

**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).

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**

 \_\_\_\_\_, 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
- 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)
- 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**

# 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**

# 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.

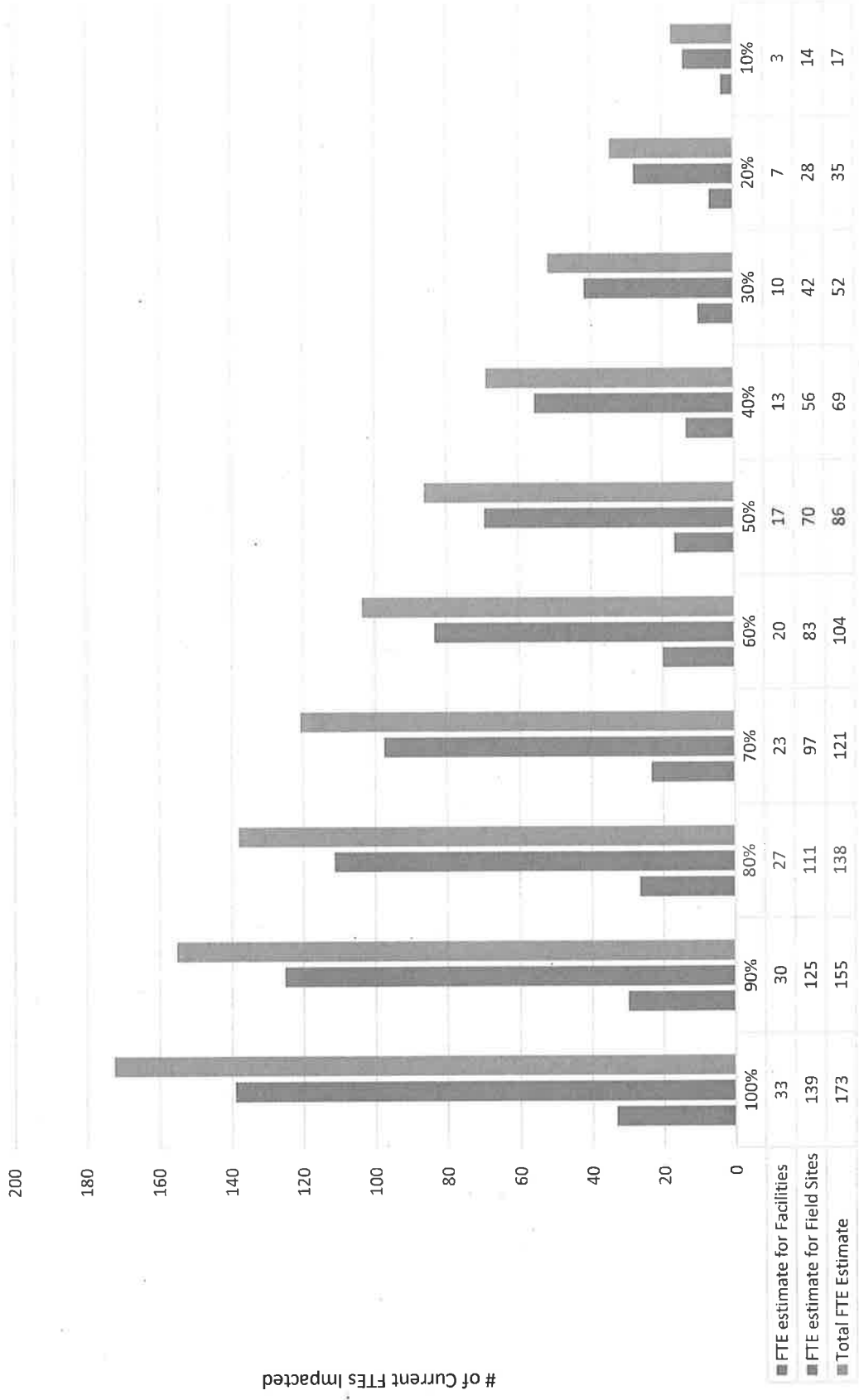
# of Community Offenders – Population as of 6/30/15 as reported in the Department of Corrections 2015 Facts and Figures Report.

# 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

#### 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 Reduction Hours	Total Hours	Number of Weeks at 40 Hours	Number of Current FTEs
			Requested	Requested	Requested	Requested	Requested	Requested	Requested								
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<sup>^</sup>



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 = 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



1 small file = 13 hours to process (6.11 – 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  
<sup>^</sup>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**

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

2  
3                    **Authority**

4  
5                    This rule is adopted pursuant to 28 V.S.A. § 107.

