

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 157.00: ACCESS TO AND DISSEMINATION OF EVALUATIVE INFORMATION

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157.01: Purpose

The purpose of 103 CMR 157.00 is to establish guidelines governing the content and use of evaluative information, and to govern, limit, or prohibit the inspection, receipt of copies, and challenge of such information by an individual referred to therein.

157.02: Statutory Authority

103 CMR 157.00 is issued pursuant to M.G.L. c. 6, §§ 167 through 178, and, in particular, pursuant to M.G.L. c. 6, § 171.

157.03: Cancellation

All previous departmental rules and regulations regarding access to and dissemination of evaluative information are hereby cancelled to the extent they are inconsistent with 103 CMR 157.00.

157.04: Applicability

103 CMR 157.00 shall apply to all inmate evaluative information held by the department in inmate files, and on the Inmate Management System (IMS) database, except the separate medical, mental health or dental records.

157.05: Access

Copies of 103 CMR 157.00 shall be maintained within the central policy file of the department, in each superintendent's central policy file, and in each inmate library and inmate policy manual.

Copies of 103 CMR 157.00 shall also be made available in the records section of correctional facilities and in the central office.

157.06: Definitions

Case Folder. At the institution, the institutional case file of the inmate. At the central office, the central office file on the inmate.

Commissioner. The Commissioner of the Department of Correction.

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Criminal History Systems Board (CHSB). The board responsible for regulating the collection, storage, dissemination and usage of criminal offender record information.

Criminal Offender Record Information (CORI). Records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. CORI shall be limited to factual statements about an individual's movement through any one or more of the formal stages of the criminal justice process. CORI does not include intelligence information or evaluative information as those terms are defined in 103 CMR 157.06.

Department. The Department Correction.

Evaluative Information. Records, data, or reports, concerning individuals charged with crime and compiled by criminal justice agencies, which appraise mental condition, physical condition, extent of social adjustment, rehabilitative progress and the like, and which are primarily used in connection with bail, pre-trial or post-trial release proceedings, sentencing, correctional and rehabilitative planning, probation or parole.

Indigency. Upon request for waiver of fees or costs an inmate may be declared indigent if:

- (a) At the time of the request, the inmate has, in all accounts to which he or she has access, a total amount less than or equal to \$10.00 plus the cost of fees sought to be waived; and
- (b) The inmate has had such amount in said accounts for a period of 60 days or more. (*e.g.* request to waive \$5.00 on July 1, 2004; indigent if, at no time since May 1, 2004, total in accounts has been more than \$15.00.)

The superintendent may designate an inmate as indigent in such other circumstances than described herein as he or she deems appropriate.

Intelligence Information. Records and data compiled by criminal justice for the purpose of criminal investigation, including reports of informants, investigators or other persons, or any type of surveillance associated with an identifiable individual. Intelligence information shall also include records and data compiled by criminal justice agencies for the purpose of investigating a substantial threat of harm to an individual or to the order or security of a correctional facility.

Screening Employee. The central office employee(s) designated by the Commissioner or the institutional employee(s) designated by the superintendent or director of that facility to screen case folders for evaluative information.

157.07: Access To Intelligence Information

An individual or the individual's representative shall not have access to intelligence information pertaining to the individual.

157.08: Access to Evaluative Information by the Individual

(1) Request for access to evaluative information by the individual to whom the evaluative information pertains may be submitted in person or by mail. Where practicable, a Department Form shall be used, but failure to use this form by the requesting individual shall not serve as a bar to access. Current inmates shall direct such request to the screening employee at their correctional facility in which they are presently serving their sentences. Former inmates and legal representatives of inmates (excluding legal representatives who are currently inmates) may submit such request to the central office screening employee or the appropriate institution.

(2) The screening employee shall review the evaluative information contained in the case folder and the IMS database, if applicable, and make a determination regarding review by the individual as follows:

- (a) Approval for full review of information requested;
- (b) Approval for partial review of information requested; or
- (c) Disapproval for review of information requested.

