

Police Record Checks Reform Act, 2015

Five-Year Review: Consultation Paper

The Ministry of the Solicitor General (the ministry) is conducting a review of the [Police Record Checks Reform Act, 2015](#) (PRCRA), in line with Section 21 of the act, which requires a review within five years of the act coming into force. The purpose of the review is to determine whether the PRCRA is achieving its policy intent of standardizing the police record check process while balancing public safety and privacy rights.

The review also aims to gather information related to issues not directly governed by the PRCRA such as:

- Exploring baselines/minimum requirements, reusability, and validity periods for police record checks;
- Issues that impact the delivery of police record checks, such as processing times and how frequently checks are required / requested;
- Employment opportunities for those with a criminal record and connection to public safety;
- The impact(s) of record check requirements on the supply and demand of volunteers; and,
- Impact of police record checks on the resource capacity of police services, municipalities, and Ontarians.

As part of its review and to help identify potential areas of improvement, the ministry is soliciting feedback from the public.

Instructions

Please respond to all or some of the engagement questions below and submit your responses through the Ontario Regulatory Registry or by email to SOLGENinput@ontario.ca with the subject line: PRCRA Legislative Review. All feedback provided by respondents will be reviewed and considered by the ministry. If you require an accessibility accommodation or an alternative method to provide your feedback please submit your request to SOLGENinput@ontario.ca.

The questions are divided into four themes:

1. Balancing public safety and privacy rights
2. Service delivery
3. Impact of PRC requirements on volunteering and employment opportunities
4. Additional feedback

Notice to Consultation Participants

Submissions and comments provided to the Ministry of the Solicitor General (the Ministry) are part of a public consultation process to solicit views on the *Police Record Check Reform Act, 2015* (PRCRA). An individual who provides a submission or comments and indicates a professional affiliation with an organization will be considered a representative of that organization. The collection of personal information during this consultation is in compliance with subsection 38(2) of the *Freedom of Information and Protection of Privacy Act, 1990*. If you have any questions regarding the collection of personal information as a result of this consultation, you may contact the Ministry's Freedom of Information Office, FOI.SOLGEN@ontario.ca.

Section 1: Respondent information (optional)

Name (Optional):

Role/Occupation (Optional):

Organization that you work for or represent (Optional):

Industry or sector that you work in or represent (Optional):

Section 2: Balancing public safety and privacy rights

Overview

Proclaimed into force in November 2018, the *Police Record Checks Reform Act, 2015* (PRCRA) established 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 sets out three types of police record checks (PRCs) and restricts the information that can be included in each type:

- A. Criminal Record Check (CRC):** Includes applicable criminal convictions and findings of guilt under the federal *Youth Criminal Justice Act*.
- B. Criminal Record and Judicial Matters Check (CRJMC):** Expands on the CRC by including discharges, outstanding charges, arrest warrants and certain judicial orders.
- C. Vulnerable Sector Check (VSC):** Expands on the CRJMC by including applicable findings of not criminally responsible on account of mental disorder, record suspensions, and certain non-conviction information (subject to a strict test).
 - VSCs are used to determine suitability for positions of trust or authority over vulnerable persons and are also governed in part by the federal *Criminal Records Act*.

The PRCRA contains a Schedule that details information that is authorized for disclosure under each type of check. The Schedule can be reviewed on e-Laws, [here](#).

The PRCRA also sets out that providers must obtain consent from the requesting individual prior to conducting a PRC. In most cases, a “second consent” is required

before the completed check can be disclosed to a third party (such as a future employer, etc.), unless the individual chooses to disclose the check themselves.

Consent requirements are intended to give a person the opportunity to review their PRC before anyone else. This helps ensure that a person can take action to address imprecise information on their PRC through a corrections process and make decisions about who or what organization they allow to have access to their personal information.

Additional information regarding police record checks can be found on Ontario.ca, [here](#), as well as in the Appendix.

The ministry is also collecting information on how organizations use PRCs when hiring new staff or volunteers.

Questions

1. Does the information disclosed in a Criminal Record Check (CRC), Criminal Record and Judicial Matters Check (CRJMC), or Vulnerable Sector Check provide adequate information/insight into an individual's risk to public safety? Is the information useful to you?
2. Aside from legislative requirements, how does your organization determine whether a PRC is required for a role? How do you determine which level of check to request?
3. If your organization requires workers or volunteers to obtain PRCs for any worker or volunteer positions, are there specific criteria related to the position that trigger the requirement (e.g. degree of responsibility or authority of the position, types of populations served, anticipation duration of the role, etc.)? If so, does your organization have different criteria for different levels of PRC requests?
4. How long does your organization consider a PRC to be valid, once received? Do you require PRCs to be updated after they are provided? If so, how frequently do you require PRCs to be updated for individuals?
5. Vulnerable sector checks are specific to a particular position, while other types of police record checks are not. If your organization requires Criminal Record Checks or Criminal Record and Judicial Matters checks for certain roles, do you archive and reuse past PRCs for individuals who apply to future positions/roles?

