

The
CORI
Reader

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Introduction

This paper is intended to be a useful and understandable -- but abbreviated and short -- explanation of the law, structure, policies and practices relating to criminal records in Massachusetts. The main statute uses the term "criminal offender record information," which most people refer to by its acronym, "CORI."¹

¹ Certain other statutes do not use the term "criminal offender record information" but are relevant to the subject matter of this paper and may be discussed.

We have written the paper pretty much for the benefit, and from the point of view, of a person who has a criminal record (which we sometimes refer to as a "CORI subject") or for the benefit of people who are trying to help CORI subjects cope with having CORI. We assume that most of the readers will not be lawyers. But we have put legal citations in footnotes, which might prove to be helpful to lawyers and other legal advocates. If you don't like footnotes, just don't read them!

This continues to be a work in progress. If any reader has one or more suggestions on how it could be improved, please tell us.

What Is CORI and Where Does One Get It?

CORI is the shorthand nickname for "criminal offender record information," the body of *Massachusetts* criminal records information which is kept by the state in a computer at the headquarters of, and presided over by, the Criminal History Systems Board (CHSB), 200 Arlington St., Chelsea, MA 02150 (617-660-4600). There is also a web site from which people with computers having internet access can get information and download forms -- <http://www.mass.gov/chsb>.

CORI consists of information generated by the criminal justice system relating to one or more criminal charges (which are formal accusations) of crimes punishable by incarceration. CORI might best be described as "way station" information on the history of each criminal case, from arrest, through court proceedings and non-guilty outcome or guilty outcome, which might include a fine, probation, incarceration, discharge, parole and discharge from parole -- whatever happens to be applicable to each charge. That is how CORI is defined in the statute.²

But, in actual practice, the only part of this information which is kept on the "CORI computer" at the CHSB headquarters in Chelsea is court-generated information, and the CHSB's data base has nothing about arrests or when the person was released from jail or prison or discharged from parole. And hence any "CORI report" that the CHSB issues to a CORI-approved organization or person contains *only* this *court-generated information*.

If a requester wants non-court-generated CORI, the requester must request that part of CORI from the criminal justice agency which created it, be it state or local police, county houses of correction, state prisons, or the Parole Board. There is no clear law, however, which compels those agencies to supply the information. (However, see footnote 44 on page 14.)

What Is the Purpose of CORI?

When the CORI law was originally put on the books in the early '70s, stimulated by the availability of federal money, there were two purposes: (1) to make the criminal justice system more efficient, by putting criminal records "on line," so that they would be instantly available to police, prosecutors, probation officers, judges and other functionaries, and (2) to safeguard the privacy of the CORI subjects, so that this obviously embarrassing and damaging information about them would get into the hands of only people with a clear need to know the information.

In the course of the last 30 years or so, the law enforcement-efficiency purpose has persisted and been morphed, it sometimes seems, into unthinking "tough-on-crime-ism;" but the privacy purpose has been increasingly restricted, by statutory changes, regulations, actions and policies of the executive branch and discretionary decision-making of the CHSB.

² General Laws, Chapter 6, Section 167. (Further statutory references will be shown in an abbreviated way -- the citation just given is abbreviated as G.L. c. 6, § 167.)

Who Is Allowed to See CORI?

By statute various organizations (or possibly individual persons) may have access to CORI, but, in many situations, the CHSB issues a separate certification to each.³ Those allowed access are:

1. Criminal justice agencies,⁴ a term which means what it says -- police, prosecutors, judges, probation and parole officers and officials of county Houses of Correction and state Correctional Institutions. With respect to courts with criminal jurisdiction and state and local police, the criminal justice agency has its own computer terminal, so that the agency can get right into the CORI computer's data base.⁵ Criminal justice agencies and "appointing authorities," will get an indication of the existence of a sealed record, if there is one, , e.g., "(There is at least one adult sealed record on file.)" – and, if they do, they may then seek a court order to unseal the record long enough for the officials to take a look. But other persons or organizations receiving a CORI report on a person are not meant to get any such indication.⁶

2. Other agencies & individuals required to have access by other statutes.⁷ The typical example here is a local liquor control commission, which must not award a liquor license to anyone convicted of certain alcohol-related crimes.

3. Anyone (organization or person) upon a showing that the public interest in disclosure outweighs the CORI subject's privacy interest in non-disclosure.⁸ This is done by the CHSB on an individualized basis. Typically these organizations see records only of cases that ended in conviction or are still pending.⁹

In the early days of the law, these certifications were grudgingly given -- no housing authority, for instance, was ever able to make the case for its access! No longer. As of this edition of the **Reader**, there were approximately 10,000 organizations certified for access to CORI.¹⁰ Current estimates by CHSB staff are that the agency processes between 1.4 and 1.5

³ Under c. 6, § 172 the Board is given such power; whereas under some later-enacted provisions, e.g., §§ 172D (child-support enforcement [IVD] agency access), 172E (long term care facility access) and 172F (Office of Child Care Services access), the access seems to be granted directly by the statutes themselves.

⁴ G.L. c. 6, § 172, clause (a).

⁵ The technical name for this data base is the Probation Central File, often also called the CARI (for Court Activity Record Information) or the BOP (for Board of Probation, which probably existed at one time). The CHSB staff draw information for CORI reports from this data base and are meant to filter out the non-conviction cases, e.g., when preparing a CORI report for a public housing authority or most employers.

⁶ This practice follows directions to the Commissioner of Probation in one of the record sealing statutes, G.L. c. 276, § 100A, 6th [unnumbered] paragraph. An "appointing authority" is defined, in c. 4 § 7, clause Second-A, to include, where relevant, the official or body in municipal government having power to appoint other officials; but the meaning for the sealing statute may be broader and encompass high level appointers throughout state government.

⁷ G.L. c. 6, § 172, clause (b).

⁸ G.L. c. 6, § 172, clause (c).

⁹ This practice seems to be in accord with former CHSB Regulations, 803 CMR §§ 7.02 and 7.03, which were *eliminated* in succeeding regulations which became effective when published on 12/31/04 in the Mass.Register No. 1016 Also, see text below on access by long term care facilities and related footnote 14.

¹⁰ MLRI received from the CHSB a list of accessor organizations in March 2003.

million CORI requests per year.¹¹ Most people and organizations which have access to CORI (that is, "CORI accessors") get such access by having gone through this certification process.

4. Specially legislatively authorized (mostly government) agencies, which currently include:

- *Housing authorities* for the purpose of screening applicants for either public housing¹² or subsidized (including Section 8) private housing.¹³ Housing authorities are able to get CORI as to cases ending in conviction or where they are still pending (no matter how old).

- *Long term care facilities (nursing homes)* for screening an applicant for, or any current employee in, "a position that involves the provision of direct personal care . . . of residents."¹⁴ The facility is to obtain "all available" CORI, which the CHSB has interpreted to mean not just pending cases and those ending in convictions but also those ending more or less favorably for the defendant. These include cases where there is a clear exoneration, as by a "No Probable Cause" pre-trial ruling by a judge or a "Not Guilty" finding or verdict by a judge or jury after trial. But our use of the term "favorably ending" cases also includes those cases where the defendant was *not* clearly exonerated, but neither was he or she found guilty or punished by a fine, probation or incarceration. Very often such cases end with a Dismissal or a "*Nolle Prosequi*," which is a filing by the prosecutor stating that he or she does not wish to prosecute the case. The "all available" CORI language and its interpretation by the CHSB pretty clearly fly in the face of the ancient Anglo-American maxim that a person is to be deemed innocent until proven guilty.

- *Mass. Departments of Social Services and Youth Services* for evaluating foster and adoptive homes¹⁵ but *not* for the purpose of hiring. These agencies may get "conviction data, arrest data, sealed record data, and juvenile arrest and conviction data."

- *Office of Child Care Services* for evaluating (for licensing purposes) any child care facility or program, public or private, or "any non-relative in-home child care provider" which or who receives government funding.¹⁶ The type of CORI it can get is the same as for DSS and DYS for evaluating foster and adoptive homes.

- *Mass. Dept. of Revenue's Child Support Enforcement Division ("Title IV-D agency")* for establishing paternity and otherwise seeking to enforce child support obligations and protect children from violence.¹⁷ The IV-D agency may get all that OCCS can get and also information on incarceration and rehabilitation, including

¹¹ Conversations in early 2005 with staff of both CHSB and an independent non-profit organization studying the effects of CORI. Note that, assuming 264 work days in a year, the CHSB would appear to send out over 5,000 CORI reports each working day.

¹² G.L. c. 6, § 168, 3d ¶, 3d sentence.

¹³ By Board certification, under § 172, clause (c), originally issued 11/11/92 and amended and reissued on 11/19/97. See also CHSB Regulations, 803 CMR §5.03, dated 12/31/04.

¹⁴ G.L. c. 6, § 172E.

¹⁵ G.L. c. 6, § 172B.

