



**THE MASSACHUSETTS COALITION OF FAMILIES
AND ADVOCATES FOR THE RETARDED, Inc.**

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May 29, 2008

Dr. JudyAnn Bigby
Secretary EOHHS
Commonwealth of Massachusetts

Dear Secretary Bigby,

We are commenting on proposed changes to regulations 101 CMR 15.00: Criminal Offender Records Check, as posted at:

<http://www.mass.gov/Eeohhs2/docs/eohhs/cori-regs-draft.pdf>

As a coalition of family groups and individuals caring for the most vulnerable individuals served by the Commonwealth, COFAR has long advocated more stringent screening of staff and volunteers to improve the safety of our loved ones, including a national CORI. COFAR has no expertise or comment on the application of these changes to other human services areas. (Our guess is that some other disability groups will have similar problems with the changes.)

However, in the area we know, it should be noted at the outset that this is an issue upon which all advocates are agreed. Although we are not commenting jointly with ARC Mass, these are issues upon which we have commented jointly as recently as 2005, and do not differ. The vulnerability of people with mental retardation/intellectual disability is well established and documented, as locally and specifically as the ever-rising tide of calls and cases at the Disabled Persons Protection Commission. The lifetime incidence of sexual abuse of persons with MR/DD has been reported as high as 90 percent. Our loved ones are abused and neglected because they are vulnerable, sometimes unable to report abuse or neglect, often disbelieved when they do so. For this reason, COFAR and all other advocacy groups have advocated for stronger background checks, national equivalents to the Massachusetts CORI system, and Massachusetts participation in the national systems that exist to track abusers.

We are not unmindful of the excessive use and abuse of criminal record information in other areas of employment, and we would not be opposed to some regulatory leeway on certain kinds of criminal history, as for example where the law itself would no longer criminalize certain actions in the records of some people, or where the criminal record has no aspect of violence, theft, or endangering other persons.

And we do believe in rehabilitation and reform – in some areas of human services former offenders can be very effective and responsible counselors – we do not in general believe that people served by DMR/DSS are appropriate subjects for experiments with loosening the regulations. Our loved ones are less able to defend themselves than almost anyone else in the Commonwealth. They need more, not less, protection. More qualified and screened staff, not people who are less so.

Because of the special situation of the most vulnerable people served by the Commonwealth, and of those whose every moment may be in the company and sometimes individual care of employees, trainee, volunteers, or interns, these regulatory “reforms” as proposed are in fact 15 steps backward for our loved ones.

Specifically:

1. The regulations as amended eliminate the EOHHS CORI clearing office, and delegate these decisions to departments and vendors dealing directly with the CHSB. This would appear to streamline the process, however given the record of DMR providers found not to be in compliance with CORI regulations; it is a risky decentralization for DMR/DDS, where most of the budget is now in contracted services, and where administrative cutbacks make supervision of vendors less likely than in the past.
2. The regulations as amended eliminate felonies more than 10 years old or misdemeanors more than 5 years old from the CORI process. This is in line with the Governor’s bill that has yet to be debated by the legislature, so in this instance EOHHS is anticipating or experimenting with a lowered level of protection that has not yet been accepted by elected representatives. People could be hired by DMR or its vendors to work with vulnerable persons with MR/DD who could not be hired by a public school system to do the same jobs for youth with full verbal and mental ability!
3. The amended regulations do make exceptions from the record-sealing deadlines for certain offenses for which there is at present no proven rehabilitation, such as sexual offenses. However, the special vulnerabilities of some people with MR/DD are such that they are preyed upon by every sort of criminal, down to non-violent serial thieves. One of the most dangerous areas, as documented in a review of DPPC complaint by US Attorney Michael Sullivan, is transportation. Not only are these vendors less supervised and more careless in hiring up to now, but the vulnerability of people who cannot speak or cannot speak well or cannot walk to someone with a misdemeanor driving record is highlighted in newspaper articles every month. Last month, there were two reports – one in New York, one in Massachusetts -- of people with severe cerebral palsy abandoned in buses by the drivers. These individuals were unable to move, and might have frozen to death.
4. In addition, Table B (offenses which as felonies would be ignored after 10 years and as misdemeanors after five) as revised does include offenses which ought to disqualify anyone from working with a vulnerable population even after rehabilitation or 10 years: abandon child under 10, alcoholic beverages sell/deliver to person under 21, animals cruelty to, twelve kinds of assault, bomb scare/hijack threat, five kinds of arson, civil rights violations, contributing to the delinquency of a child, numerous drug offenses, embezzlement, firearm violations, indecent exposure, perjury, prostitution, receiving stolen goods.
5. In many sections the term “potential unsupervised contact” is edited out. Although it *is* part of the definition of employment, we would prefer to see it repeated through the regulations because – in an era of budget cuts especially – any employee of a DMR/DDS vendor should be available for emergency fill-in. And they are apt to be pressed into service without checking their files for CORI status.
6. One of the most counter-productive changes in the regulation is putting off the CORI check until the prospective hire or volunteer has cleared all other hurdles. Although this tends to reduce the burden on the CHSB, it delays hiring unnecessarily, and if the candidate then fails, there is another delay for the next-best candidate. The present regulation that everyone starts the CORI

process on application is more efficient for the delivery of services, which COFAR places at higher importance.

7. 15:03 (2) appears to grandfather out previously CORI-ed employees if a new CORI is clear but discovers a previously overlooked offense. This creates an intolerable situation for the department or vendor which employs such a person.

8. 15:03 (3) appears to remove certain kinds of vendors from this requirement. Because our experience is so much worse with exactly the peripheral vendors such as transportation companies, this needs to be clarified. People with MR/DD are vulnerable 24/7.

9. 15:03 (4) appears to grandfather out previous CORI evaders. This is an unacceptable amnesty.

10. 15:03 (5) allows EOHHS departments and vendors to obtain out-of-state records “at their expense.” In an era of budget cuts, this phrase is cynical, and regulations should never be cynical. Bills presently in the legislature would require national CORI for DMR/DDS workers. The regulations should contain the option, but not regulate the funding mechanism.

11. Under the definitions, “Hiring Authority” would seem to eliminate the category of “lifetime presumptive disqualification.” COFAR believes that category should exist, at least within the DMR/DSS system.

12. Section 15:05 as revised now prohibits mandatory disclosure of first offenses for drunkenness, simple assault, speeding, minor traffic violations... All these are covered in present regulations, but should not be. This strikes us as a discretionary area, but the information should be available.

13. 15:06 (1) states that no application may ask if the applicant has a criminal record. COFAR prefers that every application ask that question.

14. 15:09 suggests careful consideration for all criminal records, even “Table A” sex offenses. COFAR would prefer that Table A crimes and about half of those on Table B *not* be looked at in depth, but that the old language about presumptive-disqualification be restored for DMR/DDS.

15. 15:10 post-audit, adds the option of checking on the hiring authorities that would now no longer operate through the EOHHS CORI system. We have stated our preference for a centralized system, but if this is to be abolished, then post-audit must be strengthened with mandatory and periodic checks.

Again, there may be areas in your department in which these regulations would be appropriate. DMR/DDS will do better at avoiding the scandals of a decade ago with the present regulations.

Sincerely,

Colleen M. Lutkevich, Executive Director

Cc: Elin Howe