

170080

# VERMONT

## Vermont Statutes Annotated

### Title 20

#### *Chapter 117. Vermont Criminal Information Center*

##### NEW SECTION

- 2051. Creation of center.
- 2052. Director.
- 2053. Cooperation with other agencies.
- 2054. Uniform reports.
- 2055. Files.
- 2056. Certified records.
- 2057. Information.
- 2058. [Repealed.]
- 2059. Relationship to departments of corrections and motor vehicles.

##### § 2051. Creation of center

There shall be within the department of public safety a center to be known as the Vermont criminal information center. It shall be the official state repository for all criminal records, records of the commission of crimes, arrests, convictions, photographs, descriptions, fingerprints, and such other information as the commissioner deems pertinent to criminal activity.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

##### § 2052. Director

The commissioner of public safety shall appoint a qualified person as director of the center.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

##### § 2053. Cooperation with other agencies

(a) The center shall cooperate with other state departments and agencies, municipal police departments, sheriffs and other law enforcement officers in this state and with federal and international law enforcement agencies to develop and carry on a uniform and complete state, interstate, national and international system of records of criminal activities and information.

(b) All state departments and agencies, municipal police departments, sheriffs and other law enforcement officers shall cooperate with and assist the center in the establishment of a complete and uniform system of records relating to the commission of crimes, arrests, convictions, imprisonment, probation, parole, fingerprints, photographs, stolen property and other matters relating to the identification and records of persons who have or who are alleged to have committed a crime, who are missing persons or who are fugitives from justice.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

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### § 2054. Uniform reports

(a) The center shall provide state departments and agencies, municipal police departments, sheriffs and other law enforcement officers with uniform forms for the reporting of the commission of crimes, arrests, convictions, imprisonment, probation, parole, fingerprints, missing persons, fugitives from justice, stolen property and such other matters as the commissioner deems relevant. The commissioner of public safety shall adopt regulations relating to the use, completion and filing of the uniform forms and to the operation of the center.

(b) A department, agency or law enforcement officer who fails to comply with the regulations adopted by the director with respect to the use, completion or filing of the uniform forms, after notice of failure to comply, shall be fined not more than \$100.00. Each such failure shall constitute a separate offense.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

### § 2055. Files

The director of the center shall maintain such files as are necessary relating to the commission of crimes, arrests, convictions, disposition of criminal causes, probation, parole, fugitives from justice, missing persons, fingerprints, photographs, stolen property and such matters as the commissioner deems relevant.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

### § 2056. Certified records

Upon the request of a county or district court judge, the attorney general or a state's attorney, the center shall prepare the record of arrests, convictions or sentences of a person. The record, when duly certified by the commissioner of public safety or the director of the center, shall be competent evidence in the courts of this state. Such other information as is contained in the center may be made public only with the express approval of the commissioner of public safety.—Added 1969, No. 290 (Adj. Sess.), § 10, eff. July 1, 1970.

### § 2057. Information

From time to time but at least annually, the center shall publish information relating to criminal activity, arrests, convictions and such other information as the commissioner deems relevant.—

### § 2058. Repealed. 1971, No. 258 (Adj. Sess.), § 19, eff. July 1, 1972.

Former § 2058 was derived from 1969, No. 290 (Adj. Sess.), § 10.

### § 2059. Relationship to departments of corrections and motor vehicles

This chapter shall not apply to traffic offenses or any provisions of Title 23 or those sections of Title 32 which are administered by the commissioner of motor vehicles. Notwithstanding any other provisions of this chapter the department of corrections shall be only required to furnish statistical, identification and status data, and the provisions shall not extend to material related to case supervision or material of a confidential nature such as presentence investigation, medical reports or psychiatric reports.—Added 1973,

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Executive Order

E.O. No. 31    SECURITY AND PRIVACY COMMITTEE    T.3 App. X  
*X. Security and Privacy Committee*

Executive Order No. 31

[Security and Privacy Committee]

WHEREAS, information pertaining to individuals and their involvement in the criminal justice system is maintained in and by the State of Vermont, and

WHEREAS, the rights of privacy of those individuals are affected by the manner in which that information is maintained and used, and

WHEREAS, the government of the United States of America has promulgated various regulations requiring adherence to certain standards in the maintenance and use of such information, and

WHEREAS, those rights to privacy can best be protected, and the federal requirements best complied with, by planning and implementing procedures specifically designed for use in the State of Vermont;

NOW THEREFORE, I, Thomas P. Salmon, by virtue of the power vested in me as Governor of Vermont and pursuant to 3 V.S.A. Chapter 41 do hereby order and direct that a committee, to be titled the Security and Privacy Committee, be established in order to:

1. Adopt policy positions on security and privacy issues concerning information systems at the State and local level;
2. Promulgate the State Plan as required by the Federal Regulations as set forth in 28 CFR Part 20 et seq.;
3. Seek, through appropriate methods, the implementation and enforcement of procedures designed to assure the security and privacy of publicly held personal information.

Dated June 9, 1976.

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### **Title 1 Chapter 5 Public Records**

#### **§ 315. Statement of policy**

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the general assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed with the view towards carrying out the above declaration of public policy.—Added 1975, No. 231 (Adj. Sess.).

#### **§ 316. Access to public records and documents**

(a) Any person may inspect or copy any public record or document of a public agency, on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and twelve o'clock in the forenoon and between one o'clock and four o'clock in the afternoon; provided, however, if the public agency is not regularly open to the public during those hours, inspection or copying may be made during customary office hours.

(b) If a photocopying machine or other mechanical device maintained for use by a public agency is used by the agency to copy the public record or document requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public agency. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of public records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

(c) A public agency having photocopying or other mechanical copying facilities shall utilize those facilities to produce copies. If the public agency does not have such facilities, nothing in this section shall be construed to require the public agency to provide or arrange for photocopying service, to use or permit the use of copying facilities other than its own, to permit operation of its copying

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facilities by other than its own personnel, to permit removal of the public record by the requesting person for purposes of copying, or to make its own personnel available for making handwritten or typed copies of the public record or document requested.

(d) A public agency may make reasonable rules to prevent disruption of operations, to preserve the security of public records or documents, and to protect them from damage.—Added 1975, No. 231 (Adj. Sess.).

### **§ 317. Definitions; public agency; public records and documents**

(a) As used in this subchapter, "public agency" or "agency" means any agency, board, department, commission, committee, branch or authority of the state or any agency, board, committee, department, branch, commission or authority of any political subdivision of the state.

(b) As used in this subchapter, "public record" or "public document" means all papers, staff reports, individual salaries, salary schedules or any other written or recorded matters produced or acquired in the course of agency business except:

(1) records which by law are designated confidential or by a similar term;

(2) records which by law may only be disclosed to specifically designated persons;

(3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the state;

(4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege;

(5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of a person and the charge shall be public;

(6) a tax return and related documents, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont department of taxes or submitted by a person to any public agency in connection with agency business;

(7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his designated representative;

(8) test questions, scoring keys, and other examination in-

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struments or data used to administer a license, employment, or academic examination;

(9) trade secrets, including, but not limited to, any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it;

(10) lists of names compiled or obtained by a public agency when disclosure would violate a person's right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees;

(11) student records at educational institutions funded wholly or in part by state revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as amended;

(12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;

(13) information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof;

(14) records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation;

(15) records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees;

(16) any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the state of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document.

(17) records of inter-departmental and intra-departmental communications in any County, City, Town, Village, Town School

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District, Incorporated School District, Union School District, Consolidated Water District, Fire District, or any other political subdivision of the state to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with 1 V.S.A. § 312.

