

Navigating the New & Understanding the Current CORI System



FRAN FAJANA
MASSACHUSETTS LAW REFORM INSTITUTE
2011

Outline

I. What is CORI?

II. How to Read a CORI?

III. Who has Access?

A. Current Law

B. New Law

- Expanded Requestors
- Data Limit
- Time Limit

IV. What Rights do CORI Subjects Have?

A. Current Law

B. New Law

- “Ban the Box”
- Copy before & at adverse decision
- File Complaint
- * Negligent Hiring

V. How to seal a CORI?

A. Current Law

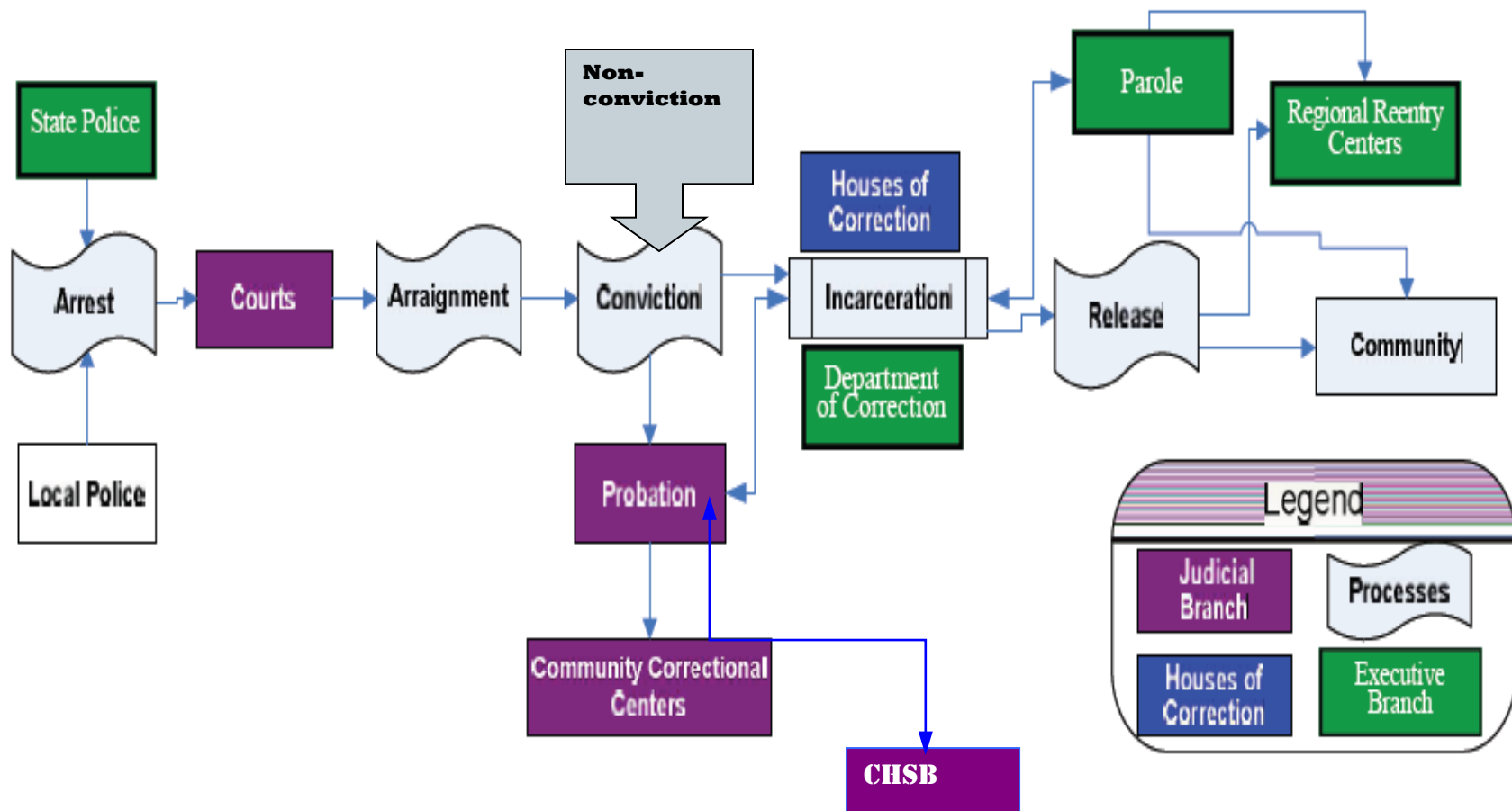
B. New Law

- CWOFF
- Con. Time Limit
- Clock Ticking

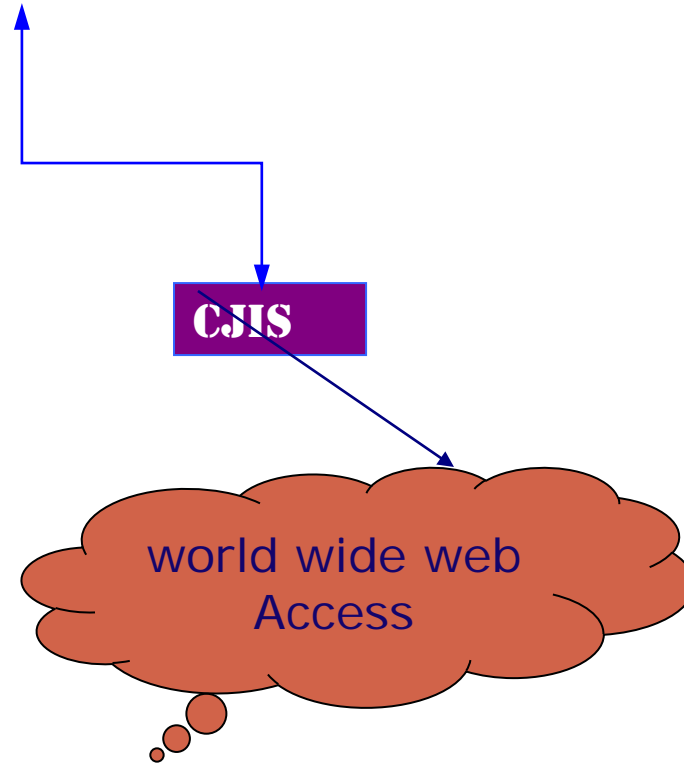
Q & A

What is CORI? Purpose; Definition; Compilation

Massachusetts Criminal Justice System



New---Department of Criminal Justice Information System



A

..... WARNING

THIS INFORMATION MAY CONTAIN CORI. IT IS NOT SUPPORTED BY FINGERPRINTS. PLEASE CHECK THAT THE NAME REFERENCED BELOW MATCHES THE NAME AND DATE OF BIRTH OF THE PERSON



COMMONWEALTH OF MASSACHUSETTS
CRIMINAL HISTORY SYSTEMS BOARD



*** PERSONS COURT SUMMARY ***

NAME: I
DOB:
MOTHER:
ADDRESS:

FORMAL I
POB:
FATHER:

PCF
SSN

ADULT APPEARANCES

- 5 ARRAIGNMENT:
ARG DATE: 06/25/1997 PD: WOR COURT: WORCESTER DISTRICT DKT#: ASLT KILL
OFF: ASSAULT TO KILL D STATUS: C WPD
DISP: C 10/8/97 DISM
- 4 ARRAIGNMENT:
ARG DATE: 06/25/1997 PD: WOR COURT: WORCESTER DISTRICT DKT#: A&B DW
OFF: A&B DANGEROUS WEAPON STATUS: C WPD
DISP: C 10/8/97 DISM
- 3 ARRAIGNMENT:
ARG DATE: 06/13/1990 PD: COURT: WORCESTER DISTRICT DKT#: DP
OFF: DISTURBING THE PEACE(BREACH) STATUS: C WPD
DISP: \$62.50 FINE VWF 66 7/2/90 DF 7/6/90 PD
- 2 ARRAIGNMENT:
ARG DATE: 12/19/1986 PD: COURT: WORCESTER DISTRICT DKT#: DIS PERS
OFF: DISORDERLY PERSON STATUS: C WPD
DISP: FILE
- 1 ARRAIGNMENT:
ARG DATE: 12/19/1986 PD: COURT: WORCESTER DISTRICT DKT#: DP
OFF: DISTURBING THE PEACE(BREACH) STATUS: C WPD
DISP: \$62.50 FINE VWF PD

END OF ADULT ARRAIGNMENTS

How to Read A CORI?

No Change in
format yet

Enhanced Level

Level 1

Level 2

Level 3

Agencies that can see time-limited conviction data

Agencies that can see pending cases and convictions

Agencies that can see "all available CORI"

Agencies that can see juvenile arrest and/or indication of sealed record and conviction data

♦ Any person who knows the name & dob of an incarcerated individual; or probationer whose crime is punishable by 5 or more years prison sentence; or recently released

♦ Anyone who shows that the public interest in getting CORI outweighs subject's interest in non-disclosure

♦ Public Housing Authorities

♦ Many Private Employers

♦ Schools
♦ Providers engaged in activities or programs for children less than 18
♦ Long-term care facilities for position treatment
♦ Agencies providing care for the elderly or disabled
♦ Taxicab companies transporting pupils
♦ CORI subject

♦ Criminal Justice Agencies
♦ DSS
♦ DYS
♦ DEEC
♦ *Operators of children's camps
*but no access to sealed record notation

G.L. c. 6, § 172, ¶¶ 6, 7.

