

803 CMR 11.00: CONSUMER REPORTING AGENCY (CRA)

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11.01: Purpose and Scope

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

11.02: Definitions

All definitions set forth in 803 CMR 2.00: *Criminal Offender Record Information (CORI)*, 5.00: *Criminal Offender Record Information (CORI) - Housing*, 7.00: *Criminal Justice Information System (CJIS)*, 8.00: *Obtaining Criminal Offender Record Information (CORI) for Research Purposes*, 9.00: *Victim Notification Registry (VNR)* and 10.00: *Gun Transaction Recording* are incorporated in 803 CMR 11.00 by reference. The following additional words and phrases as used in 803 CMR 11.00 shall have the following meanings:

Consumer Reporting Agency (“CRA”). Any person which, for monetary fees, dues, or on a cooperative, not-for-profit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer criminal history, credit information, or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

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

iCORI-registered Client. An entity registered in the iCORI system to access CORI from DCJIS that delegates this responsibility to a CRA.

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

11.03: iCORI Registration

- (1) CRA access to CORI must be accomplished through the iCORI system.

11.03: continued

(2) To register for iCORI access, a CRA must follow the procedures outlined in 803 CMR 2.04: *iCORI Registration*.

(3) Each CRA client shall also register for an iCORI account, as described in 803 CMR 2.22: *Use of a Consumer Reporting Agency (CRA)*, before the CRA may access the iCORI system on behalf of the client.

11.04: Access to CORI by a CRA to Evaluate a Subject

(1) A CRA may receive the following levels of CORI access:

- (a) Standard access for screening its current employees and employment applicants;
- (b) The same level of CORI access as is provided to the iCORI registered client on whose behalf the CRA will be performing CORI checks. Any CRA that requests CORI beyond the level of access to which its iCORI registered client is entitled shall be in violation of 803 CMR 11.00; and
- (c) Open Access to CORI for any lawful purpose.

(2) For each CORI request, the iCORI-registered client shall provide accurate identifying information for the subject to the CRA and the purpose for which the subject's CORI is being requested.

(3) For each CORI request, the CRA shall submit to DCJIS the accurate identifying information for the subject and the purpose for the CORI request as provided by its iCORI-registered client.

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

(1) For purposes of submitting a CORI request to screen its own employees, a CRA shall be considered an employer as that term is referenced in 803 CMR 2.00: *Criminal Offender Record Information (CORI)*.

(2) Prior to submitting a CORI request to screen its own current or prospective employees, a CRA shall obtain a signed CORI Acknowledgment Form and follow all procedures related to the CORI Acknowledgment Form and verification of identity procedures as set forth in 803 CMR 2.11: *Requirements for Requestors to Request CORI*.

(3) A CRA shall not be required to obtain a separate CORI Acknowledgment Form provided, however, that it has incorporated the Massachusetts CRA CORI Acknowledgment language, published by DCJIS, on its existing form and the fields on the DCJIS CORI Acknowledgment Form are included either on the CRA form or in the subject's application.

(4) A CORI Acknowledgment Form may be collected electronically in accordance with the provisions of 803 CMR 2.12: *Electronic Submission of CORI Acknowledgment Forms*.

(5) After a period of one year, a new CORI Acknowledgment Form shall be obtained from the subject. Subsequent CORI requests are subject to the procedures related to subsequent verification of identity as set forth in 803 CMR 2.13: *Identity Verification Exemption for Subsequent CORI Checks*.

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

11.06: Requesting CORI on Behalf of an iCORI-registered Client

(1) To obtain CORI on behalf of an iCORI-registered client, the client must have an active and valid iCORI account number which the CRA shall provide at the time of the CORI request. A CRA may request Open Access to CORI on behalf of iCORI-registered clients that do not have valid iCORI accounts.

11.06: continued

(2) Before a CRA may submit a CORI request on behalf of an iCORI-registered client, the client must authorize the CRA through the iCORI system to request CORI on its behalf. A CRA is prohibited from submitting CORI requests on behalf of iCORI-registered clients that have not authorized it to do so through iCORI. This includes, but is not limited to, iCORI-registered clients that have chosen to rescind their CRA designation.

(3) Before the CRA may submit a CORI request on behalf of an iCORI-registered client, the client must provide the CRA with the following:

- (a) an affirmation that the client notified the subject, in writing, of its intent to obtain CORI through a CRA and received permission to do so from the subject;
- (b) an affirmation that the client has a copy of the signed CRA CORI acknowledgment on file;
- (c) an affirmation that the client is in compliance with federal and state credit reporting statutes;
- (d) an affirmation that the client will not misuse any information in the CRA report in violation of federal or state equal employment opportunity laws or regulations; and
- (e) when a request is submitted for employment purposes, a statement indicating whether the annual salary of the position for which the subject is being screened is either above or below \$75,000.

11.07: CORI Policy Requirement for Certain Requestors and the Need to Know Requirements

(1) As provided in 803 CMR 2.18: *CORI Policy Requirement for Certain Requestors and the Need to Know Requirements*, a CRA shall maintain a CORI policy.

(2) A CRA shall also maintain a need to know list for CORI authorized staff as provided in 803 CMR 2.18: *CORI Policy Requirement for Certain Requestors and the Need to Know Requirements*.

11.08: Storage of CORI

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

(2) CRA decision makers and iCORI-registered clients shall only store and retain hard copies and electronic copies of CORI as provided in 803 CMR 2.12: *Storage and Retention of CORI*.

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

(4) Each CRA who is acting as an authorized decision maker may retain CORI for a period of no longer than seven years from the date it was obtained.

11.09: Destruction of CORI

(1) Hard and electronic copies of CORI shall only be destroyed in accordance with the provisions of 803 CMR 2.15: *Destruction of CORI and CORI Acknowledgment Forms*.

11.10: Dissemination of CORI by a CRA

(1) The CORI a CRA may disseminate to its iCORI-registered client depends upon the level of access to which the client is entitled for each particular CORI request, and, in the case of employment applicants, whether the position for which the subject is being screened has an annual salary of \$75,000 or more.

(a) If the client is entitled to Standard Access to CORI, as defined in 803 CMR 2.05: *Levels of Access to CORI*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of less than \$75,000, a CRA may disseminate:

- 1. all pending cases, except those pending cases that are seven or more years old from the date of the CORI report and that did not result in a warrant;

11.10: continued

2. all misdemeanor and felony convictions;
 3. all dispositions of not guilty by reason of insanity, except for those dispositions that are seven or more years old from the date of the CORI report;
 4. juvenile information, but only where the subject was adjudicated as an adult.
- (b) If the iCORI registered client is entitled to Standard Access to CORI and the position for which the subject is being screened or in which the subject currently works has an annual salary of \$75,000 or more, a CRA may disseminate:
1. all pending criminal charges, including cases continued without a finding of guilt until they are dismissed;
 2. all misdemeanor convictions for five years following the date of disposition or date of release from incarceration or custody, whichever is later;
 3. all felony convictions or findings of not guilty by reason of insanity for ten years following the date of disposition or date of release from incarceration or custody, whichever is later;
 4. all convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses (as defined in M.G.L. c. 6, § 178C) punishable by a term of incarceration in state prison, unless sealed, including information relating to such offenses where the subject was adjudicated as an adult.
- (c) If the client is entitled to Required 1 Access to Criminal Offender Record Information, as defined in 803 CMR 2.05: *Levels of Access to CORI*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of less than \$75,000, a CRA may disseminate:
1. all pending cases, except those pending cases that are seven or more years old from the date of the CORI report and that did not result in a warrant;
 2. all misdemeanor and felony convictions;
 3. juvenile information, but only where the subject was adjudicated as an adult while younger than 18 years old.
- (d) If the client is entitled to Required 1 Access to Criminal Offender Record Information, as defined in 803 CMR 2.05: *Levels of Access to CORI*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of \$75,000 or more, a CRA may disseminate:
1. all pending criminal charges, including cases continued without a finding of guilt until they are dismissed;
 2. all adult misdemeanor convictions and felony convictions;
 3. offenses for which the subject was adjudicated as an adult; and
 4. all convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses (as defined by M.G.L. c. 6, § 178C) punishable by a term of incarceration in state prison, unless sealed.
- (e) If the client is entitled to Required 2 Access to Criminal Offender Record Information, as defined in 803 CMR 2.05: *Levels of Access to CORI*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of less than \$75,000, a CRA may disseminate:
1. all pending cases, except those pending cases that are seven or more years old from the date of the CORI report and that did not result in a warrant;
 2. all misdemeanor and felony convictions;
 3. all non-conviction information, except non-conviction information that is seven or more years old from the date of the CORI report and that did not result in a warrant; and
 4. juvenile information, but only where the subject was adjudicated as an adult.
- (f) If the iCORI registered client is entitled to Required 2 Access to CORI and the position for which the subject is being screened or in which the subject currently works has an annual salary of \$75,000 or more, a CRA may disseminate:
1. criminal offenses that did not result in a conviction;
 2. all pending criminal charges, including cases continued without a finding of guilt until they are dismissed;
 3. all adult misdemeanor convictions and felony convictions;
 4. offenses for which the subject was adjudicated as an adult ; and
 5. all convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses (as defined by M.G.L. c. 6, § 178C) punishable by a term of incarceration in state prison, unless sealed.