6  
7                    **Purpose**

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9                    The purpose of this rule is to provide offenders and inmates access to information  
10                    about them maintained by the Department of Corrections (DOC) in a manner  
11                    consistent with the confidentiality, health, safety, security, and rehabilitation of  
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14                    **Inmate or Offender Records**

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16                    The term “Inmate/Offender Records” as used herein shall mean and include the  
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18                    custody or under the supervision of DOC. This information is maintained in various  
19                    formats including electronic, hard copy, and other media when necessary (example:  
20                    video and audio recordings). Inmate/Offender Records may contain the following  
21                    types of information:

- 22
- 23                    1. Victim/Protected Person Information – information that relates to an  
24                    inmate/offender’s victim or another protected person, such as a confidential  
25                    informant.
  - 26                    2. Court Orders – copies of Court Orders which pertain to the inmate/offender.
  - 27                    3. Offender Identifying Information – information that could be used to identify  
28                    the inmate/offender, such as a social security number or address  
29                    information.
  - 30                    4. Outside Legal Information – information maintained by the DOC that was  
31                    generated by a another agency or organization for use in a legal or  
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  - 33                    5. Supervision Information – information that relates to the classification and  
34                    supervision of the inmate/offender, such as furlough conditions and housing  
35                    determinations.
  - 36                    6. Notification Documents – information related to notifications other than  
37                    victim notification, such as law enforcement notification of escape from  
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  - 39                    7. Risk and Needs Reducing Services Information – information related to the  
40                    inmate/offender’s risk level, treatment needs, risk reducing services,  
41                    programming, and other information that relates to the offender’s  
42                    criminogenic risk and treatment.
  - 43                    8. Sex Offender Registry Information – information related to the  
44                    inmate/offender’s requirements to register with the Vermont Sex Offender  
45                    Registry.

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13 inmate discipline, due process, grievances and incidents. This includes,  
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- 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.
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23 the inmate/offender with outside persons, including inmate mail and phone  
24 calls.
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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  
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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;
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- 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 11 **Access to Inmate/Offender Records**

### 12 13 1. Inmate/Offender Records Access Request

- 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
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- 26 redacted record in the presence of a DOC staff member.
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  - 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,  
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28 must submit a request in writing to DOC.

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29

**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

---

**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.



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



Inmate/Offender Records and Access to Information - Rule

Public Comments

14-Dec-16

COMMENT SHEET

Comment #: Document: Page #: Line #: Comment:

Department of Corrections, Victim Services Unit

				Does this need to be included now that we have the victim contact note?
1	Rule	1	23	How are we defining victims and protected persons? Will this include non-adjudicated victims: DCF social workers, victim's family members, witnesses that report violations &/or at-risk behaviors, new partners that are not victims of record, RFA complainants, State's Witnesses, guardians of offender's children (temp. or permanent) placed by the State--basically anyone whose safety needs would be considered as part of release planning?
2	Rule	1	26	Civil as well as criminal?
3	Rule	1	39	Does this include history of RFA?
4	Rule	3	22	Would be good to include any information provided by Victim Services.
5	Rule	3	34	I assume HIPPA protected info is still excluded?
<i>Samantha Clark, Living Unit Supervisor, SSCF</i>				

			<p>As a LUS at SSCF in Springfield largest prison in Vermont, i wanted to express my concerns          CSS's currently are mandated to complete numerous assessments in inmates and complete a well organized and thought out Offender case plan to address and reduce recidivism once released back into the community. To properly do this time with inmate is needed and goals are set , worked on and tracked with contact meeting between the inmate and the CSS. All of the General population units have 50 inmates at any given time and the turn over in a unit could be 50-100% on any month. We at SSCF also have a large majority of the SFIs in the state the also require more services than the average inmate as the are chronically and persistently mentally ill. We have the aging population again requires special attention to release planning and medical conditions that come with normal aging.          To add another clerical task such as coping files you would be taking valuable time from inmates working on risks and barriers to risk, true case management and team meetings concerning the specialty units for the best chance of success at release and once into the community thus, result in higher recidivism less change in thinking and behaviors, and more risk to the community</p>
6	General		<p><i>Amy Tardif, Administrative Assistant A, NSCF</i></p> <p>I feel this is a bit ridiculous and also a burden to the staff. Due to the daily activities that are already being asked of by DOC, the casework staff of 11 people and admin staff of 4 people, that are working at a 420 bed correctional facility.          The new OMS system that we have at DOC is having these 15 people scanning documents, such as DR's (disciplinary reports, grievances and appeals) and then having to turn around and get these filed within a reasonable amount of time. If we start getting requests from 420 inmates that they would like a copy of their entire record (some of these inmates have 3 or more volumes) would be a very big burden and we would not be able to complete this within a reasonable amount of time on top of our daily duties that are assigned to us.</p>
7	General		<p><i>Kathy Corriveau, Administrative Assistant B, NSCF</i></p>