¹⁶ G.L. c 6, § 172F. This statute came into the law books by way of an "outside section" to the state Appropriation Act for Fiscal Year 2000, SEC. 11 of c. 127 of the Acts of 1999, which became effective 7/1/99.

¹⁷ G.L. c. 6, § 172D.

"evaluative information" (which consists of psychological and behavioral assessments by criminal justice system agents); it may also get information from "interstate systems," from the "warrant management system" and "data in the statewide domestic violence record keeping system maintained by the commissioner of probation."

- *Schools, camps and other children-serving organizations.* Chapter 385 of the Acts of 2002 added further accessors to CORI and mandates for CORI checks.

It inserted a new § 172G in chapter 6 of the General Laws giving operators of children's camps not only access to CORI, including "juvenile data," but a mandate to do CORI checks on prospective employees and volunteers. It also gives access to "court activity record information" (CARI), which (as noted above in footnote 5 on pg 4) is the central data base maintained by the Office of the Commissioner of Probation and used by law enforcement. It includes both conviction and non-conviction cases and information about the existence of sealed records, if any.

Chapter 385 also inserted a new § 172H giving (other) organizations which run programs for children "18 years of age or less" similar access and mandates, except there is no direction to get juvenile data or access to CARI.

It also inserted a new § 172I, requiring taxicab companies which have contracts with schools for transporting pupils to send the names of affected to drivers to the schools, so the schools may do CORI checks on them.

And it amended the school CORI law, § 38R of G.L. c. 71, which, before amendment, gave school committees and superintendents access to CORI for screening prospective employees. The chapter 385 amendment changed this law to give the schools access to "all available" CORI, which, in this context, includes charges which ended favorably for the CORI subject but does *not* include juvenile data or any indication of the existence of a sealed record.

But the law *mandates* CORI checks; and it requires they be done not just of prospective employees but of *all present and prospective employees and volunteers*. This latter provision has stimulated many, if not most, school committees to ask every parent of a school child in the city or town to submit to a CORI check!

5. A victim of crime, witness or family member of a homicide victim, to see the CORI of the perpetrator, upon individual certification by the CHSB.¹⁸ Further, criminal justice agencies may disclose to such people other information, including evaluative information, if "reasonably necessary for the security and well-being of such persons."

6. Any member of the general public, when the "CORI curtain is up."¹⁹ This is complicated. The general public does not have access to most CORI, most of the time. For them, the "CORI curtain" is down. But this is not true when the curtain is up as to a particular CORI subject, and then the general public may get the CORI of that person. The curtain is up in situations where the CORI subject has been either --

(a) convicted of a crime for which the maximum possible imprisonment is 5 years or more, whatever the sentence he or she actually gets (even just a fine or probation), or

¹⁸ G.L. c. 6, § 178A.

¹⁹ § 172, 7th paragraph.

(b) is convicted of any crime and sentenced to *incarceration*.

In either of these situations, right at the point of conviction, the curtain stays up, and the public may see the CORI, if, at the time the request for CORI is made:

- the CORI subject is serving a sentence of incarceration, or is under probation or parole supervision, or
- having been convicted of a misdemeanor (a crime for which the maximum allowable sentence is 2-1/2 years in a county house of correction), he or she has been released from all custody or supervision for 1 year or less time, or
- having been convicted of a felony (a crime for which the maximum allowable sentence is more than 2-1/2 years), he or she has been released from all custody or supervision for 2 years or less time, or
- having been convicted of a felony, sentenced to a state prison and having "wrapped up" in prison (either having been denied parole or returned to prison for a parole violation), he or she has been released from custody for 3 years or less time.

7. The CORI subject himself or herself.²⁰ A person can get his or her own CORI by filling out, having notarized and sending in a personal CORI request form, a copy of which is attached as item [A] in the Appendices and which can also be obtained by calling the CHSB or going to its web site. There is now a fee of \$25, unless the personal requester is indigent and also gets, fills out and sends in an affidavit of indigency modeled on the waiver provision for low-income parties in Massachusetts courts.²¹

The CORI report which a *CORI subject* gets *should* contain, not only pending cases and those ending in conviction (which most CORI outside accessors are meant to get), but also information on cases which ended favorably to the CORI subject (with Not Guilty, Dismissal, etc.) and an indication, if it is so, that there is at least one sealed record on file. Most outside accessors should *not* get this information. That is what the CHSB regulations provided until the start of 2005.²²

Actual practices of the CHSB may differ from what the regulations provide. We know of instances where CORI accessors have received CORI reports containing an indication that there is "at least one sealed record on file"; and we know of a recent instance where a CORI subject who had gotten her record sealed and thereafter got new CORI report on herself, which no longer gave any indication that that record existed.

Who is *Required* to See CORI?

As we have seen above (pg 4), criminal justice agencies and other government agencies by *other* laws, may be required to check criminal records; and most of the earlier parts of the CORI statute lay out who may and may not *have access to* CORI. However, more recent enactments have gone beyond giving access and also *mandate* that CORI checks be done.

²⁰ G.L. c. 6, § 175, 1st sentence.

²¹ G.L. c. 6, § 175A, as amended by SEC. 11 of c. 26 of the Acts of 2003 (the FY '04 Appropriation Act). Copies of both the Personal CORI Request form and the Affidavit of Indigency form are in Appendix A.

²² 803 CMR §§ 7.02 and 7.03, which were eliminated in late 2004. See paragraph 3 on page 4 and related footnote 9. But see also item [G] in the Appendix, clause c) in the boldfaced area.

One such section *requires* that a broad class of governmental and private social service agencies not only are given access to CORI but **must do a CORI check** before hiring, or taking on as a volunteer, anyone who "will have any direct or indirect contact" with a client who is elderly (60 or older) or is disabled so as to be wholly or partially dependent on others to meet daily living needs.²³

Further, as noted above on pg 6, chapter 385 of the Acts of 2002 inserted new access provisions and CORI check *mandates* for organizations serving children.

May an Employer Ask an Applicant about CORI?

Yes; but employers may *not* ask certain questions.

The state anti-discrimination statute has provisions which forbid an employer "in any . . . matter relating to the employment of any person" to ask the applicant or employee about (i) an arrest or court proceeding where no conviction resulted, (ii) a first conviction of certain minor misdemeanors: drunkenness, simple assault, speeding or minor traffic violations, affray²⁴ or disturbance of the peace; or (iii) conviction of a misdemeanor where the date of conviction, or the end of incarceration, whichever is later, occurred 5 or more years (without intervening convictions) before the request.²⁵

There are two problems with this law. The first is that what is forbidden is that the employer *ask the applicant or employee about* certain criminal involvement. But, according to a decision of the Supreme Judicial Court, the state's highest court, if the employer gets the seemingly forbidden information from some *other source*, and uses it to take adverse action against the person, the law is not violated.²⁶

The second problem is that employers don't generally even think about asking the forbidden questions. But what many of them *do ask* is *whether or not the applicant has ever been convicted of a felony*. This can be a perilous question to answer: unless the applicant *knows* the answer, it is wisest for him or her to say she does not know.²⁷ If she says No, and the CORI report shows the answer should have been Yes, her wrong answer may eliminate the applicant from consideration for lying in the application process. But if she says Yes, when the truth may be No, she may eliminate herself from consideration before the employer even seeks a CORI report.

However, an employer or other gate-keeper may not ask an applicant to get a copy of her own CORI and bring it to the gate-keeper. A hard-to-find sentence in the CORI law itself also forbids an employer (or any other power-holder with respect to an applicant) to "request or require a person to provide a copy of his criminal offender record information."²⁸ A violation of this provision may be the subject of a complaint to the CHSB under 803 CMR 6.06(6), and we know of at least one instance where the Board imposed sanctions on the employer. This statutory

²³ G.L. c. 6, § 172C. This should not be confused with § 172 clause (c), which is often referred to, even by the CHSB, as "§ 172(c)."

²⁴ Fighting by mutual consent of 2 or more persons in a public place to the terror of onlookers. *Black's Law Dictionary*.

²⁵ G.L. c. 151B, § 4, subsection 9, 1st paragraph. The CORI subject's remedy for a violation is an administrative or judicial one under c. 151B.

²⁶ *Bynes v. School Committee of Boston*, 411 Mass. 264 (1991).

²⁷ The distinction between a misdemeanor and a felony is briefly noted in the 2d and 3d bullets on pg 7.

²⁸ G.L. c. 6, § 172, 5th paragraph, 3d sentence.

provision has proven, however, to be of diminishing significance since more and more employers are getting direct access to CORI; and all that the CORI law and CHSB require is that in making such a direct request, the requester get the CORI subject's signature on the requesting form, acknowledging that a request will be made and attesting to the accuracy of his or her identifying information.²⁹

Since there is a chance that the CORI report the employer gets may be different, in a bad way, from the CORI report the CORI subject has gotten on herself, a job applicant who knows he or she has CORI, when asked to sign an acknowledgment form, should *ask the employer to agree to share the CORI report the employer gets with the CORI subject*. This may be the most opportune time to open up the chance of getting some "due process" in the employer's decision-making after he, she or it gets the CORI report.³⁰

How Can Having CORI Hurt a CORI Subject?

