

**WHAT MUNICIPALITIES AND PUBLIC ENTITIES
SHOULD KNOW ABOUT
CORI REFORM IN MASSACHUSETTS
WEBINAR**

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Background

- In 2010, the Legislature passed what was colloquially known as "CORI Reform" legislation, Chapter 256 of the Acts of 2010. This included the Massachusetts Civil Fingerprinting statute, as now codified in G.L. c. 6, s. 172B 1/2.
- Some parts of the reform legislation took effect in 2010; others did not take effect until May 4, 2012.
- On May 25, 2012, the Department of Criminal Justice Information Systems ("DCJIS," formerly the Criminal History Systems Board) issued lengthy regulations implementing the CORI Reform legislation.



What is CORI?

“CORI”, or **Criminal Offender Record Information**, consists of records and data in any communicable form compiled by a Massachusetts criminal justice agency about an identifiable individual that relate to:

- Nature or disposition of a criminal charge
- An arrest
- A pretrial proceeding
- Other judicial proceedings
- Sentencing
- Incarceration
- Rehabilitation
- Release



What is NOT CORI?

• CORI is **NOT** →

- juvenile (under age 17) criminal history information unless the juvenile was charged as an adult
- information about offenses that are not punishable by incarceration
- “public records” under G.L. c. 4, § 7(26)
- police daily logs under G.L. c. 41, § 98F
- published records of public court, administrative, judicial, or legislative proceedings
- federal criminal record information
- “anything otherwise excluded by law”

**this listing is not comprehensive. See 803 CMR 2.03(5)*



What is “iCORI”?



• “iCORI” is the new online CORI database administered by the state Department of Criminal Justice Information Systems (DCJIS), under the Executive Office of Public Safety and Security (the Criminal History Systems Board has been eliminated)

- information contained in the iCORI database is provided by the Trial Court to DCJIS. Trial Court staff provide the information electronically to DCJIS on a daily basis
- DCJIS cannot change the information provided by the Trial Court
- persons and organizations authorized the access CORI can run “real-time” CORI checks through the iCORI database



Who can access CORI?

- There are different “levels” of access to CORI, depending upon the nature of the entity or individual seeking CORI, and the purpose for which it will be used
 - Municipalities and other public sector entities may access CORI for employment, licensing, and housing purposes



What Does CORI Access Include?

- Generally, CORI access will include:
 - All pending criminal charges, including cases continued without a finding until dismissed
 - Dismissed charges, charges “continued without a finding” or “*nolle prosequi*”, will **NOT** appear on a CORI report
 - All misdemeanor convictions for 5 years following date of disposition or date of release from incarceration, whichever is later
 - All felony convictions for 10 years following date of disposition or date of release from incarceration, whichever is later
 - All convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses



What Does CORI Access Include?

- Certain types of organizations, such as **public schools, councils on aging, and camps for children**, will also have access to additional information, including information on dismissed charges
- Individuals may access their own CORI; however, an organization **cannot** ask an individual to supply his/her CORI



Overview - Important Highlights

- The so-called “**ban the box**” provision, which took effect November 4, 2010, prohibits employers from including on most employment applications questions concerning an applicant’s criminal history
- Significant changes in how a government entity accesses CORI information, with the state’s creation of the “**iCORI**” database, administered by DCJIS
- Required **adoption of a CORI policy** if you run five or more criminal background checks annually



Overview - Important Highlights

- **Mandated notification** to individuals of their CORI information **prior to making an adverse decision** based upon the results of the CORI check
- Specific requirements about **how CORI is stored and destroyed**
- The creation of the **Criminal Record Review Board**, to review and adjudicate complaints of improper disclosures of CORI or other violations of the CORI statutes and regulations
- **Increased penalties** for improper disclosure of CORI, including personal civil and criminal liability



CORI Policy Requirements

- If you conduct **five or more** criminal background checks annually, you must have a CORI policy.
 - We recommend that you adopt a CORI policy **regardless of the number of criminal background checks you conduct annually.**
- DCJIS has a model policy, available at: <http://www.mass.gov/eopss/docs/chsb/dcjis-model-cori-policy-may-2012.pdf>.
 - **Alternatively, we have developed a model policy, and if you would like further information or a copy of this model policy, please contact us.**



Who Can Access CORI?

KEY INQUIRY IS WHO IS AUTHORIZED AND WHO HAS A "NEED TO KNOW"

- One of the most significant changes is the expansion of who may access and/or view CORI information
 - No longer is each person who will access/view CORI information required to be "CORI Certified"
 - Each organization must have at least one "CORI Representative", and may have one or more "Organization Users"
 - Aside from the CORI Representative or an Organization User, CORI may be disseminated within an organization only to those persons with a "need to know."
 - Who has a "need to know" will vary depending upon the situation.