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- (3) The following information shall not be disclosed, even in the event that a request for evaluative information is approved:
- (a) Documents prepared by an agency other than the department, which contain evaluative information. In this case, the screening employee shall notify the individual of the existence of document and the name of the agency producing the document so that the individual may directly contact the agency to request access to the document.
 - (b) Information, which if disclosed would pose a direct and articulable threat of harm to a Department employee or any other person or the security of a correctional facility.
 - (c) Information, which would if disclosed clearly impair a treatment relationship between a counselor and a client.
 - (d) Information provided to the department under a clear and justifiable condition of confidentiality.
 - (e) Attorney documents which would not be subject to disclosure in a civil proceeding.
 - (f) Documents or working papers of the deliberative process of a deciding authority.
- (4) The screening authority shall make every effort to disclose all evaluative information which is reasonably segregable from that withheld under 103 CMR 157.08(3).
- (5) A department employee who prepares or compiles a report containing evaluative information may indicate on such report their opinion that part or all of its contents should not be disclosed to the individual. The screening employee shall take any such notation into account but shall make a decision independent determination of such notations when determining whether or not to disclose the information.
- (6) Within 15 business days of receipt of the request for information, the screening employee shall record their determination including the basis for denial of access, if applicable, on the Department form or written request. This form shall be retained in the individual's case folder.
- (7) Where full or partial review of evaluative information has been approved by the screening employee, the review of all information not withheld should occur as soon as is practicable following the notification of approval. The individual shall be permitted to receive one photocopy of any evaluative information which was approved for release by the screening employee.
- (8) In order to allow access by all inmates to their evaluative information the central office supervisor of records and the superintendent may establish guidelines limiting the number of requests an indigent inmate may make for access to their evaluative information. Such guidelines shall be subject to approval by the director of research or designee.

157.09: Access to Evaluative Information by Legal Representatives of the Individual

- (1) Legal representatives of an individual may have access to the individual's evaluative information, subject to the restrictions of 103 CMR 157.08(3), provided the individual has given informed written authorization for such access and the legal representative so authorized satisfactorily provides identification to the screening employee. Such legal representatives shall include:
- (a) The attorney of the individual;
 - (b) An authorized agent of the individual's attorney who is also an attorney; and,
 - (c) a law student or legal paraprofessional who is working under the authorization and supervision of the individual's attorney, provided, that said law student or paralegal submits written documentation from the attorney indicating that the law student or legal paraprofessional is under the authorization and supervision of the attorney. Law students or legal paraprofessionals who are presently inmates or parolees, or who have been inmates or parolees within the last five years, shall not be permitted access to evaluative information unless the superintendent or the director of research approves such access.

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(2) A legal representative who wishes to review evaluative information pertaining to a client shall complete the application to review evaluative information by legal representative. The relevant sections of the form should also be completed by the individual to whom the evaluative information pertains, the Department screening employee, and where required, the attorney providing authorization supervision for a law student or legal paraprofessional. The original copy shall be retained in the individual's case folder.

157.10: Access to Evaluative Information by Third Parties

(1) Access to Evaluative Information by Reintegration, Rehabilitation, or Health Agencies. Agencies or individuals furthering the reintegration, rehabilitation, or health of an individual may have access to evaluative information pertaining to the individual where access to such evaluative information is necessary to facilitate such reintegration, rehabilitation, or health. Informed consent for such access is necessary unless the individual is unable to give informed consent.

(2) Access to Evaluative Information by Members of an Individual's Family. Members of an individual's family may have access to evaluative information pertaining to the individual, subject to the provision of 103 CMR 157.08(3), provided that the individual has given informed consent for such access. In an emergency, where it is appropriate to notify next of kin, and the individual is unable to give his or her informed consent due to a medical or psychiatric disability, such consent shall not be required.

(3) Access to Evaluative Information by Other Agents for the Sole Purpose of Dissemination. Any other person may have access to evaluative information pertaining to the individual, subject to the provision of 103 CMR 157.08(3), provided that the individual has given informed consent for such access; access shall be for the sole purpose of disseminating the evaluative information to the individual where inspection and copying by the individual would cause undue burden. Persons who are presently parolees or inmates, or who have been parolees or inmates within the last five years, shall not be permitted access to evaluative information unless the superintendent, or the director of research approves such access.

(4) Access to Evaluative Information by Victims of Crime. Evaluative information may be disclosed to a victim of crime, witness, or the family member of a homicide victim, who is certified by the Criminal History Systems Board, provided that the information is reasonably necessary for the security and well being of such person, that the request for such information relates to the offense in which such person was involved and that such disclosure is consistent with 103 CMR 157.08(3).

