COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

KATIE CONNER,
Appellant

v.

DEPARTMENT OF CORRECTION,
Respondent

Case No.: G1-14-23

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

Ms. Conner's appeal is hereby ***allowed***.

Pursuant to its authority under Chapter 310 of the Acts of 1993, the Commission hereby orders the state's Human Resources Division (HRD) or DOC in its delegated capacity, to take the following actions:

- Place the name of Katie Conner at the top of future Certifications for the position of CO I at DOC until such time as she is appointed or bypassed.

- If Ms. Conner is appointed as a CO I, she shall receive a retroactive civil service seniority date for civil service purposes only the same as those appointed from Certification No. 00974.

This retroactive civil service seniority date is for civil service purposes only and is not meant to provide Ms. Conner with any additional pay or benefits including, but not limited to, creditable time toward retirement.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on October 16, 2014.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:
Stephen C. Pfaff, Esq. (for Appellant)
Jeffrey S. Bolger (for Respondent)
John Marra, Esq. (HRD0
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

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KATIE M. CONNER,
Appellant

Docket Nos: G1-14-23
CS-14-181

v.

DEPARTMENT OF CORRECTION,
Respondent

Appearance for Appellant:

Stephen C. Pfaff
Louison, Costello, Condon and Pfaff, LLP
101 Summer Street
Boston, MA 02110

Appearance for Respondent:

Jeffrey Bolger
Department of Correction
P.O. Box 946, Industries Drive
Norfolk, MA 02056

Administrative Magistrate:

Angela McConney Scheepers, Esq.

SUMMARY OF TENTATIVE DECISION

The Department of Correction has failed to prove by a preponderance of the evidence that it had reasonable justification to bypass the Appellant for the position of Correction Officer I. The Department failed to conduct a "reasonably thorough review" in its bypass of the Appellant based solely on Criminal Offender Record Information. I therefore recommend that the Civil Service Commission allow the appeal.

TENTATIVE DECISION

INTRODUCTION

Pursuant to the provisions of M.G.L. c. 31, § 2(b), the Appellant, Katie M. Conner (Appellant), seeks review of the Department of Correction's (Department) reasons for bypassing her for appointment to the position of Correction Officer I. A pre-hearing conference was held on February 25, 2014 at the offices of the Civil Service Commission

(Commission), One Ashburton Place, Room 503, Boston, MA 02108. On April 11, 2014, pursuant to 801 CMR 1.01(11)(c), a Magistrate from the Division of Administrative Law Appeals (DALA) conducted a full hearing at the DALA offices, located at One Congress Street, Boston, MA 02114, in accordance with the Formal Rules of the Standard Rules of Practice and Procedure. 801 CMR 1.01. James O'Gara testified on behalf of the Respondent. The Appellant testified on her own behalf. The hearing was digitally recorded. As no notice was received from either party, the hearing was declared private.

Fifteen (15) exhibits were admitted into evidence. The Respondent's Pre-hearing Memorandum was marked "A" for identification. The Appellant submitted a post-hearing brief on May 5, 2014. The Respondent submitted its post-hearing brief on May 14, 2014, whereupon the administrative record closed.

FINDINGS OF FACT

Based upon the testimony and documents presented at the hearing, I hereby render the following findings of fact:

1. Katie M. Conner is a 2006 graduate of Leominster High School. She has worked in retail for the past 18 months. She is a single mother of a five-year old. (Testimony of Appellant.)

2. On May 24, 2012, Ms. Conner took the Civil Service exam for the position of Correction Officer I. She received a score of 84. (Exhibit 14; Testimony of the Appellant.)

3. Although Commissioner Luis Spencer is the appointing authority for the Department, he plays no role in the appointment process. (Testimony of O'Gara.)

4. James O'Gara is a Personnel Analyst III in the Department's Human Resources Department. Employed by the Department for seven years, Mr. O'Gara oversees the hiring review of correction officer candidates. Erin Gotovich, the Department's Acting Director of Human Resources, supervises Mr. O'Gara. (Testimony of O'Gara.)