6. Do you accept PRCs that were completed previously for other job or volunteer opportunities for other organizations?
7. Since the introduction of the PRCRA, describe any issues you may have encountered with the disclosure and/or retention of information in a PRC.
8. How are the privacy rights of an individual protected when a PRC is disclosed (i.e., electronically or hardcopy)?
9. Are there guidelines or best practices to ensure data privacy and integrity?

Exceptional Disclosure

Under the PRCRA, police services are permitted to disclose non-conviction information in a VSC only if certain criteria are met. This includes whether there are reasonable grounds to believe that the individual has engaged in a pattern of predatory behaviour that indicates they present a risk of harm to a vulnerable person (for more information about the criteria please see Appendix A).

Exemptions

The PRCRA allows for exemptions from some or all the Act's requirements, under the Act itself and through the Exemptions Regulation ([O. Reg. 347/18: EXEMPTIONS](#)). If an exemption applies, police services may, for example, include information when conducting a PRC that would otherwise not be permitted to be released.

The amended Exemptions Regulation came into force on July 1, 2021. The new exemptions framework codifies safeguards to ensure that the use of regulatory exemptions is based on clear and compelling public safety needs that balance privacy rights and mitigate the risks of discrimination and bias. The framework provides additional protections for PRCs conducted based on a regulatory exemption (see Appendix for additional details on this framework).

Question

10. Do the exceptional disclosure criteria / Exemptions Regulation framework prevent the inappropriate disclosure of non-criminal information (that is not relevant to maintain public safety)?
 - a. Do the criteria/framework prevent from being disclosed non-criminal information which should be disclosed for public safety reasons?

Section 3: Service delivery

General

There are some operational aspects of PRCs that the PRCRA does not govern, including fingerprinting requirements, processing times for providers to complete PRCs, and approval or licensing of third-party PRC providers.

Although the PRCRA does not currently address these issues, the ministry is interested in feedback on whether the PRCRA has affected the delivery of PRCs. The ministry is interested in experiences of individuals and organizations requesting PRCs, and of police services and third-party providers that conduct PRCs.

Questions

11. Prior to the introduction of the PRCRA, approximately how long would it take to receive the results of a PRC? Describe any processing issues your organization or stakeholders may have experienced requesting/providing a police record check since 2018.
12. Has PRC processing time had an impact on the hiring/onboarding process for employees/volunteers? If so, please describe this impact and any mitigation strategies.
13. What service delivery concerns does your organization encounter most often (i.e., processing times, fees, verification process, fingerprinting) in relation to different types of police record checks set out under the PRCRA? Do these concerns vary by type of police record check?
14. If you have used both police services and third-party providers for PRCs, did you notice any differences in the process?

Corrections and Reconsideration Processes

Under the PRCRA, all PRC providers must provide a process for an individual to request corrections to their PRC.

The PRCRA and [O. Reg 348/18](#) also outline the process that must be followed if an individual would like the decision to include non-conviction information in their VSC to be reconsidered. For instance, individuals must submit the request in writing within 45 days of receiving their VSC, and police services must reconsider the disclosure within

30 days of receiving the request. Police services must also inform the individual of the result (i.e., whether or not the information will be removed from their VSC). (See Appendix for additional information on exceptional disclosure).

Questions

15. Do the current correction and reconsideration processes work to support corrections to the disclosure of information in a PRC?
16. Have you encountered issues regarding the correction or reconsideration process (i.e., the time required, length of the process for correction, paperwork, privacy issues)?

Section 4: Impact of PRC requirements on volunteering and employment opportunities

General

The PRCRA does not govern whether a PRC is required for a certain position or activity, or the type of check that is required. The ministry is aware that there are legislative and regulatory requirements related to PRCs for some sectors, while other organizations may require them as matter of policy.

The PRCRA does not currently establish validity periods for PRCs, or dictate how frequently an organization can request one. In some cases, individuals may also be asked to provide a new PRC after a set amount of time has passed.

The ministry is interested in how PRC requirements may impact employment and volunteering opportunities – from the perspective of both recruiting organizations and individuals seeking opportunities.

