

On The RECORD

AN INFORMATION GUIDE
FOR PEOPLE IMPACTED BY
Non-CONVICTION POLICE RECORDS
IN ONTARIO

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The Centre of Research, Policy & Program Development (the Centre) engages in non-partisan research, evidence-based programming, and policy development in the justice sector in Ontario.

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The Canadian Civil Liberties Association is a national, non-profit, independent, non-governmental organization that was constituted to promote respect for and observance of fundamental human rights and civil liberties, and to defend and foster the recognition of those rights and liberties.

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Please note that this is legal information, not legal advice. If you need advice about your individual circumstances, please consult with a lawyer.

For more information about the **John Howard Society of Ontario** and the **Canadian Civil Liberties Association** please visit our respective websites at www.johnhoward.on.ca and www.ccla.org

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INTRODUCTION

In Canada, most people believe that if they have never been convicted of a criminal offence, that they do not have a police record. This is an entirely reasonable assumption, especially when one considers that people who have never been found guilty or convicted of any crime are presumed to be innocent. Unfortunately, however, the reality of police records – and the type of information that can show up on police record checks – is not nearly so simple.

If an individual has ever called the police during a mental health crisis or after having been victimized, chances are that information about that interaction has been recorded in a police database. Similarly, if a person was surveilled by police as a “person of interest” but never formally arrested or charged, a police record may be created. If someone has been charged, though never convicted, a police record is created. Between 2010 and 2011 in Ontario, approximately 43% of all adult criminal court cases resulted in stayed or withdrawn charges. That is, in nearly half of all criminal court cases annually, people were not convicted for the charge(s) laid against them. However, they all now have police records. Non-conviction police records are not removed from police databases automatically. And, depending on the policies of the local police service, these records may be disclosed on a police record check or made available to United States

border officials. Individuals who have been charged with a criminal offence, but who are acquitted of the charges or have their charges withdrawn or discharged, are often told by court personnel that they “do not have a criminal record”. Although this is partially true – they do not have a criminal record of conviction – the information can nonetheless be disclosed on a record check. These same individuals are understandably distressed when they later find out that this is the case. Most people are entirely unaware that they have a non-conviction police record until it is too late - when they are rejected for an employment opportunity or turned away at the U.S. Border.

With the growing demand for Ontarians to undergo police record checks in order to be considered for employment, volunteer, housing, insurance and academic opportunities, concerns about the negative impacts of non-conviction police records are mounting. Thousands of Ontarians have police records – that they are often unaware of – that could be disclosed on police record checks. A recent report by the Canadian Civil Liberties Association puts the number of Canadians with a police record as high as one in three.¹ Marginalized populations such as those with mental health issues, homeless populations, racialized populations, and those with developmental disabilities come into disproportionate contact with police and are therefore more likely to have a police record.

The disclosure of these records results in unwarranted stigma, discrimination and a loss of trust or respect. It places an unfair burden on the individual to explain the incident and risk being denied for employment or other opportunities, such as housing insurance, citizenship, volunteer work, travel, adoption/fostering, travel and so forth. Consequently, non-conviction records can have the same impact as a record of conviction. On an individual level, having a police record check disclose non-conviction information can negatively impact

1. Canadian Civil Liberties Association. (2014). False Promises, Hidden Costs: The Case for Reframing Employment and Volunteer Police Record Check Practices in Canada.

individuals' self-esteem and their self-perception. For individuals who have mental health issues, the disclosure of police contacts can severely undermine their recovery process.

This Ontario-focused guide is intended to inform and assist people who are affected by (or suspect they may have) non-conviction police records. In addition, this guide can serve as a resource for professionals such as social service providers, legal professionals, and criminal justice actors who may be assisting individuals whom they know or suspect to have a non-conviction police record. You will find information on what police non-conviction police records are, how they are created and maintained, the types of police record checks used in Ontario and what they reveal, how people with non-conviction records can seek to remove this information from police databases and information on privacy and human rights.

WHAT ARE POLICE RECORDS?

What exactly is a police record? Unfortunately, there is no simple answer. Police services collect and maintain a vast amount of information about the people they come into contact with. Police records may be created from a variety of interactions with a local police service related to non-criminal and criminal matters, and can include instances where someone:

- Had informal contact with a police officer and provided their name;
- Called 9-1-1, or was present when officers responded to a call;
- Called 9-1-1 for themselves or someone they know was experiencing a mental health crisis;
- Was involved in a police investigation as a witness, victim or suspect;
- Was arrested; or
- Was charged with a criminal offence (but not convicted).

Generally, we divide police records into four categories: criminal convictions, non-conviction findings of guilt, non-conviction dispositions with no finding of guilt, and police contacts. These categories of police records are detailed below.

1. Criminal Convictions	2. Non-Conviction Dispositions: Findings of Guilt	3. Non-Conviction Dispositions: No Finding of Guilt	4. Police Contacts
<p>The following sentences result in criminal convictions:</p> <ul style="list-style-type: none"> • Imprisonment Sentence • Intermittent Sentence • Suspended Sentence • Conditional Sentence • Fine or forfeiture 	<ul style="list-style-type: none"> • Absolute Discharge • Conditional Discharge 	<ul style="list-style-type: none"> • Charges withdrawn • Charges withdrawn - 'alternative measures' or diversion • Acquittal at trial • Stay of proceedings 	<ul style="list-style-type: none"> • Police contact and surveillance • Mental health apprehensions • Arrests (but no charge) • Victimization • Witness

This information is specific to adult records only. If you think you may have a youth record, you should look for specific information on youth records.²

1. CRIMINAL CONVICTIONS³

When people think of a criminal record, they usually think of a record of criminal convictions. If you have been found guilty of a criminal offence you can receive either a criminal conviction or a discharge. You will have a criminal conviction if you are sentenced to:

- Imprisonment;

2. See Justice for Children and Youth's information page on youth records: <http://jfcy.org/en/rights/youth-records-and-other-data/>

3. A detailed glossary of all of the definitions of the various types of police records and other terms can be found in Appendix A.

- Intermittent sentence;
- A fine or forfeiture;
- A conditional sentence (where the sentence is to be served in the community); or
- A suspended sentence with probation (rehabilitative supervision in the community through probation).

A criminal conviction will remain on your record until you apply for and receive a record suspension (formerly called a pardon) under the *Criminal Records Act*. There is a waiting period before you can apply for a record suspension, and some types of criminal convictions are not eligible for a record suspension at all.⁴ Also, even after you get a record suspension, some types of criminal convictions can still be revealed on a vulnerable sector search (for more information about this type of record check, see pages 16 - 17).

2. NON-CONVICTION DISPOSITIONS: *FINDINGS OF GUILT*

If you plead or have been found guilty of a criminal offence you may also receive an absolute discharge or conditional discharge. These are findings of guilt, but they are not criminal convictions.

You cannot receive a record suspension for a discharge. The *Criminal Records Act* states that these records should be automatically sealed and removed from the Royal Canadian Mounted Police's (RCMP) databases after one year for an absolute discharge, and three years for a conditional discharge. Unfortunately, although most local police services follow this direction as well, in the past some have decided to keep and disclose this information in their databases for longer. If you received a conditional discharge before 1992 you may have to apply individually to the RCMP to have this information purged from their system.

4. See John Howard Society of Ontario's brochure on Pardons (Record Suspensions) and Waivers for more information. <http://www.johnhoward.on.ca/wp-content/uploads/2014/07/johnhoward-ontario-help-wanted.pdf>

Many people who receive a discharge are told that they will not have a criminal record of convictions. While this is correct, it is misleading: it does not mean that this information will not appear on a criminal record check. The fact that someone received a discharge is widely disclosed on a basic “criminal record check” within the one- and three-year retention time frames.

3. NON-CONVICTION DISPOSITIONS: *NO FINDING OF GUILT*

Interactions with the police – for example, arrest records or criminal charges that never went to trial – are also recorded in police databases. If an individual is charged with a criminal offence, but is not convicted or found guilty, the outcome or “ruling” is called a non-conviction disposition. Although a person has not been found guilty in court, and they do not have a criminal conviction, depending on local police service policies these records can appear on police record checks.

All of the following police interactions can result in the creation of a non-conviction disposition police record:

- Acquittal at trial
- Stay of proceedings
- Withdrawal - No reasonable prospect of conviction
- Withdrawal - Peace Bond
- Withdrawal - Diversion/ Direct accountability program

Depending on the local police service’s policies, non-conviction information like this can be disclosed on a police record check for employment purposes (see page 16 for the discussion of the disclosure of this type of non-conviction information).

4. RECORDS OF POLICE CONTACT

If someone has a more informal encounter with the police, their personal information may be gathered and then used to create a police record in the local police service's database. This is the case even if a person was not a suspect in a crime or was never charged with any criminal offence. There are many different ways people can come into contact with the police – including as a victim, as a person who is having (or appearing to have) a mental health crisis, or as a witness to crime. People who are identified as 'persons of interest' or suspects are also recorded in police databases. In some police services it has been part of their record check policy to reveal records of incidents where someone was accused or suspected of a crime, even if charges were never laid. It has also been common in Ontario to disclose 9-1-1 calls that involve suicide attempts or other mental health incidents when the police believe it is in the public interest to reveal this information.

