

CHSB Regulations

803 C.M.R. 2.00-9.00 et seq.

803 CMR 2.00: GENERAL INFORMATION

Section

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2.01: Authority

803 CMR *et seq.* is promulgated in accordance with M.G.L. c. 6, §§ 168, 173 and 175 and c. 30A.

2.02: Regulations Do Not Limit Statutory Authority

Nothing contained in 803 CMR shall be interpreted to limit the authority granted to the Criminal History Systems Board by M.G.L. c. 6, §§ 167 - 178B and any other applicable provisions of the Massachusetts General Laws.

2.03: Definitions

Applicant. Includes any current or prospective employee, licensee, or volunteer and is applicable to 803 CMR 2.00, 3.00 and 6.00.

Criminal History Systems Board (CHSB or Board). The CHSB consists of 18 members as provided by M.G.L. c. 6, § 168. The CHSB provides for and exercises control over the installation, operation, and maintenance of the data processing and data communication systems known as the Criminal Offender Record Information System. Said system shall be designed to insure the prompt collection, exchange, dissemination and distribution of such criminal offender record information as may be necessary for the efficient administration and operation of criminal justice agencies, and to connect such systems directly or indirectly with similar systems in this or other states.

Criminal Justice Agency. A state or federal court with criminal jurisdiction or a juvenile court; state, county or local police; any government agency which incarcerates or rehabilitates juvenile offenders as its principle function; or any government agency which performs as its principle function, activities relating to:

- (a) crime prevention including research or the sponsorship of research;
- (b) the apprehension, prosecution, defense, adjudication, incarceration or rehabilitation of criminal offenders; or
- (c) the collection, storage, dissemination or usage of CORI.

Criminal Justice Information System (CJIS). That system referred to in 803 CMR *et seq.* and otherwise known as the Criminal Justice Information System (CJIS) is the automated Criminal Offender Record Information referred to in M.G.L.-c. 6, § 168. CJIS is the law enforcement telecommunications system and network within Massachusetts that provides local, county, state and federal agencies with the ability to obtain or exchange information such as missing and wanted persons, local and national criminal history, restraining orders, drivers license and vehicle registration, firearms licensing and gun sales transactions, and Homeland Security Broadcasts.

Criminal Offender Record Information (CORI). "Criminal offender record information", 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. Such information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any consequent proceedings related thereto. CORI shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. CORI shall be limited to information concerning persons who have attained the age of 17 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person adjudicated a delinquent child before he attained the age 17; provided, however, that if a person under the age 17 is adjudicated a youthful offender, information relating to such criminal offense shall be criminal offender record information. Criminal offender record information shall not include information concerning any offenses, which are not punishable by incarceration.

Dissemination. The release of CORI in any communicable form.

Evaluative Information. Records, data or reports concerning identifiable individuals charged with crime and compiled by criminal justice agencies which appraise mental conditions, physical conditions, extent of social adjustment, rehabilitative progress, and the like which are primarily used in connection with bail, pre-trial, or post-trial release proceedings, sentencing, correctional and rehabilitative planning, probation, or parole. Such information is not included in the definition of CORI, but its dissemination is restricted by 803 CMR and M.G.L. c. 6, §§ 172 and 178.

Intelligence Information. Records and data compiled by a criminal justice agency for the purposes of criminal investigations, including reports of informants, investigators, or other persons or any type of surveillance associated with an identifiable individual. Intelligence shall also include records and data compiled by a criminal justice agency for the purposes of investigating a substantial threat of harm to an individual, or to the order or security of a correctional facility. Such information is not included in the definition of CORI.

Identity Theft File. The National Crime Information Center (NCIC) file that provides law enforcement with the ability to identify individuals with stolen identities and distinguish identity theft victims from impostors. Information contained in the Identity Theft File shall also be used by the CHSB when furnishing CORI information to certified non-criminal justice agencies pursuant to M.G.L. c. 6, §§ 172(b) or 172(c).

Juvenile Agencies Which Perform Criminal Justice Functions. Agencies of the juvenile justice system which perform as their principle function criminal justice duties or activities with respect to juveniles shall be deemed criminal justice agencies.

Otherwise Qualified. Refers to final applicants that meet all other criteria for positions within an agency's certification issued pursuant to M.G.L. c. 6, §§ 172(b) or 172(c).

Purge. The removal of CORI so that there is no trace of information removed and no indication that such information was removed.

Regulations. Regulations include the whole or any part of any rule, standard, other requirement of general application and future effect, including the amendment or repeal thereof, adopted by the CHSB to interpret or implement the law enforced or administered by the CHSB but does not include:

- (a) an advisory ruling of the CHSB;
- (b) procedures concerning the internal management or discipline of the CHSB which do not substantially affect the rights of or the procedures available to the public; or
- (c) decisions issued in adjudicatory proceedings.

Sealed Records. All records which have been sealed pursuant to a court order or administrative action of the Commissioner of Probation pursuant to M.G.L. c. 276, §§ 100A, 100B, and 100C.

Youthful 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/she were an adult would be punishable by imprisonment in the state prison, as set forth in M.G.L. c. 119, §§ 52 and 58.

2.04: CORI Inclusions and Exclusions

(1) Statistical Records and Reports. CORI shall not include statistical data in which individuals are not identified and from which identities are not ascertainable.

(2) Juvenile Data. CORI shall not include information concerning a person who is under the age of 17 years unless that person is prosecuted criminally pursuant to M.G.L. c. 119, §58.

(3) Photographs and Fingerprints. CORI shall include fingerprints, photographs and other identifying data that is recorded as the result of the initiation of a criminal proceeding. CORI shall not include photographs, fingerprints, or other identifying data of an individual used for investigative purposes if the individual is not identified.

(4) Evaluative Information. The access to and utilization of evaluative information, which is not CORI, is governed by M.G.L. c. 6, § 171. Each criminal justice agency which holds evaluative information shall promulgate regulations governing the access to and dissemination of such information. 803 CMR 2.00 shall require:

- (a) That any criminal justice agency, which generates evaluative information, shall make said information available to the individual to whom it refers upon his/her writing within a reasonable period of time unless it falls within certain designed exemptions.
 - (b) Those exemptions shall be specifically designated in the agency's regulations and shall include only those circumstances where disclosure of the requested evaluative information would:
 - 1) pose a direct and articulable threat to an individual;
 - 2) pose a direct and articulable threat to the security of a correctional facility.
 - (c) If such a threat is established, it must be outlined in a certificate which shall be kept with the evaluative information.
 - (d) When an individual requests his/her own evaluative information, the custodial agency shall respond in writing delineating:
 - 1) the agency's decision to release or withhold the information, in whole or in part; and
 - 2) all sources of origin for all evaluative information generated by said agency.
 - (e) A person aggrieved by the denial of access to his/her own evaluative information may appeal, in writing, to the CHSB, within 30 days of such denial. The CHSB may designate a three member panel to review said appeals.
 - (f) The CHSB, a three member panel of the Board, if so designated, or a court of competent jurisdiction pursuant to M.G.L. .c. 6, § 177 may have access to any certificate issued pursuant to 803 CMR.
- (5) Authorization for Public Dissemination of CORI.
- (a) A criminal justice agency with official responsibility for a pending criminal investigation or prosecution may disseminate CORI that is specifically related to and contemporaneous with an investigation or prosecution;
 - (b) A criminal justice agency may disseminate CORI that is specifically related to and contemporaneous with the search for or apprehension of any person, or with a disturbance at a penal institution;
 - (c) A criminal justice agency with jurisdictional responsibilities for an offender, pursuant to M.G.L. c. 6, § 172 shall release CORI in accordance with the following provisions:
 - 1. Qualifying Status. Certain CORI described in 803 CMR 2.04(5)(c)2 and 3 is available for release from criminal justice agencies if the individual named in the request or summary has been convicted of a crime punishable by a term of imprisonment of five years or more or has been convicted of any crime and sentenced to any term of incarceration, and at the time of the request:
 - a. is serving a sentence of probation or incarceration; or
 - b. is under the supervision of the Parole Board; or
 - c. having been convicted of a misdemeanor has been released from all custody or supervision for not more than one year; or
 - d. having been convicted of a felony has been released from all custody or supervision for not more than two years; or
 - e. having been sentenced to the custody of the Department of Correction has finally been discharged therefrom, either having been denied release on parole or having been returned to penal custody for violation of parole, for not more than three years.

