

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 131.00: NEWS MEDIA RELATIONS

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131.01: Purpose

The purpose for 103 CMR 131.00 is to establish Department of Correction (Department) policy regarding news media relations.

131.02: Statutory Authorization

103 CMR 131.00 is promulgated pursuant to M.G.L. c. 124, § 1(q).

131.03: Cancellation

103 CMR 131.00 cancels all previous Department policy statements, bulletins, directives, orders, notices, rules or regulations regarding news media relations to the extent they are inconsistent with this policy.

131.04: Applicability

103 CMR 131.00 applies to all Department employees and correctional institutions.

131.05: Access to Policy

103 CMR 131.00 shall be maintained within the Department's Central Policy File and shall be accessible to all Department employees. A copy of 103 CMR 131.00 shall be maintained in each superintendent's Central Policy File and at each inmate library.

131.06: Definitions

The following correctional terminology is contained within this policy and is defined for news media reference when reporting correctional issues:

Altercation. A contained, isolated disruption between two or more individuals.

Commissioner. The Commissioner of the Massachusetts Department of Correction.

Consent. A voluntary agreement to participate in a particular act.

Correctional Institution. Any Department of Correction facility. A correctional facility is designated with a security level rating of pre-release, minimum, medium or maximum.

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Criminal Offender Record Information (CORI). CORI is defined as records and data in any communicable form compiled by a criminal justice agency which concerns an identifiable individual and relates to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceeding, sentencing, incarceration, rehabilitation, or release.

CORI is Limited to:

- (a) Records and Data which set forth the fact or results of an individual's movement through any one or more of the formal stages of the criminal justice process; and,
- (b) Factual Statements about the occurrence or outcome of an arrest, indictment, warrant, arraignment, bail, continuance, default, trial, appeal, disposition, sentence, probation, commitment, parole, commutation, release, termination or revocation of probation or parole, pardon, or similar occurrences or outcomes.

CORI shall not Include:

- (a) Evaluative Information - *e.g.*, classification reports, psychiatric reports - as defined in 103 DOC 153.01(4), available at <http://www.mass.gov/doc/policy> ;
- (b) Intelligence or Investigative Information - *e.g.*, informant reports, surveillance reports - as defined in 103 DOC 153.01(5); and
- (c) statistical reports in which individuals are not identified and from which identities are not ascertainable.”

Department. The Massachusetts Department of Correction.

Department of Correction Spokesperson. The director of communications and outreach, the director of public affairs and/or someone specifically authorized by the Commissioner to speak on behalf of the agency.

Director of Communications and Outreach. The person responsible for fostering and maintaining the Department's communication functions throughout state government, among the agency's staff, as well as with the media, the general public and other interested stakeholders.

Director of Public Affairs. The chief spokesperson for the Department responsible for maintaining a liaison between the Department and the news media and for providing technical assistance to superintendents and division heads concerning news media information or issues.

Disturbance. An occurrence or event that interrupts the daily orderly operation of a correctional institution and/or precipitates a crisis.

Documentary. A television, audio recording, or motion-picture presentation, usually consisting of actual news films accompanied by narration of factual, political, social or historical events or circumstances concerning institutional life and/or correctional issues.

Employee. Any person employed by the Massachusetts Department of Correction.

Escape. The act by which an inmate in the custody of the Department, leaves the confines of a correctional institution, or the custody of an escorting officer(s), and/or fails to return from an authorized release to the community at the designated time.

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

Hostage Situation. A disturbance in which one or more persons are being held against their will by an individual(s) until certain terms are fulfilled.

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Inmate. An individual, whether in pre-trial, un-sentenced, or sentenced status, who is confined in a correctional institution, including those patients admitted for evaluation or commitment to the Bridgewater State Hospital, the Massachusetts Treatment Center or the Massachusetts Alcohol and Substance Abuse Center.

Intelligence Information - Intelligence information is defined as:

- (a) records and data compiled by a criminal justice agency for the purposes of criminal investigation, including reports of informants, investigators, or other persons, or any type of surveillance associated with an identifiable individual; and,
- (b) records and data compiled by a criminal justice agency for the purposes of investigating a substantial threat to an individual, or to the order or security of a correctional facility. Intelligence information is not included in the definition of CORI.

Investigation. An examination into allegations, as well as actual occurrences of wrong doing or improprieties by inmates or employees.

Medical Data. That part of an individual's health record which is continuously maintained by health care providers, including, physical examination history, nature of complaint, inpatient and outpatient charts, admitting and other diagnoses, consultations, diagnostic test results, nurses' notes, medication logs, *etc.*

News Media Representatives. News media representatives are persons whose principal employment is gathering and reporting news for a:

- (a) Radio or television program whose primary purpose is news reporting for a licensee of the Federal Communications Commission (FCC);
- (b) Newspaper covering general interest information and circulated to the public;
- (c) Magazine that has a national circulation is sold by mail subscriptions or on newsstands to the general public;
- (d) National or international news service, including wire services; and
- (e) Websites whose primary purpose is news reporting.

Freelance reporters and journalists are included as members of the news media, however, they may be required to verify their assignment with a letter from the outlet that they represent.

News Conference. A pre-arranged event involving the release of information to which members of the news media are invited, generally including a question and answer period.

News Release. A statement or announcement relating to Department official public business, intended for distribution to the news media for publication and/or broadcast.

Routine Information. All information concerning normal operations and daily business of the Department of Correction and its facilities.

Superintendent. The chief administrative officer of a state correctional institution.

#### 131.07: News Release Statements

The Department is committed to informing the public and the news media of events within the agency's areas of responsibility. All Department news release statements shall be released to the news media through the Office of Communications and Outreach with the Commissioner's approval. Employees, contractual staff, and volunteers shall refer all news media inquiries to the director of public affairs for official response.

- (1) Except as provided in 103 CMR 131.07(2), the Department is prohibited from commenting and/or releasing the following information:
  - (a) Criminal Offender Record Information (CORI);
  - (b) Evaluative Information;
  - (c) Intelligence or Investigative Information;
  - (d) Medical Data;

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- (e) Personnel information regarding an employee of the Department of Correction as described in the 103 DOC 204.00: *Personnel Records* policy, available at <http://www.mass.gov/doc/policy>.
- (2) The Commissioner or a designee shall decide whether the Department will disseminate CORI that refers to the death of an individual or that is specifically related to and contemporaneous with the search for, or apprehension of, any person who has escaped from correctional custody or who has been involved in a disturbance at a correctional institution.
- (3) It is the general policy of the Department not to comment on on-going or pending investigations involving inmates and/or employees in order to protect the integrity of the investigation. The Commissioner may authorize the release of preliminary information as deemed appropriate.
- (4) In the event of a hostage situation or a major disturbance, a specific area shall be designated for news media representatives, at which time an on-site Department of Correction Spokesperson shall provide a general, prepared statement outlining the occurrences. For the safety of all concerned, information shall be released at a time deemed appropriate by the Commissioner or a designee.
- (5) The Department encourages the dissemination of general and statistical information. However, requests for information otherwise unattainable and/or requiring extensive research may not be available and therefore the person requesting said information may be charged for the cost of searching, segregating, and copying said information.
- (6) Departmental Confirmation of Certain Information. The Department may confirm to members of the public, in response to specific inquiries, statements that an offender currently:
  - (a) resides in a correctional or related facility;
  - (b) is on furlough, pre-release status, parole, or probation; and
  - (c) is a participant in a rehabilitation or education program.

131.08: News Media Access to Correctional Institutions

It is the Department's policy to provide an information program that encourages interaction and contact with representatives of the news media. In an effort to provide the news media with opportunities to become better educated about correctional institutions and/or issues related to incarceration, the Commissioner may schedule planned "media days" at which time news media tours and information sessions shall be provided within designated correctional institutions.

- (1) Requests for visits by news media representatives shall not be unreasonably denied. As a general rule, subject to the superintendent's recommendation and Commissioner's approval, the legitimate requirements of maintaining security and order within a correctional institution, the protection of the privacy rights of inmates and employees, and the maintenance of other legitimate penological interests, news media representatives may be admitted to state correctional institutions for one of the following purposes:
  - (a) To interview an inmate(s);
  - (b) To interview an employee(s);
  - (c) To take a scheduled tour;
  - (d) To create a documentary;
  - (e) To observe a program;
  - (f) To take photographs or video recordings.
- (2) Prior to the director of public affairs scheduling the access of news media representatives with the facility superintendent, the director of communications and outreach shall obtain approval from the Commissioner.
- (3) A news media representative granted access to a state correctional institution, is subject to the visiting rules and regulations of that institution which include, but are not limited to the following:

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- (a) The need for proper identification;
- (b) Adherence to the dress code as required in the 103 CMR 483:000: *Visiting Policy*;
- (c) Consent to routine search procedures; and
- (d) Consent to a criminal background check. News media representatives must provide their date of birth and driver's license number for that purpose.