			<ol style="list-style-type: none"> <li>1. We have too much work already and to upload records and forms etc. in OMS for 417 inmates will take away from my other job duties. This is going to be a big project and we are going to get hit fast from all the inmates as soon as they hear they can look at their records.</li> <li>2. I help distribute canteen to the inmates and after some of them sign their canteen sheets they crumple it right up. We are going to do on this loading, coping etc. for them to destroy it when they don't want it anymore, that is a lot of work.</li> <li>3. Inmates already get Mitimus and paperwork on their sentence when they ask for them. I think the sentence paperwork is the most important thing in their files.</li> </ol>
<i>Barbara DeVost, Business Manager, NSCF</i>			
8	General		<p>Attached are some comments [referring to comments submitted by Kathy Corriveau and Amy Tardif] from my staff in regards to this. I would have to agree with them that Admin Staff and CSS' already has plenty of work to do in their 8 hrs. of work that is required of them. This would take a lot of time to incorporate all the tasks that are involved in preparing the file for the inmate's access to their information. Usually once I inmate requests this, it seems like all of them will want a copy of their files. (It's like monkey see monkey do.)</p> <p>Inmates have not had access to their files for a long time and things have run smoothly. I think if there are special circumstances and we are required to provide this then it should be by strict reasons why they are allowed this access. It should be driven by high criteria's.</p> <p>This would be very costly to the state's already costly budget. Not counting the amount of paper (trees) it takes for this to happen.</p> <p>Please reconsider this Policy and think of how much work will be involved in this task on top of our workload that we already have.</p>
9	General		

<i>Michael Foisy, Administrative Services Coordinator IV, SSCF</i>			
			I feel that this has the potential to become a very time consuming endeavor for both case work and admin staff. We would need additional positions to make this directive become a reality. I can see the Admin Team becoming overwhelmed as they struggle to keep up now.
10	General		
<i>Cassandra Torrey, Corrections Service Specialist II, MVRCF</i>			
			I feel it will be impossible to meet the deadlines of getting a copy of the file to an inmate within the deadline without hurting our ability to perform our requirements to our case load at this time. I also feel that it should not be put upon a caseworker to decide what needs to be held and not given to an offender from their file as it will create numerous grievances as offenders will feel that we are holding information from them.
11	General		
<i>Tom Giffin, Assistant Superintendent, MVRCF</i>			
			Does this include just new material or the entire file? And how would the caseworker know what the inmate had already received?
12	Rule	3	8
			Some files contain literally hundreds of pages of documents. Is the inmate going to be allowed to collect and store his file in his cell? (fire hazard and there is a finite amount of space to store inmate property/material in a cell.)
13	Rule	3	11
			Staff would require training in this area and redacting should be done be the legal dept as the litigation risk are substantial
			Many inmates have large and often more than one binder and if multiple inmates are requesting file copies the 30 days would be unreasonable as it would take the caseworker many hours to provide the copies. OMS is exceptionally slow in printing. I could literally take a caseworker days to do several inmate files. The first 14 day time frame in unrealistic and would be almost impossible to accomplish with multiple request.
14	Rule	3	14-18
<i>Brian Fisher, Living Unit Supervisor, NSCF</i>			

			<p>In reading through these documents, I believe the time that will be required, both at the initial stage and during subsequent requests for information will be overwhelming and not feasible. This falls primarily to CSS and Admin staff. The CSS staff that I supervise are in process of totally changing the way we, as a department are going about the casework process. This new style is extremely time and workload heavy. This is another layer of duties that we are not capable of doing in a 40 hour week. For me as LUS, the sheer scope of just tracking days and progress appears to be a logistical nightmare. The facility has ONE scanner for 420 cases. Just the sheer numbers of downloads will be extremely time consuming, along with other duties that can't be pushed aside.</p>
15	General		<p><i>Karen Merchant, Administrative Assistant B, NSCF</i></p> <p>NSCF houses 425 inmates on a daily basis. This directive means that we would be obligated to gather, review, redact and copy (within 30 days) as many as all of these records. We have limited staffing and due to the Administrative and Case Services Specialist current caseloads, responsibilities and accountability, I see this causing catastrophic labor issues; including increased cost of supplies in order to provide a full copy of a record, that may be several volumes, and the projected overtime costs associated with such an obligation. With respect, it appears to create a significant burden on staff especially in a large facility like Newport.</p>
16	General		<p><i>Judy Rex, Director of Policy and Planning, Department for Children and Families</i></p> <p>The definition of Victim/Protected Person Information should be broadened to include: non-adjudicated victims, a victim named in a civil relief from abuse order against the offender/inmate, family members of the offender/inmate and anyone who provides information to DOC regarding the offender/inmate's conduct.</p>
17	Rule	1	23

			<p>Paragraph number 2(c)(ii) of the rule gives DOC the authority to redact information that ‘could compromise the health, safety, or rehabilitation of the offender, inmate or another person’. However, the rule is silent on the criteria DOC would use to determine whether information in the record poses a safety concern for another person. Absent any criteria in the rule, we would recommend the following:</p> <p>Using the new definition reference above, Victim/Protected Person Information of the offender/inmate be routinely redacted before a record is released to an offender/inmate.</p> <p>Collateral contact between DCF and DOC that is referenced in an offender/inmate’s record be routinely redacted.</p> <p>An area of major concern is the collateral contact that takes place between DCF’s Family Services Division and DOC regarding child protection matters that may be reference in DOC’s case notes. This information should not be shared since DOC may not know whether sharing this information could compromise the health, safety or security of another person.</p> <p>In cases involving domestic violence or sexual assault, the Director of Victim Services should be consulted when reviewing the record for redaction to ensure the safety of victims and protected persons. This would also allow the Director to reach out to partners and family members of the offender/inmate to assess safety.</p>
18	Rule	3	22
19	Rule	3	28
			<p>Paragraph number 3 provides a much-needed provision for DCF’s Family Services Division who routinely conducts child safety investigations and may need access to information in an offenders/inmates file.</p>

