

**Summary of Proposed Changes to Ontario Regulation 155/18  
– Lieutenant Governor in Council’s Regulation and Ontario  
Regulation 200/99 – Minister’s Regulation**

*Child, Youth and Family Services Act, 2017*

*Intercountry Adoption Act, 1998*

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## Purpose

The purpose of this document is to seek feedback from Ontarians on a summary of proposed **draft** amendments to Ontario Regulation (O. Reg.) 155/18 under the *Child, Youth and Family Services Act, 2017* (CYFSA) and O. Reg 200/99 under the *Intercountry Adoption Act, 1998* (IAA). The proposed changes are about streamlining and clarifying when police record checks are required in the child and youth services sector, and what practices and procedures are to be followed when a check is required. The changes will affect service providers funded or licensed to deliver services under the CYFSA or the IAA.

Please provide the Ministry of Children, Community and Social Services (the ministry) with your comments on the proposal by email to [CYFSA@ontario.ca](mailto:CYFSA@ontario.ca) by May 4, 2022. Please reference the section and paragraph/bullet (e.g., B1(ii)(a)) in your feedback for clarity.

**Disclaimer:** In this policy intent summary, the term “residential” is used for legal accuracy, however, the ministry recognizes that this term, in the context of providing group and foster care to children and young persons in Ontario, may be traumatizing and triggering for First Nations, Inuit and Métis peoples given the history of the residential school system in Canada. As a result, the ministry is reviewing options for other language that could be used in the CYFSA and its regulations to describe “residential care” provided to children and young persons in licensed residential settings. As this work continues, the ministry will be consulting with stakeholders across Ontario, including representatives of First Nations, Inuit and Métis peoples and Indigenous service providers, given the importance of their perspectives in this area and others.

## Proposed Regulatory Changes

The ministry is proposing new regulatory provisions under the *Child, Youth and Family Services Act, 2017* (CYFSA) and the *Intercountry Adoption Act, 1998* (IAA) to streamline and clarify when police record checks are required in the child and youth services sector, and what practices and procedures are to be followed when a check is required. The proposed requirements, developed with input from external sector partners and internal stakeholders, incorporate best practices respecting the use of police record checks from various sectors that deliver services to vulnerable people and from other jurisdictions.

**Note:** The *Police Record Checks Reform Act, 2015* (PRCRA) came into force on November 1, 2018 and governs how a police record check is conducted and disclosed in Ontario. The Act establishes three types of checks (Criminal Record Checks, Criminal Record and Judicial Matters Checks, and Vulnerable Sector Checks) and limits and standardizes the kinds of records police services may disclose when completing each type of check. The PRCRA does not specify when/for whom police record checks should be obtained. The Act and its regulations include some exemptions that set out

instances where the PRCRA requirements (e.g., limitations on the information that can be disclosed) do not apply. Checks used to screen a number of roles and positions within the child and youth services sector (e.g., foster parents, prospective adoptive parents) are exempt from application of the PRCRA. Unless certain conditions are met, police services may not disclose information pursuant to an exemption set out in the [Exemptions Regulation \(O. Reg. 347/18\)](#) beyond the information that could be included in one of the three types of checks set out in the PRCRA.<sup>1</sup>

The proposed requirements will provide measures that are expected to better protect vulnerable children and young persons and promote transparency and standardization across the child and youth services sector by:

- **Establishing minimum requirements** for police record checks in the child and youth services sector.
- **Detailing practices and procedures** that service providers must follow when a check is required, including:
  - Who is required to obtain a police record check (see sections A and B1);
  - How long the police record check is valid for the purpose for which it was sought under the CYFSA and the IAA, and how often a check needs to be repeated (see sections E and C);
  - The timelines applicable in different circumstances for requesting and providing the police record check (see section C).
- **Establishing standards** for the type of check or records required to be provided, including:
  - For the purposes of screening individuals for specified roles and positions (e.g., foster parent, prospective adoptive parent) where the PRCRA does not apply, identifying the specific records to be sought in a check (see section B2). As these searches are exempt from the PRCRA, they may contain records in addition to those that can be disclosed as part of a check to which the PRCRA applies.
  - For the purposes of screening other individuals involved in providing child and youth services (e.g. staff or volunteer at a children’s aid society) where the PRCRA does apply, setting out the type of police record check that must be provided (e.g., Vulnerable Sector Check).

