

# **Public Records Study Committee 2015 Interim Report**

Pursuant to 2011 Acts and Resolves No. 59

January 2015

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**Public Records Study Committee  
Interim Report**

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**Public Records Study Committee  
Members**

Three members of the House of Representatives .....Rep. Donna Sweaney (co-chair)

Rep. Ronald Hubert

Rep. Linda Martin

Three members of the Senate.....Sen. Jeanette White (co-chair)

Sen. Claire Ayer

Sen. Peg Flory

## Public Records Study Committee Charge

No. 59 of the Acts of 2011

### Sec. 11. PUBLIC RECORDS LEGISLATIVE STUDY COMMITTEE

(a) There is established a legislative study committee to review the requirements of the public records act and the numerous exemptions to that act in order to assure the integrity, viability, and the ultimate purposes of the act. The review committee shall consist of:

(1) Three members of the house of representatives, appointed by the speaker of the house; and

(2) Three members of the senate, appointed by the committee on committees.

(b) The review committee shall review the exemptions set forth in 1 V.S.A. § 317 or elsewhere in the Vermont Statutes Annotated to the inspection and copying of public records under the public records act, 1 V.S.A. chapter 5, subchapter 3. Prior to each legislative session, the committee shall submit to the house and senate committees on government operations and the house and senate committees on judiciary recommendations concerning whether the public records act and exemptions under the act from inspection and copying of a public record should be repealed, amended, or remain unchanged. The report of the committee may take the form of draft legislation.

(c) In reviewing and making a recommendation under subsection (b) of this section, the study committee may review:

(1) Whether the public records act requires revision;

(2) Whether an exemption to inspection or copying under the public records act is necessary, antiquated, or in need of revision;

(3) Whether an exemption to inspection or copying under the public records act is as narrowly tailored as possible, including the need to clarify the term “personal documents” referenced in 1 V.S.A. § 317(c)(7) in order to ensure that it does not unintentionally limit access to public records that are not personnel records; and

(4) Whether the public records act should be amended to clarify application of the act to contracts between a public agency and a private entity for the performance of a governmental function;

(5) Whether or not to authorize a public agency to charge for staff time associated with responding to a request to inspect or copy a public record, including whether an agency should be authorized to charge for the staff time incurred in locating, reviewing, or redacting a public record; and

(6) Any other criteria that assist the review committee in determining the value of an exemption as compared to the public's interest in the public record protected by the exemption.

(7) Whether a municipality and how a municipality shall appoint or designate an official, officer, or employee responsible for advising municipal employees and any agency, board, committee, department, instrumentality, commission, or authority of the municipality regarding the requirements of the public records act and proper management of public records. As used in this subdivision, "municipality" shall mean a city, town, village or school district.

(d) In developing recommendations authorized under subsection (a) of this section, the study committee shall consult with the secretary of administration, the secretary of state, the office of the attorney general, representatives of municipal interests, representatives of school or education interests, representatives of the media, and advocates for access to public records.

(e) The study committee shall elect co-chairs from among its members. For attendance at a meeting when the general assembly is not in session, legislative members of the commission shall be entitled to the same per diem compensation and reimbursement for actual and necessary expenses as provided members of standing committees under 2 V.S.A. § 406. The study committee is authorized to meet three times each year during the interim between sessions of the general assembly, provided that the speaker of the house and the committee on committees may authorize the study committee to hold additional meetings during the interim between sessions so that the committee may accomplish its charge.

(f) Legislative council shall provide legal and administrative services to the study committee. The study committee may utilize the legal, research, and administrative services of other entities, such as educational institutions and, when necessary for the performance of its duties, the Vermont state archives and records administration.

## **I. Overview**

2011 Acts and Resolves No. 59, Sec. 11, established the Public Records Study Committee (Study Committee or Committee) to review the requirements of the Vermont Public Records Act (PRA or Act) and the numerous exemptions to it in order to assure the integrity, viability, and the ultimate purposes of the Act. In fulfilling this charge, the Committee was required to review the exemptions to inspection and copying of public records as set forth in 1 V.S.A. § 317 of the PRA<sup>1</sup> and elsewhere in the Vermont Statutes Annotated. Prior to each legislative session, the Study Committee was required to submit to the House and Senate Committees on Government Operations and the House and Senate Committees on Judiciary recommendations concerning whether the PRA and exemptions under the Act should be repealed or amended or should remain unchanged. This report is the fourth and final report of the Study Committee fulfilling its charge under 2011 Acts and Resolves No. 59, Sec. 11.

In the 2014 interim, the Study Committee met four times, on September 15, October 10, October 31, and November 21. During these meetings, the Committee:

- reviewed exemptions added or substantively amended during the 2014 legislative session;
- reviewed 81 exemptions related to five subject areas—general government and miscellaneous subjects, the judiciary and court records, criminal justice and public safety, public health, and the Legislative Branch—and reviewed draft legislation to make technical and substantive changes to some of these exemptions;
- renewed its review of the medical profession peer review exemption at 26 V.S.A. § 1443 in connection with quarterly reports of the Vermont Program for Quality in Health Care

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<sup>1</sup> See 1 V.S.A. chapter 5, subchapter 3, for the full text of the PRA.

assessing the performance of Correct Care Solutions (CCS);<sup>2</sup>

- held a public comment period at its October 31 meeting, and heard from audience members throughout its meetings;
- drafted and reviewed letters to committees of the Vermont General Assembly with jurisdiction over the subject matter of exemptions for which the Committee identified issues that exceeded the scope of their authority;
- reviewed a draft bill to amend the Administrative Procedure Act to address Public Records Act exemptions contained in administrative rules; and
- reviewed and reaffirmed its process for referral and review to the House and Senate Committees on Government Operations of Public Records Act exemptions contained in bills primarily under the jurisdiction of other standing committees of the House and Senate.

## **II. Summary of Prior Year Recommendations**

The Study Committee has issued recommendations in each of its prior annual reports,<sup>3</sup> including that the General Assembly amend or repeal various PRA exemptions and that the relevant committees of jurisdiction of the Vermont General Assembly review various PRA exemptions.

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<sup>2</sup> The Department of Corrections contracts with CCS to provide prison health care services to Vermont inmates.

<sup>3</sup> The Committee's prior year annual reports are available at:  
<http://www.leg.state.vt.us/reports/2012ExternalReports/276082.pdf>  
<http://www.leg.state.vt.us/reports/2013ExternalReports/285233.pdf>  
<http://www.leg.state.vt.us/reports/2014ExternalReports/296198.pdf>

Appendix A lists all of the Committee's prior year recommendations and summarizes any actions taken related to them. Appendix A also indicates whether the Committee reaffirms or has updated its prior year recommendations.

### **III. Exemptions Reviewed in the 2014 Interim**

At its September–November 2014 meetings, the Study Committee reviewed 81<sup>4</sup> PRA exemptions related to the following subjects: general government and miscellaneous subjects; the judiciary and court records; criminal justice and public safety; public health; and the Legislative Branch.

Appendix B lists the 81 exemptions reviewed, and provides a brief description of the subject matter of the exemptions and the Study Committee's recommendations for each. Appendix C provides more detailed explanations for recommendations to amend or repeal various exemptions or that various exemptions be reviewed by standing committees of jurisdiction or by agencies. Appendix D contains draft proposed legislation to implement current and prior year recommendations of a purely technical nature that require legislation. Appendix E contains draft proposed legislation to implement current and prior year recommendations that go beyond purely technical changes to the law.

### **IV. Medical Profession Peer Review Committee Records**

At its October 31 meeting, the Study Committee heard testimony concerning the confidentiality of the "proceedings, reports, and records" of the Vermont Program for Quality in Health Care (VPQHC) in connection with VPQHC reports evaluating the performance of Correct Care Solutions. Correct Care Solutions is a contractor of the Department of Corrections (DOC)

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<sup>4</sup> In the course of its review, a witness pointed out an 82nd exemption that had not previously been identified : 24 V.S.A. § 4643, which relates to bond registries of the Vermont Municipal Bond Bank. This exemption is similar in purpose and language to an exemption that had been identified, 24 V.S.A. § 1884.



that provides correctional health care services. VPQHC conducted medical record reviews of CCS under a contract with DOC.

Under 26 V.S.A. § 1441, VPQHC is defined as a “peer review committee.” Under 26 V.S.A. § 1443, the “proceedings, reports, and records” of such committees are “confidential and privileged,” and may be released only under limited circumstances. As a result, VPQHC reports evaluating the performance of Correct Care Solutions are confidential.

Although the Study Committee reviewed 26 V.S.A. § 1443 during the 2013 interim, it heard additional testimony this year on its application to VPQHC reports in order to determine whether meaningful alternative information is available to hold Correct Care Solutions (and ultimately DOC) accountable for its performance in delivering health care services.

The Committee heard from Dr. Delores Burroughs-Biron, Health Services Director of the DOC; Catherine Fulton, Executive Director of VPQHC; and State Auditor Doug Hoffer. Ms. Fulton provided background on VPQHC’s role reviewing CCS records and issuing a report and recommendations. Ms. Burroughs-Biron catalogued the numerous reports on prisoner health and fiscal health that it receives from Correct Care Solutions directly, and the numerous other entities that hold the DOC accountable for the delivery of prison medical services. For example:

- prisoner and disability rights organizations frequent DOC facilities to assess its performance, including health care delivery;
- DOC officials meet monthly with the Defender General’s Office to review prisoner grievances and the DOC fulfills its statutory obligation to report sentinel health events to the Defender General’s office;
- DOC reports to the Board of Medical Practice;

- DOC facilities undergo periodic inspections by the Vermont State Board of Pharmacy;
- The Auditor of Accounts conducted an audit concerning DOC's oversight of the CCS contract, including how DOC monitors CCS's satisfaction of the contract's performance requirements. The audit report was issued on October 24, 2013.<sup>5</sup>

Mr. Hoffer suggested that the State could contractually require that information from peer reviews of medical files be aggregated at the State level, so that lessons learned from peer reviews of CCS performance could be available, at least at a high level, without undermining the interest in promoting free and uninhibited peer reviews at an individual or facility level.

Based on the testimony heard, the Committee was satisfied that the exemption for proceedings, reports, and records of peer review committees does not present an obstacle to holding CCS accountable for its performance in delivering prison health care services.

## **V. Public Comment**

At its October 31 meeting, the Committee heard public comment and received written testimony from commenters on the exemptions it has reviewed during the 2014 interim. The written comments are available on the Committee's information page.<sup>6</sup>

The commenters addressed the process for creating exemptions, the advantages of more general exemptions, and criticized specific exemptions as overbroad or unnecessary.

Regarding process, commenters recommended that no Public Records Act exemption be added to statute or to rule without prior review by the Committees on Government Operations. The co-chairs noted that they already have a process in place for informal referral of Public Records Act exemptions to the Government Operations Committees for review. Rep. Sweaney

<sup>5</sup> See <http://auditor.vermont.gov/sites/auditor/files/DOC%20Health%20Care%20rpt%20WEB.pdf>.

<sup>6</sup> See [http://www2.leg.state.vt.us/legdir/committeeinfo.cfm?CommitteeID=271&\\_ga=1.104940803.1467609023.1389276193](http://www2.leg.state.vt.us/legdir/committeeinfo.cfm?CommitteeID=271&_ga=1.104940803.1467609023.1389276193)

also requested that a stand-alone bill be drafted that requires agencies submitting proposed rules to identify whether the rule creates or contains a Public Records Act exemption, and that the Government Operations Committee chairs be notified if a proposed rule creates or contains an exemption.

With respect to the pros and cons of general exemptions versus specific exemptions, some commenters noted that the number of PRA exemptions has proliferated in part due to specific agencies or interested parties seeking assurance that particular, narrow categories of documents are exempt. They claimed that the Attorney General's office has taken the position that narrow, specific exemptions are more easily defensible than relying on broad exemptions. These commenters argued that broadly worded exemptions obviate the need for numerous specific exemptions which create the perception that Vermont law is inhospitable to the principle of open access to public records, and can articulate general principles and tests that can be applied by courts and agencies to address myriad situations. Some Committee members noted that generally worded exemptions might defeat the interest in open government by giving agencies broad discretion to deny requests.

## **VI. Letters to Committees of Jurisdiction**

Over the four years that it met and reviewed all of the statutory exemptions to the Public Records Act, the Committee determined that some exemptions raise issues that go beyond the scope of the Committee's expertise or charge. As a result, it recommended that various exemptions be reviewed by standings committees with jurisdiction over the issues. Such recommendations are stated in the Committee's four interim reports, including this report.

To ensure that the relevant standing committees are informed of these recommendations, the Committee asked staff to draft letters to the chairs of each standing committee explaining its recommendations. Each letter requests that the chairs provide feedback to the House and Senate Committees on Government Operations on or before February 6, 2015, as to whether they have reviewed the issues identified in the letters and, if so, whether they would like any recommended amendments to be included in the miscellaneous Public Records Act bill that Committee members plan to introduce in the House and Senate. The Committee has asked staff to distribute the letters to committee chairs in early January 2015 after the chairs are appointed.

#### **VII. Public Records Act Exemptions in Administrative Rules**

In Fall 2012, the Committee heard testimony from several witnesses regarding a proposed Department of Public Safety rule addressing the licensing of dispensaries of medical marijuana. The rule at issue included a Public Records Act exemption for applications to become a licensed medical marijuana dispensary. The Committee raised questions as to whether it was common for public records exemptions to be adopted by rule or for a public agency to have statutory authority to adopt exemptions by rule. Because of concern that PRA exemptions adopted by administrative rule may not receive due scrutiny, the Committee recommended that the Administrative Procedure Act (APA) be amended to require agencies to identify PRA exemptions in the cover sheet required to be submitted with a proposed rule.

During the public comment period of its October 31, 2014 meeting, commenters raised again the issue of PRA exemptions in administrative rules. Rep. Sweaney requested that Legislative Counsel draft a stand-alone bill to amend the APA to provide for identification of PRA

exemptions in proposed rules, and the Committee reviewed a draft at its November 21, 2014 meeting.

The Committee agreed that the bill should amend the APA's cover sheet provision to require an agency proposing a new or amended rule to identify any PRA exemption contained in the new or amended rule—even if the exemption is carried over unchanged from an earlier version of the rule or if it merely duplicates statutory language. The Committee also recommended that the bill provide that the House and Senate Committees on Government Operations be authorized to convene a meeting outside of session to discuss a proposed rule that contains a PRA exemption. Finally, the Committee recommended that the bill provide a clear consequence for agencies that fail to identify exemptions in proposed rules filed on or after July 1, 2015<sup>7</sup>: that the portion of the rule creating the new exemption will be invalid. However, the Committee agreed that this consequence should not apply when an agency fails to identify an exemption carried over unchanged from an earlier version of a rule, if initial adoption of the exemption resulted from a filing before July 1, 2015.

A copy of the draft bill is set forth in Appendix F.

### **VIII. Process for Referral and Review by the House and Senate Committees on Government Operations**

In Fall 2013, the Committee discussed, and recommended in its January 2014 report to adopt, a process through which the Committees on Government Operations are informed of a proposed PRA exemption (or a substantive amendment to a PRA exemption) in pending legislation that is not under the primary jurisdiction and is not referred to the House or Senate Committee on Government Operations. The process provides that when a committee vote on a bill containing a

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<sup>7</sup> July 1, 2015 is the effective date of the proposed bill.

PRA exemption or substantive amendment is imminent, the Legislative Council attorney drafting the bill must confer with the chair of the committee of jurisdiction regarding the policy for referral and informal review of PRA exemptions by the Committees on Government Operations. The chair of jurisdiction then could either confer directly with the chair of Government Operations, or direct the attorney drafting the bill to inform the Legislative Council attorneys who staff PRA issues of the exemption. In the latter case, the PRA attorneys then would inform the chair of the House or Senate Committee on Government Operations. Under this process, the chair of the Committee on Government Operations could confer with the chair of jurisdiction and evaluate whether and how the Committee on Government Operations would provide input on the exemption.<sup>8</sup>

The Committee found that this referral and review process worked well during the 2014 session, and that it should be continued going forward. The Committee co-chairs stated an intent to remind existing (and to inform new) committee chairs of the referral and review process at a chair's meeting in January, and to confer with House and Senate leadership about the process as well.

