

# Administrative Procedures – Final Proposed Rule Coversheet

## Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).

**RECEIVED**  
JAN 3 1 2017

BY: .....

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**Rule Title: Inmate/Offender Records and Access to Information**

Martha Maksym, on 1/30/2017  
(signature) (date)

Printed Name and Title:

Martha Maksym, Deputy Secretary on behalf of Al Gobeille, Secretary, Agency of Human Services.

RECEIVED BY: \_\_\_\_\_

- Final Proposed Rule Coversheet
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- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Approval received by E-mail.
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Inmate/Offender Records and Access to Information

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

16P-064

3. ADOPTING AGENCY:

Agency of Human Services

4. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Kurt Kuehl, General Counsel

Agency: Agency of Human Services, Department of Corrections

Mailing Address: Vermont Department of Corrections, NOB 2 South, 280 State Drive, Waterbury, VT 05671-2000

Telephone: 802 241 - 0033 Fax: 802 241 - 0020

E-Mail: kurt.keuhl@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://corrections.vermont.gov/about/policies>

5. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Sarah Truckle, Sr. Policy and Implementation Analyst

Agency: Agency of Human Services, Department of Corrections

Mailing Address: Vermont Department of Corrections, NOB 2 South, 280 State Drive, Waterbury, VT 05671-2000

Telephone: 802 477 - 3910 Fax: 802 241 - 0020

E-Mail: sarah.truckle@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?)* Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

28 V.S.A. § 107(b).

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

Offender and inmate records contain information that is used in the custody, supervision, and case

management of persons who are in the care of the Department of Corrections (DOC). This information includes both confidential and sensitive information that if released could jeopardize the DOC's ability to perform its functions, or may compromise the health, safety, security or rehabilitation of the offender or inmate or of another person. This proposed rule reflects both the statutory obligation to produce such records and the basis for exclusion of information from production as reflected in 28 V.S.A. § 107(b).

**7. LEGAL AUTHORITY / ENABLING LEGISLATION:**

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

28 V.S.A. § 107(a) and § 107(b) (5).

**8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.**

**9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.**

**10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.**

**11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.**

**12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.**

**13. CONCISE SUMMARY (150 WORDS OR LESS):**

This administrative rule identifies types of information contained in an inmate/offender record. Additionally, it identifies processes for an inmate/offender to request access to their record, and for any person to request access to information. It further identifies procedures to correct a material fact, as well as provides for an appeal process.

**14. EXPLANATION OF WHY THE RULE IS NECESSARY:**

28 V.S.A. § 107(a) requires DOC to adopt rules that define what are "offender and inmate records"; 28

V.S.A. § 107(b)(5) requires DOC to adopt rules that identify how DOC will release or permit inspection of designated offender and inmate records.

**15. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

Vermont State Employees Association  
 Attorney General's Office  
 Department of Human Resources  
 Department of Information and Innovation/Agency of Human Services - IT Division  
 Jailtracker (Offender Management System contractor)  
 Defender General/Prisoners' Rights Office  
 Centurion  
 Offender/Inmate Advocacy Groups  
 Inmates/offenders in custody or under supervision by DOC  
 Taxpayers

**16. BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):**

The Department of Corrections anticipates several significant cost increases as a result of this rule. The estimated total pages in inmate/offender records is between 2 million and 66 million sheets, and DOC will be responsible for scanning, uploading, redacting, printing, and storing voluminous records, the total number of pages of which will vary annually depending on the number of total requests. The total estimated costs, between staff time and paper, range from just under \$1 million to nearly \$25 million depending on the number of offenders requesting records.

**17. A HEARING WAS HELD.**

**18. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 11/29/2016

Time: 01:00 PM

Street Address: 280 State Drive, Waterbury, VT

Zip Code: 05671-2000

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

12/7/2016

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Offender and Inmate Records

Release of Information

Corrections

Confidentiality

Offender File

**Run Spell Check**

**Department of Corrections**

To: Rep. Patsy French, Chair of the Legislative Committee on  
Administrative Rules

From: Sarah Truckle, Senior Policy Analyst, Vermont Department of Corrections

Re: Final Proposed Rule Inmate/Offender Records and Access to Information

Date: January 9, 2017

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**RE: Letter explaining in detail what changes were made from the proposed rule draft.**

The Vermont Department of Corrections added the following section on page 2, #18, to its proposed rule *Inmate/Offender Records and Access to Information*:

Offender Criminal History Records – records that relate to an offender’s criminal history including those provided by the Department of Motor Vehicles (DMV), Interstate Identification Index (III), National Crime Information Center (NCIC), National Law Enforcement Telecommunications System (NLETS), Vermont Crime Information Center (VCIC), and/or the Vermont Justice Information Sharing System (VJISS). Offender criminal history records cannot be released pursuant to state and federal law.

This section was added in response to a comment submitted during the public comment period by Gary Stevens, a Vermont Department of Correction’s staff member. The comment suggested:

(1) Under “Inmate or Offender Records”, add:

18. Offender Criminal History Records – records that relate to an offender’s criminal history including those provided by the Department of Motor Vehicles (DMV), Interstate Identification Index (III), National Crime Information Center (NCIC), National Law Enforcement Telecommunications System (NLETS), Vermont Crime Information Center (VCIC), and /or Vermont Justice Information Sharing System (VJISS). Offender criminal history records cannot be released by the DOC to the inmate/offender or public pursuant to:

United States Code Title 28, Part II, Chapter 23, Section 534 (ACQUISITION, PRESERVATION, AND EXCHANGE OF IDENTIFICATION RECORDS AND INFORMATION; APPOINTMENT OF OFFICIALS), subsection (b); Code of Federal Regulations Title 28, Chapter I, Part 20, Subpart C, Section 20.33 (DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION), Subsection (b); and

Vermont Statutes Annotated Title 20, Part 5, Chapter 117, Section 2056a (DISSEMINATION OF CRIMINAL HISTORY RECORDS TO CRIMINAL JUSTICE AGENCIES), Subsections (b) and (c).

The Vermont Department of Corrections recognized that this was a missing category in the definition of inmate/offender records and incorporated the suggested language in the definition.

# Administrative Procedures – Adopting Page

## Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Inmate/Offender Records and Access to Information

2. ADOPTING AGENCY:

Department of Corrections, Agency of Human Services

3. AGENCY REFERENCE NUMBER, IF ANY:

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE**

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

**Run Spell Check**



State of Vermont  
Agency of Administration  
109 State Street  
Montpelier, VT 05609-0201  
[www.aoa.vermont.gov](http://www.aoa.vermont.gov)

[phone] 802-828-3322  
[fax] 802-828-3320

Office of the Secretary

## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES

To: Louise Corliss, SOS  
Chris Winters, SOS  
Charlene Dindo, LCAR  
ICAR Members

Date: September 13, 2016

Proposed Rule: Inmate/Offender Records and Access to Information  
(Agency of Human Services)

The following official action was taken at the September 12, 2016 meeting of ICAR.

Present: Chair Michael Clasen, Scott Bascom, Clare O'Shaughnessy, Jen Duggan, John Kessler and Allan Sullivan  
Absent: Steve Knudson – voted electronically  
Dirk Anderson  
Diane Bothfeld  
Abstain: Allan Sullivan

The Committee has no objection to the proposed rule being filed with the Secretary of State.

The Committee approves the rule with the following recommendations.

1. On signature pages, add title of signer.
2. Coversheet #5 last sentence: Add 28 VSA.
3. Coversheet #9: Delete extra apostrophe after "Defender General/Prisoners"
4. Economic Impact Statement #6: Provide an answer.
5. Economic Impact Statement #7: Explain the greenhouse gas impact from all the paper made from trees.

The Committee opposes filing of the proposed rule.

cc: Kurt Kuehl  
Sarah Truckle

**Note from the Secretary of State's office:** All costs associated with the management of records (whether paper or digital) are borne by the individual agency/depts. with the exception of records stored in the State Records Center. Costs associated by the storage and destruction of paper records (and, in some cases, microfilm records) in the State Records Center, provided that the records meet the criteria for storage in the State Records Center, are currently absorbed by the Secretary of State's Office.  
Tanya Marshall, State Archivist, Vermont State Archives & Records Administration





# Administrative Procedures – Economic Impact Statement

## Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).


The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

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**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

**Rule Title:** Inmate/Offender Records and Access to Information

 , on 1/30/2017 .  
(signature) (date)

**Printed Name and Title:**

Martha Maksym, Deputy Secretary on behalf of Al Gobeille,  
Secretary, Agency of Human Services.

*BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.*

**1. TITLE OF RULE FILING:**

Inmate/Offender Records and Access to Information

**2. ADOPTING AGENCY:**

Agency of Human Services

**3. CATEGORY OF AFFECTED PARTIES:**

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

Vermont State Employees Association

Attorney General's Office

Department of Human Resources

Department of Information and Innovation/Agency of Human Services - IT Division

Jailtracker (Offender Management System contractor)

Defender General/Prisoners' Rights Office

Centurion

Offender/Inmate Advocacy Groups

Inmate/offenders in custody or under supervision by the Department of Corrections (DOC)

Taxpayers

**4. IMPACT ON SCHOOLS:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:*

None.

**5. COMPARISON:**

*COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

The Department of Corrections anticipates several significant cost increases as a result of this rule. The total pages to be scanned, uploaded, printed, and stored will vary annually

depending on the number of requests, but is estimated between 2 million and 66 million sheets of paper. The attachments to this statement show estimated ranges of staff time and potential costs. The annual range of total staff hours for these processes is anticipated to be between 31,911 and 961,211 hours, which does not include the time it will take to print requested records. The total estimated cost of staff time and paper required to respond to requests vary from just under \$1 million to nearly \$25 million.

In order to release inmate/offender records, all of the information within will first need to be reviewed and, when applicable, redacted. The time required of staff to properly complete this will be considerable and likely result in substantial overtime costs. As much of the information contains sensitive and confidential items, there may be privacy, safety, and security implications in having staff review this information. Further, if staff are not properly qualified, there is a potential that pertinent information may not be properly redacted, which could result in lawsuits against DOC. There will be a significant amount of training needed for current staff in order to be able to begin the process of redacting these documents. In addition, the maintenance of these records will require resources, primarily in the need for physical and electronic storage. In order to meet its obligations, the Department of Corrections estimates that between 17 and 173 current FTEs will be performing the scanning, uploading, and redacting of records as their sole job function. The estimates take into account the range of ten to one-hundred percent of offenders requesting their records. If fifty-percent of offenders request their records, the estimated impact would be utilizing 86 current FTEs solely to scan, upload, and redact records.

By redirecting job duties of the current FTEs to scanning, uploading, and redacting records, it is anticipated that there will be negative effects on other DOC functions. As a result, typical case management, reentry, and other DOC work may be limited. This will likely have a negative impact on those currently incarcerated and, though perhaps to a lesser extent, offenders in the community.

The initial time studies have shown that approximately 24% of inmates have what we would consider to be a small record (1,800 pages or fewer), and approximately 32% having a medium record (1,800-10,000 pages), and 45% have a large record (upwards of 10,000 pages), with the average being approximately 6,500 pages per record. The time just to scan and upload these records so that they can be reviewed, redacted, and stored ranges from approximately four hours to almost twenty-four hours per record. A trained reader who has

both legal and security skillsets would take approximately 4-5 times longer to read records for redacting purposes than it does to scan these documents. This means that the average inmate's record will require forty hours for one caseworker to review.

There are additional costs to be considered, such as acquiring technology equipment and specialty software licenses required to utilize redaction tools. Scanners would also be needed so that documents are able to be immediately added to offender records. Additionally, there is the need for building extracts in the Offender Management System. A database will also be required to track the records that have been requested, and the dates they were provided to the requestor. This will be necessary for second requests each year, which should only include new/updated documents. Finally, as the offenders will be supplied with a hard copy of all documents, the DOC may also need to procure higher capacity printers than are currently available. Some offender records would require a dedicated printer to run tens of thousands of documents. What this also means is that there would not be enough resources to reasonably accommodate initial requests. The current printers can accommodate monthly cycles of approximately 30,000 pages. Initially, this may be below the daily need from any one printer. Storage of electronic records is another consideration. The amount of records being scanned and stored both on the network drives and the Offender Management System will require the purchase of additional server space. In both cases, the significant increase in data usage and storage may slow down the overall network, creating challenges that impact all operations across state government. Other IT-related costs related to this will also increase, such as the costs of equipment maintenance and network storage volume.

The cost for supplies to do this will also be considerable. The paper alone is estimated to cost between \$40,000-400,000. There will also be expenses associated with purchasing toner.

Based on the amount of paper generated, physical storage space will likely be inadequate. Inmates are permitted to have up to 2 record boxes in their cells at a time. This means that many boxes of records will need to be stored on site so that offenders have timely access to them. This issue will compound significantly as updated records are requested. This will also become an issue when transporting inmates between facilities, as their personal property would include record boxes full of these requested records.

Some records may not be able to be printed. For instance, an offender may request to view a video record. As there are not

currently dedicated devices from which video can be reviewed by an offender, this would require a staff person's time and a state computing device in order to inspect any records such as these.

6. FLEXIBILITY STATEMENT:

*COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:*

None.

7. GREENHOUSE GAS IMPACT: *EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:*

A. TRANSPORTATION —

*IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., "THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS" OR "LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE."):*

Transportation impacts be experienced due to the required movement of inmate/offender records. In order that inmates have access to the records that they have requested under the rule, these records will have to be stored and transported anytime an inmate moves to a different correctional facility.

B. LAND USE AND DEVELOPMENT —

*IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., "THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT." OR "THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND/OR AGRICULTURAL LAND."):*

None.

C. BUILDING INFRASTRUCTURE —

*IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., "THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS." OR "THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION."):*

None.

D. WASTE GENERATION / REDUCTION —

*IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., "THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS." OR "AS A RESULT OF THE RULE, FOOD AND*

*OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A 'METHANE TO ENERGY PROJECT'."):*

This rule will require a significant increase in the amount of paper the DOC uses with estimates ranging from 1,834,855 to 66,242,198 sheets of paper. In addition to the paper requirements, there will be increased costs associated with toner for printers, as well as an increase number of scanners and printers required to perform the duties. This will all generate waste, and e-waste upon the retirement of technology.

E. OTHER —

*IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:*

This rule will require a significant amount of paper ranging from 1,834,855 to 66,242,198. Each sheet of 100% post-consumer recycled paper contributes 0.017 pounds of carbon dioxide equivalents (a unit to express all greenhouse gases including methane, nitrous oxide, and fluorinated gases). Using the estimated paper ranges, it is expected that the paper used in meeting the requirements for the rule will contribute between 31,192.535 to 1,126,117.366 pounds of carbon dioxide equivalents.

**Run Spell Check**

## **Inmate/Offender Records and Access to Information**

### **Economic Impact Statement Attachment**

#### **Explaining the Numbers**

**# of Incarcerated Offenders – Average daily population from the Department of Corrections 2015 Facts and Figures Report.**

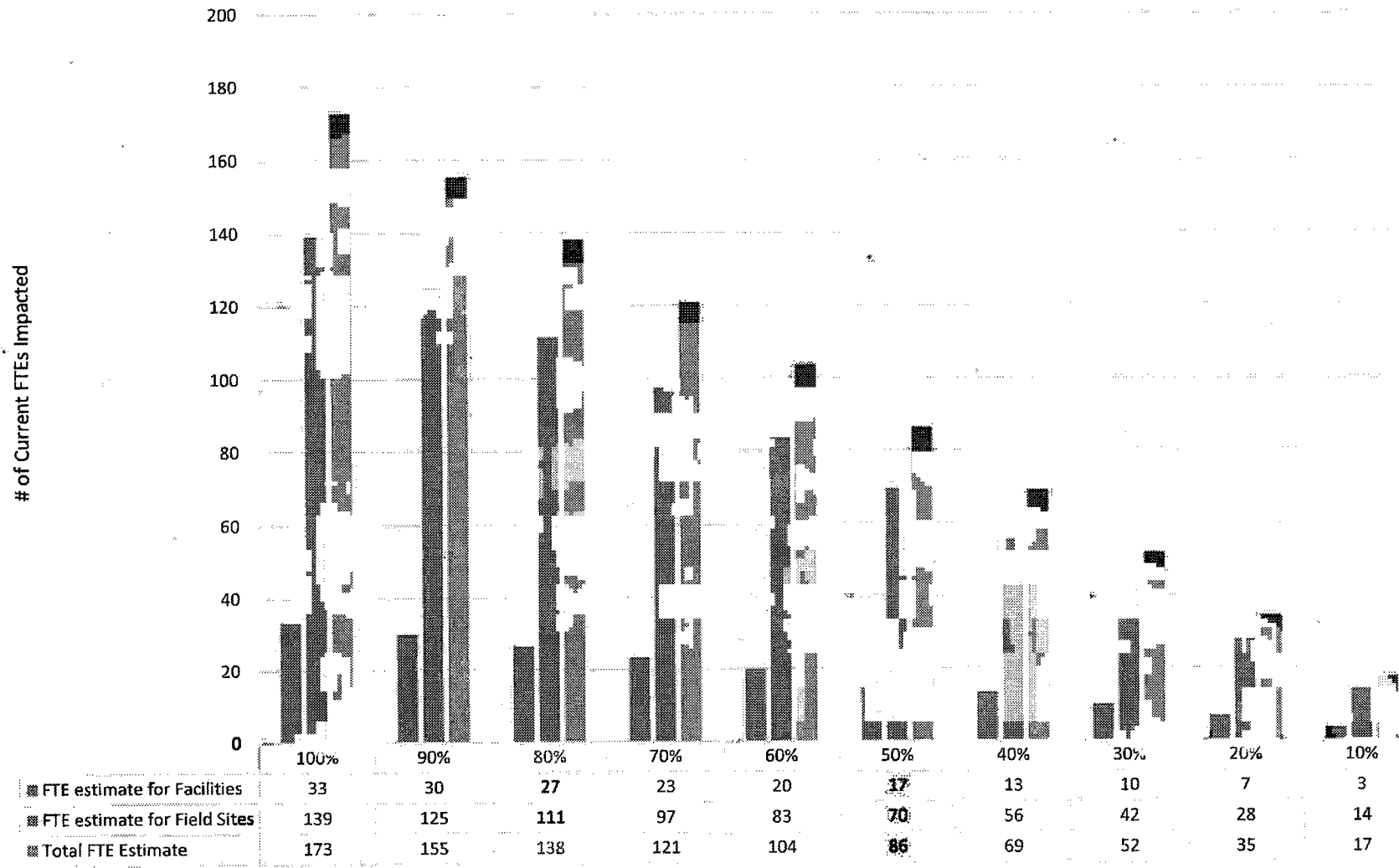
**# of Community Offenders – Population as of 6/30/15 as reported in the Department of Corrections 2015 Facts and Figures Report.**

**# of Small Files – Calculated using the Point in Time Incarceration statistics from the Department of Corrections 2014 Facts and Figures Report. The small file includes inmates with a jail sentence (max  $\leq$  1 year or unsentenced detainees)**

**# of Large Files – Calculated using the Point in Time Incarceration statistics from the Department of Corrections 2014 Facts and Figures Report. The large file corresponds with violent felon – sentenced inmates (including lifers). The average minimum sentence for a violent felon is 62.6 months thus relating to long incarceration time and likely engaging in mandatory risk and needs reducing services.**

**# of Medium Files - Calculated using the Point in Time Incarceration statistics from the Department of Corrections 2014 Facts and Figures Report. This number is based on the remaining prison population after the large and small file population counts.**

## Staff Resource Analysis Year One



*This time study does not include the following: medical records, education records, Vermont Correctional Industries records, Community Justice Center records, program files, records within the Offender Management System. It is reflective only on the time*

FTE estimate for Facilities
  FTE estimate for Field Sites
  Total FTE Estimate



### Estimated Staff Resources

#### Incarcerated Offenders Records Requests:

# of Incarcerated Offenders	Percent of Inmates Requesting Records	Total # of Records Requested	# of Small File Records Requested	# of Medium File Records Requested	# of Large File Records Requested	Anticipated Scanning Hours	Anticipated Upload Hours	Anticipated Redaction Hours	Total Hours	Number of Weeks at 40 Hours	Number of Current FTEs
YEAR 1											
1997	100%	1997	465	636	896	7113	21339	35565	64017	1600	33
1997	90%	1797	419	572	806	6402	19205	32009	57616	1440	30
1997	80%	1598	372	508	717	5690	17071	28452	51214	1280	27
1997	70%	1398	326	445	627	4979	14937	24896	44812	1120	23
1997	60%	1198	279	381	538	4268	12803	21339	38410	960	20
1997	50%	999	233	318	448	3557	10670	17783	32009	800	17
1997	40%	799	186	254	358	2845	8536	14226	25607	640	13
1997	30%	599	140	191	269	2134	6402	10670	19205	480	10
1997	20%	399	93	127	179	1423	4268	7113	12803	320	7
1997	10%	200	47	64	90	711	2134	3557	6402	160	3
ANNUALLY											
1997	100%	1997	913	1084	0	3081	9242	15403	27725	693	14
1997	90%	1797	822	975	0	2773	8318	13863	24953	624	13
1997	80%	1598	731	867	0	2464	7393	12322	22180	555	12
1997	70%	1398	639	759	0	2156	6469	10782	19408	485	10
1997	60%	1198	548	650	0	1848	5545	9242	16635	416	9
1997	50%	999	457	542	0	1540	4621	7701	13863	347	7
1997	40%	799	365	433	0	1232	3697	6161	11090	277	6
1997	30%	599	274	325	0	924	2773	4621	8318	208	4
1997	20%	399	183	217	0	616	1848	3081	5545	139	3
1997	10%	200	91	108	0	308	924	1540	2773	69	1