The proposed requirements are intended to better support the safety and well-being of vulnerable children and young persons by promoting the appropriate and timely screening of individuals who are or may be placed in a position of trust and authority over a child or young person. Developing consistent screening standards in the child and youth services sector is also intended to help address concerns raised in past Coroner’s Inquests into the deaths of vulnerable children about protecting their safety.

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<sup>1</sup> O. Reg. 347/18, s. 0.3

In developing the proposed requirements, the following have also been important considerations:

- The individual rights and interests (including privacy and human rights) of persons who will be required to request and provide the results of police record checks; and
- The interests of children and young persons in receiving services that take into account their identity characteristics as well as their cultural and linguistic needs.

The ministry has worked to balance the nature and scope of the records requested in relation to individuals that will be working in service delivery settings with the potential risk to children and young persons. For example, a police record check containing a broader range of records is only required for individuals that will be in a unique position of trust and authority with respect to a child or young person.

The proposed requirements also contemplate processes and procedures intended to safeguard individual privacy interests. For example, individuals required to provide police record checks would request and receive their police record checks directly from the police service (the checks would not be provided by the police service directly to the person or entity requiring the check). Furthermore, individuals subject to police record check requirements will have the opportunity to contextualize any records released on a check and explain why they may or may not be relevant to the position they are holding/seeking.

Additionally, as described in section B1(i) of the table below, disclosure of a broader range of records will, with limited exceptions, be subject to the disclosure framework set out in O. Reg. 347/18 under the PRCRA. This disclosure framework not only constrains disclosure of records that exceed the scope of a Vulnerable Sector Check, but also introduces further procedural safeguards for individuals who are the subject of the police record check. Such procedural safeguards include the opportunity to request reconsideration of the information disclosed as part of a police record check; and/or request corrections to the results of a police record check.

The ministry has held some early consultations respecting the potential police record check requirements to inform the development of the regulatory provisions. The ministry heard that increased oversight and transparency are broadly endorsed by sector partners.

The following table provides a summary of the proposed changes to O. Reg. 155/18 and O. Reg. 200/99.

<b>A. Individuals Required to Request a Vulnerable Sector Check</b>
i. The Schedule in the PRCRA defines the records that are released under a “Vulnerable Sector Check”. This includes information about criminal convictions where a pardon or record suspension was granted, if authorized under the <i>Criminal Records Act, 1985</i> (Canada). Where the “exceptional disclosure test”

set out at s. 10 of the PRCRA is met, a Vulnerable Sector Check will also contain non-conviction information (records relating to an individual who was charged with certain types of offences but the charge was dismissed, withdrawn or stayed).

- ii. Under the proposed regulatory provisions, the following persons could be required to provide a Vulnerable Sector Check:
  - a) Persons who hold an adoption licence under Part VII of the CYFSA or under the IAA or who are applying for an adoption licence (where the licensee or prospective licensee is a corporate entity, the officers and directors of the corporation would be required to request a Vulnerable Sector Check)
  - b) Adoption practitioners and people who seek to be adoption practitioners; and
  - c) Unless they are required to seek a check containing the expanded list of records described in the sections below, all persons who may have unsupervised interaction with children and young persons as a result of their professional affiliation (e.g. employee, volunteer, student on placement, board member, contractor, birth parent counsellor) with one of the following:
    - 1) A service provider under the CYFSA<sup>2</sup>
    - 2) A person issued a licence to facilitate adoptions under the IAA
- iii. The ministry is continuing policy work and engagement, including with societies (including Indigenous societies), Indigenous partners, and policing stakeholders, to determine appropriate approaches to police record check requirements (e.g., potentially being subject to a Vulnerable Sector Check) for youth who were receiving foster care from the foster parent immediately before their 18th birthday who are still residing with the same individual who had been providing foster care as a foster parent, and are now either receiving services under the CYFSA from a children's aid society, or are residing with the same individual who had been providing foster care as a foster parent, in a host family residence, as defined in the Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act (SIPDDA), 2008).

#### **B1. Individuals Required to Request a Check Containing a Broader Range of Records Including Non-Conviction Information**

- i. Individuals who are or will be in unique positions of trust and authority over highly vulnerable children and youth (e.g., providing care for children who have been removed from the care of their parent/caregiver) are proposed to be screened using a broader range of police records, including additional non-conviction information (i.e., records in addition to those that would be disclosed under a Vulnerable Sector Check), as one measure of determining whether they are suitable for the position/role. This requirement would also capture

<sup>2</sup> Under s. 2(1) of the CYFSA, service providers include holders of a licence issued under Part VIII or Part IX of the CYFSA and persons or entities, including children's aid societies, that provide a service funded under the CYFSA.

