

1 Introduced by Committee on Corrections and Institutions

2 Date:

3 Subject: Offender and inmate records; confidentiality; exceptions

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 records of offenders;

7 (2) require the Commissioner of Corrections to adopt rules pursuant to  
8 the Administrative Procedure Act in order to define what are offender and  
9 inmate records and to create exceptions to the confidentiality of offender and  
10 inmate records;

11 (3) establish a standard under which the Commissioner of Corrections  
12 must create exceptions to the confidentiality of offender and inmate records;

13 (4) clarify the process for an offender or inmate to request correction of  
14 a material fact relating to him or her in a record maintained by the Department  
15 of Corrections.

16 An act relating to offender and inmate records

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

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

3 § 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING  
4 OFFICER OF EACH CORRECTIONAL FACILITY

5 The supervising officer of each facility shall be responsible for the efficient  
6 and humane maintenance and operation and for the security of the facility,  
7 subject to the supervisory authority conferred by law upon the Commissioner.  
8 Each supervising officer is charged with the following powers and  
9 responsibilities:

10 \* \* \*

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

1 ~~information in the files may be used for any lawful purpose but shall not~~  
2 ~~otherwise be made public.~~

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

4 § 107. OFFENDER AND INMATE RECORDS; CONFIDENTIALITY;

5 EXCEPTIONS; CORRECTIONS

6 (a) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25  
7 defining what are “offender and inmate records,” as that phrase is used in this  
8 section.

9 (b) Offender and inmate records maintained by the Department are exempt  
10 from public inspection and copying under the Public Records Act and shall be  
11 kept confidential, except that the Department:

12 (1) Shall release or permit inspection of such records if required under  
13 federal or State law, including 42 U.S.C. §§ 10805 and 10806 (Protection and  
14 Advocacy Systems).

15 (2) Shall release or permit inspection of such records pursuant to a court  
16 order for good cause shown or, in the case of an offender or inmate seeking  
17 records relating to him or her in litigation, in accordance with discovery rules.

18 (3) Shall release or permit inspection of such records to a State or  
19 federal prosecutor as part of a criminal investigation pursuant to a court order  
20 issued ex parte if the court finds that the records may be relevant to the

1 investigation. The information in the records may be used for any lawful  
2 purpose but shall not otherwise be made public.

3 (4) Shall release or permit inspection of designated offender and inmate  
4 records to specific persons, or to any person, in accordance with rules that the  
5 Commissioner shall adopt pursuant to 3 V.S.A. chapter 25. The Commissioner  
6 shall authorize release or inspection of offender and inmate records under these  
7 rules:

8 (A) When the public interest served by disclosure of a record  
9 outweighs the privacy, security, or other interest in keeping the record  
10 confidential.

11 (B) To provide an offender or inmate access to records relating to  
12 him or her if access is not otherwise guaranteed under this subsection, unless  
13 providing such access would reveal information that is confidential or exempt  
14 from disclosure under a law other than this section, would unreasonably  
15 interfere with the Department's ability to perform its functions, or would  
16 unreasonably jeopardize the health, safety, security, or rehabilitation of the  
17 offender or inmate or of another person. The rules may specify circumstances  
18 under which the Department may limit the number of requests that will be  
19 fulfilled per year, as long as the Department fulfills at least two requests per  
20 year excluding any release of records ordered by a court. The rules also may  
21 specify circumstances when the offender's or inmate's right of access will be

1 limited to an inspection overseen by an agent or employee of the Department.  
2 The rules shall reflect the Department's obligation not to withhold a record in  
3 its entirety on the basis that it contains some confidential or exempt content, to  
4 redact such content, and to make the redacted record available.

5 (c) Notwithstanding the provisions of 1 V.S.A. chapter 5, subchapter 3  
6 (Public Records Act) that govern the time periods for a public agency to  
7 respond to a request for a public record and rights of appeal, the Commissioner  
8 shall adopt a rule governing response and appeal periods and appeal rights in  
9 connection with a request by an offender or inmate to access records relating to  
10 him or her maintained by the Department. The rules shall provide for a final  
11 exhaustion of administrative appeals no later than 45 days from the  
12 Department's receipt of the initial request.

13 (d) An offender or inmate may request that the Department correct a fact in  
14 a record maintained by the Department that is material to his or her rights or  
15 status, except for a determination of fact that resulted from a hearing or other  
16 proceeding that afforded the offender or inmate notice and opportunity to be  
17 heard on the determination. The rule required under subsection (c) of this  
18 section shall reference that requests for such corrections are handled in  
19 accordance with the Department's grievance process. If the Department issues  
20 a final decision denying a request under this subsection, the offender or inmate  
21 may appeal the decision to the Civil Division of the Superior Court pursuant to

1 Rule 74 of the Vermont Rules of Civil Procedure. The Court shall not set  
2 aside the Department’s decision unless it is clearly erroneous.

3 Sec. 3. EFFECTIVE DATE; TRANSITION PROVISION

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

5 (b) Except as provided in subsection (c) of this section, the Commissioner  
6 of Corrections may only release or permit inspection of offender or inmate  
7 records in reliance upon an exception to the confidentiality of offender and  
8 inmate records if the exception is created by law, including an exception  
9 created by rule adopted in accordance with the Administrative Procedure Act  
10 under the mandate in Sec. 2, 28 V.S.A. § 107(b)(4).

11 (c) The Department of Corrections may rely upon exceptions to the  
12 confidentiality of offender and inmate files under directives adopted by the  
13 Department prior to the effective date of this act until the Commissioner adopts  
14 rules pursuant to the rulemaking mandates of Sec. 2, 28 V.S.A. § 107(a) and  
15 (b)(4). On or before September 1, 2016, the Commissioner shall prefile rules  
16 with the Interagency Committee on Administrative Rules in accordance with  
17 these mandates. The Commissioner shall update the Joint Legislative Justice  
18 Oversight Committee on the status of its efforts to adopt the rules at the  
19 Oversight Committee’s first meeting on or after September 1, 2016.