

**STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS**

Directive: 254.01

Subject: Access To Offender Case And Criminal History And Treatment Information

Effective Date: October 20, 1998 **Review and Re-Issue Date:**

Supersedes: 8/21/95 **APA Rule Number:**

Recommended for approval by:		Authorized By:	
_____	_____	_____	_____
Signature	Date	Signature	Date

1. Authority:

1.1 Policy 254 - Access to Offender Information; 28 V.S.A. §601(10)

2. Purpose:

2.1 This directive provides guidance to Department employees, volunteers, and service providers regarding access to individual case and treatment information in the control of the Department.

3. Applicability/Accessibility

3.1 This directive applies to all case and treatment information in the control of the Department that pertains to offenders and other persons placed in the custody of the Department. Anyone may have a copy of this directive.

4. Directive

4.1 Access to case and treatment records pertaining to offenders or other persons in the custody or under the supervision of the Vermont Department of Corrections is governed by the terms of this directive. Persons who are not provided access by the terms of this directive will be permitted access only upon court order. Records pertaining to persons lodged as incapacitated persons under the provisions of 18 V.S.A. §9144 or persons lodged on civil contempt or persons held for any reason in

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the Department's custody are treated the same as the records of offenders in the custody of the Department.

4.1.1 Access to Offender Case Information

4.1.1.1 Access is permitted in the following circumstances:

4.1.1.1.1 DOC/AHS employees, DOC volunteers, assistant attorneys general and the attorney general, DOC service providers and the Vermont Parole Board when access is required to perform assigned responsibilities.

4.1.1.1.2 Criminal justice personnel who require access to perform assigned responsibilities except that access shall not be provided to: presentence reports and probation/parole supervision history unless access is required for the purpose of protection of children or investigating offenses against children; case notes ("blue" notes); or information that is not completed staff work.

4.1.1.1.3 Persons who are authorized by the Department to conduct research, evaluation or statistical activities may have access under such conditions and terms as established by the Department.

4.1.1.1.4 The person who is the subject of the information may be provided access at all reasonable times to completed staff work pertaining to that person except access is not permitted to confidential information. If the person desires to have a photocopy, he/she must make a request in writing and submit it to the supervising officer of the site or facility. The supervising officer will determine if the request should be honored in whole or part, if so when, and whether the person should be charged the cost of providing any copy. All reasonable requests for a copy will be honored within a reasonably prompt period in view of such factors as availability of staff, availability of copy facilities, and the nature of the request.

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- 4.1.1.1.5** Authorized legal representatives or other persons may be provided the same Access permitted to an offender if the offender who is the subject of the information has expressly consented in writing to access. Once writing permission provided by the offender is on file with the Department, the designated agency, legal representative or other persons may inspect case information on any day other than a weekend or legal holiday between the hours of 9:00 a.m. and 4:00 p.m. The Department may charge the designated agent or legal representative the public rate cost of providing any copy, which cost may be collected at the time of providing the copy. If a copy machine is not reasonably available at the time of the request for a copy, the Department is not required to furnish a copy at that time but may do so within a reasonable period of time. The Department is not required to permit operation of its copying facilities by other than its own personnel.
- 4.1.1.1.6** Any third party who is not a victim of a serious crime, including a representative of the media, who requests information about a specific offender by name will be provided only non-confidential information concerning that offender.
- 4.1.1.1.7** Any party including representatives of the media may be provided information in existing electronic format so long as the information can not identify a specific offender or victim or their home/work addresses or telephone numbers unless written consent of the offender or victim is obtained in advance of access.
- 4.1.1.1.8** Any victim of a serious crime shall be provided upon request:

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4.1.1.1.8.1 A verbal statement concerning the offender's overall progress in complying with conditions of probation, supervised sentence, furlough and parole, and any institutional treatment program except that the offender must, in writing, consent to any statement regarding drug/ alcohol treatment.

4.1.1.1.8.2 Documentation reflecting the potential shortest and longest lengths of time the offender may be incarcerated, or may be released on furlough supervision, parole supervision, or supervised community sentence, taking into account the provisions for reductions of term pursuant to 28 V.S.A. §811, based on the sentence or sentences the offender is serving.

4.1.1.1.9 Information obtained from the Department of Motor Vehicles may be released only to criminal justice agencies.

4.1.2 Access to Offender Treatment Records

4.1.2.1 Access to drug/alcohol treatment records is governed by 42 C.F.R., Part 2. For all other treatment records access is permitted as follows:

4.1.2.1.1 DOC volunteers, assistant attorneys general and the attorney general, DOC Service providers and the Vermont Parole Board when access is required to perform assigned responsibilities.

4.1.2.1.2 Persons who are authorized by the Department to conduct research, evaluation or statistical activities may have access under such conditions and terms as established by the Department.

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- 4.1.2.1.3** If DOC treatment staff concur, the offender who is the subject of the information may be provided access under the terms established by treatment staff.
- 4.1.2.1.4** Authorized legal representatives of an offender or non-DOC treatment providers will be provided the same access as provided to the offender. In no case will DOC treatment staff disclose the names of victims or the names of offender in treatment other than the offender consenting to access.
- 4.1.2.1.5** Any third party who is not a victim of a serious crime, including represent actives of the media, shall not have access to treatment records unless both the DOC treatment staff and the offender(s) consent in advance of access. In no case will the names of victims or offenders in treatment other than the name of the offender consenting to access be disclosed.
- 4.1.2.1.6** Any victim of a serious crime shall be provided upon request a summary of the offender's progress in treatment. In no case will staff disclose the names of other victims or the names of offenders in treatment other than the name of the offender who victimized the requesting party.
- 4.1.2.1.7** SRS where access is to DOC need area treatment records and the purpose of access is for child protection or to investigate child abuse.

4.1.3 Refusal to Permit Access

- 4.1.3.1** The Commissioner, the Deputy Commissioner, the Director of Correctional Services, or the manager of the site having custody over case information or treatment records may deny access to any person if it is determined that access would reasonably present a hazard to institutional security or pose a danger to any victim or an offender including the subject of the information. If a court has ordered disclosure

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of such information, the Department's Legal Division should be contacted immediately.

4.1.4 Waiver by the Commissioner

4.1.4.1 The Commissioner/Deputy Commissioner or designee may waive, in whole or part, the operation of this directive in any instance, and such waiver shall not be construed to create a future waiver or negate future enforcement or compliance with this directive except that such waiver shall not apply to information governed by 28 V.S.A. §04 (d); records governed by 42 Code of Federal Regulations, Part 2; or, records obtained from the Vermont Criminal Information Center. Any such waiver must be made for reasons related to public safety, institutional security, the best interests of the offender or the best interests of a victim.

5. Training Method

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6. Quality Assurance Processes

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7. Financial Impact:

7.1

8. References

1 V.S.A. §§ 316 & 317; 20 V.S.A. Chapter 117; 28 V.S.A. §204(d); 601(10);

In re T.F., No. 94-177, Vt. Sup. Ct. (Feb. 24, 1995); 42 C.F .R, Part 2; Driver Privacy Protection Policy (DMV Sept. 1977).

9. Responsible Director and Draft Participants