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UNIFORM LAW CONFERENCE OF CANADA

UNIFORM POLICE RECORD CHECKS ACT

**FINAL REPORT OF THE WORKING GROUP ON
CRIMINAL RECORD CHECKS**

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1. Introduction

[1] In 2016, following the passage by the Criminal Section of Can-CBA2016-04, a working group was formed to investigate the practice of criminal record checks across the country (the “Working Group”).

[2] In 2017, the Working Group reported its findings to a Joint Civil/Criminal Session of the Conference. The Working Group confirmed that there existed widely disparate practices across the country regarding the manner in which criminal record checks were performed and governed. Of the various approaches it had studied, the Working Group recommended the approach which had been recently adopted in Ontario through the *Police Record Checks Reform Act, 2015* (“PRCRA”).

[3] In brief compass, the *PRCRA* standardizes the practice of criminal record checks in Ontario. The legislation also limits the disclosure of prejudicial “non-conviction” information. These measures are consistent with several reports from the John Howard Society, the Canadian Civil Liberties Association and other groups which have criticized the *status quo* relating to criminal record checks and the widespread dissemination of “non-conviction” information through this practice.

[4] The Working Group recommended that uniform legislation and commentary be drafted using the *PRCRA* as its starting point. It was further recommended that the legislation should include the following central features:

1. Standardization of the types of criminal record checks to be provided;
2. Limitations on the disclosure of non-conviction information, including the development of disclosure criteria; and
3. The provision of appeal and reconsideration processes to correct inaccurate information and to challenge the inclusion of irrelevant information disclosed in criminal record checks.

[5] The Joint Criminal/Civil Session passed a resolution encouraging the Working Group to continue its work in accordance with the recommendations of its report and the directions of the Conference.

2. The *Uniform Police Record Checks Act*

[6] Over several months, the Working Group studied and debated the *PRCRA* through a series of conference calls with an aim toward drafting uniform legislation and commentary that could be presented at the 2018 Conference.

[7] The Working Group found that the *PRCRA* achieved an appropriate balance between protecting the public and protecting the privacy of individuals who may be subjected to a criminal record check. It did so by limiting the disclosure of “non-conviction” information to truly relevant circumstances. The *PRCRA* also contained all the procedural protections that were recommended to be included in the uniform legislation.

[8] In keeping with the recommendations of the Working Group, the *Uniform Police Record Checks Act* mirrors the *PRCRA*, ensuring uniformity between the acts. The uniform legislation contains nearly all the same substantive sections as the *PRCRA* with some minor variations, which the Working Group considered to be improvements to the Ontario model. The uniform legislation is also structured to be easily adapted by each jurisdiction, while still using similar section numbers as the Ontario act to allow for comparison between the acts.

[9] The *Uniform Police Record Checks Act* is divided into 23 sections and contains a Schedule.

[10] Section 1 defines the terms used in the legislation.

[11] Section 2 defines the scope of the legislation’s application and includes a subsection that can be modified by each jurisdiction to exempt certain sectors or persons from the legislation’s requirements.

[12] Section 3 binds the Crown.

[13] Section 4 is a “for greater certainty” provision aimed at clarifying what other acts are not meant to be affected by the legislation.

[14] Sections 5 through 9 set out the procedure for how a record check is to be requested under the legislation, as well as the duties of the police in carrying out these checks. Section 8 defines the three kinds of record checks that will be permitted, in addition to a requirement that the individual consent to the particular record check being performed. Section 9 requires the police to disclose the results of each respective check in accordance with the Schedule. The Schedule contains a Table setting out which records are to be disclosed under each kind of check.

[15] Section 10 sets out the criteria and procedure for disclosing “non-conviction” information through vulnerable sector checks, as well as the process for “reconsideration” should the applicant disagree with the inclusion of non-conviction information in their vulnerable sector check.

[16] Sections 11-14 govern certain procedural issues connected to the disclosure of record checks, including how youth records are to be treated, who shall receive the

results of a record check, and how the results of a record check are to be used once received.

[17] Section 15 sets out the requirement for a “corrections” process to allow individuals to correct errors or omissions that may arise in the process of conducting a record check.

[18] Sections 16-18 contain additional requirements under the legislation, including a provision requiring statistics to be gathered, as well as a provision governing the conduct of third party entities who may perform the functions of the police in the record check process.

[19] Section 19 is the enforcement provision, setting out an offence for violating important sections of the act.

[20] Sections 20-21 set out the powers of the Minister and Lieutenant Governor to make directives and regulations related to the act.

[21] Sections 22-23 provide the short title for the act as well as the “coming into force” provision.

3. Commentary and Consultation with Ontario’s Ministry of Community Safety and Correctional Services

[22] As noted above, the *Uniform Police Record Checks Act* closely tracks the *PRCRA*. However, the Working Group did not have the benefit of any explanatory notes or commentary related to the *PRCRA*. As a result, members of the Working Group liaised with the team currently responsible for the *PRCRA* and its regulations under the Ministry of Community Safety and Correctional Services in Ontario (the “MCSCS Team”).

[23] The MCSCS Team recently completed regulations for the *PRCRA*, meaning the act will be ready to come into force on November 1, 2018. The text of the *PRCRA* and its regulations are available online at: www.ontario.ca.

[24] The Working Group shared a draft of the uniform legislation and commentary with the MCSCS Team for their feedback. A conference call was held with the MCSCS Team on May 23, 2018. The MCSCS Team indicated that the draft commentary for the uniform act was in line with the intent of the *PRCRA* and their understanding of how the *PRCRA* should operate in practice. The MCSCS Team also highlighted with approval some variations in the uniform legislation that Ontario may consider moving forward as part of their ongoing review of their legislation. This included clarifying the meaning of “summary convictions” (or what the Working Group has termed “straight summary convictions”) and limiting the scope of “court

orders” in the Schedule. Valuable additional feedback was received on other proposed changes to the *PRCRA* model which the MCSCS Team is not currently considering for implementation.

[25] Speaking with the MCSCS Team was informative and helped hone and finalize the commentary that has been drafted in support of the uniform act.

4. Recommendations and Conclusion

[26] The Working Group recommends that the Final Report be accepted and that the *Uniform Police Record Checks Act* and related commentaries be adopted by the Conference

[27] The Working Group has spent over two years studying the practice of criminal record checks. This work has required significant collaboration across the country. The Working Group would like to thank the many people who participated in this project, including in particular the following individuals (in alphabetical order):

- Allison Davis (Public Safety Canada)
- Ryan Fritsch (Law Commission of Ontario)
- Russell Getz (British Columbia Ministry of Justice and Attorney General)
- Sherry Gillis, Q.C. (PEI Justice and Public Safety)
- Matthew Hinshaw (Alberta Justice)
- Katherine MacKenzie (Alberta Law Reform Institute)
- Darcy McGovern, Q.C. (Saskatchewan Justice)
- Laura Meil (Ontario Ministry of Community Safety and Correctional Services)
- Jennifer Mercer, Q.C. (Newfoundland Office of the Attorney General)
- Tony Paisana (Canadian Bar Association)
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