157.11: Access to Evaluative Information by Criminal Justice Agencies

Access to evaluative information by criminal justice agencies shall be subject to the Criminal History Systems Board regulations regarding access to and dissemination of CORI. 103 CMR 157.00 are contained in 803 CMR 2.00 *et seq.* Access to evaluative information shall be limited to that which is necessary for the discharge of the statutory responsibilities of the criminal justice agency.

157.12: Receipt of a Copy of Evaluative Information by the Individual

When the screening employee has determined that the individual may review the evaluative information, the individual shall, upon request, be permitted to receive one photocopy or IMS screen print of such evaluative information. The department may impose a charge set by the Massachusetts Executive Office Administration and Finance and .20¢ a page for copying services for each IMS screen printout and .50¢ per computer printout.

(1) No charge shall be made if the total fee for copying services would not exceed \$2.00; and,

(2) No charge shall be made for indigent inmates.

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The same procedures for photocopying, IMS screen printouts and costs apply where a third party has requested and received access to the evaluative information, pursuant to 103 CMR 157.08, 157.09, and 157.10.

157.13: Appeal Process

(1) Institution. If an individual is unsatisfied with the decision of the screening employee regarding the request to review evaluative information pertaining to the individual which is contained at the institution, the individual may, appeal that decision in writing to the superintendent. The superintendent or a designee shall respond, in writing, to the individual within 15 business days.

(2) Central Office. If an individual is unsatisfied with the decision of the screening employee regarding the request to review evaluative information pertaining to the individual contained at the central office, the individual may, appeal that decision in writing to the director of research. The director of research shall respond, in writing, to the individual within 15 business days.

157.14: Challenges to the Accuracy or Completeness of Evaluative Information

(1) Evaluative-information Contained in the Institutional Files. An individual who believes the evaluative information pertaining to the individual contained in an institutional file or the IMS database is inaccurate, incomplete, or improperly maintained or disseminated may, in writing, request the superintendent of the institution to purge, modify or supplement the evaluative information or to take other appropriate remedial action. The superintendent or a designee shall respond, in writing, to the individual within 15 business days. If it appears to the superintendent or the designee that the individual's challenge is valid, the superintendent or designee may take corrective action with regard to the evaluative information contained in the file. If the individual is unsatisfied with the response of the superintendent or designee or if the superintendent has not responded within 15 business days the individual may, in writing, request review by the Commissioner. The Commissioner or his designee shall respond, in writing, to the individual within 15 business days. Any individual aggrieved by the decision of the Department may appeal the denial in writing within 30 days thereafter to the Criminal History Systems Board. Any challenge by the individual regarding the accuracy or completeness of the evaluative information shall become a permanent part of the individual's file.

(2) Evaluative Information in Central Office Files. An individual who believes that evaluative information pertaining to the individual contained in central office files is inaccurate, incomplete, or improperly maintained or disseminated may, in writing, director of research in the central office to purge, modify or supplement the evaluative information or to take other appropriate remedial action. The director of research shall respond, in writing, to the individual within 15 business days. The director of research may take corrective action with regard to the evaluative information. If the individual is unsatisfied with the response of the director of research, or if the director has not responded within 15 business days the individual may, in writing, request review by the Commissioner. The Commissioner or a designee shall respond, in writing, to the individual within 15 business days. Any individual aggrieved by the decision of the Department may appeal the denial in writing within 30 days thereafter to the Criminal History Systems Board. Any challenge by the individual regarding the accuracy or completeness of the evaluative information shall become a permanent part of the individual's file.

157.15: Time Limits

All procedural time limits set forth in 103 CMR 157.00 are directory and may be modified by the superintendent, Commissioner or their designee(s).

157.16: Responsible Staff

(1) The director of research or a designee shall be responsible for implementing and monitoring 103 CMR 157.00 throughout the department.

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(2) Each superintendent shall be responsible for the implementation of 103 CMR 157.00 and for the development of any and all necessary and appropriate institution policies and procedures.

157.17: Annual Review

103 CMR 157.00 shall be reviewed annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the central policy file indicating that the review has been completed. Recommendations for revisions, additions or deletions shall be included.

157.18: Severability

If any article, section, subsection, sentence, clause or phrase of 103 CMR 157.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, clause or phrase of 103 CMR 157.00.

REGULATORY AUTHORITY

103 CMR 157.00: M.G.L. c. 6, §§ 167 through 178.

(PAGES 43 THROUGH 48 ARE RESERVED FOR FUTURE USE.)