

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 157.00: ACCESS TO AND DISSEMINATION OF EVALUATIVE INFORMATION

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157.01: Purpose

The purpose of 103 CMR 157.00 is to establish Department of Correction (Department) guidelines governing the content and use of evaluative information, and to govern the inspection, receipt of copies, and challenges to such information. 103 CMR 157.00 is not intended to confer any procedural or substantive rights or any private cause of action not otherwise granted by state or federal law.

157.02: Cancellation

103 CMR 157.00 cancels all previous Department and institutional policy statements, bulletins, directives, orders, notices, rules and regulations regarding access to and dissemination of evaluative information.

157.03: Applicability

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

157.04: Access

103 CMR 157.00 shall be maintained within the Department's central policy file, in each Superintendent's Central Policy File and in each inmate library and inmate policy manual.

157.05: Definitions

Commissioner. The Commissioner of the Department of Correction.

Criminal Offender Record Information (CORI). Records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. CORI shall be limited to factual statements about an individual's movement through any one or more of the formal stages of the criminal justice process. CORI shall not include Intelligence Information or Evaluative Information as those terms are defined in 103 CMR 157.05.

Criminal Record Review Board (CRRB). A statutorily-created board within the Department of Criminal Justice Information Services (DCJIS) that reviews complaints and investigates incidents involving allegations of violations of the laws governing CORI.

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Department. The Department of Correction.

Department of Criminal Justice Information Services (DCJIS). The Massachusetts agency statutorily designated to do the following: provide a public safety information system and network to support data collection, information sharing and interoperability for the Massachusetts criminal justice and law enforcement community; oversee the authorized provision of CORI to the non-criminal justice community; provide support to the CRRB; operate the Firearms Records Bureau; and provide and technically support the Victim Notification Registry for the victims of crime.

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

Inmate Management System (IMS). The Department's automated information system that provides processing, storage and retrieval of inmate-related information needed by Department personnel and other authorized users within the criminal

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

Screening Employee. The central office employee(s) designated by the Commissioner or the institutional employee(s) designated by the Superintendent or Director of that facility to screen six-part folders for evaluative information.

Six-part Folder. The institutional case file of an inmate.

157.06: Access to Intelligence Information

Requests for access to intelligence information by the individual to whom the intelligence information pertains or to the individual's approved, third party representative, shall not be granted.

157.07: Access to Evaluative Information by the Individual

(1) Individuals may request access to their evaluative information in person or by mail. Where practicable, a Massachusetts Department of Correction Application to Review Evaluative Information form shall be used, but failure to use this form by the requesting individual shall not, on its own, prevent access. Current inmates shall direct requests to the screening employee at the correctional institution where such inmate is incarcerated. Former inmates and legal representatives of inmates may submit such requests to the central office screening employee or the appropriate correctional institution.

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

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

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- (3) Under no circumstances will the following information be disclosed:
 - (a) Documents prepared by an agency other than the Department, which contain evaluative information. The screening employee shall notify the individual of the existence of such a document and the name of the agency producing the document;
 - (b) Information which would pose a direct and articulable threat of harm to a Department employee, any other person, or the security of a correctional institution;
 - (c) Information which would clearly impair a treatment relationship between a counselor and a client;
 - (d) Information provided to the Department under a clear and justifiable condition of confidentiality;
 - (e) Attorney documents not subject to disclosure in a civil or criminal proceeding;
 - (f) Documents or working papers of the deliberative process of a deciding authority.
- (4) The screening employee shall make every effort to disclose all evaluative information which is reasonably segregable from that withheld under 103 CMR 157.07(3).
- (5) A Department employee who prepares or compiles a report containing evaluative information may indicate on such report his or her opinion that part or all of its contents should not be disclosed to the individual. The screening employee shall take any such notation into account when determining whether or not to disclose the information.
- (6) Within 15 business days of receipt of the request for information, the screening employee shall record his or her determination including the basis for denial of access, if applicable, on the Massachusetts Department of Correction Application to Review Evaluative Information form or written request. This form shall be retained in the individual's six-part folder.
- (7) Where full or partial review of evaluative information by the petitioning individual has been approved by the screening employee, access should occur as soon as practicable following the notification of approval. The individual shall be permitted to receive one photocopy of any evaluative information which was approved for release by the screening employee.
- (8) To ensure efficiency of operations, the Superintendent may establish guidelines limiting the number of requests an inmate may make for access to his or her evaluative information. Such guidelines shall be subject to approval by the Assistant Deputy Commissioner of Reentry or designee.
- (9) Any inmate who is denied access, to all or part of his or her evaluative information, may appeal, in writing, to the DCJIS within 30 days of such denial.

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

- (1) Legal representatives of an individual may have access to the individual's evaluative information, subject to the restrictions set forth in 103 CMR 157.07(3), provided the individual has given informed written authorization for such access and the legal representative so authorized satisfactorily provides identification to the screening employee. Such legal representatives shall include:
 - (a) The attorney of the individual;
 - (b) An authorized agent of the individual's attorney who is also an attorney; and,
 - (c) A law student or paralegal working under the authorization and supervision of the individual's attorney, provided, that the said law student or paralegal submits written documentation from the attorney indicating that the law student or paralegal is working under the authorization and supervision of the attorney. Law students or paralegals who are presently inmates or parolees, or who have been inmates or parolees within the last five years, shall not be permitted access to evaluative information unless the Superintendent or the Assistant Deputy Commissioner of Reentry approves such access.

