

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

803 CMR 11.00: CONSUMER REPORTING AGENCY (CRA)

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11.01: Scope and Purpose

- (1) 803 CMR 11.00 is issued in accordance with M.G.L. c. 6, §§ 167A and 172; and M.G.L. c. 30A.
- (2) 803 CMR 11.00 sets forth procedures for Consumer Reporting Agencies (CRA) that request Criminal Offender Record Information (CORI) from the Department of Criminal Justice Information Services (DCJIS) to screen their own prospective or current employees, that request CORI from DCJIS on behalf of iCORI registered clients or that request Open CORI from DCJIS.
- (3) 803 CMR 11.00 applies to CRAs that request CORI from DCJIS to screen their own prospective or current employees, that request CORI from DCJIS on behalf of iCORI registered clients or that request Open Access to CORI from DCJIS.
- (4) Nothing contained in 803 CMR 11.00 shall be interpreted to limit the authority granted to the Criminal Record Review Board (CRRB) or to DCJIS by the Massachusetts General Laws.

11.02: Definitions

As used in 803 CMR 11.00 the following words and phrases shall have the following meanings:

Consumer Reporting Agency (CRA). Any person which, for monetary fees, dues, or on a cooperative, nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer criminal history, credit information, or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Criminal Offender Record Information (CORI). Information as defined in 803 CMR 2.03: *Criminal Offender Record Information Inclusions and Exclusions.*

Criminal Justice Information System (CJIS). Local, state, regional, interstate and federal information systems, including databases, computer applications and data networks used by criminal justice and public safety agencies to enhance public safety, improve interagency communications, promote officer safety, and support quality justice and law enforcement decision making.

11.02: continued

Criminal Record Review Board (CRRB). A statutorily-created board within the Department of Criminal Justice Information Services (DCJIS) that reviews complaints and investigates incidents involving allegations of violations of the laws governing CORI, M.G.L. c. 6, §§ 167A and 172; and 803 CMR 2.00: *Criminal Offender Record Information*.

Decision Maker. An entity that requests, receives, or reviews CORI results and is authorized by its client to decide whether to hire or accept an individual based on the CORI received from the DCJIS.

Department of Criminal Justice Information Services (DCJIS). The Massachusetts public safety agency statutorily responsible for the administration and management of the CJIS.

Employment Applicant. An otherwise qualified individual who meets all other requirements for the position for which the individual is being screened by an employer.

Housing Applicant. An individual who applies to rent or lease housing, including market rate and subsidized housing.

iCORI. The internet-based system used in the Commonwealth to access CORI and to obtain self-audits.

iCORI Registered Client. An entity registered to access CORI from DCJIS that delegates this responsibility to a consumer reporting agency.

Person. A natural person, corporation, association, partnership, or other legal entity.

Subject. An individual for whom a request for CORI is submitted to DCJIS.

11.03: iCORI Registration

- (1) iCORI access requires registration from an iCORI account. iCORI account registration requires access to a computer and access to the internet.
- (2) iCORI registrants shall provide:
 - (a) the iCORI registrant's identifying information as required by DCJIS; and
 - (b) identification of the purpose for which the iCORI registrant requests access to CORI including any statutory, regulatory, or accreditation requirements that mandate CORI or criminal history screening.
- (3) iCORI registrants shall complete iCORI training.
- (4) iCORI registrants shall agree to all iCORI terms and conditions.
- (5) An iCORI registration fee may be required.
- (6) iCORI registration shall expire after one calendar year.
- (7) After expiration, the iCORI registrant shall renew its registration before accessing additional CORI.
- (8) To renew a registration, the iCORI registrant shall:
 - (a) complete iCORI training again; and
 - (b) agree to all iCORI terms and conditions again.
- (9) An iCORI registration renewal fee may be required.
- (10) A CRA shall keep its registration information updated.
- (11) iCORI registration renewal fees may be required.

11.04: Access to Criminal Offender Record Information (CORI) by a Consumer Reporting Agency (CRA) to Evaluate a Subject

- (1) A CRA may receive the following levels of CORI access:
 - (a) Standard access for screening its current employees and employment applicants;
 - (b) iCORI registered client access, the CRA obtains the same level of CORI access as is provided to the iCORI registered client on whose behalf the CRA will be performing CORI checks. Any CRA that requests CORI beyond the level of access to which its iCORI registered client is entitled shall be in violation of 803 CMR 11.00; and
 - (c) Open Access to CORI for any lawful purpose.
- (2) For each CORI request, the iCORI registered client shall provide accurate identifying information for the subject to the CRA and the purpose for which the subject's CORI is being requested.
- (3) For each CORI request, the CRA shall submit to DCJIS the accurate identifying information for the subject and purpose for the CORI request as provided by its iCORI registered client.

11.05: Procedures for Requesting Criminal Offender Record Information (CORI)

- (1) Prior to submitting a CORI request to screen its own current or prospective employees a CRA shall:
 - (a) complete and maintain a CORI Acknowledgment Form for each subject to be screened;
 - (b) verify the identity of the subject;
 - (c) obtain the subject's signature on the CORI Acknowledgment Form; and
 - (d) sign and date the CORI Acknowledgment Form certifying that the subject was properly identified.
- (2) To complete the CORI Acknowledgment Form, the subject shall provide:
 - (a) all names that have been used by the subject or by which the subject has been known; and
 - (b) any different name or date of birth for the subject that the subject is aware appears in the CORI database.
- (3) A CRA shall verify a subject's identity by examining a government-issued identification. Acceptable types of government-issued identification are:
 - (a) a state-issued driver's license;
 - (b) a state-issued identification card with a photograph;
 - (c) a passport; and
 - (d) a military identification.
- (4) If a subject does not have an acceptable government-issued identification, an employer or governmental licensing authority shall verify the subject's identity by other forms of documentation as determined by DCJIS.
- (5) If a CRA is unable to verify a subject's identity and signature in person, the subject may submit a completed CORI Acknowledgement Form acknowledged by the subject before a notary public.
- (6) A CRA shall submit the subject's name, date of birth, and, if available, the last six digits of the subject's social security number.
- (7) To retrieve CORI from the iCORI system, a subject's name, date of birth, and partial social security number as submitted by the employer or governmental licensing authority must match the information in the iCORI database exactly.
- (8) If a subject has additional names or dates of birth, the CRA may submit additional requests.
- (9) A fee may be required for each separate CORI request.

11.05: continued

(10) CORI Acknowledgment Forms shall be valid for one year from the subject's having signed the form or, if an employee, until the conclusion of a subject's employment, whichever comes first.

(a) A CRA may submit a new request for CORI within one year of the subject's having signed the original CORI Acknowledgment Form as long as the CRA provides written notice to the subject at least 72 hours before submitting the request.

(b) Failure to provide such written notice to the subject of an otherwise authorized CORI request shall be a violation of 803 CMR 11.00.

(c) If a subject objects to the new request for CORI, the CORI Acknowledgment Form that was executed for such a purpose, shall become invalid.

(11) Nothing in 803 CMR 11.00 shall be construed to prohibit a CRA or an iCORI registered client from making an adverse licensing, employment or housing decision on the basis of a subject's objection to a request for CORI.

(12) CORI Acknowledgment Forms must be retained by the CRA for a minimum of one year from the date of the subject's signature.

11.06: Criminal Offender Record Information (CORI) Policy Requirement for Certain Requestors

(1) Any CRA that submits five or more CORI requests annually shall maintain a CORI policy.

(2) DCJIS shall maintain a model CORI policy on a DCJS website.

(3) A CORI policy may be developed and maintained regardless of the number of CORI requests conducted.

11.07: Delivery of Criminal Offender Record Information (CORI) Results

(1) Where fully automated, criminal history records will be returned to the CRA electronically. Otherwise a manual search of the criminal history record shall be conducted and a response will be delivered upon completion of the search.

(2) CORI requested electronically through iCORI may be viewed through the requesting organization's iCORI account.

(3) CORI requested by paper submission shall be sent to the requesting CRA by first-class mail.

11.08: Storage of Criminal Offender Record Information (CORI)

(1) A CRA shall not electronically or physically store CORI results unless the CRA has been authorized by its iCORI registered client to act as the decision maker.

(2) CRA decision makers and iCORI registered clients shall store hard copies of CORI in a separate locked and secure location, such as a file cabinet. Access to the locked and secured location shall be limited to employees who have been approved to access CORI. CRAs shall not otherwise store CORI in any form.

