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**POLICE RECORD CHECKS  
FOR VULNERABLE SECTOR SCREENING**

**Interim Guide**

**What are the implications under Ontario's Human Rights Code?**

The Ontario Human Rights Commission recognizes that many vulnerable sector agencies, educational and other institutions, as well as police services, have a responsibility to protect the public and maintain safety.

Police records checks may be needed for some high-risk jobs or volunteer positions. For example, these checks are often requested by social service and volunteer agencies that work with children and vulnerable adults including persons with certain types of disabilities to make sure that staff, members or volunteers have not engaged in harmful behaviour in the past that could put others at risk. For instance, the *Education Act* requires school boards to conduct criminal record checks to ensure the safety of pupils.

These checks can be appropriate but it is important for individuals and organizations to use them carefully. Police record checks are only one possible tool. They are not a substitute for proper hiring practices including references. They must not become a way to discriminate against people.

Persons with mental illness, or who have had a mental health crisis in their lives, may have been taken to hospital by the police under the authority of Ontario's *Mental Health Act*. If revealed, police records resulting from these non-criminal apprehensions and other contacts may have a lifelong impact when people apply for employment or a volunteer position.

**How is a Police Record Check different from a Criminal Record Check?**

Criminal records checks relate only to criminal activity under the Criminal Code. Police record checks are broader and can involve non-criminal contact with police.

**Criminal record checks** are allowed under the Ontario *Human Rights Code* for unpardoned offences. Criminal record checks for some pardoned offences, such as pardoned sex offences, might be appropriate, but only for positions that deal with vulnerable persons. Criminal record checks are done through the Canadian Police Information Centre (CPIC).

**Police record checks** (also known as police reference checks, police record searches, background checks or searches, vulnerable sector checks or screening) can include records of voluntary and involuntary apprehensions and transfers to a mental health facility, incident reports, charges, or having been a victim, suspect or witness to an occurrence.

### **When are police record checks acceptable under the *Human Rights Code*?**

Police record checks should only be requested when it is reasonable because of the job or volunteer position being applied for. While an organization may prefer to have as much information as possible about someone, human rights must always be protected. An individual's consent is required prior to doing a police record check.

A job may contain many elements, some of which are essential to doing the job, and others that are ideal or preferable, but not essential. The best practice is to list essential duties in a job description, and clearly state them when advertising the job.

Police record checks that are not required for a legitimate purpose may have unfair impact on people with mental health disabilities who have had non-criminal police contact.

The Supreme Court of Canada has set out a three-step test for justifying a discriminatory standard, factor, requirement or rule as a reasonable (sometimes called "bona fide" requirement).

In general the requirement should be:

1. for a purpose or goal that is rationally connected to performing the job
2. adopted in the belief that it is necessary to fulfill a legitimate work-related purpose
3. reasonably necessary to accomplish the work-related purpose.

As a result of this test, the rule or standard must be inclusive and must accommodate individual differences up to the point of "undue hardship". An example of undue hardship is when the health and safety of others is put at risk.

### **Who are "vulnerable persons"?**

The *Criminal Records Act* says vulnerable persons are:

"persons who because of their age, a disability or other circumstances, whether temporary or permanent,  
(a) are in a position of dependence on others: or  
(b) are otherwise at greater risk than the general population of being harmed by persons in a position of authority or trust relative to them."

## **Before requesting police record check**

An organization that can show a legitimate need should only make a request after it has offered the candidate the job, conditional on a satisfactory outcome: such checks should be the last step in a recruitment process.

Prior to making a conditional offer, agencies should not ask applicants anything related to mental or physical conditions, involvement with police, or pardoned offences.

## **Requesting a police reference check**

The first step in the recruitment process should be to develop a detailed job or volunteer position description. The description should show how the position has responsibility for vulnerable persons and reasons why a police record check and / or a criminal record check is required.

Such requirements should also be set out briefly in the position ad. The agency should also explain to the applicant why a criminal record check or a police record check is needed.

Agencies should carefully look at all the information before making a conditional offer. When the offer is made, the individual must be asked for their consent if a police record and / or criminal record check is required.

If seeking more than a criminal record check, agencies must certify that they have

- reviewed relevant information and undertaken available training in regards to human rights and other procedural obligations
- a genuine need for *Mental Health Act* apprehension information, and
- explained this to the applicant

Police will first share the results of a police record check with the applicant. The applicant then decides whether to proceed with the application and share it with the agency. Before doing so, the applicant could first choose to ask the police service to clarify, revise, suppress or remove information in the record. An agency may withdraw its conditional offer if it does not receive required information.

Agencies should review the information provided to see if it is relevant to the job. The agency, the applicant and the police service should all be open to discuss the results. Agencies should also be open to accommodating the applicant if appropriate and possible. Everyone should make sure an applicant's information is kept confidential.

## **For more information**

See the OHRC's publications *Human Rights at Work* or the Draft Policy on Mental Health Discrimination and Police Record Checks, posted on the Commission's website [www.ohrc.on.ca](http://www.ohrc.on.ca).

Also visit the Toronto Police Service website [www.torontopolice.on.ca](http://www.torontopolice.on.ca) or contact other local police services for more information on their police record check policies and procedures.