"CORI Representative" / "Organization User"

- **CORI Representative:** The person responsible for maintaining the organization's iCORI account and for receiving iCORI notifications.
 - The CORI Representative will need to review the iCORI training documents annually, and ensure that the Organization Users have also reviewed the training documents.
- **Organization User:** An individual with a registered organization who is authorized by the CORI Representative to request and obtain CORI.
 - Organization Users will have their own user names and passwords.



The CORI Regulations- What Can/Cannot Be Done

- As noted, you **cannot** ask an applicant to provide his or her own CORI.
 - We recommend that CORI should only be accessed for applicants who are otherwise qualified and meet all other requirements for the position (or license, or housing) for which they have applied.
 - In other words, you should not run CORI checks on all applicants; CORI checks should be limited to the finalist (or finalists, in appropriate circumstances) for the position, license, or housing.



“Ban the Box”



- Prohibits employers from requesting, on an employment application, that the applicant provide any criminal history/ CORI
 - Took effect November 4, 2010
- Does **not** prevent employers from running CORI checks or asking applicants about information appearing on a CORI check during an interview (subject to some exceptions, discussed in a later slide)



“Ban the Box”



- “Ban the Box” does **not** apply to:
 - Employers with fewer than six employees
 - Positions for which any federal or state law/regulation creates a mandatory or presumption of disqualification based on a criminal conviction; or
 - Where the employer or an affiliate is subject to an obligation imposed by a federal or state law/regulation not to employ individuals convicted of certain crimes in at least one of its positions



When you **MUST** run CORI



- Entities that provide services to the elderly, disabled individuals, or children (such as **at schools, camps, hospitals and government agencies serving these populations**) are required by law to do a CORI check on employees and volunteers who will have direct and unsupervised or unmonitored contact with children/elderly/disabled persons
- Public housing applicants
- CORI checks **are** required for law enforcement applicants, but those CORI checks are not covered by the CORI regulations



When You May Run CORI



- You **may** run a CORI check for other employment positions and certain license applicants
 - whether you should run a CORI check, where permissible but not required to do so, is a policy decision
 - in making that decision, care should be taken to consider the nexus between the position or license at issue and the need for CORI
 - the more CORI you have, the more CORI you have to safeguard
 - **NOTE:** There may be collective bargaining implications



CORI Acknowledgement Forms



- Prior to accessing CORI, you **must** complete a **CORI Acknowledgment Form**, signed by the applicant, and verify the applicant's identity with a government-issued identification.
 - A sample Acknowledgment Form can be found at the DCJIS' website, <http://www.mass.gov/eopss/docs/chsb/fillable-cori-acknowledgement-form-201206.pdf>
 - This Form places individuals on actual notice that you will obtain their CORI and grants you permission to retrieve their CORI.



CORI Acknowledgement Forms



- **Important Note →**
 - For employment and licensing CORI checks, **before** a new CORI check can be run beyond that authorized by the original CORI Acknowledgment Form, you must provide the individual with 72 hours' notice that a new CORI check will be run.
 - If the individual objects to the new CORI check being conducted, the Acknowledgment Form becomes invalid, and you cannot run the new CORI check without first obtaining a "fresh" Acknowledgment Form.



Notification Requirements

Key Provisions: Notice & Opportunity to Dispute

- **Before you make an adverse decision based upon a subject's CORI, you must:**
 - Notify the applicant in person, by telephone, by fax, or by electronic or hard copy correspondence of the potential adverse action (we recommend a written communication)
 - Provide the applicant with a copy of his/her CORI
 - Provide a copy of your CORI Policy, if applicable
 - Identify the information in the applicant's CORI that is the basis for the potential adverse action
 - Provide the applicant with the opportunity to dispute the accuracy of the information contained in the CORI
 - Provide the applicant with a copy of the DCJIS document "Information Regarding the Process for Correcting CORI"
 - Document all steps taken to comply with these requirements



Notification Requirements

Key Provisions: Notice & Opportunity to Dispute

- For **license applicants**, you must also include information regarding the appeal process, including the opportunity to dispute the accuracy of the information contained in the CORI, and for appealing a denial of the license at issue.
- DCJIS has a sample adverse decision notification letter, available at <http://www.mass.gov/eopss/docs/chsb/pdf-model-pre-advers-decision-letter.pdf>.



Evaluating a Positive CORI Report



- The CORI law does not mandate that you make an adverse decision based upon information contained in an individual's CORI report, in any particular situation



Evaluating a Positive CORI Report

Factors to be considered:

1. relevance of the offense(s) noted on the record to the position or license sought, or to public housing
2. the nature of the work to be performed (where applicable)
3. time since the conviction
4. age of the candidate at the time of the offense
5. seriousness and specific circumstances of the offense
6. the number of offenses
7. whether the applicant has pending charges
8. any relevant evidence of rehabilitation or lack thereof, and
9. any other relevant information, including information submitted by the candidate or requested by the organization.



Evaluating a CORI Report

- Where the licensing/appointing authority is governed by the Open Meeting Law, and an open meeting would be required to evaluate the application, if CORI will be discussed, we recommend convening an executive session pursuant to G.L. c. 30A, § 21(a)(1) (with the required advance written notification to the applicant and observing all the individual rights afforded thereunder), or under G.L. c. 30A, § 21(a)(7), as appropriate.

- **Remember**, if you invoke § 21(a)(7), you will need to reference the CORI regulations in your agenda item and motion to go into executive session as the basis for invoking exemption 7



Adverse Decisions

- There is **no** prohibition upon making an adverse decision based upon an individual's refusal to agree to a permissible CORI check.



Accessing CORI

- Users must log into “iCORI” to view results
- Results are available for 6 months
- All information in iCORI reports is confidential
- Individuals may NOT view or access CORI (including an iCORI summary) unless previously authorized by the organization’s CORI Representative.
- The CORI Representative must maintain the name of each individual he/she authorizes to view and access CORI on a list; the CORI Representative is responsible for keeping the list current



Disseminating CORI

- You should **not** be disseminating CORI outside the Organization; within the Organization, CORI should only be provided to those individuals with a “**need to know**”
- If for some reason you have permissibly disseminated CORI outside your organization, a “**secondary dissemination log**” must be maintained
- We take the position that dissemination of CORI to counsel for purposes of seeking legal advice relative to the CORI is probably not a “secondary dissemination,” and that counsel has a “need to know”



Record Keeping & Retention of CORI

- Depending upon the purpose for which a CORI check is done, **there may be different record retention requirements that apply**, derived from the applicable Municipal Records Retention Manual and/or Statewide Records Retention Schedule.

- Please note that under the Public Records Law, permission of the State Supervisor of Public Records (or the state Records Conservation Board, where applicable) must be obtained prior to destruction of any public records.



Record Keeping & Retention of CORI

- You **must** keep a CORI Acknowledgment Form, under applicable Public Records laws and regulations
- Although the CORI regulations require only that the Acknowledgment Forms be maintained for a **minimum** of one (1) year, we recommend that they be kept for at least three (3) years



Retention & Destruction of CORI

We recommend that CORI (including CORI Acknowledgment Forms) be retained at least three (3) years, but no longer than seven (7) years from the date of:

- Employment:** the date of employment or volunteer service, or from the date of the final employment decision on the individual's application, whichever is later
- Licensing:** the date of the final licensing decision (including the exhaustion of any appeals)
- Housing:** the last date of residency of the housing applicant, or from the date of the final housing decision on the individual's application, whichever is later



Destruction of CORI

- Hard copy "paper" CORI must be destroyed by "shredding or otherwise" prior to disposal
- Electronically-stored CORI must be deleted from the computer(s) and any system backups
- You cannot store CORI on "cloud" servers



Additional Considerations

- Distinct from CORI requirements, there are additional restrictions contained in the state's **anti-discrimination law**, G.L. c. 151B, § 4(9) and § 4(9½), **which apply to all public employers, regardless of size.**



Additional Considerations

- **In addition to the “ban the box” prohibitions,** employers are precluded from:
 - asking any applicant or current employee about a prior arrest, detention or disposition that did not result in a conviction
 - asking any applicant or current employee about a prior first conviction for a variety of misdemeanor offenses, or about convictions on misdemeanor charges occurring more than 5 years prior
 - asking any applicant or current employee about sealed records or juvenile offenses



CORI Enforcement and Penalties

- Improper dissemination/disclosure of CORI carries with it serious penalties (G.L. c. 6, § 177)



- Fines up to \$5,000 for individuals
- Fines up to \$50,000 for organizations
- Criminal penalties including incarceration
- Individuals may now be held personally liable for CORI violations
- Civil court action for monetary damages, including attorneys' fees

CRRB handles complaints for CORI violations



Take Away Points→



- Adopt an updated CORI Policy
- Train staff that accesses or uses CORI on current CORI policies and legal requirements
- Ensure that records that include CORI are maintained in a confidential and secure fashion and destroyed securely, according to applicable state retention requirements
- Provide notice and an opportunity to dispute CORI findings to license, employment or housing applicants



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