To some extent, of course, the answer is obvious. But we think it useful to note some of the general problems of having CORI and to highlight a recent, quite specific, government policy which has been particularly hurtful to a lot of people who have turned their lives around and want not only to "make it" in the straight world but want to help others who may be in -- and wanting to get out of -- a life of alcohol abuse, drugs and/or other crime.

There Are Many General Dangers in the Use of CORI, including that it:

- **Causes delay** in any screening process, sometimes so great that the applicant has to give up and try elsewhere;³¹

- **Is often very difficult to read and understand**, with one apparent effect that power holders who see a CORI report with many entries (which sometimes all relate to the same crime) often conclude, without further study or investigation, that the CORI subject has a long criminal record and should not be hired, given housing, a loan, insurance, etc.;

- **Is often inaccurate**, in part because court clerks and probation officers make mistakes which are sometimes not discovered until years later when the mistake comes out in a CORI report; in part because the CHSB staff does not have, or does not take, the time to do visual reviews of what the CORI computer produces from the only two CORI-subject-identifying data elements it checks, name and date of birth (see footnote 29); and in part because its name/date-of-birth-based system is not backed up by fingerprints, photographs or other identifiers which are not dependent on the name a person gives upon arrest or arraignment. The result is that CORI reports sometimes match the CORI of

²⁹ G.L. c. 6, § 172, 5th paragraph, 4th sentence. The identifying information consists of the **person's full name, maiden name or alias**, if any, address, **date of birth**, social security number (if the person is willing to give it) and a listing of any state the person has lived in over the past 10 years. *Interestingly, only the data elements here boldfaced are "search fields" within the CORI computer.* But the Central Probation File for a person, which is the source of the CORI report, contains information on the person's father's name, mother's name and social security number.

³⁰ In the Fiscal Year 2005 Budget, c. 149 of the Acts of 2004, a proviso was attached to the line item for the CHSB, directing it to adopt regulations as to four matters, one of which was to "require that any entity other than a criminal justice agency that receives a criminal offender record information report from the board as to an individual and, as a result of that report, is inclined to make an adverse decision as to the individual, shall, before making a final decision, afford the individual an opportunity to dispute the accuracy and relevance of the criminal offender record information report; . . ." The proviso is in the Appendix as item [G].

³¹ See discussion on pg 4 about the number of CORI requests that come in to the CHSB.

person A with person B, and vice versa. All of this may mean that the CORI subject may have to go to extraordinary efforts to get rid of a bad and wrongful "rap";

- **Is frequently due-processless**, in that (even assuming the record is accurate) the CORI-subject is generally *not* afforded by the gate-keeper an early, full and fair opportunity to contest the relevance of a seemingly bad record;

- **Is often *un-predictive*** of future behavior, largely because most criminal records are acquired in the late teens or twenties, and many ex-offenders – especially if addiction drove them to crime and they have conquered the addiction – mature out of criminal behaviors;

- **Stigmatizes** its subject often far beyond the extent of the crime and certainly far beyond the time that the record is generally available to the public under the CORI law; and,

- **Tends to leak out, like toxic waste, from the supposedly confidential files** which it is meant to be kept in while the user uses the information and before it is meant to be destroyed.

CORI and Getting Housing

As noted in the section on who is allowed to see CORI (pgs 4-7), public housing authorities have access to CORI for screening applicants for housing and for "section 8" and other housing subsidies. And ordinary landlords (whether individuals or organizations) *may in fact* get access to CORI under the CHSB's "section 172(c)" certification process (see pg 4) or some other way – but see footnote 37 on pg 11.

A public housing authority (PHA), when screening an applicant for public housing which is funded by the **STATE** Department of Housing and Community Development (DHCD), must follow the governing statute and DHCD regulations as to how it makes its screening decision. The PHA, for instance, may disqualify an applicant who, in prior housing, has "disturbed a neighbor," or "caused damage or destruction to property," or "engaged in criminal activity," or "is a current illegal user" of drugs³², any of which may be indicated by CORI.

The state laws also provide the applicant with some due process and a chance to prevent, or reverse, an adverse decision. Prior to disqualifying an applicant the PHA must --

"permit the applicant to show mitigating circumstances, which may include rehabilitation or rehabilitating efforts, sufficient so that when the potentially disqualifying behavior is weighed against the mitigating circumstances, the [PHA] is reasonably certain that the applicant or household member will not engage in any similar conduct in the future."³³

If the PHA decides, nevertheless, to disqualify the applicant, it must give him or her notice explaining the decision and a chance to have a "private conference" with representatives of the PHA. This amounts to an informal hearing, where the applicant can be represented by a lawyer or other

³² G.L. c. 121B, § 32, 11th [unnumbered] paragraph, subparagraphs (a), (b) & (d), and 760 CMR § 5.08(1)(a), (b), (d) & (k).

³³ 760 CMR § 5.08(2). (Obviously the applicant has to have a copy of the CORI the PHA got in order to rebut it. In this respect the CHSB's CORI Audit Guidelines may help. They are in the Appendix as item [F].) Under the reg cited above, the PHA is to consider the severity of the conduct and the danger it caused, how much time has elapsed and the likelihood of its recurring. See also G.L. c. 121B, § 32, 12th [unnumbered] paragraph.

advocate; and, if the applicant loses this round, he or she may have the adverse decision reviewed by DHCD.³⁴

If the PHA is making a screening decision about admission to a unit which is funded by the **FEDERAL** Department of Housing and Urban Development (HUD) or about making an award of a federal section 8 certificate, it must follow the applicable HUD regulations.

Under these (so-called "one strike you're out") regulations, the PHA may prohibit the admission of a household, for instance, if any member "has engaged in during a reasonable time before the admissions decision" drug-related or violent criminal activity or criminal activity which would threaten health, safety or peace of other residents, the PHA or its employees or contractors.³⁵

One requirement is that the PHA, if it has obtained CORI "showing that a household member has been convicted of a crime" that is relevant to the screening, --

"the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant . . . a copy of such information and an opportunity to dispute the accuracy and relevance of the information . . . before the denial of admission" ³⁶

A private landlord (LL) is subject to none of these fairness requirements, which makes it important for an applicant, if he or she knows the landlord will do a CORI check,³⁷ to try to get the LL to agree to share the CORI report with the applicant, so that she can discuss its accuracy and relevance. If she gets such a conference, she should prepare to make a case, using the state PHA mitigating factors (quoted on pg 10, followed by footnote 33) and, possibly, the more extensive factors in the HHS "common sense process" paragraph on pg 13.

Special CORI-related Rules for Getting a State-Funded Health and Human Services Job

There is a special problem for CORI subjects who are seeking new jobs (or sometimes even promotions) in health and human services programs that are operated or funded by Massachusetts state agencies under the the Executive Office of Health and Human Services (EOHHS or HHS).

In 1996 HHS put out a directive ("Procedure 001") that required all those agencies and the (some 1,200) private providers of health and human services which had contracts with those agencies when hiring or taking on as volunteers a person who might interact with clients, to do a CORI check on the applicant and then not be able to hire the person, *ever*, or until after certain waiting periods if the person had a crime on one or another of separate lists of crimes included in the directive.

³⁴ 760 CMR § 5.13. Though this provision for DHCD "review" is vaguely worded, the Mass. Supreme Judicial Court held in *Madera v. Secretary of EOCD*, 418 Mass. 452 (1994), that the person seeking review is entitled to a full blown adjudicatory hearing before a hearing officer or panel of what is now the DHCD (with the possibility of a further appeal, under G.L. c. 30A, § 14, to the Superior Court).

³⁵ 24 CFR § 5.855(a). This regulation, in Part 5 of 24 CMR, and related provisions in 9 other Parts, were in the Federal Register of 5/24/01. Since there are variations from Part to Part, it is important to check the Part which pertains to the housing you are dealing with. There is also, in another Part of the regulations, an absolute, lifetime, ban from federal public housing of anyone who was previously convicted of manufacturing methamphetamine while a tenant of federal public housing.

³⁶ 24 CFR § 5.903(f).

³⁷ The CHSB executive director states that the Board does *not* have a written policy as to its practice of *not* certifying private landlords for access to CORI. Letter from Barry LaCroix to author, 9/18/03. But there appears to be no restriction in the statutes preventing such certifications under § 172(c). And private landlords may get CORI from some other entity, such as the Info Center, in Feeding Hills, MA, which *does* have access to CORI.

In 2000 some job applicants who were prevented from getting HHS-funded jobs solely because of this directive sued the head of HHS,³⁸ claiming that the directive was against state law because it had not been properly adopted as a state regulation and that it violated both the state and federal constitutions because it swept over-broadly against persons with crimes on the lifetime disqualification list, thereby depriving them of working in a major field of human activity for which they were qualified, based on the presumption that they were dangerous for certain arbitrary waiting periods or forever.