### Estimated Staff Resources

#### Community Supervised Offenders Records Requests:

# of Community Offenders	Percent of Offenders Requesting Records	Total # of Records Requested	# of Small File Records Requested	# of Medium File Records Requested	# of Large File Records Requested	Anticipated Scanning Hours	Anticipated Upload Hours	Anticipated Redaction Hours	Total Hours	Number	Number
										of Weeks at 40 Hours	of Current FTEs
<b>YEAR 1</b>											
8335	100%	8335	1942	2653	3740	29688	89065	148441	267194	6680	139
8335	90%	7502	1748	2387	3366	26719	80158	133597	240474	6012	125
8335	80%	6668	1554	2122	2992	23751	71252	118753	213755	5344	111
8335	70%	5835	1360	1857	2618	20782	62345	103909	187035	4676	97
8335	60%	5001	1165	1592	2244	17813	53439	89065	160316	4008	83
8335	50%	4168	971	1326	1870	14844	44532	74220	133597	3340	70
8335	40%	3334	777	1061	1496	11875	35626	59376	106877	2672	56
8335	30%	2501	583	796	1122	8906	26719	44532	80158	2004	42
8335	20%	1667	388	531	748	5938	17813	29688	53439	1336	28
8335	10%	834	194	265	374	2969	8906	14844	26719	668	14
<b>ANNUALLY</b>											
8335	100%	8335	3812	4523	0	12858	38573	64288	115719	2893	60
8335	90%	7502	3431	4070	0	11572	34716	57859	104147	2604	54
8335	80%	6668	3050	3618	0	10286	30858	51431	92575	2314	48
8335	70%	5835	2669	3166	0	9000	27001	45002	81003	2025	42
8335	60%	5001	2287	2714	0	7715	23144	38573	69431	1736	36
8335	50%	4168	1906	2261	0	6429	19286	32144	57859	1446	30
8335	40%	3334	1525	1809	0	5143	15429	25715	46288	1157	24
8335	30%	2501	1144	1357	0	3857	11572	19286	34716	868	18
8335	20%	1667	762	905	0	2572	7715	12858	23144	579	12
8335	10%	834	381	452	0	1286	3857	6429	11572	289	6

## Estimated Number of Sheets of Paper

### Incarcerated Offenders Records Requests:

# of Incarcerated Offenders	Percent of Inmates Requesting Records	Total # of Records Requested	Estimated # of Sheets of Paper	Cost of Case of Paper	# of sheets per case	# of cases needed	Cost
<b>YEAR 1</b>							
1997	100%	1997	12,803,491	\$ 30.00	5000	2,560.70	\$ 76,820.95
1997	90%	1797	11,523,142	\$ 30.00	5000	2,304.63	\$ 69,138.85
1997	80%	1598	10,242,793	\$ 30.00	5000	2,048.56	\$ 61,456.76
1997	70%	1398	8,962,444	\$ 30.00	5000	1,792.49	\$ 53,774.66
1997	60%	1198	7,682,095	\$ 30.00	5000	1,536.42	\$ 46,092.57
1997	50%	999	6,401,745	\$ 30.00	5000	1,280.35	\$ 38,410.47
1997	40%	799	5,121,396	\$ 30.00	5000	1,024.28	\$ 30,728.38
1997	30%	599	3,841,047	\$ 30.00	5000	768.21	\$ 23,046.28
1997	20%	399	2,560,698	\$ 30.00	5000	512.14	\$ 15,364.19
1997	10%	200	1,280,349	\$ 30.00	5000	256.07	\$ 7,682.09
<b>ANNUALLY</b>							
1997	100%	1997	5,545,064	\$ 30.00	5000	1,109.01	\$ 33,270.39
1997	90%	1797	4,990,558	\$ 30.00	5000	998.11	\$ 29,943.35
1997	80%	1598	4,436,051	\$ 30.00	5000	887.21	\$ 26,616.31
1997	70%	1398	3,881,545	\$ 30.00	5000	776.31	\$ 23,289.27
1997	60%	1198	3,327,039	\$ 30.00	5000	665.41	\$ 19,962.23
1997	50%	999	2,772,532	\$ 30.00	5000	554.51	\$ 16,635.19
1997	40%	799	2,218,026	\$ 30.00	5000	443.61	\$ 13,308.15
1997	30%	599	1,663,519	\$ 30.00	5000	332.70	\$ 9,981.12
1997	20%	399	1,109,013	\$ 30.00	5000	221.80	\$ 6,654.08
1997	10%	200	554,506	\$ 30.00	5000	110.90	\$ 3,327.04

## Estimated Number of Sheets of Paper

### Community Supervised Offenders Records Requests:

# of Community Offenders	Percent of Offenders Requesting Records	Total # of Records Requested	Estimated # of Sheets of Paper	Cost of Case of Paper	# of sheets per case	# of cases needed	Cost
<b>YEAR 1</b>							
8335	100%	8335	53,438,707	\$ 30.00	5000	10,687.74	\$ 320,632.24
8335	90%	7502	48,094,836	\$ 30.00	5000	9,618.97	\$ 288,569.02
8335	80%	6668	42,750,965	\$ 30.00	5000	8,550.19	\$ 256,505.79
8335	70%	5835	37,407,095	\$ 30.00	5000	7,481.42	\$ 224,442.57
8335	60%	5001	32,063,224	\$ 30.00	5000	6,412.64	\$ 192,379.34
8335	50%	4168	26,719,353	\$ 30.00	5000	5,343.87	\$ 160,316.12
8335	40%	3334	21,375,483	\$ 30.00	5000	4,275.10	\$ 128,252.90
8335	30%	2501	16,031,612	\$ 30.00	5000	3,206.32	\$ 96,189.67
8335	20%	1667	10,687,741	\$ 30.00	5000	2,137.55	\$ 64,126.45
8335	10%	834	5,343,871	\$ 30.00	5000	1,068.77	\$ 32,063.22
<b>ANNUALLY</b>							
8335	100%	8335	23,143,771	\$ 30.00	5000	4,628.75	\$ 138,862.62
8335	90%	7502	20,829,394	\$ 30.00	5000	4,165.88	\$ 124,976.36
8335	80%	6668	18,515,017	\$ 30.00	5000	3,703.00	\$ 111,090.10
8335	70%	5835	16,200,640	\$ 30.00	5000	3,240.13	\$ 97,203.84
8335	60%	5001	13,886,262	\$ 30.00	5000	2,777.25	\$ 83,317.57
8335	50%	4168	11,571,885	\$ 30.00	5000	2,314.38	\$ 69,431.31
8335	40%	3334	9,257,508	\$ 30.00	5000	1,851.50	\$ 55,545.05
8335	30%	2501	6,943,131	\$ 30.00	5000	1,388.63	\$ 41,658.79
8335	20%	1667	4,628,754	\$ 30.00	5000	925.75	\$ 27,772.52
8335	10%	834	2,314,377	\$ 30.00	5000	462.88	\$ 13,886.26

