

No. 192. An act relating to offender and inmate records.

(S.179)

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

Sec. 1. 28 V.S.A. § 107 is amended to read:

§ 107. OFFENDER AND INMATE RECORDS; CONFIDENTIALITY;

EXCEPTIONS; CORRECTIONS

(a)(1) The Commissioner shall adopt a rule pursuant to 3 V.S.A. chapter 25 defining what are “offender and inmate records;” ~~as that phrase is produced or~~ acquired by the Department.

(2) As used in this section, the phrase “offender and inmate records” means the records defined under the rule required under subdivision (1) of this subsection.

(b) Offender and inmate records ~~maintained by the Department~~ are exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that the Department:

(1) Shall release or permit inspection of such records if required under federal or State law, including 42 U.S.C. §§ 10805 and 10806 (Protection and Advocacy Systems).

(2) Shall release or permit inspection of such records pursuant to a court order for good cause shown or, in the case of an offender or inmate seeking records relating to him or her in litigation, in accordance with discovery rules.

(3) Shall release or permit inspection of such records to a State or federal prosecutor as part of a criminal investigation pursuant to a court order issued ex parte if the court finds that the records may be relevant to the investigation. The information in the records may be used for any lawful purpose but shall not otherwise be made public.

(4) Shall release or permit inspection of such records to the Department for Children and Families for the purpose of child protection, unless otherwise prohibited by law.

(5) Shall release or permit inspection of ~~designated~~ specific categories or types of offender and inmate records to specific persons, or to any person, in accordance with ~~rules~~ a rule that the Commissioner shall adopt pursuant to 3 V.S.A. chapter 25, provided that the Commissioner shall redact any information that may compromise the safety of any person, or that is required by law to be redacted, prior to releasing or permitting inspection of such records under the ~~rules~~ rule. ~~The Commissioner shall authorize release or inspection of offender and inmate records under these rules~~ rule shall provide for disclosure of a category or type of record in either of the following circumstances:

(A) ~~When~~ when the public interest served by disclosure ~~of a record~~ outweighs the privacy, security, or other interest in keeping the record confidential; or

(B) ~~To~~ in order to provide an offender or inmate access to offender and inmate records relating to him or her if access is not otherwise guaranteed under this subsection, unless providing such access would reveal information that, unless:

(i) the category or type of record is confidential or exempt from disclosure under a law other than this section;

(ii) providing access would unreasonably interfere with the Department's ability to perform its functions, including unreasonable interference due to the staff time or other cost associated with providing a category or type of record; or

(iii) providing access may compromise the health, safety, security, or rehabilitation of the offender or inmate or of another person.

~~(c)(1) The rules may specify circumstances under which the Department~~
Unless otherwise provided in this section or required by law, the rule required under subdivision (b)(5) of this section:

(A) shall specify the categories or types of records to be disclosed and to whom they are to be disclosed, and shall not provide for any exceptions to disclosure of records that fall within these categories or types except for redactions required by law;

(B) shall specify which categories or types of records relating to an offender or inmate shall be provided to the offender or inmate as a matter of course and which shall be provided only upon request;

(C) may limit the offender's or inmate's access to include only records produced or acquired in the year preceding the date of the request;

(D) may limit the number of requests by an offender or inmate that will be fulfilled per calendar year, as long as provided that the Department fulfills at least ~~one request~~ two requests by the offender or inmate per calendar year excluding any release of records ordered by a court, ~~and at least one additional request in the same calendar year limited to records not in existence at the time of the original request or not within the scope of the original request.~~ The rules also;

(E) may specify circumstances when ~~the~~ an offender's or inmate's right of access will be limited to an inspection overseen by an agent or employee of the Department;

(F) may provide that the Department has no obligation to provide an offender or inmate a record previously provided if he or she still has access to the record. ~~The rules; and~~

(G) shall reflect the Department's obligation not to withhold a record in its entirety on the basis that it contains some confidential or exempt content, to redact such content, and to make the redacted record available.

(2) The Department shall provide records available to an offender or inmate under the rule free of charge, except that if the offender or inmate is responsible for the loss or destruction of a record previously provided, the Department may charge him or her for a replacement copy at \$0.01 per page.

~~(e)~~(d) Notwithstanding the provisions of 1 V.S.A. chapter 5, subchapter 3 (Public Records Act) that govern the time periods for a public agency to respond to a request for a public record and rights of appeal, the Commissioner shall adopt a rule pursuant to 3 V.S.A. chapter 25 governing response and appeal periods and appeal rights in connection with a request by an offender or inmate to access records relating to him or her maintained by the Department. The rule shall provide for a final exhaustion of administrative appeals no later than 45 days from the Department's receipt of the initial request.

~~(d)~~(e) An offender or inmate may request that the Department correct a fact in a record maintained by the Department that is material to his or her rights or status, except for a determination of fact that resulted from a hearing or other proceeding that afforded the offender or inmate notice and opportunity to be heard on the determination. The rule required under subsection ~~(e)~~(d) of this section shall reference that requests for such corrections are handled in accordance with the Department's grievance process. If the Department issues a final decision denying a request under this subsection, the offender or inmate may appeal the decision to the Civil Division of the Superior Court pursuant to Rule 74 of the Vermont Rules of Civil Procedure. The Court shall not set aside the Department's decision unless it is clearly erroneous.

Sec. 2. REPEAL

In 2016 Acts and Resolves No. 137, Sec. 7, as amended by 2017 Acts and Resolves No. 78, Sec. 10, subsections (b)–(e) and (g) hereby are repealed.

Sec. 3. EFFECTIVE DATE; TRANSITION PROVISION

(a) This act shall take effect on passage.

(b) Prior to the Commissioner of Corrections' (Commissioner) adopting a rule pursuant to the rulemaking mandates of 28 V.S.A. § 107(a) and (b)(5) as amended in Sec. 1 of this act, the Department of Corrections (Department) shall keep confidential "offender and inmate records" as defined in Department policies or directives in effect prior to the effective date of the rule, except that the Department:

(1) shall apply the exceptions to the confidentiality of offender and inmate records that exist under 28 V.S.A. § 107(b)(1)–(4);

(2) shall apply the exceptions to the confidentiality of offender and inmate records that exist under directives, policies, and practices adopted by the Department prior to the effective date of the rule, and in so doing shall apply the redaction requirements of 28 V.S.A. § 107(b)(5) as amended in Sec. 1 of this act; and

(3) may rely upon the limitations on offender and inmate access to records, and the provisions related to charging for copies of such records, in 28 V.S.A. § 107(c)(1)(C)–(F) and (c)(2) as amended in Sec. 1 of this act.

(c) On or before September 15, 2018, the Commissioner shall prefile rules with the Interagency Committee on Administrative Rules in accordance with the rulemaking requirements of 28 V.S.A. § 107, as amended in Sec. 1 of this act. The Commissioner shall update the Joint Legislative Justice Oversight

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Committee on the status of its efforts to adopt the rules at the Oversight

Committee's first meeting on or after September 15, 2018.

Date Governor signed bill: May 30, 2018