

House Corrections and Institutions; Inmate and Offender Records

Sec. **A.** 2016 Acts and Resolves No. 137, Sec. 7 is amended to read:

Sec. 7. EFFECTIVE DATE; TRANSITION PROVISION

(a) This act shall take effect on passage.

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

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

(d)(1) On August 30, 2016, to implement the rulemaking requirements of 28 V.S.A. § 107, the Commissioner prefiled a proposed rule entitled "inmate/offender records and access to information" with the Interagency Committee on Administrative Rules. The Commissioner filed the proposed rule, as corrected, with the Secretary of State on October 13, 2016 and the final proposed rule, as revised, with the Legislative Committee on Administrative Rules (LCAR) on January 31, 2017. After reviewing and receiving testimony on the final proposed rule, as

1 revised, the House Committee on Corrections and Institutions found that it was not consistent
2 with legislative intent because the rule would potentially cause significant costs and disruptions
3 to the Department.

4 (2) The Commissioner shall:

5 (A) withdraw the proposed final rule filed with LCAR on January 31, 2017; and

6 (B) redraft the proposed rule so that it reflects legislative intent as described in
7 subsection (e) of this section.

8 (3) The Department of Corrections may continue to rely upon exceptions to the
9 confidentiality of offender and inmate files under directives adopted by the Department prior to
10 May 26, 2016 until the Commissioner adopts final rules as required under 28 V.S.A. § 107.

11 (e) The General Assembly intends that:

12 (1) In either of the following situations, 28 V.S.A. § 107 shall be interpreted not to require
13 the Department to provide an inmate or offender a copy of records:

14 (A) [That the Department] previously provided to the inmate or offender, if the inmate
15 or offender has custody of or the right to access the copy.

16 (B) If the inmate or offender is responsible for the loss or destruction of a previously
17 provided copy. In the case of such loss or destruction, the inmate or offender may—
18 subject to the limitations of 28 V.S.A. § 107—be entitled to a replacement copy, but the
19 Department may charge him or her for the replacement copy in accordance with law.

20 (2) In managing access to inmate and offender records under 28 V.S.A. § 107, the
21 Department shall implement and use modern records management technology and practices in
22 order to minimize the costs of reviewing, redacting, and furnishing such records in accordance
23 with law.

1 (f) On or before October 1, 2017, the Commissioner shall send a written report to the
2 members of the House Committee on Corrections and Institutions and the Senate Committee on
3 Institutions that shall:

4 (1) summarize the status of the Department's efforts to redraft the rules as required under
5 subsection (d) of this section; and

6 (2) outline the implementation steps, expected benefits and costs to the State of Vermont,
7 and time line associated with transitioning to digital delivery of inmate and offender records.

8 (g) On or before January 15, 2018, the Commissioner shall submit a copy of the redrafted
9 rules to the House Committee on Corrections and Institutions and to the Senate Committee on
10 Institutions. On or before July 1, 2018, the Commissioner shall prefile the redrafted rules, as
11 may be revised, with the Interagency Committee on Administrative Rules.

12 Sec. **B**. EFFECTIVE DATE

13 Sec. **A** shall take effect on passage.