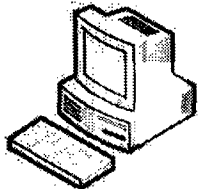
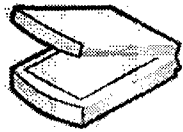
**Department of Corrections  
Offender File Rule Records Process Economic Impact Chart**



1 small file = 1 hour to scan  
 1 medium file = 2 hours to scan  
 1 large file = 6 hours to scan

**Step 1:** Time Estimates of 3,680 to 36,801 hours depending on the number of requests.\*

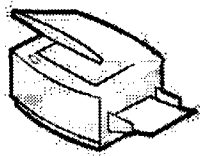
**Staff cost to scan:** \$94,539 to \$945,417^



1 small file = 3 hour to upload  
 1 medium file = 6 hours to upload  
 1 large file = 18 hours to upload

**Step 2:** Estimates of 11,040 to 110,404 hours to upload depending on number of requests.

**Staff cost to upload:** \$283,617 to \$2,836,279



**Step 3:** Paper estimate of 1,834,855 to 66,242,198 million pieces depending on number of requests

**Paper Costs:** \$39,745 to \$397,452

1 small file = 5 hours to redact  
 1 medium file = 10 hours to redact  
 1 large file = 30 hours to redact

**Step 4:** Estimates of 18,401 to 814,006 hours to redact files

**Staff cost to redact:** \$472,721 to \$20,911,814

Total process will take 17 to 173 FTE's to complete file requests. (see attached excel sheet for detailed analysis)



1 small file = 13 hours to process (611 – 6,045 total hours depending on the number of requests)

1 medium file = 18 hours to process (1,152 – 11,448 total hours depending on the number of requests)

1 large file = 54 hours to process (4,860 – 48,384 total hours depending on the number of requests)

**Overall:** The economic impact to the department to comply with the legislation ranges from \$890,622 to \$25,090,962 based on the number of requests.

\* note: Estimates are the low range of 10% of files requested to 100% of files requested  
 ^note: costs are based on average CSS hourly wage of \$25.69

# Administrative Procedures – Public Input Statement

## Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

### 1. TITLE OF RULE FILING:

Inmate/Offender Records and Access to Information

### 2. ADOPTING AGENCY:

Department of Corrections, Agency of Human Services

### 3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

Public Hearing

### 4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Numerous stakeholders were involved in the drafting of the legislation, including advocacy groups and the Prisoners' Rights Office.

**Run Spell Check**

**Department of Corrections**

To: Rep. Patsy French, Chair of the Legislative Committee on  
Administrative Rules

From: Sarah Truckle, Senior Policy Analyst, Vermont Department of Corrections

Re: Final Proposed Rule Inmate/Offender Records and Access to Information

Date: January 9, 2017

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The Vermont Department of Corrections (DOC) received fifty-five comments during the public comment period. The following summarizes the comments received and the DOC's responses.

- **Summary of Comment:** Recommendation to have DOC staff consult the DOC's Victim Services Unit prior to redacted records being released to the inmate/offender that contain victim information.
  - **DOC Response:** Any information that needs to be redacted will be redacted regardless of whether the inmate/offender is provided a copy or permitted to inspect.
- **Summary of Comment:** Request that inmates/offenders be provided notice of their appeal rights and ability to receive a reasonable accommodation (per the Americans with Disabilities Act (ADA)) and the seven-day window in which they must pursue those rights.
  - **DOC Response:** As part of the request process, DOC will provide inmates/offenders written notice of the appeal timeline. Inmates/offenders can request an ADA accommodation at any time; this is not limited by this rule.
- **Summary of Comment:** Identifies that the rule allows for the Department for Children and Families (DCF) Family Services Division who routinely conducts child safety investigations and may need access to information in offender/inmate record.
  - **DOC Response:** DOC agrees.
- **Summary of Comment:** Identifies that the rule allows for DCF to contact DOC to gather information when an offender/inmate threatens a DCF worker or program. DCF has developed a threat reporting and response protocol for employees which has been utilized significantly over the last 18 months. It is extremely helpful to DCF to have access to a photograph of an offender/inmate when s/he has made threats that can be shared with the affected staff to increase their safety. Other information in the offender's record may also be useful in the safety planning process and the ability to have an avenue for expedited information sharing regarding staff safety concerns is necessary.
  - **DOC Response:** DOC agrees
- **Summary of Comment:** Questioning whether or not the definition of inmate or offender records includes a history of Relief From Abuse Orders (RFA)?
  - **DOC Response:** If we had any RFA documentation it would be in the court orders category as it is a court order.
- **Summary of Comment:** Questioning how the DOC will operationalize this administrative rule for inmates housed under the supplemental housing contract or inmates housed under the Interstate Corrections Compact.
  - **DOC Response:** Interstate Corrections Compact cases (outgoing) are entitled to the laws and rules of the receiving state, and subsequently those who come here under Interstate Corrections Compact would be entitled to the rights under this rule. Supplemental Housing

Contract inmates would have rights to request their record and the DOC will be working with the OOS unit to operationalize.

- Summary of Comment: Identifying the DOC's limitation to correct a fact in the record that was generated from outside sources (e.g., contractors, law enforcement, or the court).
  - DOC Response: Page 4, line 8 requires that the correction only be made if it relates to a material fact about rights or status and was generated by the DOC. The DOC cannot correct outside information.
- Summary of Comments: § 107(b)(5)(A) directs the Commissioner to adopt a rule authorizing release or inspection of records "[w]hen the public interest served by disclosure of a record outweighs the privacy, security, or other interest in keeping the record confidential." The proposed rule, at 3:32-34, omits this balancing test entirely, replacing it with unfettered authorization to "release records for reasons related to public safety, institutional security, or when it is in the best interest of the inmate/offender or a victim," so long as release is not prohibited by law. This proposed rule, which purports to give the DOC discretion to release records to any person without weighing the relevant interests, finds no support in the language of § 107. The concern is that the confidentiality exception is too broad.
  - DOC Response: The APA rule does not purport to give discretion not granted by the statute. DOC is bound by the statute and will comply when determining whether or not to release records.
- Summary of Comment: In § 107(b)(5)(B), the statute makes clear that a release of records to an inmate/offender under a court order does not count against that individual's annual request cap, but the proposed rule, at 3:8-10, makes no reference to that exclusion. As presently drafted, the rule could be read to prohibit an inmate/offender from making a request within the same calendar year that a court ordered any records released to him or her.
  - DOC Response: The APA rule is limited to inmate/offender requests. A court order is not an inmate/offender request.
- Summary of Comment: Recommendation to limit the applicability of the rule in order to reduce the workload created. Suggestions include: (1) not applying to detainees; (2) not applying to inmate/offender until they have been in DOC custody/supervision for eighteen months; and (3) not to include paperwork previously given.
  - DOC Response: The DOC appreciates your suggestions, however we are bound by the statute.
- Summary of Comment: Concern over the safety and storage of inmate records once an inmate is given the record within the facility.
  - DOC Response: The DOC appreciates your suggestions, however we are bound by the statute. The facility and inmate/offender will have to comply with the property directive. However, the DOC recognizes that this could create both onsite/offsite storage needs.
- Summary of Comment: Questioning what the rationale, reasoning, and benefit is from having an entire file photocopied and given to the offender annually.
  - DOC Response: The DOC is required to implement the statute.
- Summary of Comments: The DOC received twenty-one comments from line staff expressing significant concerns over workload. Staff expressed that they will not be able to accommodate this in their typical work day, and that by placing this requirement on caseworkers, other casework functions (e.g., transition and reentry services, case planning, case management, etc.) will not be accomplished.
  - The DOC recognizes that this is an additional workload and may significantly impact current job duties. The DOC does not have any new resources available. Therefore, this is the most feasible solution given the knowledge base required to complete the task and the nature of the job.
- Summary of Comments: Expressing the opinion that specific items in a record (such as sentence paperwork) is most important to an inmate, and therefore why does DOC need to provide the entire record.



- DOC Response: The inmate/offender has a statutory right to the entire record. The DOC is responsible for meeting this requirement.
- Summary of Comments: Identification that compliance with this rule will have significant costs associated with it, both in budget dollars and in paper requirements.
  - DOC Response: As part of the APA rulemaking process the DOC has completed an economic impact statement and has identified this will have a significant financial cost associated. This rule is mandated by statute and therefore the DOC is required to implement.
- Summary of Comment: Identification that the current technological resources within field and facility sites will not accommodate this new rule.
  - DOC Response: The DOC will be purchasing additional scanners to accomplish this task.
- Summary of Comments: Identification that redaction is not a current casework function and that staff have no training in what or how to redact records.
  - DOC Response: The DOC recognizes that redaction will be a new task to CSS staff and will be developing and delivering training as part of the rule implementation as the statute and rule require all information shall be provided either in full or redacted format.
- Summary of Comments: Questioning how the inmate/offender core file fits into this new rule.
  - DOC Response: The historical core file is no longer in existence as part of this policy. From this point forward, all information will be part of the inmate/offender record which will be largely stored electronically in OMS. The information is subject to disclosure regardless of any historical confidential tags. As part of this rule, there is clear direction on what information can be redacted.
- Summary of Comment: Concern over DOC accidentally releasing sensitive information from outside sources, such as DCF, given that DOC staff will not have specific knowledge of the documents, and therefore may fail to redact them.
  - DOC Response: The DOC will develop and deliver training to staff on what and why to redact information from certain records. The DOC expects that staff will use their professional judgment when determining whether to redact and will provide training on and assistance with the exercise of this judgment. We appreciate your suggestions.
- Summary of Comment: Questioning whether the rule applies to new information placed in the inmate or offender record or all information.
  - DOC Response: The inmate/offender can receive their entire record every year. If the inmate/offender makes a subsequent request, staff will refer to the original request and additional direction provided in guidance.
- Summary of Comment: Questioning how any person can access the public use file.
  - DOC Response: The Public Use File will be made available on the Internet, however we need to create an administrative request mechanism.
- Summary of Comments: DOC staff feel that it would be impossible to comply with the required timelines.
  - DOC Response: The statute identifies a 45-day time limit for the full process, including appeal. Therefore, the DOC must meet this requirement. The DOC recognizes that redaction will be a new task to CSS staff and will develop and deliver training as part of the rule implementation because the statute and rule require all information shall be provided either in full or redacted format.
- Summary of Comment: Request to have all information provided by Victims Services redacted.
  - DOC Response: The statute identifies the standard for redaction and this was not included. However, all records will be evaluated to determine whether there is a need for redaction based on the standard.
- Summary of Comment: Questioning when an inmate/offender record can be released, whether it remains confidential, and to whom it can be released.

- DOC Response: The statute makes inmate/offender records confidential and sets forth the circumstances and to whom records can be released.
- Summary of Comment: Suggest that the rule indicate that an inmate/offender dissatisfied with the outcome of the grievance system with respect to a request to correct a fact, 4:13-14, may appeal that decision to the Civil Division of the Superior Court pursuant to Vt. R. Civ. P. 74, as specified by § 107(d). The omission of this notice from the rule may mislead people about the recourse available to them.
  - DOC Response: This is established in the statute and need to be included in this rule.
- Summary of Comment: Inmates/offenders should not be able to request copies of records previously provided to them.
  - DOC Response: This is a statutory requirement.
- Summary of Comment: Inmates/offenders should be directed to try to resolve the matter prior to filing a grievance.
  - DOC Response: This is a statutory requirement.
- Summary of Comment: Recommendation that inmates or offenders can only request their records once every five years given the workload requirements of casework and administrative staff.
  - DOC Response: This requirement is based on statute.
- Summary of Comments: § 107(b)(5)(B) allows the DOC to withhold records that “would unreasonably interfere with the Department’s ability to perform its functions,” but the proposed rule substitutes “could” for “would.” This attempt to lower the showing necessary to justify withholding records is inconsistent with the statute’s mandate and must be corrected. This, combined with the omission of the balancing test discussed above, gives the DOC a degree of discretion to release or withhold records that the statute itself does not permit.
  - DOC Response: This was changed based on the feedback from the Interagency Committee on Administrative Rules.
- Summary of Comment: Questioning whether the public use file is maintained in a paper format and, if so, who maintains it.
  - DOC Response: This will be an electronic file accessible through the public website.
- Wording of Comment: Requested adding the following language:
  - (2) Under “Access to Inmate/Offender Records” section 2, subsection c, add:
    - ii. could compromise the health, safety, security, or rehabilitation of the offender, inmate, or another person; or
    - iii. comprises of criminal history records as indicated below:
      - a. The DOC may permit the inmate/offender to inspect criminal history records from III, NCIC, NLETS, DMV, and/or VCIC in the presence of a DOC staff member.
      - b. VJISS records, whether in part of its entirety, may not be inspected by the inmate/offender under any circumstance.
      - c. The DOC may not provide a copy, either electronically or in paper form, of any and all criminal history records to the inmate/offender. An inmate/offender may obtain information on requesting a copy of their criminal history or criminal conviction report by contacting:
        - Criminal Record Check Section
        - Vermont Crime Information Center
        - 45 State Drive
        - Waterbury, VT 05671-1300
        - 802-241-5237
      - d. An inmate/offender disputing the accuracy of their individual criminal history record may submit a criminal history record appeal request in writing to:
        - Vermont Crime Information Center

