



Police Record Checks Reform Act, 2015

Background and Overview

Background

What is a police record check?

- A police record check (PRC) is a search of information in police databases about a particular individual, to be used to screen the individual (i.e., assess suitability for a particular purpose, such as employment in a particular job)
- Currently, information searched as part of a PRC can range from **convictions** and findings of guilt to **non-convictions** (i.e., when a person is charged but not found guilty) and **non-criminal information** (i.e., when a person has an interaction with police but is not charged)
- Providers offer **multiple products**, also known as **types of PRCs**, and follow different standards for the type and range of information they search for each product/type

When and why are police record checks used?

- A PRC **may be required** by law or organizational policy
- A PRC may be a useful tool to help determine an individual's suitability for certain types of opportunities (e.g., employment in a position responsible for working with vulnerable individuals)
- However, it is just one of the tools available, in addition to interviews, reference checks, verification of credentials/licences/certifications, and in some cases, more thorough background checks

Key Issues Identified Prior to the PRCRA

Lack of consistency across providers

- Different **types** of checks offered (vary in name, format, content)
- Different **terminology**, or same terminology used with different meaning (Vulnerable Sector Check in Timmins ≠ Vulnerable Sector Check in Waterloo)
- Different **types of information** disclosed (non-convictions, non-criminal information may or may not be disclosed)
- Different **standards for releasing results** followed (to individual vs. third party requestor)

Calls for action

- A **broad spectrum of stakeholders** representing various sectors raised concerns about how PRCs were being conducted and **called for legislated standards**. Sectors include:
 - Policing
 - Legal
 - Privacy, civil liberties and human rights
 - Mental health
 - Non-profit (e.g., Ontario Non-Profit Network)
 - Private (e.g., Ontario Chamber of Commerce)



Purpose of the PRCRA

- The *Police Record Checks Reform Act, 2015* (PRCRA) was passed on December 1, 2015. It sets the province's first-ever clear, consistent and comprehensive set of standards to govern how PRCs are conducted and disclosed in Ontario
- The PRCRA is intended to promote public safety while respecting privacy by creating consistent practices around the information disclosed in PRCs, and how that information is disclosed

Overview of the PRCRA

Once proclaimed, the PRCRA will:

- 1 Apply to all PRC providers** in Ontario, when **conducting the majority** of the PRCs that are requested from them (i.e., for employment, volunteering, licensing and other purposes)
- 2 Standardize three types of PRCs that can be conducted** (i.e., Criminal Record Checks, Criminal Record and Judicial Matters Checks, and Vulnerable Sector Checks)
- 3 Limit and standardize the types of information authorized to be disclosed** in each type of PRC
- 4 Require that an individual receive their PRC before** being asked to consent to **disclosure to a third party**, such as an employer
 - After reviewing, the individual can provide the results directly to a third party, or consent to allow the PRC provider to release the results to the third party

1. Application of the Act

- The PRCRA will apply to **all PRC providers** in Ontario, which includes:
 - All municipal police services and the Ontario Provincial Police;
 - Any non-police entities that are authorized to have direct access to police databases, which are typically government and broader public sector regulatory agencies; and
 - Any other third party entities that do not have direct access to police databases, but are involved in other parts of the PRC process (e.g., request intake, identity verification, disclosure)
- PRC providers would be **responsible for complying** with the Act **when conducting the majority** of police record checks requested from them
- Currently, the PRCRA exempts providers from complying with the Act when conducting PRCs:
 - Required as part of an application for child custody made by a non-parent;
 - Required for the purpose of the Office of the Children's Lawyer representing a child or reporting to a court;
 - Required as part of an application for a legal name change;
 - Required as part of the jury selection process;
 - Conducted in relation to the administration of the *Firearms Act* (Canada);
 - Required for the purpose of carrying out the Attorney General's legislated functions/responsibilities;
 - Required for the purpose of fulfilling the duties assigned to Crown Attorneys and provincial prosecutors; and
 - Requested by a children's aid society for the purpose of performing its functions
- Regulations can create further exemptions.

2. Types of Police Record Checks

- The PRCRA identifies three standard types of PRCs:
 - Criminal Record Check,
 - Criminal Record and Judicial Matters Check, and
 - Vulnerable Sector Check (VSC)
- The types of PRCs are differentiated based on the specific types of information authorized to be disclosed within each of them, as outlined in the table on the next slide
- Additionally, the VSC is intended to be used for a specific purpose: to screen individuals that work or volunteer in positions of trust and/or authority relative to vulnerable individuals (e.g., teachers and daycare workers, staff in long-term care and retirement homes, service providers working with individuals with disabilities)
- In order to keep vulnerable persons safe, the PRCRA allows for the disclosure of the broadest range of information in VSCs, including disclosure of record suspensions (formerly pardons) and relevant non-conviction information

3. Types of Information Disclosed

Under the PRCRA, providers are **required to disclose certain types of information**, dependent on the type of PRC being conducted, and **not permitted to disclose any other types of information**

✓ *Disclose* ✗ *Do not Disclose*

Authorized Information (see Appendix A - Glossary for descriptions)		Criminal Record Check	Criminal Record and Judicial Matters Check	Vulnerable Sector Check
Type	Disclosure Period			
Criminal convictions	<ul style="list-style-type: none"> Indefinite for indictable and hybrid offences 5 years for summary offences 	✓	✓	✓
Findings of guilt under the <i>Youth Criminal Justice Act</i> (YCJA)	<ul style="list-style-type: none"> Varies based on type of record; periods set out in the YCJA 	✓	✓	✓
Absolute discharges	<ul style="list-style-type: none"> 1 year, per federal law 	✗	✓	✓
Conditional discharges	<ul style="list-style-type: none"> 3 years, per federal law 	✗	✓	✓
Outstanding charges and warrants to arrest	<ul style="list-style-type: none"> Indefinite 	✗	✓	✓
Court orders (excludes mental health related orders and family court restraining orders)	<ul style="list-style-type: none"> Indefinite 	✗	✓	✓
Findings of not criminally responsible on account of mental disorder (excludes findings that resulted in an absolute discharge)	<ul style="list-style-type: none"> 5 years 	✗	✗	✓
Record suspensions (formerly pardons)	<ul style="list-style-type: none"> Indefinite 	✗	✗	✓
Certain non-convictions (<u>includes only</u> charges that have been dismissed, withdrawn or stayed, or that resulted in a stay of proceedings or an acquittal)	<ul style="list-style-type: none"> Indefinite 	✗	✗	✓ see next slide

3. Types of Information Disclosed (cont'd)

Exceptional Disclosure of Non-Conviction Information in VSCs:

- Under the PRCRA, police services are **only permitted to disclose non-conviction information in the following circumstances:**
 - Disclosure is **part of a VSC** (i.e., non-convictions cannot be disclosed in the other two types of PRCs)
 - The following **criteria are met:**
 1. The non-conviction record relates to an offence that **involves the predation of a vulnerable person** (list of offences to be specified in regulation)
 2. Based on an assessment of the following factors, the provider has **reasonable grounds to believe** that the individual has engaged in a **pattern of predation indicating that they present a risk of harm to a vulnerable person:**
 - Whether the individual appears to have targeted a vulnerable person;
 - Whether the individual's behaviour was repeated and directed to more than one vulnerable person;
 - When the incident(s) of behaviour took place;
 - Number of incidents; and
 - Reason the incident(s) or behaviour did not lead to a conviction

Reconsideration:

- If a decision is made to disclose the non-conviction information, an **individual can request that the police service reconsider the decision**. This **could lead to the removal** of that information from the VSC before it is shared with a third party, such as an employer

4. Disclosure of Information

- Under the PRCRA, a provider must obtain an individual's **initial consent to conduct a PRC**, as well as a **second consent to permit disclosure** of the completed PRC to a third party
 - The PRCRA does not permit an individual to provide second consent until the PRC is complete and they have had an opportunity to review it
 - Second consent is only required if the provider intends to directly disclose the PRC to a third party (i.e., if the individual chooses to disclose the result to the third party themselves, the provider's involvement in the process ends, and second consent is not required)
- Consent requirements under the PRCRA are intended to give the individual the **opportunity to review** their PRC **before it is viewed by a third party**, so that they can address any issues with the PRC before it is used to assess their suitability
 - Issues may include the **disclosure of inaccurate** information that requires correction, or disclosure of non-conviction information that the individual thinks is irrelevant, and wishes to have reconsidered
- This helps to ensure that an individual is able to make a well-informed decision about who they allow to have access to their personal information
- If an individual declines to provide consent to conduct a PRC and/or to disclose a complete PRC to an employer or other third party, the organization may choose to remove the individual from the screening process

Appendix A - Glossary

Type of Information	Description
Absolute and conditional discharges	An alternative sentencing option for an accused who has been found guilty of an offence and is discharged with conditions (conditional) or without conditions (absolute).
Acquittals	A finding of “not guilty.”
Court orders	A court’s direction requiring an individual to do something or refrain from doing something (e.g., probation order, prohibition order, peace bond).
Dismissed charges	A decision by the court to terminate a legal proceeding.
Findings of guilt under the Youth Criminal Justice Act	<p>A court disposition where a young person is found guilty (the term convicted does not apply to youth).</p> <ul style="list-style-type: none"> • Subject to an access period during which the record can be given to those specifically listed under the Act (e.g., the individual, guardians/parents, lawyers, Crown prosecutors, victim(s) and federal, provincial and municipal governments for employment or volunteer purposes). • The length of the access period depends on the type of offence and the final court disposition (generally, the more serious the offence or court disposition, the longer the access period).
Findings of not criminally responsible on account of mental disorder	A case in which the accused committed an act/omitted to act while suffering from a mental disorder that rendered him/her incapable of appreciating the nature and quality of the act/omission, or of knowing that it was wrong.
Hybrid offences	A criminal offence which may be tried by summary conviction procedure or by indictment at the option of the prosecutor. A hybrid offence is an indictable offence until the Crown elects to proceed by way of summary conviction.
Indictable offences	A more serious criminal offence that carries a longer maximum sentence and/or higher fine; these offences are also subject to more complex court procedures, including the right to a preliminary hearing before a trial.

Appendix A - Glossary

Type of Information	Description
Outstanding charges	A formal accusation of an offence as a preliminary step to prosecution.
Record suspensions (formerly known as pardons)	A record of a conviction that is kept separate and apart from other criminal records because the convicted person has completed his/her sentence, demonstrated that he/she is a law-abiding citizen, and been granted his/her application to have the record suspended.
Stay of proceedings	An order suspending a legal proceeding.
Stayed charges	A decision by the Crown to discontinue a prosecution.
Summary offences	A less serious offence that carries a lower maximum penalty and is subject to less complex court procedures (e.g., disorderly conduct, trespassing at night).
Warrants to arrest	A document authorizing the police to arrest an individual.
Withdrawn charges	A decision by the Crown to discontinue a prosecution.