Question

17. How do PRC requirements affect your experience in attracting volunteers or employees?

Volunteering

In 2022, amendments to the PRCRA that seek to reduce barriers for volunteers came into effect. Police services are now required to conduct and provide the results of two types of checks for volunteers for free (CRCs and CRJMCs). If copies are requested at

the time of the initial PRC request, police services must also provide up to five free copies of the results (Note: VSCs were not included in these amendments).

The amendments also added a definition of “volunteer” to the PRCRA. A volunteer is a person who performs a service but who receives no compensation for doing so other than an allowance for expenses or an honorarium. This definition does not include someone who receives some other form of credit, such as academic credit or fulfilling a sentence requirement.

Question

18. Please describe impacts to your organization since the amendments to support volunteers came into force.

Section 5: Additional feedback

The ministry is interested in other experiences you may have had with the PRCRA or with PRCs in general. Please feel free to share additional observations to help inform the review.

Question

19. Do you have any other feedback related to the impact of the PRCRA or police record checks that you would like to add?

Appendix A: Background

A Police Record Check (PRC) reflects the results of a **search of information** in police databases about an individual at the **point in time** when the search is conducted. PRCs are often used as **part of a screening process** for employment or volunteering, entering education or a profession, adoption, licensing, and access to programs or services, etc.

A PRC **may be required by law**, as a result of policies, or for insurance purposes.

Proclaimed into force in November 2018, the *Police Record Checks Reform Act, 2015* (PRCRA) established the province's first-ever clear, consistent and comprehensive set of standards to govern how a PRC is conducted and disclosed in Ontario.

The goals of the PRCRA are to promote public safety by governing types of record checks that can be conducted for screening and strengthen privacy protection by creating consistent practices around what information is disclosed in PRCs and how it is done.

Since the PRCRA was proclaimed into force, significant milestones have included:

- 2021 amendments to O. Reg. 347/18 (Exemptions) for a new exemption framework; and
- 2022 legislative amendments to reduce barriers for volunteers.

Types of Police Record Checks and Information Disclosed

There are three types of police record checks:

1. **Criminal Record Check (CRC):** Includes applicable criminal convictions and findings of guilt under the federal *Youth Criminal Justice Act*. Results can be used across positions.
2. **Criminal Record and Judicial Matters Check (CRJMC):** Expands on the CRC by including discharges, outstanding charges, arrest warrants and certain judicial orders. Results can be used across positions.
3. **Vulnerable Sector Check (VSC):** Expands on the CRJMC by including applicable findings of not criminally responsible on account of mental disorder, record suspensions, and certain non-conviction information (subject to a strict test).
 - VSCs are used to determine suitability for positions of trust or authority over vulnerable persons and are also governed in part by the federal *Criminal Records Act*.

Under the PRCRA, police record check providers are [required to include certain types of information](#), depending on the type of PRC being conducted, and are not permitted to include any other types of information.

Exceptional Disclosure of Non-Conviction Information

Under the PRCRA, police services are permitted to only disclose non-conviction information if:

- Disclosure is part of a VSC.
- The following criteria are met:
 - The non-conviction record relates to an offence prescribed in [O. Reg. 350/18](#) under the PRCRA;
 - The alleged victim was a child or vulnerable person; and,
 - Based on an assessment of the following factors, the provider has reasonable grounds to believe that the individual has engaged in a pattern of predatory behaviour 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.

Exemptions

The PRCRA (within the act and the Exemptions Regulation) allows for additional or specific information to be provided as part of a check for some sectors, where ministries or regulators put forward a compelling rationale:

- for a certain purpose
- to adhere to legislative requirements

After extensive consultations, the amended Exemptions Regulation came into force on July 1, 2021. The new exemptions framework codifies safeguards to ensure that the use of exemptions is based on clear and compelling public safety needs that balance privacy rights and mitigate the risks of discrimination and bias. The framework provides additional protections for PRCs conducted based on a regulatory exemption, related to:

- A. Consent:** Police services shall obtain written consent from an individual prior to conducting a PRC.

- B. Restricting information:** Police services are required to ensure that information can be disclosed only when it is based on information that:
- raises clear public safety concerns;
 - is recent or has occurred with enough frequency to raise ongoing public safety concerns;
 - is directly related to the risks of the position; and
 - is based on reliable sources.
- The amended regulation also establishes additional restrictions around how non-conviction information (such as: mental health, street checks and victim) is disclosed.
- C. Transparency and procedural fairness:** Police services shall disclose the police record check results to the applicant upon request and create a process to correct errors or to reconsider the information disclosed.
- D. Establishing conditions:** Police services shall prepare and maintain statistics on exempted checks and comply with any directives issued by the Minister in relation to the act.
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Email SOLGENinput@ontario.ca