G.L. c. 6, § 172, clause (c) ; 168

G.L. c. 71, § 38R; c.6, §§ 172h; 172E; 172C;

G.L. c. 6, §§ 172 clause (a); 172B; 172D; 172F;

Who has Access?

Requestors under the New CORI law: Scope, Purpose and Obligations
Fran Fajana, MLRI (August 2010)

	Requestor	Scope of Access	Purpose of Access	Obligations of Requestors
1.	Employers or their agents	a) Felony conviction for 10 years after disposition, including incarceration or custody; b) Misdemeanor conviction for 5 years after disposition, including incarceration or custody; c) Pending charge * 209A violation is treated as a felony **Entire record will be open until last conviction is no longer accessible	Evaluate applicant or volunteer	i) Verify identity & provide data including last 4 digits of SS# to query system; ii) Certify purpose & authority; iii) Obtain CORI subject's signed acknowledgement (keep for 1 year); iv) Provide copy of CORI, regardless of source, before questioning, and copy again if adverse action is based on record (unless already provided); v) Cannot request or require subject to provide copy of his or her CORI; vi) Maintain log of persons to whom CORI is shared.
2.	Housing providers or their agents	Same as #1	Evaluate applicant or volunteer for services	Same as #1
3.	State or Municipal Agency or their agents	Same as #1	Professional Licensure	Same as #1
4.	Housing Authority	Conviction and pending charges	Evaluate applicant	
5.	Operators of Camps for Children	Conviction, non-conviction, pending charge & youthful offender and juvenile data	Screen applicant, volunteer, wall climbing or challenge course programs	
6.	Providers of activities for children 18 and under	Conviction, non-conviction, pending charge & youthful offender data	Screen applicant, volunteer	
7.	Schools	Conviction, non-conviction, pending	Screen applicant,	

Requestors under the New CORI law: Scope, Purpose and Obligations
 Fran Fajana, MLRI (August 2010)

		charge & youthful offender data	volunteer, taxicab companies	
8.	Special Education Program	a) Felony conviction for 10 years after disposition, including incarceration or custody; b) Misdemeanor conviction for 5 years after disposition, including incarceration or custody; c) Pending charge * 209A violation is treated as a felony **Entire record will be open until last conviction is no longer accessible		
9.	Long-term care, assisted living & continuing care facility	All available CORI (conviction, non-conviction, pending charge & youthful offender data)		
10.	Provider of in-home or community based services for elderly or disabled persons	All available CORI		
11.	Other Legally Mandated	As required by law	As required by law	Same as #1
12.	CORI Subjects or their advocate/agent	All available CORI		
13.	General Public	i) Conviction for felony punishable by prison term of 5 or more years; ii) Status for any person sentenced to prison and is on probation, in prison or on parole at time of request; iii) Felony conviction for 2 years after release from incarceration; and		

Requestors under the New CORI law: Scope, Purpose and Obligations
Fran Fajana, MLRI (August 2010)

		iv) Misdemeanor conviction for 1 year after release from incarceration		
14.	Public Interest	Determined by Dept of Criminal Justice Information System	Serve the public interest	
15.	Criminal Justice Agencies	All CORI, including sealed records	Actual performance of criminal justice duties	
16.	Firearm Licensing Authority	All CORI, including sealed records	Firearm licensing	
17.	Criminal Record Review Board	All CORI, including sealed records	Actual performance of duties	
18.	Dept of Children & Families	Conviction, arrest data, sealed record, juvenile arrest and youthful offender data	Evaluate foster and adoptive homes; check background of persons 18 and older in a prospective foster home; & registration of interest for foster care & pre-adoptive and adoptive placement	
19.	Dept of Early Education & Care	Conviction, arrest data, sealed record, juvenile arrest and youthful offender data	Evaluate non-relative in-home child care provider	
20.	Dept of Revenue	Conviction, arrest data, juvenile delinquency, youthful offender data		
21.	Dept of Telecommunications & Energy	All available CORI (conviction, non-conviction, pending charge & youthful offender data)	Screen bus drivers who regularly transport school children	
22.	State Racing Commission	Presumably all available CORI		

Requestors under the New CORI law: Scope, Purpose and Obligations
Fran Fajana, MLRI (August 2010)

23.	Mass. Port Authority	Presumably all available CORI	Evaluate applicant seeking access to regulated shell-fishing zone	
24.	Motor Vehicle Insurance Merit Rating Board	Violations of Ch. 90 (motor vehicle law)	Evaluate insured	
25.	Banks	All available CORI	Licensure	
26.	Victim of crime or witness/family member of a homicide victim	All available CORI		
27.	Litigants	All available CORI and sealed records	Custody, visitation and safety	Non-disclosure in open court

Notes

- **1.) Effective date for #1, 2, 3, 8 11, 26, 27 and access to sealed records for criminal justice agencies & licensing authority is May, 2012.
- **2.) CORI will be available on the worldwide web.
- 3.) Inter-state and federal agencies interface with new CORI database is required.
- **4.) Convictions for murder, involuntary & voluntary manslaughter and sex offenses punishable by incarceration in state prison, unless sealed, are not exempt under the 10 and 5 limitation.
- **5.) An employer is exempt from negligent hiring liability if a hiring decision is made within 90 days of getting CORI and the employer followed department procedures. Employer is also exempt from discriminatory employment practice for relying on an erroneous record provided by the department if employment decision is also made within 90 days.
- 6.) Requestor shall discard CORI 7 years after employment or date of final decision with respect to the record.
- **7.) Department will maintain "self-audit" log of requestors and make it available for free once every 90 days.
- 8.) Police daily logs, arrest registers, chronologically maintained court records, published court/administrative proceedings and parole board decision are public records.

What Rights do CORI Subjects Have Under Current Law?



1. Partial “ban the box”
2. Opportunity to dispute accuracy and relevance
3. Prohibition against requesting or requiring individual to provide copy of CORI
4. Procedure to correct inaccurate record.

Rights of A Person with CORI Under New Law

1. “Ban the box”—no criminal history inquiry (unless mandated by a federal or state law) (effective Nov. 2010)
2. Provide copy of CORI prior to questioning applicant & at adverse decision
3. File complaint for violations, including failure to provide CORI at questioning or adverse decision, with Criminal Record Review Board
4. Obtain help to correct inaccurate record from Dept of Criminal Justice Information System
5. Obtain “self-audit.”

Sealing: Legal Option to Diminish Effects of CORI



- Massachusetts laws permit the sealing of criminal records.
- GL chapter 276, § 100A permits the sealing of convictions.
- GL chapter 276, § 100C permits the sealing of charges ending favorably to a defendant.

Sealing Convictions



3 basic requirements must be satisfied:

1. Record to be sealed should be a conviction or a disposition not 'seal-able' under § 100C;
 2. Application to seal must be made not less than **10** years after final criminal justice event on a misdemeanor and **15** years on a felony;
 3. No intervening conviction in or out of state within 10 years of the application to seal.
- * **Note: intervening motor vehicle offense.**

Sealing Convictions-- Process



1. Obtain §100A petition to seal from Office of the Commissioner of Probation, (OCP) 1 Ashburton Place, Room 405, Boston
2. Complete petition
3. Sign under the penalties of perjury
4. Mail or deliver to 1 Ashburton Place
5. About 1 week turnaround.

New Law Changes Waiting Period for Sealing Conviction



1. Felony waiting period is 10 years (time on probation counts)
2. Misdemeanor waiting is 5 years (time on probation counts)

Sealing Non-Convictions



3 basic requirements must be satisfied:

1. Final disposition must end in Not Guilty (NG), No Probable Cause (NPC), Nolle Prosequi (NP) or Dismissal (DISM);
2. Interest of substantial justice will best be served by sealing record (NP and DISM);
3. A compelling state interest will be furthered by sealing record.

Sealing Non-Convictions--Process



1. Obtain §100C petition to seal from court
2. Complete petition
3. Attach brief memo explaining why record should be sealed (sample available)
4. File petition in court where charge(s) were brought
5. Court will schedule hearing
6. Court will usually decide same day.

New Law Change Sealing Non-Conviction



1. CWOFF can be sealed whether or not probation is imposed.

Note: a) Criminal justice agencies have automatic access to sealed record
b) Family law litigants have access to sealed records in custody, visitation and safety cases.
**** New sealing rules effective May 2012.**



For CORI help:

**Legal Advocacy and Resource
Center (LARC)
800-342-5297 or
617-603-1700**