operating Procedure 057.1 (6/1/18) Operating Procedure 057.2 (7/1/15)	
Authority COV §2.2-2900 et seq., §2.2-3700 et seq., §2.2-3800 et seq., §32.1-116.1:1, §51.5-1 et seq., §53.1-10, §53.1-25	
ACA/PREA Standards 5-1B-4040, 5-1C-4048, 5-1C-4067, 5-1C-4068; 4-4040, 4-4048, 4-4067, 4-4068; 4-ACRS-7D-27, 4-ACRS-7E-11, 4-ACRS-7E-12; 4-APPFS-3E-12, 4-APPFS-3E-13; 2-CO-1C-01, 2-CO-1C-23, 2-CO-1F-06; 1-CTA-1C-01, 1-CTA-1C-11; §115.17, §115.217	
Incarcerated Offender Access Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Office of Primary Responsibility Director of Human Resources
Public Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Attachments Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

Subject
EMPLOYEE RECORDS

I. PURPOSE

This operating procedure provides guidance for comprehensive and accurate personnel and medical records for each Department of Corrections (DOC) employee; ensuring the adequacy of data in order to produce accurate personnel transactions and required federal, state, and management reports; and to ensure compliance with the Code of Virginia and provides instruction on the maintenance and utilization of DOC employee medical information, outlining areas of responsibility for ensuring confidentiality of medical information.

II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

III. DEFINITIONS

ADA Committee - The Department of Corrections *Americans with Disabilities Act (ADA)* Committee is responsible for reviewing employee requests for reasonable accommodations that exceed or are expected to exceed 90 calendar days. Committee members may include Human Resources Managers and other individuals who have technical knowledge of the Act, as selected by the Director of Human Resources.

Disability - An actual impairment that substantially limits one or more of the major activities of daily living (ADL) of an individual; or a record of such impairment; or being regarded as having such an impairment

Employee Medical Record - The employee medical record maintained in the Human Resources office that supports the organizational unit where the employee works

Health Care Provider - A health care professional licensed to practice in the Commonwealth or state where an employee resides and competent to medically certify physical or psychological/psychiatric conditions; appropriate professionals include, but are not limited to, physicians, physician assistants, psychiatrists, psychologists, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

Medical Certification - A note from the employee's health care provider, based on the most current medical knowledge, describing the employee's functional abilities and limitations in performing the essential functions of the job, and whether the employee meets DOC health and safety requirements; it is not a request or requirement for a diagnosis and employees and their attending health care provider should not be asked to provide medical information outside of the employee's ability to work, not work, or perform essential job functions.

Medical Information - Any document that contains information regarding the physical or mental health, disability, or impairment of an employee; this includes formal documentation, transcribed notes, and documentation provided by the employee from a health care provider.

Organizational Unit - A DOC unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises (VCE), Academy for Staff Development, Corrections Construction Unit, Agribusiness Unit, and individual headquarters unit (i.e. Human Resources, Offender Management, Internal Audit)

Organizational Unit Head - The person occupying the highest position in a DOC organizational unit

Personal Information - All information that describes, locates, or indexes anything about an individual including their real or personal property holdings derived from tax returns, and their education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment records, or that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such an individual; and the record of their presence, registration, or membership in an organization or activity, or admission to an institution; the term does not include routine information maintained for the purpose of internal office administration; nor does the term include real estate assessment information.

Personnel Record - Official file for each employee which may include: application, reference letters, standard of conduct notices, performance appraisals, letters of commendation, and all payroll documentation, health insurance enrollment forms, offer letters, EIN letters, and general notices

Third Party - An individual other than the subject of the records, including other state agencies, who request information from the records maintained by state agencies