### **IX. Committee Thanks to Participants and Staff**

Over the four years that the Committee convened to fulfill its charge, it heard from dozens of witnesses and commenters and received numerous written submissions. The Committee could not have completed its work without the willingness of these participants to share their time, expertise, and perspectives. The Committee would like to thank them for their valuable contributions.

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<sup>8</sup> The referral process is summarized in Appendix B of the Committee's January 2014 interim report, which is available at <http://www.leg.state.vt.us/reports/2014ExternalReports/296198.pdf>.

The Committee also would like to thank Legislative Council operations and legal staff for their hard work and excellent assistance over the past four years. The Committee could not have fulfilled its charge without their assistance.

## APPENDIX A

## List and Status of Prior Year Recommendations

Statutory Citation (Year of Report Recommendation)	Study Committee Recommendation	Status of Recommendation
2013 Acts and Resolves No. 23, Sec. 1 (2014)	The General Assembly should enact legislation directing Legislative Council to periodically update the list of statutory exemptions and group the list by subject and in order by title and section number, and providing for publication of the list on various websites.	Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. E.
1 V.S.A. § 317(a) (2012)	The House and Senate Committees on Government Operations should review whether the Public Records Act should be amended to clarify application of the act to contracts between a public agency and private entity for the performance of a governmental function.	Recommendation modified. Since the Committee’s January 2012 recommendation, a Superior Court case was decided that adopted a four-factor “functional equivalency” test to determine whether a government contractor constitutes a “public agency” subject to the Public Records Act. See <i>Prison Legal News v. Corrections Corp. of America</i> . <sup>9</sup> If the government contractor issue is raised and the House or Senate Committee on Government Operations elects to take it up, the committee should consider the <i>Prison Legal News</i> case during its review.
1 V.S.A. § 317(c)(5) and (c)(18) (2012)	The House and Senate Committees on Judiciary should review the exemption in 1 V.S.A. § 317(c)(5) regarding criminal investigation records and the exemption in 1 V.S.A. § 317(c)(18) regarding records related to Department of Public Safety investigations in order to determine if the two exemptions should	Enacted in part. Act No. 70 (S.148) of 2013 replaced the former § 317(c)(5) categorical exemption with a FOIA-derived balancing test that only exempts criminal investigation records from disclosure if production of the records could reasonably be expected to interfere with enforcement proceedings, constitute an unwarranted invasion of personal privacy, disclose the identity of a confidential source, or endanger the life or physical safety of any individual, or would deprive a person of a right to a fair trial or disclose techniques and procedures for law

<sup>9</sup> Docket No. 332-5-13 Wncv, 2014 WL 2565746 (Vt. Super. Jan. 9, 2014).



Statutory Citation (Year of Report Recommendation)	Study Committee Recommendation	Status of Recommendation
	be amended or revised.	enforcement investigations or prosecutions. 1 V.S.A. § 317(c)(18) was not addressed in Act 70, and has not to the knowledge of the Committee been reviewed to date.
1 V.S.A. § 317(c)(6) and 32 V.S.A. § 3102 (2012)	The General Assembly should clarify whether property tax adjustment information is confidential or not.	Enacted. The 2012 miscellaneous tax bill, 2012 Acts and Resolves No. 143, §§ 5 and 11 (Act 143), provided that property tax adjustment information is confidential, but a final tax bill showing only the amount due by a taxpayer is public. Under Act 143, a municipality would prepare a separate bill with the property tax adjustment information. This bill would be confidential, but the Department of Taxes and municipal officials could disclose the information to certain designated persons.
N/A (2012)	In light of the Vermont Supreme Court decision in <i>In Re: H.S. 122</i> , which held that property tax adjustment information was confidential tax return information that should not be disclosed, municipalities that previously released property tax adjustment information should be held harmless for any liability related to the disclosure of the information.	Enacted. Hold harmless language was enacted by the General Assembly in 2012 Acts and Resolves No. 70.
1 V.S.A. § 317(c)(7) (2012)	<u>2012 report recommendation</u> : Amend the personal records exemption under 1 V.S.A. § 317(c)(7) to clarify what constitutes personal information, including listing several specified categories of information as personal.	The 2012 recommendation was modified in the Committee's 2014 interim report. The 2014 recommendation is reaffirmed. See recommended language in App. E.

Statutory Citation (Year of Report Recommendation)	Study Committee Recommendation	Status of Recommendation
	<p><u>2014 report recommendation</u>: Restructure the provision to be less confusing and correct grammatical issues; specify that balancing test applies to records relating to an individual and does not include a threshold requirement that information be intimate to qualify as exempt; and amend the reference to “medical and psychological facts.”</p>	
1 V.S.A. § 317(c)(9)	<p>Amend to clarify that “trade secrets” means “confidential business records or information,” and delete requirement that purported trade secret be known only to certain individuals within a commercial concern, replacing it with the requirement that the commercial concern make efforts reasonable under the circumstances to keep it secret.</p>	<p>Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. E.</p>
1 V.S.A. § 317(c)(20) (2014)	<p>Correct error in cross-reference.</p>	<p>Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. D.</p>
1 V.S.A. § 317(c)(21) (2013)	<p>The House Committee on Commerce and Economic Development and the Senate Committee on Government Operations should review this exemption to evaluate Vermont Life’s discretion to sell or rent subscription lists and to consider ACCD’s recommendation to</p>	<p>Recommendation reaffirmed. PRSC staff is not aware of any action by the committees. In its Act 23 questionnaire<sup>10</sup> to ACCD, the Committee proposed consolidating this exemption with 1 V.S.A. § 317(c)(10), which also addresses lists of names. This proposed consolidation was reflected in a bill introduced in 2014 but was not enacted—see H.757.</p>

<sup>10</sup> During the 2013 interim, pursuant to 2013 Acts and Resolves No. 23, Sec. 1, the Study Committee sent numerous questionnaires to Vermont agencies to solicit feedback on proposed consolidations of exemptions. Ultimately, the Committee decided that the costs of pursuing a consolidation bill outweighed the benefits.

<b>Statutory Citation (Year of Report Recommendation)</b>	<b>Study Committee Recommendation</b>	<b>Status of Recommendation</b>
	expand the exemption to include customer lists.	
1 V.S.A. § 317(c)(22) (2013)	Repeal this exemption, which addresses records related to tax credits, because the underlying tax credit laws were repealed in 2006.	Recommendation reaffirmed. Bills were introduced in 2013 and 2014 but not enacted—see H.54 and H.757. See recommended language in App. D, which includes an intent section stating that records described in 1 V.S.A. § 317(c)(22), to the extent any still exist, will continue to be exempt after its repeal.
1 V.S.A. § 317(c)(23) (2012)	Amend the university research exemption under 1 V.S.A. § 317(c)(23) to provide that certain records regarding the care of animals used for research or scientific testing shall be available for public inspection or copying.	Recommendation reaffirmed. Bills were introduced in 2012–2014 but not enacted. See H.611 of 2012; H.54 of 2013; and H.757 of 2014. The Committee confirmed through its Act 23 questionnaires that VSC and UVM officials still support its recommended language. See recommended language in App. E.
1 V.S.A. § 317(c)(26) (2014)	Amend to substitute “person” for “individual.”	Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. E.
1 V.S.A. § 317(c)(30) (2013)	Recommend that substance of exemption for state marketing databases be preserved but that it be amended to be more understandable to the average reader.	Recommendation reaffirmed. Bills were introduced in 2013 and 2014 but not enacted—see H.54 and H.757. See recommended language in App. D.
1 V.S.A. § 317(c)(36) (2014)	Amend by striking reference to DFR.	Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. D.
1 V.S.A.	Senate Committee on Health and Welfare and	Enacted. 2012 Acts and Resolves No. 171, § 24f provides:

<b>Statutory Citation (Year of Report Recommendation)</b>	<b>Study Committee Recommendation</b>	<b>Status of Recommendation</b>
§ 317(c)(37) and 18 V.S.A. § 1917(a)  (2012)	House Committee on Health Care should review 1 V.S.A. § 317(c)(37) and 18 V.S.A. § 1917(a) to determine whether there is a method that allows for disclosure of reportable adverse events by health care facilities without violating federal law or the privacy of patients.	Beginning in 2013, the community reports shall include at a minimum data from all Vermont hospitals of reportable adverse events aggregated in a manner that protects the privacy of the patients involved and does not identify the individual hospitals in which an event occurred together with analysis and explanatory comments about the information contained in the report to facilitate the public's understanding of the data.
1 V.S.A. § 317(c)(38)  (2012)	Repeal the exemption in 1 V.S.A. § 317(c)(38) related to records containing prescriber-identifiable information.	Recommendation modified. Bills were introduced in 2012 and 2013 but not enacted. See H.611 of 2012 and H.54 of 2013. During its hearings on H.54, the House Committee on Government Operations determined that this exemption should be amended, but not repealed. The Committee confirmed through its Act 23 questionnaire to AHS that AHS does not oppose the amended language. See recommended language in App. D.
1 V.S.A. § 317(c)(40)  (2013)	Clarify that this provision exempts genealogical information within applications for tribal recognition.	Recommendation reaffirmed. Bills were introduced in 2013 and 2014 but not enacted—see H.54 and H.757. The Committee confirmed through its Act 23 questionnaire to ACCD that ACCD does not oppose this recommendation. See recommended language in App. D.
3 V.S.A. § 838  (2013)	The Administrative Procedure Act should be amended to require that the coversheet submitted by an agency proposing a rule specify whether the proposed rule creates a PRA exemption.	Recommendation modified. See p. 10 of the report and the recommended language in App. F.
6 V.S.A. §§ 61, 484,	Repeal each exemption after consolidating the	Modify recommendation to request that Committees on Agriculture

Statutory Citation (Year of Report Recommendation)	Study Committee Recommendation	Status of Recommendation
1039, 2766, 2946 (2014)	substance substance into a new exemption in 6 V.S.A. ch. 1.	review the desirability of repealing each exemption and creating a new, consolidated exemption in 6 V.S.A. ch. 1
8 V.S.A. § 3839 (2014)	Amend to add cross-reference to 1 V.S.A. § 317(c)(9).	Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. E.
8 V.S.A. § 4089a (2012)	Delete language of 8 V.S.A. § 4089a related to records of reviews by an independent panel of mental health care providers. The panel has been repealed and the exemption is no longer accurate.	Recommendation reaffirmed, but modified. The language of subsec. (g), providing for the compensation of members of the independent panel of mental health care providers, was repealed in Act 79 of 2013. However, the confidentiality language in subsec. (i) should still be amended, as it still references the independent panel of mental health care providers. See recommended language in App. D.
8 V.S.A. § 4089f (2012)	Amend exemption under 8 V.S.A. § 4089f related to records of external reviews of health care decisions to reflect that the exemption now also applies to review of mental health care services.	Recommendation withdrawn. In its review of this provision in 2014, the House Government Operations Committee determined that the recommended clarification was unnecessary.
8 V.S.A. § 4488(5) (2014)	Amend to strike the phrase “deemed a privileged communication” and insert in lieu thereof “ <u>confidential and privileged and treated as provided in subsection 4813m(f) of this title.</u> ”	Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. E.
8 V.S.A. § 7041(e) (2014)	Amend to clarify that this section also pertains to records of hearings.	Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. D.
9 V.S.A. § 4100b (2014)	Clarify that “settlement communications,” not “conference discussions,” shall remain	Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. D.

<b>Statutory Citation (Year of Report Recommendation)</b>	<b>Study Committee Recommendation</b>	<b>Status of Recommendation</b>
	confidential and be exempt from public inspection and copying.	
10 V.S.A. § 7(b) (2013)	The committees of jurisdiction should review this exemption for benchmark reports in order to address ambiguities in its language.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees. In its Act 23 questionnaire to ACCD, the Committee asked if ACCD recommended any specific fix to the ambiguous language. In its response, ACCD did not offer a specific recommendation, but did address some of the policy issues at stake.
10 V.S.A. § 101 (2014)	In subdiv. (6), delete language related to making public and keeping confidential certain mineral and geology information.	Recommendation reaffirmed. Bill was introduced in 2014 but not enacted. See H.757 of 2014. See recommended language in App. E.
10 V.S.A. § 1259(b) (2014)	Add reference to trade secret standard at 1 V.S.A. § 317(c)(9) and delete extraneous language.	Recommendation reaffirmed. Bill was introduced in 2014 but not enacted. See H.757 of 2014. See recommended language in App. E.
10 V.S.A. § 6628(a) (2014)	Delete language stating that hazardous materials plans received by ANR are not public records, and clarify that they shall be confidential and exempt from public inspection and copying under 1 V.S.A. § 317(c)(9).	Recommendation reaffirmed. Bill was introduced in 2014 but not enacted. See H.757 of 2014. See recommended language in App. E.
10 V.S.A. § 6632 (2014)	Add reference to trade secret standard at 1 V.S.A. § 317(c)(9) and delete extraneous language.	Recommendation reaffirmed. Bill was introduced in 2014 but not enacted. See H.757 of 2014. See recommended language in App. E.
15 V.S.A. § 307(a) (2013)	The Senate Committee on Health and Welfare and the House Committee on Human Services should review this exemption for voluntary	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.

<b>Statutory Citation (Year of Report Recommendation)</b>	<b>Study Committee Recommendation</b>	<b>Status of Recommendation</b>
	acknowledgement of parentage forms and consider its repeal.	
16 V.S.A. § 2843(d) (2013)	Language regarding application for need-based incentive grants should be modernized and should cross-reference the existing exemption for personal information.	Recommendation modified in the 2014 report. In its Act 23 questionnaire to the Vermont Student Assistance Corporation, VSAC's counsel recommended that this exemption be repealed and replaced with an exemption that more broadly addresses the confidentiality of personal financial information in VSAC's custody. The Committee agreed to this recommendation, and it was reflected in a bill introduced but not enacted—H.757 of 2014. See recommended language in App. E.
18 V.S.A. §§ 1091– 1099 (2012)	The Senate Committee on Health and Welfare and the House Committee on Human Services should review the need for mandated venereal disease testing and the accompanying public records exemption.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.
18 V.S.A. § 1099 (2012)	Amend the exemption under 18 V.S.A. § 1099 for venereal disease testing reports so that it is not a stand-alone exemption, but instead references the exemption in 18 V.S.A. § 1001 for communicable disease reports.	Recommendation withdrawn. During its 2014 session review of this exemption, the House Committee on Government Operations determined that it would be preferable to have the committees of jurisdiction review 18 V.S.A. §§ 1091–1099 as a whole prior to a standalone amendment of 18 V.S.A. § 1099.
18 V.S.A. § 4474d (2013)	Committees of jurisdiction should review and clarify the confidentiality of medical marijuana dispensary application materials and/or the scope of DPS's rulemaking authority with	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.

<b>Statutory Citation (Year of Report Recommendation)</b>	<b>Study Committee Recommendation</b>	<b>Status of Recommendation</b>
	regard to confidentiality.	
18 V.S.A. § 7103 (2012)	Amend exemption in 18 V.S.A. § 7103 regarding to whom patient information may be released to eliminate any conflict with federal law and to delete an outdated cross-reference.	Recommendation withdrawn. Because of the many issues presented by the existing language of this exemption, the Committee recommends instead that this exemption be reviewed by the House Committee on Human Services and the Senate Committee on Health and Welfare.
18 V.S.A. ch. 204 (2012)	The House and Senate Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Human Services should review the requirements in 18 V.S.A. ch. 204 regarding the voluntary and involuntary sterilizations of persons with mental retardation to consider whether the chapter is necessary or whether such proceedings are tracked in an aggregate manner.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.
18 V.S.A. § 9409a (2012)	Delete exemption in 18 V.S.A. § 9409a for information submitted by health care providers regarding the reimbursement paid for the 10 most common billing codes of primary health care services.	Enacted. 2012 Acts and Resolves No. 171, § 41(b) repealed 18 V.S.A. § 9409a.
18 V.S.A. § 9418f (2012)	Delete exemption under 18 V.S.A. § 9418f for rental health plan network information submitted to DFR.	Recommendation withdrawn. During its 2013 hearings on H.54, the House Committee on Government Operations heard testimony that 18 V.S.A. § 9418f(f) does not create a PRA exemption, but instead is intended to prohibit the use of a health care provider's contractual



<b>Statutory Citation (Year of Report Recommendation)</b>	<b>Study Committee Recommendation</b>	<b>Status of Recommendation</b>
		discount pursuant to a provider network contract, and determined that this provision should not be repealed.
23 V.S.A. § 104 (2014)	Committees on Transportation should review exemption for consistency with the Drivers Privacy Protection Act, 18 U.S.C. § 2721 <i>et seq.</i>	Recommendation reaffirmed. The Committee sent the transportation committees a letter in January 2014. PRSC staff is not aware of any action by the committees.
23 V.S.A. § 707	Exemption is overbroad: amend to state that only individually identifying information about students may be confidential.	Recommendation reaffirmed. A bill was introduced in 2014 but was not enacted—see H.757. See recommended language in App. E.
28 V.S.A. § 204(d) (2013)	Committees of jurisdiction should review exemption to clarify who may claim and waive the “privilege” for presentence, pre-parole, and supervision reports.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.
28 V.S.A. § 601(10) (2013)	Committees of jurisdiction should review exemption for inmate files in conjunction with the policies and directives adopted under the exemption to consider the appropriate breadth of the exemption, whether to require rulemaking under the APA, and the standards for the exercise of rulemaking.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.
30 V.S.A. § 206 (2013)	Recommend deleting the last section of this section, as trade secrets in information required to be furnished by the Department of Public Service may be claimed exempt under 1 V.S.A.	Recommendation reaffirmed. Bills were introduced in 2013 and 2014 but not enacted. See H.54 of 2013 and H.757 of 2014. See recommended language in App. E.