Attention: Director, VCIC  
45 State Drive  
Waterbury, VT 05671-1300

- DOC Response: This will be implemented through training.
- Wording of Comment:
  - (1) Under “Inmate or Offender Records”, add:
    - 18. Offender Criminal History Records – records that relate to an offender’s criminal history including those provided by the Department of Motor Vehicles (DMV), Interstate Identification Index (III), National Crime Information Center (NCIC), National Law Enforcement Telecommunications System (NLETS), Vermont Crime Information Center (VCIC), and /or Vermont Justice Information Sharing System (VJISS). Offender criminal history records cannot be released by the DOC to the inmate/offender or public pursuant to:
      - United States Code Title 28, Part II, Chapter 23, Section 534 (ACQUISITION, PRESERVATION, AND EXCHANGE OF IDENTIFICATION RECORDS AND INFORMATION; APPOINTMENT OF OFFICIALS), subsection (b);
      - Code of Federal Regulations Title 28, Chapter I, Part 20, Subpart C, Section 20.33 (DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION), Subsection (b); and
      - Vermont Statutes Annotated Title 20, Part 5, Chapter 117, Section 2056a (DISSEMINATION OF CRIMINAL HISTORY RECORDS TO CRIMINAL JUSTICE AGENCIES), Subsections (b) and (c).
- DOC Response: Will add: 18. Offender Criminal History Records – records that relate to an offender’s criminal history including those provided by the Department of Motor Vehicles (DMV), Interstate Identification Index (III), National Crime Information Center (NCIC), National Law Enforcement Telecommunications System (NLETS), Vermont Crime Information Center (VCIC), and /or Vermont Justice Information Sharing System (VJISS). Offender criminal history records cannot be released pursuant to state and federal law.
- Summary of Comment: Do we need to include victim and protected person information in the rule given that the DOC stores victim information in it a separate category within the record?
  - DOC Response: Yes, this needs to be included as it is part of the inmate/offender record. Victim and protected persons will include identified victims, confidential informants, and any other person whose health, safety, or security would be compromised by the release of the information. Each record will be evaluated to determine where it falls categorically and additionally whether it needs to be redacted regardless of the categorization of the information.
- Summary of Comment: Expansion and clarification of who falls into the victim and protected person category.
  - DOC Response: Victim and protected persons will include identified victims, confidential informants, and any other person whose health, safety, or security would be compromised by the release of the information. Each record will be evaluated to determine where it falls categorically and additionally whether it needs to be redacted regardless of the categorization of the information.
- Summary of Comment: Has anyone conducted a time study to determine how much staff time will be used complying with this rule?
  - DOC Response: Yes, the DOC has conducted a time study and that will be available through the DOC Feedback Link on the DOC website. Additionally, the information was filed as part of the APA rule packet. The DOC recognizes that this is an additional workload and may significantly impact current job duties. The DOC does not have any new resources available

and therefore this is the most feasible solution given the knowledge base required to complete the task and the nature of the job.

- Summary of Comment: Does the rule incorporate criminal and civil court orders?
  - DOC Response: Yes.
- Summary of Comment: Is HIPAA protected information excluded?
  - DOC Response: Yes

280 STATE DRIVE  
WATERBURY, VERMONT 05671-1000



OFFICE OF THE SECRETARY  
TEL: (802) 241-0440  
FAX: (802) 241-0450

AL GOBELLE, SECRETARY  
MARTHA MAKSYM, DEPUTY SECRETARY

STATE OF VERMONT  
AGENCY OF HUMAN SERVICES

MEMORANDUM

**TO:** Jim Condos, Secretary of State

**FROM:** Al Gobeille, Secretary, Agency of Human Services

**DATE:** Tuesday, January 17, 2017

**SUBJECT:** Signatory Authority for Purposes of Authorizing Administrative Rules

A handwritten signature in black ink, appearing to be 'A. Gobeille'.

---

I hereby designate Deputy Secretary of Human Services Martha Maksym as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedure Act, 3 V.S.A. § 801 et seq.

Cc: Martha Maksym

## Inmate/Offender Records and Access to Information

### Authority

This rule is adopted pursuant to 28 V.S.A. § 107.

### Purpose

The purpose of this rule is to provide offenders and inmates access to information about them maintained by the Department of Corrections (DOC) in a manner consistent with the confidentiality, health, safety, security, and rehabilitation of inmates, offenders, and other persons.

### Inmate or Offender Records

The term "Inmate/Offender Records" as used herein shall mean and include the information generated, collected, and maintained by DOC regarding a person in the custody or under the supervision of DOC. This information is maintained in various formats including electronic, hard copy, and other media when necessary (example: video and audio recordings). Inmate/Offender Records may contain the following types of information:

1. Victim/Protected Person Information – information that relates to an inmate/offender's victim or another protected person, such as a confidential informant.
2. Court Orders – copies of Court Orders which pertain to the inmate/offender.
3. Offender Identifying Information – information that could be used to identify the inmate/offender, such as a social security number or address information.
4. Outside Legal Information – information maintained by the DOC that was generated by a another agency or organization for use in a legal or administrative proceeding, such as affidavits.
5. Supervision Information – information that relates to the classification and supervision of the inmate/offender, such as furlough conditions and housing determinations.
6. Notification Documents – information related to notifications other than victim notification, such as law enforcement notification of escape from furlough.
7. Risk and Needs Reducing Services Information – information related to the inmate/offender's risk level, treatment needs, risk reducing services, programming, and other information that relates to the offender's criminogenic risk and treatment.
8. Sex Offender Registry Information – information related to the inmate/offender's requirements to register with the Vermont Sex Offender Registry.

- 1 9. Investigation Information and Outcome – information collected as part of the
- 2 investigative function of DOC, including pardon investigations and pre-
- 3 sentence investigations.
- 4 10. Financial Information – information related to the inmate/offender’s
- 5 finances, including supervision fees and restitution.
- 6 11. Case Management and Case Planning Information – information related to
- 7 the offender’s case, including case plans, contact notes, and release planning
- 8 information.
- 9 12. Signed Releases for Information – documents that the inmate/offender has
- 10 signed that authorize DOC to release specific documents/information to a
- 11 stated person.
- 12 13. Due Process and Incident Reporting Documents – information related to
- 13 inmate discipline, due process, grievances and incidents. This includes,
- 14 disciplinary reports, hearing information, and incident reports.
- 15 14. Medical and Mental Health Information – information related to the health or
- 16 mental health of the inmate/offender.
- 17 15. Family and Support Persons Information – information about or related to
- 18 the inmate/offender’s family or support persons, such as names and
- 19 addresses.
- 20 16. Personal Property Record Information – information related to the personal
- 21 property of the inmate/offender.
- 22 17. Communications Information – information related to the communications of
- 23 the inmate/offender with outside persons, including inmate mail and phone
- 24 calls.
- 25 18. Offender Criminal History Records – records that relate to an offender’s
- 26 criminal history including those provided by the Department of Motor
- 27 Vehicles (DMV), Interstate Identification Index (III), National Crime
- 28 Information Center (NCIC), National Law Enforcement Telecommunications
- 29 System (NLETS), Vermont Crime Information Center (VCIC), and/or the
- 30 Vermont Justice Information Sharing System (VJISS). Offender criminal
- 31 history records cannot be released pursuant to state and federal law.