In an oral argument before the court the following November the lawyer for then-HHS Secretary O'Leary conceded that the directive needed to be adopted as a regulation; and HHS and its agencies thereafter started grinding out what amounted to 16 sets of all-but-identical "emergency" regulations, which made some changes from Procedure 001 but which had the same effect of keeping uncounted numbers of people out of health and human services employment.

In August, 2001, Justice Ralph Gants issued a partial judgment in the case, holding the lifetime disqualification provision unconstitutional and ordering HHS adopt, and to cause its subordinate agencies to adopt, new regulations which would give anyone on the lifetime bar list who might be denied an HHS-funded job a "fair opportunity" to rebut the presumption of permanent dangerousness to clients.

HHS and its sub-agencies complied with the deadline in issuing the regulations, but the regulations are (in the opinion of most job applicants and their advocates) delay-causing, expensive and virtually impossible to comply with in a way that the applicant can be hired. Briefly summarized, the all-but-identical regulations have the following provisions:³⁹

1. Each provider must request a CORI report on any person about to be hired, or taken on as a volunteer, who would, for the first time with that provider, have any unsupervised access to a client (even if only briefly in a bathroom).
2. When the CORI report comes in, the provider must scrutinize the CORI. If the applicant has a crime on Table A, the "Lifetime Presumptive Disqualification" list, which includes the most serious crimes, the provider must not hire the applicant without going through what some advocates call the "hoop-jumping" procedures, explained below. (For a copy of Table A, see Appendix item [C]).

The first hoop-jumping procedure is for the provider to find the criminal justice system official (whether penal institution head, parole officer or probation officer -- whoever supervised the applicant at the final disposition of that criminal charge) and get him to send the provider a writing stating that the applicant "does not pose an unacceptable risk of harm to persons served by the program." Since these officials are generally trained *not* to make such certifications (or are personally unwilling to), this hoop-jump is a non-starter.

The second hoop-jumping procedure, to be followed if the first is "unavailable," is for the provider to find and retain (at the sole cost of the provider) a "qualified mental health professional," which is defined as a Massachusetts licensed psychiatrist or psychologist or a licensed independent clinical social worker, who "has at least 1,000 hours of experience over a minimum of two years

³⁸ The case was filed as *Cronin, et al. v. O'Leary*, Suffolk Superior Court, Civil Action No.00-1713F.

³⁹ The agencies, with citations to their regulations, follow: **EOHHS** itself, 101 CMR 15; **Office of Child Care Services**, 102 CMR 14; **Dept. of Mental Health**, 104 CMR 34; **Dept. of Public Health**, 105 CMR 950; **Dept. of Transitional Assistance**, 106 CMR 150; **Mass. Rehabilitation Comm'n**, 107 CMR 14; **Dept. of Youth Services**, 109 CMR 12; **Dept. of Social Services**, 110 CMR 18; **Mass. Comm'n for the Blind**, 111 CMR 9; **Mass. Comm'n for the Deaf and Hard of Hearing**, 112 CMR 1; **Division of Health Care Finance and Policy**, (no CORI regs!; its title in the CMR is 114); **Dept. of Mental Retardation**, 115 CMR 11; **Soldiers Home in Holyoke**, 119 CMR 1; **Office of Refugees and Immigrants**, 121 CMR 4; **Soldiers Home in Mass. (Chelsea Soldiers Home)**, 122 CMR 1; **Division of Medical Assistance**, 130 CMR 710.

involving the assessment, treatment and consultation concerning individuals with behavior that presents a risk of harm to others," and to get from this professional (who is not allowed to be anyone who has treated the applicant) the same written conclusion -- that the applicant "does not pose an unacceptable risk of harm to persons served by the program."⁴⁰

3. If the provider and applicant make it through the hoop-jumping, or if the applicant's CORI includes only crimes which are on any other "Table(s)" (lists of lesser crimes), the provider must go through a common sense process of deciding whether the applicant does, or does not, pose a risk of harm to clients based on the provider's own reasonable assessment of the age of the conviction, how old the applicant was when he or she committed the crime, the "seriousness and specific circumstances of the offense," the relationship of the crime to the work the applicant would do, the number of offenses on the CORI report, any evidence, or not, of rehabilitation and any other relevant information, "including information submitted by the candidate."⁴¹

4. If the provider decides to hire the applicant, it must document the process and notify the head of the funding agency, allowing the agency head 5 days to veto the choice before the person is hired (except if the applicant's crimes are not on Tables A or B).⁴¹

What Can the CORI-Subject Do for Self-Protection?

In some cases, not much. But for those who know or suspect that they may have CORI and are seeking employment, housing, higher education, insurance or some other benefit which a gate-keeper has power to give or withhold, here is a list of things that might be helpful and should certainly be considered.

1. Get One's Own CORI, by requesting from, or downloading from the web site of, the CHSB a personal CORI request form, and filling it out and sending it in (with the indigency affidavit, if applicable – see ¶ 7, pg 7). Note also that copies of the forms are in item [A] of the Appendix. When the CORI report comes in, study it and see if it is accurate. The CORI Codes, in Appendix item [B] may prove to be helpful. For persons who regularly review CORI reports it will help to go to this link: <http://www.mass.gov/courts/admin/sentcomm/mastercrimelistnov2003.pdf> , which gives you the **Master Crime List** in three versions. Find the version (near the middle, around page 65) which is organized by title of the offense, alphabetically.

If the CORI report is not accurate as to what it says about what happened in a particular case, and that is harmful, try to get it corrected by bringing the matter to the attention of the clerk's or probation office of the court.

If the CORI is not accurate in the sense that it appears to contain someone else's CORI, try to get the police department associated with the case to take your fingerprints and compare them with the prints the police have for the arrestee in the case. If the police find that the prints do not match, try to get a writing from the police to this effect and bring it to the probation office of the

⁴⁰ In the view of the *Cronin v. O'Leary* case plaintiffs and their lawyers these hoop-jumping procedures do not provide job candidates with the kind of "fair opportunity" to rebut the inference of dangerousness which was required in Judge Gants' August, 2001, decision. During the state's fiscal crisis of 2002-2004 there were few human services job openings. But, sooner or later, a job candidate with CORI on the lifetime disqualification list may be thwarted from being hired because of the delay, cost or overall impracticability of the hoop-jumping procedures, and the candidate or the provider may wish to challenge the regulations. MLRI CORI Project (see last page) would likely be willing to advise that applicant or provider.

⁴¹ This is set forth in the DPH version of the HHS regulations at 105 CMR § 950.106.

court. If the probation office unreasonably refuses to make the correction in the Probation Central file, you may wish to make a complaint to the CHSB under the statute and the CHSB regulations.⁴²

If the problem is that the CHSB computer appears to have come up with the *wrong person*, by attaching your identity to someone else's CORI, you should probably bring the matter, in a letter, to the attention of the legal office of the CHSB. Note the discussion in footnote 29 on pg 9, about the data elements identifying the CORI subject which the CHSB form requests *versus* the fewer data elements which the computer searches for. If one or more of the data elements (e.g., social security number) on the CORI report contradicts those shown on the form submitted, the legal office may be persuaded to make a new CORI search, using both the computer and visual inspection to assure the proper match, and, if there is no proper match, to re-report "No record" to the requester.

If the problem is that the report seems to have the right person but that *some of the CORI reported is seriously inaccurate*, the CORI subject has what may be a very difficult job ahead. The first step will be to try to persuade each applicable court's probation office to make the necessary changes. Sometimes this may be done by filing a motion with the court to re-open the case and correct the record. If that fails, the CORI statute itself provides that "If the agency declines to so act, or if the individual believes the agency's decision to be otherwise unsatisfactory, the individual may in writing request review by the board."⁴³ If the CHSB will not make a change, and there's a chance a Superior Court judge might find the refusal without factual basis or otherwise not according to law, the CORI subject may appeal to the Superior Court.⁴⁴

2. Try to Get Records Sealed. The record sealing statutes provide for sealing (making unavailable to most requesters) a record either because it has "aged out" by reason of the passage of time or because the case ended favorably for the defendant.

With respect to a case ending in a CONVICTION AND AGED-OUT CASES the Commissioner of Probation (1 Ashburton Place 405, Boston, MA 02108, 617-727-5006), after getting a properly filled-out petition form, *shall seal a felony* record, if the final disposition of the case (discharge from prison, parole or probation -- whichever came last) took place *15 or more years ago*.⁴⁵ For a copy of the petition form see Appendix item [D].

A misdemeanor record will be sealed if the final disposition was 10 or more years ago.

However, as to either a felony or a misdemeanor, within the 10 years before the petition form is filed, the person must not have been convicted of anything more serious than a \$50 motor vehicle offense.⁴⁶

⁴² G.L. c. 6, § 175 and 803 CMR § 6.07.

⁴³ The procedures here are laid out generally in G.L. c. 6, § 175, which speaks broadly of agencies contributing to that body of information known as CORI. While the text above refers to courts, this same provision might be applicable to try to correct a Dept. of Correction or Parole Board record relating to when the subject was released from custody or supervision.