(18) Records of the office of internal investigation of the department of public safety, except as provided in section 1923 of Title 20.—Added 1975, No. 231 (Adj. Sess.); amended 1977,

### § 318. Procedure

(a) Upon request the custodian of a public record shall promptly produce the record for inspection, except that:

(1) if the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so certify this fact in writing to the applicant and set a date and hour within one calendar week of the request when the record will be available for examination;

(2) if the custodian considers the record to be exempt from inspection under the provisions of this subchapter, he shall so certify in writing stating his reasons for denial of access to the record. Such certification shall be made within two business days, unless otherwise provided in division (5) of this subsection. The custodian shall also notify the person of his right to appeal to the head of the agency any adverse determination;

(3) if appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five days, excepting Saturdays, Sundays, and legal public holidays, after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title;

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## GENERAL PROVISIONS

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(4) if a record does not exist, the custodian shall certify in writing that the record does not exist under the name given to him by the applicant or by any other name known to the custodian;

(5) in unusual circumstances as herein specified the time limits prescribed in this subsection may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this division, "unusual circumstances" means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the attorney general.

(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted his administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.—Added 1975, No. 231 (Adj. Sess.).

### § 319. Enforcement

(a) Any person aggrieved by the denial of a request for public records under this subchapter may apply to the superior court in the county in which the complainant resides, or has his personal place of business, or in which the public records are situated, or in the superior court of Washington County, to enjoin the public agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a

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### COMMON LAW; GENERAL RIGHTS

### T.1 § 320

case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in section 317 of this title, and the burden is on the agency to sustain its action.

(b) Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(c) If the public agency can show the court that exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

(d) The court may assess against the public agency reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.—Added 1975, No. 231 (Adj. Sess.).

#### § 320. Penalties

(a) Whenever the court orders the production of any public agency records, improperly withheld from the complainant and assesses against the agency reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether the agency personnel acted arbitrarily or capriciously with respect to the withholding, the department of personnel if applicable to that employee, shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The department, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the department recommends.

(b) In the event of noncompliance with the order of the court, the superior court may punish for contempt the responsible employee or official, and in the case of a uniformed service, the responsible member.—Added 1975, No. 231 (Adj. Sess.).

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Education

Title 16

**§ 214. Access to criminal records**

(a) The commissioner of education may obtain from the Vermont crime information center the record of criminal convictions of any person applying for an initial license as a professional educator. The commissioner of education, through the Vermont crime information center, may request from the Federal Bureau of Investigation the record of the applicant's criminal convictions of listed crimes in other jurisdictions. If the commissioner of education requests a record from the FBI, the request shall be accompanied by a set of the applicant's fingerprints and a fee established by the Vermont crime information center, which reflects the cost of obtaining the record from the FBI. The commissioner of education, through the Vermont crime information center, may also inquire of the appropriate state criminal record repositories in all states in which the commissioner has reason to believe the applicant has resided or been employed for any information on criminal records of the applicant regarding convictions of listed crimes.

(b) A superintendent or headmaster of an independent school may ask the Vermont crime information center to provide the record of criminal convictions of a person the superintendent is prepared to recommend for employment or the headmaster is prepared to hire. The superintendent or headmaster, through the Vermont crime information center, may request from the Federal Bureau of Investigation the record of the applicant's criminal convictions of listed crimes in other jurisdictions. If the superintendent or headmaster requests a record from the FBI, the request shall be accompanied by a set of the applicant's fingerprints and a fee established by the Vermont crime information center, which reflects the cost of obtaining the record from the FBI. The superintendent or headmaster, through the Vermont crime information center, may also inquire of the appropriate state criminal record repositories in all states in which the superintendent or headmaster has reason to believe the applicant has resided or been employed for any information on criminal records of the applicant regarding convictions of listed crimes. The superintendent or headmaster shall promptly provide a copy of the record of convictions, if any, to any prospective employee as to whom a request has been made, and shall inform the prospective employee that he or she has the right to appeal the accuracy and completeness of the record. The Vermont crime information center shall send the superintendent or headmaster the record of convictions of listed crimes of a person about whom a request is made under this subsection or inform the superintendent or headmaster that no record exists.

(c) As used in this section "listed crimes" shall be defined as the term "listed crime" is defined in section 13 of Title 13.

(d) Upon completion of the application process under this section, the applicant's fingerprints shall be destroyed.—Added 1991, No. 159 (Adj. Sess.), § 6; amended 1995, No. 170 (Adj. Sess.), § 25, eff. May 15, 1996.

*Subchapter 2. Superintendents***§ 241. Appointment**

(a) Each supervisory union or supervisory district board, with the advice of the commissioner, shall employ a superintendent of schools.

(b) The superintendent shall be employed by written contract for a term not to exceed five years nor less than one year. The superintendent of schools may be dismissed for cause as specified in the contract of employment.

(c) Not later than May 15 of a year in which an incumbent superintendent's contract of employment expires, the supervisory union board shall meet to renew or act otherwise upon the superintendent's contract.—Amended 1991, No. 181 (Adj. Sess.), § 1.

**TITLE THIRTY-THREE***Human Services***PART 5. PROGRAMS AND SERVICES FOR ELDERLY AND  
DISABLED PERSONS****NEW CHAPTER****SECTION**

**79. Advisory Council on Spinal Cord and Head In-**  
**juries . . . . . 7901**

**PART 1. ADMINISTRATION***Chapter 1. Department of Social Welfare**Subchapter 2. General Administrative Provisions***§ 111. Records, restrictions, penalties****ANNOTATIONS**

**2. Evidentiary privilege.** This section does not exhibit an intent to create an evidentiary privilege as to information within the possession of the department of social and rehabilitation services. In re F.E.F. (1991) 156 Vt. 503, 594 A.2d 897.

*Chapter 3. Department of Social and  
Rehabilitation Services***NEW SECTION****309. Access to records.****§ 306. Administrative provisions****ANNOTATIONS**

**Cited.** Cited in In re F.E.F. (1991) 156 Vt. 503, 594 A.2d 897.

**§ 309. Access to records**

(a) The commissioner may obtain from the Vermont crime information center the record of convictions of any person to the extent the commissioner has determined by rule that such information is necessary to regulate a facility or individual subject to regulation by the department. The commissioner shall first notify the person whose record is being requested.

(b) The owner or operator of a facility licensed or registered by the department may ask the commissioner for the record of convic-

tions and the record of substantiated reports of child abuse of a current employee or a person to whom the owner or operator has given a conditional offer of employment. The request shall be in writing and shall be accompanied by a release signed by the current or prospective employee. The owner or operator shall inform the current or prospective employee that he or she has the right to appeal the accuracy and completeness of the record. Upon receiving a request under this subsection, the commissioner shall ask the Vermont crime information center for the record of convictions of the current or prospective employee.

(c) If the person has a record of convictions, the commissioner shall provide the owner or operator with a copy of the record. If the person has a record of substantiated reports of child abuse, the commissioner shall inform the requesting owner or operator that such record exists.

(d) Information released to an owner or operator under this section shall not be released or disclosed by the owner or operator to any other person. Release or disclosure of such information by an owner or operator may result in loss of license or registration.

(e) As used in this section,

(1) "Commissioner" means the commissioner or the commissioner's designee.

(2) "Substantiated reports of child abuse" mean report of child abuse substantiated under section 4915 of this title.—Added 1991, No. 159 (Adj. Sess.), § 2.

#### CROSS REFERENCES

Vermont criminal information center generally, see § 2051 et seq. of Title 20.

