

1 Introduced by Committee on Corrections and Institutions

2 Date:

3 Subject: Public records; corrections; offender and inmate files

4 Statement of purpose of bill as introduced: This bill proposes to:

5 (1) extend existing law designating inmate files as confidential in order  
6 to extend confidentiality to apply to offender files;

7 (2) require that exceptions to the confidentiality of offender and inmate  
8 files maintained by the Commissioner of Corrections be created through a rule  
9 adopted pursuant to the Administrative Procedure Act;

10 (3) establish principles to guide the exercise of rulemaking authority by  
11 the Commissioner of Corrections in creating exceptions to the confidentiality  
12 of offender and inmate files.

13 An act relating to the confidentiality of offender and inmate files

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 28 V.S.A. § 601 is amended to read:

16 § 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING

17 OFFICER OF EACH CORRECTIONAL FACILITY

18 The supervising officer of each facility shall be responsible for the efficient  
19 and humane maintenance and operation and for the security of the facility,  
20 subject to the supervisory authority conferred by law upon the Commissioner.

1 Each supervising officer is charged with the following powers and  
2 responsibilities:

3 \* \* \*

4 (10) To establish and maintain, in accordance with such rules and  
5 regulations as are established by the Commissioner, ~~a central file at the facility~~  
6 ~~containing an individual file~~ records for each inmate. ~~Except as otherwise may~~  
7 ~~be indicated by the rules and regulations of the Department, the content of the~~  
8 ~~file of an inmate shall be confidential and shall not be subject to public~~  
9 ~~inspection except by court order for good cause shown and shall not be~~  
10 ~~accessible to inmates at the facility. Except as otherwise provided by law, the~~  
11 ~~contents of an inmate's file may be inspected, pursuant to a court order issued~~  
12 ~~ex parte, by a state or federal prosecutor as part of a criminal investigation if~~  
13 ~~the court finds that the records may be relevant to the investigation. The~~  
14 ~~information in the files may be used for any lawful purpose but shall not~~  
15 ~~otherwise be made public.~~

16 Sec. 2. 28 V.S.A. § 107 is added to read:

17 § 107. CONFIDENTIALITY OF OFFENDER AND INMATE RECORDS;

18 EXCEPTIONS

19 Records of offenders and inmates maintained by the Department relating to  
20 the Department's custody or supervision of the offender or inmate are exempt

1 from public inspection and copying and shall be kept confidential, except that  
2 the Department:

3 (1) Shall release or permit inspection of such records by court order for  
4 good cause shown.

5 (2) Shall release or permit inspection of such records to a State or  
6 federal prosecutor as part of a criminal investigation pursuant to a court order  
7 issued ex parte if the court finds that the records may be relevant to the  
8 investigation. The information in the records may be used for any lawful  
9 purpose but shall not otherwise be made public.

10 (3) Shall release or permit inspection of specified records to specific  
11 persons or to any person in accordance with rules that the Commissioner shall  
12 adopt pursuant to 3 V.S.A. chapter 25. In adopting the rules, the  
13 Commissioner shall [may only?] authorize disclosure of a record if the benefit  
14 to the subject of the record or the public interest served by disclosure of the  
15 record outweighs the privacy or other public interest in keeping the record  
16 confidential.

17 Sec. 3. EFFECTIVE DATE; TRANSITION PROVISION

18 (a) This act shall take effect on passage.

19 (b) Except as provided in subsection (c) of this section, the Commissioner  
20 may only release or permit inspection of offender or inmate records in reliance  
21 upon an exception to the confidentiality of offender and inmate files if the

1 exception is created by law, including an exception created by rule adopted in  
2 accordance with the Administrative Procedure Act under the authority granted  
3 in Sec. 2 of this act, 28 V.S.A. § 107(3).

4 (c) The Department of Corrections may rely upon exceptions to the  
5 confidentiality of offender and inmate files under directives adopted by the  
6 Department prior to the effective date of this act until the Commissioner of  
7 Corrections adopts rules pursuant to the authority granted in Sec. 2 of this act,  
8 28 V.S.A. § 107(3). The Commissioner shall initiate rulemaking in order that  
9 such rules take effect on or before February 15, 2017.