5. On July 2, 2013, Ms. Conner's name appeared on Certification No. 00974.

(Exhibit 14.)

6. During the hiring review, Mr. O'Gara reviewed Ms. Conner's Criminal Offender Record Information (CORI) record. The CORI record was generated on July 19, 2013, and revealed that Ms. Conner was arrested on June 17, 2008 for (1) possession of a Class A substance, (2) possession of a Class B substance, and (3) knowingly being present where heroin was kept. Ms. Conner was arraigned in Leominster District Court on December 8, 2008. The charges for possession of a Class B substance and knowingly being present where heroin was kept were dismissed. The remaining charge of possession of a Class A substance was dismissed on November 25, 2008 upon payment of a court fee. (Exhibits 6 and 8.)

7. There was a notation of "ICF EXT" on the CORI record, by which the Department mistakenly believed that the Appellant had undergone "internment in a care facility." The Appellant has never been incarcerated or held by the Commonwealth. In actuality, "ICF EXT" referred to an extension of the indigency counsel fee. (Exhibit 6; Testimony of Appellant.)

8. A few days after the Department conducted the CORI checks, Mr. O'Gara and Ms. Gotovich met in order to discuss candidates. Mr. O'Gara told Ms. Gotovich that Ms. Conner had had a "hit" on her CORI, an arraignment in criminal court within the past five years.[1] Mr. O'Gara and Ms. Gotovitch did not take any notes during their discussion of Ms. Conner. There is no record of when the meeting took place. (Testimony of Mr. O'Gara.)

9. Although there is no Department Policy, Rule, or Regulation on this matter, it is Department practice to bypass candidates with CORI activity within the previous five years. If a candidate has CORI entries, the background check is suspended and there is no further review of that candidate's application. (Testimony of Mr. O'Gara.)

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[1] Ms. Conner was arraigned on the three counts on June 17, 2008. Two counts were dismissed on September 25, 2008 and the final count was dismissed on November 25, 2008. (Exhibit 6.)

10. Although Ms. Connor was arrested on June 17, 2008, the disposition of her charges took place on September 25, 2008 and November 25, 2008. Her CORI record was accessed on July 19, 2013, placing the disposition of her criminal charges well within the Department's five-year look back period. (Exhibits 6 and 8; Testimony of Mr. O'Gara.)

11. Based solely on Ms. Conner's CORI information and the conversation with Mr. O'Gara, Ms. Gotovitch made the decision to bypass Ms. Conner for appointment. There is no evidence that Ms. Gotovitch was aware that the Commonwealth dismissed all of Ms. Conner's charges. No one from the Department ever spoke to Ms. Conner about her CORI record, provided her with a copy of said record after the adverse decision, or provided her with information on how to amend incorrect information on a CORI record. *See* G.L. c. 6, § 171A. (Testimony of Mr. O'Gara; Testimony of Appellant.)

12. The Department neither obtained a copy of the police incident report nor spoke to any of the police officers involved. (Testimony of O'Gara.)

13. Because her hiring review was suspended, Ms. Conner was not interviewed by a Department investigator or a Department hiring panel, or asked to submit an employment application. (Testimony of Appellant.)

14. According to the police incident report filed in the underlying incident, on June 16, 2008, the Leominster Police executed a search warrant at 17 Laurel Street, rear apartment 6. After knocking several times, the officers made entry and located 3 men and one woman, S, in the bedroom of the small apartment. The Appellant was seated on a couch in the living room. The officers read the five parties their Miranda rights and gave them a copy of the search warrant. (Exhibit 12.)

15. When the officers asked the parties who lived in the apartment, the Appellant said that she planned to move into the apartment with the other woman. The tenant of the apartment was not present. The officers searched the bedroom and found two bags of heroin on the floor, a bag of cocaine on the dresser, numerous cut baggies, loose baggies and drug

paraphernalia. The officers found documents with the tenant's name and a prescription medication in the name of S. All of the parties admitted that they were aware of the heavy traffic coming to and from the apartment. They also said that everyone parties at the apartment, but are drug abusers rather than dealers. No one would admit to ownership of the controlled substances. (Exhibit 12.)

