



Office of the
Inspector General
Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

A Review of the
Department of Mental
Health's Employee
Screening Practices

February 2005



The Commonwealth of Massachusetts
Office of the Inspector General

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The Honorable Marc R. Pacheco
Chairman, Senate committee on Post Audit and Oversight
State House, Room 312-B
Boston, MA 02133

Dear Senator Pacheco:

The following report, *A Review of the Department of Mental Health's Employee Screening Practices*, presents this Office's recommendations for improving human service personnel hiring practices to better protect human service agencies' clients from abuse. Obtaining criminal histories of potential employees and excluding persons convicted of crimes that pose an unacceptable risk to vulnerable populations will increase the safety of those in the care of human service agencies.

EOHHS has established minimum standards for background checks on employees, vendor agency employees, and others providing support and services to clients. This Office, recommends that these standards be expanded to include additional state information, as well as criminal record information from federal databases and other state systems. Expansion of employee background checks will better protect the commonwealth's vulnerable populations.

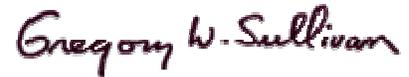
The Governor's recent executive order calling for cross agency information sharing among criminal justice agencies is a positive step towards an integrated information system. The executive order established the Integrated Criminal Justice Planning Council that is to submit a strategic plan within six months. We strongly recommend that all information sharing should extend to human service agencies.

We acknowledge and appreciate the review and comments on this report that we received from the Department of Mental Health and EOHHS.

I hope that this report will lead to criminal background check policy changes amongst all EOHHS agencies. I will support legislation offered by EOHHS to institute the reforms necessary to better protect the commonwealth's vulnerable populations.

Please do not hesitate to contact my staff with any questions you may have. As always, I welcome your suggestions.

Sincerely,

A handwritten signature in black ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan
Inspector General

cc: Secretary Ron Preston

TABLE OF CONTENTS

Executive Summary i

Introduction 1

Findings 5

Recommendations 19

Conclusion 29

Appendix A: Written Response from DMH and EOHHS A-1

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Executive Summary

The Inspector General believes that the Commonwealth can do a better job of protecting the clients of our social services agencies from potential abusers, sex offenders, and criminals.

The current system used to weed out unacceptable employees is not comprehensive. The system does not look at criminal information from the FBI or from states that border Massachusetts. For example, the current criminal record check used by Massachusetts social service agencies would not identify a sex offender from Rhode Island who is working in a group home in Massachusetts.

Since 1995, federal funding has been available under the National Criminal History Improvement Program for uses including improving background checks and for the tracking of abuse cases. Massachusetts has received over \$13 million in federal grants under this program, yet the current background check system still has significant flaws.

In addition to not including out-of-state information in background checks, the current system does not include a cross check against the Massachusetts Sex Offender Registry or against the offender records maintained by other social service agencies. For example, an alleged offender under investigation by the Department of Mental Health may be hired by the Department of Public Health or one of its vendors because they would be unaware of the on-going investigation. The Inspector General also found that agencies might not require the regular updating of criminal background checks and they may not ensure that vendors under state contract conduct background checks as required.

The Executive Office of Health and Human Services (EOHHS) responded to a draft of the Inspector General's report making clear that it understood the problems with the current reporting system. EOHHS also stated that personnel and financial resources as well as a lack of statutory authority impede efforts to improve the background check system. However, EOHHS agreed with many of the findings and recommendations made by the Inspector General. The Inspector General is unaware of any efforts by the administration to seek legislative support for any of the reforms suggested by the Inspector General and apparently supported by EOHHS.

The Inspector General recommends that the administration submit a background check reform package to the legislature as soon as possible. Until then, tens of thousands of social services clients – the most vulnerable members of our population – lack adequate protection against potential predators who might unwittingly be brought into their midst by those responsible for protecting them.

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Introduction

The Senate Post Audit and Oversight committee asked the Office of the Inspector General (Office) to examine whether the Department of Mental Health's (DMH) hiring and oversight practices protect clients against sexual and other abuse. The Office believes that DMH's practices can be improved to provide greater client protection. This report makes recommendations on how to improve human service personnel hiring practices. The recommendations extend beyond DMH to all Executive Office of Health and Human Services (EOHHS) agencies, since the majority of EOHHS agencies have similar practices.¹

DMH has been cooperative throughout this review, providing feedback on draft reports and accommodating all requests for information. The Office received a written response to this report from DMH regarding specific findings and recommendations concerning DMH's performance monitoring vendors' compliance with checking criminal records of employees who will have unsupervised contact with clients. However, DMH deferred to EOHHS on the Office's findings and recommendations that address secretariat-wide issues. EOHHS responded that it agreed in principal to many of our findings. EOHHS, however, thought that legal, funding, staffing, and union contract issues could hinder the implementation of most of our recommendations. The written responses from both DMH and EOHHS are presented following each finding and recommendation in this report. The Office's comments follow the agencies written responses. Additionally, the complete written responses from DMH and EOHHS can be found in Appendix A.

¹ EOHHS Agencies include Department of Social Services, Office of Child Care Services, Department of Transitional Assistance, Department of Youth Services, Massachusetts Office of Refugees and Immigrants, Children's Trust Fund, Betsy Lehman Center, Department of Mental Retardation, Massachusetts Rehabilitation Commission, Massachusetts Commission for the Blind, Massachusetts Commission for the Deaf & Hard of Hearing, Chelsea Soldiers' Home, Holyoke Soldiers' Home, Department of Public Health, Department of Metal Health, Department of Elder Affairs, and Department of Veterans' Services.

The Office has found that:

1. Criminal Offender Record Information (CORI) checks are of limited utility because they only identify convictions within Massachusetts;
2. CORI checks are not wholly reliable even for Massachusetts conviction information;
3. CORI checks do not include a check of the Massachusetts Sexual Offender Registry (SOR);
4. The Massachusetts SOR is not a comprehensive list of sex-offenders living in the commonwealth;
5. DMH does not ensure that vendor agencies conduct CORI checks;²
6. DMH does not require updating of background checks;
7. EOHHS agencies generally do not share information relating to allegations of client abuse by employees of the commonwealth or its vendors, and
8. The Memorandum of Understanding (MOU) between EOHHS agencies and district attorneys' offices has proven successful.

The Office recommendations that EOHHS staff believe to be difficult to implement are as follows:

1. EOHHS should expand background checks to include additional federal and/or out-of-state information;
2. EOHHS should consider using fingerprint supported CORI checks;
3. EOHHS should expand background checks to include additional in-state information;
4. EOHHS should consider using national fingerprint-based background checks to identify persons who have committed sexual offenses in other states;
5. EOHHS should ensure that agency vendors conduct CORI checks;
6. EOHHS should require periodically updated background checks;
7. EOHHS should explore the possibility of creating and establishing a comprehensive and centralized computer-based abuse registry, and
8. EOHHS should work toward creating uniformity amongst district attorneys' offices when addressing felonious crimes committed against disabled populations.

