

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 pursuant to
8 the Administrative Procedure Act in order to define what are offender and
9 inmate records and to create exceptions to the confidentiality of offender and
10 inmate records; and

11 (3) establish a standard under which the Commissioner of Corrections
12 must create exceptions to the confidentiality of offender and inmate records.

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

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

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

16 § 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING

17 OFFICER OF EACH CORRECTIONAL FACILITY

18 The supervising officer of each facility shall be responsible for the efficient
19 and humane maintenance and operation and for the security of the facility,
20 subject to the supervisory authority conferred by law upon the Commissioner.

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

3 * * *

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

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

17 § 107. OFFENDER AND INMATE RECORDS; CONFIDENTIALITY;

18 EXCEPTIONS

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

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

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

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

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

15 (A) When the benefit to the subject of a record or the public interest
16 served by disclosure of a record outweighs the privacy, security, or other
17 interest in keeping the record confidential.

18 [(B) To allow an inmate or offender access to his or her own records
19 at least two times per year. The rules adopted by the Commissioner may
20 specify that the inmate's right of access be limited to an inspection overseen by

1 an agent or employee of the Department, and may limit access to specified
2 information or records that would:

3 (i) reveal information otherwise designated confidential by law;

4 (ii) unreasonably interfere with the Department's ability to
5 perform its functions; or

6 (iii) unreasonably jeopardize the health, safety, security, or
7 rehabilitation of the inmate or offender or of another person.]

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

11 [(5) Shall permit an inmate or offender to access records relating to his
12 or her own sentence, participation in Department programs, classification data,
13 parole information, mail, visits, property, conduct, work, release processing,
14 and general correspondence.]

15 Sec. 3. EFFECTIVE DATE; TRANSITION PROVISION

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

17 (b) Except as provided in subsection (c) of this section, the Commissioner
18 of Corrections may only release or permit inspection of offender or inmate
19 records in reliance upon an exception to the confidentiality of offender and
20 inmate records if the exception is created by law, including an exception

1 created by rule adopted in accordance with the Administrative Procedure Act
2 under the mandate contained in Sec. 2 of this act, 28 V.S.A. § 107(b)(3).

3 (c) The Department of Corrections may rely upon exceptions to the
4 confidentiality of offender and inmate files under directives adopted by the
5 Department prior to the effective date of this act until the Commissioner adopts
6 rules pursuant to the rulemaking mandates of Sec. 2 of this act, 28 V.S.A.
7 § 107(a) and (b)(3). On or before September 1, 2016, the Commissioner shall
8 prefile rules with the Interagency Committee on Administrative Rules in
9 accordance with these mandates. The Commissioner shall update the Joint
10 Legislative Justice Oversight Committee on the status of its efforts to adopt the
11 rules at the Oversight Committee’s first meeting on or after September 1, 2016.