			<p>Paragraph number 4 also allows DCF to contact DOC to gather information when an offender/inmate threatens one of our workers or programs. 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 we can share with the affected staff to increase their safety. Other information in the offender's record may also be useful in our safety planning process and the ability to have an avenue for expedited information sharing regarding staff safety concerns is necessary.</p>
20 Rule		3 32	<p><i>American Civil Liberties Union of Vermont</i></p> <p>First, § 107(b)(5)(A) directs the Commissioner to adopt a rule authorizing release or inspection or 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.</p> <p>Second, § 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.</p>
21 Rule		3 32-34	
22 Rule		3 23-25	

	23 Rule		3 8-10	<p>Third, also 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.</p>
	24 Rule	3-4	42-3	<p>Fourth, while the timeline laid out for records requests and appeals, 3:42-4:3, complies with the 45-day exhaustion period specified by § 107(c),<sup>1</sup> the proposed rule does not require the DOC to provide requestors with notice of their appeal rights and the 7-day window in which they must pursue those rights. Particularly because this time limit is so short, requestors must be provided this notice upon receipt of either the requested records or the denial of that request. We also suggest that the rule give notice that reasonable accommodation will be provided to individuals who need it to pursue their appeal rights.</p>
	25 Rule			<p>In addition, although not required by the statute's rulemaking mandate, we 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.</p>
<i>Emily Tredreau, Staff Attorney, Prisoners' Rights Office</i>				

	26 Rule	3 28-30	<p>Section 107 continues the confidentiality of inmate records that existed in prior law. It allows release of records only pursuant to limited exceptions. It does not allow for broad sharing of inmate records with other governmental agencies, other than the Department of Children and Families, and then only for purposes of child protection. 28 V.S.A. § 107(b)(4). Prosecutors may access records only with a court order based on the records' relevance to an investigation. Id. § 107(b)(3). DOC may otherwise release records when "the public interest served by disclosure of a record outweighs the privacy, security, or other interest in keeping the record confidential."</p> <p>The proposed rule would allow DOC to disclose confidential inmate records in a much wider range of circumstances than are authorized by Section 107. The proposed rule would allow disclosure to "criminal justice and other agencies, departments, or organizations" ... "when necessary to perform assigned work duties"; and also "for reasons related to public safety, institutional security, or when it is in the best interest of the inmate/offender or a victim." Proposed Rule at 3:28--30. This is an incredibly broad exception to confidentiality. It does not appear to be limited to governmental organizations. This broad exception does not reflect Section 107's requirement that the public interest outweigh confidentiality interest. If DOC adopts this rule it will have given itself permission to disclose records in situations other than those authorized by the Legislature.</p> <p>While the problematic section does have the caveat "except where prohibited by law," that prohibition is the default because Section 107 itself makes inmate records confidential. Adopting this rule could confuse DOC personnel by implying that such disclosures are, in general, permitted.</p>
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		<p>2. Redacting authority is too broad</p> <p>Section 107 authorizes DOC to redact records that would unreasonably interfere with DOC's functions. The proposed rule authorizes redaction of records that merely could interfere. The rule would expand DOC's redaction authority to include records whose interfering effect is merely speculative, and is thus inconsistent with the statute.</p>
<p><i>Michael McGinnis, Corrections Service Specialist, NWSCF</i></p>		
27 Rule		<p>I would like to provide feedback regarding the offender access to records. As a facility caseworker I expect this will add a significant workload to my position and therefore do not agree with this responsibility being added to my job description. I do agree that offender should have access but this must be utilized with additional admin staff to support this. This workload will be unpredictable and has timelines to complete. It also requires tracking to ensure the offenders are only requesting their records once per calendar year. The facility case work position is currently experiencing high volumes (workload/transition) of offenders at my specific facility and therefore will require follow up with other facilities and/or the field when offenders have transferred or have been released on supervision. This would also merit hires into case work positions or increasing pay for caseworkers for their increased workload.</p>
<p><i>Brad Dunsmore, Living Unit Supervisor, NWSCF</i></p>		
28 Rule	General	
<p><i>Brad Dunsmore, Living Unit Supervisor, NWSCF</i></p>		
29 Rule		<p>The inmate should not be able to request a copy of something that has already been provided to him or her. Such as the following: grievances, dr's, legal paperwork, case plan, etc... (all the stuff they have copies of already. The inmate losing their copy should not dictate us making them another copy.)</p>
30 Rule	4	<p>13-14 inmate should be directed to try and resolve the matter prior to filing a grievance.</p>
<p><i>Richard Byrne, OOS Casework Supervisor</i></p>		