<b>Statutory Citation (Year of Report Recommendation)</b>	<b>Study Committee Recommendation</b>	<b>Status of Recommendation</b>
	§ 317(c)(9).	
33 V.S.A. § 105(b) (2013)	Amend subdivision (b)(2) regarding rulemaking authority with regard to DCF records to eliminate the third sentence.	Recommendation reaffirmed, as modified—both the second and third sentences of subdivision (b)(2) would be deleted. Bills were introduced in 2013 and 2014 but not enacted. See H.54 of 2013 and H.757 of 2014. See recommended language in App. E.
33 V.S.A. § 111 (2013)	Recommend amending the exemption to eliminate the phrase “political or commercial purposes.”	Recommendation reaffirmed. Bills were introduced in 2013 and 2014 but not enacted. See H.54 of 2013 and H.757 of 2014. In response to the Committee’s Act 23 questionnaire, AHS did not oppose this amendment. See recommended language in App. E.
33 V.S.A. § 304(b) (2013)	Amend subdivision (b)(2) regarding rulemaking authority with regard to DCF records to eliminate the third sentence.	Recommendation withdrawn because this section of law was repealed in 2014. See 2014 Acts and Resolves No. 131, Sec. 14.
33 V.S.A. § 908 (2013)	Recommend amending to clarify that State employee wages must be disclosed under 1 V.S.A. § 317(b).	Recommendation reaffirmed. Bills were introduced in 2013 and 2014 but not enacted. See H.54 of 2013 and H.757 of 2014. In response to the Committee’s Act 23 questionnaire, AHS did not oppose this amendment. See recommended language in App. E.
33 V.S.A. § 2010(e) (2013)	Recommend technical amendment to clarify that the exemption is a public record subject to an exemption.	Recommendation reaffirmed. Bills were introduced in 2013 and 2014 but not enacted. See H.54 of 2013 and H.757 of 2014. See recommended language in App. D.

<b>Statutory Citation (Year of Report Recommendation)</b>	<b>Study Committee Recommendation</b>	<b>Status of Recommendation</b>
33 V.S.A. § 4105 (2013)	Committees of jurisdiction should review to address the language and scope of the prohibition on use of information furnished to the Office of Child Support.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees. In its Act 23 questionnaire to AHS, the Committee noted this recommendation and asked AHS to comment on the breadth of the exemption. AHS responded that the current breadth of the exemption is appropriate.
33 V.S.A. § 4913 (2013)	Committees of jurisdiction should review to consider how to address bad faith reports of child abuse.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.
33 V.S.A. chapter 49 (2013)	Committees of jurisdiction should review this chapter in order to clarify and streamline the language of the exemptions in this chapter and possibly create one section in the chapter to address the confidentiality of child abuse registry information.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.
33 V.S.A. § 6321 (2013)	Committees of jurisdiction should review in order to address the appropriate scope of the exemption for records related to attendant care services.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.
33 V.S.A. § 6903 (2013)	Committees of jurisdiction should review to consider how to address bad faith reports of elderly or disabled.	Recommendation reaffirmed. PRSC staff is not aware of any action by the committees.

<b>Statutory Citation (Year of Report Recommendation)</b>	<b>Study Committee Recommendation</b>	<b>Status of Recommendation</b>
33 V.S.A. § 7112 (2013)	Amend to eliminate the reference to guidelines regarding the confidentiality of unsubstantiated complaints or the identity of residents and complainants of nursing homes.	Recommendation modified: after reviewing this provision in the 2014 session, and hearing of the varied views of the State Long Term Care Ombudsman and a representative of DAILE as to whether and how this section should be amended, the House Government Operations Committee recommended that this section be reviewed by the House Committee on Human Services and the Senate Committee on Health and Welfare.

## APPENDIX B

### List of Exemptions Reviewed in 2014, and Recommendations

No.	Cite	Description	Recommendation
<i>I. General Government, Misc.</i>			
1	1 V.S.A. § 313(a)	Minutes of executive sessions	Amend to clarify language of exemption and to make claim of the exemption discretionary.
2	1 V.S.A. § 317(c)(10)	Lists of names, disclosure of which violates a right to privacy or produces gain	Committees on Government Operations should review to determine whether “public or private gain” language should be clarified or eliminated and whether the scope of the exemption should be clarified.
3	1 V.S.A. § 317(c)(12)	Records concerning formulation of policy, where disclosure would violate a right to privacy	Committees on Government Operations should review to determine if this exemption is still needed.
4	1 V.S.A. § 317(c)(14)	Records relevant to litigation	Retain exemption in existing form.
5	1 V.S.A. § 317(c)(15)	Records relating to contract negotiations	Retain exemption in existing form.
6	1 V.S.A. § 317(c)(17)	Municipal inter- and intra-departmental communications preliminary to a policy determination	Retain exemption in existing form.
7	1 V.S.A. § 317(c)(24)	Deliberations of agencies acting in judicial or quasi-judicial capacity	Committees on Judiciary should review to assess potential need to clarify scope of exemption.
8	3 V.S.A. § 131	Complaints and other records produced or acquired in connection with the regulation of professions	Office of Professional Regulation should consider recommending clarification of exemption in its annual housekeeping bill.
9	3 V.S.A. § 316	Records of the Department of Human Resources where public policy properly requires them to be confidential	Committees on Government Operations should review to determine if this exemption is needed and, if so, how it should be amended to provide policy

No.	Cite	Description	Recommendation
			principles to guide the Department's rulemaking.
10	3 V.S.A. § 2222b(c) and 3 V.S.A. § 2225(d)	Plans submitted to Secretary of Administration for construction or installation of cables, wires, or telecommunications facilities	Retain exemption in existing form.
11	9 V.S.A. § 2440(d),(f), and (g)	General prohibition on disclosing Social Security numbers to the public; request for redacted record; records of investigation of violations of provisions related to Social Security number protection	Recommend that the Committees on Government Operation, the House Committee on Commerce and Economic Development, and the Senate Committee on Finance review the language of section to improve clarity.
12	9 V.S.A. § 2460	Attorney General or State's Attorney civil investigation records	Retain exemption in existing form.
13	9 V.S.A. § 4555	Complaint and investigation files of the Human Rights Commission	Retain exemption in existing form.
14	11 V.S.A. § 3058(g)	Member-owned LLCs; right to information	Retain exemption in existing form.
15	17 V.S.A. § 2150(d)(7)	Board of Civil Authority records relating to person's decision not to register to vote or to the identity of the voter registration agency through which any particular voter registered	Retain exemption in existing form, as required under federal law.
16	17 V.S.A. § 2154 (see also 1 V.S.A. § 317(c)(31))	Certain statewide voter checklist information	Amend 17 V.S.A. § 2154 to clarify that the specified voter checklist information is exempt public record information.
17	17 V.S.A. § 2904	Attorney General or State's Attorney records of investigations of campaign finance violations	Retain exemption in existing form.
18	18 V.S.A. § 5083	Birth certificates; address and town of residence of participants in the Address Confidentiality	Amend to include a technical correction specifying "or copying" after "inspection."

No.	Cite	Description	Recommendation
		Program	
19	18 V.S.A. § 5112(c)	Records related to the issuance of a new birth certificate in connection with a change of sex	Amend to include a technical correction specifying “or copying” after “inspection.”
20	18 V.S.A. § 5132	Marriage certificates; address and town of residence of participant in Address Confidentiality Program	Amend to include a technical correction specifying “or copying” after “inspection.”
21	21 V.S.A. § 516	Drug test results of employees or applicants for employment	Amend section to reorganize confidentiality provisions to make them more clear.
22	24 V.S.A. § 1884	Registry books of municipal treasurer	Repeal. In addition, 24 V.S.A. § 4643, a nearly identical exemption not previously identified, should likewise be repealed.
23	26 V.S.A. § 75(d)	Information submitted for peer reviews of licensed public accountants	Office of Professional Regulation should consider recommending clarification of exemption in its annual housekeeping bill.
24	26 V.S.A. §§ 1317(c) and 1368(a)(6)(C)	Disciplinary information reported by health care institutions, and judgments or settlements involving a claim of professional negligence reported by insurers; information about pending malpractice claims or actual amounts paid	Amend § 1317(c) to include a reference to the Department of Aging and Independent Living, and § 1368(a) to clarify the information referenced in the section.
25	30 V.S.A. § 7055(b)	Confidential information provided by local exchange telecommunications providers to the enhanced 911 Board or the Administrator of the 911 Database	Retain exemption in existing form.
26	30 V.S.A. § 7059	Individually identifiable information of a person in the 911 database; 911 customer information held by the 911 Board, the entity administering the enhanced 911 database, or emergency service providers;	Retain exemption in existing form.

No.	Cite	Description	Recommendation
		requests to municipalities to de-link name and street address	
27	31 V.S.A. § 674(L1I)	Financial, tax, trust, or personal records filed, received, maintained, or produced by the Tri-state Lottery Commission in connection with payment of a prize	Retain exemption in existing form.
28	32 V.S.A. § 5930a(h)	Information submitted by a business to the Economic Progress Council regarding tax information or confidential business information	House Committee on Commerce and Economic Development and Senate Committees on Finance and on Economic Development, Housing and General Affairs should review exemption for consistency of terminology.
29	32 V.S.A. § 5939(b)	Taxpayer records or information released to a state claimant agency under the Vermont Setoff Debt Collection Act	Retain exemption in existing form.
<b>II. Judiciary and Court Records</b>			
30	4 V.S.A. § 602(c)	Proceedings of the Judicial Nominating Board, including candidate information	Retain exemption in existing form.
31	4 V.S.A. § 603	Names of candidates submitted by the Judicial Nominating Board to the Governor for judicial appointment when a candidate is not selected	Retain exemption in existing form.
32	4 V.S.A. § 608(c)	Comments regarding judicial performance received by the Joint Committee on Judicial Retention	Committees on Judiciary should review entire section for consistency and workability.
33	4 V.S.A. § 740	Supreme Court records; subject to confidentiality requirements	The Committees on Government Operations, in consultation with the Committees on Judiciary, should review the breadth of the grant of rulemaking authority in this section.
34	4 V.S.A. § 741	Credit card information while	Retain exemption in existing form.



No.	Cite	Description	Recommendation
		such information is in the possession of a court or the Judicial Bureau	
35	12 V.S.A. § 1612	Health professional may not disclose a patient's privileged information in court procedure or court documents	Retain exemption in existing form.
36	12 V.S.A. § 1613	Attorney-client communications when client is a corporation	Amend exemption to clarify existing language.
37	12 V.S.A. § 1614	Confidential communications made by a victim of sexual or domestic assault to a crisis worker	Committees on Judiciary should review exemption to determine if language matches up with its intended scope, and to determine whether an exception should be added to allow for mandatory reporting of suspected child abuse.
38	12 V.S.A. § 1705	Court records and court proceedings that involve personally identifiable HIV-related information	Retain exemption in existing form.
39	12 V.S.A. § 4634	Report filed in connection with mandatory mediation program in mortgage foreclosure actions	Retain exemption in existing form.
40	12 V.S.A. § 7015	Written and oral communications related to medical malpractice pre-suit mediation	If section sunsets on July 1, 2015, session law should be added to clarify that the confidentiality of records under this section should survive the repeal.
41	14 V.S.A. § 2	Wrapped wills until delivered to a person entitled to receive it or until disposed of according to law; index of wills	Committees on Judiciary should review to determine if section should be amended to authorize Probate Courts to confirm under appropriate circumstances that a will has been deposited with a Court and to authorize agents under a power of attorney to obtain a copy of a will.
42	14 V.S.A. § 3067(e)	Records of evaluation in proceedings for guardianship of mentally disabled person	Committees on Judiciary, Senate Committee on Health and Welfare, and House Committee on Human Services should review exemption to determine if the section should be amended to

No.	Cite	Description	Recommendation
			authorize the person who is the subject of the evaluation to share the evaluation with others.
43	14 V.S.A. § 3068(e)	Records of hearing in response to a petition for guardianship of mentally disabled person when the court dismisses the petition	Committees on Judiciary, Senate Committee on Health and Welfare, and House Committee on Human Services should review exemption to determine whether the person who is the subject of the hearing has access to sealed hearing records and, if not, whether he or she should, as well as to determine whether the confidentiality of hearings under this section should be consistent with the greater confidentiality of hearings under 18 V.S.A. § 9309.
44	15B V.S.A. § 312	Family Support Act; disclosure of identifying information	Retain exemption in existing form.
45	18 V.S.A. § 9306(c)	Developmental disabilities evaluation is confidential unless disclosed with party consent	Committees on Judiciary, Senate Committee on Health and Welfare, and House Committee on Human Services should review exemption to determine whether the language allowing the sharing of an evaluation with a developmental services agency should be more clearly defined.
46	18 V.S.A. § 9309(b)	Records of proceedings of guardianship hearing for developmentally disabled unless disclosed with party consent	Committees on Judiciary, Senate Committee on Health and Welfare, and House Committee on Human Services should review exemption to determine whether the respondent has access to hearing records that are sealed under subsection (d) and, if not, whether the respondent should have such access.
<b>III. Criminal Justice, Public Safety</b>			
47	3 V.S.A. § 163	Information gathered in the course of the juvenile diversion process and sealed records related to a juvenile court diversion proceeding	Committees on Judiciary should review to consider amending this section to include a provision similar to that found in § 164(c)(1) regarding victim access to diversion information.

No.	Cite	Description	Recommendation
48	3 V.S.A. § 164	Information gathered in the course of the adult diversion process and sealed records related to an adult court diversion proceeding	Retain exemption in existing form.
49	12 V.S.A. §§ 7106 and 7108	Windsor County Youth Court proceedings	The Committees on Judiciary should review to determine whether the Youth Court is defunct and, if so, whether the entire chapter should be repealed, and session law added preserving the confidentiality of existing Youth Court records.
50	13 V.S.A. § 3504(g)	Information collected in support of investigations or studies by the Commissioner of Health regarding illness, disease, or death likely to have been caused by a weapon of mass destruction	The Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Health Care should review to determine if the exemption should be time-limited, subject to the same standards as other records relating to the detection and investigation of crime, and if the definition of “weaponized biological or biologic warfare agents” at 13 V.S.A. § 3501 should be updated.
51	13 V.S.A. § 5305(a)	Address or telephone number of crime victim who requests notification of release or escape of a defendant	Retain exemption in existing form.
52	13 V.S.A. § 5322	Name or identifying information of an applicant to the Victim’s Compensation Program, or a victim named in a restitution judgment order, or a recipient of the Domestic and Sexual Violence Survivor’s Transitional Employment Program	Retain exemption in existing form.
53	13 V.S.A. § 5358a and 1 V.S.A. § 317(c)(41)	Documents reviewed by the Victim’s Compensation Board for purposes of approving an application for compensation, and certain personal information of a victim	Retain exemption in existing form.