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

157.09: Access to Evaluative Information by Third Parties

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

(2) Access to Evaluative Information by Members of an Individual's Family. Members of an individual's family may have access to evaluative information pertaining to the individual, subject to the provision set forth in 103 CMR 157.07(3), provided that the individual has given informed consent for such access. In an emergency, where it is appropriate to notify next of kin, and the individual is unable to give his or her informed consent due to a medical or psychiatric disability, such consent shall not be required.

(3) Access to Evaluative Information by Other Agents for the Sole Purpose of Dissemination. Any other person may have access to evaluative information pertaining to the individual, subject to the provision set forth in 103 CMR 157.07(3), provided that the individual has given his or her informed consent for such access; access shall be for the sole purpose of disseminating the evaluative information to the individual where inspection and copying by the individual would cause undue burden. Persons who are presently parolees or inmates, or who have been parolees or inmates within the last five years, shall not be permitted access to evaluative information unless the Superintendent, or the Assistant Deputy Commissioner of Reentry approves such access.

(4) Access to Evaluative Information by Victims of Crime. Pursuant to M.G.L. c. 6, § 178A, a victim of crime, a witness, or a family member of a homicide victim, all as defined in M.G.L. c. 258B, may obtain, upon registration approval, all available CORI of the person accused of or convicted of said crime. All information received pursuant to 803 CMR 9.05: *Eligibility for 178A CORI Access* is confidential and shall not be shared by the victim, witness, or family member with any other individual or entity, except as provided by law. Criminal justice agencies may also disclose to individuals registered for 178A CORI access such additional information, including, but not limited to, evaluative information as such agencies determine, in their discretion, is reasonably necessary for the security and wellbeing of such persons.

157.10: Access to Evaluative Information by Criminal Justice Agencies

Access to evaluative information by criminal justice agencies shall be subject to the DCJIS regarding access to and dissemination of CORI, 803 CMR 2.00: *Criminal Offender Record Information (CORI)*. Access to evaluative information shall be limited to that which is necessary for the discharge of the statutory responsibilities of the criminal justice agency.

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

When the screening employee has determined that the individual may review the evaluative information, that individual shall, upon request, be permitted to receive one photocopy or the IMS screen print of such evaluative information. The Department may impose a charge pursuant to M.G.L. c. 66, § 10(a) and 950 CMR 32.06(1)(a), (c) and (f) for the fulfillment of the request for evaluative information.

The same procedures for photocopying or the IMS screen printouts and costs apply where a third party has requested and received access to the evaluative information, pursuant to 103 CMR 157.06 through 157.09.

157.12: Appeal Process

(1) Institution. If an individual is dissatisfied with the screening employee's decision regarding the request to review evaluative information pertaining to the individual, the individual may appeal, in writing, to the Superintendent. The Superintendent or a designee shall respond, in writing, to the individual within 15 business days of receipt of appeal.

(2) Central Office. If an individual is dissatisfied with the screening employee's decision regarding the request to review evaluative information pertaining to the individual contained at the central office, the individual may appeal, in writing, to the Assistant Deputy Commissioner of Reentry. The Assistant Deputy Commissioner of Reentry shall respond, in writing, to the individual within 15 business days of receipt of appeal.

157.13: Challenges to the Accuracy or Completeness of Evaluative Information

An individual who believes that the evaluative information pertaining to him or her contained in an institutional file or in the IMS database is inaccurate, incomplete, or improperly maintained or disseminated may, in writing, request the Superintendent of the institution to take remedial action. The Superintendent or a designee shall respond, in writing, to the individual within 15 business days of receipt of request. If it appears to the Superintendent or the designee that the individual's challenge is valid, the Superintendent or designee may take corrective action with regard to the evaluative information contained in the file. If the individual is dissatisfied with the response of the Superintendent or designee, or if the Superintendent or designee has not responded within 15 business days of receipt of request, the individual may, in writing, request review by the Commissioner. The Commissioner or his or her designee shall respond, in writing, to the individual within 15 business days of receipt of request.

157.14: Time Limits

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

157.15: Responsible Staff

(1) The Assistant Deputy Commissioner of Reentry or designee shall be responsible for implementing and monitoring 103 CMR 157.00.

(2) Each Superintendent shall be responsible for the implementation of 103 CMR 157.00 and for the development of any institution policies and procedures as necessary for the efficient administration of 105 CMR 157.00.

157.16: Annual Review Date

103 CMR 157.00 shall be reviewed at least annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

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157.17: Severability

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

REGULATORY AUTHORITY

103 CMR 157.00: M.G.L. c. 6, §§ 167 through 178A; c. 66, § 10; c. 66A, §§ 1 through 3,
803 CMR 2.00: *Criminal Offender Record Information (CORI)*,
9.00: *Victim Notification Registry (VNR)* and 950 CMR 32.00: *Public
Records Access*.

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