



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
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2008 JAN 11 PM 2:31

STATE

DEVAL L. PATRICK
GOVERNOR
TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

By His Excellency

DEVAL L. PATRICK
GOVERNOR

EXECUTIVE ORDER NO. 495

**Regarding the Use and Dissemination of Criminal
Offender Record Information by the Executive Department**

WHEREAS, the Commonwealth has compelling interests in ensuring public safety, providing services to vulnerable populations, providing employers with a motivated and qualified workforce, and empowering individuals to obtain gainful employment and housing;

WHEREAS, maintaining accurate and up-to-date criminal offender record information ("CORI") and sex offender record information is crucial to the operation and integrity of the criminal justice system, and to protecting the safety and security of crime victims and vulnerable populations;

WHEREAS, gainful employment for rehabilitated offenders reduces recidivism and increases the likelihood of successful re-integration into society, and maintaining accurate CORI is necessary to ensure that individuals are not unfairly denied access to employment and housing opportunities;

WHEREAS, the existence of a criminal record should not be an automatic and permanent disqualification for employment, and as the largest single employer in the Commonwealth, state government should lead by example in being thoughtful about its use of CORI in employment decisions;

WHEREAS, enabling public and private employers and housing providers to interpret CORI accurately and to understand their statutory and regulatory obligations with respect to CORI will improve the fairness of the employment and housing processes;

WHEREAS, the ongoing modernization by the Commonwealth's trial courts of their information systems will create the opportunity, going forward, to produce understandable CORI reports that are easier to read, and will also provide opportunities for more nuanced and sophisticated sorting of the data included in CORI;

WHEREAS, the Criminal History Systems Board ("CHSB") estimates that more than 750,000 criminal records are eligible for immediate sealing under the current laws of the Commonwealth;

WHEREAS, educating individuals about their legal rights regarding their court records will improve their prospects for employment and housing;

WHEREAS, the Executive Office of Health and Human Services ("EOHHS") and most agencies under the Secretariat have separate regulations for reviewing criminal records of candidates for employment, thereby resulting in some confusion;

WHEREAS, the current EOHHS and agency regulations for reviewing criminal records support the Commonwealth's unwavering commitment to protect the vulnerable populations it serves;

WHEREAS, the regulations of EOHHS and its agencies may impose unnecessary obstacles to employment opportunities for qualified, rehabilitated individuals with criminal backgrounds and can be strengthened to ensure that the rights of such individuals are protected without compromising the safety and well-being of clients;

WHEREAS, the Executive Office of Public Safety and Security ("EOPSS"), the EOHHS, the Executive Office of Labor and Workforce Development ("EOLWD"), the Department of Housing and Community Development and other executive agencies of the Commonwealth should serve as leaders in considering the importance and value of balancing public safety and victim rights with

the successful reintegration of rehabilitated individuals by reviewing and modeling their policies to ensure compliance with the law and to remove any unnecessary barriers to employment and housing opportunities.

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § 1, Art. 1, do hereby order as follows:

Section 1. It shall be the policy of the Executive Department with respect to employment decisions that a criminal background check will only occur, and its results will only be considered, in those instances where a current or prospective employee shall have been deemed otherwise qualified and the content of a criminal record is relevant to the duties and qualifications of the position in question. Such instances will include, without limitation, those in which a criminal conviction creates a statutory disqualification for the position, or the position requires interaction with vulnerable populations and a criminal background check is necessary to ensure that the applicant does not pose a public safety risk.

In implementing this policy, the employer should consider the nature and circumstances of any past criminal conviction; the date of the offense; the sentence imposed and the length of any period of incarceration; any reasonably available information concerning compliance with conditions of parole or probation, including orders of no contact with victims and witnesses; the individual's conduct and experience in the time since the offense, including, but not limited to, educational or professional certifications obtained since the time of the offense or other evidence of rehabilitation; and the relevance of the conviction to the duties and qualifications of the position in question. Charges that did not result in a conviction will be considered only in circumstances in which the nature of the charge relates to sexual or domestic violence against adults or children, consistent with Executive Order No. 491, Establishing a Policy of Zero Tolerance for Sexual Assault and Domestic Violence, or otherwise indicates that the matter has relevance to the duties and responsibilities of the position in question.