No.	Cite	Description	Recommendation
54	13 V.S.A. §§ 5402, 5411, and 5411a	Sex Offender Registry information may only be disclosed in accordance with law	Retain exemption in existing form.
55	13 V.S.A. §§ 5402(b), 5411(b)(1), and 5411a(d)	The identity of a victim of an offense that requires registration on the Sex Offender Registry	Retain exemption in existing form.
56	13 V.S.A. § 5411(d)	Information about requesters of Sex Offender Registry records	Retain exemption in existing form.
57	13 V.S.A. § 7041	Records or files of a law enforcement agency related to an expunged deferred sentence; special index of deferred sentences for sex offenses that require registration	Retain exemption in existing form.
58	18 V.S.A. § 4473(b)(5)(A)	Records of appeal before the Medical Marijuana Review Board	Retain exemption in existing form.
59	20 V.S.A. § 1941	All DNA samples submitted to the Department of Public Safety laboratory; DNA records	Retain exemption in existing form.
60	20 V.S.A. §§ 2056–2056h, 2060	Records of the Vermont Criminal Information Center (VCIC)	Committees on Judiciary should review chapter for consistency in use of terminology throughout and for consistency of the language of § 2056 with the overall statutory scheme.
61	20 V.S.A. § 2064(h)	Criminal information received by authorized persons as part of a subscription service with VCIC unless statute authorizes disclosure	Retain exemption in existing form.
62	23 V.S.A. § 1607(c)	Access to data collected with automated license plate recognition systems	Committees on Judiciary and on Transportation should review prior to sunset to determine if section should be extended or made permanent.
63	33 V.S.A. § 5117(a), (c), (e)	Court and law enforcement reports and files concerning a person subject to juvenile judicial	Retain exemption in existing form.

No.	Cite	Description	Recommendation
		proceedings, unless the statute allows disclosure; files of juvenile proceedings released in divorce proceedings; prohibition on redissemination by receiving persons unless authorized by law	
64	33 V.S.A. § 5118(e)	Written notice that a child has conducted a "delinquent act requiring notice" that is provided by a court to superintendent or head of school in which the child is a student	Retain exemption in existing form.
65	33 V.S.A. § 5119	Sealed juvenile delinquency records, unless statute authorizes disclosure; special index of files or records that have been sealed, unless statute authorizes disclosure; motion by law enforcement or DCF to unseal juvenile judicial records; and victim's information retained by state's attorney unless disclosure authorized by statute	Retain exemption in existing form.
66	33 V.S.A. § 5201	All files related to withdrawn delinquency petition shall be sealed	Retain exemption in existing form.
67	33 V.S.A. § 5204(h) and (i)	Court records and files of a person under the age of 16 who is tried as an adult but acquitted shall be sealed according to 33 V.S.A. § 5119; records of hearing regarding transfer of a person from juvenile court to district court unless disclosure authorized by statute	Retain exemption in existing form.
68	33 V.S.A. § 5205	Fingerprint files of children under the jurisdiction of the court	Amend to clarify language of exemption.
69	33 V.S.A. § 5234	Notice to victim in delinquency proceeding prior to juvenile release; name of facility from	Retain exemption in existing form.

No.	Cite	Description	Recommendation
		which juvenile shall be discharged shall not be released	
70	33 V.S.A. § 5287	All court records of a youthful offender shall be expunged or sealed when the youth successfully completes probation and offender status is terminated	Amend to make a technical correction to replace “District Court” with “Criminal Division.”
71	33 V.S.A. § 5309	All files related to a withdrawn petition that a child is in need of care or supervision shall be sealed	Retain exemption in existing form.
<b>IV. Public Health</b>			
72	18 V.S.A. § 154	All information reported to the State Cancer Registry and all identifying information	Retain exemption in existing form.
73	18 V.S.A. § 157	Data and identifying information received by the Vermont Mammography Registry is confidential and privileged	Retain exemption in existing form.
74	18 V.S.A. § 1001	All communicable disease reports and information collected in support of investigations and studies to determine the nature or cause of any disease outbreak; records relating to HIV or AIDS that may identify a person	Retain exemption in existing form.
75	18 V.S.A. § 1129	Immunization Registry Information, except it may be shared in summary, statistical, or other form in which particular individuals are not identified	Retain exemption in existing form.
76	18 V.S.A. § 1141	Results of communicable disease testing	Retain exemption in existing form.
77	18 V.S.A. § 1552(c)	Maternal mortality information collected and analyzed by the Northern New England Perinatal Quality Improvement Network	Retain exemption in existing form.

<b>No.</b>	<b>Cite</b>	<b>Description</b>	<b>Recommendation</b>
78	18 V.S.A. § 5088	Birth Information Network information	Retain exemption in existing form.
79	18 V.S.A. § 5222(d)	Fetal death reports	Retain exemption in existing form.
<b><i>V. Legislative Branch</i></b>			
80	2 V.S.A. § 404(c)	Requests by a member of the General Assembly to the Office of Legislative Council for legal assistance and information received in connection with research or drafting	Retain exemption in existing form.
81	2 V.S.A. § 502(b)(2)	Requests by a member of the General Assembly to the Joint Fiscal Office for fiscal research and information	Retain exemption in existing form.

## APPENDIX C

### Explanation of Recommendations on Exemptions Reviewed in 2014

#### I. General Government; Miscellaneous Exemptions

At its September 15, October 10, October 31, and November 21 meetings, the Study Committee reviewed 29 general government and miscellaneous exemptions, and was made aware of another, previously unidentified exemption through correspondence with the Vermont League of Cities and Towns. Of these, the Committee recommended that seven be amended, two be repealed, six be reviewed by committees of jurisdiction, and two be reviewed by the Office of Professional Responsibility; these recommendations are explained below.

##### 1. *1 V.S.A. § 313(a)—minutes of executive sessions*

The Open Meeting Law (OML) generally requires that meetings of public bodies be open to the public and that minutes be taken of such meetings. However, meetings may be closed under the executive session provision of the OML, which currently provides that “[m]inutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title.”

The current provision is unclearly drafted. It also appears to mandate—rather than merely authorize—that minutes be kept confidential.

The Committee recommends that this provision be amended to improve its clarity and to authorize, but not require, that minutes not be publicly disclosed. See Sec. 17 of App. D.

##### 2. *1 V.S.A. § 317(c)(10)—lists of names*

1 V.S.A. § 317(c)(10) exempts from public inspection and copying “lists of names compiled or obtained by a public agency when disclosure would violate a person’s right to privacy or



produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees.”

The Committee heard from witnesses about a Superior Court and a Supreme Court case interpreting this exemption, and from witnesses that this exemption is most likely to be claimed by Agencies possessing lists which may be of commercial value, *e.g.* lists of licensed hunters, dairy farmers, or maple syrup producers.

This exemption does not define what constitutes “public or private gain.” Further, the exemption appears to require inquiry into the motive of the requester, which is inconsistent with Supreme Court caselaw stating that a requester’s motive is irrelevant under the Public Records Act. In addition, the plain language of the exemption appears only to extend to a requester’s name—and does not explicitly extend to associated personal information such as that person’s contact information or address.

The Committee lacked time to delve further into these issues, and therefore recommends that this exemption be reviewed by the Committees on Government Operations.

3. *1 V.S.A. § 317(c)(12)—formulation of policy, where disclosure would violate a right to privacy*

1 V.S.A. § 317(c)(12) exempts records concerning formulation of policy where disclosure “would constitute a clearly unwarranted invasion of personal privacy.”

The Committee noted that this exemption is arguably inconsistent with the 2006 amendments to 1 V.S.A. § 317(c)(4) which eliminated the common law deliberative process privilege, although the elements of the latter are less stringent than 1 V.S.A. § 317(c)(12). Members also raised the question of whether this exemption is needed; witnesses noted that this exemption is rarely used. However, the Committee ran out of time to gather the information needed to

recommend whether this exemption should be repealed, amended, or kept in its existing form, and so recommends that it be reviewed by the Committees on Government Operations.

4. *1 V.S.A. § 317(c)(24)—deliberations of agencies acting in judicial or quasi-judicial capacity*

1 V.S.A. § 317(c)(24) exempts records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity. At its October 31, 2014 meeting, the Committee heard from several witnesses and received written testimony on this exemption, some in support of and others in opposition to retaining the exemption in its existing form. Supporters opined that the exemption enables quasi-judicial decision-makers to engage in frank, uninhibited discussions and information-gathering, and is consistent with an exemption to the Open Meeting Law for public bodies engaged in deliberations in connection with quasi-judicial proceedings. Opponents offered that the grounds for many decisions vital to individuals' lives are worked out during the course of quasi-judicial proceedings, and that the public officers making such decisions should be accountable for the process by which they arrive at such decisions.

During the testimony on this exemption, it became apparent that users of the exemption have different interpretations concerning its scope. One witness indicated that the exemption would cover almost any written materials related to a quasi-judicial decision-making process, while another witness seemed to articulate a narrower view that the only written material prepared for discrete deliberative sessions would be exempt.

Because the Committee lacked time to resolve these varying interpretations or the competing policy arguments, it recommends that this exemption be reviewed by the Committees on Judiciary and on Government Operations.

5. *3 V.S.A. § 131—complaints and other records produced or acquired in connection with the regulation of professions*

Under 3 V.S.A. § 131, the Secretary of State, through the Office of Professional Regulation (OPR), is charged with maintaining a register of complaints against licensees of regulated professions. OPR, and the licensing boards attached to it, are charged with investigating complaints, and OPR attorneys are authorized to prosecute disciplinary and licensing cases before a relevant board.

3 V.S.A. § 131 addresses the confidentiality of complaint, investigation, and disciplinary records. Subsection (d) appears to be intended to create a broad cloak of confidentiality over such records, and subsections (c) and (e) to provide exceptions to the broad cloak of confidentiality, describing when the Secretary or the Office of Professional Responsibility must release certain information and records. Subsection (g) appears to “clarify” the scope of the cloak of confidentiality.

However, as drafted, the language of this section was confusing to the Committee, and did not appear to match up with what the Committee believes is its intent. Subsection (d) establishes the cloak of confidentiality for “disciplinary complaints, proceedings or records...”, and subsection (g) references “disciplinary complaints.” However, a complaint is not properly characterized “disciplinary” until an investigation is completed and a decision is made to take disciplinary action. Likewise, the reference to “disciplinary ... records” appears intended to encompass “investigatory files”, which are referenced in subsection (e), but again, investigation records are not properly characterized as disciplinary until an investigation is complete and a decision is made to take disciplinary action. Finally, subsection (g) refers to the “confidentiality and privileged status” of information protected under subsection (d), but these provisions do not address whether a court may order discovery of such records.

The Committee believes that the language of this section may benefit from clarification, and therefore approves sending a letter to OPR requesting that it consider technical corrections in its annual housekeeping bill recommendations for 2015.

6. *3 V.S.A. § 316—records of the Department of Human Resources designated by rule*

3 V.S.A. § 316 states that records of the Department of Human Resources (DHR) are public records, “except such records as the rules may properly require to be held confidential for reasons of public policy....”

The Committee heard from a representative of DHR on this exemption, and learned that the Department has never adopted rules under this section to designate records as confidential. The representative indicated that the Department would oppose repeal of this rulemaking authority, however, unless the personal records exemption of the Public Records Act (1 V.S.A. § 317(c)(7)) was suitably amended to address specific categories of employee-related records.

The Committee was troubled by the open-ended nature of the grant of rulemaking authority in 3 V.S.A. § 316, and the lack of policy standards to guide any rulemaking initiated by DHR. However, the Committee ran out of time to gather information sufficient to recommend the repeal or amendment of this section, and therefore recommends that it be reviewed by the Committees on Government Operations.

7. *9 V.S.A. § 2440(d),(f), and (g)—Social Security number protection*

9 V.S.A. § 2440 is a lengthy provision known as the Social Security Number Protection Act (Act). Subsection (d) of this section governs the duties of the State and its agencies and political subdivisions, and any agent or employee thereof, in connection with Social Security numbers collected from individuals. Subsection (e) lists exceptions to the requirements of subsection (d). Among these exceptions is subdivision (e)(6), which allows a State agency or political

subdivision to continue a practice in place prior to January 1, 2007, that is inconsistent with the requirements of subsection (d), provided that certain conditions are satisfied.

Subsection (f) confers on “any person” a right to request that a town clerk or clerk of court redact the person’s Social Security number (and various other identifiers) from official records available on a public website. The request itself must include specific information and is a public record, but “access [to it] shall be restricted to the town clerk, the clerk of court, their staff, or upon order of the court.”

Subsection (g) provides for enforcement of the Act by the Attorney General and State’s Attorney (and the Department of Financial Regulation in the case of persons licensed or registered by DFR). Subdivision (g)(3) addresses the right of a law enforcement agency and the Department of Public Safety to designate as confidential information that the agency or Department provides to the AG or state’s attorney.

The Committee found that the language of this section generally makes Social Security numbers—as well requests to town clerks under subsection (f) and investigation records under subsection (g)—exempt from public inspection and copying under the Public Records Act. However, the Committee also found that the exempt status of these records probably should be clarified. In addition, Sen. Jeanette White found the exception authorized under subdivision (e)(6) of the section to be troubling. Because the Act is a complex piece of legislation with many interrelated parts, and passage of the Act involved the consultation of many interested parties, the Committee declined to make specific recommendations to amend the Act. The Committee believes, however, that the time has come to take a fresh look at the Act, and therefore recommends that the Committees on Government Operations, the House Committee on

Commerce and Economic Development, and the Senate Committee on Finance review this section.

8. *17 V.S.A. § 2154—certain statewide voter checklist information*

17 V.S.A. § 2154(a) requires the Secretary of State to establish a statewide computerized voter registration checklist to serve as the official voter registration list for all elections in the State. Subsection (b) of this section provides that a “registered voter’s month and day of birth, driver’s license number, the last four digits of the applicant’s Social Security number, and street address if different from the applicant’s mailing address shall not be considered a public record as defined in 1 V.S.A. § 317(b).”

Because this same information is listed as “exempt” from public inspection and copying under 1 V.S.A. § 317(c)(31), and because 17 V.S.A. § 1254 and 1 V.S.A. § 317(c)(31) were added in the same legislation, the Committee believes that 17 V.S.A. § 2154(b) was intended to include parallel exemption language, and likely to prohibit its release. As a result, instead of characterizing such information as “not ... a public record,” the Committee recommends a technical correction to § 2154(b) to specify that the information shall be kept confidential and be exempt from public inspection and copying under the Public Records Act. See Sec. 6 of App. D.

9. *18 V.S.A. §§ 5083 and 5132—birth certificates and marriage licenses; Address Confidentiality Program*

18 V.S.A. § 5083 provides that the Department of Health shall not disclose on a birth certificate or any public record the confidential address or town of residence of a parent if the parent gives notification of his or her participation in the Address Confidentiality Program of 15 V.S.A. ch. 21, subch. 4. The section also requires the Department to maintain a confidential record of the parent’s actual mailing address and town of residence, but that “[s]uch record shall be exempt from public inspection.”

Similarly, 18 V.S.A. § 5132 provides that upon notification by a participant of the Address Confidentiality Program, a town clerk shall not disclose on a civil marriage license or certificate or any public record the participant's confidential address or town of residence. The section also requires the Department of Health to maintain a confidential record of the participant's actual mailing address and town of residence, but that "[s]uch record shall be exempt from public inspection."

The Public Records Act affords a right to "inspect or copy any public record." As a result, the Committee believes the intended scope of the exemptions at 18 V.S.A. §§ 5083 and 5132 would be more clearly expressed with a technical correction adding the phrase "or copying" after the word "inspection." See Secs. 20 and 22 of App. D.

*10. 18 V.S.A. § 5112—records relating to issuance of birth certificate in connection with change of sex*

18 V.S.A. § 5112 provides for the issuance of a new birth certificate upon the sexual reassignment of an individual. Subsection (c) states that the "original birth certificate, the probate court order, and any other records relating to the issuance of the new birth certificate shall be confidential and shall not be subject to public inspection pursuant to 1 V.S.A. § 317(c)...."

As noted above, the Public Records Act affords a right to "inspect or copy any public record." As a result, the Committee believes the intended scope of the exemption at 18 V.S.A. § 5112(c) would be more clearly expressed with a technical correction adding the phrase "or copying" after the word "inspection." See Sec. 21 of App. D.

