

**Guide to Disclosures of Clinical Information to Law Enforcement
 OPWDD Counsel's Office
 February, 2012**

New York State Mental Hygiene Law (MHL) and the federal HIPAA Privacy Rule provide strict confidentiality and protection of clinical information/personal health information. This includes *any* information related to the care and treatment of an individual receiving services in the OPWDD system or any information that would tend to identify such person. Both State and federal laws, however, permit certain disclosures to be made without authorization of the protected individual. State and federal laws are similar but where specific provisions conflict, the rule providing the greater confidentiality protection or the greater amount of access to the individual will prevail.

One example of how federal and state confidentiality provisions conflict is disclosure to law enforcement. Here, state law is more restrictive than federal law and therefore the MHL is the rule to be followed. The MHL authorizes certain circumstances where limited disclosures can be made to law enforcement including: to prevent serious and imminent harm, to locate missing persons, in connection with a criminal investigation or to a District Attorney (but not police) in furtherance of investigation of client abuse.

The following chart provides guidance on when and what clinical information/personal health information can be shared with law enforcement personnel. If you have questions or concerns about such disclosures, please contact Counsel's Office at (518) 474-7403.

Circumstance	Can Release	Can't release
to prevent serious and imminent harm	Information <ul style="list-style-type: none"> - to endangered person or - to others, including law enforcement, with the ability to prevent the harm *note there is no obligation to disclosure to prevent serious and imminent harm	

GUIDE TO DISCLOSURES OF CLINICAL INFORMATION TO LAW ENFORCEMENT
OPWDD COUNSEL'S OFFICE
FEBRUARY, 2012

Circumstance	Can Release	Can't release
to locate missing persons	Identifying data <ul style="list-style-type: none"> - name - address - date of birth - place of birth - distinguishing physical characteristics: height, weight, eye color, hair color, presence or absence of facial hair (beard/moustache), scars and tattoos - social security number - blood type (no dental, DNA, body fluids or tissue) - type of injury - date and time of treatment - date and time of death 	<ul style="list-style-type: none"> - specific diagnosis or type of medication instead explain that anyone with information should call the listed contact information immediately to help avoid any medical emergencies; that the person may have limited verbal skills; that the person requires assistance in the community, etcetera - if making a flyer do not include your agency name or logo. Simply include a contact name and phone number. Including the agency name or logo reveals that the person is an individual with a disability.
in connection with a criminal investigation	Identifying data <ul style="list-style-type: none"> - name - address - date of birth - place of birth - distinguishing physical characteristics: height, weight, eye color, hair color, presence or absence of facial hair (beard/moustache), scars and tattoos - social security number - blood type (no dental, DNA, body fluids or tissue) - type of injury - date and time of treatment - date and time of death 	<ul style="list-style-type: none"> - Any clinical records - Any information that would be used against an individual

**GUIDE TO DISCLOSURES OF CLINICAL INFORMATION TO LAW ENFORCEMENT
 OPWDD COUNSEL'S OFFICE
 FEBRUARY, 2012**

Circumstance	Can Release	Can't release
<p>to a District Attorney in furtherance of investigation of client abuse.</p> <p>*NOTE BIG: MHL authorizes this disclosure ONLY to the District Attorney (DA) and, absent another law requiring disclosure, MHL does not permit disclosures to other law enforcement agencies. However, the DA may specifically authorize another law enforcement entity (e.g., local police) to obtain the clinical information for purposes of investigating client abuse on behalf of the DA¹</p>	<ul style="list-style-type: none"> - if the individual is the victim and agrees; - if the individual is the victim and incapacitated and the information will not be used against him/her; or - if the alleged crime occurred on the premise of the provider - can release information if law enforcement is obtaining the information on behalf of the District Attorney 	<ul style="list-style-type: none"> - Any clinical records - Any information that would be used against an individual

¹ DDSO staff should obtain written confirmation from the District Attorney requesting a local law enforcement to obtain the clinical information related to an investigation of client abuse on behalf of the District Attorney. Alternatively, staff may document a phone call with the District Attorney in which he or she authorized the law enforcement officer to obtain the information.