IV. EMPLOYEE RECORDS

A. Records to Be Maintained

1. The DOC Director of Human Resources, acting for the Director, will establish a system of uniform employee records and reports which must conform to the requirements of the Department of Human Resource Management (See DHRM Policies 6.05, *Personnel Records Disclosure*, and 6.10, *Personnel Records Management*.) and any other applicable laws and regulations, and which are required to be in use throughout the DOC. (5-1B-4040, 5-1C-4048, 5-1C-4067, 4-4040, 4-4048, 4-4067; 4-ACRS-7D-27, 4-ACRS-7E-11; 4-APPFS-3E-12; 2-CO-1C-01, 2-CO-1C-23; 1-CTA-1C-01, 1-CTA-1C-11)
2. The head of each organizational unit is responsible for ensuring that employee records and reports for the unit are prepared and maintained by the unit in accordance with instructions of the DOC Director of Human Resources.
3. As delegated by the Director of Human Resources, major institutions and Correctional Enterprises will maintain the official records for their employees. The Office of Human Resources at Headquarters will maintain the official employee record for all other employees, including all Wardens, Superintendents, Human Resource Officers, and employees in Community Corrections.
4. Medical and mental health records, including medical certifications, and physical examinations, must be kept in a separate medical record maintained in Human Resources and access should be strictly controlled. The subject of these records has access to them unless the health care provider has requested that the records not be shared with the subject. (5-1C-4067, 4-4067, 4-ACRS-7E-11, 4-APPFS-3E-12, 2-CO-1C-23, 2-CO-1F-06, 1-CTA-1C-11)
5. The *Employment Eligibility Verification* forms (I-9s) must be kept in a separate file within Human Resources.

B. Secure Records - Records on following subjects must be filed in secure files apart from the regular personnel files.

1. Equal Employment Opportunity
2. Recruitment and Selection
3. Exit Interviews
4. Grievances

5. Investigations
 6. I-9 Files
 7. Litigation
 8. Supervisors may maintain employment-related fact files on each of their employees. Employee medical information must not be placed in the supervisor's file. The supervisor's file may include but is not limited to the following:
 - a. Documentation regarding employee's work performance or performance evaluation
 - b. Documentation of counseling sessions with employees on such things as performance or behavior problems or DOC policies and procedures
 - c. Interim performance evaluations
 - d. Copies of annual evaluations
 - e. Copies of *Written Notices*
 - f. Letters or memoranda from other sources regarding employees' job performance such as letters of commendation or complaint
 - g. Attendance records
 - h. Copies of training certificates and/or other training records
 - i. Copies of *Employee Work Profiles* (EWP's)
 - j. *Acknowledgment of Extraordinary Contribution and Needs Improvement/Substandard Performance*
 9. Operating Procedure 323.1, *Vehicle Acquisition, Operations, and Maintenance*, requires the Organizational Unit Head to maintain a confidential file containing a copy of each employee's current driver's license.
 - a. Driver's license checks will be conducted annually for each employee whose position requires them to have a valid driver's license or who may drive either their personal vehicle or a state vehicle in the performance of their duties, to attend training, or for other reasons related to their employment.
 - i. New employees will be required to sign [Authorization for On-going License/Background Checks](#) 102_F8 during initial orientation. A signed *Authorization* is required of existing employees who do not have one on file.
 - ii. Organizational units shall establish a process to review each employee's DMV record annually.
 - iii. For employees who have drivers' licenses issued by Virginia, unit staff should conduct the annual driver's license check through the Department of Motor Vehicles record database using a job or token.
 - iv. Employees who are licensed to drive from states other than Virginia must secure a copy of their driving records to provide to the designated unit authority.
 - (a) Requests for reimbursement to employees for cost of driving record reports shall be submitted as non-travel related expenses via Part B of the [Employee Expense Reimbursement](#) 240_F6. (See Operating Procedure 240.1, *Travel, Non- Travel Reimbursement*.)
 - (b) Attach the original receipt to an original, signed and dated Part B of the *Employee Expense Reimbursement* and forward to the unit business office.
 - b. Unreported violations found during driver's license record checks will be considered as failure to comply with reporting notifications as required by Operating Procedure 040.1, *Litigation*.
- C. Transfers of Employee Records
1. Inter-Agency Transfers - When an employee transfers from the DOC to a position in another Executive Branch State agency subject to the provisions of the Virginia Personnel Act, the employee's official personnel file, containing documents listed below, must also be transferred to the new employing agency no more than 15 days after the date of the personnel action.
 - a. Commonwealth of Virginia - Original Application(s) for Employment with original signature(s)

- b. All original DOC-3s, signed by the proper authority
 - i. Copies of DOC-3s for transactions affecting salary changes effective the two years prior to employee transfer must be retained in the agency for audit purposes. These copies should be maintained until an audit occurs or five years from the date of transfer, whichever is longer.
 - ii. If the original documentation is needed for an emergency audit, auditors can be directed to the employee's last known place of state employment or the Department of Human Resource Management.
 - c. Original performance evaluations
 - d. Original written notices
 - e. Authorization letters for exceptional salary actions
 - f. Interim performance evaluations for employees who are laterally transferring
 - g. Other documents from the personnel file that may benefit the receiving agency
2. Intra-Departmental Transfers
- a. When an employee transfers from one institution or other organizational unit to another within the DOC, the personnel file maintained by the unit for the employee will be forwarded to the institution or other unit to which the employee is transferring.
 - b. I-9s should be forwarded to the receiving DOC facility or organizational unit.
 - c. No employee will deliver their own personnel file. The file must be sealed and sent by certified mail or approved messenger services.