² "Vendor Agency Programs" are defined as the provision of client services by any individual, corporation, partnership, organization, trust, association or other entity through funding by or contract with EOHHS by 101 Code of Massachusetts Regulations 15.04. In this report, "vendors" (or "providers") are defined as those individuals, corporations, partnerships, organizations, trusts, associations, or other entities providing client services for EOHHS.

Based on the comments provided by both DMH and EOHHS after they reviewed a draft of this report, the Office makes the following recommendations:

1. EOHHS should prepare a legislative agenda to address those concerns they have raised in response to the Office's recommendations. The Office will offer its support to such an agenda, and
2. EOHHS should seek federal and/or private funding for the expansion of background and fingerprint checks.

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Findings

DMH services more than 30,000 Massachusetts residents with a budget of over \$650 million. In FY 2002, DMH spent an estimated \$190 million to provide residential services for approximately 9,000 clients. Statistics clearly show that people with developmental disabilities are frequently victims of sexual abuse.

An important way to protect the vulnerable is to prohibit people with a history of certain criminal actions from unsupervised contact with vulnerable populations. Obtaining criminal histories of potential employees and excluding persons convicted of crimes that pose an unacceptable risk to vulnerable populations increases the safety of those in the care of EOHHS agencies.³

EOHHS, which oversees the agencies caring for the commonwealth's vulnerable populations, has established minimum standards for background checks on employees, vendor agency employees, and others providing support and services to clients. Specifically, a CORI check is required for all candidates for employment and other persons who may have unsupervised client contact.⁴ EOHHS regulations state that these standards are based on the premise that certain criminal convictions may pose an unacceptable risk to vulnerable populations.

Typically, a CORI check involves the following:

- Obtaining a completed application from the job applicant that includes:
 - The applicant's signed statement acknowledging the commonwealth's intent to review CORI information, and
 - The applicant's complete criminal record history and convictions.

³ The regulations of all EOHHS agencies establish categories of offenses that create disqualifications for job applicants.

⁴ "Potential Unsupervised Contact" is generally defined in 101 CMR 15.04 as potential for contact with a person who is receiving or applying for services in an EOHHS agency or vendor agency program or facility when no other CORI cleared employee is present.

- Inputting the applicant's name (and other demographic information) into a name-based descriptor database to obtain background information.

The CORI report will provide relevant information regarding Massachusetts' convictions. The regulations of all EOHHS agencies, including DMH, establish certain categories of offenses, which create either a lifetime disqualification for job applicants, or give the potential employer the discretion to disqualify – or hire – the applicant. Under the regulations an applicant may contest a disqualification.⁵

In the fall of 2004, the Department of Mental Retardation (DMR) adopted new regulations, 115 Code of Massachusetts Regulations (CMR) 11, that establish standardized procedures for DMR and for programs funded, licensed, or contracted by DMR to review criminal records of candidates for employment or regular volunteer or training positions. Additionally, House Bill 1304, proposed in 2003, would have required that all staff working with individuals served by DMR have national background checks by cross-referencing fingerprints with the National Instant Criminal Background Check System. The Office supports these concepts for all EOHHS agencies. The Inspector General would support legislation offered by EOHHS to institute these types of additional safeguards.

The Office's review identified the following findings:

FINDING 1: CORI checks are of limited utility because they only identify convictions within Massachusetts.

An individual who has been convicted of crimes such as sexual abuse or rape in another state would not be identified by DMH or a vendor during a CORI check because CORI information relates only to convictions in Massachusetts and not to convictions in other states. This is true for CORI checks on residents of other states, as well as Massachusetts' residents. This is a problem because many applicants for jobs in Massachusetts live outside the state. From 1992

through 2002, the Disabled Persons Protection Commission (DPPC) received 284 cases in which the alleged victim lived in Massachusetts and the alleged abuser, although working for a Massachusetts entity, resided in a neighboring state.⁶ *A Massachusetts criminal background check alone would not have revealed whether the alleged abuser had a criminal record in any other state.* One state official informed the Office that a large percentage of vendor employees working for facilities near the Rhode Island border are Rhode Island residents. These persons may have undetected Rhode Island criminal records yet are working with Massachusetts' vulnerable populations.

EOHHS agencies and vendor agencies, programs, and facilities have no mechanism to obtain background information from other states on potential employees. Only if the applicant voluntarily chooses to disclose the information would such information come to light. Currently, some unofficial sharing of information with other states occurs and some national background searches performed but only when abuse allegations are under investigation. Child advocates interviewed by the Office claim that, because of these policies, Massachusetts draws sexual predators to its employment.

EOHHS Response:

EOHHS agrees with the findings regarding the scope and coverage of the current CORI system. However, the scope and coverage for that system is limited by the scope of statutory authority and funding for the Criminal History Systems Board (CHSB), as set by the General Court. CHSB has had to respond to continual legislative expansion of its obligations to conduct record checks, for example the addition of the requirements for conducting CORI checks on youth sports organizations and for summer camps. At the same time, CHSB has not received adequate additional funding to support its

⁵ 101 CMR 15.00 et seq; 104 CMR 34.00.

⁶ Altiero, Nancy A., Executive Director, Massachusetts Disabled Persons Protection Commission to Governor's Task Force on Sexual Assault and Abuse, "Re: Governor's Task Force on Sexual Assault and Abuse," July 18, 2002.

increased responsibilities. The General Court should provide sufficient funding for CHSB's responsibilities.

Office Response:

Some EOHHS agencies, including DMR, make use of an Interdepartmental Service Agreement (ISA)-funded position at CHSB. This position is responsible for completing the CORI checks required by the EOHHS agency. Use of an ISA-funded position could alleviate CHSB funding and staffing problems.

The Office is not advocating that it is necessary to change the scope of CORI. Instead, the Office is advocating that additional sources of information are considered when completing an employee's background check, for example other states' criminal offender information listings.

FINDING 2: CORI checks are not wholly reliable even for Massachusetts conviction information.

CORI checks rely on a name-based descriptor⁷ database, not on fingerprints. Name-based descriptor databases, at a minimum, include information such as a person's name, date of birth, sex and may include additional identifying information such as weight, height, hair and eye color as well as demographic information such as previous addresses and employment history. The use of such databases can result in both false negatives, where a criminal conviction is not identified; and false positives, where an individual is wrongly identified as having a criminal record. Additionally, a person could use an alias and/or other fabricated information to intentionally avoid detection in a name-based descriptor database.

EOHHS Response:

No specific response.

⁷ A word, phrase, or alphanumeric character used to identify an item in an information retrieval system.

FINDING 3: CORI checks do not include a check of the Massachusetts Sexual Offender Registry (SOR).