			Upon reading the documents on inmate/offender records, a couple of concerns came up for me. How does the Department operationalize this process to inmates who are housed under the supplemental housing contract or the inmate housed under the Interstate Corrections Compact? The second is that the Out of State Unit does not have an assigned administrative staff member assigned to the unit.
31 Rule	General		<i>Joseph Silvestri, Living Unit Supervisor, NSCF</i>
			This action is not possible. We do not have the staff that we would need to produce copies of this magnitude for inmates. Some inmates have an entire file box, some more than one box to contain their file. Inmates are going to be able to have these copies reproduced yearly and will do so in order to produce a distraction for staff. The timelines are also not achievable. If this nonsense actually goes through then there will be a lot of other things that a CSS must do, that will not get done unless we hire extra staff and authorize overtime in order to comply with this misguided law. Another issue to think about is the property matrix and the allowable property an inmate is allowed to have in his cell. All the additional paperwork could constitute a fire hazard and create a dangerous environment for both staff and inmates.
32 Rule	General		<i>Dawn Muller, Corrections Service Specialist, NWSCF</i>
			An inmate/offender may request a complete copy of his/her record once every calendar year. An inmate/offender may also make a subsequent request for any record not previously provided once every calendar year. Based on the amount of work load that CSS/ADMIN staff already have and the time restrictions for many of our assignments or assessments, I recommend that once every 5 yrs would be more reasonable for requesting a copy of a file.
33 Rule	General		Victim/Protected Person Information – information that relates to an inmate/offender’s victim or another protected person, such as a confidential informant. It states as this is part of the record however the CSS is to go in and review after the admin does copies and remove any documentation regarding the victim that the offender shall not have. Shouldn't this just not be included as part of the record then?
34 Rule		1 23	

<i>Amber Charbonneau, Corrections Service Specialist, BUPP</i>			
			I feel this is going to add even more work to our already very busy caseloads. With the new case management directive, added contacts, added OCP duties, added cases in general due to not hiring for vacancies and having to accommodate extra cases, this is just one more burden that gets added to the pile. We cannot keep being asked to do so many things with so little manpower. Things are going to inevitably slip through the cracks and staff are overwhelmed already. Please consider allowing us to hire when we have vacancies or consider an alternative position just to do work like the offender records requests.
35 Rule	General		
<i>David Lee, Corrections Service Specialist II, NECC</i>			
			Act 137 will greatly reduce services provided by the already taxed Corrections system. Most inmate files are 6" – 12" + thick. For corrections staff to review the entire file, redact sensitive information and answer every concern the inmate has is a full-time job in itself. Without additional staff this will endanger the community by greatly reducing corrections ability to work with inmates on recidivism and supervise offenders while incarcerated and in the community.
36 Rule	General		
<i>Josh Rutherford, Superintendent, MVRCP</i>			
			Inmate/Offender Public Use File – Does this represent an actual file (and if so who will maintain it, where, etc.)? I'm currently reading it as a listing of what information within an inmate's file is public use and not as an actual physical file.
37 Rule	General		
<i>David Bellini, DOC Work Crew Leader/President VSEA</i>			

		General	<p>After speaking with some employees affected by this legislation my initial reaction is that: this is simply not going to happen without added positions specific to this requirement or a drastic rebalancing of priorities and resources.</p> <p>I randomly asked a probation offices to show me some hard copy files. Several were 2-6 inches thick. One was 6 inches thick and was marked "1 of 2." Employees would have to copy hundreds to thousands of individual pieces of paper taken out of a file, then, reassemble the file in the correct order. After this is complete the employee must read every piece of paper and redact what is required. There will likely be a great deal of subjectivity in deciding what can be released and what cannot. When this is complete the employee must then repeat this process with any part of the electric record not included in the paper file. It is likely there will be disputes over what should be redacted and what not. It could take several days to disassemble, copy, reassemble, read and redact just one file. There are likely to be many questions from employees. Training would also be necessary.</p> <p>It is difficult to imagine this was the intent of the legislature when crafting this bill. The bill's sponsor was the leading proponent to reduce probation officers' paperwork and data entry. The legislation is an unfunded mandate.</p> <p>Put another way, this is like the legislature passing a bill that mandates the local football team score a touchdown on every possession. The team will try, but it not likely to occur.</p>
38	Rule		

*David Boulanger, Corrections Service Specialist, NECC*

	39 Rule	General	<p>Has anyone actually calculated out the anticipated time requirement for this? Just as a conservative rough guess, it is likely to take around 4 hrs. or more for the CSS portion of redacting and uploading an average file. In addition, requests to listen to recordings which would include on average at least 4 major DR's at about 1/2 hr. per hearing. Just for the CSS portion, it will conservatively be 6 hours per case with an average case load of 30-50 inmates. You are now talking about nearly one full day per week (1/5 of our total hours) taken up by this new requirement! This is in addition to our current requirements which have been acknowledged to be challenging to achieve in the time allowed. Where are these hours going to come from? From an efficiency standpoint, it would make more sense to have a central clearing house for all uploading and filling of record requests. One central point would be much more efficient at redacting, uploading and processing of electronic information and would create consistency in how and where documentation is stored. You would likely see a 20% or more improvement in efficiency by doing it this way and since this does not require personal knowledge of the case, there is no benefit to having it completed by the CSS at the cost of case management, case planning and release planning functions.</p>
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*Stephen Russell, Living Unit Supervisor, NECC*