D. Separating Employees

- 1. Records for employees transferring to positions outside the Executive Branch will be retained by the separating agency as if the employee were separating from state service.
- 2. Copies of the file may be forwarded to the new agency at the separating agency's discretion.

E. Document copying and printing charges will be the sum of:

- 1. Charge for each printed page or copy
- 2. Handling charge plus any postage or shipping cost (cheapest available or as requested by recipient)
- 3. Reasonable costs, not to exceed the actual cost of labor for additional research required to locate and copy records that are not readily available for copying, such as records that are archived or are maintained on microfilm or computer databases.
- 4. Per page copying charges and handling charges should be based on the current DOC *Document Copying and Printing Charges* memorandum.

F. Disposal of Employee Records

- 1. Records must be destroyed in accordance with the Library of Virginia Retention and Disposition Schedule, [No. GS-103 Personnel Records](#).
- 2. Employee records must be disposed of in a manner that prevents accidental disclosure of personal information.
- 3. Employee personnel records must be retained at the last place of employment for five years after the employee's separation from the DOC; the long-term personnel record is saved electronically in the Human Resource Information System known as PMIS.
 - a. For Headquarters, Regional Offices, and Community Corrections, the Human Resources Unit at Headquarters will maintain personnel records for five years after separation.
 - b. For the major institutions and Correctional Enterprises that maintain the official personnel file, the unit will maintain personnel records for five years after separation.
- 4. Employee medical records must be retained at the last place of employment for 30 years after the employee's separation from the DOC.

G. Expungement of Material

1. Employees may challenge the information in their personnel file and have it corrected or removed if it is proved inaccurate. (5-1C-4068, 4-4068, 4-ACRS-7E-12, 4-APPFS-3E-13)
2. Material can only be expunged from an employee's personnel file with the approval of the Organizational Unit Head, the next level of management, and the Director of Human Resources.

V. EMPLOYEE PERSONNEL RECORDS

A. Employee Personnel Records

1. Records to be included in the official file include, but are not limited to: application, reference letters, general notices such as orientation check-list, health insurance enrollment forms, offer letters, EIN letters, original or copies of training certificates, standards of conduct notices, performance appraisals, letters of commendation, and all DOC-3s and other payroll transaction forms such as *Determining Rate of Pay* (DROP) forms.
2. Employees will submit an updated [Employee Personal Data Sheet](#) 102_F25 to their local Human Resources office; making notification of any changes to their name, address, email address, home or cell phone number, or emergency contact information within 30 days of the change.

B. Confidentiality and Disclosure

1. Personnel records are confidential and may be released only to authorized personnel. Employees responsible for the preparation, maintenance, and custody of personnel records must hold the content of such records in strict confidence, except as provided by law and DOC operating procedure. (2-CO-1F-06)
2. Failure to maintain confidentiality or comply with the provisions of this procedure will be subject to disciplinary action under Operating Procedure 135.1, *Employee Standards of Conduct*.
3. With the following exceptions, employees have the right to see and request a copy of all their personnel records.
 - a. An employee cannot see or receive a copy of records whose disclosure is prohibited by law.
 - b. Employees will be denied access to those medical and/or mental health records that the employees' health care providers have requested in writing that the records remain confidential.
4. Employees seeking access to their personnel files should arrange an appointment with their Human Resource Officer. A representative of Human Resources must be present during the review of the personnel files.
5. Employees are entitled to one free copy of their personnel file during the calendar year, including any material added to the file during that year. Employees who request additional copies will be charged for the actual cost to retrieve and duplicate the documents.
6. The individuals/agencies who may have access to employee records without the consent of the subject employee include, but are not limited to the following:
 - a. The employee's supervisor and, with justification, higher level managers in the employee's supervisory chain
 - b. The employee's agency head or designee and agency human resource employees, as necessary.
 - c. Specific private entities which provide services to state agencies through contractual agreements (such as health benefits, life insurance, Worker's Compensation, etc.) in order to provide such services.
 - d. Questionable cases must be referred to the DOC Director of Human Resources or Employee Relations Manager.
7. All requests for personal information about employees by third parties should be directed to the employee's Human Resource Officer, the Human Resource Unit at Headquarters, or the DOC Verifications. It is not necessary for these requests to be in writing.

