

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

### **Authority**

This rule is adopted pursuant to 3 V.S.A. § 800 *et seq.* and 28 V.S.A. § 107 which states that offender and inmate records 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 specific categories or types of offender and inmate records to specific persons, or to any person, in accordance with 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 rule.

### **Purpose**

The purpose of this rule is to define “offender and inmate records” and to provide for the release or inspection of designated offender and inmate records to specific persons, including offenders and inmates seeking access to information about them maintained by the Department of Corrections (DOC), in a manner consistent with the confidentiality, health, safety, security, and rehabilitation of offenders and inmates (collectively “offenders”) and other persons.

### **Offender and Inmate Records**

Offender and inmate records are exempt from public inspection and copying under the Public Records Act and shall be kept confidential except as provided in 28 V.S.A.

§ 107(b) and in this rule. “Offender and inmate records” means all of the information generated, collected, and maintained by the DOC for any inmate or offender.

### **Health Records**

Access to medical, mental health, and alcohol and drug treatment records is governed by the Health Insurance Portability and Accountability Act (HIPAA), accompanying regulations, and 42 C.F.R. Part 2. These health and treatment records are not included in offender and inmate records for the purpose of this rule.

### **Education Records**

Offenders are entitled to inspect and review their education records pursuant to the Family Educational Rights and Privacy Act. Education records are not included in offender and inmate records for the purpose of this rule.

### **Information Provided to Persons Other than Offenders**

Vermont law expressly authorizes disclosures of offender records and information in specific, limited circumstances which remain unchanged by this rule. This rule addresses the release of information as outlined in the Authority section of this document.

1. The DOC has determined that the public interest served by the disclosure to any person of the following categories of information, which comprise the Public Use File, outweighs the privacy, security, or other interest in keeping the information confidential. The Public Use File is accessible by any person on the [data.vermont.gov](http://data.vermont.gov) website or by submitting a request to the DOC, in writing, pursuant to the Vermont Public Records Act, 1 V.S.A. 315 *et seq.* The Public Use File includes an offender’s:
  - a) Last name;
  - b) First name;
  - c) Middle name;
  - d) Known aliases;
  - e) Current age;
  - f) Booking date;
  - g) Date released if applicable;
  - h) Race;
  - i) Sex;
  - j) Town of residence;
  - k) Active agencies;
  - l) Probation and Parole Officer;

- m) Corrections Service Specialist;
  - n) Minimum release date;
  - o) Maximum release date;
  - p) Legal status;
  - q) Charge status;
  - r) Charge description;
  - s) Bail amount; and
  - t) Sentence for each charge.
2. The DOC may release and permit inspection of offender and inmate records to DOC volunteers and service providers, and the Vermont Parole Board, as required to perform their work relating to the offender.
  3. The DOC shall provide court-appointed representatives of an offender's estate and court-appointed guardians with access to offender and inmate records required to perform their powers.
  4. The DOC Commissioner or Deputy Commissioner may release records for reasons related to public safety or institutional security, or when it is in the best interest of member(s) of the public, an offender, or a victim.

### **Types of Information Provided to Offenders as a Matter of Course**

The DOC shall provide offenders with certain documents as a matter of course, that are part of the offender and inmate record. Documents related to an offender's custody and supervision in the following categories, that are produced or retained by the DOC in the course of its day-to-day business, shall be presumed available to an offender and shall be provided upon request to the offender's Corrections Service Specialist or Probation and Parole Officer:

1. Field Supervision Documents
  - a. Home Confinement Schedule
  - b. Offender Schedule (handwritten)
  - c. Request for Offender Driving Privileges
  - d. Travel Permits
  - e. Agreement to Participate in Community Restitution Program
  - f. Conditions of Supervision
  - g. Special Conditions for Domestic Violence Offenders
  - h. EPICS (Effective Practices in Community Supervision) Summary
  - i. Residence Investigation and Approval
  - j. Supervision Contract
  - k. Telephone Report Supervision Probation Contract
  - l. Field Return to Facility Explanation
  - m. Work Crew Orientation