### *Chapter 7. Office of Alcohol and Drug Abuse*

#### § 702. Definitions

##### ANNOTATIONS

Cited. Cited in *Napolitano v. Flynn*, 949 F.2d 617 (2d Cir. 1991).

#### § 708. Treatment and services

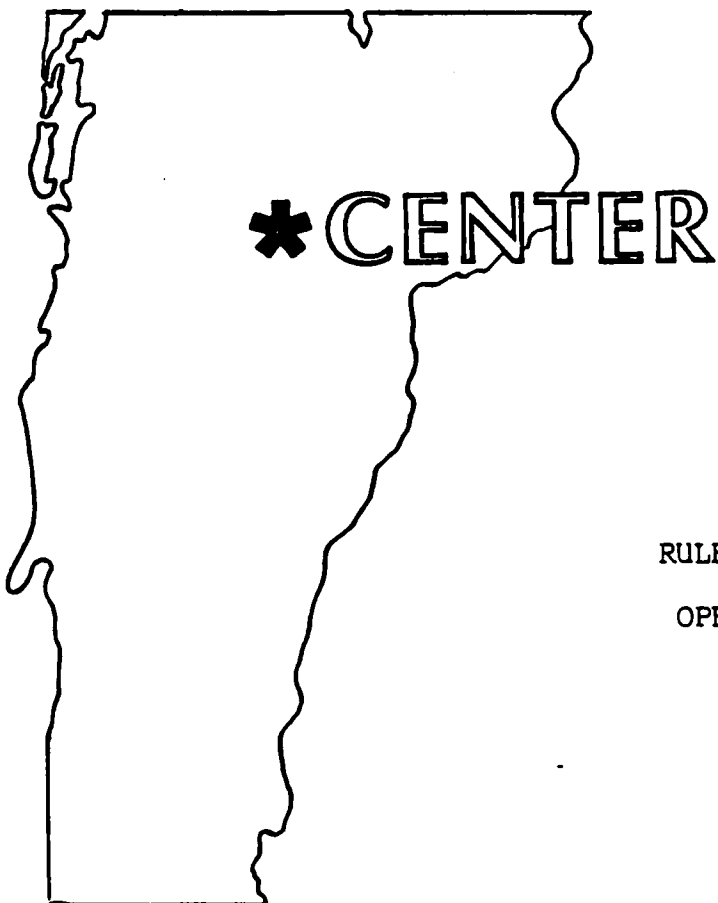
##### ANNOTATIONS

1. Failure to take intoxicated person into custody. In absence of clear guidance from legislature or courts, dictum in *State v. Merritt*, 149 Vt. 529, 546 A.2d 791 (1988), standing alone, was insufficient to create a "clearly established" right, under this section, upon which plaintiff could base suit against police officers for failure to take into protective custody individual who subsequently, while driving while intoxi-

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## *CRIMINAL INFORMATION*



RULES AND REGULATIONS GOVERNING THE  
OPERATION OF THE VERMONT CRIMINAL  
INFORMATION CENTER

1979



DATE 31 October 1979

TO: All Criminal Justice System Agencies; Office of the Defender General  
*Warren M. Cone*  
FROM: Warren M. Cone, Commissioner  
SUBJECT: VCIC Regulations

The Department of Public Safety has adopted RULES AND REGULATIONS GOVERNING THE OPERATION OF THE VERMONT CRIMINAL INFORMATION CENTER. (a copy of which is attached to this memo ) The regulations were effective 20 October 1979 and form the basic operating guidelines for VCIC as well as contributors to and users of record data maintained within the center.

It is important to note that selected sections of the regulations will not become effective until 31 March 1980. These are (a) Incident Reports; (b) revised arrest reports; and, (c) reports of disposition. This was done to permit finalization of these report formats and to preclude disruption of the present IRS program. Undoubtedly there will be some problems associated with forms during this interim period. Your cooperation during this transitional time frame is essential to the maintenance of the record data at VCIC. The Director of VCIC, Sgt. Billy Chilton, and his staff will be available to answer any questions you may have with regard to implementation of regulatory requirements.

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## VERMONT CRIMINAL INFORMATION CENTER

### RULES AND REGULATIONS

#### SECTION 1      AUTHORITY

1.10 These regulations, entitled "RULES AND REGULATIONS GOVERNING THE OPERATION OF THE VERMONT CRIMINAL INFORMATION CENTER", have been promulgated and adopted under the authority of Title 20, Vermont Statutes Annotated, Section 2054 (a), pursuant to the provisions of Title 3, Vermont Statutes Annotated, Chapter 25 (as amended) and Department of Public Safety Rules of Practice dated 24 June 1969.

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### SECTION 2 PURPOSE AND APPLICABILITY

2.10 PURPOSE The regulations provide the essential guidelines governing the collection, storage and dissemination of criminal history record information.

2.20 APPLICABILITY All criminal justice and non-criminal justice agencies and persons who are users of, or contributors to, the information and services of the Vermont Criminal Information Center are subject to the conditions and provisions of the regulations.

(a) The regulations do not impose upon any agency or person prohibitions or restrictions regarding the collection, storage, dissemination and security of criminal history record information obtained from original documents of entry to which they are lawfully entitled from sources other than the VCIC.

(b) The records of persons, contained within the Vermont Criminal Information Center, may not be used for determinations of employment suitability except as such is permitted by these regulations. This section shall not prohibit the acquisition and use of such information from sources other than VCIC.

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### SECTION 3 DESCRIPTION

3.10 THE VERMONT CRIMINAL INFORMATION CENTER, hereinafter VCIC, is the official state repository for all criminal records and the records of the commission of crimes (20 VSA § 2051).

3.20 FILES AND RECORDS The files and records maintained within VCIC shall include, but not be limited to:

- (a) Incident/Offense Reports
- (b) Arrest/Arraignment Reports
- (c) Disposition (Adjudication) Reports
- (d) Fingerprint Records
- (e) Photographs
- (f) Descriptions
- (g) Information Request and Dissemination Records which shall contain as a minimum:

- (1) Name of Requestor
- (2) Agency Name
- (3) Purpose of Inquiry
- (4) Date of Inquiry

- (h) Missing persons information
- (i) Wanted Persons
- (j) Release, probation and parole information
- (k) Personal review of records forms

3.30 VERMONT WARRANT SYSTEM. VCIC shall be responsible for the operation of the Vermont Warrant System and shall provide a central index file of all outstanding warrants that have been issued by the State of Vermont.

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### SECTION 4      DEFINITIONS

4.10 As used in these regulations:

(a) INCIDENT/OFFENSE REPORT. Standardized report concerning the occurrence of a crime or criminal activity. Minimum elements required include:

- (1) Agency Identification (Code)
- (2) City/Town Code
- (3) Calendar Year of Incident/Offense
- (4) Incident/Offense Report Number
- (5) Offense Code
- (6) Complainant Last Name
- (7) Date of Occurance
- (8) Time of Occurance (24 Hour Time, AM, PM, or unknown)
- (9) Case Status (Invest., Closed, Unfound, Citation or Other)
- (10) Case Origin (Uniform or Non-Uniform)
- (11) Must be submitted to VCIC within (10) working days of occurrence

(b) ARREST/ARRAIGNMENT REPORT. Standardized report of the arrest and arraignment of persons. Minimum elements required include:

