

1 Introduced by **Committee on Corrections and Institutions**

2 Date:

3 Subject: Offender and inmate files; 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 defining
8 what are offender and inmate records, and creating exceptions to the
9 confidentiality of offender and inmate records, pursuant to the Administrative
10 Procedure Act; and

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

14 An act relating to the confidentiality of offender and inmate records

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

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

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

19 The supervising officer of each facility shall be responsible for the efficient
20 and humane maintenance and operation and for the security of the facility,

1 subject to the supervisory authority conferred by law upon the Commissioner.

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

4 * * *

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

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

18 § 107. OFFENDER AND INMATE RECORDS; CONFIDENTIALITY;

19 EXCEPTIONS

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

1 section.

2 (b) Offender and inmate records maintained by the Department are exempt
3 from public inspection and copying and shall be kept confidential, except that
4 the Department:

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

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

12 (3) Shall release or permit inspection of specified offender and inmate
13 records to specific persons or to any person in accordance with rules that the
14 Commissioner shall adopt. The Commissioner shall adopt the rules pursuant
15 to 3 V.S.A. chapter 25, and shall adopt rules authorizing disclosure of such
16 records when the benefit to the subject of a record or the public interest served
17 by disclosure of a record outweighs the privacy or other public interest in
18 keeping the record confidential.

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

1 Sec. 3. EFFECTIVE DATE; TRANSITION PROVISION

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

3 (b) Except as provided in subsection (c) of this section, the Commissioner
4 of Corrections may only release or permit inspection of offender or inmate
5 records in reliance upon an exception to the confidentiality of offender and
6 inmate records if the exception is created by law, including an exception
7 created by rule adopted in accordance with the Administrative Procedure Act
8 under the directive contained in Sec. 2 of this act, 28 V.S.A. § 107(b)(3).

9 (c) The Department of Corrections may rely upon exceptions to the
10 confidentiality of offender and inmate files under directives adopted by the
11 Department prior to the effective date of this act until the Commissioner adopts
12 rules pursuant to the rulemaking mandates of Sec. 2 of this act, 28 V.S.A.
13 § 107(a) and (b)(3). On or before September 1, 2016, the Commissioner shall
14 prefile rules with the Interagency Committee on Administrative Rules in
15 accordance with these mandates. The Commissioner shall update the Joint
16 Legislative Justice Oversight Committee on the status of its efforts to adopt
17 rules under these mandates at the Oversight Committee's first meeting on or
18 after September 1, 2016.