- n. Payment Contract/Waiver
- o. P&P (Probation & Parole) Offender Orientation
- 2. Facility Specific Documents
  - a. Request to Produce Resident Publication Form
  - b. Resident Handbook Acknowledgement Form
  - c. Approved Visitors List
  - d. Notice of Rejection/Disposition of Mail
  - e. Request for Inmate-to-Inmate Correspondence
  - f. Telephone Request Sheets
  - g. Re-Entry Checklist
  - h. Re-Integration Furlough Planning
  - i. Residence Verification and Approval
  - j. Notice of Disapproved Publication
  - k. Outside Purchase/Special Package Request Form
  - l. Refusal of Court Clothes
  - m. Authorization of Special Observation Checks
  - n. KOP (Keep on Person) Contract
  - o. PREA (Prison Rape Elimination Act) Inmate Orientation Form
  - p. Out of State Transfer Order
  - q. Acknowledgement Forms
- 3. Administrative Segregation Documents
  - a. Administrative Segregation Review (7 day)
  - b. Administrative Segregation Placement Report
  - c. Notice of Hearing/Waiver of 24-hour Notice of Hearing
  - d. Ad. Seg. Waiver of Appearance/Hearing/Refusal to Appear
  - e. Confidential Informant Form
  - f. Hearing Report Form
  - g. Appeal Process Notice Form
  - h. Inmate Appeal Form
  - i. Notice of Review
  - j. 60 Day Central Office Review Form
  - k. Segregation Confinement Log Sheet
  - l. Special Observation Form
  - m. Removal from Segregation Status
- 4. Grievance Documents
  - a. Right to Grieve Form
  - b. Informal Complaint & Plan for Resolution Form
  - c. Offender/Inmate Grievance Submission Form
  - d. Grievance Investigation & Superintendent's/District
  - e. Manager/Supplemental Housing Manager Response
  - f. Grievance Submission Rejection Memo
  - g. Decision to Appeal to Corrections Executive
  - h. Response to Appeal to Corrections Executive
  - i. Decision to Appeal to Commissioner

- j. Response to Appeal to the Commissioner
- 5. Furlough Violation Process Documents
  - a. Notice of Suspension Report form
  - b. Notice of Hearing/Waiver of 24-hour Notice
  - c. Waiver of Appearance/Hearing/Refusal to Appear
  - d. Confidential Informant Form
  - e. Hearing Report Form
  - f. Inmate Appeal Form
- 6. Other Due Process Documents
  - a. Notice of Hearing for Preliminary Probable Cause Hearing
  - b. Notice of Hearing/Waiver of 24-Hour Notice of Hearing
  - c. Preliminary Probable Cause Hearing Refusal to Appear
  - d. Preliminary Probable Cause Notice of Hearing
- 7. Inmate Discipline Process Documents
  - a. Incident Reports - Related to DR (Disciplinary Report)
  - b. Inmate Disciplinary Report Form
  - c. Notice of Hearing/Waiver of 24-Hour Notice of Hearing
  - d. Confidential Informant Form
  - e. Waiver of Appearance/Hearing/Refusal to Appear
  - f. Inmate Disciplinary Appeal Form
  - g. Hearing Report Form
  - h. Special Observation Form
- 8. Vermont Law Library (VTLL) Documents
  - a. VTLL02 Law Library Use Request Form
  - b. VTLL02a Law Library Sign in Sheet
  - c. VTLL05 Legal Photocopy Request Form
  - d. VTLL06 Book Loan Request
  - e. VTLL07 Law Library Inventory
  - f. VTLL08 Law Terminal Use Form
  - g. VTLL09 Typewriter Use Form
  - h. VTLL10 Supply Request Form
  - i. VTLL03 Law Library Schedule
  - j. VTLL11 End of Month Report
  - k. Facility Inmate Law Library Job checklist
  - l. Outside Purchase/Special Package Request Form
- 9. Offender Financial Information Documents
  - a. DOC's Payment Coupon
  - b. Financial Account Balances
  - c. Offender Collection Memo & Offender Financial Obligations Form (426.01)
  - d. Receipt and Disbursement Form FI61
  - e. Request/Response for Release Money for Housing
  - f. Request/Response for Release Monies for other than Housing
  - g. Staff Request for Inmate Release Money for Housing

10. Americans with Disabilities Act (ADA) Documents
  - a. ADA Accommodation Decision Appeal to Commissioner
  - b. ADA Accommodation Notification to Facility Staff
  - c. ADA Offender/inmate Orientation to ADA
  - d. Request for Reasonable Accommodation/Response Form
11. Special Diet/Religious Accommodation Documents
  - a. Agreement for Medical and Dental Diet Acceptance
  - b. Inmate Request for Religious Diet/Alternative Meal
  - c. Religious Diet Cancellation Request
  - d. Religious Diet Participation Agreement
  - e. Service Agreement for Medical or Dental Diet Refusal
  - f. Special Diet Cancellation Request
  - g. Inmate Religious Accommodation Request Form
  - h. Religious Accommodation Request
  - i. Religious or Alternative Diet
12. Property Documents
  - a. Confiscation of Inmate Property
  - b. Personal Property Report
  - c. Property Forms (Denial, Disposition, Property Receipts)
  - d. Report of Lost or Damaged Property
13. Risk Intervention Program/Services Documents
  - a. Agreement to Participate
  - b. Corrective Action Plan RRP (Risk Reduction Program
  - c. Corrective Action Plan VTPSA (Vermont Treatment Program for Sexual Aggressors)
  - d. Group Handouts RRP
  - e. Group Handouts VTPSA
  - f. Homework RRP
  - g. Homework VTPSA
  - h. Inmate Request For Clinical Services
  - i. Program Termination Letters
  - j. Refusal of Treatment Form
  - k. Risk Reduction Program Participation Agreement
  - l. Risk Reduction Program Plan
  - m. VTPSA Handbook
  - n. VTPSA Plan
  - o. Program Completion Assessment
  - p. RRP Offender Referral
14. Sex Offender Registry Documents
  - a. Certification of Compliance with DOC-Recommended Treatment
  - b. Notice Form Regarding Non-Compliant Designated High-Risk Sex Offenders
  - c. Sex Offender Notice of Non-Compliance Letter

- d. Sex Offender Registry Change of Address/Employment/Education Form
  - e. Sex Offender Registry Change of Treatment/Supervision Status Form
  - f. Sex Offender Registry Information
  - g. Sex Offender Registry Notification of Requirement to Register Form
  - h. Sex Offender Registry Registration Form
  - i. Sex Offender Registry Update Form
  - j. Vermont Sex Offender Registry Notification of Requirement to Register Form
  - k. Vermont Sex Offender Registry Notification of Requirements to Register Form - Out of State Jurisdiction
15. Security Threat Group Documents
- a. Security Threat Group Member Renunciation Form
  - b. Security Threat Group Member Self-Admission Form
16. Sentence Computation/Good Time Documents
- a. Work Camp Good Time Notice of Award or Denial
  - b. Sentence Computation
17. Releases of Information; Liability
- a. Reciprocal Release of Information
  - b. Release of Information – HIPAA (Health Insurance Portability and Accountability Act)
  - c. Release of Liability
  - d. Release of Liability Declaration
18. Interstate Agreements
- a. Interstate Compact & Corresponding Travel Permit
  - b. Interstate Agreement on Detainers Paperwork
19. Parole Documents
- a. Modification of Parole Conditions
  - b. Parole Hearing Notices
  - c. Parole Order
  - d. Parole Summary and Decisions
  - e. Parole Reprimand
  - f. Parole Violations Report
20. Home Detention Documents
- a. Home Detention Investigation Form
  - b. Department Request for Review – Home Detention
  - c. Notice to Court of Home Detention Revocation
21. DNA (Deoxyribonucleic acid) Documents
- a. DNA Receipt
  - b. DNA Testing Refusal Form
  - c. Notification of DNA Testing Report
22. Probation Documents
- a. Juvenile Probation Violation Complaint
  - b. Probation Orders (Warrant)

23. Field/Electronic Monitoring Documents
  - a. Electronic Monitoring- 30 Day District Manager
  - b. Electronic Monitoring Completion
  - c. Electronic Monitor Placement
24. Case Planning Documents
  - a. Case Staffing Form
  - b. Case Transfer Request
  - c. Case Plan (all)
25. Assessments and Evaluations
  - a. Violent Risk Appraisal Guide (VRAG)
  - b. Program Services Disability Screening
26. Other Documents
  - a. Waiver of Extradition
  - b. Developmental Services Questions
  - c. Naloxone Interest
  - d. Affidavits from DOC staff
  - e. Court Hearing Notices
  - f. Notice of Collateral Consequences
  - g. Thinking Report
  - h. Communications with OOS (Out of State) for Extradition
  - i. CSS (Casework Service Specialist) Child Survey

### **Types of Information Provided to Offenders Only Upon Request**

The DOC shall provide offenders with certain documents, only upon request, that are part of the offender and inmate record. Requests shall be made to the offender's Corrections Service Specialist or Probation and Parole Officer and are limited to the preceding twelve (12) months of documents in each of the following categories:

1. Incident Reports;
2. Contact Notes;
3. Transitional Housing Case Notes;
4. Points-Based Classification History; and
5. Offender Movement History.