	40 Rule	General	<p>The DOC has spent time, money and resources in regard efficiency. In response to that we have had 2 different initiatives in regard to paperwork reduction in recent years. I hate to say that anything is impossible but the reality is that time is finite. Our state's budget is currently in a deficit so I believe it is fair to say we will not be given any new job position to complete this work. Without exaggeration, many of our offender files contain thousands of pages. It is not unrealistic for a CSS's caseload at this facility to have a weekly turnover rate of 8%. Without additional staffing this directive will greatly reduce a CSS's time for case planning, and transitional re-entry. It is my fear that requiring CSS staff to spend huge parts of their day redacting mountains of paperwork will take them away from the duties that that evidence has proven to reduce recidivism. It's a matter of cost benefit analysis. Do we want our staff addressing risk, need and responsibility which research has proven to lower an offenders risk to reoffend or reading threw a mountain of paper that an offender was most likely already given at one time or another. These are the staff responsible for victim notification, law enforcement notification, and sex offender registry. We can do it all but it will take more staff to do it.</p> <p><i>Ed Adams, Superintendent, SSCF</i></p>
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		General	<p>The legislative intent behind this has merit and comes from a good place. I see this as similar in theory to the federal government allowing everyone to get a free copy of their credit report each year so we can ensure there are no errors. The similarities end there.</p> <p>We will need additional positions to make this directive a reality. Without additional positions our small admin teams will become quickly overwhelmed with requests in the first year. Each facility has about the number of staff needed just to keep up on the current requirements of keeping a facility running.</p> <p>Although everyone has the right to a credit report check each year many do not take advantage of this for various reasons. I estimate that most inmates will request access to this feature even though they had no previous interest in it once they see others getting their files.</p> <p>Having experience uploading routine documents I can say that the process takes about 4-5 minutes per packet or sheet. 1 minute to scan, 1 minute to save to location, find the inmate in OMS, 1 minute to click through all the options and name the file and finish off with almost a minute to complete the upload. If an inmate had just 200 various papers or packets of documents (PSI, DR, etc) that might be 4 minutes * 200 uploads = 800 minutes or 13 hours of work just to complete one upload. I have no science behind these numbers – just based anecdotally on experience with files. We have not even started copying yet. This is just the upload process.</p>
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41 Rule

		General	<p>I have a total of 4 admin at SSCF. If I gave then nothing to do but this directive that would give me 750 hours of time worked in a month (if they took no breaks). Even if all the core files were small (using 200 documents as a small number) that would be a maximum of 57 inmates that could have their core files uploaded in a month – if all my admin did nothing but upload. At that pace I would need 6 months of my admin doing nothing but file uploading just to run through all the inmates we house.</p> <p>When 300 inmates all submit for copies of their file the day this goes live there will be no mathematical way to complete. And I believe the 200 documents in a core file is rather low estimate.</p> <p>So maybe in real life we can take one admin off line just to complete this task and dump their duties on the others (at SSCF I can do that but other facilities have fewer admin). One admin could potentially upload 15 core files per month if that's all they did. Maybe 20 as they get more efficient at it. We have some core files that are 1000's of documents so if those happen to be the first requests then the number could go down.</p> <p>I have 300 inmates and one admin might be handle 15-20 uploads a month if that's all they did. And this is just the uploading process. We still have not actually made the copies for the inmates to have. That's even more time.</p>
41 (Cont.)	Rule		

41 (Cont.)	Rule	General	<p>So without additional admin positions to help us with this the inmates will be able to administratively drag the DOC to a halt. The natural next step for the inmates will be to take us to court for missing the deadlines of 30 days and set off a chain reaction that drags the AG office and central staff in to waste more resources.</p> <p>I would anticipate that after a year we will have caught up to the upload process at which time we just are in maintenance mode. So potentially limited service admin positions for 1-2 years would suffice.</p> <p>Here are some suggestions to help make this realistic and operational:</p> <ul style="list-style-type: none"> <li>• Does not apply to a detainer (their attorney has essentially everything we have and just about anything we put in the core file we give the inmate a copy of in real time - like a DR).</li> <li>• Does not apply to an inmate until they have been on supervision or incarcerated for 18 months (or some combination to make 18 months).</li> <li>• Paperwork that we already provide them copies of is not given to them again through this process. We give them copies of grievance responses, DR packets, etc. as a routine. Why should we provide them again through this process. They should be responsible for retaining the copies we already give them if they want. The section on DR's is typically a larger one for some inmates but that's a section they already have been provided copies of and there is a process in place to challenge the information about those materials.</li> </ul>
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41 (Cont.)	Rule	General	<ul style="list-style-type: none"> <li>• Offender must sign a waiver as part of the process to advise them that DOOC is not responsible for the records the inmate retains in their property. Roommates, etc. could gain access to their information and that is not DOOC responsibility to protect it.</li> <li>• The record must be considered part of their property allowances – I don't consider it legal paperwork but either way should count against either their legal or general property maximum.</li> <li>• Inmate should be able to select from a menu of options what they want to obtain. This should not be an ALL or NOTHING event. Maybe they only want one specific group of information. Why would we want to throw away loads of efficiency and paper if they only want their assessments for instance.</li> </ul>
<i>Michael Koehler, Corrections Service Specialist I, NSCF</i>			
42	Rule	General	<p>My quick two cents regarding Inmate/Record Access is litigious inmates in the jails will all request this and the workload placed on the CSS class will be unmanageable.</p>
<i>Ellie Breimaier, Department for Children and Families</i>			
43	Rule	1	<p>23 In reviewing the draft rule, my big question comes regarding line 23- 1. Victim/Protected Person Information- I do not see anywhere clear guidance regarding the Victim's info. So how does this law and Rule, fit with DOC policy specific to the files/information that your Unit maintains?</p>
44	Rule	3	<p>I am not sure that the language on page 3 under section ACCESS To Inmate Records, under item 2 does enough , DOC may permit the inmate/offender to inspect the redacted record in presence of DOC staff..... who determines this ? I would feel better if DOC staff, MUST consult your Unit [VSU] if any information regarding victim information may be shared with the offender</p>
<i>Brad Danseran, Field Corrections Service Specialist, SAPP</i>			