certain other adults in the setting, to assist in determining whether they may pose a risk to the safety and well-being of children and young persons in that setting. Police record checks to screen individuals for all of these roles and positions are exempt from application of the PRCRA, as they fall within the exemptions identified in s. 2(2) paragraph 8 of the PRCRA or in s. 1 of O. Reg 347/18. A broader range of records may therefore be disclosed than would be permitted under a Vulnerable Sector Check; however, for those police record checks that are exempt under s.1 of O. Reg. 347/18, police services would only have the authority to disclose such records if they met the conditions set out in O. Reg. 347/18 under the PRCRA.<sup>3</sup>

- ii. Under the proposed regulatory provisions, the following persons would be required to request from a police service a police record check that contains this broader range of records (listed in the section below entitled: “Records to Be Requested by Individuals Referred to in B1”):
  - a) Persons who hold a residential licence under Part IX of the CYFSA or who are applying for a residential licence (where the licensee or prospective licensee is a corporate entity, the officers and directors of the corporation);
  - b) Current and prospective employees/students/volunteers who are or will be providing direct residential care to vulnerable children and young persons;
  - c) Prospective adoptive parents, and adults 18 and older who live in the home;
  - d) Kinship service caregivers and persons providing care in a “place of safety” (as defined in s. 74(4) of the CYFSA);
  - e) Foster parents and prospective foster parents; and
  - f) Adults who are 18 and older who live in a foster, kinship service or “place of safety” home under the CYFSA.
- iii. The ministry is continuing policy work and engagement, including with societies (including Indigenous societies), Indigenous partners, and policing stakeholders, to determine appropriate approaches to police record check requirements (e.g., potentially being subject to the requirement to request a check containing a broader range of records) for:
  - a) Individuals providing care to First Nations, Inuit or Métis children pursuant to a customary care agreement;
  - b) Roles/positions in directly operated Youth Justice facilities and youth probation offices; and
  - c) The Child and Parent Resource Institute, a directly operated mental health facility.

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<sup>3</sup> Section 0.3 of O. Reg 347/18 under the PRCRA prohibits a police service that is performing a police record check pursuant to an exemption set out in the regulation from disclosing any information beyond what would be provided in one of the three types of checks set out in the PRCRA, unless the information represents a public safety concern. The police service may not disclose more information than is necessary to indicate the public safety concern. Further, the chief of police or designate must reasonably believe that the information revealed raises clear public safety concerns, is recent or has occurred with enough frequency to raise ongoing public safety concerns, is directly relevant to the position the individual is being screened for, and is based on reliable sources.

## **B2. Police Records to Be Requested by Individuals Referred to in B1**

- i. The proposed regulatory provisions would require persons holding or seeking specified roles/positions within the child and youth services sector (those listed in B1) to request a police record check that contains the records listed below. As noted above, these checks are exempt from application of the PRCRA, either pursuant to s. 2(2) paragraph 8 of the PRCRA or s.1 of O. Reg. 347/18.
- ii. This list of records is modelled on the list of records requested in the police record check that must be obtained by non-parents who are applying for decision-making responsibility for a child under the *Children's Law Reform Act* and includes non-conviction information.
- iii. The records requested would include :
  - a) every criminal offence of which the person has been convicted, except in respect of which a pardon has been issued or granted under the *Criminal Records Act, 1985* (Canada);
  - b) despite clause (a) above, any conviction for which a pardon has been granted, where disclosure is authorized under the *Criminal Records Act, 1985* (Canada);
  - c) every criminal offence of which the person has been found guilty and has been discharged, except an offence in respect of which the *Criminal Records Act, 1985* (Canada) requires that the record be purged;
  - d) every finding of guilt under the *Youth Criminal Justice Act, 2002* (Canada) in respect of the individual during the applicable period of access under that Act;
  - e) every outstanding order of a judge or justice of the peace made against the person in respect of a criminal matter, including a probation order, prohibition order or warrant;
  - f) every outstanding restraining order made against the person under section 35 of the *Children's Law Reform Act, 1990*, section 46 of the *Family Law Act, 1990* or section 137 of the *Child, Youth and Family Services Act, 2017*, or any predecessors of those sections;
  - g) every outstanding criminal charge against the person;
  - h) every criminal charge against the person that,
    - i. resulted in a finding of not criminally responsible on account of mental disorder,

- ii. resulted in a stay of proceedings,
  - iii. was dismissed by the court, or
  - iv. was withdrawn by the Crown
- i) every contact between the person and a police force or service for which the police force or service has a written record
  - j) every contact between the person and a police force or service in relation to actions taken against the person under the Mental Health Act, 1990 because of a determination under that Act that the person was suffering or apparently suffering from a mental disorder of a nature or quality that would likely result in serious bodily harm to the person or to another person or in serious physical impairment of the person.
- iv. While the proposed regulatory provisions would require the specified persons to request the listed records from a police service, for those checks that are exempt from application of the PRCRA under s. 1 of O. Reg. 347/18, the disclosure of any records that exceed the scope of a Vulnerable Sector Check would be subject to the conditions set out in section 0.3 of that regulation.

### **C. Timing and Frequency of Police Record Checks**

- i. Police record checks are point-in-time checks that should be repeated at regular intervals for individuals who have previously provided a check to support service providers in assessing whether the individual is still suitable to be in a position of trust and authority over a child or young person.
- ii. Under the proposed regulatory provisions, and subject to input from policing stakeholders, the following timing and frequency (i.e., every 3 years) requirements for requesting police record checks and providing the results would apply:
  - 1) **Applicants and holders of licenses under Parts VIII and IX of the CYFSA, or under the IAA**
    - a) Persons who are applying for an adoption licence (where the prospective licensee is a corporate entity, the officers and directors) and persons who are applying for a residential licence (where the prospective licensee is a corporate entity, the officers and directors) would be required to request the relevant police record check and provide the results to a ministry Director as part of their application.
    - b) Persons who hold an adoption license or residential licence would be required to request the relevant police record check and provide the results to a ministry Director at least once every three years after they



provided the last police record check.

- c) Officers and directors of corporations holding either an adoption licence or a residential licence would be required to request the relevant police record check and provide the results to a ministry Director within 60 days of becoming an officer or director of the corporation and at least once every three years thereafter.

**2) Adoption Practitioners**

- a) Persons seeking to be adoption practitioners would be required to request a Vulnerable Sector Check and provide the results to a ministry Director at the time they seek to be approved as an adoption practitioner.
- b) An adoption practitioner would be required to request a Vulnerable Sector Check and provide the results to a ministry Director at least once every three years after they provided the last police record check.

**3) Prospective adoptive parents and adults living with them**

- a) Prospective adoptive parents and adults who live with them would be required to request a check containing a broader range of records, including non-conviction information, and provide the results to a children's aid society or adoption practitioner as part of an adoption homestudy assessment and at least once every three years thereafter until a final order is made for the child's adoption either by an Ontario court or by a court in another jurisdiction.

**4) Place of safety caregiver and adults living with them**

- a) A person who is or seeks to be a primary caregiver for a child in a home designated as a place of safety, and any adult living with them, would be required to request the relevant police record check as soon as practicable after the placement is identified by the society but no later than 7 days after the child is placed in the home and then provide the police record check results to the relevant service provider as soon as possible after receiving it.

**5) Kinship service caregiver and adults living with them**

- a) A person who is or seeks to be a primary caregiver for a kinship service placement, and any adult living with them, would be required to request the relevant police record check as soon as practicable after the placement is identified by the society but no later than 7 days after the child is placed in the home and then provide the police record check results to the relevant service provider as soon as possible after receiving it.

- b) A kinship service caregiver and any adult living with them would be required to request the relevant police record check and provide the results to a service provider at least once every three years after they provided the last police record check, for so long as the caregiver continues to receive services from the society. Such persons would not be required to submit a police record check after they have been granted legal custody under clause 102(1) of the CYFSA of a child whom they were providing kinship service if they are not acting as a kinship service caregiver for any other child.

**6) Foster parents, prospective foster parents and persons living with them**

- a) A prospective foster parent and any adult living with them would be required to request the relevant police record check before they begin interacting with children or young persons without supervision and then provide the police record check results to the relevant service provider as soon as possible after receiving them.
- b) A foster parent and any adult living with them would be required to request the relevant police record check and provide the results to a service provider at least once every three years after they provided the last police record check. Such persons would not be required to submit a police record check after they have been granted legal custody under clause 116(1)(b) of the CYFSA of a child whom they were fostering if they are not acting as a foster parent for any other child.

**7) Persons who have or who seek a professional affiliation with a service provider or an adoption licensee under the IAA**

- a) All persons seeking a professional affiliation with a CYFSA service provider (employees, volunteers, students on placement, board members, contractors, birth parent counsellor) or with a person issued a licence to facilitate adoptions under the IAA and who may as a result have unsupervised interaction with children and young persons receiving services from that service provider or licensee are required to request the relevant police record check before the person begins interacting, without supervision, with children or young persons. They would then be required to provide the relevant police record check results to the relevant service provider or licensee as soon as possible after they receive it.
- b) All persons who have a professional affiliation as described above would be required to request the relevant police record check and provide the results at least once every three years after they provided the last police record check.

**8) Persons turning 18 years of age**

- a) The following persons would be required to request a police record check within 60 days of turning 18 and to provide the results to the relevant service provider, adoption practitioner or adoption licensee as soon as possible after receiving it:
  - i. A person who has a professional affiliation with the service provider or licensee (employees, volunteers, students on placement, board members, contractors) and who may as a result have unsupervised interaction with children or young persons
  - ii. A person living with a foster parent or prospective foster parent (please note the ongoing policy work with respect to the persons described at A(iii) of this table)
  - iii. A person living with a prospective adoptive parent
  - iv. A person living with a place of safety caregiver
  - v. A person living with a kinship service caregiver

**D. Offence Declarations**

- i. An offence declaration is a written statement signed by the person making the declaration, which lists, in relation to a specified period of time, all of the person's convictions for offences under the *Criminal Code* (Canada) and every criminal offence for which there is an outstanding charge or warrant for arrest in respect of the person.
- ii. Under the proposed regulatory provisions, persons required to request a police record check and provide the results would also be required to provide an offence declaration at the same time, to cover the period of time between when the person requested the check from the police service and when the person provided the results to the relevant entity (e.g. ministry director, service provider, adoption practitioner, etc.). Additionally, in a year in which a person is not required to request a police record check and provide the results, the person would be required to provide an offence declaration on or before the anniversary of the day on which the person last provided an offence declaration or results of a police record check.

**E. Validity of a Police Record Check**

- i. Under the proposed regulatory provisions, results of a police record check would only be considered valid if it is an original copy that has been issued by a police record check provider within the last six months.

**F. Statement of Relevance**

- i. Under the proposed regulatory provisions, when providing results of a police record check, a person may also include a written statement about whether, in

their opinion, the contents of the record are or are not relevant to the position or role that the person holds or seeks to hold.

#### **G. Obligations of Service Providers and Other Entities Who Receive Police Record Checks**

- i. Under the proposed regulatory provisions, a service provider or other entity that may receive results of a police record check would be required to make the following information available to any person who may be required to request a police record check and provide the results:
  - a) The process for obtaining a police record check.
  - b) The process for submitting an offence declaration.
  - c) Information about how the service provider or other entity will protect information contained in the police record check.
  - d) Information about the right of a person who provides a police record check to provide a written statement about whether, in their opinion, the contents of the record are or are not relevant to the position or role that the person holds or seeks to hold.

#### **H. Notice of Conviction or Charge**

- i. Under the proposed regulatory provisions, a person required to request a police record check would be required to, as soon as possible after being charged with and/or convicted of an offence under the *Criminal Code* (Canada), provide a written and signed notice informing a Director or service provider of the charge and/or conviction.

#### **I. Break in Affiliation**

- i. Under the proposed regulatory provisions, if there is a break in the professional affiliation between a person who has a professional affiliation with a CYFSA service provider and that service provider, the following rules would apply:
  - a) In the case of a break that is 6 months or less, the person would be required to provide the service provider with any police record check or offence declaration the person would have been required to provide had the break not occurred.
  - b) In the case of a break that is longer than 6 months, the person would be required to provide the service provider with the relevant police record check and offence declaration even if the police record check or offence declaration would not be required had the break not occurred.
- ii. The same would apply in the case of a person who has a professional affiliation with a person issued a licence to facilitate adoptions under the IAA.

- iii. A person referred to above who is required to provide a police record check or offence declaration would be required to,
  - a) request any police record check and provide any required offence declaration before interacting, without supervision, with children and young persons; and
  - b) provide the police record check to the relevant entity as soon as possible after they receive it.

## **Conclusion**

All interested parties are encouraged to provide feedback on the proposed regulatory provisions. The ministry values the unique and diverse perspectives from children and youth, families, and broader sector partners, including police stakeholders.

Please provide the ministry with your comments by email to [CYFSA@ontario.ca](mailto:CYFSA@ontario.ca) by no later than May 4, 2022. Please reference the section and paragraph/bullet (e.g., B1(ii)(a)) in your feedback for clarity.

Please note that you will not receive a formal response to your comment. The ministry will review all feedback received and consider revisions to the proposed regulations as appropriate.

Thank you for taking the time to review this document and provide feedback.