



# VERMONT

P.O. Box 484

Montpelier, VT 05601-0484

Telephone: 802-371-9932 (no collect calls, please)

E-mail: [cure.vermont@gmail.com](mailto:cure.vermont@gmail.com)

On Facebook: CURE VERMONT

To: House Corrections and Institutions Committee  
From: Gordon Bock, state director, CURE VERMONT  
Re: Discussion of 28 V.S.A. § 601 (10)<sup>1</sup> (Prisoners' individual files)  
Date: 5 February 2016

---

## THE STATUTE TODAY:

("The supervising officer of each facility shall) ... establish and maintain, in accordance with such rules and regulations as are established by the Commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be indicated by the rules and regulations of the Department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown and shall not be accessible to inmates at the facility. Except as otherwise provided by law, the contents of an inmate's file 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 purpose but shall not otherwise be made public." (emphasis added)<sup>2</sup>

---

**"Remember those who are in prison, as though you are in prison with them, and those who are tortured as though you are being tortured, too." --- Hebrews 13:3**

---

<sup>1</sup> <http://legislature.vermont.gov/statutes/fullchapter/28/009>

<sup>2</sup> Id.

## OVERVIEW

“The presence of complete, accurate and *accessible prisoner files* is not only a prerequisite for effective prison management and strategic planning, it is also an essential tool for ensuring the human rights of prisoners are respected and upheld. If prison systems deny such rights, the rehabilitative purpose of imprisonment is necessarily undermined, along with public confidence in the criminal justice system and the rule of law in general.”

--- Handbook on prisoner file management,<sup>3</sup> Office on Drugs and Crime, United Nations, 2008 (emphasis added)

“The prisoner's interest in seeking access to his file is to *ensure that the parole board does not base its decision on false or misleading information contained in the file.*” (emphasis added)

--- “Prisoner Access to Parole Files: A Due Process Analysis” (sic), by John P. McCahey, Fordham Law Review, Vol. 47, Issue 2 at 261. (1978)<sup>4</sup>

citing:

--- Kohlman v. Norton, 380 F. Supp. 1073 (D. Conn., 1974) (parole denied because file erroneously indicated that applicant had used gun in committing robbery);

--- Leonard v. Mississippi Probation & Parole Bd., 373 F. Supp. 699 (N.D. Miss., 1974), *rev'd*, 509 F.2d 820 (Sth Cir.), *cert. denied*, 423 U.S. 998 (1975) (prisoner denied parole on the basis of illegal disciplinary action);

--- Masiello v. Norton, 364 F. Supp. 1133 (D. Conn., 1973) (presentence report in parole file contained unsubstantiated assertion that defendant would become connected with organized crime if released on parole);

--- State v. Pohlbel, 61 N.J. Super. 242, 160 A.2d 647 (App. Div., 1960) (presentence report in parole file erroneously stated, *inter alia*, that prisoner had violent tendencies)

## HOW IT WORKS AT “CLUB FED”

“Disclosable records in the Inmate Central File include, but are not limited to, documents relating to the inmate's sentence, detainer, participation in Bureau programs such as the Inmate Financial Responsibility Program,

---

<sup>3</sup> Available for purchase at: <http://www.amazon.com/Handbook-Prisoner-Management-Criminal-Justice/dp/9211302668>

<sup>4</sup> PDF available at:  
[ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2339&context=flr](http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2339&context=flr)

classification data, parole information, mail, visits, property, conduct, work, release processing, and general correspondence. *This information is available without filing a FOIA request.* If any information is withheld from the inmate, staff will provide the inmate with a general description of that information and also will notify the inmate that he or she may file a FOIA request.” (emphasis added)

--- Code of Federal Regulations (hereinafter “CFR”) (delineating U.S. Bureau of Prisons policy on “Inmate access to Inmate Central File”),<sup>5</sup> 28 CFR 513.40.