⁴⁴ G.L. c. 6, § 176 and c. 30A, § 14 (the state Administrative Procedure Act).

⁴⁵ Some crimes are excepted – relating to firearms, crimes against public justice (e.g., perjury) and conflict-of-interest charges.

⁴⁶ G.L. c. 276, § 100A, 1st through 4th [unnumbered] paragraphs. Section 100B is a comparable statute as to a juvenile record, which may be sealed after a comparably-measured 3 years.

Unfortunately, despite what is written above, the Office of the Commissioner of Probation takes the position, *sometimes*, that it *will not seal any of a person's CORI until it can seal all of that person's CORI*.⁴⁷ We think this is a wrong reading of the statute, and it may be challenged at an appropriate point.

With respect to a case ending favorably, i.e., NOT WITH A CONVICTION for the defendant, the sealing process and procedures are now much more complicated. (A photocopy of the triplicate form, which one has to get from the court or OCP, is at Appendix [E]).

If the case was one where a grand jury failed to indict a person (that is, returned a "*no bill*"), the Commissioner is required by statute to seal the record automatically and direct the clerk of the court to do the same, unless the defendant asks in writing that this not be done.⁴⁸ This is still good law, undisturbed by court decision.

But if the case was one where the judge or the ("petit") jury, after a trial, found the defendant "*Not Guilty*," the automatic sealing of the record (under the same statute mentioned above) was held by a federal court in 1989 (in the *Pokaski* case) to be unconstitutional.

The court declared that automatic sealing in such a situation offended the public's right to know what its government was doing, under the First Amendment of the U.S. Constitution. Accordingly, the court required that the sealing take place only after a judge, not in the proceeding where the defendant was found not guilty, determines, after hearing, that there is a "compelling state interest," based on the particular facts of the situation, which overcomes the 1st Amendment interest in keeping the record open.⁴⁹

If the case is one which ends favorably to the defendant in that he or she is not convicted, that is, is *nol prossed* by the prosecutor and/or *dismissed* by the court *without there having been any order of probation*, the sealing process is the most complicated. The applicable state statute provides that the CORI subject must (on a pre-printed form from the court) petition the applicable court for sealing, and that the judge, after hearing, may order the case sealed "if it appears to the court that substantial justice would be served."⁵⁰ But this process is also now affected by the *Pokaski* case, which imposed the **further requirement that the judge find, as well, that there is a compelling state interest, based on the facts of the person requesting sealing, to overcome the constitutional interest in keeping the record open**. Further, a 1995 state Supreme Judicial Court decision (the *Doe* case) required that in these discretionary sealing cases there must be two hearings -- the first in which the petitioner requests sealing and shows that it is appropriate under the state and federal standards; and, if the court agrees, a second hearing, at which the prosecutor, the probation office, perhaps the alleged victim and others, have chance to come in and contest the petition for sealing.⁵¹

Actual practice seems to vary from court to court and judge to judge. Sometimes persons with sealable CORI, with some coaching, are able to go into court on their own and get the CORI sealed, and sometimes not. The same is true of savvy lawyers. In all situations, however, we think the best practices are to (a) get and analyze the criminal case records from the court; (b) prepare and file with the petition a petitioner's affidavit of the facts which demonstrate how the is being, or is highly likely to be, harmed if the CORI is not sealed; and (c) prepare and file a memo of facts and

⁴⁷ Letter of 12/31/2003 from Anthony C. Sicuso, Deputy Commissioner/Legal Counsel, OCP, to Francisca D. Fajana, Esq. of MLRI.

⁴⁸ G.L. c. 276, § 100C, 1st paragraph.

⁴⁹ *Globe Newspaper Co. v. Pokaski*, 868 F.2d 497, 510 (1st Cir. 1989).

⁵⁰ G.L. c. 276, § 100C, 2d paragraph.

⁵¹ *Commonwealth v. Doe*, 420 Mass. 142, 150 (1995).

law urging the sealing. And remember, if you fail, that a non-conviction case that is aged-out under § 100A, may be sealed under that section.

Both of these criminal record sealing statutes require an employer, on any application form, to have a statement that if the employer asks about a sealed criminal record, the applicant may answer "no record."⁵² This has generally been construed to cover oral exchanges of information and to protect the applicant, as well, from being fired for lying on the application, in the (we hope unlikely) event that the employer later finds out about the sealed record.

Finally, there are **special sealing statutes** in the Substance Abuse Law, which are less restrictive, relating to certain convictions and favorable dispositions on **drug charges**.⁵³

3. Assert Rights under the Other Protective Statutes, referred to above at pg 8, when dealing with an employer who is out of compliance with those laws. *But be warned that these may be of minimal help in most situations.*

There is also a section of the CORI law which gives "any aggrieved person" (including a CORI subject) a right to sue about a violation of the CORI law in the Superior Court, possibly to obtain a court order, money damages and a court-awarded fee for the suing party's attorney, to be paid by the CORI law violator.⁵⁴ But we think its usefulness is still untested.

4. Prepare to Demonstrate Rehabilitation & Unlikelihood of Offending Again. Even though the CORI system, as it now works, does not give an ex-offender many breaks, a CORI-subject would be wise to put together a file folder, with letters from probation officers, clergy, counselors, treatment people, or *anyone whose opinion would be respected*, explaining why it is unlikely that the ex-offender will commit crime again and how he or she has become a useful member of society who is trying to be productive. (See an example in the Appendix item [H].) Sooner or later a break may come, and it will be good to be ready.

5. Finally, if you need advice, call the CORI Project at MLRI, 617-357-0700, **Extension 504**. This project was started in May, 2002, for the purpose of producing helpful materials and trainings; assisting and advising people with CORI problems; analyzing how to do this effectively, gathering data on the extent of the problems; and working for "law reform" of the CORI law and its uses. We may be able to help you. We will certainly try, if we have the resources. And you may be able to help us!

Good Luck!

⁵² G.L. c. 276, § 100A (relating to as-of-right sealing upon the passage of time), 5th [unnumbered] paragraph. There are comparable provisions in §§ 100B (relating to juvenile records) and 100C (relating to discretionary sealing of records by a court). For information on how these laws work, see pages 14-15.

⁵³ G.L. c. 94C, § 34, 2d & 3d [unnumbered] paragraphs, and § 44.

⁵⁴ G.L. c. 6, § 177.

PERSONAL MASSACHUSETTS CRIMINAL RECORD REQUEST FORM

If you would like a copy of your own Massachusetts criminal record, complete this form, sign it in front of a notary public, and mail it, **along with a check or money order made payable to the Commonwealth of Massachusetts in the amount of \$25.00 pursuant to M.G.L. c.6, §172A** and a self-addressed stamped envelope to this agency. Walk-in service is not available. If you are incarcerated and a notary public is not available, have an official of the correctional facility endorse same. This agency's mailing address is: the Criminal History Systems Board, 200 Arlington Street, Suite 2200, Chelsea, MA 02150 ATTN: CORI Unit.

Please be advised that it is unlawful to request or require a person to provide a copy of his criminal offender record information, except as authorized by the Criminal History Systems Board, as per M.G.L. c. 6 §172.

Last name		First name	Middle name	
Maiden name		Alias		
Date of birth (MM/DD/YY)			Social Security Number (requested but not required)	
Mailing address		Town	State	Zip code

I hereby swear, under the pains and penalties of perjury, that the information I have provided above is true, and to the best of my knowledge and belief.

Signature of requestor	Date
------------------------	------

AUTHENTICATION OF SIGNATURE BY NOTARY PUBLIC OR CORRECTIONAL FACILITY

_____, SS.

The above-named _____, appeared before me, the undersigned authority, this _____ day of _____, 200____ and acknowledge the foregoing signature to be made of his or her own true free act and deed.

Notary public	Correctional Facility Official (give rank and title)
---------------	--

My commission expires	Correctional Facility Address and Phone
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AFFIDAVIT OF INDIGENCY¹
Submitted with Personal Criminal Record Request

Name of applicant: _____

Address: _____
(Street and number) (City or town) (State and Zip)

Following the scheme of General Laws c. 261, §§ 27A et seq., applicant swears (or affirms) as follows:

[Check only one.]

1. Applicant is indigent in that he/she is a person:

_____ (a) who receives public assistance under Massachusetts Transitional Aid to Families with Dependent Children (TAFDC), Massachusetts Emergency Aid to Elderly, Disabled, and Children (EAEDC), Federal Supplement Security Income (SSI), Massachusetts MassHealth (formerly Medicaid), or Massachusetts Veterans' Benefits; **or**

_____ (b) whose income, less taxes deducted from his/her pay is _____ per week/month/year (circle period that applies), for a household of _____ persons, consisting of myself and _____ dependents; which income is at or below 125% or less of the current poverty threshold annually published in the Federal Register by the U.S. Department of Health and Human Services; [List any other available household income for the circled period on this line: _____] **or**

_____ (c) who is unable to pay the fees and costs without depriving himself or his dependents of the necessities of life, including food, shelter and clothing.

IF YOU CHECKED (c), YOU MUST ALSO COMPLETE THE SUPPLEMENT TO THE AFFIDAVIT OF INDIGENCY.

2. Applicant requests that the following fee be waived by the Criminal History Systems Board:

\$25 fee for personal CORI request

Signed under the penalties of perjury:

Signature of applicant: _____

Date: _____

¹This form was adapted from the form prescribed by the Chief Justice of the SJC under Massachusetts General Laws, chapter 261, §27B.

ALL INFORMATION CONTAINED HEREIN IS CONFIDENTIAL. IT SHALL NOT BE DISCLOSED TO ANY PARTY OTHER THAN AUTHORIZED CRIMINAL HISTORY SYSTEMS BOARD PERSONNEL.

\$ _____

(c) Taxes Deductions (monthly)

Federal Tax: \$ _____ State Tax: \$ _____
Social Security: \$ _____ Health Insurance: \$ _____
Medicare: \$ _____ Pension: \$ _____ Other:
\$ _____

Total Deductions (monthly):
\$ _____

(f) Net Income (monthly) (gross income minus total deductions): \$ _____

(g) If applicant's spouse or any other member of applicant's household is employed, list occupation and name and address of his/her employer and monthly income after taxes:

3. NET INCOME (monthly):

(a) Income After Taxes (from Line 2(f)):

(b) Expenses (monthly):

Rent or Mortgage: \$ _____ Food: \$ _____
Clothing: \$ _____
Utilities (electricity, gas, oil, water, telephone) \$ _____
Health Insurance \$ _____ Uninsured Medical Expenses \$ _____
Child Care: \$ _____ Education Expenses for Children \$ _____
Other Expenses (i.e. transportation, laundry, car insurance, etc.)

Total Expenses (monthly): \$ _____

(c) Net Income Minus Taxes and Expenses (monthly): \$ _____

4. ASSETS

(a) Own home? _____ Market value: \$ _____
Balance owed \$ _____

(b) Own car? _____ Year and Make: _____
Market value: \$ _____ Balance owed:
\$ _____

(c) **Bank Accounts (specify type and balance)**

(d) **Other property including real estate (specify type and value)**

5. DEBTS

(a) **Specify:** _____

6. MISCELLANEOUS

(a) **Other facts that may be relevant to applicant's ability to pay fees and costs?**

Signed under the penalties of perjury:

Signature of applicant: _____

Typed/Printed name of applicant: _____

Date: _____

ALL INFORMATION CONTAINED HEREIN IS CONFIDENTIAL. IT SHALL NOT BE DISCLOSED TO ANY PARTY OTHER THAN AUTHORIZED CRIMINAL HISTORY SYSTEMS BOARD PERSONNEL.

CORI Codes

Status Codes

You will find the status codes below in the right-most column of the CORI report.

Code	Description
C	Case Closed
O	Open or Pending Case
W	Outstanding Warrant
VPH	Violation of Probation Hearing
WPD	Wanting Police Department, if warrant is active, PD is named

Disposition Codes

The disposition codes are listed on the left for each stage of a case and will tell you what happened in the case at that stage.

APP	Appeal: a resort to a higher court for the purpose of obtaining a review of a lower court's decision and reversal of the lower court's judgment. This may also refer when a defendant, having been convicted in a jury-waived session in the district court, was able to appeal his case and to obtain a six person jury trial under the old de novo system.	C	Continued: court will continue case for another date for hearing, trial, etc.
		CC	Court Costs: costs imposed by the court
		CMNTY SRV	Community Service: condition of bail or probation ordered by the court that includes a specific period of hours of service to the community.
APP WD	Appeal Withdrawn: when a defendant withdraws his/her appeal to a higher court.	CONC	Concurrent: sentences to be served at the same time or to run together.
		CONS	Consecutive: sentences to be served one after another.
BF	Brought Forward: when defense or prosecutor moves to advance the case prior to the date previously set for hearing or trial.	CWOF or CWF	Continued without a finding: not considered a conviction. The court allows the defendant to "save" his record and not have a guilty finding entered as long as he completes a period of probation without further criminal charges and complies with the terms of probation. Most often occurs when the
BO or BOGJ	Bound Over: when probable cause is found to exist at a preliminary hearing, the court directs that the case be bound over for action by the grand jury. Also referred to as BOGJ.		

	defendant has admitted to sufficient facts (see above).	DYS	Department of Youth Services: state agency to whom juveniles may be committed until their 18 th or 21 st birthday upon finding of delinquency or Youthful Offender by the juvenile court.
DEL	Delinquent: term used to describe minors who have committed an offense that would be punishable by criminal process if they were adults (those at least 7 and no other than 16). Upon a finding delinquency, the judge may commit the juvenile to the custody of DYS until his/her 18 th birthday, or until his 21 st birthday if after a jury trial the court finds that his release poses a danger to the public.	DY	Day(s): may refer to number of days the defendant was held awaiting trial as being served; or period of sentence following finding of guilt.
		EXTN	Extended: condition for a period of additional time.
DF	Default: failure by the defendant to appear in court during criminal case; a warrant will be entered for his/her arrest.	F&A* or F/A	From & After (not concurrent): indicates additional time to be served by defendant while in custody.
		FEE	Fee: cost charged by court.
DISCH	Discharged; release from supervision of the court.	FILE NF	Filed No Finding: a defendant's original plea is "not guilty" and the court may dispose of case with the Commonwealth's consent and place it on file. This does not prevent the Commonwealth from moving to reopen the case in the future.
DISM or DRC or DRD	Dismissed: the court may dismiss a case for various legal reasons. The Commonwealth has the remedy of appeal if a case is dismissed over its objection. Dismissed at Request of Complainant: refers to criminal charges being dismissed based on the victim's assertion to the court that he/she wishes these charges to be dismissed.	FINE	Fine: amount set by statute that defendants are required to pay based upon crimes charged and committed.
	Dismissed Request Defense: in MA, the prosecution must agree to dismissal of criminal charges against the defendant; the court may not on its own dismiss criminal charges based upon the request of the defense.	FJ	First Instance Jury Trial: formerly referred to de novo system in which a defendant could have a bench trial and then if convicted could appeal the trial to a jury; or waive the bench trial and go straight to the jury.
DWOP	Dismissed Without Prejudice: the Commonwealth may file new complaint upon additional evidence or witness coming forward.	FROM/ AFT	See F&A above (not concurrent) From & After
		G	Guilty: conviction of criminal

	charges; a finding by judge or jury beyond a reasonable doubt that defendant committed crime(s) charged by the Commonwealth.		crimes charged beyond a reasonable doubt.
GJ	Grand Jury: body of people (usually 23) summoned to inform on crimes committed within its jurisdiction and to indict persons of crimes when it has been presented with sufficient evidence to warrant holding a person for trial.	JUV COMP D	Juvenile Complaint Dismissed: this may occur when a defendant has been indicted as a Youthful Offender and the case proceeds in Juvenile Court as YO case and not as a juvenile case.
HC or HOC	House of Correction: county facility for holding inmates on bail or when sentenced to a period of incarceration. The maximum sentence is 2 ½ years.	LIFE	Life: a defendant serving a life sentence is eligible for parole after 15 years, except for life sentences for 1 st degree murder which are life without parole.
HWB	Held Without Bail: finding by courts that no conditions or monies will ensure the return the person for every stage of the criminal proceeding. Also called pretrial detention.	MT or MIS	Mistrial: order by judge terminating trial before conclusion; generally a new trial will then occur.
IND	Indictment: a formal written accusation drawn up and returned by a grand jury charging one or more persons with a crime. Indictments in adult cases are tried in Superior Court.	NDEL	Not Delinquent: See Not Guilty; entered in juvenile court.
INDF	Indefinitely: Prior to 1993, a court could give a defendant an indefinite sentence to the state reformatory, with parole eligibility set by the Parole Board. This was abolished in 1993.	NF	No Finding
INDICT	Indictment: refer to Grand Jury	NG	Not guilty: finding by judge or jury that the evidence presented by the Commonwealth did not prove beyond a reasonable doubt that the defendant committed the crimes as charge.
JT	Jury Trial: the defendant has a constitutional right to be tried by a jury of his peers (6 person in district court, 12 persons in superior court with two alternates in both courts). In criminal cases the jury must unanimously find the defendant committed the	NOB	No Bill: when the grand jury declines to indict, it return a "no bill of indictment."
		NOLO	Nolo contendere: Latin translation "I do not wish to contend"; formerly used in the Commonwealth in which a defendant enters a plea in a criminal proceeding who does not admit guilt but states that he will offer no defense against the charges. The defendant may then be declared guilty, yet retain the right to deny the validity of the finding in related proceedings.

NOS	Notice of Surrender: defendant has been given written notice by the probation department that the probation officer intends to seek usually a revocation of probation and an imposition of a custodial sentence.		period of incarceration, with a suspended sentence, or straight probation.
NP	Nolle Prosequi (or Nolle Prossed): motion by the Commonwealth to dismiss charges as if they were never brought in the first place because of insufficient evidence.	PROB EXTN	Probation Extended: court may extend the period of probation that the defendant has been ordered to complete; this may be in order to have additional time to complete community service, a program or upon a finding of a violation of probation, the court may extend the period of probation rather than order the defendant to serve a period of incarceration.
NPC	No Probable Cause: finding by the court that there is insufficient evidence to believe that a crime has occurred or that the defendant committed a crime.	PROG	Program: usually refers to a condition of probation that the defendant has been ordered to complete, and may include completion of i.e., alcohol safety awareness program, anger management program or batterer's treatment program.
PARD	Pardoned: conditional release under supervision by the parole board; a pardon can only be granted by the Governor with the advice and consent of the Executive Council.	PTP	Pre-Trial Probation: as a condition of bail or release, the court may order the defendant to report to probation prior to the case being resolved.
PC	Probable Cause: finding by a judge that there is sufficient evidence to believe that a crime has occurred or that the defendant has committed a crime, in order to bind a case over from the district court to superior court for hearing.	REM	Removed: usually refers to the term of removing a case from a lower court to a higher court.
PD or & PD	Paid	REST	Restitution: amount of monies ordered by the court that the defendant has been ordered to pay as a condition of the sentence.
PG	Plea of Guilty: admission by defendant to criminal charges and waiver of right to jury or bench trial	RMT or or REMIT	Remitted: refers to when the court does not require the defendant to pay court costs or fines due to indigency or other reasons.
PROB	Probation: the court may order the defendant to be supervised by the probation department with certain conditions and/or programs to be completed during a specific period of time; this may be following a	ROR	Released on Recognizance: defendant is not required to post monies to the court to

	ensure his/her return during the course of the proceedings and instead is released without the requirement of posting bail money.		successfully completes the probationary period, he/she will not be ordered to serve the sentence (or period of incarceration).
R/R	Revise and Revoke Sentence: post-conviction remedy of defendant asking the court to change his/her original sentence; sentencing judge may upon certain findings, revoke original sentence and order new sentence or deny the motion.	SS RVK	Suspended Sentence Revoked: see SS; this is when due to violation of probation or further criminal activity, a defendant may be ordered to serve the sentence that had not been imposed but suspended.
RSVD	Revised: refers usually to sentencing at the appellate level.	STAY	Stay of Order of Sentence: judicial order abeying the period of incarceration for a specific time.
SDP	Sexually Dangerous Person: formal adjudication as a sexually dangerous person. Pursuant to G.L. c. 123A, s. 14, if after a trial an individual is found to be a SDP, such person shall be committed to the treatment center for an indeterminate period of a minimum of one day and a maximum of such person's natural life until discharged pursuant to the provisions of section 9.	SUMM	Summons: a mandate issued in lieu of arrest requiring the defendant's appearance in criminal court where he/she may be named to appear to answer to criminal charges; or as a mandate requiring an individual to appear as a witness at a trial or hearing.
		SUP	Support: refers to entry of order of child support in case of paternity or formerly illegitimacy in criminal court.
SENT	Sentence: after finding by judge or jury on criminal charges, or offer a plea by defendant, the court may sentence a defendant to a period of incarceration (either committed or suspended) and/or probation and other terms.	SURR	Surrendered: refers to having a defendant returned to court; usually refers to defendant on probation and having new criminal activity.
		SURR DEF	Surrendered on Default: brought to court to answer to charges of having not appeared in court on date required.
SPS	Split Sentence: After a finding of guilty or as part of a plea bargain, a defendant may be ordered to serve a period of incarceration and the balance on probation.	TB	True Bill: return by the grand jury on one or more indictments holding the defendant on criminal charges; see indictment.
SS	Suspended Sentence: when period of incarceration is not ordered to be served but "suspended" during the period of probation; if the defendant	TD or T&D	Terminated and Discharged: refer to termination supervised of probation and defendant being discharged from probation.

TERM	Terminated: refers to termination of supervised probation.	WAR	Warrant: issued by court or vested authority naming a person charged with a crime, a and commanding their appearance before the court.
VAC	Vacated: usually refers to the removal of default entered on an individual's criminal record.	WAR/WD	Warrant Withdrawn/Recalled: when a defendant appears in court, the warrant will be recalled.
VN	Violation of Probation Notice: written notice by probation of terms that defendant has allegedly violated; due process rights attach at hearing that will be scheduled.	WD	Withdrawn: may refer to defendant's withdrawal of appeal to a higher court for review.
VOP	Violation of Probation Finding: finding following a hearing before judge concerning whether the defendant has violated the terms of his probation. As a result of a finding, that a defendant is in violation, a judge may revoke a CWOF and enter a guilty, impose committed time, or extend the terms of incarceration.	YO	Youth Offender: a person who is subject to an adult or juvenile sentence for having committed, while between the ages of 14 and 17, an offense that if he were an adult would be punishable by imprisonment in the state prison, and (a) has previously been committed to DYS, or (b) has committed an offense which involves the infliction or threat of serious bodily harm, or (c) has committed a violation of G.L. c. 269, sections 10 or 10E.
VWF	Victim Witness Fund: statutory fund established. Depending upon whether the defendant is charged with a felony or misdemeanor, he is assessed certain fines that must be paid into the victim witness fund.		

**EOHHS CORI Regulations' "Table A" –
Crimes Giving Rise to Presumptive Lifetime Bar
to Working in State-Funded Human Services
(101 CMR § 15.16)**

<u>Table A</u>	<u>MGL</u>
A&B, Dangerous Weapon, Vict 60+	c. 265, § 15A(a)
A&B Child w/Injury	c. 265, § 133
A&B on Retarded Person	c. 265, § 13F
Administering Drugs/Sex	c. 272, § 3
Armed Assault w/Intent to Murder or Rob	c. 265, § 18(b)
Armed Assault w/Intent to Murder or Rob, Vict 60+	c. 265, § 18(a)
Armed Assault, Dwelling, w/Felony Intent	c. 265, § 18A
Armed Carjacking	c. 265, § 21A
Armed Robbery	c. 265, § 17
Assault w/Intent to Murder or Maim	c. 265, § 15
Assault w/Intent to Rape	c. 265, § 24
Assault w/Intent to Rape Child	c. 265, § 24B
Attempt Escape or Escape by Prisoner or Sex/Dang	c. 268, § 16
Attempt to Murder	c. 265, § 16
Burning Dwelling House	c. 266, § 1
Distribute Controlled Substan, Minor	c. 94C, § 32F
Exhibit Posing Child	c. 272, § 29A
Extortion	c. 265, § 25
Home Invasion	c. 265, § 18C
Incest	c. 272, § 17
Indecent A&B, Child 14 or Over	c. 265, § 13H
Indecent A&B, Child under 14	c. 265, § 13B
Indecent A&B, Retarded Person	c. 265, § 13F
Induce Minor to Prostitution	c. 272, § 4A
Intimidation of Witness	c. 268, § 13B
Kidnapping	c. 265, § 26
Malicious Explosion	c. 266, § 101
Manslaughter, Negligence (Minor/Child)	c. 265, § 13
Manslaughter	c. 265, § 13
Mayhem	c. 265, § 14
Murder	c. 265, § 1
Perjury	c. 268, § 1
Rape	c. 265, § 22(b)
Rape Aggravated	c. 265, § 22(a)
Rape, Statutory	c. 265, § 23
Trafficking in Cocaine	c. 94C, § 32E(b)(4)
Trafficking in Heroin	c. 94C, § 32E(c)(4)
Trafficking in Marijuana	c. 94C, § 32E(a)(4)
Unnatural Acts w/Child under 16	c. 272, § 35A
Conspiracy to Commit any of above Offenses	
Accessory Before any Crime in this Category	
Attempts to Commit any Crime in this Category	

8/2/02

101 CMR

PETITION TO SEAL

TO: Commissioner of Probation, One Ashburton Place, Rm.405, Boston MA 02108

SELECT appropriate box(es). If 1, 2, or 3 are selected you must sign corresponding numbered affidavit below.

- PART A
1 - 4
1 Section 100B - Chapter 276. Delinquency (juvenile) cases, all sentence elements of which, and of any subsequent court appearances, were completed 3 years prior to this request.
2 Section 100A - Chapter 276. Misdemeanor cases, all sentence elements of which, and of any subsequent court appearances, were completed 10 years prior to this request (or, which was a felony when committed, and is presently a misdemeanor).
3 Section 100A - Chapter 276. Felony cases, all sentence elements of which, and of any subsequent court appearances, were completed 15 years prior to this request.
4 Section 100A - Chapter 276. Recorded offense which is no longer a crime, except where the elements of the offense continue to be a crime under a different designation.

