

Legal Update

August 12, 2010

CORI and Criminal Law Changes

On Friday, August 6, 2010, Governor Patrick signed into law *An Act reforming the Administrative Procedures relative to Criminal Offender Record Information and Pre- and Post-trial supervised release*. The majority of the provisions of this new legislation will take effect on November 4, 2010. (Many CORI changes and the prohibition on sex offenders operating ice cream trucks will take effect in 18 months.) A copy of the bill is attached; below are the key points in the new law.

1. Sentences for Drug Offenses:

- Offenders serving minimum mandatory sentences in a house of correction will be eligible for parole after half of the sentence has been served.
- Offenders are ineligible for parole upon a finding of one of the following aggravating circumstances:
 - i. The defendant used violence or threats of violence, or possessed a weapon, or induced another participant to do so, during the commission of the offense;
 - ii. The defendant directed the activities of another who committed any felony drug violation; or
 - iii. The offense was committed during the commission or attempted commission of a violation of G.L. chapter 94C sections 32F (distribution of drugs to a minor) or 32K (inducing a minor to sell drugs).
- Such parole eligibility will apply to inmates currently serving minimum mandatory drug sentences.
- Minimum mandatory sentences to state prison are not affected by this legislation.
- Inmates serving minimum mandatory sentences in a house of correction and state prison will be permitted to participate in education, training and employment programs.

2. Sheriffs' Pretrial Diversion Program:

- The sheriffs, or the DOC commissioner in the case of women held at Framingham, are authorized to classify pretrial detainees to a diversion program whereby the detainee is permitted to be away from the jail, with or without supervision, for purposes of participating in the program.

- Those charged with murder or offenses that carry a life sentence, and a number of other crimes under c. 94C, c.265 and c.272, are not eligible for this program. Sex offenders and those held on dangerousness are also ineligible.
- Placement in program requires victim notification by the appropriate custodial authority.

3. Right to Jury Trial in Sexually Dangerous Persons Proceedings.

- The Commonwealth will have the right to a jury trial in sexually dangerous person civil commitment cases.
- Homeless sex offenders must verify their registration data and appear at the local police department every 30 days. (Current law is every 45 days.)
- Homeless sex offenders must wear GPS device, or other electronic monitoring system.
- Sex offenders may be barred from obtaining a vending permit to operate an ice cream truck; the bill creates criminal penalties for sex offenders engaged in ice cream truck vending.

4. Firearms – Pre-trial Detention Dangerousness Hearings:

- Prosecutors may move for dangerousness based upon a charge of illegal possession of a firearm, machine gun, sawed-off shotgun, or large capacity weapon.

5. Victim Compensation:

- Potential compensation has been raised from \$4,000 to \$6,500 for a victim's family for burial expenses and up to \$800 for additional expenses; the statute now provides for compensation for professional crime clean-up, items seized as evidence, implementation of security measures, such as changing locks, for victim's safety, and mental health counseling for the parents/guardians of child victims.

6. Intimidation of a Witness:

- The crime of intimidation of a witness has been expanded to include intimidating witnesses in civil or criminal proceedings, including criminal investigations, grand jury proceeding, trial, probate and family proceedings, juvenile proceedings, housing proceedings, land proceedings, etc. The current statute criminalizes intimidation in criminal investigations only.
- The bill also broadens the intent language to include reckless disregard to impede, obstruct, or delay proceedings.

7. Criminal Offender Record Information:

- The statute creates a new agency within EOPSS, the Department of Criminal Justice Information Services (formerly Criminal History Systems Board), and establishes a Criminal Record Review Board and defines its authority.
- Potential employers are now prohibited from inquiring about a criminal record as part of the initial application process. Employers must provide a job applicant with his criminal history record prior to asking about his criminal history, or if it is the reason the applicant is not hired; employers who are statutorily prohibited from hiring certain ex-offenders are exempted from this provision.
- Access to information:
 - i. Criminal Justice agencies, gun licensing authorities, and the criminal record review board may obtain all criminal offender information, including sealed records;
 - ii. A requestor who is currently authorized by statute to obtain CORI may obtain such information to the extent required to comply with the statute;
 - iii. A requestor who seeks information on potential employees, volunteers, interns, tenants, or applicants for a professional or occupational license may obtain: (i) felony convictions for 10 years following the disposition thereof, including termination of any period of incarceration or custody, (ii) misdemeanor convictions for 5 years following the disposition thereof, including termination of any period of incarceration or custody, and (iii) pending criminal charges, which shall include CWOs until such time as the case is dismissed;
 - iv. Prior misdemeanor and felony conviction records shall be available for the entire period that the subject's last available conviction record is available;
 - v. A violation of section 7 of chapter 209A and a violation of section 9 of chapter 258E shall be treated as a felony for access purposes pursuant to this section.
- Sealing Records:
 - i. The "wait time" to request a record be sealed has been reduced to 5 years for a misdemeanor offense and 10 years for a felony offense; the offender must not have committed any new offenses within that waiting time period.
 - ii. A violation of a domestic violence prevention order or a criminal harassment prevention order is treated as a felony.
 - iii. Convictions for firearm offenses and crimes against public justice are not eligible for sealing.
 - iv. Sex offenses are not eligible for sealing until 15 years after the disposition of the case, or for so long as the offender is under a duty to register as a sex offender. Any person classified as a level 2 or level 3 sex offender is not eligible to seal those sex offenses.

8. Miscellaneous Provisions of the Crime Bill:

- Expands definition of "escape" to include tampering with electronic monitoring devices.
- Establishes, subject to appropriation, teen dating violence prevention programs in schools.

- Requires the Executive Office of Public Safety and Security (EOPSS) to create a resource guide for use by law enforcement, judges and sheriffs on substance abuse treatment options, including civil commitment programs, jail diversion and public and private treatment centers.
- Requires EOPSS to adopt regulations for the creation of substance abuse education programs in prison and houses of correction.
- Creates studies on the use of certificates of rehabilitation; the benefit and cost of establishing a substance abuse treatment program required during parole; jail diversion programs for nonviolent offenders with substance abuse disorders; and the bail review process.