

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;

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

13 (4) clarify the process for an inmate or offender to request correction of
14 a material fact relating to him or her in a record maintained by the Department
15 of Corrections.

16 An act relating to offender and inmate records

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

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

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

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

10 * * *

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

1 ~~information in the files may be used for any lawful purpose but shall not~~
2 ~~otherwise be made public.~~

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

4 § 107. OFFENDER AND INMATE RECORDS; CONFIDENTIALITY;

5 EXCEPTIONS; CORRECTIONS

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

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

12 (1) Shall release or permit inspection of such records if required under
13 federal or State law, including 42 U.S.C. §§ 10805 and 10806 (Protection and
14 Advocacy Systems).

15 (2) Shall release or permit inspection of such records pursuant to a court
16 order for good cause shown or, in the case of an inmate or offender seeking
17 records relating to him or her in litigation, in accordance with discovery rules.

18 (3) Shall release or permit inspection of such records to a State or
19 federal prosecutor as part of a criminal investigation pursuant to a court order
20 issued ex parte if the court finds that the records may be relevant to the

1 investigation. The information in the records may be used for any lawful
2 purpose but shall not otherwise be made public.

3 (4) Shall release or permit inspection of designated offender and inmate
4 records to specific persons, or to any person, in accordance with rules that the
5 Commissioner shall adopt pursuant to 3 V.S.A. chapter 25. The Commissioner
6 shall authorize release or inspection of offender and inmate records under these
7 rules:

8 (A) When the public interest served by disclosure of a record
9 outweighs the privacy, security, or other interest in keeping the record
10 confidential.

11 (B) To provide an inmate or offender access to records relating to
12 him or her if access is not otherwise guaranteed under this subsection, unless
13 providing such access would reveal information that is confidential or exempt
14 from disclosure under a law other than this section, would unreasonably
15 interfere with the Department's ability to perform its functions, or would
16 unreasonably jeopardize the health, safety, security, or rehabilitation of the
17 inmate or offender or of another person. The rules may specify circumstances
18 under which the Department may limit the number of requests that will be
19 fulfilled per year, as long as the Department fulfills at least two requests per
20 year excluding any release of records ordered by a court. The rules also may
21 specify circumstances when the offender's or inmate's right of access will be

1 limited to an inspection overseen by an agent or employee of the Department.
2 The rules shall reflect the Department’s obligation not to withhold a record in
3 its entirety on the basis that it contains some confidential or exempt content, to
4 redact such content, and to make the redacted record available.

5 (c) Notwithstanding the provisions of 1 V.S.A. chapter 5, subchapter 3
6 (Public Records Act) that govern the time periods for a public agency to
7 respond to a request for a public record and rights of appeal, the Department
8 shall adopt a rule governing response and appeal periods and appeal rights in
9 connection with a request by an inmate or offender to access records relating to
10 him or her maintained by the Department. The rules shall provide for a final
11 exhaustion of administrative appeals no later than 45 days from the
12 Department’s receipt of the initial request.

13 (d) An offender or inmate may request that the Department correct a fact in
14 a record maintained by the Department that is material to his or her rights or
15 status, except for a determination of fact that resulted from a hearing or other
16 proceeding that afforded the inmate or offender notice and opportunity to be
17 heard on the determination. The rule required under subsection (c) of this
18 section shall reference that requests for such corrections are handled in
19 accordance with the Department’s grievance process. If the Department issues
20 a final decision denying a request under this subsection, he or she may appeal
21 the decision to the Civil Division of the Superior Court pursuant to Rule 74 of

1 the Vermont Rules of Civil Procedure. The Court shall not set aside the
2 Department's decision unless it is clearly erroneous.

3 Sec. 3. EFFECTIVE DATE; TRANSITION PROVISION

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

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

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