16. The five parties were all placed under arrest and charged with possession of a Class A substance, possession of a Class B substance and knowingly being present where heroin was kept. The tenant of the apartment was summonsed. (Exhibit 12.)

17. Ms. Conner testified that 17 Laurel Street was not her permanent home. After breaking up with her boyfriend, she had no place to live. S, an occupant of the premises, offered her a place to stay. Ms. Conner denied drug use, and stated that police officers found the drug paraphernalia in the bedroom, while she had been staying in the living room. (Testimony of Appellant.)

18. On November 26, 2013, the Department issued a bypass letter to Ms. Conner, citing:

> Failed CJIS-Negative Criminal History-Possession of a Class A Controlled Substance 6/17/08; Possession of a Class B Controlled Substance 6/17/08; Knowing a Class A Controlled Substance Presence-Heroin 6/17/08.

The letter was signed by Ms. Gotovitch. (Exhibit 2.)

19. On January 22, 2014, Ms. Conner filed a timely appeal with the Commission. (Exhibits 1and 14.)

CONCLUSION AND ORDER

A. Applicable Legal Standards

When a candidate for appointment appeals from a bypass, the commission's role is not to determine whether that candidate should have been bypassed. The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182,

187 (2010). The commission determines, "on the basis of the evidence before it, whether the appointing authority [has] sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification" for the decision to bypass the candidate. *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 241 (2006), citing G.L. c. 31, § 2 (*b*). "Reasonable justification in this context means 'done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.' " *Brackett v. Civil Serv. Comm'n, supra,* quoting *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928). *See also Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 189, 190-91 (2010) *citing Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 824-826 (2006). *See also Methuen v. Solomon*, No. 10-01813-D, Essex Sup. Ct. (July 26, 2012); *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012). A "preponderance of the evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient." *Mayor of Revere v. Civil Serv. Comm'n*, 31 Mass. App. Ct. 315 (1991). In determining whether the department has shown a reasonable justification for a bypass, the commission's primary concern is to ensure that the department's action comports with "[b]asic merit principles," as defined in G.L. c. 31, § 1. *See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban,* 434 Mass. 256, 259 (2001). An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. *Beverly,* supra at 189. The commission "finds the facts afresh" in conducting this inquiry, and is not limited to the evidence that was before the Department. *Beverly,* supra at 187. The Commission owes "substantial deference" to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. *Id.* Cities and towns have wide discretion in selecting public employees, and absent proof that they acted unreasonably, may

not be forced to take the risk of hiring unsuitable candidates. *Tewksbury v. Massachusetts Civ. Serv. Comm'n*, No. 10-657-G (Suff. Sup. Ct. August 30, 2012) (Superior Court found that the town acted reasonably; Commission erred when it reversed DALA Recommended Decision and improperly substituted its judgment).[2] An appointing authority "should be able to enjoy more freedom in deciding whether to appoint someone as a new … officer than in disciplining an existing tenured one." *Attleboro v. Massachusetts Civ. Serv. Comm'n et al.*,[3] No. 2011-734, Bristol Sup. Ct. (November 5, 2012), citing *Beverly* at 191.

A. The Department's Review did not Provide Reasonable Justification for Bypassing the Appellant

The Department was not reasonably justified in bypassing the Appellant because it failed to conduct a "reasonably thorough review" in its consideration of her for employment. *Beverly*, supra. After finding entries on her criminal offender registry information record, the Department failed to complete a proper vetting procedure. Ms. Conner had no convictions; all of the CORI entries that formed the basis for the Department bypass had been dismissed at the request of the Commonwealth. Mr. O'Gara, a Personnel Analyst III, was in charge of the candidates' hiring review. He testified that none of the selected candidates had "drug issues," and cited his concern for both staff and inmates. Mr. O'Gara testified that the Department is concerned by offenses involving drugs, weapons, assault and battery, sexual assaults and sexual assaults involving child victims.