Print Last name First name Middle name Date of Birth
Alias/Maiden/Previous name
Mailing Address City State Zip
Occupation Social Security #
Birthplace
Father's Name Mothers Maiden Name
Husband or Wife
Signature

In accord with the provision of Chapter 276, Sections 100A, and 100B, as established by Chapter 686 of the Acts of 1971, Chapter 404 of the Acts of 1972 and Chapter 322 of the Acts of 1973, respectively, I hereby request that my record of adult criminal and/or juvenile Massachusetts court appearances and dispositions be sealed forthwith.

To the best of my knowledge:

- 1. [] a) My delinquency court appearances or dispositions including court supervision, probation, commitment or parole, the records for which are to be sealed, terminated not less than three years prior to said request; b) I have not been adjudicated delinquent or found guilty of any criminal offense within the commonwealth in the three years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars nor been imprisoned under sentence or committed as a delinquent within the commonwealth within the preceding three years; and c) I have not been adjudicated delinquent or found guilty of any criminal offenses in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and have not been imprisoned under sentence or committed as a delinquent in any state or county within the preceding three years.

Signed under penalties of perjury,

Signature of petitioner

- 2. [] To the best of my knowledge:
a) All of my court appearance and court disposition records, including termination of court supervision, probation, or sentence for any misdemeanor occurred not less than ten years prior to this request; b) that my court appearance and court disposition records, including termination of court supervision, probation or sentence for any felony occurred not less than fifteen years prior to this request; c) that I have not been found guilty of any criminal offense within the commonwealth in the ten years preceding such request, except motor vehicle offenses in which the penalty does not exceed a fine of fifty dollars; d) I have not been convicted of any criminal offense in any other state, United States possession or in a court of federal jurisdiction, except such motor vehicle offenses as aforesaid, and have not been imprisoned in any state or county within the preceding ten years; and e) my record does not include convictions of offenses other than those to which the section applies, or convictions for violations of sections one hundred and twenty-one to one hundred-thirty one H, inclusive, of chapter one hundred and forty or for violations of chapter two hundred and sixty eight or chapter two hundred and sixty-eight A.

Signed under penalties of perjury,

Signature of petitioner

PETITIONER NOT TO WRITE BELOW THIS LINE



**TRIAL COURT OF MASSACHUSETTS
OFFICE OF THE COMMISSIONER OF PROBATION
ONE ASHBURTON PLACE, ROOM 405
BOSTON, MASSACHUSETTS 02108
617-727-5300**

[E]

Petition to court to seal record of adult criminal and/or juvenile Massachusetts court appearances and dispositions.

PETITIONER'S NAME:

(Print) _____ Date of Birth _____
(Last Name) (First Name) (Middle Name)

Alias/Maiden/Previous Name _____

Mailing Address _____
(Number) (Street) (City) (State) (Zip Code)

Birthplace _____ Father's Name _____ Mother's Maiden Name _____

- Section 100c - Chapter 276 (May Seal) Dismissed, except in cases where probation has been imposed. Nolle Prosequi, No Probable Cause, Not Guilty.
- Section 34 - Chapter 94C (Drug controlled substance). (May Seal). First offense.
- Section 34 - Chapter 94C (Drug controlled substance). (Shall Seal). Possession of marijuana, or controlled substance in Class E.
- Section 44 - Chapter 94C (Drug controlled substance). (Shall Seal). Not guilty, complaint dismissed or not pressed.
- Chapter 1102 of 1973 - Conviction of possession of marijuana prior to July 1, 1972. (Shall Seal).

Court No.	Docket No.	Court Appearance Date	Offense	Disposition

Date _____ Signature of Petitioner _____

Petitioner NOT To Write Below This Line

Petition Allowed/Disallowed

Instructions

Upon a hearing on this matter on _____

I find that SEALING WAS NECESSARY TO EFFECTUATE
A COMPELLING GOVERNMENTAL INTEREST.

Judge's Signature _____

Date _____

C.P.O. Signature _____

Rec'd by Commissioner of Probation _____

After the petition is allowed, send the white copy to the Clerk's Office, the yellow copy to the Commissioner of Probation and the pink copy of the petitioner.

All copies must be signed by the judge. The yellow copy must be signed by the Chief Probation Officer before being forwarded to the Office of the Commissioner of Probation.



Mitt Romney
Governor

Kerry Healey
Lieutenant Governor

The Commonwealth of Massachusetts
Executive Office of Public Safety
Criminal History Systems Board
200 Arlington Street, Suite 2200
Chelsea, Massachusetts 02150

Tel: 617-660-4600 Fax: 617-660-4613
TTY Tel: 617-660-4606
www.mass.gov/chsb

Edward A. Flynn
Secretary of Public Safety

Barry J. LaCroix
Executive Director

CORI AUDIT GUIDELINES

The CORI Audit Guidelines must be followed by all certified agencies. If your agency is selected to be the subject of an audit, you will be notified in advance. If you have any questions regarding these guidelines, please contact the Legal Department at (617) 660-4760.

1. Current and prospective employees and/or volunteers must sign the request form acknowledging that a CORI check will be conducted by the Criminal History Systems Board. This does not apply to CH 336, CH 444, 172I, 172G, and 172H requests.
2. Access to CORI is limited to the authorized personnel who have signed an Agreement of Non-Disclosure on file with the CHSB.
3. CORI may always be shared with the applicant/employee/volunteer to whom it pertains upon request by the named individual person. "Shared" includes the provision of a photocopy of the CORI.
4. CORI must not be disseminated to any other person or agency except as provided in paragraph 3 or as otherwise provided by law.
5. CORI must be kept separate from any other personnel files. CORI must be secured in a locked file cabinet when not being inspected.
6. CORI may be kept for up to three years for purposes of defending against any employment discrimination action.
7. Only one copy of the CORI is to be kept in the files at any time.

**Good CORI Language in Mass. FY '05 Budget
Chapter 149 of the Acts of 2004
(boldfaced below)**

Criminal History Systems Board

8000-0110 For the operation of the criminal history systems board; provided, that the board shall fund 1 administrative assistant who shall be employed in the victim services unit of the board for the continued and enhanced operation of the post-conviction victim and witness certification program operated pursuant to chapter 258B and clause (c) of the first paragraph of section 172 of chapter 6 of the General Laws; provided further, that said victim services position shall be in addition to any such positions approved as of February 1, 1998; provided further, that not more than \$75,000 shall be expended for the purpose of enabling local housing authorities access to criminal offense information when qualifying applicants for state-assisted housing; **provided further, that the board shall, not later than September 30, 2004, adopt regulations to: a) assure that the distribution of criminal offender record information relates to the individual for whom the request has been made, b) afford practical assistance in corrections to an criminal offender record information report to an individual who submits evidence to the board that one or more charges in a criminal offender record information report distributed by the board and purportedly relating to that individual, in fact, do not relate to that individual, c) limit the distribution of criminal offender record information to conviction data and data regarding any pending criminal charge, except as otherwise authorized by law, and d) require that any entity other than a criminal justice agency that receives a criminal offender record information report from the board as to an individual and, as a result of that report, is inclined to make an adverse decision as to the individual, shall, before making a final decision, afford the individual an opportunity to dispute the accuracy and relevance of the criminal offender record information report; and provided further, that no later than February 28, 2005 , the board shall file a report with the house and senate committees on ways and means detailing the steps the board had taken to implement the preceding proviso and the success of those steps in improving the accuracy of the criminal offender record information system** \$2,560,647

ABC Canning Company, Inc.
124 Mountainside Circle
Anywhere, MA 01472
508-894-7777

[H]

April 29, 2005

To Whom It May Concern:

I have known **Mary Moe** for the last three years, ever since she was hired by our company to work in the food preparation room at ABC's factory. She has been an excellent worker, and she was given a promotion last May and a raise in pay. Ms. Moe learns fast, she is very careful in her work, she is punctual, cooperative and gets along well with the other employees. Further, she has done all of this while, since September of 2003, she has been attending classes 4 nights a week with a view to getting a certificate in drug counselling. Ms. Moe is someone this company would like to keep – indeed, I wish that she could be with ABC until she reaches retirement!

However, Ms. Moe has told me that in January she intends to leave this job and devote the next year or so to her studies, so that she can get her certificate and start looking for a job in her chosen field of work.

It was in connection with her leaving that she asked me to write this letter of recommendation. We had a private conversation, and she shared with me information about her past, information which I did not know about when we hired her. (ABC does not do CORI checks, and we do not even ask about criminal records unless there is something about an applicant which makes us suspicious.)

What I learned astounded me, not so much because of the extent of her past criminal record but because it indicated a lifestyle and a set of attitudes that have no relation to the responsible, hard-working person that she is now and has been as a top worker at ABC Canning Company for the last three years. Once in her life she was a slave to drugs, and this led her into bad company and into crime. But she did her time, and while she was in prison, she went through a drug rehab program which not only helped her to get permanently off drugs but also into a whole new, honest, serious, hardworking life style. She is quite clearly now a wholly different person from the one she was when her behaviors gave rise to her CORI.

When Ms. Moe completes her course and gets her certification, she will be looking for a job. I hope that anyone considering her application will give major consideration not to her CORI-past but to the person she is now.

Sincerely,

J. M. Pingree
President