

## Massachusetts Criminal Records Reform Legislation Enacted

On August 6, 2010, Governor Patrick signed into law an anti-crime package, Chapter 255 of the Acts of 2010. Among numerous other changes, this new law imposes significant limits on the criminal offender records information ("CORI") that will be made available to many employers through the Commonwealth's new Department of Criminal Justice Information Services (the "DCJIS") (which will succeed to many of the functions currently performed by the Criminal History Systems Board); creates certain procedural requirements for the use of CORI in employment decisions; increases the penalties for improperly obtaining or disclosing CORI; limits to some extent the criminal background information provided to employers by private vendors in Massachusetts; and prohibits employers from asking job-seekers about prior criminal records as part of an initial written job application.

### Information Limits

Effective in February 2012, Chapter 255 will substantially limit the CORI provided to many users of the DCJIS data base. Under the new law, felony convictions will now be included in CORI reports sought by most employers only for 10 years after final disposition (including termination of any period of incarceration) and misdemeanor convictions will be reported only for five years after final disposition (again, including termination of any period of incarceration). If an offender has at least one conviction that is still timely for reporting purposes, however, then all prior convictions (no matter how old) will also be reported. There will be no time limit for the reporting of murder, manslaughter and sex offense convictions punishable by incarceration in a state prison, or for pending criminal charges (including, until they are finally dismissed, charges that have been continued without a finding). Where a specific statute, regulation or accreditation requirement authorizes or requires a particular type of employer to obtain broader access to CORI (for example, the statutory requirement that schools obtain "all available criminal offender record information" with respect to current and prospective employees), the employer will continue to be provided that broader access.

Chapter 255 will also limit the information provided to employers by private vendors in Massachusetts, by prohibiting those vendors from reporting arrests, indictments or convictions which, from the date of disposition, release or parole precede the report by more than seven years. Under current law, such information may lawfully be supplied in connection with the employment of an individual whose annual salary equals or may reasonably be expected to equal \$20,000 or more; Chapter 255 will eliminate this exception, effective in February 2012.

## Procedural Requirements

Under the new law, an organization intending to use CORI in connection with any employment decision must provide a copy of that information to the applicant before either questioning the applicant concerning it or making an adverse decision on the basis of it. The organization (if conducting at least five criminal background investigations a year) must also maintain a written CORI policy; must notify applicants of potential adverse decisions based on CORI; and must provide the applicant with a copy of the policy and with information concerning the process for correcting a criminal record. While these statutory requirements will take effect in February 2012, similar requirements are already imposed under directives issued by the Criminal History Systems Board.

## Penalties for Improperly Obtaining or Disclosing CORI

Employers have always been required to protect the confidentiality of CORI and to obtain CORI only in the manner prescribed by law. Effective November 5, 2010, Chapter 255 substantially increases the penalties for knowing violations of these restrictions, providing for fines of \$1,000 for a first offense, \$2,500 for a second offense and \$5,000 for a third or subsequent offense.

## Initial Job Applications

Under current law, employers may ask job applicants about recent felony and misdemeanor convictions as part of the hiring process and such questions appear on many employers' job applications. Chapter 255 will make it unlawful, as of November 5, 2010, for an employer to request criminal offender information on its *initial* written application form. Exceptions are provided if the applicant is applying for a position for which any federal or state law or regulation creates a presumptive disqualification based on a particular type of conviction and for employers subject to state or federal obligations to refrain from hiring individuals who have been convicted of particular offenses.

## What This Means For Your Organization

Massachusetts organizations which currently rely on CORI supplied by the Criminal History Systems Board in making employment decisions should review their practices and procedures to ensure compliance with the new law. Those organizations which will receive more limited information from the CHSB than before may wish to evaluate whether obtaining what will remain in some ways more expansive criminal background information through a private vendor is appropriate (employers using a private vendor to provide criminal background information should be aware that the legal requirements for such inquiries are different, and in some ways more demanding, than those governing the use of CORI provided by the DCJIS). Finally, employers (including employers who do not rely on state-provided CORI) who include on their initial job applications questions concerning prior criminal convictions will need to revise those forms and consider instead whether to seek this information from applicants at later stages of the hiring process, if at all.

If you have questions concerning the changes to the CORI statutes or concerning the new restrictions on criminal background inquiries in the hiring process, please contact the Ropes & Gray attorney with whom you regularly work.