Police contacts can include information like records of contact, allegations and/or mental health apprehensions that are non-criminal or that did not result in a criminal charge. Sometimes an individual may not even know that their information is recorded in a police database – for example if their name came up in another investigation, but they were never directly interviewed or contacted.

The following are examples of police contacts:

- Apprehensions under the *Mental Health Act* as a result of coming into contact with the police during a mental health crisis;
- Being investigated as a "person of interest" or being the subject of surveillance;
- Contacts with police that result from being the victim of a crime or being a witness;
- Being arrested but never charged with a criminal offence.

Depending on the police service, police contact information might be disclosed on a police record check; what will be disclosed, however, depends on the local police service's policies and the level of record check that is requested. How to find out what will be disclosed by your local police service is discussed later in this document.



WHERE ARE POLICE RECORDS STORED?

Police records are maintained and stored in a variety of databases – and they do not all necessarily contain the same information. For example, national databases, local police databases and border agencies may all have access to different amounts of information.

Local police databases generally contain the majority of information and detail about specific incidents or police interactions. If a criminal charge is laid against someone the local police service creates a file in their database, and they may send a copy of this information to the Canadian Police Information Centre (CPIC), managed by the RCMP. CPIC then creates a temporary file until further action is taken by the courts. If the charge results in a conviction, staff at CPIC enters the information into its computerized database that is accessible by police officers across Canada. Once a conviction has been entered in the CPIC system, police across Canada will have access to the same information that was contained in the temporary file, as well as the record of conviction and sentencing.

Information is uploaded at the discretion of the local police department. The time frame of when information is uploaded, or whether it is uploaded in an ongoing fashion, is decided by each

service and can vary across police departments and provinces. If charges are dropped, stayed, changed or in any way modified, it is the responsibility of the local police agency to adjust the information in their database and ensure that one of the major RCMP databases does not contain inaccurate information.

There are instances where non-criminal contacts with local police can be shared with CPIC. If individuals have had interactions with the police relating to threat of suicide or attempted suicide, this information may be 'flagged' in CPIC, and therefore accessible to all police services and agencies with access to CPIC.



DISCLOSURE OF POLICE RECORDS:

THE TYPES OF RECORD CHECKS IN ONTARIO

There are generally three types of record checks in Ontario, as defined by the Ontario Association of Chiefs of Police (OACP) in its voluntary provincial LEARN Guideline. This Guideline was most recently updated in June 2014, and significantly changed the way that non-conviction records in particular are disclosed. Importantly, in the 2014 version of the LEARN Guideline, records of police contact (including mental health contacts) will not be disclosed on any level of record check, and charges processed by alternative measures through a formal diversion program should also never be disclosed. The OACP LEARN Guideline is voluntary, and not all local police services comply with the Guideline or offer all three levels of record check. Be sure to contact your local police service to find out what levels of record check they offer, whether they comply with the 2014 version of the LEARN Guideline, and if not, what type of information they will disclose on the various record checks they offer. The levels of record check outlined in the LEARN Guideline are: Police Criminal Record Check, Police Information Check and Police Vulnerable Sector Check. Each level of check discloses varying levels of information gathered from CPIC and local police databases.

TYPES OF RECORD CHECKS



POLICE CRIMINAL RECORD CHECK

- A Police Criminal Record Check is typically used for employment opportunities where a basic criminal background check is requested. It is generally the least intrusive level of check.
- Information disclosed on this level of check will include: unpardoned criminal convictions; summary convictions for five years, where identified; and findings of guilt under the *Youth Criminal Justice Act* within the applicable disclosure period.



POLICE INFORMATION CHECK

- The Police Information Check is more comprehensive than a Police Criminal Record Check.
- Information disclosed on this level of check will include: unpardoned criminal convictions, summary convictions, for five years, where identified; absolute and conditional discharges for 1 or 3 years, respectively; findings of guilt under the *Youth Criminal Justice Act* within the applicable disclosure period; and outstanding entries such as warrants, peace bonds or pending charges.



POLICE VULNERABLE SECTOR CHECK

- The Police Vulnerable Sector Check is the third level of check and is the most in-depth. It is used when applicants are seeking employment and/or volunteering directly with vulnerable populations.
- Information disclosed on this level of check will include: unpardoned criminal convictions; summary convictions, for five years, where identified; absolute and conditional discharges for 1 or 3 years, respectively; findings of guilt under the *Youth Criminal Justice Act* within the applicable disclosure period; outstanding entries such as warrants, peace bonds or pending charges; Not Criminally Responsible by reason of Mental Disorder (for five years); in very exceptional circumstances*, non-conviction dispositions, such as withdrawn charges, can be disclosed; and finally, any record suspended (pardoned) sexual offences that are flagged in CPIC can be disclosed in a police vulnerable sector check.**

* The OACP LEARN Guideline outlines an “exceptional disclosure assessment” which identifies under what specific criteria police services can disclose non-conviction dispositions on a police vulnerable sector check. This test can be found on page 33 of the LEARN Guideline.

