

## What if a Criminal Record is Discovered?

As mentioned above, unless provided otherwise by law, the existence of a criminal record does not necessarily automatically disqualify an applicant from employment or volunteer services with children and youth. In general, if a background check indicates that there is adverse or criminal activity in the applicant's background, the office (or person) responsible for screening must be able (and have the authority) to determine if the offense prevents or does not prevent the applicant from working safely with children and youth.

It is important to establish assessment criteria defining what will constitute automatic disqualifiers for anyone who works directly with children and youth, and make these criteria known to the applicant. Organizations may wish to consider including the criteria below in their screening policy as factors that may disqualify an applicant. (This list is not exhaustive; an organization may wish to consider additional factors in their screening policy.)

- Failure to complete the entire screening process (applicant voluntarily withdrew the application, refused to submit to a criminal history check, etc.)
- Past history of sexually abusive or violent behaviors toward children or adolescents (regardless of whether the individual completed therapy)
- Conviction for any crime in which children or adolescents were involved (regardless of successful completion of probation or incarceration)
- History of violence or any sexually exploitative behavior including acts against adults
- Termination from a paid or volunteer position for misconduct with a child
- Refusing to follow a clear Code of Conduct
- Lying about criminal history
- Suspension or expulsion from a school as a student

Assessment criteria should be relevant to the needs of the organization and type of work the applicant may be performing. All hiring decisions should be based upon a complete review of the candidate's qualifications and characteristics.

In Massachusetts, the DCJIS has published guidance on this process and provided the criteria by which to evaluate a criminal record. There are two basic types of disqualification - presumptive and discretionary – and three lists of criminal offenses separated into tables – A, B and C.<sup>1</sup>

If a criminal offense on a CORI is listed on Table A, the most egregious and violent offenses, the applicant is *presumptively* disqualified from employment or service. The screening or hiring authority should notify the applicant immediately and share the findings. The applicant then has the opportunity to rebut the presumption that they are ineligible to work in an environment with children or other vulnerable parties.

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<sup>1</sup> See: (<http://www.mass.gov/eopss/docs/dps/inf/inf-amuse-cori-valuation-criteria-table-a-c.pdf>)

If the individual believes that their CORI Report is inaccurate, the office or individual conducting the screening must provide the individual with a copy of the DCJIS packet “Information Concerning the Process in Correcting a Criminal Record.” If the individual’s criminal record is thereafter corrected, the individual can be provided with an opportunity to undergo another CORI check.

If an applicant has a criminal offense that is listed on Table B, the individual is *discretionarily* disqualified from employment or service. This means that the screening or hiring authority can exercise a measure of discretion in deciding whether the individual is capable of working safely with children and youth. As with offenses listed on Table A, the applicant must be notified immediately and be given the opportunity to rebut the finding of ineligibility by providing additional information (i.e., a letter of reference from a probation officer, the prosecuting district attorney, judge, or a treating mental health professional stating that the individual is unlikely to pose harm to the young or vulnerable).

In these discretionary situations, the individual reviewing the CORI information can also consider and weigh several additional factors on a case-by-case basis. These factors include:

- a. The relevance of the criminal offense to the nature of the employment or volunteer service being sought;
- b. The nature of the work to be performed;
- c. The seriousness and specific circumstances of the offense;
- d. The age of the candidate at the time of the offense;
- e. The number of offenses;
- f. The length of time since the offense occurred;
- g. Whether the applicant has pending charges
- h. Any relevant evidence of rehabilitation or lack thereof

If, after this process, the individual is either hired or is allowed to serve as a volunteer, or is not, it would be important to identify and document the factors and rationale that went into that decision, and to keep them with the individual’s personnel record.

If an applicant has a criminal offense that is listed in Table C, the individual is also discretionarily disqualified from employment or service. As in both circumstances described above, the applicant must be notified immediately and be given the opportunity to rebut the finding of ineligibility by providing additional information. The information the screener may consider for additional review is the same information contained above in items a – h above, with the addition of item “i”: “Any other relevant information, including information submitted by the candidate or requested by the hiring authority, such as letters of reference from the applicant’s probation officer or a treating mental health professional.”

The difference between the process in terms of the offenses listed in Tables B and C is that Table C offenses (although serious) are considered to be the least egregious category of offenses, and do not necessarily require letters of reference to overturn the initial finding as Table B offenses do. Again, the factors that go into the final decision should be documented and kept with the individual's personnel records. More information on this process can be found on the website of the Department of Criminal Justice Information Services: (<https://www.mass.gov/orgs/departments-of-criminal-justice-information-services>) and on the MA Public Safety website at: (<https://www.mass.gov/orgs/executive-office-of-public-safety-and-security>).