8. The following personal information is considered public information and may be given to any third party requesting it by telephone or in writing without the subject employee's knowledge or consent:
 - a. Name
 - b. Position
 - c. Job classification (class specification)
 - d. Annual salary
 - e. Allowances
 - f. Date and place of employment
 - g. Employer's work telephone number
 - h. Reimbursements for expenses
9. Other personal information that is not considered public information may be furnished to a third party only if the request is written and accompanied by a signed release from the employee. This information includes, but may not be limited to the following:
 - a. Performance evaluations
 - b. Eligibility for re-employment
 - c. Separation status
 - d. Reason for termination
10. Information on substantiated allegations of sexual abuse or sexual harassment involving a former employee must be furnished to any institutional employer for whom which the employee has applied to work provided the request is written. (§115.17 [h], §115.217 [h])
11. Only that information which is specifically requested will be provided.
12. Requests for personal information not considered public information from third parties other than the employee's supervisors and employees having custody of personnel records should be documented using an [Employee Verification/Information](#) 102_F26 or copy of the third party's employee verification/information request form. These forms should be placed in the employee's personnel file or documented in the employee database.

VI. EMPLOYEE MEDICAL RECORDS

A. Employee Medical Records

1. Organizational Unit Heads and Human Resources Officers are responsible for properly obtaining and securing all employee medical information.
2. Information regarding the medical condition or history of applicants and employees must be collected and maintained in medical files stored separately from all other files and treated as a confidential medical record. (5-1C-4067, 4-4067; 4-ACRS-7E-11; 4-APPFS-3E-12; 2-CO-1C-23; 1-CTA-1C-11)
3. Employee medical records are maintained only in Human Resources Offices and information regarding the medical condition or history of employees may not be kept in any other file unless specifically authorized by the Director of Human Resources or designee.
4. All documents containing information regarding the medical condition or history of applicants and employees must be treated as official medical information and must be confidentially maintained in the Employee Medical Record in the Human Resources Office.
5. The following documents must be placed in the Employee Medical Records (list is not all inclusive):
 - a. Medical Certification
 - i. Employees should forward medical certifications directly to the local unit Human Resources office in a confidential manner to be filed in their medical record.
 - ii. Human Resources should review the documentation and advise supervisors if their employees may be out of work, when they will return to work, or if there are medically necessary work

restrictions.

- iii. Medical information is **NOT** to be filed in the supervisor's (fact) file on the employee nor maintained anywhere other than in the employee's medical file.
- iv. This includes medical information taken from the certification and transcribed elsewhere.

b. Workers Compensation Records

- i. All workers compensation records that include any reference to an employee's illness or injury, diagnosis, prognosis, course of treatment (including medication or therapy) for any worker's compensation claim.
 - ii. To facilitate records retention, a separate Workers' Compensation file will be maintained adjacent to the medical file to hold all related employee Workers Compensation Records.
- c. Results of any medical screening, physical or psychological evaluations, tests including drug test results, or examination of an employee including medical screening and/or physical examination for employment.
- d. Medical verification provided by any health care provider due to a medical condition or medical appointment.
- e. Any documentation of vaccinations such as for Hepatitis B or related documents such as employee declination forms.
- f. Any medical information, including disability, volunteered or disclosed by an employee and any handwritten notes scribed by a supervisor, Human Resources Officer or other employee
- g. Any medical documentation submitted in support of a request for a temporary work adjustment or in support of an ADA request for reasonable accommodation. The organizational unit's Human Resources Office must maintain copies of such requests and the ADA Committee decision in the employee's medical file. The DOC Benefits Manager must maintain the ADA Request and a copy of the ADA decision in a separate locked file at headquarters.
- h. Any Family Medical Leave Act (FMLA) requests and supporting documentation including FMLA response letters and tracking sheets as appropriate
- i. Any correspondence from the third-party administrator related to employees' absences for disability

B. Access to Medical Records

- 1. Employee medical records will be stored in a locked file or locked room and maintained confidentially.
- 2. Access to an employee's medical record must be strictly limited to those persons who have a legitimate reason to know, as follows:
 - a. The subject employee
 - b. The Human Resources Officer
 - c. Employees responsible for processing workers compensation claims
 - d. A member of the ADA Committee or Headquarters Human Resources Office staff if approved by the Director of Human Resources.
- 3. Access Exceptions - Any exception to this operating procedure where access to an Employee Medical Record is requested must have the written approval of the Director of Human Resources or designee.