131.09: Evaluation of Access Request

- (1) Each request for news media access to a correctional institution shall be directed to the director of public affairs and be evaluated by the director of communications and outreach. Such request shall be in writing and shall include:
  - (a) The name of the publication or electronic broadcast;
  - (b) The nature of the proposed news item;
  - (c) The method of coverage and the type of equipment requested for the proposed coverage;
  - (d) The names of all those requesting access to the facility. When practicable, all names shall be provided to the director of public affairs at least 48 hours prior to the requested visit.
- (2) The decision on whether to approve or deny the request shall include, but not be limited to, the following factors:
  - (a) Whether the interview may pose a safety and/or security concern for the staff, the inmate, other inmates or if the request otherwise disrupts the orderly operation of a correctional institution, or impacts other legitimate penological interests;
  - (b) Whether an inmate is awaiting action or under investigation at the time of the request or the inmate is within the first 90 days of incarceration;
  - (c) Whether the inmate is in the Department Disciplinary Unit (DDU) or a segregation unit;
  - (d) Whether, during a disturbance and for a reasonable time thereafter, in the opinion of the superintendent as conveyed to the Commissioner, the presence of a news media representative would be operationally unreasonable and unsafe, would pose a burden to the orderly operation of the institution, or would exacerbate the disturbance;
  - (e) Whether a news media representative has forfeited the privilege to enter a correctional institution for failure to follow the procedures set forth in 103 CMR 131.00;
  - (f) Whether the news media representative has violated any rule, regulation, or procedure governing the conduct of visitors inside a correctional institution;
  - (g) Whether there is litigation pending in the state or federal courts, whether criminal or civil in nature, discussion of which could prejudice the due administration of justice.
- (3) Where access is denied, reasons for such denial shall be provided in writing by the director of public affairs upon receipt of a written request seeking the reasons for denial from a representative of the news media or from an inmate.

131.10: On Site Interviews of Inmates in Correctional Institutions

The Department shall provide for reasonable access to offenders by the news media representative subject to the following conditions:

- (1) Once an interview between the news media representative and an inmate is approved, the director of public affairs shall notify the director of victim services so that appropriate notification can be made to any certified petitioners.
- (2) In the interests of safety and security, an in-person interview by a representative of the news media shall not be permitted for any inmate whose visiting privileges have been suspended. Such inmates shall not be denied access to the news media, but may communicate only through written correspondence or outgoing collect telephone calls when permitted. In-person interviews between an inmate and a representative of the news media may only be conducted with inmates who would otherwise be permitted to visit with members of the general public and shall be conducted under the security level requirements of the facility where that inmate is incarcerated.

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(3) On site interviews of inmates in the DDU or segregation units may be permitted consistent with the safety and security needs of the particular correctional institution and the visiting restrictions of the particular segregation unit (*e.g.* one hour duration).

(4) Interviews may be permitted with more than one inmate within a correctional institution consistent with the need to maintain security and order within a correctional institution. However, such interviews shall be required to take place with only one inmate at a time.

(5) Based upon concerns for the safety, security and order of the institution, inmate interview requests involving video, on-camera interviews, tape recordings and the taking of photographs, whether still or video, by a news media representative inside a correctional institution shall be considered on a case-by-case basis and require advance approval from the Commissioner. The taking of photographs, whether still or video, by a news media representative that identify an inmate shall require the inmate's consent and the Commissioner's prior approval. Approved materials are for use by the news media only and are not permitted to be possessed or retained by any inmate. Live on-camera and audio interviews are strictly prohibited.

(6) News media representatives interested in interviewing an inmate on site at a correctional institution must initiate contact with said inmate by obtaining Form I-DOC News Media Agreement Form and Form II - DOC Media Waiver Form from the director of public affairs or from the Department's Website (<http://www.mass.gov/doc/policy> (attached to News Media Relations regulation)) or by obtaining written consent in the form of a letter from the inmate. Both forms shall be completed in part by the news media representative and sent directly to the inmate for his/her consent to participate in the interview. It is then the inmate's responsibility to complete the forms and forward them to the news media representative. If the inmate consents to the interview, the news media representative shall forward the completed forms to the director of public affairs for the director of communications and outreach's recommendation and superintendent's and Commissioner's approval. Each superintendent shall maintain a file for signed forms, and a copy of the signed form shall be placed in the inmate's case file.

(7) Regardless of an inmate's consent to be interviewed by a news media representative within a correctional institution, access to a correctional institution may be denied as provided in 103 CMR 131.09.

(8) Interviews shall be scheduled at times that are convenient to the superintendent and the news media representative. Consistent with the safety, security and operational needs of the correctional institution, a correctional employee shall be present for the duration of any interview. In addition, a scheduled interview may be cancelled or an interview in progress may be terminated based on the operational/administrative needs of the facility or as dictated by safety or security concerns. The duration of an interview is no more than one hour.

