

ACCESS TO AND RELEASE OF CRIMINAL OFFENDER RECORD INFORMATION (CORI)

- AUTHORITY:** **Rule 5.552 (Confidentiality of Records) of the 2016
California Rules of Court
Penal Code (PC) Sections 11075 thru 13326
PC Section 1203
Welfare and Institutions Code (WIC) Sections 781,
827, 827.9, 828, and 831
Government Code Section 6254 (f)
Security Clearance Information Act of 1985 (Public
Law 99-169 Stat. 1009, H.R. 2419)
Standing Order No. 2008 of the Superior Court in and
for the County of Orange**
- RESCINDS:** Procedure Manual Item 1-1-101, dated 06/30/14
- FORMS:** **Criminal Offender Record Information (CORI)
Chrono Request Form** **(Word Document)**
- PURPOSE** To provide a guideline for staff who receive requests for CORI found in
probation department case files.

I. GENERAL INFORMATION

A. Definition:

CORI is an acronym for Criminal Offender Record Information and includes records and data compiled by criminal justice agencies maintained in summary format, identifiable to a specific individual subject, and referring to arrests, pretrial proceedings, dispositions, incarceration, rehabilitation, and release.

1. CORI refers primarily to State Summary Criminal History (RAP) sheets.
2. Although CORI does not specifically refer to such items as police reports or booking sheets, this agency considers these items confidential as part of our records and thus subject to controlled access.
3. CORI refers only to adult records. Access to juvenile records is controlled by section 827 of the Welfare and Institutions Code (WIC).

B. Integration of CORI restrictions with probation case records, policy, and procedures:

This agency considers virtually ALL adult file information as CORI or CORI-derived in order to insulate us as much as possible from exposure to privacy invasion litigation.

1. Our files typically contain psychological, counseling, medical, or other confidential information whose access and disclosure are governed by OTHER California or federal confidentiality or privacy laws beyond the scope of this Procedure Manual Item (PMI).
 2. Some are referred to in this PMI. Others are the focus of specific PMIs.
- C. Who is authorized to review requests for case file information on adult offenders:
1. All sworn staff from the deputy probation officer (DPO) classification up to and including the chief probation officer are authorized to determine the legitimacy of a request for release and to prepare the release in the most appropriate format.
 2. **Financial Officers are permitted to release pertinent case information to victims in restitution cases and financial information to Court on Change of Plea (PC1203.4) requests, pursuant to statute. Release of financial documentation is managed by the Department's Custodian of Records (COR).**
 3. Other sworn or **professional** staff, paid or otherwise, who may have access to CORI are nevertheless not authorized to disseminate case file information.
- D. Authorization to Release CORI:
1. Right to Know:

An agency or individual seeking CORI from **probation department** files is deemed to have the legitimate right to know IF there is a COURT ORDER, STATUTE, or **CASE LAW** that establishes that right.

Do not be intimidated by those claiming a right to know which is not evident.
 2. Need to Know:

An agency or individual, having established right to know is deemed to have the need to know if the request is submitted under the auspices of official agency business AND the subject of the record is:
 - a. Under investigation.
 - b. Under arrest.
 - c. Under supervision.
 - d. Undergoing diagnosis, evaluation, or supervision plan development.
 - e. Applying for a peace officer position.

f. Applying for a higher level Security Clearance with the Department of Defense (DOD).

3. Concurrence of Right and Need to Know:

Before releasing information all requests must meet both criteria.

4. Department Record Security Clerk (Office Manager-**Manchester Office Building [MOB]** Records):

a. The Record Security Coordinator serves as the department consultant on **the processing and maintenance of record**.

(1) When a question, problem, or conflict arises about **processing a record check**, discuss the matter with the unit supervising probation officer (SPO), who will consult the available written resources within the Department.

(2) Contact the SPO who will contact the Record Security Coordinator if the question remains unresolved.

b. The Record Security Coordinator is the department liaison with the Department of Justice (DOJ)/Division of Law Enforcement/Record Security Unit and will seek clarification from that agency on CORI interpretation.

E. The California Attorney General/DOJ:

1. The DOJ is the agency mandated to safeguard CORI in California.

2. Criminal justice agency staff who misuse CORI may cause the agency employing them to lose its electronic access to offender records stored at the DOJ.

a. Agency staff found to have deliberately broken the CORI or other confidentiality laws may be vulnerable to misdemeanor charges (**PC Section 11142**; Labor Code **Section 432**).

b. Civil penalties may also result.

3. The Probation Department and all other criminal justice agencies in California are required to obey the regulations of DOJ and may be audited from time to time regarding its record security practices.

F. General Record Security Requirements:

1. All staff shall maintain records in such a way as to minimize access, inadvertent or careless viewing, by anyone, including other department staff. Additionally, they must ensure that access is granted only to staff with a legitimate working need.

2. Return Criminal History Sheets, which are received in ERROR (i.e., not referring to the subject under inquiry) to the Records Room with an explanation.

Do not discard or otherwise file these sheets lest this agency be unable to produce them in an audit.

3. Replace old Criminal History Sheets with UPDATED versions from the FBI or DOJ. Discard or shred the old ones in accordance with established department procedure.

4. Do not show Criminal History Sheets, in whole or in part, to the subject of the record.

- a. This Department does not involve itself in issues or challenges as to the accuracy of data UNLESS the matter or issue is material to an investigation conducted by the department and there is reason to believe such a challenge may prove true.

- b. Refer record subjects raising such challenges to the law enforcement agency responsible for the entry or to DOJ, both of which have procedures to handle these challenges (**PC** Sections 11120 – 11126).

5. The department does not provide copies of state Summary Criminal History Sheets to other authorized agencies except in an emergency (in order to ensure completeness and accuracy in all records transmitted within the system).

- a. Adherence by the Department to this policy can be critical because some authorized recipients nevertheless receive criminal history sheets with non-conviction CORI censored.

- b. Complete histories can be provided to criminal justice agencies **including any District Attorney's Office.**

II. PROCEDURE

A. Receiving and Evaluating Requests for Information/Assigned DPO:

1. Examine the request to determine if the request satisfies the right to know and need to know requirements before preparing a response.
2. Consult the current LIST OF AGENCIES AUTHORIZED TO RECEIVE CORI published by the DOJ to verify authority when in doubt.
3. Review applicable statute, court orders, policies, and procedures before responding.
4. Arrange to call the requester back if unable to validate request or identify by telephone.

- a. In emergencies such as immediate impending dictation dates, the DPO may release CORI forthwith subject to authentication of the requestor. **SPO approval is needed in these instances.**
- b. Requestors may be given CORI by telephone provided they agree to follow up with a written request and we arrange to provide our own written response immediately thereafter.
- c. Where written follow up does not appear indicated, the unit SPO may approve a verbal exchange so long as proper documentation is placed in the file.

B. Agencies wishing access to CORI only:

Refer all requestors for prior record data by authorized entities to DOJ for an up-to-date Summary Criminal History Sheet.

C. Agencies wishing access to general or specific probation case file information:

1. Conduct right to know and need to know as if the information desired was CORI only.
2. Determine if there is a compelling need for the information, and then review the request with the unit SPO for guidance.

If the agency does not meet both requirements (need and right to know), refer the requesting agency to the Orange County Superior Court. The requestor may petition the court with their specific request for records. If the petition is granted, the assigned DPO will comply accordingly. If the case is closed and is unassigned, the Custodian of Records will prepare the response.

D. Request to conduct a file review

1. **Refer the requestor to the COR or Subpoena Clerk, located at the North County Field Services Office.**
2. **Only the COR, Subpoena Clerk, or authorized personnel within the Professional Standards Division (PSD) is permitted to conduct a file review with a requestor.**
3. **The only requestors that are permitted to review probation files are law enforcement agencies, the District Attorney's Office, and the attorney of record for a subject who has a probation file. There are strict regulations when a federal agency wants to review or obtain juvenile records (PMI 2-5-011).**
4. **The Custodian of Records (COR) or Subpoena Clerk will:**
 - a. Confirm the requestor's identity and purpose of the request.
 - b. If no file exists, advise the requestor.

- c. If a file exists, it will be requested.
- d. Before allowing the requestor to review the file, examine his/her badge and official identification card. If these items cannot be provided do not proceed with the discussion/meeting.
- e. Once properly identified, provide the requestor with a work site (empty office, etc.) where the file can be reviewed.
 - (1) Enter a CORI Chrono in the Institutional Case Management System (ICMS) Chronological History Page.

Suggested wording:

"File reviewed and information released this date ____
. I certify the above person/agency was authorized to obtain information/records pursuant to §11075 through **PC** 11081. The agent was advised of his CORI Confidentiality responsibilities pursuant to **PC** 11142."

E. DPO's Broad Discretion:

- 1. CORI law gives wide latitude for the DPO to release information about probationers or file subjects to otherwise unauthorized recipient's provided:
 - a. The information released is in the best interest of the subject for his rehabilitation,

AND
 - b. The subject provides a written consent or waiver/release of information.
 - c. Consult those PMIs covering use of forms and procedures applicable to "client authorized" release, e.g., community resources for further guidance.
- 2. Remember, the DPO is required to LIMIT the information released to a recipient to that which is needed and no more.

For example: Court reports also contain information about persons other than the subject. Unless the requestor has a need for data about those people, the information should **not be released**.

Preparing Written Response:

- a. Prepare narrative summary when releasing information.
- b. Submit letter response to requestor attaching a copy of requestor's letter of inquiry.

c. Do not send specific file documents. Requestor should be referred to original sources if necessary.

3. Retain original inquiry and copy of our response to requestor in case file.

F. Chronological Entry Documenting Release:

1. **The DPO shall use the CRIMINAL OFFENDER RECORD INFORMATION (CORI) CHRONO REQUEST FORM and include:**

- a. Date of release
- b. What **information** was released
- c. Name and title of addressee and agency
- d. Purpose of release
- e. Method of release
- f. Who released it

2. **The unit clerk will make the CORI entry in ICMS and a copy of the CORI CHRONO REQUEST FORM will remain in the probation file.**

3. All records of release must be retained and accessible for two years hence.

G. **Only the COR or designee can release documents (including copies of reports) from the probation file.**

1. Use of the Confidential Stamp:

Documents containing confidential or controlled access information going out to authorized recipients must contain the warning - stamped, typed, or otherwise - which says:

"Pursuant to PC 11142 the furnishing of this report or information contained within to an unauthorized person is a misdemeanor.

H. Who May Have Court Reports:

1. All Probation Departments in California and the U.S.;
2. Attorney of Record and client, but only as specified by law and local court procedures (see Section II.I.5);
3. California Department of Corrections;
4. Division of Juvenile Justice;
5. California Rehabilitation Center;

6. County Parole;
 7. Military Recruiters **(except in the case of juvenile record information [Refer to PMI 2-5-011])**;
 8. Anyone else where **the** law specifically authorizes the access to, release, or receipt of the report.
 9. Anyone so ordered by the Court.
 - a. Sections 1203.05 and 1203.10 PC vests the Court with the authority to control access to adult court offender files and reports.
 - b. Reports of the DPO whether probation revocation or presentence proceedings are designed for current use and need-to-know expires after a while.
 - c. The privacy of others named in Pre-Sentence Reports or other probation reports and documents dictates need for circumspection as well.
 - d. Agencies authorized copies of court reports as designated in Section II.I.1-7 do not have to have these reports censored prior to release unless good cause is present.
 10. **The subject of the report.**
 11. **Victims of the case pursuant to PMI 2-1-107.**
- I. The following rubrics may be cited in other **PMIs**, but are listed here for reference.
1. Private Court Report Providers:
 - a. These are no more entitled to controlled access information than any other non-authorized individual or agency.
 - b. The DPO should consult with the unit SPO if it is deemed that an exception should be made. The matter is then referred to the Division Director for a decision.
 2. Citing Cases in Performance Evaluations:
 - a. Case file identifiers (names) or other information that would serve to compromise the confidentiality of the case shall not be cited in performance evaluations or any other documents routinely accessible to the public under other provision of law.
 - b. Performance on specific cases can be documented via A, J, DL, or I number so long as the identification of the individual is not possible.

3. Citing Cases in Staff Reports or Memos:

Probation cases must not be identified in any internal documents or reports unless the report document is marked confidential.

4. Information to Victims:

- a. State law requires the District Attorney to provide information to victims inquiring about sentences and disposition. (Section 11116.10 PC), further discussed in PMI 2-1-107 (Release of Pre-Sentence Reports to Victims of Marsy's Law/Victim's Bill of Rights).
- b. Section 742 WIC mandates this same dispositional release responsibility for juvenile cases on the DPO.
- c. Law enforcement is required to make available information contained in police reports under specified conditions (Government Code Section 6254 [f]).
- d. Consult other applicable laws and PMIs governing notification requirements to victims.

5. Copies of Court Reports to Attorneys:

The availability of court report copies for defense and prosecuting attorneys shall be governed by applicable statute (**PC** Section 1203, et seq.) and the governing procedures in the various courts in the County.

6. Access by Agents of the DPO:

- a. We generally need not be concerned about allowing access to case file information to persons who are not full or part time paid employees of the Probation Department but who are nonetheless acting as agents of the DPO, i.e., Volunteer Probation Officers (VPOs), Volunteers in Probation (VIPs), contract consultants, interns, or anyone else working under our direction. Contracts should be prepared containing understanding of confidentiality requirements.
- b. Other department policies and procedures prescribe the scope of duties for VPOs, VIPs, and interns for reasons other than record security. These PMIs should be consulted for guidance.

7. Standing Order No. 2008 of the Superior Court in and for the County of Orange (refers to adult probation files only):

- a. Any attorney representing either the People or a current or former adult probationer may view the Probation Department's file concerning that probationer, and may request the Probation Department to make photocopies of documents contained in the file that are relevant to a pending criminal proceeding or post-judgment relief.

- b. The following types of records are exempted from disclosure pursuant to this order and require a separate court order.
 - (1) Any and all “personal information” of any non-party, including all witnesses and victims: including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history.
 - (2) Medical and mental health records, including psychological/psychiatric evaluations.
 - (3) Medical records concerning the defendant, however, any such medical or mental health records concerning the defendant shall be provided to defense counsel of his or her agent upon presentation of a valid signed release (HIPPA waiver) by the defendant authorizing the disclosure of such records to defense counsel.
 - (4) Records relating to a pending investigation that meet the definition of “official information” as declared by Evidence Code **Section 1040**.
 - c. If the Probation Department determines the requested information is exempt from disclosure, **the department’s Custodian of Records** will advise counsel of such action.
8. Court Authorization for release of information to the Orange County Family Conciliation Court:
- a. Notwithstanding the provisions of this PMI, the Orange County Family Conciliation Court is entitled to the following documents from our files:
 - (1) State Summary Criminal History Sheets.
 - (2) Other criminal history records.
 - (3) Other "releasable information" contained in files of the Probation Department.
 - b. Staff of the Family Conciliation Unit are deemed to have both a right-to-know and need-to-know, and accordingly, may access all information contained in the police department files which would also be available to the DPO, so long as their staff is assigned to a case within their jurisdiction.
9. Officials Designated in **PC** Section 11105.1:

Since it is difficult to locate the officials designated in this statute in the List of Authorized Recipients, staff should refer to this statute for guidance.

REFERENCES:

Procedures:	1-1-102	Use of the California Sex and Arson Registry (CSAR) and Megan's Law Information System for Community Notification
	1-1-103	Teletype Services
	1-1-109	Confidentiality of California Department of Corrections Diagnostic Reports
	1-1-110	Release of Juvenile Record Information to Orange County School Districts, Police Agencies, and District Attorney
	1-1-111	Subpoenas-Subpoena Duces Tecums-Standing Order
	1-1-115	Sensitive Client Case Files
	1-1-116	Release of Juvenile Record Information Police Reports
	1-1-117	Juvenile Victim Services
	1-2-102	Volunteers in Probation Program
	1-2-255	Referral of Adult and Juvenile Probationers to Community Resources
	1-4-104	Threats: Staff Responsibilities Regarding Threats and Notice to Unsuspecting Victims
	1-4-203	Security Clearance, Volunteers, Vendors, Contractors and Orange County Public Works Personnel
	1-5-305	Retention and Destruction of Case Files
	2-5-008	Local and Out-of-Town Inquiries (OTI)-Juvenile
	2-5-009	Sealing/Release/Destruction of Juvenile Court Records
	2-5-011	Military Recruiter, Department of Defense and Job Corps Juvenile Record Checks and Character References
	2-6-008	Destruction or Redaction of Juvenile Records Pursuant to Health and Safety Code 11361.5
Policies:	A-21	Liability
	B-1	Case Confidentiality-Client's Rights to Privacy
	B-2	Inter- and Intra-Agency Confidentiality
	B-3	Case File Management and Security
	B-4	Sensitive Cases
	D-1	Threats, Harm, Danger to Employees and Others
	E-2	Subpoena, Summons, and Subpoena Duces Tecum
	G-3	Building Security and Safety
	G-13	Electronic Information Devices

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APPROVED BY: