

**MASSACHUSETTS DIVISION OF PROFESSIONAL LICENSURE
POLICY REGARDING REVIEW OF CONVICTION AND PENDING CRIMINAL
CASE DATA REGARDING APPLICANTS FOR PRIVATE OCCUPATIONAL
SCHOOL LICENSURE**

Effective February 3, 2016

Pursuant to M.G.L. c. 112, § 263, the Division of Professional Licensure (DPL) must review criminal offender record information (CORI) of principals, administrators, employees, instructors, and other individuals related to private occupational schools for purposes of school licensure and approval. No application for licensure or renewal shall be approved unless all principals and employees have provided satisfactory proof of good moral character. Additionally, prior to issuing a private occupational school sales representative license, or renewing said license, an applicant must demonstrate satisfactory proof of good moral character. Finally, no staff or instructor will be approved unless s/he has provided satisfactory proof of good moral character.

This policy establishes the guidelines to be followed by DPL when reviewing CORI for the purpose of determining eligibility for private occupational and sales representative licensure.

Policy No. 14-01

Purpose: To provide guidance to applicants and to DPL staff regarding the type, age, and disposition of conviction and pending criminal case information that may impact eligibility for licensure.

Policy: **The Office of Private Occupational School Education Executive Director and Board Counsel (“DPL staff”) are authorized to review the records of criminal convictions and pending criminal cases received from the Department of Criminal Justice Information Services (DCJIS) to determine whether an applicant is eligible for a license per this policy. This policy is not intended to be comprehensive or cover extenuating circumstances; therefore, DPL staff, in all cases, are free to decide that an individual’s record must be subject to the Director’s review and possible rejection even if the applicant would otherwise qualify for review by DPL staff per this policy.**

A. MAJOR CONVICTIONS – AUTOMATIC DISQUALIFICATION

Several major crimes exist which, by their very nature, may indicate that the applicant, if provided a license or approved to work or teach at the school, would pose an unacceptable risk to the public health, safety or welfare or to the provision of safe and competent practice in an occupational school setting. As such, DPL has determined that these crimes are representative of a lack of good moral character and are reasonably related to the private occupational school setting. All applicants denied a license or approval per this finding shall be granted the right to an adjudicatory hearing to challenge this determination and the factual and/or legal basis for their disqualification. The following list of crimes (including attempt or conspiracy to commit), represents convictions which, if on an applicant’s CORI will disqualify an applicant for **FIVE (5) years** from the date of conviction. In the event more

than five years has passed since the conviction or where the CORI indicates these charges are still pending, the applicant's CORI shall be reviewed by the Director.

CONVICTION	DEFINITION
Murder	First degree murder is the killing of a human being committed with deliberately premeditated malice aforethought (intentionally), or with extreme cruelty. All other murder, arising from reckless or negligent conduct, is second degree murder.
Rape	Sexual intercourse by a person with another person who is compelled to submit against their will by force or threat of bodily injury or sexual intercourse with a child under sixteen years of age.
Aggravated sexual assault	The unwanted touching of the genitals, mouth or anus of one person by the genitals of another person as the result of violence, force or the threat of force.
Assault with intent to rape	The use of force or the threat of force with intent to commit rape.
Armed assault with intent to murder with felony intent	Assaulting another with intent to commit murder or maim or disfigure that person.
Armed assault with intent to rob	While being armed with a dangerous weapon assaulting another and robbing, stealing or taking money or personal property from that person.
Burglary, armed assault on occupant	Breaking and entering a dwelling in the nighttime, to commit a felony, armed with a dangerous weapon at the time of such breaking, with any other person being lawfully therein.
Kidnapping	Without lawful authority, forcibly or secretly confining or imprisoning another person within this commonwealth against his will or forcibly carrying a person from the commonwealth against their will or secretly confining or imprisoning a person.
Indecent assault and battery, child under 14	Any unwanted touching of the breast or genitals either directly or indirectly, enhanced penalty if the victim is fourteen years of age.

Indecent assault and battery, child 14 or over	Any unwanted touching of the breast or genitals either directly or indirectly, enhanced penalty if the victim is fourteen years of age.
Unnatural acts with child under 16	Committing any unnatural and lascivious act with another person, enhanced penalty if the other person is under sixteen years of age.
Assault and battery dangerous intimidation, race, color, religion	Committing an assault or a battery upon a person or damaging the real or personal property of a person with the intent to intimidate such person because of such person's race, color, or religion; an enhanced penalty is imposed if serious bodily injury occurs.
Administering drugs to obtain sex	Administering to or Causing to be taken by a person any drug, matter or thing with intent to stupefy or overpower such person so as to thereby enable any person to have unlawful sexual intercourse.
Induce sex, minor	Inducing any person under eighteen of chaste life to have unlawful sexual intercourse.
Money Laundering	Knowingly directing, organizing, transporting, possessing, or engaging in a transaction involving money derived from criminal activity with the intent to engage in criminal activity or knowing the transaction is designed to conceal the source of the money or avoid reporting requirements.
Attempted Extortion	Maliciously threatening, verbally or in writing, to accuse another of a crime or offence, to injure a person or property of another, to use power or authority to extort money or pecuniary advantage or to compel another to act against their will.
Larceny	Converting, secreting, unlawfully taking, carrying away, concealing or copying with intent to convert the property or trade secret of another with the intent to embezzle.