** For more information on what types of record suspended (pardoned) convictions may be unsealed pursuant to a police PVSC, see the [Criminal Records Act](#).

HOW DO I FIND OUT IF I HAVE A POLICE RECORD?

As discussed above, police records are the result of various types of interactions people have with the police, which is not restricted to only criminal matters. Simply providing your personal information to a police officer during an informal interaction may result in your information being entered into a police record.

Although all of these situations may result in a police record, not all of this information is recorded in every time. Moreover, to make things even more complicated, not all information that is held by the police will be disclosed on a detailed police record check.

There are two ways to find out what type of information might be revealed in your police record check:

OPTION 1: *REQUEST A POLICE RECORD CHECK FROM THE POLICE SERVICE(S) YOU INTERACTED WITH*

If you are concerned with what type of information will appear on your police record, you can go to your local police station and request your record check.

To get the most information, make sure you ask for the most detailed police record check available. Unfortunately, many people find that they are not able to request a vulnerable sector check before they actually need one for work, school or volunteering. This is because, legally, the police should only conduct this check if you require it for a position where you are working with vulnerable populations and will probably refuse to process the request simply for your own information. If you cannot get the level of check you need simply by asking on your own, for example because you know your job will want a vulnerable sector check, you can try to get the information via option 2 below.

There is a lack of consistency among police services regarding what information should be released on each level of check so you may get different results from different police services. Each police service may also retain different recorded information about you in their system that may not be accessible to other police services. Often, you will be asked for your past addresses, and the police service may contact the police service where you used to live to find out if there is any relevant information on you in their local police database to include on your check.

If you are unsure about whether an interaction you had with the police was even recorded, you should request the record check from that specific police division; e.g. if you were arrested by the Toronto police, but now live in Ottawa, you should still inquire with the Toronto police since they may have more records about your interaction. Again, the police may refuse to give you a record check if you don't live in the area. If this happens, you can file a freedom of information request (option 2).

There is typically a fee associated with requesting your record – you should check with your local police service to find out the cost.

It may be helpful to see an example of the form for the specific type of record check you will be asking for. Many of these forms can be

downloaded from the police services' website. This form will vary depending on the police service you contact. Some of these forms offer clear information about the type of records that will be revealed. And if you have a criminal record of conviction, you may be asked to disclose this information before the background check is conducted.

OPTION 2: *FILE A FREEDOM OF INFORMATION OR PRIVACY ACT REQUEST*

You can access your information that the police keep in their database through filing a freedom of information request. However, you should be aware that this can be a lengthy process.

You should make this request directly to the local police service with which you had your interaction. There are different laws for provincial and federal access to your information. For a provincial or municipal police force, you will need to use Ontario's provincial freedom of information legislation. If you require your information from the RCMP, you are required to use the federal privacy laws. To find out more on filing your freedom of information request, you should visit the police service's website as they may have a form you can fill out or more detailed and specific directions. As with requesting your police record, there is also a fee associated with filing and completing the freedom of information request.

There are exceptions to the right to access your information. A common exception is if another individual's personal information is at risk of being disclosed. And depending on the circumstances of your situation, the police have the discretion to not release some areas of your record. But there is an appeal process to dispute a decision to withhold information. If you filed a provincial freedom of information request you should contact the [Information and Privacy Commissioner of Ontario](#). Information on how to appeal an access request response

with the RCMP is available on their website, <http://www.rcmp-grc.gc.ca/atip-aiarp/index-eng.htm>.

You should be aware that trying to access your record in this way will not tell you exactly what will appear in your police check, because the police have different policies about what information will be released on different levels of checks. It will tell you, however, if the police have no information about you on file, which is a good indication that there will not be any information that will come up on a record check.



HOW DO I PURGE OR SUPPRESS THE NON-CONVICTION INFORMATION FROM MY RECORD?

Some – but not all – police services have established procedures that you can use to request the purge or suppression of your non-conviction record. Purging a record will remove it from the databases, and as a result it should not be disclosed on record checks – although we have heard of some police services that will purge part of a record, and continue to disclose another part, so you should ask to make sure a purge request will be effective. Suppression of a record will remove a specific entry from your record check; it will not remove it from police databases. These are two different processes and likely have two separate applications.

