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Submitted via email: dcjisregs.comments@state.ma.us

May 11, 2016

Secretary Daniel Bennett
Executive Office of Public Safety & Security
Attention: Department of Criminal Justice Information Services (DCJIS)
Office of the General Counsel
200 Arlington Street
Suite 2200, Chelsea MA 02150

Re: AIM Comments regarding changes to 803 CMR 2.00- Criminal Offender Record Information (CORI)

Dear Secretary Bennett:

AIM was heavily engaged with the legislature, the prior Administration and directly engaged with the Secretary of Public Safety & Security regarding Criminal Offender Registry Information (CORI) reform that became law in 2009. As discussed during that policy debate, AIM members are most concerned about maintaining a safe workplace for their employees and customers. The state's iCORI system is a critical aspect of that effort.

AIM appreciates that the Department of Criminal Justice Information Services (DCJIS) for undergoing the process of regulatory review as stated in Executive Order 562. In order to better understand these proposed regulations, AIM requested that DCJIS provide a redline version of the proposed changes and further request for a written summary explaining the proposed changes. AIM appreciates that DCJIS did both and published their summary of explanation in their e-newsletter regarding the proposed changes in 803 CMR 2.00.

AIM does have questions and concerns regarding the proposed regulations that deserve further review. AIM's comments below provide additional details and would further offer to DCJIS the opportunity to connect with those in the regulated community to discuss these questions and concerns further.

AIM's comments largely focus on ways in which the proposed regulation limit access to data and add unnecessary and costly regulatory challenges. AIM wishes to raise the following specific concerns with DCJIS regarding 803 CMR 2.00.

Section 2.02

As proposed, the definition of who is covered by CORI is expanded to "volunteers, subcontractors, contractors, or vendors" and any individuals who would apply for such relationship with a company

or a “volunteer organization” as described in the definitions sections for “Employment Applicant” and “Employee”.

AIM is concerned that the proposed regulations would impact “volunteer organizations” in unintended ways. First, the term “volunteer organization” is not defined nor provided a threshold size. The significant challenge will be in the additional bureaucracy created for volunteer organizations. Under these proposed regulations, it would appear that if a volunteer organization wants to reject a potential volunteer based on their CORI, they would now have to give them a copy of the CORI before they ask any questions, give them the opportunity to dispute the CORI, and follow all the other rules employers now have to follow. This would add a significant cost for identifying volunteers and would also require them to maintain written CORI policies under the same conditions as employers.

Further, AIM is not sure not how this applies to true subcontractors and vendors, given that they are typically companies. Further, how would a one conduct a CORI check on a company? AIM would benefit from further explanation of this change to understand the purpose.

Section 2.03(1)

AIM is concerned that the proposed regulations would further limit access to certain information. The proposed regulations increases the minimum age to obtain information from 17 to 18. This is of concern because an employer is not receiving a year of potentially important criminal record information that employers previously had access too.

Specifically, section 2.03(1) limits the information provided for offenses committed after 9/18/13 (effective date) to individuals 18 y/o and older. Additionally, it provides unequal and potentially skewed information for applicants with potentially similar backgrounds based solely on the effective date of the statute.

Section 2.05

The proposed regulations also strike the language "information relating to" before offenses when determining what information can be accessed, could potentially limit an employer's access to important information/documents relating to an offense.

Section 2.09 (7) AIM wishes to highlight a change that appears to be helpful.

As proposed, Section 2.09 (7), may help employers who may want to conduct CORI checks after the initial hiring process. Under the previous regulations, a CORI Acknowledgment Form was valid for “for one year from the subject's having signed the form or until the conclusion of a subject's employment, whichever comes first”. Then, if an employer wanted to run another CORI check on an employee anytime in that first year, they had to give 72 hours' notice before submitting the request. Now under the proposed regulations, it appears that an employer does not have to give that 72 hours notice as long as the employee is notified “on its CORI Acknowledgment Form that a CORI may be requested at any time within that one year.”