2. Mandatory Dissemination. A criminal justice agency, with the primary responsibility for the creation and/or maintenance of that information, shall make available to any person upon request information indicating custody status and placement within the criminal justice system. No information shall be disclosed that identifies family members, medical or psychological history, or any other personal information unless such information is directly relevant to release or custody placement decision, and no information shall be provided if its release would violate any other provisions of state or federal law. Custody status and placement shall include, for the purposes of 803 CMR 2.04(5)(c)2., any information indicating that a criminal offender currently:

- a. is on probation; or
- b. is subject to particular special conditions of probation; or
- c. is in compliance or non-compliance with particular special conditions of probation, including whether an offender is a participant in a court ordered rehabilitation or educational program; or
- d. is confined in a particular institution, or
- e. is confined at a particular level of security; or
- f. is eligible for parole on an estimated date; or
- g. has begun parole supervision on a specified date, and has ended, or is expected to end parole supervision on a specified date; or
- h. is subject to certain conditions of parole.

3. Discretionary Dissemination. The following criminal justice agencies may make available to the public a summary, which may include references to evaluative information, concerning a decision to release an individual on a permanent or temporary basis, to deny such release or to change his custody status:

- a. the Parole Board, except as required by M.G.L. c. 127, § 130;
- b. a probation department, with the approval of a justice of the appropriate division of the trial court;
- c. the Department of Correction;
- d. a county correctional authority.

(6) Dissemination of CORI During Certain Proceedings. No provision of 803 CMR 2.00 shall be construed to prohibit dissemination of criminal offender record information in the course of criminal proceedings, or other proceedings expressly required by a statute to be made public, including published opinions, where such disclosure is limited to that necessary to carry on such proceedings effectively.

(7) Public Records. CORI shall not include public records as defined in .M.G.L. c. 4, § 7, cl. twenty-sixth including police daily logs under M.G.L. c. 41, § 98F.

(8) Certain Published Records. CORI shall not include published records of public court or administrative proceedings, or public judicial, administrative or legislative proceedings.

(9) Exclusion of Minor Offenses. CORI shall not include information concerning offenses that are not punishable by incarceration.

(10) Court Order and Subpoena. Nothing in 803 CMR 2.00 shall prohibit an agency from disseminating CORI pursuant to a valid court order or subpoena issued by an administrative agency pursuant to M.G.L. 30A, § 12 or a federal administrative agency as required by law.

(11) Restrictions on the access to and dissemination of an individual's CORI terminates upon his/her death. Upon request, with a valid death certificate or reasonable proof of death as determined by the CHSB, criminal justice agencies may release CORI concerning the deceased.

2.05: Regulations and Advisory Rulings

(1) Initial Procedure to Handle Recommended Regulations. Upon receipt of a petition for the adoption, amendment or repeal of a regulation submitted pursuant to M.G.L. c. 30A, § 4 or upon written recommendation by a member of the CHSB that a regulation be adopted, amended, or repealed, the CHSB shall determine whether to schedule proceedings in accordance with 803 CMR 2.05(2). If the petition has been presented to the CHSB, the chairman of the CHSB shall, within a reasonable amount of time after such determination, notify the petitioner of the CHSB's action.

(2) Procedures for Adjudicatory Proceedings. All procedures for proceedings for adopting, amending, and repealing regulations shall be conducted pursuant to the requirements set forth in the Administrative Procedure Act at M.G.L. c. 30A.

(3) Rules for Adjudicatory Proceedings. Adjudicatory proceedings shall be conducted pursuant to the informal/fair hearing rules of practice and procedure set forth at 801 CMR 1.02.

(4) Advisory Ruling.

(a) Any interested person or his/her attorney may at any time request an advisory ruling with respect to the applicability to any factual situation of any statute or regulation enforced or administered by the CHSB. The request shall be sent to the CHSB by mail or delivered in person during normal business hours.

(b) All requests shall be signed by the requesting party or the requesting party's attorney, contain the requesting party's address or the address of his/her attorney, and state clearly and concisely the substance of the request. The request may be accompanied by any supporting data or arguments. If the CHSB determined that an advisory ruling will not be rendered, the CHSB shall, as soon as practicable, notify the requesting party that the request is denied. If an advisory ruling is rendered, a copy of the ruling shall be sent to the requesting party or his or her attorney.

(c) The CHSB may notify any person that an advisory ruling has been requested and may receive and consider arguments or data from persons other than the person requesting the ruling.

2.06: Severability

If any provision of 803 CMR 2.00 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 2.00 not

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specifically held invalid, and to this end the provisions of 803 CMR 2.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY

803 CMR 2.00: M.G.L. c. 6, §§ 168, 173 and 175; c. 30A.

803 CMR 3.00: ACCESS PROCEDURES (CERTIFICATION)

Section

- 3.01: General Requirements
- 3.02: Criminal Justice Agencies: Eligibility for Access
- 3.03: Non Criminal Justice Agencies: Eligibility for Access
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- 3.05: Procedures for agencies certified under M.G.L. c. 6, §§ 172(b) or 172(c) to follow in conducting CORI checks
- 3.06: Public access to conviction data on certain individuals
- 3.07: Computer Terminal Access to CORI
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3.01: General Requirements

- (1) Any individual or agency requesting certification for access to CORI under the provisions of M.G.L. c. 6, §§ 172(a), (b), or (c), shall apply in the manner prescribed by the CHSB.
- (2) Within a reasonable time of receipt by the CHSB of an application under M.G.L. c. 6, § 172, and the collection of sufficient data, Legal Counsel shall prepare a written recommendation pertaining to each application with reasons for approval or denial of certification.
- (3) The members of the CHSB shall meet and consider the applications for certification and recommendations of Legal Counsel on each. In the case of applications filed pursuant to M.G.L. c. 6, §§ 172(a) and 172(b), a majority vote of the present and voting members shall be required for certification. For applications filed pursuant to M.G.L. c. 6, § 172(c), a 2/3 vote of the present and voting members shall be required for certification.
- (4) No CORI shall be disseminated to any such agency or individual prior to certification by CHSB.
- (5) Upon certification, access to CORI at a certified agency is limited to individuals who have filed individual agreements of non-disclosure with the CHSB. Such individuals shall be designated to request, receive, and review CORI on behalf of the agency. The CHSB in its discretion may deny access to CORI by individuals at a certified agency.

(6) Certifications issued pursuant to M.G.L. c. 6, §§ 172(b) and 172(c) shall be renewed every two years.

(7) Any individual or agency certified by the CHSB to access CORI shall be required to attend training as a condition of initial certification and upon each subsequent certification renewal. Said trainings shall be conducted in a format and in intervals established by the CHSB.

3.02: Criminal Justice Agencies: Eligibility for Access

(1) In order to obtain certification as a criminal justice agency pursuant to M.G.L. c. 6, § 172(a), the agency requesting such certification must show that it conforms to the definition of "Criminal Justice Agency" which appears in M.G.L. c. 6, § 167 and 803 CMR 2.03.

(2) Only those officials and employees of criminal justice agencies as determined by the administrative heads of such agencies to require CORI for the actual performance of their criminal justice duties shall have access to CORI. Such administrative heads shall maintain for inspection by the CHSB, a list of such authorized employees by position, title, or name.

(3) Consultants and contractors to criminal justice agencies shall complete a written Agreement of Non-Disclosure, as provided by and approved by the CHSB, to use CORI only as permitted by M.G.L. c. 6, §§ 167 through 178 and 803 CMR 3.00. Such Agreements of Non-Disclosure shall be held by the criminal justice agency and the CHSB.

(4) A certified criminal justice agency that is a subunit of a non-criminal justice agency shall not disseminate CORI, directly to or through any intermediary, to any uncertified official, employee, consultant or contractor of the non-criminal justice agency of which it is a part.

3.03: Non-Criminal Justice Agencies: Eligibility for Access

(1) In order to obtain certification pursuant to M.G.L. c. 6, § 172(b), a non-criminal justice agency must show that it is required to have access to CORI by statute. "Required to have access by statute" means that there is a specific statutory directive that such individual or agency:

- (a) Have access to CORI, or;
- (b) Must use CORI in the exercise of its decision making process.

The following shall not constitute sufficient justification for certification under 803 CMR 3.03:

- 1. An administrative or executive directive, in the absence of specific statutory language;
- 2. A statutory requirement to consider good character, moral character, trustworthiness or similar subjective characteristics.

(2) Consultants and contractors to non-criminal justice agencies shall complete a written Agreement of Non-Disclosure, as provided by and approved by CHSB, to use CORI only as permitted by M.G.L. c. 6, §§ 167 through 178 and 803 CMR 3.00. Such Agreements of Non-Disclosure shall be held by the criminal justice agency and the CHSB.

(3) A certified non-criminal justice agency that is a subunit of an uncertified non-criminal justice agency shall not disseminate CORI, directly or through any intermediary, to any uncertified official, employee, consultant or contractor of the non-criminal justice agency of which it is a part.

3.04: Public Interest: Eligibility for Access

(1) In order to obtain certification pursuant to M.G.L. c. 6, § 172(c), an agency, individual or corporation must offer evidence that the public interest in disseminating the requested CORI outweighs the personal privacy interests of the subjects upon which access is sought. Two-thirds of the present and voting members of the CHSB are required both for certification and for the extent of access to be allowed.

(2) Persons who are victims of crime, witnesses to crime, and family members of homicide victims, as defined by M.G.L. c. 258B, shall be certified by the Board upon their application to receive:

- (a) CORI information as it relates to the offense in which said victim/witness is involved;
- (b) Other information, including but not limited to, evaluative information, which in the agency's discretion is reasonably necessary for the security and well being of said victim/witness.

3.05 Procedures for agencies certified under M.G.L. c. 6, §§ 172(b) or 172(c) to follow in conducting CORI checks

(1) A non-criminal justice agency certified pursuant to M.G.L. c. 6, §§ 172(b) or 172(c) shall obtain information required by the CHSB on the CORI request form including but not limited to full name, date of birth, mother's maiden name, place of birth, sex, former addresses, height, weight, eye color and may request the applicant's social security number, in order to assure that the distribution of CORI relates to the individual for whom the request has been made.

(2) Each certified non-criminal justice agency also shall obtain from any individual whose CORI is requested from the CHSB the person's Identity Theft File Number if the individual has been enrolled in the NCIC Identity Theft File by the CHSB. If an individual provides an agency with an Identity Theft File Number on a CORI request form, the agency shall submit the request for such individual's record according to the business process specified by the CHSB, which may include, but not be limited to faxing such requests to a dedicated fax number at the CHSB. This business process will prevent the dissemination to the certified non-criminal justice agency of any records or data the CHSB has determined does not belong to the identify theft victim.

- (3) In order to obtain a CORI check on an applicant, the agency shall:
- (a) confirm that it is currently certified to perform a CORI check on the current or otherwise qualified applicant under its grant of certification from the CHSB;
 - (b) use the form prescribed by the CHSB;
 - (c) obtain the signature of the individual upon whom the CORI check is being performed, except as otherwise authorized by law;
 - (d) verify the identity of the applicant whose CORI is being requested with at least one form of government issued photographic identification, or if the individual has not been issued such a form of identification, then verify the applicant's information with a government issued non-photographic identification, such as a birth certificate or social security card; and
 - (e) maintain a copy of the CORI request form.
- (4) If the applicant whose CORI is being requested is unable to appear in person at the agency to provide the required government issued identification at the time the CORI request form is completed, then the individual may provide the agency with a clear, legible copy of the identification. In such instances, the agency is required to conduct an in-person verification of the identity of the applicant with at least one form of government issued identification prior to or simultaneously with the applicant beginning or receiving any employment, service or benefit to ensure the CORI received from the CHSB corresponds to the applicant for whom a request was made.
- (5) In response to a CORI request by a certified non-criminal justice agency, the CHSB will not disseminate a CORI which an individual has established to the CHSB is wrongly attributed to him or her by any means, including an alias.

3.06 Public Access to Conviction Data on Certain Individuals

- (1) Pursuant to M.G.L. c. 6, § 172, the public may have access, upon written request, to conviction data that is maintained on the automated criminal history file of the Criminal History Systems Board pertaining to certain individuals that meet the following criteria:
- (a) the person has been convicted of a crime punishable by a term of five years or more, regardless of the sentence imposed; or
 - (b) the person has been convicted of any crime and sentenced to any term of incarceration AND at the time of the request:
 - 1. the person is currently incarcerated; or sentenced to and actively on probation supervision; or currently under parole supervision; or,
 - 2. having been convicted of a misdemeanor, has been released from all custody and supervision for not more than one year; or,
 - 3. having been convicted of a felony, has been released from all custody or supervision for not more than two years; or,
 - 4. having been sentenced to the custody of the Department of Correction, has finally been discharged therefrom, either having been denied a release on parole or having been returned to custody as a parole violator, for not more than three years.

- (2) Said requests for publicly accessible conviction data shall be made only to the Criminal History Systems Board in the following manner:
- (a) in writing, including the name, date of birth of the person subject of the query; social security number is requested but not required, additional data may be required to positively identify the individual;
 - (b) by mail, postage prepaid;
 - (c) accompanied by a fee of \$30.00 for each name to be queried;
 - (d) all responses will be returned by mail to the requestor;
 - (e) the CHSB reserves the right to deny a record request based upon insufficient identifying information.