As stated previously, CORI checks will only identify Massachusetts convictions and not out-of-state convictions. In Massachusetts, anyone with a conviction for certain sexual offenses, whether convicted in Massachusetts or elsewhere, must, by law, register as a sex offender. The CORI and SOR databases, however, are not linked. According to DMH, only a CORI check is done on job applicants. The SOR is not checked. According to M.G.L. c. 6, §178I, DMH, and other EOHHS agencies charged with protecting or having responsibility, care and/or custody of another, "shall receive at no cost from the [sexual offender registry] board a report." The report identifies if the individual is a registered sex offender. However, the agencies must request this information, as they do not have direct access to this information.

EOHHS Response:

EOHHS would welcome legislation that would provide for and fund the costs entailed in meshing the information contained in the SOR with the criminal offender record information kept by CHSB, so that the information could be made available to EOHHS agencies and vendors as part of their CORI checks. EOHHS would be willing to work with the [Office] on supporting such an enhancement of the CORI system, recognizing that EOHHS does not have legislative or budget resources on its own to bring about this change in the state's criminal offender record systems.

Office Response:

The Office would support legislation offered by EOHHS to institute this reform.

FINDING 4: The Massachusetts SOR is not a comprehensive list of sex-offenders living in the commonwealth.

For the job applicant who committed sexual offenses out-of-state, but failed to register as a sex offender in Massachusetts, checking the SOR database will not disclose the offense. A recent investigative press report, disclosed that the SOR did not contain any information for nearly 50 percent of the 18,120 sex offenders in Massachusetts. In addition, the report stated, “33 percent of the state’s worst sex offenders either do not live or do not work at the addresses listed in state records.”⁸ Recent efforts have been made to improve the SOR and to make SOR information publicly available.

EOHHS Response:

No specific response.

FINDING 5: DMH does not ensure that vendor agencies conduct CORI checks.

While DMH contractually requires vendors to complete CORI checks, the Office is concerned that DMH does not have a standard oversight procedure in place to ensure that its vendors conduct CORI checks. 104 CMR 34.08 states that the hiring authority (the agency or vendor) shall ensure the CORI check is done and a satisfactory result is received before the job applicant can begin work. Furthermore, 104 CMR 28.13 (10)(11) states that whenever DMH finds “upon inspection or through information that a program is not in compliance with an applicable law or regulation” (including completion of background checks) DMH can order the deficiency to be corrected. Alternatively, after an administrative hearing, pursuant to M.G.L. c. 30A, DMH may revoke, suspend, limit, refuse to issue or renew, or terminate a license. Without specific oversight procedures, DMH appears to be in violation of its own regulations for ensuring that CORI

⁸ Mulvihall, M. et al. “Special Report: State Losing Track of Sex Offenders.” Boston Herald, November 5, 2003.

checks are performed. The vulnerable client populations that DMH serves would be significantly benefited by a strong system of oversight.

If vendors know DMH never reviews whether the CORI checks are completed, there is an incentive for the vendor to forgo this important safeguard. To date, several EOHHS agencies already require vendor reviews in their respective regulations.⁹ DMH, however, does not. DMH's written response to this report indicated that it would undertake a review "to determine a baseline of compliance among [its] vendors," and that ensuring completion of CORI checks would "become an element of regular contract monitoring."

EOHHS Response:

Under its current regulations EOHHS' agencies are required to audit vendor documentation for CORI checks as part of their licensing and contracting processes, and we agree that this review process could be strengthened. However, the large number of EOHHS agencies' contracted vendors (more than 200 in the agency purchase of service (POS) system for human services vendors), the high volume of record checks that currently are conducted annually (more than 340,000), as well as the high volume of vendor employee turnover (estimated to be as much as 50,000 employees annually) makes this task very difficult, as well as costly, in a time of severely limited agency staff. EOHHS agrees that this is a vital activity, but [EOHHS] must work within budgetary limits on administrative funding. EOHHS would welcome the support of the [Office] in obtaining expanded administrative resources for its agencies for this important function.

In addition, EOHHS is currently working on enhancing web-based technology to help improve the timeliness and efficiency for its agencies and vendors to

⁹ The Office of Child Care Services, 102 CMR 14.13; Massachusetts Commission for the Blind, 111 CMR 9.14; Massachusetts Rehabilitation Commission, Division of Medical Assistance, and Commission for the Deaf and Hard of Hearing, 107 CMR 14.12, 130 CMR 710.111, and 112 CMR 6.14.

complete background checks. And, [EOHHS is] engaged in a comprehensive review of all procedures pertaining to contracting under the POS system. Among other things, an enhanced POS system could include centralized information gathering on vendor licensing, auditing, corrective action plans and management information.

Office Response:

EOHHS should follow DMH's initiative to establish a baseline of compliance and to make review of CORI checks part of any licensing review. The recent addition to DMR regulations, 115 CMR 11, is a good example of standardized procedures for agencies and programs funded, licensed, or contracted by an agency to review criminal records of candidates for employment or regular volunteer or training positions. The Office would consider supporting any legislation offered by EOHHS to institute these procedures.

FINDING 6: DMH does not require updating of background checks.

Updating current employee background checks periodically may provide added safety for vulnerable populations. Under the current system, EOHHS and vendor employees only receive CORI screening when they apply for and are accepted into a new position. Updating background checks at some interval would identify any offenses that occur after employment has begun, as well as any historical offenses that may not have shown up during the original CORI check due to reporting errors or convictions that were pending at the time of the original CORI check.

EOHHS Response:

No specific response, see Finding 5.

FINDING 7: EOHHS agencies generally do not share information relating to allegations of client abuse by employees of the commonwealth or its vendors.

According to staff from several EOHHS agencies, their agencies do not currently share information regarding abuse allegations including internal investigative files. With few exceptions, EOHHS agencies are unaware of information that another may have about job applicants or possible sexual offenders. Child advocates interviewed by the Office have claimed that abusers understand how investigations work at EOHHS agencies. As a result, they have allegedly been able to avoid the investigatory process. For example, abusers remain in a position with one agency vendor until suspicions are raised. The abuser then resigns and moves on to another vendor under contract with a different agency. The process begins again. Due to the transient nature of the human service vendor workforce and the constant need for staff, this process can, in theory, continue indefinitely.

Each EOHHS agency maintains its own investigative files that examine abuse allegations, substantiated and unsubstantiated, by employees of the agency and its vendors. Investigators from most EOHHS agencies meet periodically to share information, however, this is only an informal peer effort. Besides mandated reporting of abuse to the Department of Social Services (DSS) and to the Disabled Persons Protection Commission (DPPC), EOHHS agencies and vendors lack an official system that promotes information sharing. Therefore, if an employee is fired from one EOHHS agency or vendor because of an allegation, substantiated or otherwise, that very same person may be hired by another EOHHS agency or vendor and end up committing similar acts of abuse again. According to a DMH attorney, employer concerns about legal liability when providing references for employees seeking new employment may discourage employers from referring to allegations of misconduct even if substantiated.

