

* * * Presentence and Pre-parole Reports; Supervision History * * *

Sec. A. 28 V.S.A. § 204 is amended to read:

§ 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF RECORDS

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(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the Department in the discharge of the employee’s official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is ~~privileged~~ confidential and shall not be disclosed to anyone outside the Department other than the judge or the Parole Board, except that the court or Board may in its discretion permit the inspection of the report or parts thereof by the State’s Attorney, the defendant or inmate, or his or her attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful. Nothing in this section shall prohibit the Department for Children and Families from accessing the supervision history of probationers or parolees for the purpose of child protection.

* * *

(f) Except as otherwise provided by law, reports and records subject to this section may be inspected, pursuant to a court order issued ex parte, by a State or federal prosecutor as part of a criminal investigation if the court finds that the records may be relevant to the investigation. The information in the files may be used for any lawful investigative purpose but shall not otherwise be made public.

* * * Inmate Files * * *

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

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

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

* * *

1 (10) To establish and maintain, in accordance with ~~such rules and regulations as are~~
 2 ~~established by that~~ the Commissioner shall adopt pursuant to 3 V.S.A. chapter 25, a central file at
 3 the facility containing an individual file for each inmate. ~~Except as otherwise may be indicated~~
 4 ~~by the rules and regulations of the Department, the~~ The content of the file of an inmate shall be
 5 confidential ~~and~~, shall not be subject to public inspection or copying except by court order for
 6 good cause shown, and shall not be accessible to inmates at the facility: including the inmate to
 7 whom the file pertains, except that file contents may be inspected or released:

8 (A) By court order for good cause shown.

9 (B) Except as otherwise provided by law, the contents of an inmate's file may be
 10 inspected, pursuant to a court order issued ex parte, by a state or federal prosecutor pursuant to a
 11 court order issued ex parte as part of a criminal investigation if the court finds that the records
 12 may be relevant to the investigation. The information in the files may be used for any lawful
 13 investigative purpose but shall not otherwise be made public.

14 (C) In accordance with rules that the Commissioner shall adopt pursuant to 3 V.S.A.
 15 chapter 25. [Insert policy principle governing the Commissioner's exercise of RM authority?].

17 Sec. C. EFFECTIVE DATE; TRANSITION

18 (a) Sec. B shall take effect on July 1, 2015.

19 (b) On or before January 1, 2016, the Commissioner of Corrections shall prefile with the
 20 Interagency Committee on Administrative Rules proposed rules governing the establishment and
 21 maintenance of inmate files and exceptions to the confidentiality of inmate files. The policies
 22 and directives of the Department of Corrections that govern the establishment, maintenance, and
 23 confidentiality of inmate files shall continue to apply until the rules take effect. [Add a sentence
 24 about interim reporting to the Corrections Oversight Committee?]

26 ADDITIONAL MATERIAL

27 **I. 28 V.S.A. § 102**

28
 29 § 102. COMMISSIONER OF CORRECTIONS; APPOINTMENT; POWERS;
 30 RESPONSIBILITIES
 31

1 (a) The Department is under the direction of the Commissioner, who shall be appointed by the
2 Secretary of Human Services with the approval of the Governor and shall serve at the pleasure of
3 the Secretary. The Commissioner's salary shall be fixed by the Governor within the appropriation
4 therefor.

5
6 (b) The Commissioner is charged with the following powers:

7 (1) To supervise the administration of the Department.

8 (2) To exercise supervisory power over and to establish and administer programs and
9 policies for the operation of the correctional facilities of the Department, and for the correctional
10 treatment of persons committed to the custody of the Commissioner.

11 (3) To appoint and remove a Deputy Commissioner as provided in 3 V.S.A. § 3053 and
12 delegate appropriate powers and duties to the Deputy.

13 (4) To appoint and remove subordinate officers of the Department in accordance with
14 law, and, notwithstanding the provisions of any other statute or law, to delegate any authority
15 conferred on him or her by statute to any designee named by him or her in writing.

16 (5) To order the assignment and transfer of persons committed to the custody of the
17 Commissioner to correctional facilities, including out-of-state facilities.

18 (6) To establish, consolidate, or abolish divisions within the Department, and to
19 establish, consolidate or abolish bureaus, special units, and other subdivisions in any division.

20 (7) To accept and receive, on behalf of the Department or any facility thereof, any
21 bequest or gift of personal or real property made to the Department or any facility thereof, and to
22 hold and use the property for the purposes specified in such bequest, devise, or gift.

23 (8) To cooperate with and accept funds from the federal government or any agency
24 thereof for the purpose of exercising the powers and responsibilities stated in this section.

25 (9) To conduct any necessary inquiry or investigation into matters related to
26 correctional programs and responsibilities of the Department.

27 (10) To utilize the resources of the Department to apprehend any person escaping from
28 a correctional facility. In performing such function, the Commissioner and any authorized
29 employee of the Department shall have all the power and authority of a law enforcement officer.

30 (11) To contract for services or purchase, lease, or rent personal property to carry out
31 the functions of the Department, and to lease or rent month to month residential housing for
32 community-based probation and parole programs. All other real property required by corrections
33 programs shall be purchased, leased, or rented by the Commissioner of Buildings and General
34 Services.

35 (12) To enter into contracts with private collection agencies for the collection of
36 supervisory fees imposed by this title and fines, penalties, and restitution imposed under Title 13.
37 The Commissioner may agree to pay collection agencies a fixed rate for services rendered or a
38 percentage of the amount collected which shall be added to any amounts and may be recovered
39 as an administrative cost of collection. Any such fixed rate or percentage may be deducted
40 directly by the collection agency on a pro rata basis from any portion of the money so collected.

41 (13) To establish community reparative boards pursuant to chapter 12 of this title.

42 (14) To delegate to locally established boards or justice centers, the authority to assist,
43 through use of community resources, in developing and implementing restorative justice
44 programs for offenders, victims of crime and members of the community.

1 (15) To rely upon the expertise of Department employees to provide core and
2 substantive supervision of offenders and risk assessment determinations for the delivery of
3 correctional services in both residential and nonresidential settings.

4 (16) With the approval of the Secretary of Human Services, to accept federal grants
5 made available through federal crime bill legislation, provided that the Commissioner shall
6 report the receipt of a grant under this subdivision to the Chairs of the House Committee on
7 Corrections and Institutions and the Senate Committee on Institutions.

8
9 (c) The Commissioner is charged with the following responsibilities:

10 (1) To make rules and regulations for the governing and treatment of persons committed to
11 the custody of the Commissioner, the administration of correctional facilities and the regulation
12 of employees under the jurisdiction of the Commissioner.

13 (2) To establish and operate correctional diagnostic centers.

14 (3) To establish and maintain at each correctional facility a program of treatment designed
15 as far as practicable to prepare and assist each inmate to assume his or her responsibilities and to
16 participate as a citizen of the State and community.

17 (4) To establish facilities and develop programs to provide inmates at correctional facilities
18 with such educational and vocational training deemed to be appropriate to the treatment of the
19 inmates.

20 (5) To prescribe rules and regulations for the maintenance of discipline and control at each
21 correctional facility.

22 (6) To maintain security, safety, and order at the correctional facilities and act to subdue
23 any disorder, riot, or insurrection which may occur at any facility. The Commissioner, for such
24 purpose, may enlist the assistance of any citizen of the State, and shall have the obligation to
25 render reasonable compensation to any person providing such assistance.

26 (7) To establish, maintain, and administer such regional or other community correctional
27 facilities as are necessary for the confinement and treatment of inmates either before or after the
28 conviction of any offense, and to use the jails and lockups as provided in this title. Such facilities
29 shall be used for the confinement of persons awaiting court disposition and the confinement of
30 inmates serving short terms and such other inmates as may be assigned to such facilities for
31 furloughs, work release, and other prerelease treatment.

32 (8) To establish in any appropriate correctional facility a system of classification of
33 inmates, to establish a program for each inmate upon his or her commitment to the facility and to
34 review the program of each inmate at regular intervals and to effect necessary and desirable
35 changes in the inmate's program of treatment.

36 (9) To develop and maintain research programs and collect statistical information
37 concerning persons committed to the custody of the Commissioner, sentencing practices, and
38 correctional treatment.

39 (10) To inspect at regular intervals all correctional facilities.

40 (11) To close any correctional facility which he or she deems inadequate.

41 (12) To establish training programs for new employees, and to establish such in-service
42 training programs as he or she deems advisable.

43 (13) Repealed.]

44 (14) To collect a fee up to the amount of \$30.00 per month as a supervisory fee from each
45 person under the supervision of the Department who is on probation, furlough, pre-approved
46 furlough, supervised community sentence or parole. Supervisory fees collected by the

1 Department shall be credited to a special supervision and victim restitution fund, established and
 2 managed pursuant to 32 V.S.A. chapter 7, subchapter 5, for this purpose. The Commissioner
 3 shall adopt rules governing the collection of supervisory fees, including the maximum period of
 4 time offenders are subject to supervision fees and the offender's ability to pay such fees.

5 (15) To lease farms or lands, with the approval of the Department of Buildings and
 6 General Services in accordance with 29 V.S.A. § 160, and to administer and manage such farms.

7 (16) To exercise all powers and perform all duties established in the Office of
 8 Commissioner by the Agency of Human Services and stated in 3 V.S.A. §§ 3052 and 3053.

9 (17) To exercise all powers and perform all duties necessary and proper in carrying out his
 10 or her responsibilities and in fulfilling the purposes and objectives of this title.

11 (18) To establish within the Department programs for inmates to participate in work,
 12 industry, community service, public works activities, and employment at correctional facilities.

13 (19) If a treaty in effect between the United States and a foreign country provides for the
 14 transfer or exchange of a convicted and sentenced offender to the country of which the offender
 15 is a citizen or national, the Commissioner may, with the written consent of such offender
 16 obtained only after the opportunity to consult with counsel, and in accordance with the terms of
 17 the treaty, consent to the transfer or exchange of any such offender and take any other action
 18 necessary to initiate the participation of the State in the treaty.

19 (20) To utilize the Department of Buildings and General Services' competitive bidding
 20 practices in order to determine the most effective and cost-effective alternatives for housing
 21 inmates in any out-of-state correctional facility.

22 (21) The Commissioner is authorized to contract for payment processing services for
 23 receiving deposits to inmate financial accounts. The Department, directly or through a processing
 24 agent, may assess a fee for deposits to each account so long as the fee does not exceed the costs
 25 incurred.

26 (22) To notify local and State law enforcement officers of the following information
 27 regarding a person released from incarceration on probation, parole, or furlough and residing in
 28 the community: name; address; conditions imposed by the court, parole board, or Commissioner;
 29 and the reason for placing the person in that community.

30 **II. 2 V.S.A. § 205.**

31 **§ 205. STANDING COMMITTEES; ADMINISTRATIVE RULEMAKING** 32 **DELEGATION**

33 (a) Whenever a standing committee introduces or amends proposed legislation which
 34 delegates rulemaking authority to a state agency, the committee shall express in the legislation
 35 and, to the greatest extent possible, the intent of the legislation and the scope of the rulemaking
 36 authority being delegated. For all such proposed legislation, the committee shall make a
 37 determination, and express such determination in the legislation, as to whether such rulemaking
 38 delegation contemplates the adoption of routine technical rules or major substantive rules.
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43 (b) For the purposes of this section:

44 (1) "Major substantive rules" means rules that require the exercise of significant agency
 45 discretion or interpretation in drafting, or, because of their subject matter or anticipated impact,
 46 are reasonably expected to result in a significant increase in the cost of doing business, a

1 significant reduction in property values, the loss or significant reduction of government benefits
2 or services, the imposition of state mandates on units of local governments, or other serious
3 burdens on the public or units of local government.

4 (2) "Routine technical rules" means procedural rules that establish standards of practice or
5 procedure for the conduct of business with or before an agency, and any other rules that are not
6 major substantive rules. Routine technical rules include forms prescribed by an agency, but do
7 not include fees established by an agency, except fees established or amended by agency rule
8 that are below a cap or within a range established by statute.