(g) If the iCORI registered client is entitled to Required 3 or Required 4 Access to CORI, as defined in 803 CMR 2.05: *Levels of Access to CORI*, and the position for which the subject is being screened or in which the subject currently works has an annual salary of less than \$75,000, a CRA may disseminate:

1. all pending cases, except those pending cases that are seven or more years old from the date of the CORI report and that did not result in a warrant;
2. all misdemeanor and felony convictions;
3. all non-conviction information, except non-conviction information that is seven or more years old from the date of the CORI report and that did not result in a warrant; and
4. juvenile information, but only where the subject was adjudicated as an adult.

(h) If the client is entitled to Required 3 or Required 4 CORI access and the position for which the subject is being screened or in which the subject currently works has an annual salary of \$75,000 or more, a CRA may disseminate:

1. criminal offenses that did not result in a conviction;
2. all pending criminal charges, including cases continued without a finding of guilt until they are dismissed;
3. all adult misdemeanor convictions and felony convictions;
4. offenses for which the subject was adjudicated as an adult ; and
5. all convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses (as defined in M.G.L. c. 6, § 178C) punishable by a term of incarceration in state prison, unless sealed.

(2) Any CRA that receives CORI from DCJIS and which has reason to believe that the information contained therein has, in whole or in part, been disclosed in error, shall contact DCJIS to request that the CORI be reviewed before disseminating the CORI results to the iCORI-registered client.

(3) Any CRA that knowingly disseminates CORI beyond the scope permitted by the Fair Credit Reporting Act, 15 U.S.C. § 1681, and 803 CMR 2.00: *Criminal Offender Record Information (CORI)* shall be in violation of applicable laws and regulations.

(4) Any CRA that knowingly disseminates CORI beyond the level of access to which its iCORI-registered client is entitled shall be in violation of 803 CMR 2.00: *Criminal Offender Record Information (CORI)*.

(5) Any CRA that knowingly fails to provide a copy of the CORI results to its iCORI-registered client shall be in violation of 803 CMR 2.00: *Criminal Offender Record Information (CORI)*.

(a) A CRA may provide a summary of the CORI results in a report to the client. The CRA shall also provide an exact copy of the CORI results received from DCJIS to the client. A CRA may redact information from the CORI results in order to comply with the disclosure requirements in 15 U.S.C. § 1681, provided, however, that it shall provide the remaining information in the format received from the iCORI system.

(b) A CRA may only disseminate CORI results to its iCORI-registered client(s).

(c) Any CRA that knowingly disseminates CORI results to a party that is not one of its iCORI-registered client(s) shall be in violation of 803 CMR 2.00: *Criminal Offender Record Information (CORI)*.

11.11: A CRA Acting as Decision Maker

(1) A CRA is a decision maker for CORI request purposes if it has been authorized by its iCORI-registered client to receive CORI results and, based on those results, to decide whether to hire or accept an individual for employment, housing, volunteer, or licensing purposes.

(2) If a CRA intends to question the subject about the subject's CORI received from DCJIS, the CRA shall provide the subject with a copy of the CORI report prior to questioning.

11.12: Adverse Decisions by a CRA Acting as Decision Maker

(1) If a CRA is authorized to be the decision maker by an iCORI-registered client, before

notifying the client of a potential adverse decision based on a subject's CORI received from DCJIS, the CRA shall:

- (a) provide the subject with a pre-adverse action disclosure that includes a copy of his or her consumer report and a copy of A Summary of Your Rights Under the Fair Credit Reporting Act, published by the Federal Trade Commission, by meeting the subject in person, by telephone, by electronic communication, by fax, or by hard copy correspondence;
- (b) notify the subject of the potential adverse decision;
- (c) provide a copy of the CORI to the subject;
- (d) provide a copy of the CRA's CORI Policy to the subject, if applicable;
- (e) identify the information in the CORI that is the basis for the inclination to make an adverse decision;
- (f) provide the subject with a copy of the DCJIS information concerning the process for correcting a criminal record;
- (g) provide the subject with an opportunity to dispute the accuracy of the information contained in the CORI; and
- (h) document all steps taken to comply with 803 CMR 11.00.

(2) If a subject claims that the CORI provided by the CRA is incomplete or inaccurate, the CRA shall investigate the subject's claim, unless the CRA has a reasonable basis to deem the subject's claim frivolous. If a CRA receives a claim from a subject that the criminal history information provided by the CRA is inaccurate or incomplete, and if the CRA obtained the criminal history information from DCJIS, the CRA shall also notify DCJIS, in writing, of the subject's claim and shall also include a copy of the subject's claim of incomplete or inaccurate criminal history information.

(3) The copy of any CORI provided by a CRA pursuant to 803 CMR 11.12(1)(c) shall not be transmitted to the subject by unsecured email.

(4) A CRA obtaining CORI from DCJIS is subject to the authority of the CRRB.

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

Any CRA that obtains CORI from DCJIS shall be subject to audit as described in 803 CMR 2.23: *Audits by DCJIS*.

11.14: CRA Access to CORI for Purposes Other than on Behalf of a Client

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

11.15: Severability

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

REGULATORY AUTHORITY

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