The determination to bypass Ms. Conner was made after a brief conversation Mr. O'Gara had with Erin Gotovitch, his supervisor, a few days after the Department ran the CORI checks. There is no written document memorializing this conversation, only Mr. O'Gara's testimony that the meeting actually took place. The appointing authority for the Department, Commissioner Luis Spencer, played no role in this decision. The Commission

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[2] *Cyrus v. Tewksbury*, Docket Nos. G1-08-107, CS-08-539, Recommended Decision, (June 5, 2009), *rev'd by Final Decision* 23 MCSR 58 (2010).

[3] William Dunn.

has previously advised the Department against its insufficient vetting processes that excluded the appointing authority:

> In *Machnik v. Department of Correction*, 26 MCSR 21 (2013), Mr. O'Gara stated that the DOC Commissioner had delegated hiring responsibilities to the Assistant Deputy Commissioner of Administration. First, as noted in *Machnik*, there is no provision in the civil service law or rule that allows such a delegation. Second, even if such delegation were permissible, there was no evidence presented here showing that the Assistant Deputy Commissioner reviewed the reasons for bypass. Instead, it appears that DOC's Acting Director of Human Resource Operations, who reports to the Assistant Deputy Commissioner, made the decision to bypass Ms. Rolle based on a brief conversation with Mr. O'Gara, a Personnel Analyst. In *Machnik*, we stated that: "DOC, on a going forward basis, should ensure that the Commissioner fulfills this important responsibility [of making final hiring decisions]." That directive apparently received as much consideration by DOC as the Governor's 2009 statement directed to all Massachusetts employers, both private and public, to give applicants a chance to discuss their criminal record before disqualifying her for employment.

Rolle v. Department of Correction, 27 MCSR 254, 256 (2014). *See also Marino v. Department of Correction*, 27 MCSR 247, 249-250 (2014); *Moreira v. Department of Correction*, 27 MCSR 251, 253 (2014).

The Department argued that it may consider a candidate's arrest record as a reason for bypass. *Manca v. Department of Correction*, 25 MCSR 525 (2012). The Department also argued that under *Anderson v. Department of Correction* "it is permissible for the Department to review a CORI and make a determination based on the record as to whether the applicant should be denied." *Department of Correction v. Anderson and Civil Serv. Comm'n*, No. 09-0290, (Suff. Sup. Ct. Feb. 5, 2010) (superior court vacated Commission decision, finding that DOC could bypass candidate solely based on CORI report). The Commission had also ruled that the Department may rely on information in a CORI report to bypass a candidate, even if the offenses were later dismissed. *Preece v. Department of Correction*, 20 MCSR 152 (2007); *Lavaud v. Boston Police Dep't*, 17 MCSR 125 (2004) (Commission upheld bypass due to Appellant's long record of arrests although the charges were later dismissed); *Brooks v. Boston Police Dep't*, 12 MCSR 19 (1999) (Commission upheld original bypass despite age of criminal record).

There have been sweeping changes in the CORI law recently. On May 4, 2010, chapter 6 of the General Laws was amended by chapter 256 of the Acts of 2010:

> In connection with any decision regarding employment … a person in possession of an applicant's criminal offender record information shall provide the applicant with the criminal history record in the person's possession … prior to questioning the applicant about his criminal history… . If the person makes a decision adverse to the applicant on the basis of his criminal history, the person shall also provide the applicant with the criminal history record in the person's possession … .
>
> A person who annually conducts 5 or more criminal background investigations, whether criminal offender record information is obtained from the department or any other source, shall maintain a written criminal offender record information policy providing that, in addition to any obligations required by the commissioner by regulation, it will: (i) notify the applicant of the potential adverse decision based on the criminal offender record information; (ii) provide a copy of the criminal offender record information and the policy to the applicant; and (iii) provide information concerning the process for correcting a criminal record.

G.L. c. 6, § 171A. St. 2010, c. 256.

On January 11, 2008, the Governor issued Executive Order Number 495, Regarding the Use and Dissemination of Criminal Offender Record Information by the Executive Department:

> … WHEREAS, the existence of a criminal record should not be an automatic and permanent disqualification for employment, and as the largest single employer in the Commonwealth, state government should lead by example in being thoughtful about its use of CORI in employment decisions; WHEREAS, enabling public and private employers and housing providers to interpret CORI accurately and to understand their statutory and regulatory obligations with respect to CORI will improve the fairness of the employment and housing processes;…
>
> WHEREAS, educating individuals about their legal rights regarding their court records will improve their prospects for employment and housing; …
>
> NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2. c. 2, § 1, Art. 1, do hereby order as follows:
>
> Section 1. It shall be the policy of the Executive Department with respect to employment decisions that a criminal background check will only occur, and its results will only be considered, in those instances where a current or prospective employee shall have been deemed otherwise qualified and the content of a criminal record is relevant to the duties and qualifications of the position in question. Such instances will include, without limitation, those in which a criminal conviction creates a statutory disqualification for the position,

> or the position requires interaction with vulnerable populations and a criminal background check is necessary to ensure that the applicant does not pose a public safety risk.
>
> *In implementing this policy, the employer should consider the nature and circumstances of any past criminal conviction;* the date of the offense; the sentence imposed and the length of any period of incarceration; any reasonably available information concerning compliance with conditions of parole or probation, including orders of no contact with victims and witnesses; *the individual's conduct and experience in the time since the offense, including, but not limited to, educational or professional certifications obtained since the time of the offense or other evidence of rehabilitation;* and the relevance of the conviction to the duties and qualifications of the position in question. Charges that did not result in a conviction will be considered only in circumstances in which the nature of the charge relates to sexual or domestic violence against adults or children, consistent with Executive Order No. 491, Establishing a Policy of Zero Tolerance for Sexual Assault and Domestic Violence, or otherwise indicates that the matter has relevance to the duties and responsibilities of the position in question.

Exec. Order No. 495 (Jan. 11, 2008) (emphasis added).

803 CMR 2.00 promulgates procedures for accessing CORI for the purpose of evaluating applicants for employment or professional licensing, as well as CORI complaint procedures. 803 CMR 2.00 sets forth the establishment and use of the iCORI system, the internet-based system used in the Commonwealth to access CORI and to obtain self-audits, in order to access criminal records. 803 CMR 2.00 applies to *all* users of the iCORI system including employers, governmental licensing authorities, and individuals with criminal history. The steps for a "reasonably thorough review" are included in 803 CMR 2.17 Adverse Employment Decision Based on Criminal Offender Record Information (CORI):

> Before taking adverse action on an employment applicant's application for employment based on the employment applicant's CORI, an employer shall:
> (1) comply with applicable federal and state laws and regulations;
> (2) notify the employment applicant in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse employment action;
> (3) provide a copy of the employment applicant's CORI to the employment applicant;
> (4) provide a copy of the employer's CORI Policy, if applicable;
> (5) identify the information in the employment applicant's CORI that is the basis for the potential adverse action;
> (6) provide the employment applicant with the opportunity to dispute the accuracy of the information contained in the CORI;

(7) provide the employment applicant with a copy of DCJIS information regarding the process for correcting CORI; and
(8) document all steps taken to comply with 803 CMR 2.17.

803 CMR 2.17 (issued in accordance with G.L. c. 6, §§ 167A and 172 and G.L. c. 30A.)

It is undisputed that the Department failed to provide Ms. Conner with a copy of the CORI report upon which it based its adverse decision. Based on Mr. O'Gara's testimony, the Department does not maintain a written criminal offender information policy that would notify candidates of adverse decisions based on the criminal offender record information, provide candidates with a copy of the criminal offender record information and the Department's policy in that regard and provide candidates with the information for correcting a criminal record. Because the background check was discontinued when the CORI check revealed a "hit" on Ms. Conner, she did not advance to filling out an application.

The Department argues that the Commissioner has delegated his hiring responsibility to the Deputy Commissioner for Personnel and Training. However, at the time she made the decision to bypass Ms. Conner, Ms. Gotovitch's title was Acting Director of Human Resources. Thus neither the appointing authority nor his delegatee is involved in the hiring decisions. The Commission first addressed this in *Machnik v. Department of Correction*, 26 MCSR 21 (2013), then later in *Rolle v. Department of Correction*, 27 MCSR 254, 256 (2014), *Marino v. Department of Correction*, 27 MCSR 247, 249-250 (2014), and *Moreira v. Department of Correction*, 27 MCSR 251, 253 (2014). Candidates Rolle, Marino, and Moreira all appeared on the same certified eligibility list as Ms. Conner.

The facts in the instant matter are woefully similar to those in *Rolle*, supra. A criminal charge against Ms. Rolle was dismissed upon the request of the Commonwealth in 2009. But, in 2013, the Department bypassed Ms. Rolle for appointment as a Correction Officer I based solely on the dismissed charges on her CORI report. The Department did not check the accuracy of the CORI report, but relied on it without ever speaking to Ms. Rolle or giving her the opportunity to discuss the dismissed charge. The Department did not procure the police

incident report or the criminal docket sheet or ask Ms. Rolle to provide copies of the same. Ms. Rolle never advanced to submitting an application for employment, a document which would have provided the Department with a summary of her personal, educational, and professional background. The Commission allowed Ms. Rolle's appeal, noting that it had already given the DOC a directive under *Machnik v. Department of Correction*, supra, and granted her relief pursuant to Chapter 310 of the Acts of 1993.

The Department review in *Rolle* and in this matter falls short of the "reasonably thorough review" as required in *Beverly*, supra, and is contrary G.L. c. 6, §§ 176-181 B. Neither the Appointing Authority nor the individual improperly delegated the responsibility for making appointments was involved in this decision. There was a marked absence of written internal records documenting how the decision to bypass both Ms. Rolle and Ms. Conner was made. Ms. Conner was not provided with a copy of the CORI report or given the opportunity to dispute the accuracy of its contents.

This is not to say that if the Department had conducted "reasonably thorough review," i.e. if the Department had maintained a written CORI notification policy, had documented its decision to bypass Ms. Conner, had notified her of the adverse decision based on her CORI, provided her with a copy of the report, discussed the matter with her, offered her information on how to correct a CORI and had obtained a copy of the relevant police report or spoken to the police officers involved in the underlying incident - that it could not have found reasonable justification to bypass her. But those are not the facts before me. As a matter of fact, this failure to discuss the CORI report with Ms. Conner led the Department to erroneously believe that she had been incarcerated due to the "ICF EXT" notation on her CORI. If the Department had spoken to her, it would have learned that the court had granted Ms. Conner an extension in order to pay her indigency counsel fee. Mistakes do appear on CORI reports, and candidates must be granted the chance to explain the situation to employers

and to correct them. In this case, the Department, a large employer that reviews CORI reports frequently, failed to properly interpret an innocuous notation.

Based on the preponderance of credible evidence presented at the hearing, I find that the Department has not provided reasonable justification for its decision to bypass Katie M. Conner for appointment as a Correction Officer I. The Department failed to conduct a "reasonably thorough review" of Ms. Conner and improperly used CORI information to bypass her. Accordingly, I recommend that the appeal be allowed.

I further recommend that the Commission enter the following order.

ORDER

Pursuant to its authority under Chapter 310 of the Acts of 1993, the state's Human Resources Division (HRD) or DOC in its delegated capacity, shall:

- Place the name of Katie M. Conner at the top of any current or future Certification for the position of Correction Officer I until she is appointed or bypassed.

- Should Ms. Conner be appointed as a Correction Officer I, she shall receive a retroactive civil service seniority date the same as those appointed from Certification No. 00974.

This retroactive civil service seniority date is not intended to provide Ms. Conner with any additional pay or benefits including creditable service toward retirement.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

_____

Angela McConney Scheepers
Administrative Magistrate

DATED: