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To: House Committee on Institutions and Corrections

From: A.J. Ruben, Supervising Attorney

Date: February 3, 2016

Re: **DRVT Comments on (dr req 16-606 – draft 2.1) Public records; corrections; offender and inmate files.**

Thank you for the invitation to comment on the proposed changes to access to prisoner and offender correctional files. Disability Rights Vermont (formerly Vermont Protection & Advocacy, Inc.) is an independent, private, non-profit agency mandated by federal law to protect and advance the rights of individuals with disabilities. See Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801 et seq; 42 C.F.R. Part 51 et seq; Protection and Advocacy of Individual Rights, 29 U.S.C. § 794(e) et seq, 34 C.F.R. Part 381 et seq. Additionally, DRVT is the State's Mental Health Care Ombudsman pursuant to 18 V.S.A. §7529. As a large number of Vermont prisoners are people with disabilities, DRVT is pleased to be asked to comment on the current proposal.

DRVT suggests that the bill be amended to make it clear that the records at issue in this bill are NOT prisoner medical records, but rather non-medical records created and maintained by the DOC, known as the prisoner's "core" file. DRVT suggests medical record provisions are governed by HIPAA and not impacted by this proposal.

DRVT is concerned that the proposal allows the continuation of a policy that prevents former prisoners from having access to records about them after they have left the correctional facility. While the statute is clear that prisoners in correctional facilities are not authorized to receive copies of their "core" file, without clarification there is confusion about the right of a prisoner to access their "core" file when released. There are some parts of the "core" file that represent security concerns, such as the names of an informant against the prisoner, that would reasonably be kept from a former prisoner, but most of the "core" file contains important information about the prisoner's time in prison and does not represent any security risk if disclosed. DRVT suggests that the Committee consider amending the bill to clarify that the Commissioner shall adopt policies that allow former prisoners to obtain non-security sensitive records regarding their incarceration.

DRVT is also concerned that the proposed language is misleading and inaccurate in that it asserts that only a court order is generally sufficient to access a prisoner's "core" file. This

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On the web: www.disabilityrightsvt.org

assertion is not accurate as DRVT's federal access authority found at, inter alia, 42 C.F.R. § 51.41, clearly provides for DRVT to access all relevant files, including "core" files under several circumstances. DRVT suggests that the proposal specifically provide that the designated protection and advocacy system's federal access authority is not amended or impeded by this section. To do otherwise would create confusion and inaccurate expectations on the part of the DOC that their records will be exempt from P&A review.

Finally, DRVT would support limiting the public disclosure of a prisoner's "core" file without their permission by using the following language in 28 V.S.A. §107 (3), "...the Commissioner **may only** authorize disclosure if the benefit to the subject...or public interest...outweighs the privacy or other public interest..."

Thank you again for this opportunity to comment on this important issue.