



Research Involving Department of Justice Funding

Purpose

The purpose of this document is to provide guidance on the additional procedures required when human subject research is conducted with support from any program or involves any component of the Department of Justice (DoJ).

Scope and Applicability

This information and guidance applies to all human subject research conducted with support from the DoJ. Research is considered to be conducted with support from or to involve a component of the DoJ when:

- A. it is funded by the DoJ (most often from the National Institute of Justice (NIJ)).
- B. it involves the cooperation, collaboration, or other type of agreement with DOJ, including sites, institutions, personnel.

For example, research conducted within any facilities of the Bureau of Prisons (BOP) must comply with the specific BOP requirements.

- C. it uses or is supported by property, facilities, or assets of a component of DoJ (for example, Bureau of Justice Statistics, National Center for Juvenile Justice).

Background

Human subject research which is supported or funded by NIJ is governed by the DoJ regulations for the protection of human subjects (28 CFR 46, often referred to as "The Common Rule") and the DoJ Confidentiality of Identifiable Research and Statistical Information regulations (28 CFR 22). Together, these regulations:

- Protect the privacy of individuals by limiting the use of private, identifiable information for research or statistical purposes.
- Protect private information provided by individuals from use in any judicial, legal, or administrative process without the individual's prior consent.
- Improve the scientific quality of NIJ research programs by minimizing the subject's concerns over the use of the data.

- Clarify for researchers the limitations on the use of privately identifiable information for only research or statistical purposes.
- Ensure that our understanding and knowledge of the broad criminal justice system will continue to advance by providing individual privacy protections.

The Boston Children's Hospital (BCH) Institutional Review Board (IRB)/Institutional Review Board (IRB) ensures that applicable DOJ requirements are appropriately addressed before it grants IRB approval.

Definitions

Human Subjects Research: DoJ applies the standard Common Rule (45 CFR 46) definition of Human Subjects Research. DoJ regulations provide the following additional information:

Research is also defined as any program, project, or component thereof which is supported by DoJ and whose purpose is to develop, measure, evaluate, or otherwise advance the state of knowledge in a particular area. [28 CFR 22.2(c)]

Identifiable private information: Defined by DoJ as information not extracted from public records which:

Is labeled by name or other personal identifiers, or

Can, by virtue of sample size or other factors, be reasonably interpreted as referring to a particular private person.

National Institute of Justice: The DoJ program that funds most DoJ Human Subjects Research.

Office of Justice Programs: An umbrella organizational structure within the DoJ, under which most DoJ research programs reside.

Privacy Certificate: a requirement for all Human Subjects Research supported by the NIJ and assures that the grant applicant understands his/her responsibilities to protect the confidentiality of research and statistical information and has developed specific procedures to ensure that this information is only used or revealed in accordance with the requirements of 42 USC §3789g and 28 CFR Part 22.

Under a Privacy Certificate, the regulations that govern DOJ funded research do not allow the researcher and/or research staff to make voluntary disclosures of matters such as current or past abuse or risk of harm to oneself or others. However, Massachusetts child and elder abuse reporting laws require the researcher to make these disclosures. In order to comply with both the regulations that govern DOJ funded research and the state reporting requirements, the researcher must provide a second informed consent (addendum) to allow such reporting, should a subject self-disclose or give staff strong reasons to believe the subject may be in a dangerous situation. Please see <http://www.nij.gov/nij/funding/humansubjects/sample-form-consent-for-reporting.doc.doc> for guidance.

Requirements for Investigators conducting DOJ Research:

Investigator Requirements for research funded by NIJ:

1. **Sign an Employee Confidentiality Statement.** All researchers and research staff are required to sign employee confidentiality statements as a condition of grant or proposal approval by the NIJ. Certificates are maintained by the responsible Research Investigator. A model employee confidentiality statement can be found on the NIJ website at <http://www.nij.gov/funding/humansubjects/pages/employee-confidentiality.aspx>
2. **Obtain a Privacy Certificate and submit it to the IRB with application.** Once obtained, the IRB will review the Privacy Certificate to ensure the confidentiality protections described in the Privacy Certificate are consistent with the confidentiality protections described in the IRB application and Informed Consent form. Investigators should refer to the NIJ Privacy Certificate Guidance and Model Privacy Certificate at <http://www.nij.gov/nij/funding/humansubjects/privacy-certificate-guidance.htm> for information that must be included, sample format, and instructions to avoid common problems. Note: The NIJ only accepts the Privacy Certificate. It does not issue or accept Certificate of Confidentiality issued by the National Institutes of Health (NIH). Please see separate IRB policy on Certificates of Confidentiality.
3. **Keep Privacy Certificate Current and make necessary modifications.** If data collection methodology and/or information provided in the Privacy Certificate changes as a result of IRB requirements, a revised Privacy Certificate must be provided to the NIJ and IRB prior to the commencement of research.
4. **Include the following in the informed consent form:** (go to <http://www.nij.gov/nij/funding/humansubjects/informed-consent.htm> for guidance)
 - a. a statement describing the extent to which confidentiality of records identifying the subject will be maintained (the subject should be informed that private, identifiable information will be kept confidential and will only be used for research and statistical purposes. However, the subject should be made aware that a disclosure of future criminal intent is not covered or protected by DOJ regulations.
 - b. Under a Privacy Certificate, researchers and research staff are not permitted to report current or past abuse or whether a subject is at risk for harming himself/herself or others. Since this is in conflict with requirements of Massachusetts law (and most other state laws), the investigator must provide a second informed consent (addendum) to allow for such reporting, should there be a self-disclosure or if the research staff has reasons to believe the subject may be in a dangerous situation. Please see <http://www.nij.gov/nij/funding/humansubjects/sample-form-consent-for-reporting.doc.doc> for guidance. If the research will be conducted outside of Massachusetts, the Office of General Counsel can advise on state law requirements in the state where the research will be conducted.

- c. If, due to sample size or some unique feature, the identity of the individual cannot be maintained, the subjects need to be explicitly notified. If the investigator intends to disclose any information, the subject needs to be explicitly informed what information would be disclosed, under what circumstances, and to whom. The subject must be informed of any potential risks which may result from this disclosure.
 - d. Subjects must be informed that study is funded by NIH.
 - e. 28 CFR 46.117 allows for waiver of documentation of informed consent where criteria met
5. **The Principal Investigator must submit IRB approval letter and informed consent to NIH or applicable funding agency.**
6. **Archiving:**
- a. Follow guidelines to submit data resulting from their projects to NIH for archiving with the National Archive of Criminal Justice Data (NACJD), including copies of the informed consent document, data collection instruments, surveys, or other relevant research materials. Except for computerized data/records maintained at an official DOJ site, records that contain non-disclosable information directly traceable to a particular person may not be stored in or introduced into an electronic retrieval system (such as the EMR).

Regulatory Citations

28 CFR 46 <http://www.gpo.gov/fdsys/pkg/CFR-2004-title28-vol2/pdf/CFR-2004-title28-vol2-part46.pdf>

28 CFR 512 <http://www.gpo.gov/fdsys/pkg/CFR-2004-title28-vol2/pdf/CFR-2004-title28-vol2-part512.pdf>

42 USC 3789g <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap46-subchapVIII-sec3789g.pdf>

Related Content

Document Attributes

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Approved	Susan Kornetsky, MPH Director of Clinical Research Compliance <hr/> August Cervini, MBA Vice President for Research Administration		