(3) CRA decision makers and iCORI registered clients shall password protect and encrypt electronically stored CORI. CRA decision makers and iCORI registered clients shall limit password access to only those employees who have been approved by them to access CORI.

(4) CORI information shall not be stored using public cloud storage methods by the CRA or its client.

(5) A CRA may transmit CORI results to its iCORI registered client(s) via electronic means, provided any CORI data transmitted electronically shall be encrypted.

(6) Each CRA who is acting as an authorized decisionmaker may retain CORI for a period of not longer than seven years from the date it was obtained.

11.09: Destruction of Criminal Offender Record Information (CORI)

- (1) Each CRA decision maker who retains CORI shall destroy hard copies of CORI by shredding or otherwise before disposing of CORI.
- (2) Each CRA decision maker who retains CORI shall destroy electronic copies of CORI by deleting them from the hard drive on which they are stored and from any system used to back up the information before disposing of CORI.
- (3) Each CRA decision maker who retains a CORI registered client shall appropriately clean all information by electronic or mechanical means before disposing of or repurposing a computer used to store CORI.

11.10: Requesting Criminal Offender Record Information (CORI) on Behalf of an iCORI Registered Client

- (1) To obtain Standard or Required Access to CORI on behalf of an iCORI registered client, the iCORI registered client must have an active and valid iCORI account number which the CRA shall provide at the time of the CORI request. A CRA may request Open Access to CORI on behalf of iCORI registered clients that do not have valid iCORI accounts.
- (2) Before a CRA may submit a CORI request to DCJIS on behalf of an iCORI registered client, the CRA must be authorized through iCORI by its iCORI registered client to request CORI on its behalf. A CRA is prohibited from submitting CORI requests on behalf of iCORI registered clients that have not authorized it to do so through iCORI. This includes, but is not limited to iCORI registered clients that have chosen to rescind their CRA designation.
- (3) Before the CRA may submit a CORI request on behalf of an iCORI registered client, the iCORI registered client must provide the CRA with affirmations of the following:
 - (a) that the iCORI registered client notified the subject in writing of, and received permission for, the CRA to obtain the subject's CORI;
 - (b) that the iCORI registered client is in compliance with federal and state credit reporting statutes;
 - (c) that the iCORI registered client will not misuse any information in the report in violation of federal or state equal employment opportunity laws or regulations; and
 - (d) a statement of the annual salary of the position for which the subject is being screened.
- (4) A CRA must provide DCJIS with the purpose for each CORI request submitted and submit the payment for each CORI request.

11.11: Dissemination of Criminal Offender Record Information (CORI) by a Consumer Reporting Agency (CRA)

- (1) The information a CRA may disseminate to its iCORI registered client depends upon the level of access to which the iCORI registered client is entitled for each particular CORI request, and, in the case of employment applicants, whether the position for which the subject is being screened has an annual salary of \$75,000 or more.
 - (a) If the iCORI registered client is entitled to Standard Access to CORI as defined in 803 CMR 2.05: *Levels of Access to Criminal Offender Record Information*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of less than \$75,000, a CRA may disseminate:
 1. all pending cases, except those pending cases that are seven or more years old from the date of the CORI report and that did not result in a warrant;
 2. all misdemeanor and felony convictions; and
 3. juvenile information, but only where the subject was adjudicated as an adult while younger than 17 years old.
 - (b) If the iCORI registered client is entitled to Standard Access to CORI as defined in 803 CMR 2.05: *Levels of Access to Criminal Offender Record Information*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of \$75,000 or greater, a CRA may disseminate:
 1. all pending cases;
 2. all misdemeanor and felony convictions; and