3.07: Computer Terminal Access to CORI

Computer terminal access to CORI shall be limited to certified criminal justice agencies, unless such access is otherwise authorized by the CHSB. Computer terminal access to CORI, or to any other data contained on CJIS, shall be used by law enforcement or criminal justice personnel and otherwise authorized persons only for a criminal justice purpose in the performance of their official duties and responsibilities. Such CJIS data shall include, but not be limited to, CORI, juvenile records, and any and all information as provided via the Registry of Motor Vehicles, the National Law Enforcement Telecommunications System, the Interstate Identification Index, the Court Activity Record Information file (including the civil restraining order file), Corrections information, and Parole information. All such personnel or authorized persons shall be subject to a criminal record background check and will sign an agreement of non-disclosure on forms provided by the Criminal History Systems Board.

3.08: Limitations on Access to CORI

The extent of access to CORI, or to any other data contained on the CJIS system as indicated in 803 CMR 3.06, shall be limited to that necessary for the actual performance of the criminal justice duties of criminal justice agencies under M.G.L. c. 6, § 172(a), to that necessary for the actual performance of the statutory duties of agencies and individuals granted access under M.G.L. c. 6, § 172(b), and to that necessary for the actual performance of the actions or duties sustaining the public interest as to agencies or individuals granted access under M.G.L. c. 6, § 172(c).

3.09: Access by Other Than Personal Identifying Information

Except for approved research program or upon written authorization of the CHSB and the head of the agency whose CORI is sought, access to and dissemination of CORI shall be limited to inquiries based on name, fingerprints or other personal identifying characteristics.

3.10: Listing of Dissemination of CORI

Each agency or individual certified by the CHSB shall maintain a listing of CORI disseminated and the agencies or individuals to whom it has disseminated each item of CORI. The listing shall include the type of CORI disseminated, to whom it was disseminated, by whom it was disseminated, and the date. The listing shall be maintained for at least one year from the date of dissemination. Such listing shall be made available for audit or inspection by the CHSB.

3.11 Listing of Certified Agencies

The CHSB shall maintain a list of all agencies certified under M.G.L. c. 6, §§ 172(a), (b), (c) and 173. A copy of such list shall be provided to any individual or agency on request.

3.12: Fees

- (1) A fee of \$30.00 shall be paid to the Board for each request for the publicly accessible record of criminal convictions of an individual pursuant to the provisions of M.G.L. c. 6, § 172, paras. 6 and 7.
- (2) A fee of \$15.00 shall be paid to the Board for each request for CORI data of an individual pursuant to any certification provided by the Board to a non-governmental agency pursuant to the provisions of M.G.L. c. 6, § 172, paragraph 1, clause (b) and clause (c)..
- (3) A fee of \$25.00 shall be paid to the Board for each request for CORI from an individual seeking to obtain CORI pertaining to himself, including requests as made by authorized third parties; provided, however, that if a person shall be found indigent, as defined in M.G.L. c. 261, § 27A, the Board shall not impose a fee.

- (4) No fee shall be assessed by the Board for any request for CORI data as presented by the following:
- (a) a victim, witness, or family member of a homicide victim, all as defined by M.G.L. c. 258B and certified pursuant to M.G.L. c. 6, § 178A;
 - (b) a governmental agency;
 - (c) such others as the board shall exempt upon application thereto and where the Board determines such exemption shall serve the public interest.

3.13: Electronic Mechanism for Access to CORI

The CHSB in its discretion may authorize access to CORI through its secure website (Web CORI application) to certified agencies. Where a certified agency is granted electronic access to CORI the following terms and conditions shall apply:

- (1) Each agency user of the CHSB website is required to submit an individual agreement of non-disclosure.
 - (a) The CHSB reserves the right to deny an individual's access to CORI.
 - (b) Upon approval the user is issued a password to access the system. It is the responsibility of each user to keep his/her password secure and confidential.
- (2) The use, storage, and retention of CORI shall be kept in accordance with the CORI audit guidelines.
- (3) No part of the CHSB web site, or any information contained therein, may be reproduced, republished, redistributed, or transmitted, in whole or in part in any form or by any means, electronic or mechanical, in any information storage or retrieval system, unless in accordance with M.G.L. c. 6, §§ 167-178 inclusive or with express written permission from the Executive Director of the CHSB.
- (4) Enforcement of the terms and conditions, or the use of any information received through the CHSB web site including but not limited to CORI, will be governed and construed by the laws of the Commonwealth of Massachusetts.
- (5) The CHSB reserves the right to audit agencies in order to ensure compliance with policy, regulatory, and statutory requirements.
- (6) The CHSB may require agencies to process CORI requests electronically through its secure website.
- (7) The CHSB reserves the right to revoke or deny electronic access to CORI.

3.14: Revocation and Modification Procedures

The CHSB may revoke or modify the conditions of a certification at any time as follows:

- (1) by a majority vote of the present and voting members, modify the conditions of the certification issued pursuant to M.G.L. c. 6 § 172(a);
- (2) by a majority vote of the present and voting members, revoke or modify the conditions of the certification issued pursuant to M.G.L. c. 6, § 172(b); or
- (3) by a two thirds majority vote of present and voting members, revoke or modify the conditions of the certification previously issued pursuant to M.G.L. c. 6, § 172(c).

3.15: Severability

If any provision of 803 CMR 3.00 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 3.00 not specifically held invalid, and to this end the provisions of 803 CMR 3.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY

803 CMR 3.00: M.G.L. c. 6, §§ 168, 172, 172B, 175. Chapter 149 of the Acts of 2004.

803 CMR 4.00: STATUTORY AUTHORIZED ACCESS (REPEALED)

803 CMR 5:00 REGULATIONS GOVERNING REQUEST FOR AND USE OF CORI BY LOCAL HOUSING AUTHORITIES AND AGENCIES

Section

- 5.01: Definitions
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- 5.05: Lawful Use of CORI
- 5.06: Housing Authority Access to Interstate Criminal Records
- 5.07: Severability

5.01: Definitions

Agency means any housing agency of the federal, state or local government or a political subdivision, administering a subsidized housing program or an organization under contract with such a public agency to administer a subsidized housing program.

Applicant means any Elderly Applicant, Family Applicant, Handicapped Applicant for public housing or applicant for subsidized housing as defined in 803 CMR 5.02, including all household members and other persons to be listed on the lease as "Other Occupants", as well as any other persons to be so added to this list at a later time.

Criminal History Systems Board means the Criminal History Systems Board established by M.G.L. c. 6, § 168.

Criminal Offender Record Information (CORI) is defined by. M.G.L. c. 6, § 167 and 803 CMR 2.02(1) and includes those records to which an LHA or agency may have access pursuant to M.G.L. c. 6, § 168.

Criminal Charges Which are Currently Pending means any matter before a court of the Commonwealth or any jurisdiction including federal courts, for which a criminal complaint has been issued, an application for a criminal complaint has been submitted, or an indictment has been issued and the court is continuing to exercise jurisdiction over the matter, including, but not limited to, the following dispositions:

- (a) continued without a finding;
- (b) placed on file;
- (c) warrants.

Housing and Community Development (HCD) means the Massachusetts Department of Housing and Community Development as defined in M.G.L. c. 121B, § 1.

Housing and Urban Development (HUD) means the United States Department of Housing and Urban Development established by 42 U.S.C. § 3531.

