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**CORI SYSTEM IS OVERHAULED, AFFECTING EMPLOYER PRACTICES  
RELATING TO ITS USE**

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**Introduction**

On August 6, 2010, Governor Patrick signed a sweeping overhaul of the various statutes that govern the use of Criminal Offender Record Information (“CORI”). Signed after three years of debate, the amendments are intended to balance the need of employers to make informed hiring decisions, with an approach that maintains job opportunities for ex-offenders.

CORI will be maintained in a database that will be accessible via the internet. System upgrades will not only allow immediate access to CORI, but are also intended to allow officials to promptly validate accurate data and correct information that is inaccurate. The system will be maintained by the newly created Department of Criminal Justice Information Services (“Department”), which largely replaces the former Criminal History Systems Board.

Criminal justice agencies will continue to have virtually unlimited access to CORI, including sealed records. In addition, the following “requestors,” defined as “a person, other than a criminal justice agency, submitting a request for criminal offender record information to the Department,” will continue to have access to CORI to the extent, and for the purposes authorized by, the statute: (1) those individuals and agencies required by statute to have access to CORI (e.g. certain providers of care or services to children, elderly or disabled individuals); and (2) those who request CORI for the purpose of evaluating current and prospective employees including full-time, part-time, contract, internship employees or volunteers.

## **Certain Of The New Provisions May Impact Employers' Hiring Practices**

Highlighted below are those amendments that are of particular relevance to employers.

- **The “Ban-the-Box” Provision.** The new amendments effectively “ban the box,” referring to the box on many employment applications that applicants are asked to check if they have a record of certain criminal offenses. The law now makes it unlawful for an employer to request criminal offender record information on its initial written application form. Employers, therefore, are advised to remove all inquiries concerning criminal history from their employment applications. (Employers who are statutorily prohibited from hiring ex-offenders are exempt from this provision).
- **Subsequent Inquiries.** The new law does not prohibit inquiries about criminal history later in the application process, but any employer in possession of a job applicant’s criminal offender record information must provide the individual with a copy of the record: (i) prior to any questioning concerning his/her criminal history; and/or (ii) if an adverse decision is made on the basis of the criminal record.
- **Employers Who Annually Conduct Five or More Inquiries.** Employers who annually conduct 5 or more criminal background investigations will be required to maintain a written policy that provides that in addition to any obligations required by the Commissioner by regulation, the employer will: (i) notify the applicant of the potential of an adverse decision based on criminal offender record information; (ii) provide a copy of the criminal offender record information and the policy to the applicant; and (iii) provide information concerning the process for correcting a criminal record.
- **Protection from Liability.** Employers will be protected from liability for discriminatory hiring practices for failure to hire a person on the basis of erroneous criminal offender record information that is requested and received from the Department if the employer would not have been liable had the information been accurate, and provided that the employer made the decision within 90 days of obtaining the criminal offender record information and followed the Department’s policies and procedures for verifying the information.
- **Look-Back Period.** The look-back period for criminal offender record information available to employers for purposes of evaluating a job applicant’s suitability for employment has been reduced from 15 to 10 years for felony convictions, and from 10 to 5 years for misdemeanors.<sup>1</sup>

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<sup>1</sup> Notwithstanding this provision, convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses as defined in M.G.L. c. 6 § 178 that are punishable by a term of incarceration in state prison shall remain in the database permanently and shall be available to the requestors listed above, unless sealed.

- **Record Disposal.** Unless otherwise required by law or court order, an employer must discard criminal offender record information obtained from the Department no later than 7 years from an individual's last date of employment or volunteer service, or from the date of the final decision regarding the individual.
- **Effective Date.** The provision that prohibits inquiries about felonies or misdemeanors on an initial written application becomes effective **November 4, 2010**. Violations of the provision after that date will subject employers to liability under the new law. Other provisions, including those discussed above, will take effect in May 2012.

**Employers Should Be Aware - Use Of CORI May Implicate Other Laws**

Employers often retain the services of commercial reporting agencies to perform background checks on current and prospective employees. As a general matter, virtually all background checks performed by third parties for use in evaluating individuals for employment purposes fall under the purview of the Fair Credit Reporting Act ("FCRA"). Thus, employers who contract with third party agencies to conduct background checks, including criminal background checks, must be mindful of the FCRA's disclosure and authorization requirements.

In addition, as a practical matter, background checks should be performed on all current or prospective employees in a given job classification, so as to avoid an inconsistent practice that could lead to an allegation of discrimination.<sup>2</sup> Finally, unionized employers are advised that a duty to bargain may arise concerning background checks on existing members of a bargaining unit.

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The information above is intended as a broad overview. If you have any questions concerning CORI in general, or about compliance with the law, please feel free to call us. Our attorneys will be happy to answer your questions.

**Please note that this publication should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents of this publication are intended solely for general purposes, and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.**

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<sup>2</sup> The EEOC recognizes that selection procedures can be an effective means of determining which applicants are best suited for a particular job, but cautions that use of these tools can violate anti-discrimination laws if they are used to intentionally discriminate against those in protected classes, or even if they have an unintended disparate impact on a protected class.