

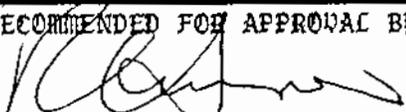
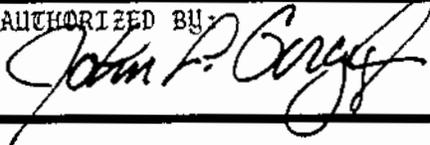
PROPOSED RULE



DEPARTMENT OF CORRECTIONS
AGENCY OF HUMAN SERVICES
STATE OF VERMONT

NUMBER

255 POLICY
DIRECTIVE
PROCEDURE

SUBJECT Reporting of Offender Information	EFFECTIVE DATE 8/15/95	REVIEWED AND RE-ISSUED	SUPERSEDES NEW
RECOMMENDED FOR APPROVAL BY: 	AUTHORIZED BY: 		
SIGNATURE	SIGNATURE		

AUTHORITY

33 V.S.A. §4913(a); Peck v. Counseling Service of Addison County, Inc., 146 Vt. 61 (1985); 28 V.S.A. §505(b); 28 V.S.A. §204(a)

PURPOSE

This policy establishes the guidelines for the reporting of offender information to courts, state's attorneys, the Vermont Parole Board, the Commissioner of Social and Rehabilitative Services, and third parties.

APPLICABILITY/ACCESSIBILITY

This policy applies to all Department of Corrections employees, volunteers, and service providers and to all offender information in the control and custody of the Department. Anyone may have a copy of this policy.

DEFINITIONS

Counseling Notes: written comments by DOC employees or health care providers in an offender's mental health records that document the author's hypothesis or opinion about an offender's behavior for future evaluation by the author, and are written solely for the author's future evaluation.

Foreseeable Risk of Harm: a case-by-case determination by department employees in consultation with treatment providers and others involved in the offender's case planning that is based upon: (1) an offender's prior criminal background, personal history and current conduct; (2) the type of crime for which the offender was most recently convicted; and (3) the surrounding circumstances in which the offender is being supervised, including the relationship of the offender to a third party or third parties.

Information: any statement, whether or not it is in writing, that pertains to a specific offender.

Non-Confidential Information: (1) the name of a specific offender; (2) the offender's current offense; (3) date and length of sentence received; (4) date of commencement of furlough, supervised community sentence; probation or parole, or incarceration; (5) the offender's attorney of record; and (6) the DOC employee assigned to supervise the offender.

Offender: any person convicted of a crime or offense who is placed in the care, custody, or supervision of the Vermont Department of Corrections.

Presentence Report: any written report prepared by DOC employees and provided to a judge that contain a recommendation for a sentence and factual information pertaining to the offender and/or victim.

Reporting: any communication of offender information that is made by a DOC employee, volunteer, agent or contractor that is required by law or this policy whether or not a request for such information is made.

Serious risk of danger: a case-by-case determination by a therapist, a medical professional, or mental health professional, or other person as defined in 12 V.S.A. §1612(a) that is based upon: (1) the offender's proclivity to violent behavior as evidenced by prior criminal background or history of mental health treatment; and (2) the expressed intent of that offender to harm the person or property of an identifiable third party.

Service Provider: an employee, agency or department providing a service to offenders pursuant to an agreement or contract with the Vermont Department of Corrections.

Special Relationship: a relationship between an offender and a third party that has been established as a result of the supervision of the offender by the Department; e.g. a special relationship may exist between a third party and the DOC if an offender is required or allowed to work or live with the third party.

Supervising Employees: DOC staff and employees who are tasked with monitoring offenders, or involved in directly working with, or supervising, offenders in the community.

Treatment Notes: any written notes used in the Department's programs for offenders that address need areas such as violence, sexual deviancy, or drug/alcohol abuse. Treatment notes would include daily journals, thinking reports, treatment group or review forms, treatment team log books, relapse prevention plans, sexual autobiographies, and references or documentation pertaining to identifiable victims.

POLICY

Department employees, volunteers, and service providers shall report offender information to state officials and third parties in the following situations:

- A. Supervising employees shall disclose non-confidential information pertaining to that offender to a third party and/or to appropriate law enforcement officials where there is a foreseeable risk of harm to that third party by the offender. While sound judgement and common sense should be exercised to avoid

causing unjustified alarm, fear or reaction, Department employees should realize that the offender's behavior patterns, need areas, personal history and special relationship to a third party may create a foreseeable risk of harm to that third party triggering the need to disclose information. This does not prevent the offender from being encouraged or permitted to make the required disclosure with the understanding that an employee will verify the disclosure.

The determination of a foreseeable risk of harm is a question of fact that should be determined on a case-by-case basis. Those usually involved in the determination include supervising employees, any employees or service providers working with the offender in a treatment program, and any caseworkers involved in the offender's case planning. The Department's Legal Division should be consulted where the issue of foreseeable risk of harm is unclear.

- B. Service providers and Department employees who are physicians, medical specialists, nurses, dentists, mental health professionals, probation/parole officers, or supervising employees who have reasonable cause to believe that an offender has abused or neglected a child, shall make a report within 24 hours to the Commissioner of SRS. Additional reporting pursuant to Policy 291 - Reporting Incidents - shall also be made.
- C. Department employees who are not supervising offenders, who have reasonable cause to believe that an offender has abused or neglected a child, may make a report to the Commissioner, SRS. However, a report also shall be made pursuant to Policy 291.
- D. Service providers or Department employees who are authorized to practice medicine, dentistry, nursing or mental health care, shall report when an offender poses a serious risk of danger to an identifiable victim. See Policy 291 for reporting procedures.
- E. Department employees shall provide the Vermont Parole Board information required to address parole and supervised community sentence except that disclosure of counseling and treatment notes shall not be made.
- F. Department employees shall provide a sentencing court information required for a presentence report except that disclosure of counseling and treatment notes shall not be made.
- G. Department employees, volunteers and service providers shall report to law enforcement authorities (e.g. State Police, State's Attorney) admissions of past criminal conduct by offenders when (1) the admission was not made during the course of health care; and (2) the admission is specific as to surrounding circumstances including the identity of the victim(s).
- H. Any person may be provided offender criminal history information (except presentence reports) by the Commissioner, designee, the Director of Correctional Services, or the site manager, if it is determined that an emergency exists or exceptional circumstances warrant the disclosure of criminal history information in order to control a disturbance, apprehend an escapee, ensure institutional safety or protection of any offender, or otherwise address a legitimate public safety interest.

SUBJECT

Reporting of Offender Information (255)

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- I. The print media and the law enforcement community in the area of an offender's planned residence and/or supervision shall be notified of an offender's name, current offense, and identity of supervising office, when an offender is released from confinement from a correctional facility and placed on supervision in the community. If an offender is serving a sentence for any offense involving a minor as a victim, the Department of SRS shall be notified of the offender's name, current offense, identify of supervising officer and place of residence and employment.

LEGAL GUIDANCE

Department employees, volunteers, and service providers are encouraged to seek guidance at any time from the Department's Legal Division whenever there is a question about the application of this policy in a given situation.