

The Commonwealth of Massachusetts, Department of Mental Health

Access to Criminal Offender Record Information Concerning Patients

Policy # 01-1

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Effective Date: December 1, 2001

Approval by Commissioner

Signed by: Marylou Sudders

Date: October 4, 2001

I. Purpose of Policy

This policy establishes procedures governing access to and use of Criminal Offender Record Information (CORI) concerning patients. A CORI report shall be requested for each person admitted to a DMH-operated or contracted adult inpatient Facility. This policy repeals and replaces DMH Policy #97-3.

II. Scope of Policy

This policy shall apply to all DMH-operated and contracted adult inpatient facilities that serve continuing care and/or forensic patients.

III. Definitions

- Agreement of Non-Disclosure: Document confirming knowledge and understanding of laws governing authorized access to, maintenance of and use of Criminal Offender Record Information reports to be completed by staff persons for authorization for access to CORI. The form is attached to this policy.
- Criminal Offender Record Information (CORI): Data compiled by the Massachusetts Criminal History Systems Board detailing the history of involvement with the state criminal justice system of an individual including, but not limited to, information detailing the disposition of prior criminal charges, history of arrests, records of criminal judicial proceedings, sentencing, incarceration and rehabilitation.
- CORI Authorized Individual: Persons(s) designated to obtain CORI reports concerning patients after completion of requirements set forth in this policy.
- CORI Records Custodian: Individual(s) designated by a Facility Director as the keeper of CORI reports concerning patients.
- DMH Division of Forensic Mental Health Services (DFMHS): The Division within the Department of Mental Health that is authorized by the Criminal History Systems Board to access and disseminate CORI data to authorized users.
- Facility: A DMH-operated or contracted inpatient facility.
- Facility Director: The Chief Operating Officer, Superintendent or Center Director of a DMH-operated or contracted inpatient facility.
- Forensic Patient: An individual admitted to a Facility pursuant to provisions of M.G.L. chapter 123, section 15, 16, 17 or 18.
- Forensic Evaluation: A court-ordered inpatient evaluation pursuant to M.G.L. chapter 123, section 15 (b), 15(e), 15(f), 16(a), 17(a), 18(a) or 18(b).
- Mandatory Forensic Review, A risk assessment consultation provided by the Forensic Division pursuant to DMH Policy 00-1 to aid Treatment Teams in making decisions concerning granting of certain privileges and discharge for patients with a history of violence.
- Treatment Team: The multidisciplinary clinical team responsible for the care and treatment of a patient.

IV. Clinical Risk Assessment and Access to Criminal Offender Record Information

A. CORI Authorized Individual(s)

Each adult Facility that serves continuing care patients and/or forensic patients shall develop a list of persons eligible to apply for authorization to have access to CORI reports, as specified in this policy, on patients admitted to the Facility. This list shall be limited to people employed in the following positions. Individuals who do not hold one of these positions are not eligible to apply for authority to have access to CORI reports.

1. Psychiatrists appointed as 'Designated Forensic Psychiatrists' pursuant to DMH regulations or in training for such designation;
2. Psychologists appointed as 'Designated Forensic Psychologists' pursuant to DMH regulations or in training for such designation;
3. All members of a Treatment Team, and its consultants, including, but not limited to, Mandatory Forensic Review (MFR) Evaluators and Mentally Ill/Sexual Behavior Disorder (MI/SBD) Team Members;
4. Facility Medical Directors;
5. Facility Directors;
6. CORI Records Custodian;
7. Area Medical Directors;
8. Area Directors;
9. Area Attorneys;
10. Human Rights Officers;
11. DMH Commissioner;
12. DMH Senior Managers;
13. DMH Investigators.

Each person designated to apply for authority to have access to CORI reports shall be provided with an Agreement of Non-Disclosure, to be reviewed, completed and submitted to the Forensic Division. All such forms shall be sent to the Criminal History Systems Board, 200 Arlington Street, Chelsea, Massachusetts, 02150, with a copy of each form maintained in a Facility file and in a designated file in the DMH Division of Forensic Mental Health Services (DFMHS). The Criminal History Systems Board will notify the DFMHS if CORI access has been denied to a particular person. Individuals for whom CORI access is requested will be considered approved by the Criminal History Systems Board for access unless such notification is received. The DFMHS and each Facility shall maintain and keep current a list of all people with CORI access authority.

Any CORI Authorized Individual, upon transfer to a DMH-employed or contracted position not designated as a position to receive CORI authorization, shall be notified in writing, by the Facility Director (or the DFMHS for Central Office CORI Authorized Individuals), of the termination of his or her authority to access CORI reports. A copy of such notification shall be sent to the Criminal History Systems Board, 200 Arlington Street, Chelsea, Massachusetts, 02150. A copy shall also be maintained by the Facility Director and shall be made available upon request. Upon termination of employment with DMH or a contracted inpatient facility, a CORI Authorized Individual shall be notified, in writing, by the Facility Director (or the DFMHS for all Central Office CORI Authorized Individuals) of the termination of his or her CORI authorization. A copy of such notification shall be sent to the Criminal History Systems Board, 200 Arlington Street, Chelsea, Massachusetts, 02150, and also kept on file by the Facility or the DFMHS.

Each person seeking to be a CORI Authorized Individual must attend an approved training session on CORI procedures. The Facility shall document compliance with this requirement.

B. Use of Criminal Offender Record Information (CORI)

Access to CORI reports of patients admitted to Facilities shall be solely for clinical purposes of risk assessment; for purposes of completing an acute forensic evaluation pursuant to M.G.L. chapter 123, section 15, 16, 17 or 18; for review of discharge decisions and/or for investigating elopements. CORI reports may be used in ongoing evaluation of the potential risk of a patient, and shall be reviewed for consideration, if determined to be relevant, in risk assessment for clinical decisions concerning increased inpatient privileges and discharge readiness.

A determination of whether a patient poses a risk of harm shall not be based solely on information contained in the CORI report. Entries in a CORI report may be considered reliable evidence that a patient has engaged in criminal behavior. However, it is expected that the treatment team will discuss the information contained in the CORI report with the patient and seek to obtain additional information from the patient, court, police and other criminal justice

agencies to enhance the risk assessment process. For example, a CORI report may identify a possible criminal act not previously known to a clinician, allowing the clinician to ask the patient about it or obtain reports regarding the incident. This additional information shall be documented in and made part of the patient's medical record.

Whenever a CORI Authorized Attending Psychiatrist or other designated member of the Treatment Team, or Designated Forensic Psychiatrist or Psychologist, receives a patient's CORI report, he or she shall meet with the patient to discuss information in the CORI report and determine whether the patient understands and agrees that the CORI report is accurate. He or she:

- a. shall inform the patient of his or her right to receive a copy of the CORI report, and provide necessary assistance to the patient in gaining access to the CORI report;
- b. shall explain to the patient that he or she may seek assistance from a Human Rights Officer or legal advocate regarding any human rights concerns related to his or her CORI report being used for risk assessment purposes; or
- c. may make any appropriate contacts with the courts or other persons as appropriate, to obtain reports or other information relevant to the patient's criminal history.

A delay in obtaining a CORI report on a patient shall not, in and of itself, be reason for any delay in the granting of privileges or discharge of a patient who has been deemed otherwise clinically appropriate for such privileges or discharge.

C. Procedure for Accessing CORI Reports

Individual CORI reports shall be available for review only by a CORI Authorized Individual. A CORI report shall be requested, in writing, from the DFMHS. Requests for a CORI report shall indicate the name and title of the CORI Records Custodian, to whom the CORI report will be sent directly. Whenever a patient is discharged from a Facility prior to receipt of his or her CORI report, a CORI Records Custodian shall contact the DFMHS to rescind the request.

D. Procedures for Clinical Risk Assessment

This section applies only to continuing care patients. It does not apply to the following forensic sections under M.G.L. chapter 123:

- Section 15(b) 20 or 40-day evaluation;
- Section 15(e) 30-day evaluation;
- Section 15(f) 40-day evaluation;
- Section 16(a) evaluation;
- Section 18(a) and 18(b).

Individuals hospitalized under the above sections are not eligible for off-grounds or unsupervised privileges and are not discharged directly to the community but to a court or correctional facility.

In considering whether entries on a patient's CORI report are relevant to the clinical risk assessment of the patient, reference should be made to any DMH policies on special clinical reviews.

E. Maintenance and Dissemination of CORI Records

Each Facility shall develop a protocol governing the access and dissemination of inpatient CORI records, as follows:

1. CORI Records Custodian

Each Facility Director shall appoint one or more CORI Records Custodians. These appointments shall be made so as to ensure that appropriate CORI Authorized Individuals are available at the Facility at all times. The CORI Records Custodian will be responsible for the access, storage and dissemination of CORI to all CORI Authorized Individuals.

2. Maintenance of CORI Reports

Each Facility shall provide secure files in which all CORI reports shall be kept. These files shall be locked and shall be accessible only to CORI Authorized Individuals. Such reports shall be maintained separately from individual medical records. CORI reports maintained relative to a patient must be destroyed immediately following the discharge of the patient from the Facility.

3. Dissemination of CORI Reports

CORI reports shall be available for review only by individuals specifically authorized for CORI access, except as set forth below. A list of all such individuals shall be maintained by the Facility and must be made available for reference to anyone in order to determine whether a particular individual is authorized to receive CORI reports. CORI reports may not be disseminated to people who do not hold a position listed in section IV.A. of this policy. Requests for access to CORI reports by anyone not authorized to do so shall be referred to the Criminal History Systems Board, except:

- a. Where a patient requests access to his or her own CORI report, the report shall be provided; OR
- b. Where a patient requests, in writing, that his or her CORI report be shared with his or her legal advocate, the CORI report shall be provided as requested.

DMH Senior Managers (as designated by the Commissioner) may request access to a CORI report from the DFMHS when reviewing discharge planning. The Commissioner shall send a list of approved names to the DFMHS, which shall be updated as necessary. The requested CORI shall be sent to the requesting manager and noted in the CORI dissemination log at the facility.

A DMH Investigator may request access to a CORI report from a facility when investigating the elopement of a patient. The DMH Office of Investigations shall send a list of CORI cleared investigators to each CORI Records Custodian, which shall be updated as necessary. The requested CORI report shall then be made available to the investigator and noted in the CORI dissemination log at the facility.

Each individual CORI report file shall include a dissemination review log sheet, which shall list each dissemination or review of a specific CORI report. Each time a CORI report is reviewed, the log sheet shall be updated to include: (1) the name and title of the person reviewing the report; and (2) the name and title of the person providing the report, if different from the person reviewing the report; and (3) the date that the report was reviewed or disseminated; and (4) the purpose for which the report was reviewed. Whenever copies are made for review of a CORI report, upon completion of such review the copy shall be returned to the CORI Records Custodian for return to the confidential CORI file or destruction.

F. Role of the Human Rights Officer

The Human Rights Officer at the Facility shall be responsible for (1) assisting in the resolution of any human rights concerns a patient may have regarding the use of CORI records, and (2) advising patients relative to their rights relative to CORI reports received by the Facility.

Whenever a CORI report has been obtained relative to a patient, and privileges or discharge are denied or delayed as a result of the information received in respect to the CORI report, a Treatment Team member or other designee shall notify the Human Rights Officer. In such cases, the Human Rights Officer shall be notified of, and with the patient's assent, be invited to attend all Treatment Team and other meetings where these issues are scheduled for discussion, as set forth in section IV.B. of this policy. Where a staff person learns that a patient has a human rights concern relative to a CORI report, the staff person shall advise the patient as to the availability of the Human Rights Officer to address these issues.

V. Implementation

It shall be the responsibility of the Area Director to designate a person in each Facility to implement this policy and to arrange with the DMH Central Office for mandatory staff training for such implementation. It shall be the responsibility of the Assistant Commissioner for Forensic Services to establish the procedures for accessing CORI, maintaining the CORI Authorized list and providing training on the use of CORI.

VI. Review

This policy shall be reviewed at least every three years.