### **Process for Offenders to Obtain Offender and Inmate Records**

1. Requests by Offenders for Access to Offender and Inmate Records:
  - a) Offenders may request any document or information in their offender and inmate record available to them as a matter of course or only upon request, provided that at least one year has passed since the offender's last request for the same document or information. All requests must be in writing and



delivered to the offender's Corrections Service Specialist or Probation and Parole Officer.

- b) Offenders no longer under DOC supervision may request any document or information in their offender and inmate record that (1) was previously provided to them as a matter of course or upon request, or (2) would have been provided to them only upon request if they were still under DOC supervision, provided that at least one year has passed since the offender's last request for the same document or information. All requests must be in writing and delivered to the DOC's records officer.
- c) Information maintained in an offender and inmate record that is not provided as a matter of course or upon request as set forth in this rule is confidential, and will not be provided to an offender upon a request for access to such information.

2. DOC Response to Offenders' Requests for Access to Offender and Inmate Records:

- a) The DOC shall, within thirty (30) days of the offender's written request, either provide copies of the requested information in electronic or paper format, allow the inmate to inspect the requested information, or notify the offender that access to the requested information is denied. If it is determined that review of the information by the offender could jeopardize the safety or security of the facility, the offender, or any other person, the DOC may require the inmate to inspect the requested information in the presence of DOC staff.
- b) The DOC shall redact information that:
  - i. would unreasonably interfere with the DOC's ability to perform its functions; or
  - ii. may compromise the health, safety, security, or rehabilitation of the offender, inmate, or any another person.
- c) The DOC shall not withhold information in its entirety because it contains some redactable information.
- d) If the request includes documentation that has previously been provided to the offender as a matter of course or as part of a previous records request, then the request may be subject to a charge of \$ 0.01 per page.
  - i. The DOC shall provide the offender with an estimate of the charges within two business days from the date the request was submitted. Upon receipt of the estimated charges, the offender may:

- (1) Pay the estimate, commencing the thirty-day period in which the DOC must provide the requested records;
  - (2) Retract the request, which shall terminate the DOC's obligation to provide the requested records;
  - (3) Modify the request, resulting in the DOC providing a new estimate of charges within two business days, or
  - (4) Fail to pay the estimate within thirty (30) days, which shall terminate the DOC's obligation to provide the requested records.
- ii. Offender and inmate records subject to fees shall not be disclosed until the estimated charge has been paid to the DOC.
  - iii. The DOC shall waive any charges for previously requested records if their loss or destruction was not a result of the offender's actions, or for other good cause shown.

### **Timing and Appeals**

An offender shall have seven (7) calendar days to appeal the DOC's decision to deny access to requested information, commencing on the date of receipt of the denial. The appeal shall be made in writing and delivered to the offender's Corrections Service Specialist or Probation and Parole Officer.

The DOC's records officer shall review the appeal and issue a final written decision, which shall exhaust the inmate's administrative appeal, no later than 45 calendar days from the DOC's receipt of the initial request.

### **Correction of Fact**

An offender may file a grievance requesting that the DOC correct a material fact in the record that impacts the offender's rights or offender status. An offender must demonstrate that the material fact is incorrect by clear and convincing evidence and was not previously determined at a hearing or proceeding that afforded the offender due process rights to contest the determination.

### **Offender Responsibilities**

Offenders are responsible for the safekeeping of any information and documents provided to them by the DOC. All documents are subject to the DOC's property limit for inmates. If information previously provided as a matter of course or as part of a previous records request is destroyed or lost by the offender, the offender's subsequent requests for the same information may be denied if less than one year has passed since the prior request; if one year or more has passed since the previous request, the offender may be charged at the rate of \$0.01 per page.

**Effective Date**

This rule is effective on August 18, 2019.

Within one year of the effective date of this rule, an offender may request, pursuant to the process identified in this rule, any document in the offender and inmate record that (1) is available to the offender as outlined in this rule, and (2) was created within one year preceding the offender's request. The DOC shall fulfill such requests for documents not previously provided at no cost to the offender. Requests for documents previously provided to the offender are subject to a charge of \$ 0.01 per page.