

1 S.116

2 Introduced by Senator Sears

3 Referred to Committee on Institutions

4 Date: February 25, 2015

5 Subject: Corrections; public defenders

6 Statement of purpose of bill as introduced: This bill proposes to make various
7 changes to laws related to the rights of offenders in custody of the Department
8 of Corrections.

9 An act relating to rights of offenders in the custody of the Department of
10 Corrections

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

12 ~~*** Parole Board Independence ***~~

13 ~~Sec. 1. 28 V.S.A. § 456 is added to read.~~

14 § 456. PAROLE BOARD INDEPENDENCE

15 (a) The Parole Board shall be an independent and impartial body.

16 (b) The Parole Board shall not be counseled or represented by any attorney
17 who, at the same time, has:

18 (1) an attorney-client relationship with the Department of

19 Corrections; or

1 ~~(2) an attorney-client relationship with an offender who has a hearing~~
2 pending before the Board.

3 * * * Due Process * * *

4 Sec. 2. 28 V.S.A. § 857 is added to read:

5 § 857. ADMINISTRATIVE SEGREGATION; PROCEDURAL
6 REQUIREMENTS

7 (a) Except in emergency circumstances as described in subsection (b) of
8 this section, before an inmate is placed in administrative segregation,
9 regardless of whether that inmate has been designated as having a serious
10 functional impairment under section 906 of this title, the inmate is entitled to a
11 hearing pursuant to subsection 852(b) of this title.

12 (b) In the event of an emergency situation and at the discretion of the
13 Commissioner, an inmate may be placed in administrative segregation prior to
14 receiving a hearing as described in subsection 852(b) of this title.

15 Sec. 3. 28 V.S.A. § 204 is amended to read:

16 § 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF
17 RECORDS

18 * * *

19 (d)(1) Any Except as provided in subdivision (2), any presentence report,
20 pre-parole report, or supervision history prepared by any employee of the
21 Department in the discharge of the employee's official duty, except as

1 ~~provided in subdivision 204a(b)(5) and section 205 of this title, is privileged~~
2 and shall not be disclosed to anyone outside the Department other than the
3 judge or the Parole Board, ~~except that:~~

4 ~~(2)(A) the~~ The court or Board may in its discretion shall permit the
5 inspection of the report, ~~or parts thereof~~ redacted of information that may
6 compromise the safety or confidentiality of a victim or witness, by the State's
7 Attorney, and by the defendant or inmate, or his or her attorney, or: ~~and~~

8 (B) the court or Board may in its discretion permit the inspection of
9 the report or parts thereof by other persons having a proper interest therein,
10 whenever the best interest or welfare of the defendant or inmate makes that
11 action desirable or helpful.

12 (3) Nothing in this section shall prohibit the Department for Children
13 and Families from accessing the supervision history of probationers or parolees
14 for the purpose of child protection.

15 * * *

16 Sec. 4. 28 V.S.A. § 601 is amended to read:

17 § 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING
18 OFFICER OF EACH CORRECTIONAL FACILITY

19 The supervising officer of each facility shall be responsible for the efficient
20 and humane maintenance and operation and for the security of the facility,
21 subject to the supervisory authority conferred by law upon the Commissioner.

1 ~~Each supervising officer is charged with the following powers and~~
2 responsibilities:

3 * * *

4 (10) To establish and maintain, in accordance with such rules and
5 regulations as are established by the Commissioner, a central file at the facility
6 containing an individual file for each inmate. Except as otherwise may be
7 indicated by the rules and regulations of the Department, the content of the file
8 of an inmate shall be confidential and shall not be subject to public inspection
9 except by court order for good cause shown ~~and shall not be accessible to~~
10 ~~inmates at the facility.~~ Information that may compromise the safety or
11 confidentiality of a victim or witness shall be redacted from a file prior to
12 inspection by an inmate. Except as otherwise provided by law, the contents of
13 an inmate's file may be inspected, pursuant to a court order issued ex parte, by
14 a ~~state~~ State or federal prosecutor as part of a criminal investigation if the court
15 finds that the records may be relevant to the investigation. The information in
16 the files may be used for any lawful purpose but shall not otherwise be made
17 public.