11.11: continued

3. juvenile information, but only where the subject was adjudicated as an adult while younger than 17 years old.
 - (c) If the iCORI registered client is entitled to Required 2 Access to Criminal Offender Record Information, as defined in 803 CMR 2.05: *Levels of Access to Criminal Offender Record Information*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of less than \$75,000, a CRA may disseminate:
 1. all pending cases, except those pending cases that are seven or more years old from the date of the CORI report and that did not result in a warrant;
 2. all misdemeanor and felony convictions;
 3. all non-conviction information, except non-conviction information that is seven or more years old from the date of the CORI report and that did not result in a warrant; and
 4. juvenile information, but only where the subject was adjudicated as an adult while younger than 17 years old.
 - (d) If the iCORI registered client is entitled to Required 2 Access to CORI as defined in 803 CMR 2.05: *Levels of Access to CORI*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of \$75,000 or more, a CRA may disseminate:
 1. all pending cases;
 2. all misdemeanor and felony convictions;
 3. all non-conviction information; and
 4. juvenile information, but only where the subject was adjudicated as an adult while younger than 17 years old.
 - (e) If the iCORI registered client is entitled to Required 3 Access or Required 4 Access to CORI as defined in 803 CMR 2.05: *Levels of Access to Criminal Offender Record Information*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of less than \$75,000, a CRA may disseminate:
 1. all pending cases, except those pending cases that are seven or more years old from the date of the CORI report and that did not result in a warrant;
 2. all misdemeanor and felony convictions;
 3. information regarding charged criminal offenses that did not result in a conviction, except non-conviction information that is seven or more years old from the date of the CORI report and that did not result in a warrant; and
 4. juvenile information, but only where the subject was adjudicated as an adult while younger than 17 years old.
 - (f) If the iCORI registered client is entitled to Required 3 or Required 4 CORI access as defined in 803 CMR 2.05: *Levels of Access to Criminal Offender Record Information*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of more than \$75,000, a CRA may disseminate:
 1. all pending cases;
 2. all misdemeanor and felony convictions;
 3. information regarding charged criminal offenses that did not result in a conviction; and
 4. juvenile information, but only where the subject was adjudicated as an adult while younger than 17 years old.
- (2) Any CRA that receives CORI from the DCJIS and has reason to believe that the information contained therein has, in whole or in part, been disclosed in error, shall contact DCJIS to request that the CORI be reviewed before disseminating the CORI results to its iCORI registered client.
 - (3) Any CRA that knowingly disseminates CORI beyond the scope permitted by the Fair Credit Reporting Act, 15 U.S.C. § 1681, and 803 CMR 2.00: *Criminal Offender Record Information* shall be in violation.
 - (4) Any CRA that knowingly disseminates CORI beyond the level of access to which its iCORI registered client is entitled shall be in violation of 803 CMR 2.00: *Criminal Offender Record Information*.
 - (5) Any CRA that knowingly fails to provide a copy of the CORI results to its iCORI registered client shall be in violation of 803 CMR 2.00: *Criminal Offender Record Information*.

11.11: continued

- (a) A CRA may provide a summary of the CORI results in a report to the iCORI registered client. The CRA shall also provide the iCORI registered client an exact copy of the CORI results from DCJIS.
- (b) A CRA may only disseminate CORI results to its iCORI registered client(s).
- (c) Any CRA that knowingly disseminates CORI results to a party other than its iCORI registered client(s) shall be in violation of 803 CMR 2.00: *Criminal Offender Record Information*.

11.12 Designation of a Consumer Reporting Agency (CRA) as Decision Maker

- (1) A CRA is a decision maker for CORI request purposes if it has been authorized by its iCORI registered client to receive CORI results and, based on those results and on behalf of its client, to decide whether to hire or accept an individual for employment, housing, volunteer, or licensing purposes.
- (2) If authorized as the decision maker and the CRA intends to ask the subject about criminal history information obtained from a source other than the DCJIS, the CRA shall provide the subject with a copy of the criminal history and identify its source.
- (3) If a CRA intends to question the subject about the subject's CORI received from DCJIS, the CRA shall provide the subject with a copy of the CORI report prior to questioning.

11.13: Adverse Decisions by the Consumer Reporting Agency (CRA) as Decision Maker

- (1) If the CRA is authorized as the decision maker, before notifying the iCORI registered client of a potential adverse decision regarding the subject based on the subject's CORI received from DCJIS, the CRA shall:
 - (a) provide the subject with a pre-adverse action disclosure that includes a copy of the subject's consumer report and a copy of *A Summary of Your Rights Under the Fair Credit Reporting Act*, published by the Federal Trade Commission by meeting the subject in person, by telephone, by electronic communication, by fax, or by hard copy correspondence;
 - (b) notify the subject of the potential adverse decision;
 - (c) provide a copy of the CRA decision maker's CORI Policy to the subject, if applicable;
 - (d) identify the information in the CORI that provides the basis for the inclination to make an adverse decision;
 - (e) provide a copy of the CORI to the subject;
 - (f) provide the subject with a copy of the DCJIS information concerning the process for correcting a criminal record;
 - (g) provide the subject with an opportunity to dispute the accuracy of the information contained in the CORI; and
 - (h) document all steps taken to comply with 803 CMR 11.13.
- (6) If a subject claims that criminal history information provided by a CRA is incomplete or inaccurate, the CRA shall investigate the subject's claim, unless the CRA has a reasonable basis to deem the subject's claim frivolous. If a CRA receives a claim from a subject that the subject's criminal history information, as provided by the CRA, is inaccurate or incomplete, and if the CRA obtained the criminal history information from the DCJIS, the CRA shall also notify DCJIS, in writing, of the subject's claim. The CRA shall also include a copy of the subject's claim of incomplete or inaccurate criminal history information.
- (7) A CRA obtaining CORI from the DCJIS is subject to the authority of the CRRB.
- (8) Landlords, property management companies, real estate agents, or public housing authorities shall be permitted to evaluate housing applicants by using the services of a CRA pursuant to 803 CMR 5.16: *Using the Services of a Consumer Reporting Agency to Make Housing Decisions*.
- (9) Employers shall be permitted to evaluate employment applicants by using the services of a CRA pursuant to 803 CMR 2.21: *Use of a Consumer Reporting Agency to Make Employment Decisions*.

11.14: Audits by Department of Criminal Justice Information Services (DCJIS)

- (1) Requests for CORI are subject to audit by DCJIS.
- (2) Any CRA that obtains CORI from DCJIS shall be subject to an audit conducted by DCJIS.
- (3) Each CRA who requests CORI shall respond to, and participate in, audits conducted by DCJIS.
 - (a) Failure to cooperate with, or to respond to, an audit may result in immediate revocation of CORI access.
 - (b) DCJIS may restore CORI access upon completion of its audit.
 - (c) DCJIS may also initiate a complaint with the CRRB against any CRA for failure to respond to, or to participate in, an audit.
- (4) During a DCJIS audit, the CRA shall provide, or allow DCJIS audit staff to inspect, certain CORI-related documents, including, but not limited to:
 - (a) CORI Acknowledgment Forms;
 - (b) secondary dissemination logs;
 - (c) the organization's CORI Policy; and
 - (d) documentation of adverse decisions based on CORI such as employment, licensing, or housing decisions.
- (5) During an audit, DCJIS audit staff shall assess the CRA's compliance with statutory and regulatory requirements, including, but not limited to:
 - (a) if the CRA properly registered for the appropriate level of CORI access and provided correct registration information;
 - (b) if the CRA is properly completing and retaining CORI Acknowledgment Forms;
 - (c) if the CRA is requesting CORI in compliance with 803 CMR 2.00: *Criminal Offender Record Information*;
 - (d) if the CRA is properly storing and safeguarding CORI;
 - (e) if the CRA is screening only those individuals permitted by law; and
 - (f) if the CRA has a CORI policy that complies with DCJIS requirements.
- (6) Audit results may be published.
- (7) If the DCJIS auditors determine that the CRA is not in compliance with statutory or regulatory CORI requirements, DCJIS may initiate a complaint against the organization with the CRRB.
- (8) DCJIS may also refer the audit results to state or federal law enforcement agencies for criminal investigation.

11.15: Consumer Reporting Agency (CRA) Access to Criminal Offender Record Information (CORI) for Purposes Other than on Behalf of a Client

Nothing in 803 CMR 11.00 shall limit the ability of a CRA or an iCORI registered client to access CORI pursuant to any other chapter of 803 CMR (Department of Criminal Justice Information Services) including, but not limited to access as an employer or member of the general public pursuant to 803 CMR 2.00: *Criminal Offender Record Information*.

11.16: Severability

If any provision of 803 CMR 11.00 or the application thereof is held to be invalid, such invalidity shall not affect other provisions or the application of any other part of 803 CMR 11.00 not specifically held invalid, and to this end the provisions of 803 CMR 11.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY

803 CMR 11.00: M.G.L. c. 6, §§ 167A and 172; and M.G.L. c. 30A.