- (1) Agency Identification (Code)
- (2) City/Town code
- (3) Year of Arrest
- (4) Arrest Number
- (5) Incident/Offense number
- (6) Calendar Year of Incident/Offense
- (7) Date of Arrest
- (8) Arrested with Warrant (Yes or No)
- (9) Time of Arrest (24 Hour time)
- (10) Name of Subject (Last, First and Middle)
- (11) Address
- (12) U.S. Citizen (Yes or No)
- (13) Maiden Name (Married Female Only)
- (14) Aliases
- (15) Place of Birth (City/Town, and State)
- (16) Sex Identification (Male or Female)
- (17) Date of Birth
- (18) Marital Status
- (19) Physical Description (Height, Weight, Build, Hair, Eyes, Race, Complexion and Identifying Scars, Marks or Tattoos)
- (20) Statute Citation and Offense Charged
- (21) Police Disposition (Released, Citation, Lodged, Immediate Arraignment or Other)
- (22) Arraignment Date
- (23) Plea at Arraignment (Guilty, Nolo, Not Guilty or Pro Forma Not Guilty)

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### 4.10 cont'd

- (24) Docket Number
- (25) Bail Data (Amount in Dollars, Cash, Per Centum, Personal Recognizance or Confined for Lack of Bail)
- (26) Charge at Arraignment - Statute Citation
- (27) Disposition by States Attorney (entry required for VCIC use only if disposed of other than by prosecution subsequent to arraignment).
- (28) Must be submitted to VCIC within (10) working days of arraignment date.
- (29) No agency shall submit reports of arrest to the VCIC prior to the arraignment of the subject.

(c) DISPOSITION REPORT. Standardized report of the adjudication of an offense whether by court action, action of the States Attorney or the Attorney General. Disposition Reports shall be forwarded to the VCIC within 10 working days of the effective date of such action. Minimum elements required include:

- (1) Name of Subject
- (2) Docket Number
- (3) Incident/Offense Number
- (4) Date of Birth (Age)
- (5) Place of Birth
- (6) Arresting Agency (Code)
- (7) Name of Offense (Statute Citation)
- (8) Arraignment Date
- (9) Arraignment Plea (Guilty, Nolo, Not Guilty or Pro Forma Not Guilty)
- (10) Bail Data (Date Bail Set, Personal Recognizance, Appearance Bond Amount - Deposit, or Cash Surety Amount).
- (11) Amended to: Name of Offense (Statute Citation)
- (12) Plea Agreement
- (13) Dismissal Information (by Prosecutor or Court and Date of Dismissal)
- (14) Plea Information (Guilty or Nolo and Date of Plea)
- (15) Transferred to Juvenile Court
- (16) Verdict Information (Guilty or Not Guilty and Date)
- (17) Judgement Information (Guilty or Not Guilty and Date)
- (18) Fine Information (Amount)
- (19) Term Information (Minimum Years, Months or Days - Maximum Years, Months or Days, Split to Serve, Suspended, Make Restitution and Amount or Other)
- (20) Final Disposition Date

(d) PHOTOGRAPHS. Mugshots and photographs of other subject matter: Mugshots are to be submitted to VCIC as required by section 11.10 (d)

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### 4.10 cont'd

(e) FINGERPRINT RECORDS shall be each of several types of standardized fingerprint record forms currently in common use throughout the Vermont criminal justice system. Fingerprint cards shall accompany reports of arrest/arraignment as specified in section 11.10(d).

(f) PROBATION, PAROLE, RELEASE. In those cases where sentence is suspended and the offender is placed on probation, a final probation termination report shall be forwarded to the VCIC by the court having jurisdiction within ten (10) working days of the effective date of such action. The report shall identify the individual by full name, date of birth, incident/offense number, docket number, offense for which convicted and shall further state probation termination date and conditions of closure, i.e., violation, satisfactory or unsatisfactory. Release from incarceration or parole shall be a report of the release provided by the Commissioner of Corrections. The report shall be forwarded to the Director of VCIC within ten (10) working days of the effective date of action and shall contain, as a minimum, the full name and date of birth of the individual, incident/offense number, Corrections Department identification number, offense for which the individual was convicted and release or termination date.

(g) A CRIMINAL HISTORY RECORD is defined as all documentation representing an individual's contact (s) with the Vermont criminal justice system consisting of the elements described below. Out of state, other state, federal or international criminal record information shall not be included as part of a Vermont criminal history record:

(1) IDENTIFICATION DATA: full name; date of birth; physical description and other agency, federal, state identification numbers.

(2) ARREST/ARRAIGNMENT DATA: full name; date of birth; physical description; date of arrest; offense(s) charged in clear language and appropriate statutory citation; arraignment date; police disposition.

(3) JUDICIAL DISPOSITION DATA: Full name; date of birth; conviction date to include probation information, fines assessed and confinement awarded; statute citation; nonconviction data (see section 6.20); disposition date; mittimus date; probation case termination date and type (violation, satisfactory or unsatisfactory).

(4) CUSTODY/SUPERVISION DATA: full name, date of birth; physical description; Department of Corrections identification number; release from sentenced incarceration (date and type of release); parole termination date and type (expiration or revocation).

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### 4.10 cont'd

(h) Criminal justice agencies shall be:

(1) Courts, and;

(2) Governmental agencies, divisions or sub-units thereof, which perform the administration of justice pursuant to a statute, executive order, municipal charter or ordinance and allocate 50%, or more, of the funds budgeted and appropriated annually to them for criminal justice administration purposes.

(3) The administration of criminal justice shall be defined as any of the following activities: detection, apprehension, adjudication, correctional supervision, or rehabilitation of accused persons, or criminal offenders, criminal identification, collection, storage and dissemination of criminal history record information and nonconviction data but shall not include criminal defense functions, crime prevention activities and programs, drug addiction treatment, or similar programs unless these have been specifically charged with the rehabilitation of offenders by statute or executive order.

(i) NON-CRIMINAL JUSTICE or other agencies and individuals (to include public and private agencies, corporation, companies, associations or boards and commissions) may be authorized to receive criminal history record information and nonconviction data. Non-criminal justice agencies and individuals are defined as any agency, or employee thereof, not specifically engaged in any activity as defined in Section 4.10(h) (3). The regulations permit other public or private agencies to have access to criminal history record information and nonconviction data to implement a statute, ordinance, municipal charter, or executive order that refers to criminal conduct and contains exclusions or requirements based on such conduct.

(j) AUTHORIZED AGENT. A duly authorized representative or employee of the agencies defined by section 4.10(h) & (i).

(k) MASTER CRIMINAL INDEX. A standardized form or format used by VCIC to record or reference the record of each transaction relating to a person's contact with the criminal justice system.

(l) AGENCY. An agency or department of federal, state or local government; also a corporation or company, governmental sub-unit, also boards, commissions and committees.

(m) COMMISSIONER. The commissioner of the Department of Public Safety.

## VERMONT

### 4.10 cont'd

(n) DIRECTOR. The Director of the Vermont Criminal Information Center.

(o) NONCONVICTION DATA. Arrest/arraignment information without disposition, or information that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

(p) DISCLOSURE: Disclosure of the criminal history record information and nonconviction data also includes acknowledgement of the existence or non-existence of such data.

(q) DISSEMINATION shall be defined as the disclosure, release or transmission of information by an agency or individual to another agency or individual.

(r) AN EXECUTIVE ORDER is defined as an order by the President of the United States or Chief Executive of a state which has the force and effect of law and is published in a manner permitting regular public access thereto. Orders by chief executives of political subdivisions of a state are not executive orders within the meaning of these regulations.

(s) COURT shall mean any court in the State of Vermont or any court of the United States as such is or may be defined by rule, order or statute.

(t) ADJUDICATION DATE shall mean the date of dismissal, acquittal or date sentence imposed, except in cases of deferred sentence wherein the date deferred sentence is imposed shall be the adjudication date. Decisions not to prosecute, subsequent to arraignment, shall be reported within 10 days of such action by the prosecutor.

(u) NLETS: National Law Enforcement Telecommunications System.

(v) NCIC: National Crime Information Center

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### SECTION 5 DIRECTOR

5.10 APPOINTMENT AND ACCOUNTABILITY. The Director of the Vermont Criminal Information Center shall be appointed by the Commissioner of Public Safety (20 VSA S 2052).

5.20 DUTIES AND RESPONSIBILITY. The Director shall be responsible for the overall operation of the Vermont Criminal Information Center, supervision and direction of all staff personnel and delegation of intermediate supervisory responsibilities as he deems appropriate. The Director shall, with approval of the Commissioner:

(a) Serve as liaison between VCIC and the various state and local agencies which comprise the Vermont criminal justice community.

(b) Consult with the Attorney General (or his representative) on all legal matters involving these regulations or beyond the scope of these regulations but relative to VCIC.

(c) Compile and maintain a record of all contributors to VCIC files and records.

(d) Compile, publish and distribute a manual for all in-state user/contributor agencies entitled "STANDARD OPERATING PROCEDURE VCIC" (or similar title).

(e) Compile, publish, or otherwise make available, statistical data relative to the commission of crimes within the State of Vermont. Such publications shall be prepared and forwarded to the Commissioner by September 1 of each year for the previous fiscal year ending 30 June.

(f) Prepare an annual report on the operation and status of the Vermont Criminal Information Center for the Commissioner of Public Safety.

(g) Establish hours of operation of VCIC to provide for reasonable availability of information to all users on a timely basis. Scheduling shall be at the Director's discretion.

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### SECTION 6

### CRIMINAL HISTORY RECORD INFORMATION-DISSEMINATION

6.10 This section provides the essential guidelines for the dissemination of criminal history record information to both criminal justice and noncriminal justice agencies and individuals.

(a) Covered information shall consist of criminal history record information, as defined in Section 4, and nonconviction data discussed in Section 6.20, and defined by Section 4.10(0).

(b) These regulations do not apply to:

- (1) "Wanted" posters
- (2) Original records of entry such as police blotters and court records of public judicial proceedings which are available from originating police agencies and courts; or,
- (3) Published court opinions; or,
- (4) Records of traffic offenses maintained by the Commissioner of Motor Vehicles.

6.20 NONCONVICTION DATA: Record data, relative to an arrest which subsequently did not result in a conviction based upon that arrest, and, wherein the individual has no record of previous or subsequent arrests and convictions within this state, shall not be deemed a criminal history record. Record data which falls within the foregoing category shall be prefaced: CRIMINAL JUSTICE INFORMATION ONLY-NO CRIMINAL HISTORY RECORD. Similarly, arrests pending adjudication shall also be treated as nonconviction data per Section 4.10(0). In those cases of arrest where a conviction does not result from such arrest, but, there exists records of prior or subsequent Vermont arrests and convictions, relative to the individual, nonconviction data may be included as criminal history record information.

### 6.30 INFORMATION DISSEMINATION

(a) Criminal justice agencies, and agents thereof, may obtain criminal history record information and nonconviction data from the VCIC. All requests shall be by full name and date of birth of the subject. The requestor shall state his/her name and the name of the agency represented and shall clearly state the specific purpose for which the information will be used or further disseminated. If the purpose of the request is for use in a current investigation, the requestor shall give the case number or other similar identification. A criminal justice agency is not prohibited from requesting criminal history record information from VCIC concerning candidates for employment specifically within the criminal justice agency. Further dissemination of such information to non-criminal justice agencies or persons is prohibited. Inquiry may be made by telephone, in writing or by computer terminal. Telephone inquiry, however, shall be restricted to in-state (Vermont) criminal justice agencies only and the Vermont Crime Information Center shall employ a

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### 6.30 cont'd

call-back system to identify the agency and caller based upon a listing of authorized telephone numbers and persons provided to, and approved by, the Director. Use of private, party line and phone booth telephone numbers is prohibited. All telephone authorization lists shall be in the form of a request addressed to the Director, on agency letterhead, properly signed by a department head or equivalent authority.

(1) The VCIC may refuse to disseminate criminal history record and nonconviction information if, in the discretion of the Director: the purpose of the request lacks proper justification; the identity of the requestor as an authorized agency or person cannot be satisfactorily established; the proposed use of information requested is inconsistent with or prohibited by these regulations, state or federal law, municipal ordinance, charter, other regulation or executive order; is inconsistent with the provisions of Rule 16, Vermont Rules of Criminal Procedure; is prohibited by court order or rule.

(2) Upon satisfactory identification of an individual appearing in person at the VCIC, criminal history record information and nonconviction data may be released.

(3) Written requests shall be on agency letterhead, signed by a department head, or equivalent authority.

(4) Computer terminal inquiries by in-state terminal, NLETS and NCIC terminal shall be deemed to have satisfied the requirement for written requests. In-state terminal requests shall require automatic terminal identification as part of the system design.

(5) Criminal history record information and nonconviction data obtained from the VCIC shall only be valid for time and date issued.

(6) The director may decline to disseminate record data which he has determined to be inaccurate until such time as errors have been corrected.

(7) Information requests from any prosecutor shall be forwarded directly to the requestor by registered mail, return receipt requested, or conveyed by hand upon personal appearance at VCIC.

(8) The VCIC shall refuse to forward criminal history record information and nonconviction data to other than the original requestor.

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(b) Non-criminal justice agencies, and agents thereof, may be entitled to criminal history record information and nonconviction data from VCIC as follows:

(1) Where ever a statute, executive order, municipal charter or ordinance denys licensing or other civil rights to a person convicted of a crime (§ 4.10(i)).

(2) All requests shall be by full name and date of birth of the individual about whom information is requested.

(3) The purpose of the request, use of information or further dissemination shall be clearly stated.

(4) The requesting agency may be required to provide the Director with a copy of their authority to obtain criminal record information.

(5) The requesting agency shall maintain a file of requests and responses from VCIC and shall make such files and records available to VCIC for audit purposes (§ 14.30).

(6) The requesting agency shall agree not to disclose the contents of any record data or logs to any person for any purpose except as provided herein.

6.40 Disclosure of criminal record information by VCIC is not prohibited for purposes of international travel, i.e., obtaining visas, passports or other recognized international travel documents. The Director may provide both conviction and nonconviction information for the purposes of this section.

6.50 Dissemination records shall be maintained by the Director concerning all requests for criminal history record and nonconviction information. These records shall include:

(a) Name of requesting agency, department or individual initiating request.

(b) Date of request.

(c) Name and date of birth of individual concerned in the request for information.

(d) Reason for the request.

6.51 Records of information dissemination shall be considered confidential.

### 6.60 CRIMINAL HISTORY RECORD EXTRACT

(a) A certified extract copy of criminal history record

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### 6.60 cont'd

information shall consist of a record of the entries representing an individual's contact(s) with the criminal justice system, i.e., arrests, dispositions and correctional supervision data. Such records, when properly attested to by the Director or the Commissioner, shall represent a certified criminal history record extract and shall be deemed to satisfy the requirements of Title 20, VSA § 2056 unless otherwise specified by the court or prosecutor.

(b) A non-certified criminal history record extract shall consist of the identical elements specified in 6.60 (a), but does not require the certification of the Director or Commissioner. Such record data shall be satisfactory for the purposes of non-criminal justice agencies and all criminal justice agencies as specified by Title 20, VSA § 2056.

(c) The sources of all criminal history record information maintained by the VCIC shall be original documents of entry, or copies thereof acceptable to the Director, or micrographic copies of such documents produced by the VCIC.

