

Police Record Checks Reform Act, 2015

Background and Overview

Purpose of the *Police Record Checks Reform Act*

- The *Police Record Checks Reform Act, 2015* (PRCRA) was passed on December 1, 2015, and was proclaimed into force on November 1, 2018.
- The PRCRA sets the Province's first-ever clear, consistent and comprehensive set of standards to govern how a police record check (PRC) is 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.

• Key issues identified prior to the PRCRA

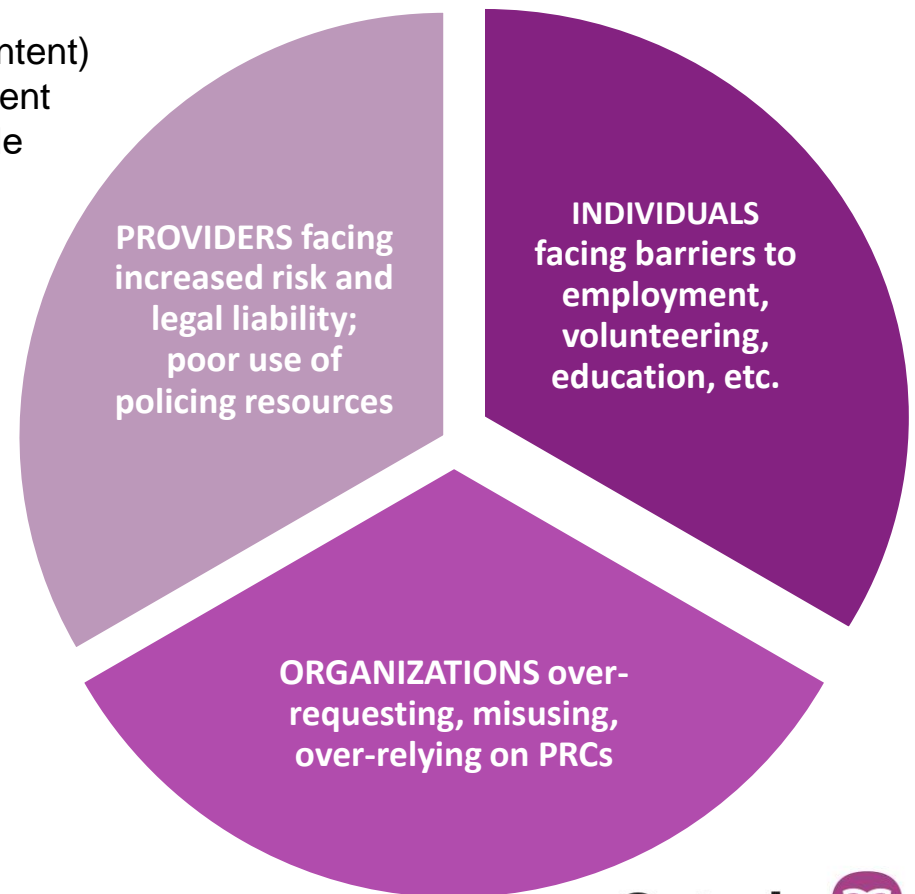
- Different types of checks offered (vary in name, format, content)
- Different terminology, or same terminology used with different meaning (Vulnerable Sector Check in Timmins ≠ Vulnerable Sector Check in Waterloo)
- Different types of information disclosed (non-convictions, non-criminal information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

• Calls for action prior to the PRCRA

- 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)



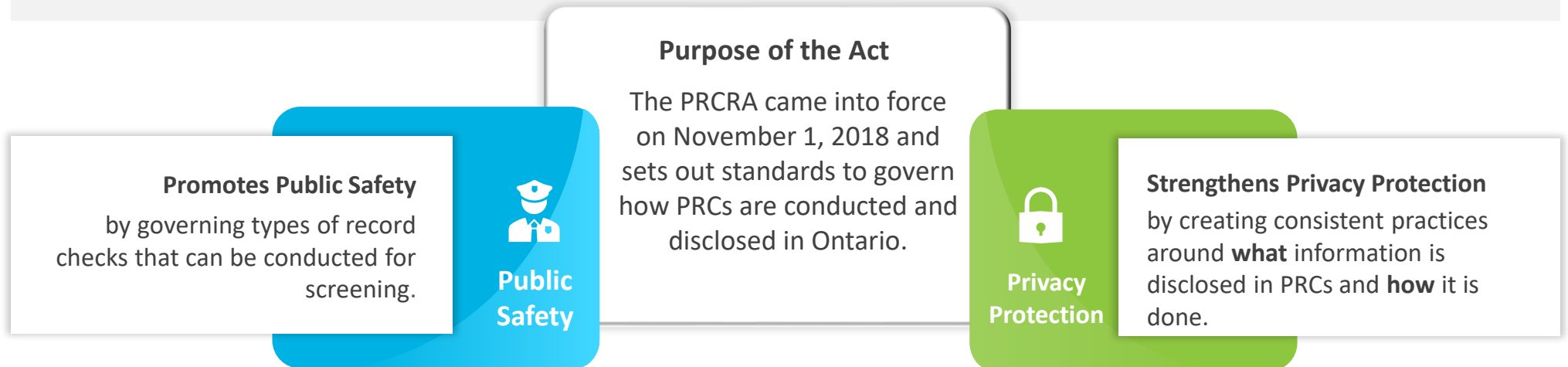
Background

What is a police record check?

A PRC is a search of information in police databases about an individual. PRCs are often used as part of a screening process for employment or volunteering, entering education or a profession, access programs or services, etc.

Why was the Act created?