Unfortunately, many police services have different procedures for people who want to purge or suppress their non-conviction information. If you need to find out about the policy or procedure of a specific police station, you can start by searching their website because they should have steps to take to have your information purged or suppressed, or phone the station directly if you cannot access that information online.

PURGE REQUESTS

Generally, only the police service that created the non-conviction record can decide whether or not to remove (purge) the information from the local and national databases. If you have ever been a person of interest in a police investigation, arrested, or charged by the police, you should send a request to the investigating police service to purge your police record. Since different police services may keep different information on you that may not be accessible by other police services, you will have to file requests to each individual police service you have had interactions with to ensure all local information is removed from your record and will not be disclosed in any checks.

You should be aware that the RCMP – who maintain the National Repository of information collected by police services across Canada – may also have non-conviction information about you in their database. As a result, when you do file your request, you should make sure that you ask for all of your non-conviction records, photographs and fingerprints be removed from both the local police service's database as well as national police databases – the RCMP's database.

You will have to send a written request to the police asking for the information to be removed from your record. When writing your request, you should note some of the following circumstances because the police may consider them when deciding whether or not to keep your non-conviction information in their database:

- Circumstances to help explain the interaction or allegation
- Whether you were formally charged by the police or not
- If you were not charged, what were the circumstances of your interaction(s) with the police?
- If you were charged, how the case ended and what the result was (e.g. withdrawn by prosecutor, acquitted after trial, etc.)

- The nature of the interaction or allegation- for example, was it not very serious or was it non-violent?
- How long ago the alleged event took place
- Your age at the time
- Whether there has been other allegations or police contact since then
- How retaining this record is impacting your life
- How the release of this information is having or could have a negative impact on your life (e.g. if you want to volunteer in your child's school, if you want to work with children or others in the vulnerable sector, etc.)
- Human rights considerations (especially relevant where the information is related to physical or mental health) and how the release of this information could result in discrimination against you.

A lot of this information should be available in the police file, and when processing your request the police may talk to other officers who were in charge of the investigation. But you should still include all information that is relevant to your circumstances.

Remember, you do not have to tell the police anything about your prior contact with them, and any information you do decide to give to the police might be used as evidence against you. If you have concerns about this you should speak with a criminal lawyer before contacting the police.

SUPPRESSION REQUESTS

Most police services will send your record check directly to you. If a non-conviction entry appears on your check, you can contact the

police service to find out the process to suppress that particular entry. Similar to the purge request, the police may require a written request sent directly to them. See the above section on purge requests for some suggestions on what to include in your letter.

WHAT IF THE POLICE REFUSE TO PURGE OR SUPPRESS MY NON-CONVICTION INFORMATION?

Depending on the police service, there may be an appeal procedure if they won't agree to purge or suppress the information. To find out more, you should ask the specific police agency you are dealing with. You may need to write to the 'appeal panel' to tell them why you think your record should be removed.

WHAT IF THERE IS NO INTERNAL APPEAL PROCESS, OR MY APPEAL IS REJECTED BY THE POLICE?

If you are not successful after talking with the police directly and/or pursuing the appeal (or if there is no means of appeal) there are independent oversight bodies that may be able to assist you. You can try appealing the police decision to the relevant police commission, police services board or independent civilian oversight agencies. Again, you should set out why you think the police made the wrong decision in your case. You can also complain about the police policy and process in general.

After you have finished all these avenues of possible appeal, you can start a judicial review of the final decision in your case. It can be difficult to launch a successful judicial review without a lawyer's help.

ARE THERE LIMITS ON WHAT MY EMPLOYER OR THE VOLUNTEER AGENCY CAN DO WITH THE INFORMATION I GIVE THEM?

In recent years, there has been an increase in requests for employees and volunteers to provide police record checks. These record checks can be privacy-invasive and even lead to discriminatory treatment, so it is important for you to know what laws apply to organizations requesting a record check.

First, organizations generally cannot get this information without your consent, so usually you will be asked to sign a form consenting to the release of specific information. You should always read the details on the consent form to find out exactly what type of check you are consenting to.

Second, in some circumstances organizations will be limited by human rights obligations. Ontario's human rights legislation, the *Ontario Human Rights Code*, prohibits discrimination on the grounds of a disability, including a mental illness. Where police record checks disclose police contact, 9-1-1 calls or mental health apprehensions, asking for and making decisions based on a police record check may constitute prohibited discrimination on the ground of disability. Organizations should not ask you for a record check that includes

mental health information unless the information they might receive is related to an actual *bona fide* requirement of the job.⁵ In any event, record checks should only be asked for as a last step in the screening process, once a conditional job or volunteer offer has been given. In Ontario, human rights legislation also protects people from discrimination if they have a pardoned conviction (now known as a record suspension). There are also human rights protections for individuals who have a conviction for any provincial offence. Unfortunately, however, there is no clear human rights protection in Ontario for individuals with non-conviction records that are not related to mental health.