### 6.70 INFORMATION SECURITY

(a) The Department shall conduct a background investigation of all persons who are applicants for employment or transferees seeking employment within VCIC, or routinely required to access criminal history and nonconviction data contained in VCIC for the purpose of providing security clearance. This requirement is inclusive of permanent classified, temporary or permanent part-time employees.

(b) Other individuals may be granted admittance to the VCIC or access to information contained therein on the following basis:

(1) Visitors to the Center, as approved by the Commissioner or the Director, shall be provided with a visitor pass or other suitable identification which must be prominently displayed upon their person at all times while in the VCIC.

(2) All visitor pass identification will be obtained from the VCIC at the time the individual is admitted and must be returned to VCIC upon departure, except that individual Department of Public Safety employee identification, issued by the Commissioner, shall be retained by the employee.

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### SECTION 7 SECURITY OF COMPUTERIZED CRIMINAL INFORMATION SYSTEMS

7.10 SECURITY CONCEPTS WITH SHARED COMPUTER SYSTEMS. The constraints of budgets and program cost effectiveness considerations may tend to preclude systems which must rely on dedicated hardware for information security. The alternative is a shared system concept with an effective employee screening program and physical plant and software security methods and procedures.

7.20 PERSONNEL SCREENING AND SECURITY. Due to the nature of material contained in a criminal history record information system, it shall be necessary to restrict access to such data, programs and storage devices, to the minimum number of persons required to effectively and efficiently operate and maintain the system. In order to satisfy the security requirements of these regulations, the Commissioner of Budget and Management shall provide to the Commissioner of Public Safety a list of persons having direct or other access to the criminal history record information system, its operational programs and tape or other storage, for the purpose of providing security clearances for these persons.

(a) Should any individual, whose name has been submitted to the Commissioner of Public Safety for clearance, fail to qualify for security clearance as the result of a background investigation conducted by the Department of Public Safety, the Commissioner of Budget and Management shall submit an alternate.

(b) Disqualification shall be on the following basis:

(1) The individual has a criminal history record.

(2) The individual is known to associate regularly and frequently with persons having criminal records.

(c) The Commissioner of Budget and Management and the Commissioner of Public Safety shall jointly maintain an accurate current listing of security clearances issued.

(d) Upon permanent reassignment of persons with a security clearance to an area not involved with criminal data, the security clearance shall become invalid effective with the date of such assignment.

(e) Secure terminal access codes shall be a provision of the criminal records information system software design. Access codes shall be amended immediately upon reassignment, termination or other of VCIC or Data Processing personnel having access to such information.

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7.30 SECURITY COOPERATION. The Commissioner of Public Safety and the Commissioner of Budget and Management shall cooperate in the development of an environment of informational and physical security suitable to the specialized requirements of criminal history record information.

7.40 PROGRAM SECURITY. Program safeguards shall be designed to restrict access and detect any breach of security as follows:

(a) Criminal history record data entry and file maintenance shall be restricted to VCIC.

(b) Direct on-line access of criminal history record information shall not normally be possible from any terminal facility except VCIC. The capability to unlock remote terminals to permit direct access shall be controlled at VCIC.

(c) All unauthorized attempts to access criminal history information shall:

(1) Produce an automatic notation of the date of inquiry or access and terminal identification on the criminal history record queried.

(2) Detect and store a record of all unauthorized attempts or penetrations of any criminal history record information system, program or file.

(d) The design and documentation of the security program shall be restricted to the minimum number of employees outside VCIC essential to its operation and maintenance.

7.50 The unauthorized disclosure of criminal history record information by VCIC or other Public Safety employees shall be cause for immediate dismissal. (see section 13.21).

7.60 The knowledgeable attempt by any agency employee outside VCIC to directly access criminal history information may result in suspension of that agency's terminal privileges.

## VERMONT

### SECTION 8 RECORD ACCESS AND APPEAL

8.10 Any person, who has reason to believe that the VCIC maintains criminal history records or nonconviction data concerning him may request an opportunity to view this information and may request a copy of reports and forms which constitute the record.

8.11 Information requests shall be in writing, addressed to the Director or the Commissioner. Requestor shall include full name and date of birth.

8.12 Proper identification of the requestor shall be required prior to the release of the acknowledgement of any information by VCIC. To that end the following procedure shall govern:

(a) Appearance in person may require fingerprint verification for proper identification. If fingerprints are required, they shall be taken by the State Police.

(b) Information requests, wherein personal appearance is or would be a hardship may be acknowledged in writing by the Director. A hardship is defined as follows:

(1) Requestor is presently incarcerated (proceed as defined in § 8.70).

(2) Requestor is presently a resident of another state or country.

(3) Requestor is physically incapacitated and unable to travel; such incapacity shall be defined by the requestor, and;

(4) Other cases as may be determined by the Director or Commissioner.

8.13 In those cases where the requestor cannot travel due to hardship determination, except as provided in §8.70, the identity of the requestor may be established by any of the following alternative methods:

(a) The chief of police of the town or city of the requestor's residence, may attest to the requestor's identity as a person known to him or;

(b) Any law firm or attorney, duly licensed to practice law in the state of requestor's residence, may attest to the requestor's identity as a person known to him, or;

(c) Any court of law in the state of requestor's residence may attest to the requestor's identity as a person known to the court.

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8.20 INDIVIDUAL RIGHTS UNDER REVIEW. A person granted permission to review his file information shall have the right to:

- (a) Make notes concerning file information reviewed.
- (b) Obtain a non-certified criminal record extract of file information reviewed:
  - (1) The Director shall have the right to charge each person the reasonable cost of providing photostats or other copies of documents, and all copies may be retained by VCIC until payment is made.
  - (2) Copies of criminal history record documents shall be for the express use of the individual.
- (c) Examine the records of review and inquiry relative to his file.

8.30 RIGHT TO CHALLENGE. An individual who believes that information contained in his VCIC file is inaccurate may challenge the items of alleged discrepancy.

- (a) The Director shall investigate all alleged discrepancy(ies) within 72 hours of notification.
- (b) A challenge found to be valid by investigation shall be processed by the Director as follows:

- (1) VCIC ERROR. Correct the discrepancy and notify the individual by certified mail within 72 hours. (See Section 8.60).

- (2) CONTRIBUTING AGENCY ERROR. Within 72 hours:

- ( i) Notify the individual by certified mail of the results of the investigation and the name of the agency responsible for providing the incorrect information.

- (ii) Notify the originating agency by certified mail identifying the discrepancy and request correction within 10 working days.

8.40 INVALID CHALLENGE - NOTIFICATION. The Director shall notify, by certified mail, any person whose challenge has been determined to be invalid as a result of an investigation. Such notice shall advise the individual that no apparent error exists. The decision of the Director may be appealed as provided for in section 8.50.

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8.50 RIGHT OF APPEAL. Any person, dissatisfied with a decision of the Director concerning information contained in their record file, may appeal to the Commission of Public Safety to initiate a formal proceeding to hear the matter in dispute. Proceedings shall be in accordance with the "RULES OF PRACTICE" adopted by the Department of Public Safety, effective July 1969, and filed with the Secretary of State.

(a) The individual shall, by certified mail, notify the Commissioner of Public Safety that he has challenged certain information contained in his record in VCIC, and;

(b) That the Director of VCIC has disputed or otherwise claimed the challenge to be invalid, and;

(c) Pursuant to Rule 5, Department of Public Safety "Rules of Practice", and these regulations, he is petitioning for a formal proceeding to resolve the matter.

(d) The petition must include the specific details of the challenge and reasons for the claim that information is in error.

(e) The Commissioner, upon receipt of a notice of appeal shall, within 7 working days, set a date for hearing the appeal, but such date shall not be greater than 30 consecutive days from date of receipt, and;

(1) Within 30 consecutive days from the date of hearing, the Commissioner shall render findings upon the matter(s) in dispute and notify the petitioner by certified mail.

(2) In the event the challenge is found invalid, the petitioner shall be informed that the disputed information may only be changed by court order.

(3) In the event the challenge is found valid, the Director of VCIC shall be notified to proceed in accordance with section 8.30 and 8.60, RECORD CORRECTION.

8.60 RECORD CORRECTION. The Director shall notify all agencies and persons, who have received erroneous information, of the correction to be affected. This will be accomplished within 24 hours of receipt of notification that a change or correction is required. This section shall apply to changes authorized by the Director, the originating agency, the Commissioner or by court order.

8.70 RIGHT OF REVIEW BY PERSONS CONFINED. A person confined to a Vermont, other state or federal institution, resulting from a Vermont conviction, shall have the right to review his record by making application to the Vermont Commissioner of Corrections, through the superintendent, or principal administrator, of the institution in which he is incarcerated.

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(a) The Commissioner of Corrections shall request, in writing, that the Director of VCIC provide a non-certified criminal history record extract for the individual named.

(b) The Director shall, within 72 hours, deliver the record data in person or, by certified mail, to the Commissioner of Corrections.

(c) The rights to challenge and appeal, as defined by sections 8.30 and 8.50, are applicable.

8.80 LIMITATIONS ON FREQUENCY OF ACCESS. The Director of VCIC may impose limitations on the frequency of access under the following conditions.

(a) There have been no system contacts involving the individual since the last review, as far as VCIC records then indicate.

(b) In the opinion of the Director, the frequency of requests by any one individual is excessive and disruptive of regular work schedules at the center.

8.90 RESEARCH AND STATISTICS. The records contained within VCIC may be made available to any criminal justice, non-criminal justice agency or person for research and statistical purposes at the discretion of the Director and Commissioner of Public Safety. Access to VCIC files and records shall be granted under the following conditions.

(a) The information must be reasonably available at VCIC within the existing files and systems of access.

(b) Activity shall be performed at VCIC in accordance with a schedule approved by the Director.

(c) File data will not be removed from VCIC under any circumstances.

(d) No copies of file data will be made under any circumstances.

(e) Information which might describe or otherwise identify, directly or indirectly, any particular person(s) shall not be included in any notes or other material.

(f) The disclosure of privileged information by any person engaged in research and statistical work is prohibited. Violation of the provisions of this Subsection shall result in:

(1) Immediate revocation of access authority.

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### SECTION 9

### JUVENILE RECORDS

9.10 Juvenile offender records shall be excluded from VCIC files, except that, information concerning persons under the age of eighteen years shall be included when the individual is both adjudicated and receives disposition as an adult.

9.20 Arrest and arraignment data, relative to an individual sixteen years of age, but under eighteen years, may be accepted by VCIC for entry into the records system. However, in the event proceedings are subsequently transferred to juvenile court, such information shall be expunged from the system, marked "JUVENILE RECORDS" and forwarded to the court having jurisdiction for proper disposition.

9.30 No criminal history record concerning juveniles, juvenile offenses or acts of delinquency shall be converted from manual to computerized form except that information relating to proceedings in which a juvenile is both adjudicated and receives disposition as an adult shall be converted.

9.40 All juvenile records, which may presently exist within VCIC, and from which the individual's identity is ascertainable, shall be expunged from the system effective with the adoption of these regulations.

9.50 Juvenile data by age, sex and type of offense is not precluded from VCIC. Such information is of statistical value and may be maintained within VCIC for this purpose.

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### SECTION 10            EXPUNGEMENT, SEALING AND EXECUTIVE PARDONS

10.10 VCIC procedures, pursuant to the receipt of a court ordered expungement or sealing order, or an executive pardon, are dependent upon the content of such order or pardon.

10.20 FORWARDING DELETED RECORDS. All deleted materials shall be forwarded in a single package by registered mail, return receipt requested, deliver to addressee only to:

(a) The court issuing the order in cases of expungement sealing order, or;

(b) The Governor's Office in cases of executive pardon.

10.30 VCIC shall respond to all further inquiries with respect to the offense(s) subject to the expungement, sealing order or executive pardon, NO RECORD.

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### SECTION 11

### REPORTING REQUIREMENTS

11.10 Reporting agencies, shall be courts and criminal justice agencies as such are defined in Section 4.10(h) (1) and (2). The forms and documents required are:

- (a) Incident/Offense Report (§ 4.10 (a)).
- (b) Arrest/Arraignment Report (§ 4.10 (b)).
- (c) Disposition Report (§ 4.10(c)).

(d) Fingerprints shall be required in every instance of the arrest of an individual for any offense, the maximum sentence for which, by Vermont Statute, is one year or longer or the maximum fine is \$100.00 or more. Motor vehicle offenses are excluded except operation without consent of owner; careless and negligent driving death resulting; leaving the scene of an accident; driving under the influence of alcohol or any other drug, which are covered offenses within the context of this section. Additionally, fingerprints shall be taken in every instance of individuals apprehended as fugitives from justice and in every case involving incarceration. One of each original completed fingerprint card shall be forwarded to the VCIC with the arrest/arraignment report within 10 working days following arraignment of the subject. The Director shall be responsible for distribution of materials so received. The Director shall be responsible for processing all R-84 fingerprint record forms in cases of conviction and shall provide arresting agencies with a copy of the disposition report in every instance. Nothing in this section shall be construed as a prohibition against the retention of duplicate materials or copies of materials which the arresting agency has determined to be vital or essential to its system of records. It is recommended that photographs(mugshots) accompany reports of arrest and arraignment and fingerprint cards when ever possible.

(e) Parole termination shall be reported to the VCIC by the Commissioner of the Department of Corrections within 10 working days of the effective date of such action. Minimum data elements shall be:

- (1) Name of person (first name, middle name, last name)
- (2) Date of birth.
- (3) Date of termination.
- (4) Type of termination(expiration or revocation).

(f) Probation termination (see section 4.10(f)).

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- (g) Release from incarceration or parole (see section 4.10(F))
- (h) Reports of persons missing. Such reports shall be on forms provided by the Director.
- (i) Reports of persons wanted shall be on forms provided by the Director.
- (j) Reports of property stolen shall be on forms provided by the Director.

11.20 TIME REQUIREMENTS. Unless otherwise specified, all reports and documents required for submission to the VCIC shall be forwarded within ten (10) working days from date of transaction. Pre-trial confinements will be reported on the arrest/arraignment report; confinement for lack of bail and persons released on probation by the court shall be reported on the disposition report.