32

33 **Inmate/Offender Public Use File**

34

35 The term “Public Use File” as used herein shall mean and include select information

36 from the Inmate/Offender Records of an inmate or offender, limited to:

- 37 1. Last name;
- 38 2. First name;
- 39 3. Middle name;
- 40 4. Current age;
- 41 5. Booking date;
- 42 6. Date released if applicable;
- 43 7. Race;
- 44 8. Sex;
- 45 9. Town of residence;
- 46 10. Active agencies;

- 1 11. Field Corrections Service Specialist;
- 2 12. Facility Corrections Service Specialist;
- 3 13. Minimum release date;
- 4 14. Maximum release date;
- 5 15. Legal status;
- 6 16. Charge status;
- 7 17. Charge description;
- 8 18. Bail amount; and
- 9 19. List sentence for each charge.

### 10 Access to Inmate/Offender Records

#### 11 1. Inmate/Offender Records Access Request

- 12
- 13
- 14
- 15 a) An inmate/offender may request a complete copy of his/her record once
- 16 every calendar year. An inmate/offender may also make a subsequent
- 17 request for any record not previously provided once every calendar year.
- 18 b) An inmate/offender shall request a copy of his/her record in writing.
- 19

#### 20 2. DOC Responses to Inmate/Offender Records Access Requests

- 21 a) DOC shall provide a copy, either electronically or in paper form to the inmate
- 22 within 30 days of the written request, or notify the inmate/offender of the
- 23 denial of the request. If the information requested could potentially
- 24 jeopardize the safety or security of the facility or any person if retained by
- 25 the inmate/offender, the DOC may permit the inmate/offender to inspect the
- 26 redacted record in the presence of a DOC staff member.
- 27 b) DOC shall not withhold a record in its entirety because that it contains some
- 28 confidential or exempt information.
- 29 c) DOC shall redact information that:
  - 30 i. could unreasonably interfere with the DOC's ability to perform its
  - 31 functions; or
  - 32 ii. could compromise the health, safety, security, or rehabilitation of the
  - 33 offender, inmate, or another person.
- 34

35 3. Except where prohibited by law, criminal justice personnel and other agencies,  
36 departments, or organizations may be permitted access to inmate/offender records  
37 when necessary to perform assigned work duties.

38  
39 4. Except where prohibited by law, the Commissioner or Deputy Commissioner, of  
40 DOC, may release records for reasons related to public safety, institutional security,  
41 or when it is in the best interest of the inmate/offender or a victim.

### 42 Timing and Appeals



1 DOC shall provide a copy, either electronically or in paper form, to the inmate within  
2 30 days of receipt of the written request or notify the inmate/offender of denial of  
3 the request.

4  
5 Upon receipt of the requested records or the denial of the request, the  
6 inmate/offender shall have 7 days to appeal DOC's decision regarding his/her  
7 access to the corresponding records. This appeal shall be made in writing.

8  
9 Upon receipt of the appeal, DOC shall respond within 7 days. DOC shall issue a final  
10 decision regarding access to the inmate/offender record no later than 45 days from  
11 its receipt of the initial request.

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13 **Correction of Fact**

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15 An inmate/offender may request DOC to correct a fact in his/her corresponding  
16 record maintained by DOC that is material to his/her rights or status. However, an  
17 inmate/offender may not request DOC to correct a fact that was determined at a  
18 hearing or other proceeding that afforded the offender or inmate notice and  
19 opportunity to be heard on the determination.

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21 The offender/inmate shall use the offender grievance system to request DOC to  
22 correct a fact.

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24 **Public Access to an Inmate/Offender's Public Use File**

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26 DOC shall permit anyone to review the contents of the Public Use File regarding an  
27 inmate/offender. To review the Public Use File of an inmate or offender, a person  
28 must submit a request in writing to DOC.

## Inmate/Offender Records and Access to Information

### **Authority**

This rule is adopted pursuant to 28 V.S.A. § 107.

### **Purpose**

The purpose of this rule is to provide offenders and inmates access to information about them maintained by the Department of Corrections (DOC) in a manner consistent with the confidentiality, health, safety, security, and rehabilitation of inmates, offenders, and other persons.

### **Inmate or Offender Records**

The term "Inmate/Offender Records" as used herein shall mean and include the information generated, collected, and maintained by DOC regarding a person in the custody or under the supervision of DOC. This information is maintained in various formats including electronic, hard copy, and other media when necessary (example: video and audio recordings). Inmate/Offender Records may contain the following types of information:

1. Victim/Protected Person Information – information that relates to an inmate/offender's victim or another protected person, such as a confidential informant.
2. Court Orders – copies of Court Orders which pertain to the inmate/offender.
3. Offender Identifying Information – information that could be used to identify the inmate/offender, such as a social security number or address information.
4. Outside Legal Information – information maintained by the DOC that was generated by a another agency or organization for use in a legal or administrative proceeding, such as affidavits.
5. Supervision Information – information that relates to the classification and supervision of the inmate/offender, such as furlough conditions and housing determinations.
6. Notification Documents – information related to notifications other than victim notification, such as law enforcement notification of escape from furlough.
7. Risk and Needs Reducing Services Information – information related to the inmate/offender's risk level, treatment needs, risk reducing services, programming, and other information that relates to the offender's criminogenic risk and treatment.
8. Sex Offender Registry Information – information related to the inmate/offender's requirements to register with the Vermont Sex Offender Registry.

- 1 9. Investigation Information and Outcome – information collected as part of the  
2 investigative function of DOC, including pardon investigations and pre-  
3 sentence investigations.
- 4 10. Financial Information – information related to the inmate/offender’s  
5 finances, including supervision fees and restitution.
- 6 11. Case Management and Case Planning Information – information related to  
7 the offender’s case, including case plans, contact notes, and release planning  
8 information.
- 9 12. Signed Releases for Information – documents that the inmate/offender has  
10 signed that authorize DOC to release specific documents/information to a  
11 stated person.
- 12 13. Due Process and Incident Reporting Documents – information related to  
13 inmate discipline, due process, grievances and incidents. This includes,  
14 disciplinary reports, hearing information, and incident reports.
- 15 14. Medical and Mental Health Information – information related to the health or  
16 mental health of the inmate/offender.
- 17 15. Family and Support Persons Information – information about or related to  
18 the inmate/offender’s family or support persons, such as names and  
19 addresses.
- 20 16. Personal Property Record Information – information related to the personal  
21 property of the inmate/offender.
- 22 17. Communications Information – information related to the communications of  
23 the inmate/offender with outside persons, including inmate mail and phone  
24 calls.
- 25 18. Offender Criminal History Records – records that relate to an offender’s  
26 criminal history including those provided by the Department of Motor  
27 Vehicles (DMV), Interstate Identification Index (III), National Crime  
28 Information Center (NCIC), National Law Enforcement Telecommunications  
29 System (NLETS), Vermont Crime Information Center (VCIC), and/or the  
30 Vermont Justice Information Sharing System (VJISS). Offender criminal  
31 history records cannot be released pursuant to state and federal law.

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