Third, employment contracts, either between an employer and an individual employee or in the form of a collective agreement, may restrict an employer from imposing a criminal record check policy on existing employees or volunteers. If the employment agreement does not explicitly allow an employer to conduct record checks, an employer may not be able to impose this requirement on current employees without renegotiating the contract or collective agreement. The Supreme Court has ruled that, in a unionized workplace, “any rule or policy unilaterally imposed by an employer and not subsequently agreed to by the union... must be consistent with the collective agreement and be reasonable...”⁶ An assessment of whether police record checks are a reasonable exercise of unilateral management rights can include multiple aspects of the proposed policy, including:

- whether the check is relevant to the specific position,
- whether there are privacy protections for employee information,
- how much notice is given to affected employees,
- how the information is used in the employment context, and

5. If a job applicant is prevented from meeting job requirements for a reason that is related to a protected ground in the *Ontario Human Rights Code*, employers must be able to demonstrate whether these requirements are reasonable, essential to the position, and made in good faith (“*bona fide*”).

6. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para. 24.

- whether employees who are not cleared have access to an appeal mechanism.

Policies that do not comply with applicable privacy and human rights legislation will not be reasonable. There may be particular safety-sensitive workplaces such as airport security or social workers dealing with young children that will justify the imposition of criminal record checks. Multiple arbitrators, however, have found that overbroad background screening programs or blanket policies unilaterally imposing police record checks on employees who are not in such sensitive positions are unreasonable.

Finally, there are also important limits on when organizations can receive vulnerable sector checks. A vulnerable sector check can only be legally provided if:

- the request is made by a person or organization responsible for the well-being of a child or vulnerable person;
- the request is made in the context of a specific application for a paid or volunteer position;
- the position being applied for is one of trust or authority towards a child or vulnerable person; and
- the applicant has given their consent in writing.

A vulnerable person is a person who, because of their age, a disability or other circumstances, is in a position of dependency on others or is at a greater risk than the general population of being harmed by a person in a position of trust or authority towards them.

Not every position that involves contact with a vulnerable person will meet the requirements for a vulnerable sector search. The position must be one that creates either authority (power) over, or special trust with, a vulnerable person.

TRAVELLING ACROSS THE U.S. BORDER

People with non-conviction records may experience difficulty from U.S. border officials. Many people have been denied entry into the United States because of their non-conviction records. The United States Department of Homeland Security, including the U.S. Customs and Border Protection (CBP) officials have access to the CPIC databases. Officials who access CPIC have access to information regarding criminal records, including non-conviction records- cases under investigation, intelligence information, motor vehicle and driver information, and the Alzheimer's Society Wandering Persons Registry.

If a local police service removes non-conviction information, in most cases it is also removed from CPIC. However, it is difficult to know if the information has been copied into American databases.

If a person's non-conviction record has been removed from CPIC and he/she is still experiencing difficulty entering the U.S., one can apply for a U.S. Waiver of inadmissibility.

A Waiver is a document, issued by the country to which you would like to travel, allowing you to enter even if you do not meet the entry requirements. The waiver is issued by CBP and carries a short term. You can apply by filling out Form I-192 and submitting the required documents.

The application process can take up to a year and is expensive. The costs will depend on the types of documents you need to submit, but the application itself costs \$585.00 US (as of 2013). For more information, read the CBP website: www.cbp.gov, contact your nearest Port of Entry, or call the Pearson Airport CBP Centre: 905-676-2606.



APPENDIX A

UNDERSTANDING NON-CONVICTION POLICE RECORDS

1. Criminal Convictions	2. Non-Conviction Dispositions: Findings of Guilt	3. Non-Conviction Dispositions: No Finding of Guilt	4. Police Contacts
<p>The following sentences result in criminal convictions:</p> <ul style="list-style-type: none"> • Imprisonment Sentence • Intermittent Sentence • Suspended Sentence • Conditional Sentence • Fine or forfeiture 	<ul style="list-style-type: none"> • Absolute Discharge • Conditional Discharge 	<ul style="list-style-type: none"> • Charges withdrawn • Charges withdrawn - 'alternative measures' or diversion • Acquittal at trial • Stay of proceedings 	<ul style="list-style-type: none"> • Police contact and surveillance • Mental health apprehensions • Arrests (but no charge) • Victimization • Witness

1. CRIMINAL CONVICTIONS

When an accused person is convicted of a charge (or charges), they can receive the following sentences:

CUSTODIAL SENTENCE. (Imprisonment). A person has been convicted of a crime and sentenced to a term of imprisonment either in a provincial jail/correctional centre or a federal prison.

