

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Corrections and Institutions to which was referred
3 Senate Bill No. 116 entitled “An act relating to rights of offenders in the
4 custody of the Department of Corrections” respectfully reports that it has
5 considered the same and recommends that the House propose to the Senate that
6 the bill be amended by striking out all after the enacting clause and inserting in
7 lieu thereof the following:

8 Sec. 1. 28 V.S.A. § 456 is added to read:

9 § 456. PAROLE BOARD INDEPENDENCE

10 (a) The Parole Board shall be an independent and impartial body.

11 (b) In a pending parole revocation hearing, the Parole Board shall not be
12 counseled by:

13 (1) assistant attorneys general; and

14 (2) any attorney employed by the Department of Corrections.

15 (c) If any attorney employed by the Department of Corrections or an
16 assistant attorney general or the direct supervisor of an assistant attorney
17 general who represents the Department of Corrections in parole revocation
18 hearings provides training to the Parole Board members on the subject of
19 parole revocation hearings, the Defender General shall be notified prior to the
20 training and given the opportunity to participate.

1 Sec. 2. 28 V.S.A. § 857 is added to read:

2 § 857. ADMINISTRATIVE SEGREGATION; PROCEDURAL
3 REQUIREMENTS

4 (a) Except in emergency circumstances as described in subsection (b) of
5 this section, before an inmate is placed in administrative segregation,
6 regardless of whether that inmate has been designated as having a serious
7 functional impairment under section 906 of this title, the inmate is entitled to a
8 hearing pursuant to subsection 852(b) of this title.

9 (b) In the event of an emergency situation and at the discretion of the
10 Commissioner, an inmate may be placed in administrative segregation prior to
11 receiving a hearing as described in subsection 852(b) of this title.

12 Sec. 3. 28 V.S.A. § 204 is amended to read:

13 § 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF
14 RECORDS

15 (a) A court, before which a person is being prosecuted for any crime, may
16 in its discretion order the Commissioner to submit a written report as to the
17 circumstances of the alleged offense and the character and previous criminal
18 history record of the person, with recommendation. If the presentence
19 investigation report is being prepared in connection with a person's conviction
20 for a sex offense that requires registration pursuant to 13 V.S.A. chapter 167,
21 subchapter 3, the Commissioner shall obtain information pertaining to the

1 person's juvenile record, if any, in accordance with 33 V.S.A. §§ 5117 and
2 5119(f)(6), and any deferred sentences received for a registrable sex offense in
3 accordance with 13 V.S.A. § 7041(h), and include such information in the
4 presentence investigation report.

5 * * *

6 (d)(1) ~~Any~~ Except as provided in subdivision (2) of this subsection, any
7 presentence investigation report, ~~pre-parole report, or supervision history or~~
8 parole summary prepared by any employee of the Department in the discharge
9 of the employee's official duty, except as provided in subdivision 204a(b)(5)
10 and section 205 of this title, is confidential and shall not be disclosed to anyone
11 outside the Department other than the judge or the Parole Board, ~~except that:~~

12 (2)(A) ~~the~~ The court or Board ~~may in its discretion~~ shall permit ~~the~~
13 inspection of the presentence investigation report, ~~or parts thereof~~ or parole
14 summary, redacted of information that may compromise the safety or
15 confidentiality of any person, by the State's Attorney; and by the defendant or
16 inmate, or his or her attorney, ~~or;~~ and

17 (B) the court or Board may, in its discretion, permit the inspection of
18 the presentence investigation report or parole summary or parts thereof by
19 other persons having a proper interest therein, whenever the best interest or
20 welfare of the defendant or inmate makes that action desirable or helpful.
21 ~~Nothing in this section shall prohibit the Department for Children and Families~~

1 ~~from accessing the supervision history of probationers or parolees for the~~
2 ~~purpose of child protection.~~

3 (e) The presentence investigation report ordered by the court under this
4 section or section 204a of this title shall include the comments or written
5 statement of the victim, or the victim's guardian or next of kin if the victim is
6 incompetent or deceased, whenever the victim or the victim's guardian or next
7 of kin choose to submit comments or a written statement.

8 * * *

9 Sec. 4. 28 V.S.A. § 601 is amended to read:

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

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

17 * * *

18 (10) To establish and maintain, in accordance with such rules and
19 regulations as are established by the Commissioner, ~~a central file at the facility~~
20 ~~containing an individual file~~ records for each inmate. ~~Except as otherwise may~~
21 ~~be indicated by the rules and regulations of the Department, the content of the~~

1 ~~file of an inmate shall be confidential and shall not be subject to public~~
2 ~~inspection except by court order for good cause shown and shall not be~~
3 ~~accessible to inmates at the facility. Except as otherwise provided by law, the~~
4 ~~contents of an inmate's file may be inspected, pursuant to a court order issued~~
5 ~~ex parte, by a state or federal prosecutor as part of a criminal investigation if~~
6 ~~the court finds that the records may be relevant to the investigation. The~~
7 ~~information in the files may be used for any lawful purpose but shall not~~
8 ~~otherwise be made public.~~

9 Sec. 5. 28 V.S.A. § 107 is added to read:

10 § 107. OFFENDER AND INMATE RECORDS; CONFIDENTIALITY;
11 EXCEPTIONS; CORRECTIONS

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

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

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

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

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

9 (4) Shall release or permit inspection of such records to the Department
10 for Children and Families for the purpose of child protection, unless otherwise
11 prohibited by law.

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

17 (A) When the public interest served by disclosure of a record
18 outweighs the privacy, security, or other interest in keeping the record
19 confidential.

20 (B) To provide an offender or inmate access to records relating to
21 him or her if access is not otherwise guaranteed under this subsection, unless

1 providing such access would reveal information that is confidential or exempt
2 from disclosure under a law other than this section, would unreasonably
3 interfere with the Department’s ability to perform its functions, or would
4 unreasonably jeopardize the health, safety, security, or rehabilitation of the
5 offender or inmate or of another person. The rules may specify circumstances
6 under which the Department may limit the number of requests that will be
7 fulfilled per calendar year, as long as the Department fulfills at least one
8 request per calendar year excluding any release of records ordered by a court,
9 and at least one additional request in the same calendar year limited to records
10 not in existence at the time of the original request or not within the scope of the
11 original request. The rules also may specify circumstances when the
12 offender’s or inmate’s right of access will be limited to an inspection overseen
13 by an agent or employee of the Department. The rules shall reflect the
14 Department’s obligation not to withhold a record in its entirety on the basis
15 that it contains some confidential or exempt content, to redact such content,
16 and to make the redacted record available.

17 (c) Notwithstanding the provisions of 1 V.S.A. chapter 5, subchapter 3
18 (Public Records Act) that govern the time periods for a public agency to
19 respond to a request for a public record and rights of appeal, the Commissioner
20 shall adopt a rule pursuant to 3 V.S.A. chapter 25 governing response and
21 appeal periods and appeal rights in connection with a request by an offender or

1 inmate to access records relating to him or her maintained by the Department.

2 The rule shall provide for a final exhaustion of administrative appeals no later
3 than 45 days from the Department's receipt of the initial request.

4 (d) An offender or inmate may request that the Department correct a fact in
5 a record maintained by the Department that is material to his or her rights or
6 status, except for a determination of fact that resulted from a hearing or other
7 proceeding that afforded the offender or inmate notice and opportunity to be
8 heard on the determination. The rule required under subsection (c) of this
9 section shall reference that requests for such corrections are handled in
10 accordance with the Department's grievance process. If the Department issues
11 a final decision denying a request under this subsection, the offender or inmate
12 may appeal the decision to the Civil Division of the Superior Court pursuant to
13 Rule 74 of the Vermont Rules of Civil Procedure. The Court shall not set
14 aside the Department's decision unless it is clearly erroneous.

15 Sec. 6. 13 V.S.A. § 5233 is amended to read:

16 § 5233. EXTENT OF SERVICES

17 (a) A needy person who is entitled to be represented by an attorney under
18 section 5231 of this title is entitled:

19 * * *

1 (3) To be represented in any other postconviction proceeding which may
2 have more than a minimal effect on the length or conditions of detention where
3 the attorney considers;

4 (A) the claims, defenses, and other legal contentions to be warranted
5 by existing law or by a nonfrivolous argument for the extension, modification,
6 or reversal of existing law or the establishment of new law; and

7 (B) the allegations and other factual contentions to have evidentiary
8 support, or likely to have evidentiary support after a reasonable opportunity for
9 further investigation and discovery.

10 * * *

11 Sec. 7. EFFECTIVE DATE; TRANSITION PROVISION

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

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

19 (c) The Department of Corrections may rely upon exceptions to the
20 confidentiality of offender and inmate files under directives adopted by the
21 Department prior to the effective date of this act until the Commissioner adopts

1 rules pursuant to the rulemaking mandates of Sec. 5, 28 V.S.A. § 107(a) and
2 (b)(4). On or before September 1, 2016, the Commissioner shall prefile rules
3 with the Interagency Committee on Administrative Rules in accordance with
4 these mandates. The Commissioner shall update the Joint Legislative Justice
5 Oversight Committee on the status of its efforts to adopt the rules at the
6 Oversight Committee’s first meeting on or after September 1, 2016.

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11 (Committee vote: _____)

12 _____

13 Representative _____

14 FOR THE COMMITTEE