

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: S. 116 Name of Bill: An act relating to the rights of offenders in the custody of the Department of Corrections

Agency/ Dept: AHS\Corrections Author of Bill Review: Kurt Kuehl

Date of Bill Review: _____ Related Bills and Key Players _____

Status of Bill: (check one): ☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill makes various changes to laws enacted to the rights of offenders of offenders in custody of the Department of Corrections. It addresses the issues of: 1) impartial counsel to the Parole Board, 2) procedural requirements related to placing an inmate in administrative segregation; 3) protection and confidentiality of written reports and investigations; 4) creation and confidentiality of offender record; 5) requires the Department of Corrections to adopt a rule defining what constitute offender and inmate records and how those records would be released or inspected in accordance to the law; and, 6) changes circumstances under which the Defender General accepts post-conviction cases.

2. Is there a need for this bill? *Please explain why or why not.*

Section 1: The Parole Board has agreed to this language. The DOC is unaffected by this amendment does not have an opinion about its necessity.

Section 2: Administrative Segregation. This section outlines requirements for holding a hearing prior to placing an inmate in administrative segregation. The language reflects current DOC practice.

Section 3 and 4: These sections reflect changes to language related to DOC records regarding offenders.

Section 4 provides updates to 28 V.S.A. § 601 to more accurately reflect DOC practice and changes in technology. The new language eliminates the concept of a file for an offender during a period of incarceration and a separate file for offender records generated by the DOC during an offender's supervision in the community. It eliminates the concept of an offender file and addresses DOC records, whether physical or electronic, regarding the offender. Due to the change in § 601 eliminating the concept of an offender file, the language in 28 V.S.A. § 204 was amended to eliminate the concept of a supervisory file, provide consistency with the revision of § 601, and maintain the confidentiality of certain information. Section 5: The bill requires the DOC to create a rule that will set forth parameters for how DOC would release information to offenders and others. Its intention is to give offenders more access to records about them. Rules will set clear expectations about how and when confidential information could be released. Section 6: Allows the Office of the Defender General to deny requests to represent offenders in post-conviction proceedings if there is no factual merit to the case.

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This bill strikes a good balance between providing offender access to their records while balancing safety and security.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

It is expected that most of the requests for records will come from those who are incarcerated. There will be costs associated with copying, reviewing and redacting, and gathering all the records associated with offenders. A staff person will need to review all of this information prior to disclosure to assure that privileged and/or confidential information, such as victim information, is not released. This will require staff training and oversight from General Counsel. The cost to the Department will range depending on the number of requests received.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The Parole Board would potentially need to contract with legal counsel for counsel during revocation hearings.

Section 6 could potentially save money for the Office of the Defender General by allowing them to deny cases with no factual merit.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

N/A

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Disability Rights, Prisoner's Rights, and ACLU all testified in favor of this bill.

6.2 Who else is likely to oppose the proposal and why? N/A

7. Rationale for recommendation: *Justify recommendation stated above.*

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many? No

Secretary/Commissioner has reviewed this document: Commissioner Menard

Date: 5/3/2016

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