

Massachusetts Criminal Records Reform To Take Full Effect On May 4, 2012

As described in our prior [Alert](#), Massachusetts lawmakers in 2010 made substantial changes to employers' access to, and use of, criminal offender records information ("CORI") made available by the Commonwealth's Department of Criminal Justice Information Services (the "DCJIS") (formerly the Criminal History Systems Board). Certain of these reforms—for example a ban on questions about criminal history in initial written job applications—went into effect in 2010 and are described in our prior Alert. The majority of the changes, however, are set to take effect on May 4, 2012 and are summarized below.

Access to CORI

Under the previous law, only certain certified employers (for example, hospitals, banks and many social service agencies) were permitted to submit written CORI requests.

Under the new law, all employers will have "Standard Access" to CORI via the Commonwealth's new online iCORI system.¹ Standard Access permits employers to obtain CORI for the purpose of evaluating current or prospective employees or volunteers and allows employers to receive:

- All CORI relating to murder, manslaughter or sex offense convictions;
- CORI relating to felony convictions and violations of domestic abuse orders, for a period of ten years following the disposition date (such as the incarceration release date);
- CORI relating to misdemeanor convictions, for a period of five years following the disposition date;
- Pending offenses.

Additionally, if at least one prior conviction is eligible to be disseminated to employers with Standard Access, the system will show all of the individual's prior convictions to the employer.

Employers currently certified to receive CORI have automatically had their certifications extended until May 4, 2012, at which time they will be required to register for iCORI credentials and may request enhanced, or "Required," access to CORI in accordance with statutory authorizations (for example, elder care facilities are required by law to access all CORI pertaining to job applicants).

Protection for Employers Against Negligent Hiring Liability

Once the new law takes effect, an employer cannot be held liable for negligent hiring simply because it relied solely on CORI provided by the DCJIS and did not perform additional criminal history background checks, so long as the employment decision was made within 90 days of obtaining the CORI.

Likewise, under the new law, an employer cannot be held liable for discriminatory employment practices for failing to hire an applicant on the basis of inaccurate CORI provided by DCJIS, so long as the employer would not have been liable if the information were correct and so long as the employment decision was made within 90 days of obtaining the CORI.

¹ iCORI is scheduled to become accessible on May 4, 2012. More information regarding iCORI may be found [here](#).

Use of CORI in Adverse Employment Decisions

The CORI reform law also provides employees, job applicants, and volunteers with a new due process right: If an employer intends to question an individual about his or her criminal history and has obtained CORI about that individual, regardless of the source, it must first present a copy of the CORI to that individual.² Similarly, if an employer makes an adverse employment decision on the basis of CORI, regardless of the source, it must present a copy of the CORI to the affected individual.

If you have questions concerning the changes to the CORI statutes or concerning its effects on your business, please contact the Ropes & Gray attorney with whom you regularly work, or any member of the firm's [labor & employment](#) department.

² Many of our clients have provided copies of CORI to applicants and employees for some time, in compliance with agency regulations. The new law codifies and slightly reduces this obligation. We expect that new regulations will reflect this new statutory formulation. For those clients who have an established practice of providing CORI they receive to the applicant or employee, we would suggest consulting with a member of the Ropes & Gray [labor and employment](#) department before implementing any changes.