SUSPENDED SENTENCE. (Rehabilitative supervision in the community through probation). A suspended sentence under the *Criminal Code* allows a judge to suspend a passing of sentence, and instead place a convicted person on a period of probation.

CONDITIONAL SENTENCE. A conditional sentence is a sentence of custody (imprisonment) that is served in the community, generally under what is commonly referred to as “house arrest” and other conditions. If the person is found in breach of their conditions they can be made to serve the balance of their conditional sentence in jail.

FINE OR FORFEITURE. A person is convicted and sentenced to pay a specified amount of money to the court.

2. NON-CONVICTION DISPOSITIONS: FINDINGS OF GUILT

If you plead or have been found guilty of a criminal offence you may also receive an absolute discharge or conditional discharge. These are findings of guilt, but they are not criminal convictions.

ABSOLUTE DISCHARGE. If you plead guilty early or are found guilty by a judge or jury following a trial, a Judge may, instead of imposing sentence that results in a conviction, grant a “discharge.” Under the *Criminal Code* of Canada, if an accused person accepts responsibility for a charge, or have been found guilty, they may be granted an absolute discharge, which is not a criminal conviction. An absolute discharge is immediate and there is no probation order – it is a registration of guilt. There is a record that results from an absolute discharge. The record of the absolute discharge is supposed to be removed from CPIC databases after a period of one year.

CONDITIONAL DISCHARGE. A conditional discharge usually contains certain probation requirements that must be fulfilled before the discharge becomes Absolute. These requirements may or may not include requirements such as reporting conditions, a repayment of money to the victim, or the completion of programming. While someone with a conditional discharge does not end up with a criminal conviction, it is a registration of guilt, it will takes at minimum three years from the date of the discharge for the record of discharge to be removed from CPIC databases.

You cannot receive a record suspension for a discharge. The *Criminal Records Act* states that these records be automatically sealed and removed from RCMP databases after one year for an absolute discharge, and three years for a conditional discharge.

Many people who are discharged are frequently told that they will not have a criminal record of convictions. While this is correct, it is misleading: the fact that someone received a discharge is widely disclosed on a basic “criminal record check”, at least within the one and three- year retention time frames.

3. NON-CONVICTION DISPOSITIONS: NO FINDING OF GUILT

Although a person has not been found guilty in court, and they do not have a criminal conviction, these records frequently appear on police record checks. All of the following can result in the creation of a police record.

WITHDRAWAL – *NO REASONABLE PROSPECT OF CONVICTION.*

Sometimes the Crown will withdraw a person’s charges before trial. This will likely happen if the Crown believes there is no reasonable prospect of conviction, or if pursuing the charges are not in the public’s interest.

WITHDRAWAL – *PEACE BOND.* For certain charges, duty/defence counsel may negotiate with the Crown Attorney to “drop” or withdraw the charges against an accused person in exchange for the person to enter into a Peace Bond. A Peace Bond is a promise an accused makes to the court in writing to keep the peace and be of good behavior, and if deemed necessary, to stay away from the complainant for a given period of time, usually up to a year. The original charge is usually withdrawn.

WITHDRAWAL – DIVERSION. For certain charges that involve minor and/or first-time offences, the Crown may agree to ‘drop’ or withdraw charges if a person completes ‘diversion’. Someone who is sentenced to diversion may be told they have to make a charitable donation, perform community service, and/or enter into and complete a specific program.

ACQUITTAL AT TRIAL. If the matter was taken to trial and the person is found not guilty by a judge or jury, then one is said to have been “acquitted” of the charges laid against him/her.

STAY OF PROCEEDINGS. This is a stoppage of the case against an accused person without a finding of guilty or not guilty. A stay is usually granted because of some form of procedural unfairness, such as a violation of certain Charter rights, to the accused person. A stay of proceedings is different from a suspended sentence. A suspended sentence IS a criminal conviction.

4. RECORDS OF POLICE CONTACT

MENTAL HEALTH APPREHENSION

Under certain circumstances the police have the power to detain people under provincial mental health legislation and it can often result in the person being taken to a hospital.

Other types of police contact can include individuals that have been put under surveillance, people who were interviewed by the police or considered as suspects, persons of interest in investigations, witnesses and complainants.

OTHER KEY TERMS:

FORM 1: A document that authorizes a physician to detain an individual, for a maximum of 72 hours, who is believed to be a threat to themselves or someone else.

