

I. Current law regarding the confidentiality of inmate records

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

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

* * *

(10) To 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.

II. Directives of the Department of Corrections related to offender files

Go to: http://www.doc.state.vt.us/about/policies/rpd/administrative-services-201-300/admin_services#management

IV. Most recent version of draft language to address inmate files

Issues with language below:

- Where does it belong? 28 V.S.A. § 601 is supposed to be a list of the powers and responsibilities of supervising officers of correctional facilities. 28 V.S.A. § 601(10) seems like a poor fit for creating
- 28 V.S.A. § 102 (Commissioner of Corrections; appointment; powers; responsibilities) appears to be a better fit. See <http://legislature.vermont.gov/statutes/section/28/003/00102> Existing provisions in 28 V.S.A. § 102 reference rulemaking authority inconsistently.
- DOC's directives address "offenders", which is broader than "inmates."

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

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authority conferred by law upon the Commissioner. Each supervising officer is charged with the following powers and responsibilities:

* * *

(10)(A) ~~To establish and maintain, in accordance with such rules and regulations as are established by that~~ the Commissioner shall adopt, 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~~ Except as otherwise provided in this subdivision (10), the content of the file of an inmate shall be confidential ~~and~~, shall not be subject to public inspection ~~or copying except by court order for good cause shown~~, and shall not be accessible to inmates at the facility: other than the inmate to whom the file pertains.

(B) The contents of inmate files may be disclosed:

(i) Pursuant to a court order for good cause shown.

(ii) 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 to a state or federal prosecutor pursuant to a court order issued ex parte 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.

(iii) In accordance with rules that the Commissioner shall adopt governing access to inmate files.

(C) The contents of an inmate file shall be open to inspection or copying by the inmate to whom the file pertains or by a person authorized by the inmate, except as authorized or required to be withheld from the inmate under rules that the Commissioner shall adopt or under another provision of law.

(D) The rules required under this subdivision (10) shall be adopted pursuant to 3 V.S.A. chapter 25.

Sec. Y. RULEMAKING ON INMATE FILES; REPORTING; TIMELINE

(a) The Commissioner shall adopt rules governing the establishment and maintenance of inmate files, access to an inmate file by persons other than the inmate to whom the file pertains, and restrictions on access by the inmate to whom the file pertains, in accordance with the provisions of 28 V.S.A. § 601(10) as will be amended by Sec. B of this act.

(b) On or before November 1, 2015, the Commissioner of Corrections shall send a written report to the Joint Legislative Corrections Oversight Committee describing the efforts to draft the rules and summarizing the contents of the working draft of the rules. The Commissioner shall prefile the proposed rules with the Interagency Committee on Administrative Rules on or before January 1, 2016, and shall complete the steps of the rulemaking process under his or her control so that the rules take effect no later than August 1, 2016.

Sec. Z. EFFECTIVE DATES

(a) This section and Sec. Y shall take effect on passage.

(b) Sec. X shall take effect when the rules required to be adopted under Sec. Y take effect.