For budget reasons DPPC ended a useful information-sharing program recently. In the program, DPPC offered free checks of DPPC records on prospective employees and vendors. To complete the DPPC record check, the employer had to obtain permission from the job applicant. Upon receiving a request, DPPC would run a vendor and/or job applicant's name through their database to determine if any allegations had been made against an individual or vendor. The report to the requester would state whether:

- The entity making the allegation referred the matter to an agency with the appropriate jurisdiction;
- DPPC investigated the matter, and
- DPPC substantiated such allegations.

According to the DPPC, vendor agencies used this service almost exclusively. In fact, DMH staff members interviewed for this report did not know that DPPC offered this service.

EOHHS is currently implementing a reorganization plan. The Office does not know how this plan may impact the sharing of information between agencies. For example, one part of the proposed reorganization plan requires merging the investigative units of different EOHHS agencies. The Office has been told that an alternative to the merger is a standardization of policies and procedures, including formalized information sharing.

EOHHS Response:

EOHHS agencies are required to abide by the confidentiality limitations that are established by the legislature with regard to the sharing of criminal offender record information. Of the EOHHS' agencies, only the Department of Youth Services (DYS) is a criminal justice agency with the legal authority to access all criminal record information. For example, DYS can access charges, juvenile convictions and sealed records, while other EOHHS agencies can only access adult convictions. But beyond the differences in levels of access to criminal

offender information, EOHHS agencies do not currently have statutory authority to share CORI information with each other. In order to do so [EOHHS] would need legislation to authorize the release of CORI from one EOHHS agency to other EOHHS agencies, as well as the authority to share such information with vendors. Such legislative authority currently exists only in limited circumstances, for example [M.]G.L. 119, §51B (9), which authorizes DSS to share allegations of child abuse with other EOHHS agencies when the allegation involves abuse or neglect in one of their facilities. [EOHHS] would be pleased to work with the [Office] and other interested parties to address this very important issue.

Office Response:

The Office is not advocating the sharing of CORI information, but instead the sharing of information regarding complaints or allegations of abuse.

FINDING 8: The Memorandum Of Understanding (MOU) between EOHHS agencies and district attorneys' offices has proven successful.

Created in 1999, the MOU between EOHHS agencies and district attorneys' (DAs) offices is aimed at ensuring that crimes against vulnerable populations are reported and prosecuted. In Massachusetts, each of eleven district attorneys, the State Police Detective Unit, and human services agencies (including DMH, DMR, Massachusetts Rehabilitation Commission, and DPPC) have entered into a MOU. The MOU describes a multidisciplinary approach to addressing felonious crimes committed against "disabled persons" (those between the ages of 18 to 59) of the commonwealth. The MOU identifies the specific roles of the signing parties and sets forth several goals. The goals include:

- Providing protection, treatment, and continuity of care to disabled citizens who are victims of crime.

- Increasing communication and cooperation between law enforcement, professionals, and agencies providing services to these disabled citizens.
- Ensuring crimes committed against this segment of the commonwealth's population are reported promptly, investigated by trained law enforcement personnel, and prosecuted by the district attorneys.

The Office commends the success of the MOU thus far. According to officials associated with the MOU, in 1997, two years before the program started, only 35 cases were referred to the district attorneys, with none resulting in criminal prosecution. In 2003, four years after program inception, 645 cases were referred to the district attorneys and 108 led to criminal charges.

According to officials associated with the MOU, however, each district attorney's office handles the MOU in a slightly different manner and there are varying degrees of interest in the MOU among offices. Consequently, there is no uniformity, which may result in inconsistent reporting and prosecution of crimes against the commonwealth's vulnerable populations. In addition, according to some officials there has been little training of law enforcement officials related to working with vulnerable populations, therefore local police, district attorneys' offices, and court officials are often unprepared for carrying out the goals of the MOU. According to DPPC staff, DPPC is designing a manual for "first responders" that will aid in preparing those dealing with disabled crime victims.

EOHHS Response:

[EOHHS] agree[s] that the protocols developed between a number of EOHHS agencies, the DPPC, and the DAs are very effective agreements. However, it should be noted that these agreements arise out of specific statutory mandates for information sharing between agency investigators and the DAs. See, for example [M.]G.L. c. 119, §51B (4), the DSS-DA referral law. [EOHHS] would certainly support legislative expansion of these very effective models to additional EOHHS agencies and situations, and would be willing to work with

[the Office] on this issue, as well. In fact EOHHS currently has an ongoing group representing investigators from all of the EOHHS agencies, the Attorney General, and the DPPC looking at this and related issues.

Office Response:

The Office would support any legislative expansion of the mandates for information sharing between the DAs and agency investigators; as well as the expansion of the MOU to include additional EOHHS agencies and situations.

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Recommendations

Recommendation 1:

EOHHS should work with law enforcement agencies to expand background checks to require obtaining additional *federal and/or out-of-state information* relating to criminal convictions by doing national fingerprint-based background checks and/or directly contacting other states for information.

The Integrated Automated Fingerprint Identifications System (IAFIS), administered by the FBI, contains fingerprint information and name based descriptor information related to federal crimes and serious state crimes that local law enforcement agencies have reported to the FBI.¹⁰ All states have the right to request a national background check including a fingerprint “for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider’s fitness to have responsibility for the safety and well being of children, the elderly or individuals with disabilities.”¹¹

House Bill 1304 would have been a positive step towards requiring more extensive background check information. However, the Office feels that any legislation of this kind should include all EOHHS agencies and vendors.

EOHHS Response:

EOHHS is willing to discuss whether expansion of background checks beyond those provided in the CORI system is desirable or economically feasible. However, there are significant barriers to moving forward on this recommendation. First, EOHHS agencies could not expand their access to criminal offender information without an express grant of statutory authority by

¹⁰ The information contained in the Interstate Identification Index (III), the criminal history record information segment of the Integrated Automated Fingerprint System (IAFIS) database, comes from the 47 states criminal history agencies, including Massachusetts, which regularly contribute information.

the General Court. Of the EOHHS agencies, the DYS, as a criminal justice agency, is the only agency authorized to have access to state and federal criminal offender databases. All other EOHHS agencies have a more limited access to CORI, consistent with their individual enabling statutes.

Office Response:

The Office is advocating that EOHHS consider other sources of information when hiring an employee; this does not necessarily mean that EOHHS needs to have increased statutory access to criminal offender information. Many of the commonwealth's neighboring states are willing to share available state criminal background information. In many other states, background checks are completed for the home state, as well as any other states in which the applicant has lived within a reasonable time period. For example, Vermont will contact each state (when information sharing is possible) in which the applicant has lived over the last five years.

It is particularly concerning that EOHHS employees who are residents of New Hampshire, New York, Vermont, Connecticut, Maine and Rhode Island are only screened for criminal records in the state of Massachusetts, when many of these states are willing to share criminal background information. Additionally, the National Child Protection Act (NCPA) allows any state to request a national background check including a fingerprint "for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well being of children, the elderly or individuals with disabilities."¹²

¹¹ The 1993 National Child Protection Act (NCPA), as amended in the 1998 Volunteers for Children Act established this right. 42 U.S. Code (U.S.C.) Chapter 67, Subchapter VI, §5119 et seq.

¹² Ibid.

Recommendation 2:

EOHHS should work with law enforcement agencies to use fingerprint supported CORI checks.

EOHHS Response:

[EOHHS] would need to discuss the implications for our agencies and vendors of moving to a fingerprint based background check system. [EOHHS] do[es] not believe that requiring fingerprinting of agency staff or vendor employees is within our current statutory authority. Currently, neither the administration nor the General Court has authorized EOHHS to require fingerprinting of [EOHHS] employees or vendor agencies. Such a requirement could raise significant concerns among our employees and employee unions, and any change in EOHHS policies on background checks for current or prospective state employees will need to be negotiated with the applicable state employee unions. This has already been a somewhat contentious issue and some agencies currently have limitations on conducting criminal background checks as the result of labor negotiations.

Equally important, apart from the need to obtain legislative authorization to implement this recommendation, there must be significantly enhanced funding for EOHHS agencies to pay the costs attendant on accessing the fingerprint-based databases. It is our understanding that the cost of accessing the federal NCSC [NCIC] system to conduct a single criminal record check is a minimum of \$25 per information check, in addition to the administrative cost of obtaining the fingerprints. Based solely on the estimated number of criminal record checks conducted by EOHHS agencies in 2003 for initial hiring, the additional cost would at a minimum be \$8.5 million. That sum only would cover the current approximately 340,000 background checks without any additional background checks on employees or vendor staff, as recommended in the report.

Office Response:

The Office is advocating that the use of fingerprint-based systems (both federal and state) be considered. It may well be the case that the use of these systems is not feasible due to employee relations. It should be noted, however, that the use of fingerprint-based systems would cut down on the number of false negative *and* false positive identifications under the current state background check system.

The cost of the federal background check is a legitimate concern; however some of this cost would be borne by the vendor agencies. It may be the case that the use of the federal fingerprint based background check is cost prohibitive at this time. However, other than implementation costs (or increased costs to local law enforcement agencies), there should not be significant costs associated with a fingerprint-based state background check other than those that currently exist. It should be noted that the cost per check is approximately \$25, and an investment that should be considered in order to protect the states vulnerable populations.

It should also be noted that federal funding for these types of activities is available to the states through the National Criminal History Improvement Program (NCHIP). The goal of the NCHIP program is to “insure that accurate records are available for use in law enforcement, including sex offender registry requirements, and to permit states to identify ineligible firearm purchasers, persons ineligible to hold positions involving children, the elderly, or the disabled, and persons subject to protective orders or wanted, arrested, or convicted of stalking and/or domestic violence.” Over the 10 year of the program (1995-2004), the NCHIP program has made available over \$469 million in funding.

Recommendation 3:

EOHHS should expand background checks to include additional *in-state information* relating to criminal convictions including, but not limited to:

- Ensuring that a job applicant is not listed in the SOR database, and/or
- Obtaining a job applicant's fingerprints and checking them against the state fingerprint database.

EOHHS Response:

As [EOHHS] indicated above, the expansion of [EOHHS] agencies' access to additional in-state information, such as sex offender registry information [SOR] or juvenile or sealed records is dependent on the statutory authorization accorded to those specific agencies. [EOHHS] would be willing to work with the [Office] to review agencies' current legislative authority, as well as the development of specific legislative proposals. In addition, the high demand for CORI checks is not easily met by either CHSB or EOHHS agencies that have their own capacity to do background checks, because of limited administrative staffing and need for enhanced information technology capacity. [EOHHS] do[es] not believe that EOHHS can attempt to address these issues on its own. Instead, [EOHHS is] willing to work collaboratively with the [Office], the CHSB, the SORI Board and other interested parties to address issues of adequate funding and scope of authority.

Office Response:

SOR will provide a report to any state agency free of charge. The Office will support any legislation offered by EOHHS to institute these reforms.

Recommendation 4:

EOHHS should use national fingerprint-based background checks to identify persons who have committed sexual offenses in other states. Since many states send information on sex offenders to the FBI, a national fingerprint-based background check on a job applicant would more likely uncover such sexual offenses.

EOHHS Response:

No specific Response.

Recommendation 5:

EOHHS should ensure that vendors conduct CORI checks by amending EOHHS agency regulations to require regular audit/review of the background checks vendors are required to obtain.

EOHHS Response:

EOHHS already requires its vendors who provide services to vulnerable clients to conduct criminal background checks to the extent authorized by law. [EOHHS] fully agree[s] that maintenance of records of such checks is essential so that contractor compliance can be audited by [EOHHS] agencies, and is an essential element of the procurement and licensure process. However, [EOHHS's] ability to audit to ensure that this requirement is being met by the very large number of POS providers is affected by the continuing limits on administrative staffing for [EOHHS] agencies. Again, [EOHHS] would be willing to work with the [Office] to increase legislative awareness of this issue, which [EOHHS] would hope to have reflected in increased administrative dollars.

Office Response:

DMH has taken the initiative to make this an element of regular contract monitoring. The Office advises that the rest of EOHHS take the same step. Not completing a full review of vendor requirements is ineffective contract management.

Recommendation 6:

EOHHS should require updating of background checks at regular intervals, such as every three years. DMH regulations state that the hiring authority (the agency or vendor) should ensure that each applicant provides consent to periodic CORI checks during the applicant's employment with DMH or a DMH vendor. DMH, however, does not update nor does DMH require its vendors to update CORI checks regularly.

DMH informed the Office orally that it will consider the recommendation.

EOHHS Response:

EOHHS agrees that this is an important policy goal, and indeed a number of EOHHS agencies currently provide for updated CORI checks on their own employees. However, as discussed above there are several significant barriers to bringing this about. First, with respect to EOHHS employees covered by collective bargaining agreements, agencies where this currently is not the practice, would need to negotiate this new requirement. Secondly, [EOHHS] would be substantially increasing the costs both to [EOHHS] agencies for [their] own employees and to provider vendors for their employees, potentially doubling or tripling administrative costs for CORI checks. In particular, [EOHHS] could anticipate great resistance from POS vendors to adding this significant cost and workload issue. It will also further complicate [EOHHS's] ability to audit vendors to verify the completion of required background checks.

Such a significant change in practice may also necessitate legislative authorization, along with additional funding both for EOHHS and for CHSB.

Office Response:

The Office would support legislation offered by EOHHS to institute these reforms. The Office also believes that if the updating of background checks is “an important policy goal” then EOHHS should weigh the costs both of implementing these reforms and not implementing these reforms.

Recommendation 7:

EOHHS should explore the possibility of creating and establishing a comprehensive and centralized computer-based abuse registry that would require all EOHHS agencies and vendors to contribute information. This abuse registry can be used to check the background of job applicants.

EOHHS Response:

Many of the EOHHS agencies have specific abuse registries, for example DSS has the Registry of Alleged Perpetrators, and Department of Public Health (DPH) has a Nurse Aide Abuse Registry. There is certainly merit to the concept of coordinating the collection of such information. However, in order to create and implement such a registry, there would need to be legislative authorization for the effort, an analysis of how such a registry relates to federally required registries, such as the DSS Registry of Alleged Perpetrators, an administrative process for those listed on the registry to challenge their listing, as well as legislation setting the parameters of information sharing across EOHHS and other agencies, such as the DA’s or DPPC. [EOHHS] would also need clear legislative authority regarding [EOHHS’s] ability, if any, to share the data with agency vendors. Lastly, there would be significant costs involved in staffing and developing the information technology support for the project.

Office Response:

It is unclear if legislative authority would be needed for investigative staff to have access to the abuse registries of the EOHHS agencies. Since EOHHS agrees that this concept has merit, the Office recommends that EOHHS add this to its legislative agenda. The Office will offer its support to such an agenda.

Recommendation 8:

EOHHS should work with the DAs and the courts in creating uniformity between DAs' offices in addressing felonious crimes committed against disabled persons. As part of this effort, EOHHS should provide training to local police, district attorneys' offices, court officials, and all others involved with the MOU on working with crime victims from vulnerable populations. In addition, the manual for "first responders" should be provided to MOU stakeholders as soon as it is completed.

EOHHS Response:

EOHHS agencies are already party to a MOU that includes the [DAs], the DPPC, EOHHS adult disabilities agencies and local law enforcement agencies regarding referring for prosecution complaints involving crimes committed against disabled individuals in programs and facilities under the jurisdiction of these agencies. Similarly, DSS, through the DA referral provision of [M.]G.L. Chapter 119, §51A, and related agreements with the DAs, works to assure that crimes against abused and neglected children are effectively prosecuted. In addition, [EOHHS has] supported legislative efforts to strengthen and enhance criminal penalties for crimes against the disabled and elderly. [EOHHS] would welcome the support of the [Office] for these efforts.

Office Response:

This recommendation specifically refers to the MOU. It is the Office's opinion that there needs to be greater uniformity across the state among the MOU programs including procedure, support to first responders, and training.

Additional Recommendations:

Based on the comments provided by both DMH and EOHHS after they reviewed a draft of this report, the Office makes the following recommendations.

Recommendation 9:

EOHHS should prepare a legislative agenda to address those concerns they have raised in response to the Office's recommendations. The Office will offer its support to such an agenda.

Recommendation 10:

EOHHS should seek federal and/or private funding for the expansion of background and fingerprint checks.

Conclusion

To better protect some of the commonwealth's most vulnerable citizens, the Office has made several recommendations. These recommendations all point to more thorough and frequent background checks for individuals who will be working with vulnerable populations and a more comprehensive and cooperative approach to this process by the agencies involved. The Office appreciates DMH's cooperation throughout the review process and willingness to comply with recommendations of this report.

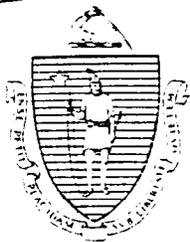
The most comprehensive and effective way for the commonwealth to determine whether a job applicant has been convicted of certain crimes is to require that the individual agree to a national fingerprint-based background check. The commonwealth should also establish a comprehensive and centralized computer-based abuse registry that all EOHHS agencies and their vendors and facilities are required to contribute to and access information from regarding job applicants' background for investigative purposes.

The timeliness, cost and privacy issues surrounding information obtained from national fingerprint-based background checks are important and should be considered and addressed. However, these concerns should not hinder the protection of vulnerable populations. In addition, while acknowledging that constitutional and privacy issues will be encountered and must be carefully and thoughtfully addressed when establishing a centralized database, the value of such information in preventing an abuser to move from one vulnerable population to another is paramount.

The Office acknowledges that legislative action and/or increased funding will be needed to implement some of the recommendations of this report. The Office will support legislation offered by EOHHS to institute these reforms.

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APPENDIX A
Written Response from Department of Mental Health and
Executive Office of Health and Human Services



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Mental Health
25 Staniford Street
Boston, Massachusetts 02111-2575

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

RONALD PRESTON
Secretary

ELIZABETH CHILDS, M.
Commissioner

RECEIVED

JUN 14 2004

(617) 626-8000
TTY (617) 727-9842
www.state.ma.us/dmh

OFFICE OF THE INSPECTOR GENERAL

June 14, 2004

Inspector General Gregory Sullivan
Office of the Inspector General
One Ashburton Place – 13th Floor
Boston, MA 02108

RE: Investigation into DMH vendor CORI screening practices

Dear Inspector General Sullivan:

Thank you for the opportunity to review and respond to your office's investigation of DMH vendors' employee screening practices. I share your goal of protecting the vulnerable clients who are served by DMH and other human services agencies, and I agree that an important element of achieving that goal is assuring that the state and vendor workforce is screened to prevent individuals with dangerous criminal records from being placed in positions where they might have unsupervised contact with clients.

I understand that the Executive Office of Health and Human Services (EOHHS) will be responding to your findings and recommendations that address secretariat-wide issues. I will therefore confine my response to your specific findings and recommendation concerning DMH's monitoring of its vendors' compliance with DMH requirements for checking criminal records (CORI) of employees who will have unsupervised contact with clients.

DMH does require its vendors to check job applicants' criminal records (CORI), as it does for its own employees. While your investigation correctly notes that DMH has not made it a practice of auditing its vendors to assure compliance with this requirement, we have no reason to believe that they are not conducting CORI checks. In fact, given the slow, but steady, volume of inquiries we receive concerning CORI related disqualifications, we believe that CORI checks are in fact being regularly done.

DEPARTMENT OF MENTAL HEALTH

June 14, 2004

Page 2

However, I do agree that it would be better practice for DMH to include compliance with the CORI check requirement as part of our contract monitoring. Accordingly, I have directed that a review be made to determine a baseline of compliance among our vendors, and that this become an element of regular contract monitoring. Any vendor found to be failing to conduct the required CORI checks will be determined in breach of its contract with the Department.

The balance of your report makes recommendations for changes in practice throughout the EOHHS agencies. I have reviewed EOHHS' response to those recommendations, and concur in the Secretariat's analysis.

In closing, let me thank you again for the opportunity to respond to your investigation. I appreciate the important contribution your office makes to assuring integrity in government, and to enhancing the well being of the citizens of the Commonwealth. I look forward to working with you on this issue, and on others of mutual interest, as we continuously strive to maintain the highest standards of quality in the services we provide.

Very truly yours,



Elizabeth Childs, M.D.
Commissioner

Cc: Stephen Kadish, Undersecretary, Executive Office of Health & Human Services
Marianne Greeno, General Counsel
Patricia Mackin, Assistant Commissioner



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
One Ashburton Place, Room 1109
Boston, MA 02108*

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

RONALD PRESTON
Secretary

June 14, 2004

John K. McCarthy, Esq.,
Senior Assistant Inspector General
Office of the Inspector General
One Ashburton Place - Room 1311
Boston, MA 02108

Re: Draft Report on Background Check Procedures

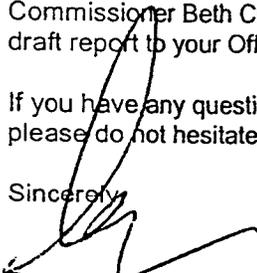
Dear Mr. McCarthy:

Enclosed please find the comments of the Executive Office of Health and Human Services on the Draft Report on Current Background Check Procedures. We appreciated the willingness of your Office to meet with us in May to discuss our views, and in providing us with the opportunity to respond to each of the proposed findings and recommendations. Thank you as well for your patience in waiting for this response.

You will note that we have identified a number of areas where the Inspector General and the Secretary of Health and Human Services could collaborate on addressing the vital issue of criminal background checks for employees of our agencies and vendors. In addition, Commissioner Beth Childs of the Department of Mental Health is submitting comments on the draft report to your Office.

If you have any questions regarding our responses or would like to follow up with us in any way, please do not hesitate to contact me. We look forward to working with your office.

Sincerely,


Steve Kadish
Undersecretary

cc: Gregory Sullivan
Ronald Preston
Stephen Cidlevich
Beth Childs
Kristen Apgar
Neil Cohen ✓

Executive Office of Health and Human Services –
Response to Recommendations of Inspector General
Regarding Criminal Background Checks

June 14, 2004

This is in response to the proposed findings and recommendations of the State Inspector General on improvements to criminal background checks conducted by agencies of the Executive Office of Health and Human Services. On May 4, 2004, EOHHS was given the opportunity to meet with the Office of the State Inspector General to discuss recommendations stemming from an audit of the criminal background check procedures followed by the Department of Mental (DMH). In the course of the Inspector General's audit and development of findings regarding DMH, the scope of the proposed report was expanded to consideration of EOHHS' overall procedures for criminal background checks, since many EOHHS agencies serve vulnerable clients and the Secretariat has through its own CORI regulations taken the lead in establishing agencies' procedures. DMH is responding separately to the draft report. This response addresses the recommendations directed to EOHHS.

SUMMARY

EOHHS supports the Inspector General's focus on the important role that criminal background checks can play in the hiring of appropriate agency and vendor staff to work with vulnerable clients. We look forward to working with him in addressing these concerns. However, there are significant issues posed by the report's draft findings and recommendations that could only be addressed by:

- Providing funding to address the significant increase in costs attendant on any expansion of required criminal background checks;
- Amending and expanding scope of state legislation applicable to EOHHS and the Criminal History Systems Board (CHSB) with respect to obtaining information on criminal offender records;
- Obtaining additional legislative authorization to access to criminal offender information beyond the CORI system;
- Amending EOHHS' statutory authorization in order to share criminal offender record information across EOHHS agencies; and
- Enhancing available information technology in order to complete an expanded quantity of CORI checks in a timely way.

These issues are identified in more detail in our responses to the draft recommendations. It is our hope that the Inspector General's final report will reflect these concerns, as well as our expressed willingness to work with him on addressing these issues.

Responses to Draft Findings:

1. FINDING: CORI checks only identify convictions within Massachusetts, and their accuracy is variable, based on correct identification of the applicant's name, address and date of birth, as well as up-to-date entry of conviction information.

Response: EOHHS agrees with the findings regarding the scope and coverage of the current CORI system. However, the scope and coverage for that system is limited by the scope of statutory authority and funding for the CHSB, as set by the General Court. The CHSB has had to respond to continual legislative expansion of its obligations to conduct record checks, for example the addition of the requirements for conducting CORI checks on youth sports organizations and for summer camps. At the same time the CHSB has not received adequate additional funding to support its increased responsibilities. The General Court should provide sufficient funding for the CHSB's responsibilities.

2. FINDING: The current CORI system does not identify individuals who are listed on the Sex Offender Registry.

Response: EOHHS would welcome legislation that would provide for and fund the costs entailed in meshing the information contained in the Sex Offender Registry with the criminal offender record information kept by the CHSB, so that the information could be made available to EOHHS agencies and vendors as part of their CORI checks. EOHHS would be willing to work with the Inspector General on supporting such an enhancement of the CORI system, recognizing that EOHHS does not have legislative or budget resources on its own to bring about this change in the state's criminal offender record systems.

3. FINDING: Current EOHHS agency practice with regard to review of vendor criminal record checks is not sufficient to assure vendor compliance, nor is vendor information on employees updated by running subsequent CORI checks of current employees.

Response: Under its current regulations EOHHS' agencies are required to audit vendor documentation for CORI checks as part of their licensing and contracting processes, and we agree that this review process could be strengthened. However, the large number of EOHHS agencies' contracted vendors (more than 2000 in the agency purchase of service (POS) system for human services vendors), the high volume of record checks that currently are conducted annually (more than 340,000), as well as the high volume of vendor employee turnover (estimated to be as much as 50,000 employees annually) makes this task very difficult, as well as costly, in a time of severely limited agency staff. EOHHS agrees that this is a vital activity, but we must work within budgetary limits on administrative funding. EOHHS would welcome the support of the Inspector General in

obtaining expanded administrative resources for its agencies for this important function.

In addition, EOHHS is currently working on enhancing web-based technology to help improve the timeliness and efficiency for its agencies and vendors to complete background checks. And, we are engaged in a comprehensive review of all procedures pertaining to contracting under the Purchase of Services (POS) system. Among other things, an enhanced POS system could include centralizing information gathering on vendor licensing, auditing, corrective action plans and management information.

4. **FINDING:** EOHHS agencies do not share information regarding allegations of client abuse by their employees or by vendors.

Response: EOHHS agencies are required to abide by the confidentiality limitations that are established by the legislature with regard to the sharing of criminal offender record information. Of the EOHHS' agencies, only the Department of Youth Services (DYS) is a criminal justice agency with the legal authority to access all criminal record information. For example DSS can access charges, juvenile convictions and sealed records, while other EOHHS agencies can only access adult convictions. But beyond the differences in levels of access to criminal offender information, EOHHS agencies do not currently have statutory authority to share CORI information with each other. In order to do so we would need legislation to authorize the release of CORI from one EOHHS agency to other EOHHS agencies, as well as the authority to share such information with vendors. Such legislative authority currently exists only in limited circumstances, for example G.L. 119, §51B (9), which authorizes DSS to share allegations of child abuse with other EOHHS agencies when the allegation involves abuse or neglect in one of their facilities. We would be pleased to work with the Inspector General and other interested parties to address this very important issue.

5. **FINDING:** The Memorandum of Understanding between EOHHS agencies and the District Attorneys has been successful.

Response: We agree the protocols developed between a number of EOHHS agencies, the Disabled Persons Protection Commission, and the District Attorneys are very effective agreements. However, it should be noted that these agreements arise out of specific statutory mandates for information sharing between agency investigators and the District Attorneys. See, for example (G.L. c. 119, §51B (4), the DSS-DA referral law). We would certainly support legislative expansion of these very effective models to additional EOHHS agencies and situations, and would be willing to work with your office on this issue, as well. In fact EOHHS

currently has an ongoing group representing investigators from all of the EOHHS agencies, the Attorney General and the DPPC looking at this and related issues.

Specific Recommendations of the Draft Report:

1. RECOMMENDATION: EOHHS should expand background checks to include additional states or federal conviction information, and should consider using fingerprint supported criminal record checks both for accuracy and to identify persons who have committed sex offenses in other states.

Response: EOHHS is willing to discuss whether expansion of background checks beyond those provided in the CORI system is desirable or economically feasible. However, there are significant barriers to moving forward on this recommendation. First, EOHHS agencies could not expand their access to criminal offender information without an express grant of statutory authority by the General Court. Of the EOHHS agencies, the Department of Youth Services, as a criminal justice agency, is the only agency authorized to have access to state and federal criminal offender databases. All other EOHHS agencies have a more limited access to CORI, consistent with their individual enabling statutes.

Further, we would need to discuss the implications for our agencies and vendors of moving to a fingerprint based background check system. We do not believe that requiring fingerprinting of agency staff or vendor employees is within our current statutory authority. Currently, neither the administration nor the General Court has authorized EOHHS to require fingerprinting of our employees or vendor agencies. Such a requirement could raise significant concerns among our employees and employee unions, and any change in EOHHS policies on background checks for current or prospective state employees will need to be negotiated with the applicable state employee unions. This has already been a somewhat contentious issue and some agencies currently have limitations on conducting criminal background checks as the result of labor negotiations.

Equally important, apart from the need to obtain legislative authorization to implement this recommendation, there must be significantly enhanced funding for EOHHS agencies to pay the costs attendant on accessing the fingerprint-based databases. It is our understanding that the cost of accessing the federal NCSC system to conduct a single criminal record check is a minimum of \$25 per information check, in addition to the administrative cost of obtaining the fingerprints. Based solely on the estimated number of criminal record checks conducted by EOHHS agencies in 2003 for initial hiring, the additional cost would at a minimum be \$8.5 million. That sum only would cover the current approximately 340,000 background checks without any additional background checks on employees or vendor staff, as recommended in the report.

2. RECOMMENDATION: EOHHS should expand background checks to include additional in-state information.

Response: As we indicated above, the expansion of our agencies' access to additional in-state information, such as sex offender registry information or juvenile or sealed records is dependent on the statutory authorization accorded to those specific agencies. We would be willing to work with the Inspector General to review agencies' current legislative authority, as well as the development of specific legislative proposals. In addition, the high demand for CORI checks is not easily met by either the CHSB or EOHHS agencies that have their own capacity to do background checks, because of limited administrative staffing and need for enhanced information technology capacity. We do not believe that EOHHS can attempt to address these issues on its own. Instead, we are willing to work collaboratively with the State Inspector General, the CHSB, the SORI Board and other interested parties to address issues of adequate funding and scope of authority.

3. RECOMMENDATION: EOHHS should ensure that vendors conduct CORI checks.

Response: EOHHS already requires its vendors who provide services to vulnerable clients to conduct criminal background checks to the extent authorized by law. We fully agree that maintenance of records of such checks is essential so that contractor compliance can be audited by our agencies, and is an essential element of the procurement and licensure process. However, our ability to audit to ensure that this requirement is being met by the very large number of POS providers is affected by the continuing limits on administrative staffing for our agencies. Again, we would be willing to work with the Inspector General to increase legislative awareness of this issue, which we would hope to have reflected in increased administrative dollars.

4. RECOMMENDATION: EOHHS should ensure that CORI checks are periodically updated.

Response: EOHHS agrees that this is an important policy goal, and indeed a number of EOHHS agencies currently provide for updated CORI checks on their own employees. However, as discussed above there are several significant barriers to bringing this about. First, with respect to EOHHS employees covered by collective bargaining agreements, agencies where this currently is not the practice, would need to negotiate this new requirement. Secondly, we would be substantially increasing the costs both to our agencies for our own employees and to provider vendors for their employees, potentially doubling or tripling administrative costs for CORI checks. In particular, we could anticipate great resistance from POS vendors to adding this significant cost and workload issue. It will also further complicate our ability to audit vendors to verify the completion of required background checks. Such a significant change in practice may also

necessitate legislative authorization, along with additional funding both for EOHHS and for the CHSB.

5. RECOMMENDATION: EOHHS should explore the possibility of creating and establishing a comprehensive and centralized abuse registry.

Response: Many of the EOHHS agencies have specific abuse registries, for example DSS has the Registry of Alleged Perpetrators and DPH has a Nurse Aide Abuse Registry. There is certainly merit to the concept of coordinating the collection of such information. However, in order to create and implement such a registry, there would need to be legislative authorization for the effort, an analysis how such a registry would related to federally required registries, such as the DSS Registry of Alleged Perpetrators, an administrative process for those listed on the registry to challenge their listing, as well as legislation setting the parameters of information sharing across EOHHS and other agencies, such as the DA's or DPPC. We would also need clear legislative authority regarding our ability, if any, to share the data with agency vendors. Lastly, there would be significant costs involved in staffing and developing the IT support for the project.

6. RECOMMENDATION: EOHHS should work with the District Attorneys to establish a uniform process for addressing crimes committed against disabled individuals.

Response: EOHHS agencies are already party to a MOU that includes the District Attorneys, the DPPC, EOHHS adult disabilities agencies and local law enforcement agencies regarding referring for prosecution complaints involving crimes committed against disabled individuals in programs and facilities under the jurisdiction of these agencies. Similarly, DSS through the DA referral provisions of Chapter 119, §51A, and related agreements with the District Attorneys works to assure that crimes against abused and neglected children are effectively prosecuted. In addition, we have supported legislative efforts to strengthen and enhance criminal penalties for crimes against the disabled and elderly. We would welcome the support of the Inspector General for these efforts.