Interstate Identification Index (III) means the Interstate Identification Index, which contains a chronology of arrest events compiled as a result of fingerprint submissions to the Federal Bureau of Investigation (FBI).

Local Housing Authority (LHA) means a local housing authority or regional housing authority which was created pursuant to M.G.L. c. 121B and operates thereunder, including HCD or its designated agent, to the extent that HCD is acting as a local housing authority pursuant to M.G.L. c. 121B, § 26A.

Public Housing means housing owned by housing authorities operating pursuant to. M.G.L. c. 121B § 1.

Subsidized Housing Program means any program of rental assistance for low and moderate income persons funded by the state or federal government, such as, but not limited to, the Section 8 Housing Assistance Program, 42 U.S.C. 1437(f), the Massachusetts Rental Voucher Program, M.G.L. c. 121B, Emergency Shelter Grant Program, Supportive Housing Program, Shelter Plus Care, Section 8 Single Room Occupancy (SRO) Moderate Rehabilitation, the Surplus Federal Property for Use to Assist the Homeless Program, HOME, and Housing Opportunities for Persons with AIDS (HOPWA).

5.02: Effective Date

803 CMR 5.00 shall apply to all LHA requests for CORI received by the CHSB on or after March 14, 1991, and to all agency requests for CORI received by the CHSB on or after March 1, 1993.

5.03: Availability of CORI

Barring any extraordinary circumstances, the following CORI in the possession of the CHSB shall be provided by the CHSB to an LHA or agency within a reasonable time, upon receipt of a request from an LHA concerning a named individual:

- (1) any and all information relative to any criminal convictions, both felonies and misdemeanors, regardless of when the conviction occurred:
- (2) any and all information relative to any criminal charges which is currently pending before the courts of the Commonwealth or any jurisdiction including the federal courts.
 - (a) To the extent that the CHSB has none of the aforementioned CORI in its possession for the named individual, the CHSB shall so notify the agency or LHA in the manner as prescribed by the CHSB.
 - (b) At its discretion, the CHSB may specify that all such written requests for CORI shall be made on a form to be prescribed by the CHSB and that such requests may be delivered to the CHSB by facsimile machine.

5.04: Fees

The CHSB shall not assess any filing or user fee of any kind upon an LHA or agency for a request for CORI pursuant to 803 CMR 5.00.

5.05: Lawful Use of CORI

An agency or LHA which obtains CORI pursuant to 803 CMR 5.00 shall use this information only for purposes of evaluating applicants for public or subsidized housing. Dissemination of CORI for any other purpose or to individuals not involved in the tenant selection process is expressly prohibited. To ensure that CORI is handled in a lawful fashion, each LHA or agency shall adopt its own set of guidelines for handling CORI, which shall include, at a minimum, the following safeguards:

- (1) applicants shall be informed in writing that CORI will be obtained from the CHSB;
- (2) the dissemination and/or use of CORI by agency or LHA employees other than as provided in 803 CMR 5.00 shall be expressly prohibited;
- (3) standards shall be established for determining when a request for an applicant's CORI will be made, provided that:
 - (a) requests for CORI shall not be made prior to the final application screening process including compliance with all provisions relating to applicant screening in regulations of the Massachusetts Department of Housing and Community Development; and
 - (b) the standards adopted must not have the purpose or effect of discrimination on the basis of race, religion, color, national or ethnic origin, ancestry, age, sex, handicap, sexual orientation, marital status, military status or receipt of public assistance.
- (4) a designation shall be made of those persons authorized to submit a written request for CORI to the CHSB on behalf of the LHA or agency;
- (5) CORI shall be kept in a separate, locked file cabinet when not being used;
- (6) CORI shall be destroyed when the applicant to whom it pertains has been housed or has received a subsidy. If an applicant has been determined ineligible for housing or subsidy, the applicant's CORI shall be destroyed three years from the date of the application's rejection, or after all administrative and judicial proceedings concerning the rejection are exhausted, whichever is later;
- (7) a list of persons who are CORI approved shall be established and maintained, and this list shall include only those persons who are directly involved in the decision as to whether an applicant is eligible for public housing, or a subsidy and those persons shall sign an agreement of non-disclosure provided by the CHSB;
- (8) only one copy of the CORI is to be kept in the files at any time; and

(9) each individual shall have the right to inspect and be provided with a copy of CORI relating to him/her from the LHA or agency upon request.

(10) no provisions of an LHA or agency's guidelines shall construe 803 CMR 5.00 to prohibit dissemination of CORI by an LHA or agency in the course of a tenant selection appeal, or other administrative or judicial proceeding in which such CORI is relevant, brought by an applicant; provided, however that an agency shall, on request, share with the applicant his/her CORI at any time, and if an agency denies an applicant eligibility for a program on the basis of CORI, the agency shall keep the record open for 90 days if the applicant seeks modification of such CORI pursuant to 803 CMR 6.07.

5.06: Housing Authority Access to Interstate Records

- (1) Pursuant to 42 U.S.C. § 1437(d), police departments may upon request provide information to local housing authorities (LHA) as maintained on the Interstate Identification Index (III) for the purpose of screening adult applicants or tenants of public housing for the purpose of applicant screening, lease enforcement, and eviction. Prior to receiving information pursuant to this statute the local housing authority shall:
 - (a) apply for certification pursuant to M.G.L. c. 6, § 172(b) from the CHSB on the form prescribed by CHSB; and
 - (b) execute a Memorandum of Understanding with the local police department and CHSB;
- (2) Certification is granted for a period of two years from the date of certification. The local housing authority shall apply for renewal of this certification upon expiration.
- (3) Upon certification the procedure for Interstate Identification Index checks for an LHA is as follows:
 - (a) The requesting LHA will submit the name, date of birth, social security number, or other personal identifying characteristics to the local police department. This access is specific to local housing applicants, tenants, or evictions;
 - (b) The local police department will conduct a Interstate Identification Index name and date of birth search and then notify the LHA of any matches;
 - (c) The LHA will not receive the information from the Interstate Identification (per the agreement between the Department of Housing and Urban Development and the Department of Justice), instead, the LHA will be notified by the local police department only of any possible matches in the Interstate Identification Index search;
 - (d) Upon receipt of possible matches, the LHA will instruct the applicant to arrange to have fingerprints taken at the local police department;
 - (e) The local police department will forward the fingerprint card to the FBI through the designated channeling agent;
 - (f) Fingerprint cards matching criminal records will be returned to the local police department, along with a copy of the corresponding criminal record;
 - (g) The local police department will obtain any missing disposition information and will redact any information that is not a pending case or criminal conviction;

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- (h) Pending cases and criminal convictions will be forwarded to the LHA by the local police department;
- (i) If a record is returned from the FBI with no pending cases or criminal convictions, an automated response will be forwarded to the police department;
- (j) All other records, with no pending cases or criminal convictions, will be destroyed.

5.07: Severability

If any provision of 803 CMR 5.00 or the application thereof is held to be invalid, such invalidity shall not effect other provisions or the application of any other part of 803 CMR 5.00 not specifically held invalid, and to this end the provisions of 803 CMR 5.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY:

803 CMR 5.00: M.G.L. c. 6, § 168.

803 CMR 6.00: INDIVIDUAL RIGHTS, NOTIFICATION, INSPECTION

Section

- 6.01: Notice to Individuals
- 6.02: Release of CORI to Individuals
- 6.03: Inspection of CORI in Manual Systems
- 6.04: Inspection of CORI in CJIS
- 6.05: Copies of CORI and Documents Indicating the Absence of a Record
- 6.06: Authorization of Third Parties to Inspect and Copy CORI
- 6.07: Practical Assistance to Correct a CORI
- 6.08: Complaints About CORI
- 6.09: Complaints of Improper Dissemination, Access to or Maintenance of CORI
- 6.10: Circulation of Challenged Records
- 6.11: Challenge to the Accuracy and Relevance of CORI
- 6.12: Compliance
- 6.13: Severability

6.01: Notice to Individuals

Upon sentencing of a person, following his/her conviction of any crime in the Commonwealth, the person shall be informed by the Probation department on a form provided by the CHSB, that:

- (1) he/she will now have a criminal record;
- (2) that the public shall have access to this criminal record information, under certain specified conditions;
- (3) that the convicted person has certain enumerated rights pertaining to this record information pursuant to M.G.L. c. 6, §§ 167 through 178.

This form shall be drafted by the Board and provided to probation departments.

6.02: Release of CORI to Individuals

- (1) Each individual shall have the right to inspect and if practicable copy CORI relating to him or her in accordance with M.G.L. c. 6, § 175 and 803 CMR 6.00.
- (2) It is unlawful for a person to request or require another person to provide a copy of his criminal record except as certified by the CHSB or as specifically provided in 803 CMR 6.00.

6.03: Inspection of CORI in Manual Systems

Agencies at which criminal offender records are sought to be inspected shall prescribe reasonable hours and places of inspection, and shall impose such additional restrictions as may be approved by the board, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them.

6.04: Inspection of CORI in CJIS

CORI maintained in CJIS shall be available for inspection by the individual to whom it refers. Such requests shall be made in writing to the offices of the Criminal History Systems Board at 200 Arlington Street, Suite 2200, Chelsea, MA 02150, by providing a self-addressed, stamped envelope, and the following information: subject's full name, date of birth, social security number and parents' full names, including mother's maiden name. The CHSB may designate other sites for in person access to CORI on CJIS.

6.05: Copies of CORI and Documents Indicating the Absence of a Record

- (1) An individual shall have a right to receive, if practicable, a computer printout or a photocopy of CORI, including personal identifiers, referring to him /her.
- (2) If no CORI referring to the requesting individual can be found in the criminal justice agency's files, then such agency shall disclose this fact to the individual, in writing if requested.
- (3) In order for any individual, other than the individual named in the CORI, to inspect and or copy CORI under 803 CMR 6.05, all requirements of 803 CMR 6.06 must be met.
- (4) An agency holding CORI may impose a reasonable charge for copying services, not to exceed its usual charges to the public for such services, or the actual cost of such copying, whichever is less.
- (5) An individual may make and retain a written summary or notes of the CORI reviewed and he /she may take with him /her such summary of notes.

6.06: Authorization of Third Parties to Inspect and Copy CORI

- (1) An individual named in CORI may give his/her informed written authorization to third parties, including but not limited to attorneys, family members, and persons or agencies furthering the individuals's health or rehabilitation, to inspect and copy CORI pertaining to that individual. A third party so authorized may inspect and copy CORI in accordance with 803 CMR 6.05 by presenting such authorization and satisfactory identification to the agency holding the CORI. Where the individual is unable, due to a physical or mental incapacity, to give such informed written authorization, a criminal justice agency may disseminate CORI necessary for treatment purposes or for notifying families of the physical or mental health of an individual without such authorization. This provision shall not apply to consultants and contractors under 803 CMR 3.02(3).
- (2) An attorney authorized as a third party may further designate, in writing, an agent to act on his/her behalf in inspecting or copying an individual's CORI. If such agent is not himself/herself an attorney, the attorney shall provide, in addition a statement indicating that the agent is acting under the attorney's supervision.

(3) If the third party is either presently or has been within the last five years a correctional inmate or a parolee, such access shall be permitted only upon approval of the agency holding the CORI.

(4) A third party shall be prohibited from making any further dissemination of such CORI, except to the individual who has given such authorization. Upon disseminating CORI pursuant to 803 CMR 6.06, criminal justice agencies shall provide authorized parties with written notice of this prohibition and of the statutory penalties for improper dissemination of CORI.

(5) Where a criminal justice agency has reason to suspect the bona fide basis or authenticity of a third party authorization, the agency may refuse to allow the party purportedly authorized to inspect or copy CORI. Such a situation may arise where the agency suspects that the authorization has been coerced, or given for an unlawful purpose. When refusing a request to inspect and copy CORI on this basis, the agency shall notify the individual to whom the CORI pertains of such refusal and of the right to petition the CHSB for review of such refusal.

(6) Agencies shall implement 803 CMR in a manner consistent with the provisions of M.G.L. c. 151B, § 4 restricting an employer's right to condition employment on an applicant being required to disclose certain CORI. Except as authorized by M.G.L. c. 6, § 172 and 803 CMR 3.02-3.04, it shall be unlawful to require or request a person to provide a copy of his/her CORI to any third person, agency, organization or corporation pursuant to M.G.L. c. 6, § 172 and violations of such are punishable pursuant to M.G.L. c. 6, §§ 168 and 177-178B.

6.07 Practical Assistance to Correct a CORI:

The CHSB shall post on its website and provide at no cost information concerning the process of correcting a criminal record.

Such information shall include information on the CHSB's procedure for an individual to establish to that he/she has been the victim of identity theft for the purposes of dissemination of criminal records. Such procedure will include, but not be limited to:

- a) filing an incident report with law enforcement;
- b) completion of the CHSB's Identity Theft Affidavit;
- c) issuance, upon satisfactory documentation, of an Identity Theft Victim Certification Letter and personal identification number; and
- d) entry, upon satisfactory documentation into an Identity Theft Index.

The CHSB will afford practical assistance to an individual seeking to avail him or herself of the procedure for addressing identity theft as it pertains to criminal records, including providing practical assistance to an individual asserting that one or more charges on a CORI do not pertain to him or her. Such assistance may include contact with personnel in a court.

6.08: Complaints of Inaccurate, Incomplete or Misleading CORI

(1) Any person (hereinafter "complainant") who believes that his/her CORI is inaccurate, incomplete or misleading shall submit in writing a request to the agency having custody or control of the record(s) containing the CORI, or to the CHSB. An inaccurate or misleading CORI shall include that in which an individual is listed as an alias and no charge(s) on the record pertain(s) to the complainant. That written request shall describe with reasonable specificity the inaccurate, incomplete, or misleading CORI, and shall describe the modification necessary to correct the inaccurate, incomplete or misleading CORI.

(2) Any person ("complainant") who is denied the right to inspect or copy CORI relating to him/her may, within 30 days of such denial, petition the CHSB for an order requiring the release of such CORI.

(3) If the agency declines to modify or allow access to the record(s) complained of in accordance with the request of the complainant, that complainant may file, in writing, a complaint with the CHSB. Said complaint shall be accompanied by written proof of the denial of the custodial agency to provide the requested relief, and shall include the following information:

- (a) a description and/or a photocopy of the record(s) containing the inaccurate, incomplete or misleading CORI; and
- (b) a statement describing, with reasonable specificity, what is inaccurate, incomplete or misleading about the CORI contained in the record described in 803 CMR 6.08(2)(a); and
- (c) a statement describing the modification believed by the complainant to be necessary to correct the inaccurate incomplete or misleading CORI or action necessary to access CORI; and
- (d) a description of all steps undertaken by the complainant to access his/her CORI or correct the inaccurate, incomplete or misleading CORI prior to the filing of the complaint with the CHSB.

(4) Upon receipt by the CHSB of a complaint of inaccurate, incomplete or misleading CORI or denial of access to one's CORI, CHSB counsel will review the allegations and information contained therein for compliance with the provisions of 803 CMR 6.08(2) (a) through (d). No complaint shall be deemed received by the CHSB until such complaint is submitted in compliance with the provisions of 803 CMR 6.08(2) (a) through (d).

- (a) Where CHSB counsel determine that all information required by 803 CMR 6.08(2)(a) through (d) has been provided, the complaint shall be referred to the CHSB for disposition.
- (b) Where CHSB counsel determine that all information required by 803 CMR 6.08(2)(a) through (d) has not been provided CHSB counsel will return the complaint to the complainant with a request for additional information as specified.

(5) Following referral by CHSB counsel of a complaint of inaccurate, incomplete, or misleading CORI to the CHSB, the CHSB shall first review the complaint and any supporting documents at a regularly scheduled monthly meeting. That review shall be for the purpose of determining whether a *prima facie* basis for the complaint has been established.

- (a) Where the CHSB determines, after review, that there has been established no *prima facie* basis for the complaint, the complaint shall be dismissed.
 - (b) Where the CHSB determines, after review, that there has been established a *prima facie* basis for a complaint, the CHSB shall set a date for hearing, and shall provide written notice to all concerned parties of the notice of the complaint and the date set for hearing.
- (6) At its hearing the CHSB or its designees, or a subcommittee consisting of CHSB members or their designees, shall provide all parties an opportunity to:
- (a) have counsel present;
 - (b) present evidence or offer testimony;
 - (c) present and examine witnesses;
 - (d) cross-examine witnesses.
- (7) Where a sub-committee of CHSB members or their designees has been selected to hear a complaint of inaccurate, incomplete or misleading CORI, the subcommittee shall present proposed findings of fact to the full CHSB. The CHSB shall review the proposed findings of fact and adopt, reject or modify those findings.
- (8) Where the record in question is found by the CHSB to contain inaccurate, incomplete or misleading CORI, the CHSB shall order the record containing such CORI to be properly purged, modified, or supplemented by explanatory notation to correct the inaccurate, incomplete or misleading CORI as required by M.G.L. c.6, § 175. The CHSB shall not disseminate a record that it has determined is wrongly attributed to an individual by any means, including an alias.

6.09: Complaints of Improper Dissemination of, or Access to CORI

- (1) Any person (hereinafter "complainant") who believes that CORI, juvenile proceedings data, or evaluative information referring to him/her has been unlawfully disseminated or accessed shall submit a complaint in writing to the CHSB. The written complaint as submitted to the CHSB shall contain the following information:
- (a) A reasonably specific description of the nature of the CORI, juvenile proceedings data, or evaluative information improperly disseminated or accessed; and
 - (b) A statement identifying the agency and/or individual who the complainant believes has improperly disseminated or accessed his/her CORI, juvenile proceedings data, or evaluative information; and
 - (c) A reasonably specific statement describing the circumstances of the improper dissemination of or access to CORI, juvenile proceedings data, or evaluative information, including the period of time within which such alleged violation has occurred; and
 - (d) An oath or affirmation, signed by the complainant, that the allegations made in the complaint are in good faith and that they are, to the best of the complainant's knowledge and belief, true.
- (2) Upon receipt by the CHSB of a complaint of improper dissemination of or access to CORI, juvenile proceedings data, or evaluative information, CHSB counsel will review the allegations and information contained therein for compliance with the provisions of 803 CMR 6.09(1)(a) through (d).

(a) Where CHSB counsel determine, following review of the complaint, that all information required by 803 CMR 6.09(1)(a) through (d) has not been provided, CHSB counsel will return the complaint to the complainant with a request for additional information as specified.

(b) Where CHSB counsel determine, following review of the complaint, that the information required by 803 CMR 6.09(1)(a) through (d) has been provided, an investigation into the complainant's allegations shall commence. Any individual or entity alleged to have improperly disseminated or accessed CORI, juvenile proceedings data, or evaluative information shall be contacted in writing by Board counsel regarding same and shall have 90 days to answer said allegations in writing.

(c) An individual's or entity's failure to answer allegations in writing within the 90 days required by 803 CMR 6.09(2)(b) may be considered by the CHSB when the CHSB considers whether a *prima facie* basis for the complaint has been established.

(d) After concluding its investigation into the complainant's allegations, Board counsel shall refer the complaint to the CHSB.

(3) Following CHSB counsel's referral of a complaint of improper dissemination of or access to CORI, juvenile proceedings data, or evaluative information, the CHSB shall review the complaint, any supporting documents, and Board counsel's findings at a regularly scheduled monthly meeting. That review shall be for the purpose of determining whether a *prima facie* basis for the complaint has been established.

(a) Where the CHSB determines, after review, that there has been established no *prima facie* basis for a complaint, the complaint shall be dismissed.

(b) Where the CHSB determines, after review, that there has been established a *prima facie* basis for a complaint, the CHSB may conduct a public hearing. If such hearing is held, written notice shall be provided to all concerned parties with a summary of the complaint and the hearing date.

(4) At the hearing, the CHSB, or a designated sub-committee consisting of CHSB members or their designees, shall provide all parties an opportunity to:

- (a) have counsel present;
- (b) present evidence or offer testimony;
- (c) present and examine witnesses; and
- (d) cross-examine witnesses.

(5) Where a sub-committee of CHSB members or their designees has been selected to hear any complaint of improper dissemination of or access to CORI, juvenile proceedings data, or evaluative information, the sub-committee shall present its proposed findings of fact to the full CHSB. The CHSB shall review the proposed findings of fact and adopt, reject, or modify those findings.

(6) Where the CHSB finds for the complainant and that CORI, juvenile proceedings data or evaluative information was improperly disseminated or accessed the CHSB may:

- (a) issue orders enforcing the statute, rules and regulations of the CHSB; and/or
- (b) impose civil fines up to and including \$500.00 for each willful violation; and/or
- (c) refer the case to the appropriate District Attorney or to the Attorney General for criminal prosecution.

6.10: Circulation of Challenged Records

CORI challenged under the provisions of 803 CMR shall be deemed to be accurate, complete and valid until otherwise ordered by the CHSB.

6.11 Opportunity to Challenge the Accuracy and Relevance of CORI

(1) All agencies certified to access CORI under the provisions of M.G.L. c. 6, §§ 172 (b) or (c) are required to provide a copy of the CORI received from the CHSB to each individual whose record is requested, unless the CHSB indicates to the agency that no record exists for an individual. In every case in which a certified non-criminal justice agency receives a response other than a “No Record” response from the CHSB, the agency shall provide the individual with a copy of the record before any determination or decision is made on the basis of the record. In addition to the copy of the record, the agency shall also provide the individual with information made available by the CHSB on how to correct a CORI and information on how to enroll in the Identity Theft File to establish that the person is the victim of identity theft.

