



# **Criminal Record Checks**

**Uniform Law Conference of Canada**

**Fredericton, NB**

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# “criminal record check” vs. “police background check”

## *“non-conviction” information*

- Apprehensions under mental health acts
- Suicide attempts and drug overdoses
- Restraining orders
- Ticket offences
- Noise complaints
- “adverse police contact”
- Arrests with no charges
- Acquittals and withdrawn/stayed charges



# Who is affected?

- The **job applicant** who was once a “person of interest”
- The **volunteer** with a dated, suicidal past
- The **parent** with a mental health history
- The **student** with a youth record
- The **traveller** with a substance abuse problem
- The **rehabilitated offender** seeking a pardon / record suspension



<b>Code #</b>	<b>Translation</b>	<b>Definition</b> (greyed role codes are not subject to release in a Police Information Check)
1	Other	Non Accusatory
2	Charged	Charges have been approved by Crown Counsel
3	Complainant	A subject requesting the Services of a law enforcement body
4	EDP	Emotional disturbed person - a person who appears to be mentally unstable and who might use a threat to an investigator/himself or others <b>**MAY OR MAY NOT BE DISCLOSE ABLE -Requires follow-up**</b>
11	Suspect	A subject that is believed to be involved in a commission of a crime or statute breach but charges have not been laid
10	Street Check	A mandatory code for street check subjects, indicates that the subject came to the attention of a law enforcement agency as a result of a self-generated check. Not due to an investigation or occurrence.
12	Victim	A subject that has suffered as a result of the commission of an offence or the breach of a statute (all 1000 UCR series)
14	Witness	A subject who is observed or has some knowledge relating to a crime or statute breach, or incident
34	Suspect Chargeable	A subject for whom grounds exist to support the recommendation of a charge but police choose against this course of action.
39	Recommend Charges	use of this code is mandatory when a police agency has submitted a report to Crown Counsel who has either not yet approved or not approved changes. Once charges are approved this role code is changed to "charged".
92	Subject of Complaint	Non Accusatory, subject that is being complained about or a subject in relation to whom a call for service was received.
102	Youth Charged	An Information or Summary offence Ticket has been laid or issued against the subject by the unit or agency with jurisdiction
139	Youth Recommended Charges	Mandatory when the agency has submitted a RCC against a juvenile subject, but Crown has either not yet laid charges or has not approved charges. (Some agencies elect to use "charged" in the first instance, and then change to "charges recommended" if Crown Counsel does not approve charges)
134	Youth Suspect Chargeable	A subject for which grounds exist to support the recommendation of a charge but police choose against this course of action
111	Youth Suspect	A subject that is believed to be involved in the commission of a crime or statute breach but charges have not been laid.
112	Youth Victim	A subject that has suffered as a result of the commission of an offence or the breach of a statute (all 1000 UCR series)
202	Youth Non-Disclosure	System generated, not to be disclosed
239	Youth Non-Disclosure	System generated, not to be disclosed

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# Recent Reports

## ***Canadian Civil Liberties Association (2012)***

Presumption of Guilt? The Disclosure of Non-Conviction Records in Police Background Checks

## ***John Howard Society of Ontario (2014)***

An Information Guide for People Impacted by Non-Conviction Police Records in Ontario

## ***Office of the Information & Privacy Commissioner for BC (2014)***

Use of Police Information Checks in British Columbia

## ***Ontario Information and Privacy Commissioner (2014)***

Crossing the Line: The Indiscriminate Disclosure of Attempted Suicide Information to U.S. Border Officials via CPIC

## ***Alberta Civil Liberties Research Centre (2015)***

The Use and Disclosure of Non-Conviction Records in Police Background Checks



# Common Conclusions

1. Criminal Record Checks are being overused
2. Criminal Record Checks typically involve the disclosure of highly private, and often, irrelevant personal information
3. Criminal Record Checks sometimes include inaccurate, outdated or mistaken information that cannot be easily corrected



# Inconsistent Responses Across the Country

- Federally, the RCMP drafted a **policy** regulating the dissemination of CPIC information (2014)
- In Ontario, the government passed **legislation** (*Police Record Checks Reform Act, 2015*)
- In BC, the Ministry of Justice issued **guidelines** (2015)
- In many other jurisdictions, the decisions are simply left to individual police forces/detachments on a **case-by-case** basis



# Inconsistent Protections

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	<b>ONTARIO</b>	<b>BC</b>	<b>ALBERTA</b>
<b>Apprehensions under mental health act</b>	<b>No Disclosure</b>	<b>No Disclosure</b>	<b>Disclose</b>
<b>Suicide Attempts</b>	<b>No Disclosure</b>	<b>No Disclosure</b>	<b>Disclose</b>
<b>Adverse police contact (including arrest, suspect, witness, etc.)</b>	<b>No Disclosure</b>	<b>Disclose</b>	<b>Disclose</b>
<b>Findings of NRCMD (not criminally responsible due to mental disorder)</b>	<b>Disclose, but only if within 5 years of discharge</b>	<b>Disclose</b>	<b>Disclose</b>
<b>Charges that were stayed, withdrawn or resulted in acquittal</b>	<b>Disclose, but only when “exceptional disclosure” criteria are met and only for enumerated offences</b>	<b>Disclose</b>	<b>Disclose</b>



# “exceptional disclosure”

2016ulcc0015

## ***Police Record Check Reform Act, s. 1(1)***

“non-conviction information” means, subject to subsection (4), information concerning the fact that an individual was charged with a criminal offence if the charge,

- (a) was dismissed, withdrawn or stayed, or
- (b) resulted in a stay of proceedings or an acquittal;

## ***Police Record Check Reform Act, s. 10***

### **Exceptional disclosure of non-conviction information, vulnerable sector check**

**10.** (1) This section applies with respect to the disclosure of non-conviction information in response to a request for a vulnerable sector check in respect of an individual.

### **Criteria for exceptional disclosure**

(2) Non-conviction information about the individual is not authorized for exceptional disclosure unless the information satisfies all of the following criteria:

1. The criminal charge to which the information relates is for an offence specified in the regulations made under subsection 22 (2) (c).
2. The alleged victim was a child or a vulnerable person.
3. After reviewing entries in respect of the individual, the police record check provider has reasonable grounds to believe that the individual has been engaged in a pattern of predation indicating that the individual presents a risk of harm to a child or a vulnerable person, having regard to the following:
  - i. Whether the individual appears to have targeted a child or a vulnerable person.
  - ii. Whether the individual’s behaviour was repeated and was directed to more than one child or vulnerable person.
  - iii. When the incident or behaviour occurred.
  - iv. The number of incidents.
  - v. The reason the incident or behaviour did not lead to a conviction.



# The Legal/Constitutional Case for Change

- Human rights legislation
  
- The *Charter*
  - Section 11(d) – the presumption of innocence
  - Section 8 – broader privacy interests
  - Section 7 – right to security of the person
  
- Basic procedural fairness



# The Balancing Act

- “vulnerable sector check”
- “exceptional circumstances”
- Enumerated offences?
- Enumerated categories of applicants?



# Solutions and Recommendations

- *Police Record Check Reform Act, 2015*
- Categorizing Checks and Limiting Requests to the Appropriate Category
- Reconsideration Process
- Review and Oversight Mechanisms



# Q & A



# Additional Resources

- *Criminal Records Act*: <http://laws-lois.justice.gc.ca/PDF/C-47.pdf>
- RCMP, *Dissemination of Criminal Record Information policy*: <http://www.rcmp-grc.gc.ca/en/dissemination-criminal-record-information-policy>
- *Bill 113, An Act respecting police record checks*: [http://www.ontla.on.ca/bills/bills-files/41\\_Parliament/Session1/b113ra.pdf](http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session1/b113ra.pdf)
- Ontario Ministry of Community Safety and Correctional Services, *Best Practices*: [http://www.mcscs.jus.gov.on.ca/english/police\\_serv/PoliceRecordsChecks/PS\\_records\\_checks.html](http://www.mcscs.jus.gov.on.ca/english/police_serv/PoliceRecordsChecks/PS_records_checks.html)
- LEARN, *Guideline for Police Record Checks*: [http://www.oacp.on.ca/Userfiles/Files/NewAndEvents/PublicResourceDocuments/GUIDELINES%20FOR%20POLICE%20RECORD%20CHECKS%20%20%20June%202014\\_FINAL.pdf](http://www.oacp.on.ca/Userfiles/Files/NewAndEvents/PublicResourceDocuments/GUIDELINES%20FOR%20POLICE%20RECORD%20CHECKS%20%20%20June%202014_FINAL.pdf)
- BC Ministry of Justice, *British Columbia Guideline for Police Information Checks*: [http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/police-information-checks/police\\_infochecks\\_guidelines.pdf](http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/police-information-checks/police_infochecks_guidelines.pdf)
- Calgary Police Service, *Police Information Checks*: <http://www.calgary.ca/cps/Pages/Public-services/Police-information-checks.aspx>