*11. 21 V.S.A. § 516—drug test results of employees or applicants for employment*

21 V.S.A. § 516 provides that health care information of an employee or applicant to be subject to a drug test shall be confidential (with exceptions), prohibits a medical review officer

from revealing the identity of an individual being tested, and requires specified persons who have access to information about drug test results to keep all such information confidential.

The Committee does not object to these exemptions, but believes the language of this section is poorly structured and somewhat confusing, and therefore recommends a technical amendment. See Sec. 16 of App. D.

*12. 24 V.S.A. §§ 1884 and 4643—books of registry*

The Vermont Municipal Bond Registration Act, 24 V.S.A. chapter 53, subchapter 4, generally authorizes a municipal corporation to issue bonds, notes, or certificates in various forms (coupon, bearer, or book entry) and governs their form, registration, and transfer. This subchapter includes a confidentiality provision, 24 V.S.A. § 1884, which provides that the “books of registry held by the treasurer of the municipal corporation or other designated register shall be confidential and the information contained therein shall not be available to the public.”

The Committee received written and oral testimony on this provision from Steve Jeffrey, the Executive Director of the Vermont League of Cities and Towns, who consulted with several individuals with municipal expertise: a 40-year municipal bond attorney; the executive director of the Vermont Municipal Bond Bank; and the director of the Center for State and Local Leadership at George Mason University, who in turn consulted with the Director of Governmental Affairs of the National Association of Bond Lawyers.

Through his consultations, Mr. Jeffrey identified another municipal bond confidentiality provision, 24 V.S.A. § 4643, which had not previously been identified by the Committee. Section 4643 is a provision in 24 V.S.A. chapter 119, which establishes and governs the Vermont Municipal Bond Bank (Bank). Section 4643 provides that the Bank may authorize its own bonds or notes by resolution and governs their form, registration, and transfer. 24 V.S.A.



§ 4643(c) specifies that the “books of registry held by the state treasurer or other designated register shall be confidential and the information contained therein shall not be available to the public.”

Mr. Jeffrey stated that individuals he consulted surmised that the confidentiality language of 18 V.S.A. §§ 1884 and 4643 could be based on historical practices of local individuals “buying and holding” municipal bonds and the registries therefore constituting a list of wealthier members of the community.<sup>11</sup> However, under current practice, bonds are purchased by one or more large investment banks and then resold to others (and often resold again many times through the life of the bond). As a result, registries held by public agencies quickly become obsolete. Because of these changes in the bond market, and because registry lists likely qualify as exempt under 1 V.S.A. § 317(c)(10), Mr. Jeffrey recommended that 18 V.S.A. § 1884 and § 4643(c) be repealed, and the Committee concurs with that recommendation. See Secs. 14–15 of App. E.

*13. 26 V.S.A. § 75(d)—peer reviews of licensed public accountants*

In 26 V.S.A. chapter 1 (Accountants), § 75(d) provides that “[i]nformation submitted for peer reviews [of licensed public accountants] is exempt from public disclosure under 1 V.S.A. § 317(c)(3) and (6).” The latter cross-references—1 V.S.A. § 317(c)(3) and (6)—are provisions of the Public Records Act which exempt the following from public inspection and copying:

(3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State;

\* \* \*

(6) a tax return and related documents, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont Department of Taxes or submitted by a person to any public agency in connection with agency business;

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<sup>11</sup> Such registry lists are already protected under another PRA exemption described above, 1 V.S.A. § 317(c)(10), if their disclosure “would violate a person’s right to privacy or produce public or private gain....”

If the intent of 26 V.S.A. § 75(d) is to broadly exempt records related to peer reviews of licensed public accountants, then its language is likely too narrow.

During August 2014, legislative counsel contacted counsel to the Board of Public Accountancy (Board) about the scope of records intended to be covered under 26 V.S.A. § 75(d). Counsel offered to testify before the Committee with the Chair of the Board concerning 26 V.S.A. § 75(d).

Because of time pressures, and because the Committee finds the application and intended scope of 26 V.S.A. § 75(d) to be unclear on its face, the Committee elected not to schedule counsel and the Chair of the Board to testify. Instead, the Committee approves sending a letter to OPR requesting that it consider whether the existing language of 26 V.S.A. § 75(d) accurately describes the scope of public accountant peer review records intended to be exempt from disclosure under the Public Records Act and, if it does not, to recommend corrective language in its annual housekeeping bill.

*14. 26 V.S.A. §§ 1317(c) and 1368(a): disciplinary and malpractice information concerning persons licensed to practice medicine*

26 V.S.A. § 1317(a) requires certain health care institutions to report disciplinary action to the Board of Medical Practice. In 2011, this provision was amended to require a copy of a report to be sent to the Department of Disabilities, Aging, and Independent Living in the case of disciplinary action taken against a licensee based on the provision of mental health services. Subsection (c) provides for the confidentiality of such reports (with exceptions), and was not updated in 2011 to reference the obligation of DAIL to keep confidential the reports that it receives under this section. As a result, the Committee recommends a technical correction to subsection (c) to reference DAIL. See Sec. 18 of App. D.

26 V.S.A. § 1368(a) establishes a “data repository” in the Department of Health comprised of conviction, criminal charge, disciplinary, malpractice claim, and education and background information about licensees that are “required under this section and any other law or rule which requires the reporting of such information.” As just noted, another section in the same chapter, 26 V.S.A. § 1317, requires health care institutions to report disciplinary information (and insurers to report malpractice information). The reference in subsection (a) to information “required under ... any other law or rule which requires the reporting of such information” appears to gloss over the information specifically required to be reported under 26 V.S.A. § 1317. The Committee therefore recommends that 26 V.S.A. § 1368(a) be amended to reference information required to be reported under the same chapter.<sup>12</sup> See Sec. 19 of App. D.

*15. 32 V.S.A. § 5930a(h)—information submitted by a business to the Economic Progress Council*

32 V.S.A. § 5930a establishes the Vermont Economic Progress Council and governs its award of tax stabilization agreements and exemptions as well as Vermont employment growth incentives. Subsection (h) creates a public records exemption for “information and materials submitted by a business concerning its income taxes and other confidential financial information” except that such information may be shared with JFO and the Auditor of Accounts. Subsection (h) goes on to prohibit JFO and the Auditor from disclosing any “proprietary business information....”

The Committee is unsure whether the references to “confidential financial information” and “proprietary business information” are intended to refer to the same information. Therefore, the Committee recommends that the House Committee on Commerce and Economic Development

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<sup>12</sup> The Committee reviewed 26 V.S.A. § 1368(a) because subdivision (a)(6)(C)(ii) provides that “[p]ending malpractice claims and actual amounts paid by or on behalf of a professional ... shall not be disclosed by the Commissioner of Health or by the licensing authority to the public.” The Committee does not object to this language.

and the Senate Committees on Finance and on Economic Development, Housing and General Affairs review the language of 32 V.S.A. § 5930a(h) for internal consistency.

## **II. Judiciary and Court-Related Records**

At its September 15, October 10, and October 31, 2014 meetings, the Study Committee reviewed 17 judiciary and court record-related exemptions. Of these, the Committee recommended that one be amended, the effect of the repeal of another be clarified, and that seven be reviewed by committees of jurisdiction; these recommendations are explained below.

### *I. 4 V.S.A. § 608—comments regarding judicial performance*

4 V.S.A. § 608 governs the conduct of the Joint Committee on Judicial Retention. Subsection (c) provides that information obtained from members of the Vermont bar and the public on the performance of a judge or justice “shall be confidential until the committee commences its hearings under this subsection.” Subsection (d) provides in part that “[c]opies of written comments received by the committee shall be forwarded to the judge, the justice, or the magistrate. A judge, a justice, or a magistrate seeking retention has the right to a reasonable time period to prepare and present to the committee a response to any testimony or written complaint adverse to his or her retention and has the right to be present during any public hearing conducted by the committee.”

The Committee does not understand how to read these two provisions together. If the information is confidential until the Committee on Judicial Retention has a hearing, then is it prohibited from sending the information to the judge, justice, or magistrate seeking retention prior to his or her hearing? If so, then is the Committee required to take up the retention at a subsequent hearing, so the judge, justice, or magistrate has a “reasonable time to prepare and present a response”? If not, should the language be clarified?

Because the Committee was unable to answer these questions, it recommends that the Committees on Judiciary review this provision to determine whether it is workable and ought to be clarified.

2. *4 V.S.A. § 740—Supreme Court records; subject to confidentiality requirements*

4 V.S.A. § 740 authorizes the Supreme Court by administrative order or directive to prepare, maintain, record, index, docket, preserve, and store court records and provide certified copies of them upon request, “subject to confidentiality requirements of law or court rules.”

This section appears to broadly authorize the Supreme Court to adopt rules requiring that certain Court records be confidential, yet does not include a standard or guiding policy for the adoption of such rules. The breadth of this provision and the lack of any standard or policy may be appropriate, but the Committee lacked the time to investigate or consider this issue further. Instead, it recommends that the Committees on Government Operations, in consultation with the Committees on Judiciary, review the language of this section to determine if its breadth and absence of a standard or guiding policy is appropriate.

3. *12 V.S.A. § 1613—attorney-client communications when client is a corporation*

12 V.S.A. § 1613 adds substance to the attorney-client privilege laid out in Vermont Rule of Evidence 502 by specifying when attorney-client communications are privileged in the case of corporate clients.

The Committee has no objection to the substance of this section. However, because the Committee finds its language to be confusing, it recommends a technical, clarifying amendment. See Sec. 12 of App. D.

4. *12 V.S.A. § 1614—sexual or domestic assault crisis worker–victim communications*

12 V.S.A. § 1614(b) establishes the following privilege:

(b) A victim receiving direct services from a crisis worker has the privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made by the victim to the crisis worker, including any record made in the course of providing support, counseling or assistance to the victim.

Unlike the attorney-client privilege, the language of the above victim-crisis worker privilege appears to apply only to communications that flow in one direction—those “made by the victim to the crisis worker”—and not to communications from the crisis worker to the victim.

In addition, unlike the health care worker–patient privilege, 12 V.S.A. § 1614(b) includes no exception language that would authorize a crisis worker to fulfill mandatory child abuse reporting responsibilities.

Because these issues raise policy concerns that fall outside the scope of the Committee’s jurisdiction, the Committee recommends that the Committees on Judiciary review 12 V.S.A. § 1614 to determine whether its plain language matches up with its intended scope and to determine whether adding exception language to address the mandatory reporting issue would be appropriate.

5. *12 V.S.A. § 7015—written and oral communications related to medical malpractice pre-suit mediation*

12 V.S.A. chapter 215, subchapter 2 governs voluntary pre-suit mediation in medical malpractice matters. A provision in this subchapter, 12 V.S.A. § 7015, provides that “[a]ll written and oral communications made in connection with or during the mediation process set forth in this chapter shall be confidential.” The entire subchapter is currently set to expire on July 1, 2015.

The Committee recognizes that it is outside its jurisdiction to review the merits of the expiration of this subchapter. However, if it does expire, the Committee recommends that session law be enacted clarifying that confidential communications made prior to its repeal shall remain confidential post-repeal. See Sec. 13 of App. D.

6. *14 V.S.A. § 2: Wrapped wills until delivered to a person entitled to receive it or until disposed of according to law; index of wills*

14 V.S.A. § 2 governs the form, confidentiality, and cataloguing of wills deposited with the Probate Division of the Superior Court. Wills so deposited are enclosed in a sealed wrapper, and the wrapper may be indorsed with the name of a person to whom the will is to be delivered after the testator's death.

This section addresses confidentiality of the will during the life of a testator and after a testator dies. During the life of a testator, the will may only be delivered to the testator, a person the testator authorizes in writing, or an authorized legal guardian. After the testator dies, the will may be delivered on demand to the person named on the wrapper, and if the will is not so demanded, the Court is required to publicly open it. If a petition to open the decedent's estate is filed in a district other than the one in which it was kept, it must be delivered to the named executor or the person named on the wrapper, or filed in the other court.

14 V.S.A. § 2 also requires probate courts to keep an index of wills deposited, and provides that this index not be open to public inspection.

The Committee heard testimony that the language of § 2 that appears to prevent courts from confirming or denying that a will has been deposited does not reflect actual practice, and suggested that it would make sense to permit an heir to inquire as to the existence of a will upon furnishing a death certificate. The Committee also raised a question as to whether an agent under a power of attorney should be permitted to obtain a copy of a will during the testator's life. Because these policy issues fall outside the scope of the Committee's jurisdiction, it recommends that they be reviewed by the Committees on Judiciary.

7. *14 V.S.A. §§ 3067(e) and 3068(e)—guardianship proceedings for mentally disabled person; evaluation and hearing records*  
*AND 18 V.S.A. §§ 9306(c) and 9309(b)—guardianship proceedings for developmentally disabled person; evaluation and hearing records*

14 V.S.A. §§ 3067 and 3068 are provisions in a subchapter that governs petitions for guardianship and guardianship proceedings in the case of persons alleged to have “significantly subaverage intellectual functioning which exists concurrently with deficits in adaptive behavior” or a “physical or mental condition that results in significantly impaired cognitive functioning.”

14 V.S.A. § 3067 specifies that when a petition for guardianship, or a motion for guardianship modification or termination, has been filed, the Court shall order an evaluation of the respondent. The section further specifies the required contents of the evaluation, and with regard to its release, subsection (e) provides in part:

Regardless of whether the report of the evaluator supports or does not support guardianship, the court shall provide a copy of the evaluation to the respondent, the respondent’s attorney, the petitioner, the guardian upon appointment, and any other individual, including the proposed guardian, determined by the court to have a strong interest in the welfare of the respondent. The evaluation shall remain confidential, and recipients of the evaluation are prohibited from sharing the evaluation.

14 V.S.A. § 3068 addresses the conduct of guardianship hearings. Subsection (a) specifies who may attend, and provides that the “court may exclude any person not necessary for the conduct of the hearing on motion of the respondent.” Subsection (e) is the sole provision that addresses the records of the hearing, and it provides:

If upon completion of the hearing and consideration of the record the court finds that the respondent is not a person in need of guardianship, it shall dismiss the petition and seal the records of the proceeding.

A separate chapter in Title 18, chapter 215, governs petitions for guardianship and guardianship proceedings in the case of persons alleged to have developmental disabilities. 18 V.S.A. § 9306 requires the Commissioner of DAIL upon receiving a guardianship petition from Superior Court to arrange for a comprehensive evaluation of the respondent, and describes



generally what the evaluation must contain and when it must be completed. With regard to release of the evaluation, subsection (c) states:

The department shall send a copy of the evaluation to the court, the state's attorney, the director of guardianship services, and to counsel for the respondent. The evaluation is a confidential document, and shall not be further disclosed by the court and the parties without the consent of the respondent or a person authorized to act on behalf of the respondent, except that the department shall release the evaluation to a developmental services agency, if necessary, for the purpose of obtaining or improving services to the person.

18 V.S.A. § 9309 addresses the conduct of guardianship hearings under chapter 215. With regard to the confidentiality of the hearings themselves, and hearing records, subsections (b) and (d) provide in relevant part:

(b) [text omitted]. The general public shall be excluded from hearings under this chapter, and only the parties, their counsel, the interested person who requested the filing of the petition, witnesses and other persons accompanying a party for his or her assistance, and such other persons as the court finds to have a proper interest in the case or in the work of the court may be admitted by the court. The proceedings of the hearing shall be confidential, and a record of the proceedings may not be released without the consent of the respondent or the respondent's guardian.

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(d) If, upon completion of the hearing and consideration of the record, the court finds that the respondent is not a person in need of guardianship, as defined in subdivision 9302(5) of this title, it shall dismiss the petition and seal the records of the proceedings.

Read together, and individually, these Title 14 and Title 18 provisions addressing guardianship evaluations and guardianship hearings raise a number of questions:

- i. Why does 14 V.S.A. § 3067(e) prohibit the respondent, i.e. the subject of the evaluation, from sharing it? By contrast, 18 V.S.A. § 9306 authorizes release of an evaluation with the consent of the respondent or a person authorized to act on behalf of the respondent.
- ii. Why is the confidentiality of guardianship hearings addressed so differently in 14 V.S.A. § 3068(e) and 18 V.S.A. § 9309?
- iii. Do the sealing requirements of 14 V.S.A. § 3068(e) and 18 V.S.A. § 9309(d) in the case of dismissed petitions mean that the respondent cannot access the hearing records?

