

Client Advisory | August 2010

New CORI Statute Impacts Employers' Access to Criminal Record Information

On August 6, 2010, Massachusetts Governor, Deval Patrick, signed legislation reforming the Massachusetts Criminal Offender Record Information (CORI) law. In several ways, the new law impacts employers' access to, and use of, criminal record information for applicants and employees.



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Most of the employment-related provisions of the statute do not become effective until 2012, but one important aspect, regarding job applications, becomes effective on November 4, 2010.

Job Applications

The most immediate impact of the new CORI statute is an amendment to the Massachusetts Fair Employment Practices Law, G.L. c. 151B. Through this amendment, employers are prohibited from requesting criminal offender record information in any "initial written employment application" (unless the job is one in which federal or state law or regulation would disqualify an applicant based on certain prior convictions, or would prohibit the employer from employing persons who have been convicted of certain criminal offenses). "Criminal offender record information" is broadly defined as records and data compiled by a criminal justice agency concerning the nature or disposition of a criminal charge, an arrest, a pretrial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation or release. This blanket prohibition on requesting criminal offender record information in an initial employment application overrides prior law, in which employers were permitted to include inquiries about felony convictions and certain misdemeanor convictions on their employment applications. Consequently, employers should revise their employment applications prior to November 4, 2010 in order to comply with the new requirements.

Access to, and use of, CORI

The new statute also addresses the manner in which employers may access CORI and, once in possession of CORI, the manner in which they may use it. Among other things, the new statute:

- Permits employers to request CORI from the Department of Criminal Justice Information Services -- a new department that supplants in large part the Criminal History Systems Board -- for the purpose of evaluating current and prospective employees, contractors, interns or volunteers.
- Establishes an internet-accessible database for all CORI, requiring at least the name, date of birth and last four digits of the subject's social security number for access. In addition, employers accessing the database generally will be required to certify that the request is for a permissible purpose, that the subject has signed an acknowledgement form authorizing the requestor to obtain the subject's CORI, and that the employer has verified the subject's identity by reviewing a form of government-issued identification.
- Limits CORI available to employers to: (1) felony convictions that concluded within the past ten years (i.e., the later of the date of conviction or the date the individual was released from incarceration or custody); (2) misdemeanor convictions that concluded within the past 5 years (previously, 10 years' worth of information was available); and (3)

pending criminal charges. In the case of multiple convictions, however, the CORI for all convictions will continue to be available until the applicable time period has expired for the last conviction.

- Permits employers to use CORI in making employment-related decisions, but requires the employer to provide the individual with a copy of the CORI before taking any adverse action based on CORI.
- Requires any employer that conducts more than 5 criminal background investigations per year to implement a written CORI policy providing that the employer will (1) notify an applicant of a potential adverse decision based on the CORI; (2) provide a copy of the CORI and the policy to the applicant; and (3) provide the applicant with information concerning the process for correcting a criminal record.
- Allows individuals to obtain a log of any person requesting his or her CORI, the date of the request and the certified purpose of the request.
- Requires an employer to discard CORI concerning a former employee or applicant within seven years of the last date of employment or decision not to hire the applicant, respectively.
- Provides certain “safe harbors” for employers, protecting them from liability for failure to hire based on erroneous information in an applicant’s CORI records (if they would not have been liable

if the information was accurate) and protecting them from liability for negligent hiring by reason of relying solely on CORI records and not performing any additional criminal background check. However, to take advantage of these safe harbors, employers must act within 90 days of receiving CORI and must verify the information contained in the record as provided by the statute.

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