---

“An inmate may at any time request to review all disclosable portions of his or her Inmate Central File by submitting a request to a staff member designated by the Warden. Staff are to acknowledge the request and schedule the inmate, as promptly as is practical, for a review of the file at a time which will not disrupt institution operations.”

--- U.S. Bureau of Prisons Program Statement 1351.05, “Release of Information”<sup>6</sup>

... WHILE NORTH OF THE 49<sup>th</sup> PARALLEL ...

“As a prisoner, you are under constant surveillance. The police, the courts, Social Services and the prison system are always writing reports, assessments and evaluations. All of the documents, records, files, cases and numbers are how the system sees you. This data double, this official digital clone, will be hidden from you even though it is the driving force behind all of their decisions about you. *Often this information is wrong or unfairly biased or used improperly.*

“... Anyone in Canada can file an access request; *being in prison should have no bearing on your access request.*” (emphasis added)

--- From Access to Information Requests: A Guide for Canadian Prisoners, by Mike Larsen<sup>7</sup>

---

<sup>5</sup> See: <https://www.gpo.gov/fdsys/pkg/CFR-2009-title28-vol2/xml/CFR-2009-title28-vol2-part513.xml#seqnum513.40>

Also: <https://www.law.cornell.edu/cfr/text/28/513.40>

<sup>6</sup> Available at:

<http://www.bop.gov/PublicInfo/execute/policysearch?todo=query&series=1000#>

<sup>7</sup> <http://www.rittenhouseanewvision.com/access-to-information-guide-for-canadian-prisoners.html>

Also see:

[http://www.academia.edu/399457/Canadian\\_Prisoner\\_Access\\_to\\_Information\\_Guide\\_V.1.0](http://www.academia.edu/399457/Canadian_Prisoner_Access_to_Information_Guide_V.1.0)

MEANWHILE, “DOWN UNDER” ...

“To make it lawful for the (West Australia) Department (of Corrective Services) to pass on prisoner information, *the prisoner must consent to the release of information*. Consent may be provided by the prisoner concerned by completing the [Prisoner Consent for Verbal Release of Information](#) form with the assistance of a prison officer.”<sup>8</sup>

“Under the *Right to Information Act 2009* and *Information Privacy Act 2009*, you have the right to:

- apply for access to most government documents, including documents held in Corrective Services files, although you may not be given access to all information;
- have incorrect personal information on government files corrected;
- access to your medical records.”<sup>9</sup>

... AND ACROSS AMERICA ...

“We remain convinced that *due process imposes the requirement that an inmate be advised of adverse information that may lead to an unfavorable (parole) decision and given an opportunity to address it*. In reaching this result, we recognize the state's strong and legitimate interests in preserving the confidentiality of sources of information necessary for parole release decisions and in maintaining security and discipline within its institutions. Our decision in no way seeks to abrogate or minimize these interests.” (emphasis added)

--- Williams v. Missouri Bd. of Probation and Parole, 661 F. 2d 697, 699, U.S. 8th Circuit Court of Appeals (1981)

---

“*(W)hen an inmate has an opportunity to review the material in his parole file and to demonstrate to the parole board that parole is appropriate in his case, ‘this procedure adequately safeguards against serious risks of error and thus satisfies due process.’*” (emphasis added)

--- Walker v. Prisoner Review Board,<sup>10</sup> 769 F.2d 396, U.S. 7<sup>th</sup> Circuit Court of Appeals (1985), quoting Greenholz v. Inmates of the Nebraska Penal and Correctional Complex,<sup>11</sup> 442 U.S. 1 at 15, 99 S.Ct. 2100 at 2108 (1979).

---

<sup>8</sup> <http://www.correctiveservices.wa.gov.au/about-us/access-prisoner-information/default.aspx>

<sup>9</sup> <http://www.qld.gov.au/law/sentencing-prisons-and-probation/prisons-and-detention-centres/prisoners-rights/>

<sup>10</sup> <http://openjurist.org/769/f2d/396/walker-v-prisoner-review-board-r>

<sup>11</sup> <http://openjurist.org/442/us/1>