B. LEVEL 2 / 3 SEX OFFENDER – AUTOMATIC DISQUALIFICATION

Regardless of the conviction date, DPL finds that sexual offenders represent a unique danger to the public. As a result, DPL gives great deference to the findings of the Sex Offender Registry Board which classifies sexual offenders based upon the degree of dangerousness they pose to the public. Individuals who have been classified per 803 CMR 1.03 as a Level 2 or Level 3 offender are not eligible for an occupational school license or approval as staff or an instructor. In addition to the hearing rights detailed in Section G, individuals denied a license or approval under this section are encouraged to reapply upon reclassification to Level 1.

C. MATTERS REQUIRING DIRECTOR REVIEW

In the following instances, DPL staff shall review an applicant's CORI with the Director:

1. More serious convictions, other than major convictions referred to in Section A, which involved a prison sentence of **TWO YEARS** or more (marked by the code "CMTD") or which occurred within the last **TEN YEARS**.
2. Minor convictions which occurred within the past **FIVE YEARS**, these include but are not necessarily limited to:
 - A. Burglary/breaking and entering
 - B. Arson/burning a building
 - C. Possession of drugs (Classes A, B, C)
 - D. Intent to distribute drugs
 - E. Assault and Battery on a protected class, such as police officer
 - F. OUI charged as a third offense or greater.
3. Any recent matter for which the CORI indicates a period of probation continuing at least **SIX MONTHS** after the review date. This does not include open traffic violations, such as a compulsory insurance violation, attaching wrong plates, or a first time OUI.

D. MATTERS WHICH MAY BE APPROVED BY DPL STAFF

In the following instances, DPL staff may approve an applicant to move forward in the application process.

1. More serious convictions, other than major convictions referred to in Section A, which involved less than **two years** of a prison sentence **and** occurred more than **ten years** in the past.
2. Minor convictions which occurred more than **five years** in the past.
3. Minor convictions other than those referenced in Section C(2) above which do not otherwise indicate that the applicant has serious drug or violence problems.
4. Traffic violations, such as compulsory insurance violations, attaching wrong plates, or a first time OUI which have an outstanding probationary period.

E. MATTERS WHICH MAY BE DENIED/PUT ON HOLD BY DPL STAFF

1. For matters in which the applicant has made a false statement or omitted information on his/her application for licensure or approval regarding a criminal history, the application may be **DENIED** by DPL staff for **SIX MONTHS**. Individuals so denied may have a limited hearing to contest the accuracy of this determination as allowed by law. This denial period shall not apply to individuals who would otherwise be approved under sections D(1) to D(5) of this policy, unless otherwise

decided by the Director. In such instances, DPL staff may issue an advisory letter to the applicant regarding the false statement.

2. Applicants whose CORI lists a crime in which the status code is “W” to indicate there is an outstanding warrant shall have their application placed on **HOLD**. The applicant shall be given **SIX MONTHS** to send in documentation that the warrant is withdrawn, otherwise the application will be denied.
3. Applicants whose CORI lists a crime in which the case status is “OPEN” to indicate that the matter is still pending shall have their application placed on **HOLD**. The applicant shall be given **SIX MONTHS** to resolve the matter and demonstrate that it has been closed, otherwise the application will be denied.
4. Applicants disputing the accuracy of CORI regarding a relevant conviction may be allowed to place their application on **HOLD** for up to **SIX MONTHS** while correcting the CORI.

F. REVIEW PROTOCOLS

The following factors will be applied by DPL when analyzing an applicant’s CORI in order to determine whether to approve or deny a license application:

- (a) The requirements of public protection;
- (b) Relationship between occupational school education and public protection;
- (c) Time since the conviction;
- (d) Age of the applicant/licensee at the time of the offense(s);
- (e) Seriousness and specific circumstances of the offense(s);
- (f) The number of offenses;
- (g) Whether the applicant/licensee has pending charges;
- (h) Any relevant evidence of rehabilitation or lack thereof;
- (i) Submission of false information on an application for licensure and/or failure to provide required notification of new information;
- (j) Any other relevant information, including information submitted by the applicant or requested by DPL.

G. DUE PROCESS REQUIREMENTS

Pursuant to relevant case law and the provisions of M.G.L. c. 30A, DPL must provide applicants who are denied a license the right to challenge DPL’s decision. This includes the

right to challenge the accuracy of the CORI used to justify a denial. The following minimum procedures must be followed:

1. All denials must be issued in writing as soon as possible after the decision to deny a license or approval is made.
2. Denial letters must state the factual and legal reasons justifying the denial.
3. Unless the denial is to be permanent, denial letters should specify when the applicant may file a new application for licensure or approval.
4. The denial must outline the applicant's right to request a limited hearing on DPL's rationale for the denial. This must include requiring the applicant to file, in writing, a request for a hearing within fourteen (14) days of the date of the denial letter (or any amendment thereof) and must notify the applicant that this request must specifically refute the facts upon which DPL has based its decision. A dispute as to whether a crime is reasonably related to the profession, including crimes/statuses that lead to automatic disqualification, shall be deemed to be ones of fact subject to a hearing. If the applicant does this, they are entitled to a hearing, if they do not, they should be provided with a notice that their request is denied and notify them of their appellate rights.