11.30 INCIDENT/OFFENSE REPORTS shall be submitted to the VCIC relative to each occurrence of crimes falling within the following classifications:

- (a) Criminal Homicide:
  - (1) Murder and nonnegligent manslaughter
  - (2) Manslaughter by negligence
- (b) Forcible Rape:
  - (1) Rape by force
  - (2) Attempts to commit forcible rape
- (c) Robbery:
  - (1) Firearm
  - (2) Knife or cutting instrument
  - (3) Other dangerous weapon
  - (4) Strong-arm (i.e., fist, feet, hands).
- (d) Aggravated assault:
  - (1) Firearm
  - (2) Knife or cutting instrument
  - (3) Other dangerous weapon
  - (4) Hands, feet, fist - aggravated injury
- (e) Burglary:
  - (1) Forcible entry
  - (2) Unlawful entry - no force
  - (3) Attempted forcible entry
- (f) Larceny - Theft (except motor vehicle theft)
- (g) Motor vehicle theft:
  - (1) Autos
  - (2) Trucks and buses
  - (3) Other vehicles
- (h) Other assaults which do not result in serious or aggravated injury to the victim.
  - (1) Simple assault
  - (2) Minor assault
  - (3) Assault and battery
  - (4) Injury by culpable negligence
  - (5) Resisting or obstructing an officer

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- (6) Intimidation
- (7) Coercion
- (8) Hazing
- (9) All attempts to commit above
- (i) Arson
- (j) Forgery and counterfeiting
- (k) Fraud
- (l) Embezzlement
- (m) Stolen property including buying, receiving, possessing as well as attempts.
- (n) Vandalism
- (o) Weapons, carrying, possessing; generally regulatory offenses
- (p) Prostitution
- (q) Sex Offenses:
  - (1) Adultery and fornication
  - (2) Incest
  - (3) Indecent exposure
  - (4) Indecent liberties
  - (5) Seduction
  - (6) Sodomy
  - (7) Statutory rape (no force)
- (r) Narcotic drug law violations
- (s) Gambling:
  - (1) Bookmaking
  - (2) Numbers, lottery
  - (3) All other
- (t) Offenses against the family and children:
  - (1) Desertion, abandonment or nonsupport of wife or children.
  - (2) Neglect or child abuse
  - (3) Nonpayment of alimony
- (u) Driving under the influence of alcohol or any other drug
- (v) Liquor law violations
- (w) Disorderly conduct
- (x) All other statutory violations not otherwise included in the above.

11.40 QUALITY CONTROL. Each agency required to submit reports and other documents to VCIC shall ensure that:

- (a) All materials are clearly legible and suitable for microfilming or other reproduction as required by the Director.
- (b) Information submitted is both accurate and complete.
- (c) Person identification is accurate and complete.
- (d) Time frames for submission are strictly observed.

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### SECTION 12 INVESTIGATIVE REPORTS

12.10 Reports of the investigation and detection of crime are not a requirement for VCIC files and records.

(a) Exception: Fire investigations conducted by the Department of Public Safety as a function of the office of State Fire Marshal (20 VSA § 2681, 2635, 2831, and 2833) shall be forwarded to VCIC for processing (statistical data) and file storage.

(b) Fire investigation reports may be disseminated by VCIC in accordance with 20 VSA § 1815, except that:

(1) In no instance will a fire investigation report be released in a criminal case until prosecution, if any, has been completed, unless:

(2) Written consent from the prosecuting attorney having jurisdiction in the case has been provided the Director of VCIC or:

(3) A court order directing the release of information is obtained.

12.11 INDIVIDUAL REVIEWS PROHIBITED. Fire investigation reports shall not be subject to individual review as defined in Section 8 of these regulations.

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### SECTION 13            SANCTIONS - EMPLOYEE REQUIREMENTS

13.10 NON-COMPLIANCE Failure to comply with the provisions of these regulations, after notice of failure to comply, shall subject the agency, department or law enforcement officer to the provisions of Title 20 VSA § 2054(b).

13.20 UNAUTHORIZED DISCLOSURE of criminal history record information by an employee of VCIC or other employee of the Department of Public Safety, shall be cause for dismissal, subject to existing State personal regulations, the Vermont State Employees Labor Relations Act and state employee labor contracts in effect at the time.

13.21 UNAUTHORIZED DISCLOSURE of criminal history record information by criminal justice agencies (or agents or employees thereof) shall be cause for the suspension of that agency's access privileges.

(a) Such suspension, if invoked, shall remain in effect until the agency has satisfied the Director that appropriate corrective action has been taken. Notification of action taken shall be in writing to the Director. If suspension of access has not been invoked and the agency has failed to notify the Director of corrective action within 14 working days of the Director's notice to the agency of a disclosure violation, suspension shall be mandatory for a period of not less than 30 consecutive days, and shall continue in effect until the Director has been satisfied as to the corrective action taken by the agency.

(1) The Director shall cause to be published monthly a listing of agencies suspended or reinstated.

(b) Should an agency, suspended per 13.21 (a), feel that such action is unwarranted or has been unduly extended despite attempts to satisfy the Director's requirement for corrective action, the agency may appeal the matter to the Commissioner.

(c) Second offense disclosure violation within a calendar year (January-December) by any criminal justice agency shall be cause for immediate suspension of access privileges and the matter shall be referred to the Attorney General for appropriate action. Notification shall be in writing to the agency with a copy to the Attorney General. Reinstatement of access privileges shall occur only upon notification to the Director by the Attorney General that the matter has been resolved to the satisfaction of the State.

(d) An agency whose privilege of access to VCIC record information has been suspended is not relieved of reporting responsibilities during the suspension period.

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13.22 UNAUTHORIZED DISCLOSURE\* by NON-CRIMINAL justice agencies shall subject such agencies to the same procedures as outlined in 13.21(a) (d) above.

13.30 VCIC EMPLOYMENT - CRIMINAL RECORDS CHECK. The Personnel Officer of the Department of Public Safety shall, prior to employment of any person within VCIC, inform the applicant, candidate or transferee that a criminal records check will be required. Upon notification to the individual that a record check will be made, he/she may decline employment within VCIC without prejudice to availability elsewhere in state government. No notation shall be made upon their application for employment.

13.31 DENIAL OF EMPLOYMENT WITHIN VCIC: Employment within the VCIC may be denied to certain individuals, if, in the opinion of the Director of VCIC, and upon examination of the applicant's background, there exists a reasonable concern for information security should the person be employed.

13.32 Denial of employment within VCIC shall be mandatory in cases where there has been a conviction at the time for the following offenses, or there has been an arrest pending disposition involving:

- (a) Perjury
- (b) Murder
- (c) Sex Crime
- (d) Robbery with a weapon
- (e) Assault with a weapon
- (f) Arson, including bombing threats

13.33 Denial of employment based on convictions for, or arrests pending disposition of other criminal acts, will be considered and evaluated on a case by case basis. (Minor traffic violations excluded.)

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\* See Section 4.10(P)

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### SECTION 14 USER REQUIREMENTS AND RECORDS

14.10 All agencies who obtain criminal history record information from the VCIC shall maintain a record of such requests as follows:\*

- (a) Date of request
- (b) Name of person (employee) making the request
- (c) Reason for the request
- (d) Names and addresses of all persons and agencies to whom criminal record information obtained from VCIC was given and the reason .

14.20 The director of VCIC shall provide record forms to all using agencies and shall compile a list of such user agencies for the purpose of information dissemination use audits.

14.30 Requesting agencies shall maintain request records (or forms) on a calendar year basis and each form, record or set of forms or records, shall be maintained by the using agency for a period of three (3) years from the year-date of such form or record.

(a) Requesting agencies shall make any such form or record, as defined in this section of the regulations, available for audit or inspection by the Director of VCIC or his authorized representative upon request.

(b) The Director of VCIC or the Commissioner of Public Safety may, for the purposes of audit, direct by letter authority any employee of the Department of Public Safety to perform the audit function.

(c) Any using agency may refuse to disclose any record of dissemination to any person who does not have in his/her possession such letter authority excuted by the Director of VCIC or the Commissioner of Public Safety.

14.40 Any agency or employee thereof, who is found to have violated the provisions of these regulations with respect to unauthorized disclosure, shall be subject to the sanctions defined by Section 13.

\*Any record obtained from VCIC which has been identified as NONCONVICTION data shall be clearly marked on the record form.