

S.61; House C'ee on Corrections and Institutions Strike-All Sec. 10 (Offender/Inmate Records)

Sec. 10

A. Background

To understand Sec. 10, some background is needed.

Last year, the General Assembly passed a bill that became Act 137. Among other provisions, Act 137 required the Commissioner of Corrections **to adopt rules** providing for the disclosure of offender and inmate records of the Department:

- when “the public interest served by disclosure of a record outweighs the privacy, security, or other interest in keeping the record confidential”; and
- in order to provide an offender or inmate access to records relating to himself or herself, subject to various limitations and exceptions that were to be further developed in the rule.

In response to this rulemaking mandate, the Commissioner initiated the process for adopting the rule this fall, and filed a proposed rule with LCAR on January 31, 2017.

Because the proposed rule’s economic impact statement estimated that the rule would result in significant costs to the Department, LCAR sent a letter to the Chairs of the House and Senate Institutions Committees stating that the committees may wish to consider the cost issue and whether to take legislative action to reduce the costs. After the House Committee on Institutions responded to (and Rep. Emmons testified before) LCAR, LCAR postponed action on the rule until May 25 in order to give the Committee time to consider the proposed rule and whether a legislative response was needed.

After reviewing and taking testimony on the proposed rule, the House Committee on Institutions found that it was not consistent with legislative intent because it would potentially cause significant costs and disruptions to the Department.

B. Summary of Sec. 10

Sec. 10 is a legislative response to address the costs of the proposed rule. Sec. 10 amends a transition provision in Act 137 in order to:

- **[Subsec. (d)]**: Direct the Commissioner to:
 - (1) withdraw the proposed rule filed with LCAR; and
 - (2) redraft the proposed rule so that it reflects legislative intent.
- **[Subsec. (e)]**: Articulate a legislative intent that the rule be interpreted not to require the Department to give an offender or inmate a copy of records:
 - (1) previously provided to the offender or inmate, if he or she still has a copy; or

(2) if the inmate or offender is responsible for the loss or destruction of a previously provided copy. [In such cases the Department may charge for a replacement copy.]

- [Subsec. f]: Direct the Commissioner, on or before October 1, 2017, to:
 - (1) develop a plan to implement and use modern records management technology and practices in order to minimize the costs of furnishing offender/inmate records; and
 - (2) send the Institutions Committees a copy of this plan as well as a written report that:
 - (A) summarizes the status of the Department's efforts to redraft the rules; and
 - (B) analyzes a possible transition to digital delivery of offender/inmate records.

- [Subsec. (g)]: Direct the Commissioner to:
 - ❖ Submit a copy of the redrafted rules to the Institutions Committees on or before January 15, 2018.
 - ❖ Prefile the redrafted rules with the Interagency Committee on Administrative Rules on or before July 1, 2018.

The interim reporting requirement [subsec. (f)] and the requirement to file a copy of the redrafted rule with the Institutions Committees early in the next session [subsec. (f)] will give committee members an opportunity to weigh in and respond in case the Department gets off track again.