This could give employers greater flexibility on their criminal background checks.

Section 2.10

AIM wishes to highlight this positive change. As proposed, the regulations would allow electronic collection, which could make it easier for employers.

Section 2.12 (1) and 2.16 (3)

AIM is concerned that the proposed regulations will add administrative burdens. Specifically, some of the new requirements surrounding maintenance and access to CORI place an unnecessary burden on a company of our size and scale.

Specifically, Section 2.12 (1) requires that all individuals who have access to CORI must sign individual non-disclosure agreements and, section 2.16 (3) further requires that each requestor maintain a "need to know" list of staff members who are authorized to review, request or receive CORI and that the people on that list also sign an individual agreement of non-disclosure to be maintained. As proposed, it is unclear within the language of the regulation whether an individual who can both receive, review and request CORI and has general access to CORI would need to sign two separate non-disclosure agreements.

AIM is also concerned that this proposed change does not work practically for many companies that have multiple locations in Massachusetts. Given the number of employees within the company who may be granted access at varying times within multiple locations in Massachusetts, requiring the company to obtain signatures and maintain these additional agreements for each individual would be cumbersome, and unnecessary given the existing requirements that CORI be kept in a locked and secured location.

AIM is also concerned about the additional regulatory burdens as proposed in Sections 2.12-2.16. Under current regulations, for hard copy CORI, all individuals who have access to the file where CORI is kept, which must be "in a separate locked and secure location". Under the proposed regulations, an employer must "have signed the individual agreement of non-disclosure." Under the proposed regulations, for electronically stored CORI, individuals who have the password must also sign the "individual agreement of non-disclosure." Employers who wish to store CORI in the cloud may do so, but they are required to have a written agreement with their cloud storage provider which must be approved by DCJIS. This is duplicative based on the current state laws on data security. There are also detailed instructions on the destruction of outdated CORI and CORI Acknowledgement forms that may be too specific, confusing and possibly in conflict the current state laws and regulations on Data Security and record destruction. AIM is concerned about the additional regulatory burdens as proposed in Sections 2.12-2.16 which increases requirements for the security of CORI info. For hard copy CORI, all individuals who have access to the file where CORI is kept, which must be "in a separate locked and secure location", under the current regulations, must "have signed the individual agreement of non-disclosure." Under the proposed regulations, for electronically stored CORI, individuals who have the password must also sign the "individual agreement of non-disclosure." Employers who wish to store CORI in the cloud may do so, but they

have to have a written agreement with their cloud storage provider which must be approved by DCJIS—that's almost certainly going to be a pain. There are also detailed instructions on the destruction of outdated CORI and CORI Acknowledgement forms that may be too specific, confusing and possibly in conflict the current state laws and regulations on Data Security and record destruction. Employers must now also maintain a "need to know" list of individuals authorized to review and request CORI that can be produced to DCJIS on request.

As proposed, employers must now also maintain a "need to know" list of individuals authorized to review and request CORI that can be produced to DCJIS on request.

Section 2.21

AIM is concerned that the proposed regulations add additional regulatory burden, operational cost and further legal risks. A proposed in Section 2.21, the language enhances the enforcement mechanisms of DCJIS for violations of the CORI regulations. In addition to auditing employers and filing a complaint against them in the Criminal Record Review Board ("CRRB"), DCJIS can now also "refer the audit results to state or federal law enforcement agencies for criminal investigation" or "enter into a consent agreement with the requestor whereby the requestor agrees to certain audit findings and, in lieu of further proceedings, agrees to resolve audit findings by agreeing to pay a fine and/or by agreeing to other conditions regarding access to CORI." While it appears that the proposed language provides for a consent decree process, which would allow employers who have indisputable CORI violations an alternative to continued proceedings, but it's going to involve paying a fines.

Thank you for taking AIM's concerns into consideration. AIM and our members are available to provide additional feedback and explanation of these concerns.

Sincerely,



Bradley A. MacDougall
Vice President for Government Affairs
Associated Industries of Massachusetts