	45 Rule	General	<p>I will start with I appreciate the work that the policy and implementation unit of this Department does. Please don't take this feedback as directed at your unit or in any way focused toward the unit.</p> <p>I understand the Department has to create policy appropriate to Act 137. However, this Act directing this policy will have a direct impact on my work. To be honest in my opinion for very little to no benefit to the Offender's, victims, public safety, the Department or in general the taxpayers of the State of Vermont.</p> <p>As a Probation &amp; Parole Officer I see with the passing of Act 137 an with implementation of this policy around release or permit inspection of designated offender and inmate records that I will simply be photocopying files all day for offenders. For as I said very little to no benefit. The Department of Corrections is already transparent with offenders on the way we supervise them, offenders already understand case planning since they assist in designing it according to risk, offenders receive sentence computations/probation orders/supervision conditions/parole agreements already. I can't think of any rational reason that an offender can benefit from having an entire file photocopied yearly if they so choose.</p>
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45 Cont.	Rule	General	<p>At this time the Department is rolling out a new Case Management Directive that will entail me as a Probation Officer to have extra duties that will take me added time to remain in the office. Part of the new Case Management Directive will also entail me to take on extra duties in more of a victim services role. The Department is implementing EPICS which takes me extra time in the office along with extra time in becoming certified. When I already have scheduled office meetings with offenders and required reports to complete. Little by little my role as a Probation &amp; Parole Officer is becoming more focused to an office setting only. Compared to a joint role of working in the field as the offenders supervising officer actually checking on them in real life situations, visiting their homes and having interaction with their families. Now, with this inmate/offender records and access mandate coming on line the remaining time in my days will most likely be spent reviewing files &amp; photocopying them for offenders. There is just only so much time in the day for one Officer.</p> <p><i>Jeanne Jean, Corrections Service Specialist II, OOS</i></p>
46 Rule	General		<p>I am concerned that when 28 V.S.A §107 is enacted, I will be required to complete 89 request in 30 days. I will be unable to meet the deadlines for expediting these records. The OOSU CSS staff have larger caseloads and limited administrative staff. December 1st CSS' are being tasked with many updates and changes in case management per Directive 371.02 for every offender. This Directive alone is overwhelming.</p> <p>I think it is great to list what belongs in the corefile. I also think it would be beneficial to list examples of what does not belong in the core file. For example: Case staffing reports, RSN, PSI and so on. (Heck, I even came across Unit officer post orders in one of my corefiles.)</p> <p>If information is labeled Confidential, is it subject to disclosure?</p> <p>If we have a specific core file, then a pencil file with additional information not required to be in the corefile, is that subject to disclosure?</p>

*Kory Stone, OOS Contract Manager*

		General	<p>I have read this directive in its entirety and the only feedback I can provide is that it does not seem feasible that a facility CSS will be able to meet any of the timelines, in the OOS Unit for example CSS staff have close to 80 inmates on their caseloads, some of these inmates have several files that are filled with paperwork, there is no way that these CSS staff will be able to accomplish these tasks and still complete their Casework duties in the timelines listed, it is possible that some of these files will take upwards of 30 man hours to complete. This is a task that would require several new positions be created and this task removed from the CSS staff.</p>
<i>Gary Stevens, Corrections Service Specialist, BPP</i>			
47 Rule			<p>(1) Under "Inmate or Offender Records", add:</p> <p>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 DOOC to the inmate/offender or public pursuant to:</p> <p>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 1, 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).</p>
48 Rule		2 25	

	49 Rule	3 27	<p>(2) Under “Access to Inmate/Offender Records” section 2, subsection c, add:</p> <ul style="list-style-type: none"> <li>ii. could compromise the health, safety, security, or rehabilitation of the offender, inmate, or another person; or</li> <li>iii. comprises of criminal history records as indicated below:             <ul style="list-style-type: none"> <li>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.</li> <li>b. VISS records, whether in part of its entirety, may not be inspected by the inmate/offender under any circumstance.</li> <li>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:                 <ul style="list-style-type: none"> <li>Criminal Record Check Section</li> <li>Vermont Crime Information Center</li> <li>45 State Drive</li> <li>Waterbury, VT 05671-1300</li> <li>802-241-5237</li> </ul> </li> <li>d. An inmate/offender disputing the accuracy of their individual criminal history record may submit a criminal history record appeal request in writing to:                 <ul style="list-style-type: none"> <li>Vermont Crime Information Center</li> <li>Attention: Director, VCIC</li> <li>45 State Drive</li> <li>Waterbury, VT 05671-1300</li> </ul> </li> </ul> </li> </ul>
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*Shana Blanchard, Corrections Service Specialist II, NWSCF*

				<p>This plan of allowing offenders to get a copy of their file will not work, unless the plan is to hire staff specifically to accomplish this task. As caseworkers with in a facility and field there is not enough time in our day (nor copiers in some cases) to accomplish such tasks. We as caseworkers already have enough deadlines to meet and have difficulty meeting those deadlines as it is.</p> <p>If this task does get passed on to caseworkers, field staff, and admin workers you will then be forcing us to submit a request for an upgrade. It would be nice for the department not use their field and facility caseworkers as their admin for once so we could concentrate on actual casework.</p>
50 Rule		General		
<i>David Turner, Director of Offender Due Process</i>				
				<p>This section outlines the types of documents that are considered the inmate record. There are several documents that are not now considered part of the inmate core file but we keep these records. They include records such as; mail logs, visitor logs, phone request lists and pin sheets, segregation confinement check sheets, special observation sheets, financial documents and canteen receipts, property receipts and minor DR's etc.. There are likely others as well. Some of these are now in OMS. Will they be considered part of the core file?</p>
51 Rule			1	16-21
52 Rule			3	32
53 Rule			4	7-11
				<p>In this section are we including general requests for inmate records that are not from the inmate. Could be by anyone else who is a member of the public. I think this may need clarification.</p> <p>I think this needs to clarify that an inmate may request DOC to correct a fact in the record that was placed there by a person employed by the Department of Corrections. We can't correct contractors, law enforcement or court information. We can only consider correcting information about the inmate that was created by a DOC employee. It should also be clear that the burden of proof is on the inmate. I see the number of grievances increasing and this will be another part of this that adds to the workload.</p>

54	Rule	General	<p>In closing: It would appear given only those few documents that has been put out for feedback so far, that the offender file rule is going to create a tremendous amount of work for the Department and its staff. The Administrative and CSS staff could potentially be overburdened by a legislative mandate that appears to go way beyond what it needs to in order to correct a perceived problem. I spent many years as both a CSS and a Living Unit Supervisor. This rule may cost the taxpayers thousands of dollars in both infrastructure dollars as well as extra days inmates may spend in prison. Given the legislative mandate it will be imperative that the CSS staff comply with the timelines outlined in the rule as opposed to working on getting an inmate transitioned to the community.</p> <p>The Attorney General's office and courts will also be effected as we end up in court litigating the "facts" as they are stated in the inmate's file. I believe that the Department's staff are diligent in their investigation into situations and only put information in the file that they believe to be factual. The inmates would likely disagree and we will spend a lot of time in the courts having these discussions.</p>
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54 Cont.	Rule	General	<p>OMMS currently does not have the ability to play video or audio files. It also does not have an automated email notification system set up. A solution to this is likely not difficult as jailtracker has the capability it just needs a few add ons and some configurations setting turned on. However, there will be an expense to this that was included in the original bid estimate. We also currently have a situation in which all facilities are not downloading anything into OMMS unless they have to as it is much quicker to place a paper document into the file then scanning it and downloading it into OMMS. Right now (since there is no direct scan into OMMS option) all documents need to be scanned to email, moved into a file on the network, renamed so they can be located, and then you have to ask OMMS to go get them as there is no drop and drag option. This takes several minutes per document (which is why some facilities are not doing it). In order to accomplish what is required it will take at least one more admin staff person per work site. We have over 20 work sites!</p> <p>Giving inmates access to information that department has gathered about them is important. There is likely an easier way to go about getting this accomplished. Unfortunately, no one asked how this might happen. Instead we end up with a legislative solution. If there is still time to put a stop to this so we can come up with a viable less expensive time consuming solution that would be preferable.</p> <p><i>Lucas Herring, IT Manager</i></p>
55 Rule		4 16	<p>Public Access to an Inmate/Offender's Public Use File, it states that "To review the Public Use File of an inmate or offender, a person must submit a request in writing to DOC." If this is the public use file, why is this needing written request to access?</p>



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**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

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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 blue ink, appearing to be 'Al Gobeille', written over the 'FROM' line of the memorandum.

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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