At its October 10, 2014 meeting, the Committee heard from a Vermont Legal Aid attorney and the Director of the Office of Public Guardian. However, the Committee determined that addressing the above questions lay outside the scope of its charge, and instead recommends that the Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Human Services review these sections in light of the questions above to determine if any clarifications or amendments would be appropriate.

### **III. Criminal Justice and Public Safety-Related Exemptions**

At its September 15, October 10, and October 31, 2014 meetings, the Study Committee reviewed 25 criminal justice and public safety record-related exemptions. Of these, the Committee recommended that two be amended and that six be reviewed by committees of jurisdiction; these recommendations are explained below.

#### *1. 3 V.S.A. §§ 163–64—adult and juvenile diversion records*

3 V.S.A. § 163 authorizes and governs the operation of a juvenile court diversion project, and 3 V.S.A. § 164 authorizes and governs the operation of an adult court diversion project. Both sections broadly provide that information gathered during a diversion process be held “strictly confidential” and not released without the participant’s prior consent. The adult diversion provision provides exceptions to this confidentiality which the juvenile diversion provision does not include, including authorizing the prosecuting attorney to release information to a victim upon a showing of legitimate need and subject to an appropriate protective agreement defining the purpose for which the information is being released.

During testimony on these provisions, the Committee learned that, despite the lack of parallel language in the juvenile diversion provision, victims of participants in juvenile diversion are afforded the same rights of access as are victims of participants in adult diversion. The witnesses

recommended (or did not object to) amending 3 V.S.A. § 163 to clarify the rights of victims in the juvenile diversion context, and the Committee recommends that the Judiciary Committees consider such an amendment. The Committee also heard conflicting testimony as to whether DUI offenders are eligible for adult diversion, and therefore also notes that the Judiciary Committee may wish to clarify this issue.

2. *12 V.S.A. §§ 7106 and 7108—Windsor County Youth Court proceedings*

12 V.S.A. chapter 216 establishes the Windsor County Youth Court and governs its operations. Its provisions include 12 V.S.A. §§ 7106 and 7108, which govern the confidentiality of proceedings and records of the Windsor County Youth Court.

At its September 15 meeting, the Committee heard testimony that the Windsor County Youth Court is defunct. However, the Committee did not feel comfortable recommending repeal of 12 V.S.A. §§ 7106 and 7108 (or of chapter 216 in its entirety), as any such recommendation falls under the jurisdiction of the Judiciary Committees.

Instead, the Committee recommends that the Judiciary Committees review whether the Windsor County Youth Court is permanently defunct and, if so, whether 12 V.S.A. chapter 216 should be repealed. If either of the Judiciary Committees votes favorably to recommend a bill to repeal chapter 216, the Committee further recommended that language be added to address, and to preserve, the confidentiality of existing Windsor County Youth Court records.

3. *13 V.S.A. § 3504(g)—information collected in support of investigations regarding illness, disease, or death likely to have been caused by a weapon of mass destruction*

13 V.S.A. § 3504 requires health care providers to report to the Commissioner of Health cases of illnesses, diseases, injuries, or death likely to be caused by a weapon of mass destruction; pharmacists to report unusual or increased prescription requests or unusual trends in pharmacy visits “that may result from bioterrorist acts, epidemic or pandemic disease, or novel and highly

fatal infectious agents or biological toxins”; and veterinarians and livestock owners to report animal diseases (or suspected diseases) that “can result from bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins....”

Subsection (g) of this section provides that “[i]nformation collected pursuant to this section and in support of investigations and studies undertaken by the commissioner in response to reports made pursuant to this section shall be privileged and confidential” but that “[t]his subsection shall not apply to the disclosure of information to a law enforcement agency for a legitimate law enforcement purpose.”

At its October 10 meeting, the Committee heard from witnesses from the Departments of Health and of Public Safety to learn if this provision had been used and, if so, if the Departments viewed the language as preventing all investigation information from being released for all time.

At this hearing, questions arose as to:

- i. whether investigations under this section should be subject to the same standards as criminal detection and investigation standards generally, under 1 V.S.A. § 317(c)(5);
- ii. whether the exemption should be time-limited; and
- iii. whether the definition of “weaponized biological or biologic warfare agents” at 13 V.S.A. § 3501, which is itself used in the definition of “weapon of mass destruction,” should be updated.

Because these questions would be more appropriately addressed by the standing committees of jurisdiction, the Committee recommends that the Committees on Judiciary, the Senate Committee on Health and Welfare, the House Committee on Health Care, and the Committees on Government Operations review 13 V.S.A. §§ 3501 and 3504 in light of the questions above to determine if any amendments would be appropriate.

4. *20 V.S.A. §§ 2056–2056h—records of the Vermont Crime Information Center*

20 V.S.A. §§ 2056–2056h consist of several provisions that address access to records of the Vermont Crime Information Center (VCIC). The Committee heard from the Director of VCIC, who answered many of its questions about the scope and type of records that VCIC maintains, how criminal records are shared across jurisdictions, and the user agreements that govern the conduct of users of criminal history and criminal conviction records.

The Committee noted an inconsistent use of terminology across these sections. Section 2056a defines “criminal history record” for the purpose of section 2056a, and section 2056c defines the narrower term “criminal conviction record” for the purpose of section 2056c. Later in the chapter, sections 2056e and 2056g refer to a “Vermont criminal record” in the text of each statute, and in the section headings refer to “criminal history records.” The Committee recommends that the Committees on Judiciary review these sections for consistency in the use of terminology.

In addition, the Committee noted that this chapter contains several sections that specify the circumstances and conditions of release of criminal records in various contexts, but that section 2056 appears to confer broad discretion on the Commissioner of Public Safety to release information maintained by VCIC. The Committee believes that the broad language of section 2056 may be inconsistent with the overall statutory scheme of this section, and therefore also recommends that it be reviewed by the Committees on Judiciary.

5. *23 V.S.A. § 1607(c)—data collected with automated license plate recognition systems*

23 V.S.A. § 1607 regulates the use of Automated License Plate Recognition (ALPR) Systems for legitimate law enforcement purposes as well as the release, retention, and disposition of ALPR data. Under subsection (c), active ALPR data may only be accessed and used by a law

enforcement officer for a legitimate law enforcement purpose, and historical ALPR data may only be transmitted to and used by a law enforcement officer who has a legitimate law enforcement purpose. This provision is scheduled to be repealed on July 1, 2015.

The Committee does not object to the substance of this section. If it is repealed, however, then the limitations on release of this data would no longer exist. The Committee recommends that the Committees on Judiciary and on Transportation review this section to determine whether it should continue in effect on and after July 1, 2015, and the sunset provision likewise repealed.

6. *33 V.S.A. § 5205—fingerprint files of children under Family Division jurisdiction*

33 V.S.A. § 5205 governs the storage, retention, and disclosure of fingerprint records of a child under the jurisdiction of the Family Division of Superior Court. Subsection (a) of this section provides that such fingerprint files “shall be kept separate from those of other persons under special security measures limited to inspection by law enforcement officers only on a need-to-know basis unless otherwise authorized by the Court in individual cases.”

This sentence appears to grammatically conflate two separate issues: segregation of fingerprint files, and access to such files. The Committee recommends a technical correction to clarify this language. See Sec. 14 of App. D.

7. *33 V.S.A. § 5287—court records of a youthful offender*

33 V.S.A. § 5287 addresses the records of youthful offenders charged in the Criminal Division but whose case has been transferred to the Family Division of Superior Court under a conditional plea of guilty. Under subsection (c), if the youthful offender successfully completes the terms of the juvenile probation order, the Family Division “shall terminate youthful offender status, discharge the youth from probation, and file a written order dismissing the Family

Division case” and provide notice of the dismissal to the Criminal Division, which “shall dismiss the criminal case.”

Subsection (d) provides that upon discharge and dismissal under subsection (c), “all records relating to the case in the District Court shall be expunged....” Under Act 154 of 2010 (relating to restructuring of the judiciary), District Courts ceased to exist, and under Sec. 237(b)(3) of Act 154, all cases and files of the former District Courts were “transferred to the criminal division of the superior court” effective July 1, 2010. The Committee recommends that 33 V.S.A. § 5287 be amended with a technical correction to replace “District Court” with “Criminal Division.” See Sec. 15 of App. D.

## APPENDIX D

### Appendix D: Draft Bill; Technical Recommendations of the Committee

\* \* \* Commerce; Motor Vehicle Franchising Practices Act \* \* \*

Sec. 1. 9 V.S.A. § 4100b is amended to read:

§ 4100b. ENFORCEMENT; TRANSPORTATION BOARD

\* \* \*

(e) The Board shall be empowered to determine the location of hearings, appoint persons to serve at the deposition of out-of-state witnesses, administer oaths, and authorize stenographic or recorded transcripts of proceedings before it. Prior to the hearing on any protest, but no later than 45 days after the filing of the protest, the Board shall require the parties to the proceeding to attend a prehearing conference in which the Chair or designee shall have the parties address the possibility of settlement. If the matter is not resolved through the conference, the matter shall be placed on the Board's calendar for hearing. ~~Conference discussions~~ Settlement communications shall remain confidential ~~and, shall be exempt from public inspection and copying under the Public Records Act, shall not be disclosed or, and shall not be used as an admission in any~~ subsequent hearing.

\* \* \*

\* \* \* Commerce; State Database Structures and Application Code \* \* \*

Sec. 2. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(30) ~~all code and machine-readable structures of state-funded and controlled~~ State-controlled database applications structures and application code, including the vermontvacation.com website and Travel Planner application, which are known only to certain



~~state~~ State departments engaging in marketing activities and which give the ~~state~~ State an opportunity to obtain a marketing advantage over any other state, regional, or local governmental or nonprofit quasi-governmental entity, or private sector entity, unless any such ~~state~~ State department engaging in marketing activities determines that the license or other voluntary disclosure of such materials is in the ~~state's~~ State's best interests;

\* \* \*

\* \* \* Commerce; Tax Credit-Related Exemptions \* \* \*

### Sec. 3. EFFECT OF REPEAL

Sec. 4 of this act repeals 1 V.S.A. § 317(c)(22), which related to documents filed, received, or maintained by the Agency of Commerce and Community Development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit). 32 V.S.A. chapter 151, subchapters 11C and 11D were repealed in 2006, and thus the exemption at 1 V.S.A. § 317(c)(22) is no longer needed. However, if a public agency retains custody of records that qualified as exempt under the former 1 V.S.A. § 317(c)(22), these records shall remain exempt from public inspection and copying after its repeal.

Sec. 4. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(22) ~~any documents filed, received, or maintained by the Agency of Commerce and Community Development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit), except that all such documents shall become public records under this subchapter when a tax credit certification has been~~

~~granted by the Secretary of Administration, and provided that the disclosure of such documents does not otherwise violate any provision of Title 32; [Repealed.]~~

\* \* \*

\* \* \* Education; Student Records \* \* \*

Sec. 5. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(11) student records, including records of a home study student, ~~at educational institutions or agencies funded wholly or in part by State revenue;~~ provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 ~~(P.L. 93-380) and as, 20 U.S.C. § 1232g, as may be amended;~~

\* \* \*

\* \* \* Elections; Voter Checklist Information \* \* \*

Sec. 6. 17 V.S.A. § 2154(b) is amended to read:

(b) A registered voter's month and day of birth, driver's license number, the last four digits of the applicant's Social Security number, and street address if different from the applicant's mailing address shall ~~not be considered a public record as defined in 1 V.S.A. § 317(b) be kept confidential and be exempt from public copying and inspection under the Public Records Act.~~ Any person wishing to obtain a copy of all of the statewide voter checklist must swear or affirm, under penalty of perjury pursuant to 13 V.S.A. chapter 65, that the person will not use the checklist for commercial purposes. The affirmation shall be filed with the ~~secretary of state~~ Secretary of State.

\* \* \* Financial Regulation; Anti-Fraud Plans \* \* \*

Sec. 7. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(36) anti-fraud plans and summaries submitted by insurers to the Department of Financial Regulation for the purposes of complying with 8 V.S.A. § 4750;

\* \* \*

\* \* \* Financial Regulation; Insurer Supervision Hearings \* \* \*

Sec. 8. 8 V.S.A. § 7041(e) is amended to read:

(e) The notice of hearing held under subsection (a) of this section and any order issued pursuant to subsection (a) shall be served upon the insurer pursuant to the provisions of 3 V.S.A. chapter 25. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the Commissioner may base his or her order. Unless mutually agreed between the Commissioner and the insurer, the hearing shall occur not less than ten days nor more than 30 days after notice is served and shall be held at the offices of the Department of Financial Regulation or in some other place convenient to the parties as determined by the Commissioner. ~~Hearings~~ Unless the insurer requests a public hearing, hearings and hearing records under subsection (a) of this section shall be private and shall not be subject to the provisions of 1 V.S.A. chapter 5, subchapters 2 and 3 (~~public information and access to public records~~), ~~unless the insurer requests a public hearing~~ the Open Meeting Law and the Public Records Act).

\* \* \* Health Care; Prescriber-Identifiable Data \* \* \*

Sec. 9. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(38) records ~~held by the agency of human services,~~ which include prescription information containing ~~prescriber-identifiable data,~~ that could be used to identify a prescriber, except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in 18 V.S.A. §§ ~~4621, 4631, 4632, 4633, and 4622~~ or 9410 ~~and,~~ 18 V.S.A. chapter 84, ~~or as provided for in 18 V.S.A. chapter or 84A,~~ and for other law enforcement activities;

\* \* \*

\* \* \* Health Care; Mental Health Care Service Reviews \* \* \*

Sec. 10. EFFECT OF AMENDMENT

Sec. 11 of this act amends 8 V.S.A. § 4089a(i) to eliminate references to independent panels of mental health professionals. Such panels were eliminated in 2011 Acts and Resolves No. 21, Sec. 14, and therefore the references to such panels in subsection (i) likewise should be removed. However, if a public agency obtained and retains custody of records of such panels in connection with specific reviews under 8 V.S.A. § 4089a, the records shall remain exempt from public inspection and copying under the Public Records Act, and shall continue to be maintained in compliance with any applicable State or federal laws, after the amendments in Sec. 16 of this act take effect.

Sec. 11. 8 V.S.A. § 4089a is amended to read:

§ 4089a. MENTAL HEALTH CARE SERVICES REVIEW

\* \* \*

(i) The confidentiality of any health care information acquired by or provided to ~~the independent panel of mental health professionals~~ an independent review organization pursuant to section 4089f of this title shall be maintained in compliance with any applicable State or federal laws. ~~The independent panel shall not constitute a public agency 1 V.S.A. § 317(a), or a public body under section 310 of Title 1.~~ Records of, and internal materials prepared for, specific reviews under this section shall be exempt from public ~~disclosure under 1 V.S.A. § 316 inspection and copying under the Public Records Act.~~

\* \* \* Judiciary and Court Records; Lawyer-Corporate Client Privilege \* \* \*

Sec. 12. 12 V.S.A. § 1613 is amended to read:

§ 1613. LAWYER-CORPORATE CLIENT PRIVILEGE

(a) Communications otherwise privileged under Rule 502 of the Vermont Rules of Evidence ~~are~~ shall only be privileged with respect to a corporation ~~only~~:

(1) if the representative client is a member of the control group of the corporation, acting in his or her official capacity. ~~However, if, or~~

(2) ~~the communications are with a representative client who is not a member of the control group, such communications are privileged only~~ to the extent necessary to effectuate legal representation of the corporation, if the communications are with a representative client who is not a member of the control group.

(b) ~~For purposes of~~ As used in this section, “control group” means:

(1) the officers and directors of a corporation; and

(2) those persons who:

(A) have the authority to control or substantially participate in a decision regarding action to be taken on the advice of a lawyer; or

(B) have the authority to obtain professional legal services or to act on advice rendered pursuant thereto, on behalf of the corporation.

\* \* \* Judiciary and Court Records; Mediation Prior to Foreclosure \* \* \*

Sec. 13. EFFECT OF REPEAL; RECORDS IN CONNECTION WITH MEDIATION PRIOR TO FORECLOSURE

All written and oral communications made in connection with or during the mediation process set forth in 12 V.S.A. chapter 215, subchapter 2 (mediation prior to foreclosure) that were confidential under 12 V.S.A. § 7015 shall remain confidential and exempt from public inspection and copying under the Public Records Act after the effective date of any repeal of 12 V.S.A. § 7015.

\* \* \* Judiciary and Court Records; Delinquency Proceedings; Fingerprint Files \* \* \*

Sec. 14. 33 V.S.A. § 5205 is amended to read:

§ 5205. FINGERPRINTS; PHOTOGRAPHS

(a) Fingerprint files of a child under the jurisdiction of the Court shall be kept separate from those of other persons under special security measures. Inspection of such files shall be limited to inspection by law enforcement officers only on a need-to-know basis unless otherwise authorized by the Court in individual cases.

\* \* \*

\* \* \* Judiciary and Court Records; Youthful Offenders \* \* \*

Sec. 15. 33 V.S.A. § 5287(d) is amended to read:

(d) Upon discharge and dismissal under subsection (c) of this section, all records relating to the case in the ~~District Court~~ Criminal Division shall be expunged, and all records relating to the case in the Family Court shall be sealed pursuant to section 5119 of this title.

\* \* \* Labor and Employment; Drug Testing \* \* \*

Sec. 16. 21 V.S.A. § 516 is amended to read:

§ 516. CONFIDENTIALITY

(a) Any health care information about an individual to be tested shall be ~~taken~~ collected only by a medical review officer ~~and~~. This information shall be confidential and shall not be released to anyone except the individual tested, and may not be obtained by court order or process, except as provided in this subchapter. In addition, a medical review officer shall not reveal the identity of an individual being tested to any person, including the laboratory.

(b) Employers, medical review officers, laboratories, and ~~their~~ the agents of any of these, who receive or have access to information about drug test results, shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, except where such release is compelled by a court of competent jurisdiction in connection with an action brought under this subchapter. ~~A medical review officer shall not reveal the identity of an individual being tested to any person, including the laboratory.~~

(c) If information about drug test results is released contrary to the provisions of this subchapter, it shall be inadmissible as evidence in any judicial or quasi-judicial proceeding, except in a court of competent jurisdiction in connection with an action brought under this subchapter.

\* \* \* Open Meeting Law; Minutes of Executive Sessions \* \* \*

Sec. 17. 1 V.S.A. § 313(a) is amended to read:

(a) No public body may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of State government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except for actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, the minutes shall not be made public subject to, notwithstanding subsection 312(b) of this title, be exempt from public copying and inspection under the Public Records Act. A public body may not hold an executive session except to consider one or more of the following:

\* \* \*

\* \* \* Professional Regulation; Board of Medical Practice \* \* \*

Sec. 18. 26 V.S.A. § 1317 is amended to read:

§ 1317. UNPROFESSIONAL CONDUCT TO BE REPORTED TO BOARD

(a) Any hospital, clinic, community mental health center, or other health care institution in which a licensee performs professional services shall report to the ~~board~~ Board, along with supporting information and evidence, any disciplinary action taken by it or its staff which significantly limits the licensee's privilege to practice or leads to suspension or expulsion from the institution, a nonrenewal of medical staff membership, or the restrictions of privileges at a



hospital taken in lieu of, or in settlement of, a pending disciplinary case related to unprofessional conduct as defined in sections 1354 and 1398 of this title. The ~~commissioner of health~~ Commissioner of Health shall forward any such information or evidence he or she receives immediately to the ~~board~~ Board. The report shall be made within 10 days of the date such disciplinary action was taken, and, in the case of disciplinary action taken against a licensee based on the provision of mental health services, a copy of the report shall also be sent to the ~~commissioner of mental health and the commissioner of disabilities, aging, and independent living~~ Commissioner of Mental Health and the Commissioner of Disabilities, Aging, and Independent Living. This section shall not apply to cases of resignation or separation from service for reasons unrelated to disciplinary action.

(b) Within 30 days of any judgment or settlements involving a claim of professional negligence by a licensee, any insurer of the licensee shall report the information to the ~~commissioner of health~~ Commissioner of Health and, to the extent the claim relates to the provision of mental health services, to the ~~commissioner of mental health~~ Commissioner of Mental Health.

(c) Except as provided in section 1368 of this title, information provided to the ~~department of health or of mental health~~ Department of Health, the Department of Mental Health, or the Department of Disabilities, Aging, and Independent Living under this section shall be confidential unless the ~~department~~ Department of Health decides to treat the report as a complaint, in which case, the provisions of section 1318 of this title shall apply.

(d) A person who acts in good faith in accord with the provisions of this section shall not be liable for damages in any civil action.

(e) A person who violates this section shall be subject to a civil penalty of not more than \$10,000.00.

Sec. 19. 26 V.S.A. § 1368(a) is amended to read:

(a) A data repository is created within the Department of Health which will be responsible for the compilation of all data required under this section ~~and, under this chapter, and under any~~ other law or rule which requires the reporting of such information. Notwithstanding any provision of law to the contrary, licensees shall promptly report and the Department shall collect the following information to create individual profiles on all health care professionals licensed, certified, or registered by the Department, pursuant to the provisions of this title, in a format created by the Department that shall be available for dissemination to the public:

\* \* \*

\* \* \* Vital Records; Birth Certificates and Address Confidentiality Program \* \* \*

Sec. 20. 18 V.S.A. § 5083 is amended to read:

§ 5083. PARTICIPANTS IN ADDRESS CONFIDENTIALITY PROGRAM

(a) If a participant in the program described in 15 V.S.A. chapter 21, subchapter 3 who is the parent of a child born during the period of program participation notifies the physician or midwife who delivers the child, or the hospital at which the child is delivered, not later than 24 hours after the birth of the child, that the participant's confidential address should not appear on the child's birth certificate, then the ~~department~~ Department shall not disclose such confidential address or the participant's town of residence on any public records. A participant who fails to provide such notice shall be deemed to have waived the provisions of this section. If such notice is received, then notwithstanding section 5071 of this title, the attendant physician or midwife shall file the certificate with the ~~supervisor of vital records registration~~ Supervisor of Vital

Records within ten days of the birth, without the confidential address or town of residence, and shall not file the certificate with the town clerk.

(b) The ~~supervisor of vital records registration~~ Supervisor of Vital Records shall receive and file for record all certificates filed in accordance with this section, and shall ensure that a parent's confidential address and town of residence do not appear on the birth certificate during the period that the parent is a program participant. A certificate filed in accordance with this section shall be a public document. The ~~supervisor of vital records~~ Supervisor of Vital Records shall notify the ~~secretary of state~~ Secretary of State of the receipt of a birth certificate on behalf of a program participant.

(c) The ~~department~~ Department shall maintain a confidential record of the parent's actual mailing address and town of residence. Such record shall be exempt from public inspection and copying under the Public Records Act.

\* \* \*

\* \* \* Vital Records; New Birth Certificate in Connection with Change of Sex \* \* \*

Sec. 21. 18 V.S.A. § 5112(c) is amended to read:

(c) A new certificate issued pursuant to subsection (a) of this section shall be substituted for the original birth certificate in official records. The new certificate shall not show that a change in name or sex, or both, has been made. The original birth certificate, the ~~probate court~~ Probate Division order, and any other records relating to the issuance of the new birth certificate shall be confidential and shall ~~not be subject to~~ exempt from public inspection ~~pursuant to 1 V.S.A. § 317(e)~~ and copying under the Public Records Act; however an individual may have access to his or her own records and may authorize the state registrar to confirm that, pursuant to court

order, it has issued a new birth certificate to the individual that reflects a change in name or sex, or both.

\* \* \* Vital Records; Marriage Certificates and Address Confidentiality Program \* \* \*

Sec. 22. 18 V.S.A. § 5132(c) is amended to read:

(c) The ~~department~~ Department shall maintain a confidential record of the person's actual mailing address and town of residence. Such record shall be exempt from public inspection and copying under the Public Records Act.

\* \* \* Historic Preservation; Archeological Sites \* \* \*

Sec. 23. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(20) information ~~which~~ that would reveal the location of archeological sites and underwater historic properties, except as provided in 22 V.S.A. § ~~762~~ 761;

\* \* \*

\* \* \* Historic Preservation; Tribal Recognition Applications \* \* \*

Sec. 24. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(40) records of genealogy provided in an application or in support of an application for tribal recognition pursuant to chapter 23 of this title;

\* \* \*

## APPENDIX E

### Draft Bill; Substantive Recommendations of the Committee

\* \* \* Public Records Act; Short Title \* \* \*

Sec. 1. 1 V.S.A. § 315 is amended to read:

§ 315. STATEMENT OF POLICY; SHORT TITLE

(a) It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

(b) This subchapter may be known and cited as the Public Records Act or the PRA.

\* \* \* Public Records Act; List of Statutory Exemptions \* \* \*

Sec. 2. 1 V.S.A. § 317(d) is added to read:

(d) On or before December 1, 2015, the Office of Legislative Council shall compile a list of all Public Records Act exemptions found in the Vermont Statutes Annotated. In compiling the list, the Office of Legislative Council shall consult with the Attorney General's office. The list shall be updated no less often than every two years, and shall be arranged by subject area, and in

order by title and section number. The list, and any updates thereto, shall be posted on the websites of the General Assembly, the Secretary of State's Office, the Attorney General's Office, and the State Library, and shall be sent to the Vermont League of Cities and Towns.

\* \* \* Exemptions to the Public Records Act \* \* \*

\* \* \* Education; University and State College Research Records \* \* \*

Sec. 3. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(23) any data, records, or information ~~developed, discovered, collected, or received~~ produced or acquired by or on behalf of faculty, staff, employees, or students of the University of Vermont or the Vermont State Colleges in the conduct of study, research, or creative efforts on medical, scientific, technical, scholarly, or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records, or information are published, disclosed in an issued patent, or publicly released by the institution or its authorized agents. This subdivision applies to, but is not limited to, research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research. This subdivision shall not exempt records, other than research protocols, produced or acquired by an institutional animal care and use committee regarding the committee's compliance with State law or federal law regarding or regulating animal care;

\* \* \*

\* \* \* Education; Vermont Student Assistance Corporation \* \* \*

Sec. 4. 16 V.S.A. § 2827 is added to read:

§ 2827. CONFIDENTIALITY OF PERSONALLY IDENTIFYING INFORMATION

Except as otherwise provided by law, or by consent of the individual identified in the record, information that directly or indirectly identifies applicants, recipients, beneficiaries, or participants in programs administered by the Corporation, including grant, loan, scholarship, outreach, or investment plan programs, shall be kept confidential and are exempt from public inspection and copying under 1 V.S.A. § 317(c)(7).

Sec. 5. 16 V.S.A. § 2843 is amended to read:

§ 2843. APPLICATIONS, CERTIFICATES, AND REPORTS

(a) The recipient must apply for an incentive grant at least annually. Grants may be for a maximum of five full-time equivalent school years.

(b) Each applicant for an incentive grant shall furnish a certificate of income with the application. Attached to the certificate shall be a form of consent, executed by the student and any other required persons, granting permission to the Vermont ~~commissioner of taxes~~ Commissioner of Taxes to disclose the income tax information required by subsection (c) of this section.

(c) The Vermont ~~commissioner of taxes~~ Commissioner of Taxes, when requested by the ~~corporation~~ Corporation, shall compare any certificate filed pursuant to this subchapter with the ~~state~~ State income tax returns filed by the persons making such certificate and shall report any instances of discrepancy to the corporation.

(d) ~~Except as otherwise provided in this subchapter or other applicable law or court order, or by agreement of the applicant, certificates and reports made to the corporation under this section~~

~~shall be confidential, and it shall be unlawful for anyone to divulge the amount of income or any particulars set forth in a certificate or any report made to an applicant or the corporation. Nothing herein shall be construed to prevent the publication of statistical data as long as the identification of particular individuals, certificates, and reports is prevented. [Repealed.]~~

\* \* \* Financial Regulation; Dispute-Resolution \* \* \*

Sec. 6. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(26) information and records provided to the Department of Financial Regulation by ~~an individual~~ a person for the purposes of having the ~~department~~ Department assist that ~~individual~~ person in resolving a dispute with any person ~~or company~~ regulated by the Department, and any information or records provided by a ~~company or any other~~ person in connection with the ~~individual's~~ dispute;

\* \* \*

\* \* \* Financial Regulation; Insurance Agents of Fraternal Benefit Societies \* \* \*

Sec. 7. 8 V.S.A. § 4488(5) is amended to read:

(5) Notice of termination of appointment of insurance agent. Every society doing business in this State shall, upon the termination of the appointment of any insurance agent licensed to represent it in this ~~state~~ State, forthwith file with the Commissioner of Financial Regulation, a statement, in such form as he or she may prescribe, of the facts relative to the termination and the cause thereof. Every statement made pursuant to this section ~~shall be deemed a~~ is confidential and privileged communication to the same extent as provided under subsection 4813m(f) of this title.



\* \* \* Financial Regulation; Statements of Life Settlement Providers \* \* \*

Sec. 8. 8 V.S.A. § 3839 is amended to read:

§ 3839. REPORTING REQUIREMENTS AND PRIVACY

(a) Each life settlement provider shall file with the ~~commissioner~~ Commissioner on or before March 1 of each year an annual statement containing such information as the ~~commissioner~~ Commissioner may prescribe by rule or order. Information relating to life settlement transactions shall be limited to only those transactions where the policy owner is a resident of this state. Upon proper request by the filer, the ~~commissioner~~ Commissioner shall ~~maintain the confidentiality of~~ keep confidential trade secret information exempt from public inspection and copying under 1 V.S.A. § 317(c)(9). The annual statement shall not contain ~~individually identifiable~~ individually identifiable life settlement transaction information, but such information shall be provided to the ~~commissioner~~ Commissioner pursuant to section 3840 of this title. If available to the provider because of the provider's business relationship or affiliation with one or more life settlement purchasers, the annual statement shall also include such information as the ~~commissioner~~ Commissioner may prescribe by rule or by order concerning life settlement purchase agreements or similar investment contracts entered into by residents of this ~~state~~ State.

\* \* \*

\* \* \* Health Care; Nursing Home Data Filed with Division of Rate Setting \* \* \*

Sec. 9. 33 V.S.A. § 908(a) is amended to read:

(a) Each nursing home or other provider shall file with the Division, on request, such data, statistics, schedules, or information as the Division may require to enable it to carry out its

function. Information received from a nursing home under this section shall be available to the public, except that the specific salary and wage rates of employees, other than the salary of an administrator, shall not be disclosed unless disclosure is required under 1 V.S.A. § 317(b).

\* \* \* Health Care; Prescription Drug Price Information Submitted to DVHA \* \* \*

Sec. 10. 33 V.S.A. § 2010(e) is amended to read:

(e) Notwithstanding any provision of law to the contrary, information submitted to the Department under this section ~~is confidential and is not a public record as defined in 1 V.S.A. § 317(b)~~ shall be kept confidential and be exempt from public inspection and copying under the Public Records Act. Disclosure may be made by the Department to an entity providing services to the Department under this section; however, that disclosure does not change the confidential status of the information. The information may be used by the entity only for the purpose specified by the Department in its contract with the entity. Data compiled in aggregate form by the Department for the purposes of reporting ~~required by this section are public records as defined in 1 V.S.A. § 317(b)~~ may be released under the Public Records Act, provided they do not reveal trade information protected by State or federal law.

\* \* \* Human Services; Records of Department for Children and Families \* \* \*

Sec. 11. 33 V.S.A. § 105(b) is amended to read:

(b) In addition to other duties imposed by law, the Commissioner shall:

- (1) ~~Administer~~ administer the laws assigned to the Department;
- (2) ~~Fix~~ fix standards and issue regulations necessary to administer those laws and for the custody and preservation of records of the Department. ~~Those regulations shall contain provisions restricting the use or disclosure of information contained in the records to purposes~~

~~directly connected with the administration of the Department. As used in this subdivision, the word "records" includes records, papers, files, and communications.;~~

(3) ~~Appoint~~ appoint all necessary assistants, prescribe their duties, and issue regulations necessary to ensure that the assistants shall hold merit system status while in the employ of the Department, unless otherwise specifically provided by law.

\* \* \* Human Services; Information Related to Assistance Applicants or Recipients \* \* \*

Sec. 12. 33 V.S.A. § 111 is amended to read:

§ 111. RECORDS, RESTRICTIONS, PENALTIES

(a) The names of or information pertaining to applicants for or recipients of assistance or benefits, including information obtained under section 112 of this title, shall not be disclosed to anyone, except for the purposes directly connected with the administration of the ~~department~~ Department or when required by law.

(b) A person shall not:

(1) ~~Publish~~ publish, use, disclose, or divulge any of those records for purposes not directly connected with the administration of programs of the Department, or contrary to regulations issued by the Commissioner; ~~or~~

(2) ~~Use any records of the department of any kind or description for political or commercial purposes, or purposes not authorized by law.~~

\* \* \* Motor Vehicles; Driver Training School Records \* \* \*

Sec. 13. 23 V.S.A. § 707 is amended to read:

§ 707. RECORDS REQUIRED; MAINTENANCE OF VEHICLES

Every driver's training school licensee shall keep a record on such forms as the ~~commissioner~~ Commissioner may prescribe showing the name and address of each instructor, the instruction

license number of such instructor, the particular type of instruction given and how much time was given to each type of instruction, and such other information as the ~~commissioner~~ Commissioner may require. Such record shall be open to the inspection of the ~~department~~ Department at all reasonable times ~~but shall be for the confidential use of the department.~~ Individually identifying information about students may be exempt from public inspection and copying under 1 V.S.A. § 317(c)(7). Every driver's training school licensee shall maintain all vehicles used in driver training in safe mechanical condition at all times.

\* \* \* Municipal Bond Registries \* \* \*

Sec. 14. 24 V.S.A. § 1884 is amended to read:

§ 1884. ~~CONFIDENTIAL REGISTRY~~

~~The books of registry held by the treasurer of the municipal corporation or other designated register shall be confidential and the information contained therein shall not be available to the public. [Repealed.]~~

Sec. 15. 24 V.S.A. § 4643 is amended to read:

§ 4643. FORM OF ISSUANCE

(a) Bonds or notes of the bank shall be authorized by resolution of the bank and may be issued in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per annum or within such maximum rate, be in such denomination or denominations, be issued in coupon form payable to bearer, in registered form or in book entry form, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as the resolution provides.

(b) The ~~state treasurer~~ State Treasurer may, at the direction of the bank, act as transfer agent or registrar for the exchange or transfer of registered bonds and notes or maintain records so that bonds and notes in book entry form may be effected and the bank may contract with or otherwise designate a bank, trust company, or other person to maintain records so that bonds and notes in book entry form may be effected. Such bank, trust company, or other person, which may include the federal government or any of its agencies or instrumentalities or any officer, agency, or instrumentality of the ~~state~~ State, may be located or have its principal office inside or outside the ~~state~~ State. Bonds and notes in book entry form shall be effected by means of entries on the records of the ~~state treasurer~~ State Treasurer or other designated person which shall reflect the description of the issue, the principal amount, the interest rate, the maturity date, and the owner of the bonds or notes and such other information as is deemed appropriate. The ~~state treasurer~~ State Treasurer or other designated person may effect conversion between book entry bonds and notes and registered bonds and notes for owners of bonds or notes who request such a change. The ~~state treasurer~~ State Treasurer or other designated transfer agent or registrar shall issue a confirmation of the transaction in the form of a written advice.

(c) ~~The books of registry held by the state treasurer or other designated register shall be confidential and the information contained therein shall not be available to the public.~~

[Repealed.]

\* \* \* Natural Resources; Discharge Permits \* \* \*

Sec. 16. 10 V.S.A. § 1259 is amended to read:

§ 1259. PROHIBITIONS

(a) No person shall discharge any waste, substance, or material into waters of the State, nor shall any person discharge any waste, substance, or material into an injection well or discharge

into a publicly owned treatment works any waste which interferes with, passes through without treatment, or is otherwise incompatible with those works or would have a substantial adverse effect on those works or on water quality, without first obtaining a permit for that discharge from the Secretary. This subsection shall not prohibit the proper application of fertilizer to fields and crops, nor reduce or affect the authority or policy declared in Joint House Resolution 7 of the 1971 Session of the General Assembly.

(b) Any records, ~~reports~~ or information obtained under this permit program ~~shall be available to the public for inspection and copying. However, upon a showing satisfactory to the Secretary that any records, reports or information or part thereof, other than effluent data, would, if made public, divulge methods or processes entitled to protection as that constitutes trade secrets, the Secretary shall treat and protect those records, reports or information as confidential. Any under 1 V.S.A. § 317(c)(9) is exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that such records, ~~reports~~ or information ~~accorded confidential treatment will~~ may be disclosed to authorized representatives of the State and the United States when relevant to any proceedings under this chapter.~~

\* \* \*

\* \* \* Natural Resources; Division of Geology and Mineral Resources \* \* \*

Sec. 17. 10 V.S.A. § 101 is amended to read:

§ 101. DIVISION OF GEOLOGY AND MINERAL RESOURCES; DUTIES

The ~~division of geology and mineral resources~~ Division of Geology and Mineral Resources shall:

\* \* \*

(6) Maintain records of old and new information relating to the geology, mineral resources, and topography of the state and make public new information resulting from research and field studies conducted by or for the division. ~~Certain information provided by the mineral industries of the state may be held in confidential status at the industries' request and used only for purposes and in a manner permitted by the industry~~ State.

(7) Prepare and publish reports on the geology, mineral resources, and topography of the state State.

\* \* \* Natural Resources; Toxics Use Reduction And Hazardous Waste Reduction Plans \* \* \*

Sec. 18. 10 V.S.A. § 6628 is amended to read:

§ 6628. PLAN, PLAN SUMMARY, AND PERFORMANCE REPORT

#### REVIEW

(a) Except as provided for in this section, a ~~toxics use reduction and hazardous waste reduction plan~~ Toxics Use Reduction and Hazardous Waste Reduction Plan developed under this subchapter shall be retained at the facility and is not a public record under 1 V.S.A. § 317. If a person developing a Toxics Use Reduction and Hazardous Waste Reduction Plan under this chapter chooses to send all or a portion of the plan to the Secretary for review, it ~~still~~ shall ~~not~~ be a public record kept confidential and be exempt from public inspection and copying under 1 V.S.A. § 317(c)(9). A plan summary submitted pursuant to section 6629 of this title shall be submitted to the Secretary and shall be a public record.

\* \* \*

Sec. 19. 10 V.S.A. § 6632 is amended to read:

§ 6632. TRADE SECRETS

The ~~secretary~~ Secretary shall adopt rules to ensure that trade secrets designated by a generator in all or a portion of the review and plans, and the report required by this subchapter, ~~are utilized~~ which are exempt from public inspection and copying under 1 V.S.A. § 317(c)(9), shall be used by the ~~secretary or~~ Secretary, the ~~department~~ Department, and any authorized representative of the Department only in connection with the responsibilities of the ~~department~~ Department pursuant to this subchapter, and ~~that those trade secrets are not otherwise disseminated by the secretary, the department, or any authorized representative of the department. The rules shall provide that a generator may only designate as trade secrets those that satisfy the criteria for trade secrets set forth in 18 V.S.A. § 1728(a) shall be kept confidential.~~

\* \* \* Personal Records; General Exemption \* \* \*

Sec. 20. FINDINGS; STATEMENT OF PURPOSE

(a) Findings. The General Assembly finds that:

(1) Under 1 V.S.A. § 317(c)(7), personal records relating to an individual are exempt from public inspection and copying.

(2) The Vermont Supreme Court has interpreted “personal records” under 1 V.S.A. § 317(c)(7) as records the disclosure of which would reveal “intimate details” of an individual’s life. Under Vermont Supreme Court caselaw, a record containing intimate details is only exempt if the invasion of privacy occasioned by disclosure of the record outweighs the public interest in its disclosure.



(3) What constitutes “intimate” details for purposes of 1 V.S.A. § 317(c)(7) is subject to multiple interpretations, which may be overly narrow and, thus, prevent protection of personal information that should be exempt from public disclosure.

(b) Statement of purpose. It is the purpose of Sec. 21 of this act to:

(1) reorganize and restructure the personal records exemption of 1 V.S.A. § 317(c)(7);  
(2) supersede the threshold requirement that a record relating to an individual must reveal intimate details of that individual’s life in order to qualify as exempt under 1 V.S.A. § 317(c)(7); and

(3) provide that a personal record shall be exempt from disclosure under 1 V.S.A. § 317(c)(7) if it relates to a particular individual and if the nature, gravity, and potential consequences of the invasion of privacy occasioned by its disclosure outweighs the public interest in its disclosure.

Sec. 21. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(7) personal ~~documents~~ records relating to an individual, including if the nature, gravity, and potential consequences of the invasion of privacy occasioned by disclosure outweighs the public interest in favor of disclosure. A record is not required to reveal intimate or embarrassing facts about an individual in order to qualify as exempt under this subdivision. Exempt information may include:

(A) ~~information~~ Information in any files maintained to hire, evaluate, promote, or discipline any employee of a public agency;. However, such information shall be made available to that individual employee or his or her designated representative.

~~(B) information in any files~~ Information relating to personal finances;

~~(C) Individually identifying~~ medical or psychological facts ~~concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his or her designated representative;~~

\* \* \*

\* \* \* Public Service Department; Records of Supervised Entities \* \* \*

Sec. 22. 30 V.S.A. § 206 is amended to read:

§ 206. INFORMATION TO BE FURNISHED DEPARTMENT

On request by the ~~department of public service~~ Department of Public Service, a company owning or operating a plant, line, or property subject to supervision under this chapter shall furnish the ~~department~~ Department information required by it concerning the condition, operation, management, expense of maintenance and operation, cost of production, rates charged for service or for product, contracts, obligations, and the financial standing of such company. It shall also inform the ~~department~~ Department of the salaries of, the pensions, option, or benefit programs affecting, and the expenses reimbursed to, its officers or directors, or both. ~~Such information shall be open to public inspection at reasonable times and any person shall be entitled to copies thereof. Information exacted for use by the department in a particular instance shall not be made public, except in the discretion of the department.~~

\* \* \* Trade Secret Exemption (General) \* \* \*

Sec. 23. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

\* \* \*

(9) trade secrets, meaning confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is ~~known only to certain individuals within a commercial concern~~ a commercial concern makes efforts that are reasonable under the circumstances to keep secret, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it, except that the disclosures required by 18 V.S.A. § 4632 ~~shall not be included in~~ are not exempt under this subdivision;

\* \* \*

## APPENDIX F

### Draft Bill to Amend the Administrative Procedure Act

Statement of purpose of bill as introduced: This bill proposes to amend the Administrative Procedure Act to:

- (1) require an agency filing a proposed rule to identify in the cover sheet included in the filing whether the rule contains a Public Records Act exemption;
- (2) require that the Legislative Committee on Administrative Rules send a copy of a final rule proposal to the Committees on Government Operations if the agency identifies a Public Records Act exemption in the proposal;
- (3) authorize the Committees on Government Operations to convene for the purpose of considering a recommended course of action for the Legislative Committee on Administrative Rules with respect to a Public Records Act exemption contained in a rule; and
- (4) specify consequences for an agency's failure to identify a new or broadened exemption in its cover sheet on and after the effective date of this act.

An act relating to identification and notification of Public Records Act exemptions in administrative rules

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

Sec. 1. 3 V.S.A. § 838 is amended to read:

#### § 838. FILING OF PROPOSED RULES

(a) Proposed rules shall be filed with the ~~secretary of state~~ Secretary of State. The filing shall include the following:

- (1) a cover sheet;

- (2) an economic impact statement;
  - (3) an incorporation by reference statement, if the proposed rule includes an incorporation by reference;
  - (4) an adopting page;
  - (5) the text of the proposed rule;
  - (6) an annotated text showing changes from existing rules;
  - (7) an explanation of the strategy for maximizing public input on the proposed rule as prescribed by the ~~interagency committee on administrative rules~~ Interagency Committee on Administrative Rules; and
  - (8) a brief summary of the scientific information upon which the proposed rule is based to the extent the proposed rule depends on scientific information for its validity.
- (b) The cover sheet shall be on a form prepared by the ~~secretary of state~~ Secretary of State containing at least the following information:
- (1) the name of the agency;
  - (2) the title or subject of the rule;
  - (3) a concise summary explaining the effect of the rule;
  - (4) the specific statutory authority for the rule, and, if none exists, the general statutory authority for the rule;
  - (5) an explanation of why the rule is necessary;
  - (6) an explanation of the people, enterprises, and government entities affected by the rule;
  - (7) a brief summary of the economic impact of the rule;
  - (8) the name, address, and telephone number of an individual in the agency able to answer questions and receive comments on the proposal;

(9) a proposed schedule for completing the requirements of this chapter, including, if there is a hearing scheduled, the date, time, and place of that hearing, and a deadline for receiving comments; ~~and~~

(10) whether the rule contains an exemption from inspection and copying of public records, or otherwise contains a Public Records Act exemption by designating information as confidential or limiting its public release and, if so, the asserted statutory authority for the exemption and a brief summary of the reason for the exemption; and

(11) a signed and dated statement by the adopting authority approving the contents of the filing.

\* \* \*

Sec. 2. 3 V.S.A. § 841 is amended to read:

§ 841. FINAL PROPOSAL

(a) After considering public comment as required in section 840 of this title, an agency shall file a final proposal with the ~~secretary of state~~ Secretary of State and with the ~~legislative committee on administrative rules~~ Legislative Committee on Administrative Rules.

(b) The filing of the final proposal shall include all information required to be filed with the original proposal, suitably amended to reflect any changes made in the rule and the fact that public hearing and comment has been completed. Where an agency decides in a final proposal to overrule substantial arguments and considerations raised for or against the original proposal or to reject suggestions with respect to separate requirements for small businesses, the final proposal shall include a description of the reasons for the agency's decision.

(c) ~~The legislative committee on administrative rules~~ Legislative Committee on Administrative Rules shall distribute, ~~by email or regular mail, a brief summary of final proposed rules~~ a copy of the final proposal to:

- (1) ~~the chairs of the appropriate standing committees.~~ In addition, upon request;
- (2) ~~each member of the appropriate standing committee shall be notified by email or in summary fashion that the final proposed rule has been filed, the date of filing, and, upon request, shall be provided with~~ committees who requests a copy of the filing; and
- (3) the chairs of the Committees on Government Operations, when the cover sheet accompanying the filing identifies a Public Records Act exemption in the rule.

(d) The chair of a standing committee which considered legislation delegating rulemaking authority and, in the case of rules that create or enlarge the scope of a Public Records Act exemption, the chairs of the Committees on Government Operations, may convene the committee for the purpose of considering a recommended course of action for the ~~legislative committee on administrative rules~~ Legislative Committee on Administrative Rules. The chair may convene such a meeting, pursuant to 2 V.S.A. § 406, while the ~~general assembly~~ General Assembly is not in session. Any recommended course of action shall be filed with the ~~legislative committee on administrative rules~~ Legislative Committee on Administrative Rules rules no later than five working days before the committee has scheduled a review of the proposed rule.

Sec. 3. 3 V.S.A. § 846 is amended to read.

#### § 846. REMEDIES FOR PROCEDURAL FAILURES

- (a) The following shall prevent a rule from taking effect:
  - (1) failure to file with the ~~secretary of state~~ Secretary of State;

(2) failure to file with the ~~legislative committee on administrative rules~~ Legislative Committee on Administrative Rules;

(3) failure to file with the ~~interagency committee on administrative rules~~ Interagency Committee on Administrative Rules; or

(4) failure to respond to an objection of the ~~legislative committee on administrative rules~~ Legislative Committee on Administrative Rules as required in section 842 of this title.

(b) The following shall not affect the validity of a rule after its adoption:

(1) inadvertent failure to make required assurances relating to an incorporation by reference; or

(2) amendment after public hearing of the text of a proposed rule in a manner that does not cause the published summary of the rule to become misleading or inadequate; or

(3) failure to certify that all procedures required by this chapter have been satisfied; or

(4) failure to meet the style requirements of section 833 of this title; or

(5) inadvertent failure to mail notice or copies of any rule.

(c) Failure to identify the creation or enlargement in scope of a Public Records Act exemption in accordance with subsection 838(b) of this title shall render invalid the provisions of the rule that create or enlarge the exemption.

(d) For other violations of this chapter, the court may fashion appropriate relief.

~~(d)~~ (e) An action to contest the validity of a rule for noncompliance with any of the provisions of this chapter, other than those listed in ~~subsection~~ subsections (a) and (c) of this section, must be commenced within one year after the effective date of the rule.

#### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2015.