Each agency in the Executive Department shall examine and, if necessary, amend its employment practices and policies to reflect the policy set forth in this Section and in Executive Order No. 491. The Secretary of each Executive Office shall be responsible for ensuring that each agency within her Secretariat conducts this review. All Secretaries shall report to the Commonwealth's Chief Human Resources Officer the results of their review and the steps taken to comply with this policy no later than March 31, 2008. Thereafter, the Chief Human Resources Officer shall take whatever actions are necessary and appropriate to ensure that this policy is implemented fully.

Section 2. The EOHHS, in consultation with agencies under the Secretariat and the Massachusetts Office for Victim Assistance, shall promulgate a consolidated set of regulations that provide clear guidelines to be followed by EOHHS and its agencies, as well as their vendor programs, when reviewing the criminal records of current or prospective employees.

Without compromising the Secretariat's commitment to ensure the safety and security of the vulnerable populations it serves, the EOHHS regulations shall ensure rehabilitated individuals with criminal backgrounds be given a fair opportunity to be employed and reintegrate successfully into the workforce.

The EOHHS regulations shall ensure that the rights of current and prospective employees are protected by (a) providing individuals with information regarding EOHHS hiring policies and procedures regarding CORI and individuals' rights to dispute the accuracy and relevancy of any CORI; (b) creating a systematic means for employers to document all factors taken into consideration, including evidence of rehabilitation, in making employment decisions; (c) specifying strong penalties for vendors that fail to comply with any requirement; and (d) streamlining and simplifying, wherever possible, current CORI procedures and requirements.

Section 3. The executive staff of the CHSB shall draft and submit to the board for approval regulations requiring that any entity certified to obtain access to CORI under the provisions of G.L. c. 6, §§ 172(b) and (c) shall participate in prescribed training and pass a

written examination as a condition of such entity's obtaining certification, or renewal of its certification, in accordance with G.L. c. 6, § 172 and 803 CMR 3.00.

Section 4. The CHSB CORI Audit, Training, and Compliance Unit (the "Unit") shall, consistent with CHSB's appropriations and staffing, develop and maintain an electronic learning system to enhance the training of entities certified under the provisions of G.L. c. 6, §§ 172(b) and (c) to obtain access to CORI. The electronic learning system shall include, but not be limited to, the following subjects: the reading and interpretation of disposition codes and CORI reports; the statutory and regulatory rights of current and prospective employees; the responsibilities of employers with respect to access, review, storage, and dissemination of CORI; and consideration of the relevance of a criminal record to the duties and qualifications of various positions.

Section 5. The Unit shall, consistent with CHSB's appropriations and staffing, increase its auditing of CORI-certified entities to ensure that CORI and juvenile data is accessed, reviewed, and stored appropriately and in accordance with all applicable statutes and regulations. The Unit shall ensure that all CORI-certified entities maintain written policies regarding their use of CORI and comply with existing regulations that require providing individuals with a copy of their CORI report and an opportunity to discuss the relevancy and accuracy of the report.

Section 6. The EOPSS, the CHSB, and the EOLWD together shall launch a coordinated, comprehensive, and targeted public education campaign to (a) raise awareness among the public regarding time frames and mechanisms for the sealing and correcting of criminal records; (b) educate employers about the permissibility of questions in employment applications and interviews as well as rules concerning the storage, dissemination, retention, and use of CORI; and (c) educate crime victims and witnesses about their rights of access to CORI. The educational materials developed shall be made available to the public in a variety of media and formats, including, but not limited to, posters and brochures provided at various agencies within the Executive Department that have regular contact with the public and/or employers.