C. Use and Disclosure - Employee medical information may be used or disclosed with proper authorization as outlined under the following circumstances:

- 1. Lawsuits and Disputes - If an employee is involved in a lawsuit or other legal action, the employee's medical information may be disclosed in response to a Court or administrative order, a subpoena, warrant, discovery request, or other lawful due process.
- 2. Workers Compensation/Americans with Disabilities Act (ADA) - Medical information may be disclosed when it is authorized, and necessary to comply with workers compensation and ADA laws or other similar programs.

3. Military and Veterans - If an employee becomes a member of the U.S. armed forces, medical information may be released about that employee, as deemed necessary by military command authorities.
4. Special Investigations Unit - Special Agents assigned to the Special Investigations Unit, when conducting formal inquiries, may be granted access to employee medical information when authorized by a Court of lawful jurisdiction or binding administrative order, a subpoena, warrant, or other lawful due process. Lawful due process includes a release signed by the employee.
5. To Avert Serious Threat to Health or Safety - Medical information may be disclosed when necessary to prevent a serious threat to the employee's safety, or the health and safety of the public or another person. In this case, employee medical records may be provided by the following:
 - a. DOC medical personnel, including contract medical staff
 - b. The Administrative Duty Officer, shift commander, any HR representative or highest ranking employee present at the Organizational Unit at the time of the emergency.
 - c. Any employee responsible for, or participating in, an emergency response situation with a need to know the medical information, including the Institutional Safety Officer or other employee designated to complete OSHA reports.

D. Employee Medical Record Maintenance

1. The following positions are responsible for the maintenance and security of employee medical records in their respective organizational units. Exceptions to this requirement must be approved by the Director of Human Resources.
 - a. Human Resources Officers in the major facilities and Corrections Enterprises.
 - b. DOC Human Resources Unit for community corrections and employees at Headquarters.
2. Information on Worker's Compensation for institutions and Virginia Correctional Enterprises will be maintained by the Headquarters Risk Management Unit and duplicates may be kept by the facility/unit. Duplicate Worker's Compensation will be handled pursuant to this operating procedure and Operating Procedure 261.3, *Worker's Compensation*.
3. Employee medical records must be kept separately from other records and must be stored in a file that remains locked at all times except when access is deemed necessary. Medical information (including health care provider's notes and FMLA requests) will not be kept in supervisor fact files; there will be no exceptions to the storage of medical files.
4. When an employee transfers within the Department of Corrections, the employee's medical record must be transferred with the personnel file to the receiving unit. When an employee transfers to another State agency, the medical record must remain with the Department of Corrections.
5. Records must be maintained and destroyed in accordance with State guidelines governing recordkeeping and destruction schedules/procedures. Employee medical records must be purged consistent with

VII. REFERENCES

[The Americans with Disabilities Act of 1990](#)

DHRM Policy 6.05, *Personnel Records Disclosure*

DHRM Policy 6.10, *Personnel Records Management*

Section 504 of the Rehabilitation Act of 1973

Operating Procedure 025.3, *Public Records Retention and Disposition*

Operating Procedure 040.1, *Litigation*

Operating Procedure 135.1, *Standards of Conduct*

Operating Procedure 240.1, *Travel*

Operating Procedure 261.3, *Worker's Compensation*

Operating Procedure 323.1, *Vehicle Acquisition, Operations, and Maintenance*

Records Retention and Disposition Schedule, [No. GS-103 Personnel Records](#)

Chief of Corrections Operations Memorandum, *Document Copying and Printing Charges*, July 22, 2014

VIII. FORM CITATIONS

[Authorization for On-going License/Background Checks](#) 102_F8

[Employee Personal Data Sheet](#) 102_F25

[Employee Verification/Information](#) 102_F26

[Employee Expense Reimbursement](#) 240_F6

IX. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years after the effective date.

Signature Copy on File

10/4/18

Joseph W. Walters, Deputy Director for Administration

Date