FORM 2: A document that anyone can apply for and submit to a Justice of the Peace to demand that a person be assessed by a physician, if an individual has sufficient information to suspect the individual in question may be suffering a mental health crisis.

VULNERABLE PERSON/POPULATION: According to the *Criminal Records Act*, a vulnerable person is a person who, because of age, a disability, or other circumstances, whether temporary or permanent are (a) in a position of dependence on others or (b) are otherwise at a greater risk than the general population of being harmed by a person in a position of authority or trust relative to them.

OTHER RESOURCES ON POLICE RECORD CHECKS:

CANADIAN CIVIL LIBERTIES ASSOCIATION

- General information: www.ccla.org/recordchecks
- False Promises, Hidden Costs: The Case For Reframing Employment and Volunteer Police Record Check Practices In Canada: <http://www.ccla.org/recordchecks/falsepromises>
- Presumption of Guilt: The Human Cost: <http://ccla.org/recordchecks/humancost/>
- Presumption of Guilt? The Disclosure of Non-Conviction Records in Police Background Checks: <http://ccla.org/wordpress/wp-content/uploads/2012/09/CCLA-NCD-Report.pdf>
- Know your rights guides and FAQs – national overview: <http://ccla.org/recordchecks/resources/>

JOHN HOWARD SOCIETY OF ONTARIO

- Help Wanted*: Reducing Barriers for Ontario's Youth with Police Records: <http://www.johnhoward.on.ca/wp-content/uploads/2014/07/johnhoward-ontario-help-wanted.pdf>
- Police Records and Stigma: Challenging Stereotypes: <http://www.johnhoward.on.ca/wp-content/uploads/2014/09/counter-point-6-police-records-and-stigma-challenging-stereotypes.pdf>
- Record Suspensions (Pardons) and Waivers Information Brochure: <http://www.johnhoward.on.ca/wp-content/uploads/2014/09/Record-Suspension-brochure.pdf>

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER FOR B.C.

- Use of Police Information Checks in British Columbia: <http://www.oipc.bc.ca/investigation-reports/1631>
- Use of Employment-Related Criminal Record Checks: Government Of British Columbia: <http://www.oipc.bc.ca/investigation-reports/1247>

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER FOR ONTARIO

- What is involved if you are asked to provide a Police Background Check?: <http://www.ipc.on.ca/images/resources/up-1policebkg.pdf>
- Crossing the Line: The Indiscriminate Disclosure of Attempted Suicide Information to U.S. Border Officials via CPIC: <http://www.ipc.on.ca/english/Resources/Reports-and-Submissions/Reports-and-Submissions-Summary/?id=1391>

OFFICE OF THE PRIVACY COMMISSIONER OF CANADA

- https://www.priv.gc.ca/index_e.asp
- Workplace privacy FAQ: https://www.cippic.ca/en/FAQ/workplace_privacy#FAQwork

- Workplace Privacy - What information about me can my employer gather?: https://cippic.ca/FAQ/workplace_privacy/gather#credit_check_on_me

POLICE RECORDS CHECK COALITION

- PRCC Advocacy Guide to Cross-Border Mental Health Records: <http://www.mentalhealthpolicerecords.ca/docs/guides/PRCCInfoGuideXBorder2012.pdf>

CANADIAN POLICE INFORMATION CENTRE

- <http://www.cpic-cipc.ca/faq/index-eng.htm>

ORGANIZATIONS THAT MAY HELP

PROVINCIAL ORGANIZATIONS

- Information and Privacy Commissioner of Ontario www.ipc.on.ca
- Justice for Children and Youth (for Youth Record issues) www.jfcy.org
- Ontario Human Rights Commission www.ohrc.on.ca
- Ontario Human Rights Legal Support Centre www.hrlsc.on.ca
- Ontario Human Rights Tribunal www.hrto.ca/
- Ontario Independent Police Review Director www.oiprd.on.ca/

FEDERAL ORGANIZATIONS

- Office of the Privacy Commissioner of Canada www.priv.gc.ca

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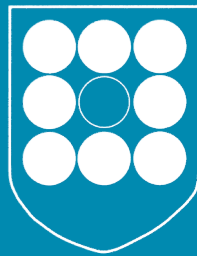
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Justice for Children and Youth. Records, Fingerprints, Photos, DNA.
<http://jfcy.org/en/rights/youth-records-and-other-data/>

Ontario Association of Chiefs of Police. (2014). LEARN Guideline for police record checks in Ontario:
http://www.oacp.on.ca/Userfiles/Files/NewAndEvents/PublicResourceDocuments/GUIDELINES%20FOR%20POLICE%20RECORD%20CHECKS%20%20_%20June%202014_FINAL.pdf

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