(9) When leaving the correctional institution, any personal notes or work product prepared under 103 CMR 131.08 by representatives of the news media including tape and film as permitted by 103 CMR 131.00 *et seq.* may be inspected for concealed articles but shall not be read or reviewed by any officers or employees of the institution or Department.

(10) Inmates are prohibited from calling for or participating in a news conference or on a talk show. In addition, inmates are prohibited from making three-way calls to engage in news media interviews of any kind.

(11) Interviews are strictly prohibited while an offender is out of the correctional facility, *e.g.*, an outside hospital, court, parole board hearing.

(12) No inmate may accept monetary compensation either directly or indirectly for consenting to any interview granted.

131.11: Federal or Other Out-of-state Inmate Interviews

- (1) Prior to interviewing, photographing or tape recording the voice of any inmate, a representative of the news media must ascertain through the director of public affairs whether the inmate is a federal or other out-of-state prisoner.
- (2) Where an inmate is a federal or other out-of-state prisoner, no interviews, photographs or tape recording with the prisoner shall be permitted except where appropriate federal or other out-of-state officials have given written approval to the Commissioner.
- (3) Where a representative of the news media is in violation of the 103 CMR 131.11(1) and (2), the privilege to enter a correctional institution may be forfeited.

131.12: Employee Interviews

- (1) Due to the privacy rights of both staff and inmates and the serious nature of correctional issues, each request for access to any employee of the Department as an official who has been authorized to speak on the Department's behalf shall be directed to the director of public affairs and be evaluated by the director of communications and outreach. the director of public affairs shall coordinate the interview upon the approval of the employee, Commissioner, and the superintendent of the employee's institution if the result of the interview does not:
  - (a) Violate any employee's privacy rights;
  - (b) Violate an inmate's privacy rights; or
  - (c) Interfere with the orderly operation of a correctional institution.
- (2) Those employees designated by the Commissioner to respond to news media inquiries have the permission to speak on behalf of the Commissioner or Department in an official capacity and are obligated to adhere to the privacy rights of inmates as well as fellow employees. Any employee not designated by the Commissioner to respond to news media inquiries is not speaking on behalf of the Department nor acting in the capacity of Department spokesperson.

131:13: Documentaries

- (1) Representatives of the news media desiring to make documentary films or tape recordings must make said request to the director of public affairs, in writing, which will be evaluated by the director of communications and outreach. Such request for permission shall state the purpose of the documentary, the length of time that the filming or tape recording shall last, the type of activities to be filmed or tape recorded, and the person or persons to be interviewed. To expedite entrance procedures, news media representatives are encouraged to keep equipment needs to a minimum.
- (2) The Commissioner, or a designee, may execute an agreement with the makers of the documentary setting forth the conditions (*e.g.*, areas of access, time of day) for filming or tape recording the documentary.
- (3) The superintendent of the correctional institution shall assign an employee to accompany the makers of the documentary to ensure that any inmate photographed in an identifiable manner, or whose voice has been recorded in such a way as to identify the inmate, has signed a consent form to appear in the film or be heard on tape. Additionally, the assigned employee shall ensure any staff photographed in an identifiable manner, or whose voice has been recorded in such a way as to identify him/her, has signed a consent form to appear in the film or be heard on tape.
- (4) The Commissioner or a designee, and the maker of the documentary, shall be entitled to view the documentary before it is shown publicly to ensure that the agreement has been complied with, and that all required consent forms have been signed.

131.14: Requests for Public Record Information

News media requests for information made under the public records law, M.G.L. c. 66, shall be submitted to the director of public affairs who will coordinate tracking and ensure timely and appropriate responses.

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131.15: Responsible Staff

- (1) The director of communications and outreach and the director of public affairs shall be responsible for implementing and monitoring 103 CMR 131.00 throughout the Department.
- (2) Each superintendent shall be responsible for implementing 103 CMR 131.00, and for the development of any and all necessary and appropriate institution policies and procedures.

131.16: Annual Review

103 CMR 131.00 shall be reviewed annually from the effective date by the Commissioner or designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the central policy file indicating that the review has been completed. Recommendations for revisions, additions, or deletions shall be included.

131.17: Severability

If any article, section, subsection, sentence, clause or phrase of 103 CMR 131.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other articles, section, subsection, sentence, clause or phrase of 103 CMR 131.00.

REGULATORY AUTHORITY

103 CMR 131.000: M.G.L. c. 124, § 1(q).