~~*** Access to Records ***~~

Sec. 5. 28 V.S.A. § 602 is added to read:

§ 602. RIGHT OF AN INDIVIDUAL TO ACCESS RECORDS

(a) At the request of any person in the custody or under the supervision of the Department, the Department shall provide records maintained by the Department concerning that person if that person is:

(1) a party in a case in any division of the Superior Court in which the Department is also a party; or

(2) a defendant in a hearing before the Parole Board in which revocation of parole is a possible outcome.

(b) Nothing in this title concerning the confidentiality of the Department's records shall be construed as limiting a person's right to access records about himself or herself, except as specified in subsections (c) and (d) of this section.

(c) The Department shall redact any information compromising the safety or confidentiality of a victim or witness prior to providing the record to a person under this section.

(d) The Department may seek a court order limiting disclosure of records. The order may be granted only if the court finds clear and convincing evidence that disclosure of records would create a substantial and identifiable risk to public safety.

1 ~~(e) As used in this section, "records" means records stored in any form,~~
2 ~~physical or electronic.~~

3 * * * Postconviction Relief * * *

4 Sec. 6. 13 V.S.A. § 5233 is amended to read:

5 § 5233. EXTENT OF SERVICES

6 (a) A needy person who is entitled to be represented by an attorney under
7 section 5231 of this title is entitled:

8 * * *

9 (3) To be represented in any other postconviction proceeding which may
10 have more than a minimal effect on the length or conditions of detention where
11 the attorney considers:

12 (A) the claims, defenses, and other legal contentions to be warranted
13 by existing law or by a nonfrivolous argument for the extension, modification,
14 or reversal of existing law or the establishment of new law; and

15 (B) the allegations and other factual contentions to have evidentiary
16 support, or likely to have evidentiary support after a reasonable opportunity for
17 further investigation and discovery.

18 * * *

19 * * * Effective Date * * *

20 Sec. 7. EFFECTIVE DATE

21 This act shall take effect on passage.

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(b) The Parole Board shall not be counseled or represented by any attorney who, at the same time, has:

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(b) In the event of an emergency situation and at the discretion of the Commissioner, an inmate may be placed in administrative segregation prior to receiving a hearing as described in subsection 852(b) of this title.

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(2)(A) ~~the~~ The court or Board ~~may in its discretion~~ shall permit the inspection of the report, ~~or parts thereof~~ redacted of information that may compromise the safety or confidentiality of any person, by the State's Attorney; and by the defendant or inmate; or his or her attorney; ~~or;~~ and

(B) the court or Board may, in its discretion, permit the inspection of the report or parts thereof by other persons having a proper interest therein,

whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.

(3) Nothing in this section shall prohibit the Department for Children and Families from accessing the supervision history of probationers or parolees for the purpose of child protection.

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(10) To establish and maintain, in accordance with such rules and regulations as are established by the Commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be indicated by the rules and regulations of the Department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown ~~and shall not be accessible to inmates at the facility.~~ Information that may compromise the safety or confidentiality of any person shall be redacted from a file prior to inspection by an inmate. Except as otherwise provided by law, the contents of an inmate's file may be inspected, pursuant to a court order issued ex parte, by a ~~state~~ State or federal prosecutor as part of a criminal investigation if the court finds that the records may be relevant to the investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

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(b) Nothing in this title concerning the confidentiality of the Department's records shall be construed as limiting a person's right to access records about him- or herself, except as specified in subsections (c) and (d) of this section.

(c) The Department shall redact any information compromising the safety or confidentiality of any person prior to providing the record to a person under this section.

(d) The Department may seek a court order limiting disclosure of records. The order may be granted only if the court finds by a preponderance of the evidence that disclosure of records would create a substantial and identifiable risk to public safety.

(e) As used in this section, "records" means records stored in any form, physical or electronic.

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