The intention behind the Act is to remove inappropriate barriers (e.g. unintended bias) to the people of Ontario seeking access to employment, education or other opportunities.



The PRCRA allows for some **exemptions from the legislation, where ministries or regulators put forward compelling rationale. For example:**

- for a certain purpose (for example, as part of an application for child custody made by a non-parent).
- to adhere to federal requirements (for example, in relation to the Firearms Act (Canada)).

Background

When and why are police record checks used?

- A PRC may be required by law (e.g., *Long-Term Care Homes Act, 2007* and regulations), as a result of policies (e.g., to volunteer for a youth day camp), or possibly for insurance purposes.
- Previous consultations have revealed that PRCs are widely used (practically all sectors appear to rely on them).
- A PRC can be a useful tool to help determine an individual's suitability for certain types of opportunities; however, it is just one of the tools available, and best practices suggest additional tools are critical (interviews, reference checks, verification of credentials/licenses/certifications, having operational policies in place that reduce risk, etc.).

> 590,000

Number of PRCs Police Services in Ontario conducted in 2019.

19 Ministries

PRCRA affects their employees and contracted services, their sectors, their regulators and their stakeholders.

140,000

Number of standardized PRCs OPP conducted in 2019.

Private Sector Providers:

- Are private sector businesses that facilitate or provide police record checks. They are also subject to the PRCRA.
- Provide a vast number of police record checks in Ontario to employers, organizations, etc. (e.g., Banks, large corporations).
- Provide certain **police services with a source of revenue** (e.g., check Canadian Police Information Centre (CPIC) databases).

Overview of the PRCRA

1

Applicability of the PRCRA



Applies to **all police record check providers** in Ontario, including:

- **Police Services:** provincial and municipal police services.
- **“CPIC Agencies”:** Non-police agencies that have direct access to police databases (e.g., Registrar for private security has direct access to CPIC); and
- **Private sector police record check providers.**

2

Disclosure and Consent



Providers must obtain an individual’s **consent prior to conducting a PRC.**

In most cases, a **“second consent”** is required (i.e., the PRC must be returned to the individual, who can then decide whether or not they want to share the information with anyone else, including an employer).

3

Types of Record Checks



Outlines three types of PRCs and sets out what information may be included for each type:

1. **Criminal Record Check (CRC);**
2. **Criminal Record and Judicial Matters Check (CRJMC); and**
3. **Vulnerable Sector Check (VSC).**

See next slide for information included under each.

4

Exemptions to the PRCRA



PRCs for some sectors have either a **permanent** or **temporary** exemption to some or all the PRCRA requirements.

If an exemption applies, police services may, for example, include additional information when conducting a PRC (could include mental health related information or non-criminal information).

Types of Information Disclosed

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

✓ *Include* ✗ *Do not Include*

Authorized Information (see Appendix A - Glossary for descriptions)		Criminal Record Check	Criminal Record and Judicial Matters Check	Vulnerable Sector Check
Type	Time 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 (YCJA)</i>	<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</u> only 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)

Permanent Exemptions

- There are some **permanent** exemptions in the PRCRA legislation and regulations:

Permanent Exemptions

PRCRA (Legislation)

- Police Record Check required as part of or for the purpose of:
 - An application for child custody made by a non-parent;
 - The Office of the Children’s Lawyer representing a child or reporting to a court;
 - A legal name change;
 - A jury selection process;
 - The administration of the Firearms Act (Canada);
 - Carrying out the Attorney General’s legislated functions/responsibilities;
 - Fulfilling the duties assigned to Crown Attorneys and provincial prosecutors; and
 - A children’s aid society for the purpose of performing its functions.

Exemptions Regulation

- Police Record Check required as part of or for the purpose of:
 - Adoption, residential and foster care under the Child, Youth and Family Services Act, 2017;
 - Electricity Generation Facilities;
 - Ontario Securities Commission;
 - Agencies with access to Canadian Police Information Centre database (exempt from s. 12 consent requirement);
 - Securities markets, certain roles (exempt from s. 12 consent requirement); and
 - PRC providers that use a self declaration process, which is validated by a police service (exempt from s. 12 consent requirement).

Temporary Exemptions

- There are also some sectors that have time-limited, **temporary** exemptions to all or some of the PRCRA requirements. These were intended to provide more time to determine specific sector needs, and if the temporary exemptions were required on a permanent basis.

Temporary Exemptions (in regulation)

- Correctional institutions, parole offices, etc.;
- Police services;
- Office of the Independent Police Review Director;
- Criminal Intelligence Service Ontario;
- Office of the Provincial Security Advisor;
- Inspectors, investigators, etc.;
- Special Investigations Unit;
- Independent Police Review Director;
- Adjudicative Tribunals;
- Lottery, Gaming, Cannabis, etc.;
- Office of the Public Guardian and Trustee and of Children's Lawyer;
- Office for Victims of Crime;
- Crown Attorneys on fee for service;
- Criminal Injuries Compensation Board;
- Child and Parent Resource Institute;
- Financial services;
- **Schools and childcare providers** (s. 9 of the act only: type of information that may be disclosed as part of a PRC); and
- **Administration of justice and other roles** - where access to facilities, confidential information or critical infrastructure *could undermine the administration of justice OR significantly jeopardize the safety of an individual or the security or safety of assets, information, etc.* (e.g., Crown Attorneys, adjudicative tribunals, correctional institutions, etc., as well as OPS positions and contracts for service related to various sectors).

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.

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.

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.

Appendix A – Glossary continued

Type of Information	Description
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.
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 has 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.