(2) Unless otherwise provided by law, agencies certified pursuant to M.G.L. c. 6, §§ 172(b) or 172(c), that are inclined to make an adverse decision based upon receiving CORI, shall before making a final decision, afford the individual with an opportunity to challenge the accuracy or relevance of the CORI. Agencies shall have a written CORI policy that includes at a minimum the following provisions:

- (a) notify the applicant of the potential adverse decision based on the CORI;
- (b) provide a copy of the CORI and the agency’s CORI policy to the applicant;
- (c) provide a copy of the CHSB’s information concerning the process in correcting a criminal record;
- (d) inform the applicant which part of the criminal record appears to make him ineligible;
- (e) provide the applicant with an opportunity to dispute the accuracy and relevance of the CORI;
- (f) upon receipt of additional documentation from the applicant and/or the CHSB, review the information with the applicant and inform him/her of the decision;
- (g) document all steps taken to comply with this section.

(2) The CHSB shall develop and make available a model CORI policy that an agency may use to implement the provisions of paragraphs (1) and (2).

6.12: CORI Compliance and Audit Requirements

(1) All forms, authorizations, statements, and the like required by 803 CMR 6.00 shall be maintained by the certified agency holding the CORI and be subject to inspection by the CHSB.

(2) The CHSB shall prescribe and publish compliance guidelines for agencies certified under M.G.L. c 6, §§ 172(b) or 172(c) and shall conduct periodic audits of certified agencies for compliance with these statutory provisions.

(3) Agencies or individuals certified under M.G.L. c 6, §§ 172(b) or 172(c) shall be responsible for knowledge of the compliance guidelines.

(4) The certification of an agency or individual may be subject to revocation or modification as outlined in 803 CMR 3.14.

(5) The CHSB may impose sanctions under M.G.L. c. 6, §§ 168 and 177 for violations of M.G.L. c. 6, §§ 167-178B.

6.13: Severability

If any provision of 803 CMR 6.00 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 6.00 not specifically held invalid, and to this end the provisions of 803 CMR 6.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY

803 CMR 6.00: M.G.L. c. 6, §§ 168, 172, 174, 175, Chapter 149 of the Acts of 2004.

803 CMR 7.00: CRIMINAL JUSTICE INFORMATION SYSTEM, CONTENTS, COMPUTERIZATION

Section

- 7.01: Content and Identification
- 7.02: Protection from Accidental Loss or Injury
- 7.03: Unauthorized Access
- 7.04: Personnel Security
- 7.05: User Agreements
- 7.06: Severability

7.01: Content and Identification

(1) CORI compiled by each criminal justice agency shall be entered into and maintained in CJIS in accordance with procedures established by the CHSB.

(2) The Executive Director of the CHSB shall adopt procedures to ensure a high degree of certainty that CORI maintained in CJIS is correctly identified with the individual to whom it pertains. The Executive Director also shall adopt procedures to ensure with a high degree of certainty that information contained in CJIS that is disseminated to non-criminal justice agencies certified to receive access to such information under the provisions of M.G.L. c. 6, §§ 172 (b) or (c) is correctly identified with the individual to whom it pertains. Such procedures for dissemination to certified non-criminal justice agencies may include, but are not limited to, matching several data elements such as mother's maiden name, father's name, eye color and social security number, as well as fingerprinting.

7.02: Protection from Accidental Loss or Injury

The Executive Director of the CHSB shall institute procedures for protection of information in CJIS from environmental hazards including fire, flood, and power failure.

7.03: Unauthorized Access

The Executive Director of the CHSB shall maintain control over and access to information in the automated CORI system by requiring identification, authorization and authentication of systems' users and their need to know. The CHSB reserves the right to issue sanctions for violations of the CORI law for unauthorized access and dissemination of CORI.

7.04: Personnel Security

(1) The Executive Director of the CHSB shall cause to be investigated the previous employment and criminal record of employment candidates and contractors assigned to CORI systems.

(2) Investigations shall be conducted prior to assignment to the CORI system. Willful giving of false information shall disqualify an applicant, employee, or contractor from assignment to the CORI system.

7.05: User Agreements

The Executive Director of the CHSB shall cause each agency user of CJIS to execute and maintain a User Agreement. Said User Agreement shall be in the format approved and provided by CHSB.

7.06: Severability

If any provision of 803 CMR 7.00 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 7.00 not specifically held invalid, and to this end the provisions of 803 CMR 7.00 and various applications thereof are declared to be severable

REGULATORY AUTHORITY

803 CMR 7.00: M.G.L. c. 6, §§ 168, 174, 175.

803 CMR 8.00: ACCESS TO CORI FOR RESEARCH PURPOSES

Section

8.01: Application Requirements

8.02: Preservation of Subject Anonymity: Destruction of Identifying Data

8.03: Inspection by Board: Compliance

8.04: Severability

8.01: Application Requirements

(1) Individuals and agencies requiring access to CORI for purposes of research shall apply to the Board for such access, on a form approved by the CHSB except that any criminal justice agency holding CORI may utilize such CORI for research purposes.

(2) Any applicant for access to CORI shall be required to demonstrate that the research project is being conducted for valid educational, scientific, or other public purposes.

(3) All applicants shall provide to the Board a detailed description of the research project specifying the type of CORI required and the reason for which such CORI is required.

(4) The Board shall base its disposition of a request for access to CORI upon the purposes, design, and the compliance with requirements pertaining to subject anonymity contained in 803 CMR 8.02.

8.02: Preservation of Subject Anonymity: Destruction of Identifying Data

(1) All research projects and all published products of such research projects shall be designed to preserve the anonymity of the individuals about whom CORI relates. All applicants shall designate and specifically identify to the Board those project members responsible for preserving the anonymity of research subjects.

(2) Research projects afforded access to CORI pursuant to the regulations shall be limited to inspecting and extracting such data in accordance with 803 CMR 8.02.

(3) The project researchers shall segregate identifying data from the rest of the CORI by assigning an arbitrary code consisting of an original, nonduplicating number which shall be maintained in a secure place under the control of the project director. Access to such code shall be limited to the project director and those project members specifically identified as responsible for preserving the anonymity of research pursuant to 803 CMR 8.02(1).

(4) Upon termination of the research project, the project director shall destroy the code developed pursuant to 803 CMR 8.02(3) and attest to the Board in writing that such destruction has been effected.

(5) The project director and each member of the research staff shall be required to complete an agreement not to disclose any CORI to unauthorized persons. Such agreement shall be held by the Board and made available for public inspection.

8.03: Inspection by Board : Compliance

(1) The Board shall have the right to inspect any research project periodically. The Board may require periodic compliance reports. Any published product of the research project shall be submitted to the Board upon request.

(2) In addition to those sanctions contained in M.G.L. c. 6, § 178 and 803 CMR, the Board, upon failure of any research project to comply with M.G.L. c. 6, §§ 167 - 178 or 803 CMR, may:

- (a) revoke approval for current access;
- (b) demand and secure the return of all CORI; and
- (c) deny future access to CORI.

8.04: Severability

If any provision of 803 CMR 8.00 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 8.00 not specifically held invalid, and to this end the provisions of 803 CMR 8.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY

803 CMR 8.00: M.G.L. c. 6, §§ 168, 173 and 175.