Section 7. The EOPSS, the CHSB, and the Department of State Police shall request the cooperation of the Administrative Office of the Trial Court ("AOTC") and the Office of the Commissioner of Probation ("OCP") in conducting a pilot program or programs in selected district courts to evaluate the feasibility and cost of biometric identification of all defendants arraigned in criminal cases in the courts of the Commonwealth in order to create a biometric index for criminal records. The EOPSS shall report to the Governor on the results and recommendations of such pilot programs no later than December 31, 2008.

Section 8. In addition, the EOPSS and the CHSB shall seek the assistance of the AOTC and OCP in exploring the feasibility and cost of (a) improving the existing administrative system for correcting and sealing existing criminal records and (b) improving the presentation, readability, and ability to sort and classify CORI records created using technology prior to AOTC's implementation of the "MassCourts" information system.

The EOPSS, the CHSB, and the Department of State Police, in conjunction with the EOHHS, shall also conduct a study of the feasibility, desirability, and cost of providing access to the 50-state conviction data contained in the Interstate Identification Index ("III") to entities certified to receive CORI under G.L. c. 6, § 172(b).

The EOPSS shall report to the Governor on the results and recommendations of the studies and initiatives set forth in this Section 8 no later than March 31, 2008.

Section 9. The EOLWD shall establish and coordinate an interagency task force consisting of representatives from the following agencies: the EOHHS, the Department of Correction, the Department of Workforce Development, the Massachusetts Parole Board, the Board of Higher Education, the Division of Apprentice Training, the Association of Massachusetts Community Colleges, the Division of Professional Licensure, and the Massachusetts Sheriffs Association. The Task Force shall review existing pre-release and post-release training programs for ex-offenders in the Commonwealth and shall make recommendations on replicating successful pre- and post-

release training programs that facilitate employment and educational training.

The Task Force shall report to the Governor on the results and recommendations of its studies and initiatives as set forth in this section no later than March 31, 2008.

Section 10. The EOLWD shall, subject to appropriation, establish a competitive grant program for local workforce investment boards and one-stop career centers to allow for implementation of comprehensive basic education training and job placement services for ex-offenders. A grant program established for this purpose shall incorporate the recommendations outlined by the Task Force established under Section 9.

The EOLWD shall further implement additional performance standards for the one-stop career system that will promote and measure performance on job placement services for ex-offenders.

Section 11. The CHSB, the Department of Housing and Community Development ("DHCD"), and the Department of Transitional Assistance ("DTA") shall review existing federal and state laws, regulations, and program requirements governing the collection and use of CORI in connection with the consideration of granting or denying housing opportunities to otherwise eligible households. Without compromising the Commonwealth's ongoing commitment to public safety and security, the CHSB, DHCD and DTA shall make recommendations concerning regulatory amendments and other measures that could be implemented to: (a) increase the consistency and uniformity of the treatment of CORI in making such housing decisions; (b) ensure that discretionary CORI-based denials of housing occur only in instances involving a risk to public safety or to individual victims or witnesses; (c) address the needs of individuals or families who are denied housing based on CORI; (d) develop and launch a campaign to better educate owners and managers of multi-family housing concerning CORI; and (e) streamline the CORI review process so that housing placement delays are mitigated and reduced.

Section 12. Nothing in this Executive Order shall be construed to require action inconsistent with any applicable state or federal law.

Section 13. This Executive Order shall remain in effect until amended, superseded, or revoked by subsequent Executive Order.



Given at the Executive Chamber in Boston this 11th day of January in the year of our Lord two thousand and eight, and of the Independence of the United States of America two hundred and thirty-two.

A handwritten signature in black ink, appearing to read "Deval Patrick".

DEVAL L. PATRICK
GOVERNOR
Commonwealth of Massachusetts

A handwritten signature in black ink, appearing to read "William Francis Galvin".

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS