SUBMISSON

JHSO Submissions on the Regulatory Exemptions Proposal under the Police Record Check Reform Act, 2015.

john howard society Ontario

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John Howard Society of Ontario

Centre of Research & Policy

T: 416-408-4282
W: www.johnhoward.on.ca
@jhsontario

About the John Howard Society of Ontario

For more than 90 years, we've worked to keep the humanity in justice.

Today we continue to build a safer Ontario by supporting the people and communities affected by the criminal justice system. Our 19 local offices deliver more than 80 evidence-based programs and services focused on prevention, intervention and re-integration across the province. These range from helping youth develop the life skills that will let them achieve their full potential, to helping families navigate issues of criminal justice, to providing job training for those leaving incarceration so they can contribute to their community in a meaningful way. We promote practical, equitable policies while raising awareness of the root causes of crime and calling on Ontarians to share responsibility for addressing them. Within the system itself, we advocate for the fair treatment of every individual. Each year, our work impacts the lives of more than 100,000 Ontarians.

Please accept this document as the submission of the John Howard Society of Ontario (JHSO) to the Consultation on Proposed Exemptions under the *Police Record Checks Reform Act, 2015*. We are grateful for the opportunity to have met with you and provide the following written submissions to this consultation.

John Howard Society of Ontario has been engaged in research and advocacy on the issue of police records and employment and the disclosure of non-conviction records for many years. The John Howard Society of Ontario worked closely with other stakeholders at CMHA, CCLA and OACP to inform the development of the PRCRA. We have contributed to various consultations processes in the past on the PRCRA and regulations to the Act and we are pleased to provide our input on the current consultation.

Introduction

The *Police Record Check Reform Act* is an important piece of legislation, guarding the fundamental human rights of individuals and protecting against the discrimination, stigmatization and exclusion arising from the release of non-conviction records. The Act also introduced clarity and standardization into a system that lacked higher direction for record check providers, leading to rights infringement, inconsistent and unpredictable practices, and confusion for the public, the voluntary sector and employers alike. It is crucially important that the Exemptions Regulation fit within the spirit and objectives of the PRCRA by only providing exemptions in a narrow set of circumstances when absolutely necessary. If too broad, the exemptions may undermine the Act and re-introduce inconsistency and ambiguity into Ontario's police record check system.

JHSO appreciates and supports the government's decision to begin from the premise that no exemptions should exist and any proposed exemptions must be justifiable before they are included in Regulation. We also recognize the consideration given by the Ministry of the Solicitor General, in the proposal document, to limit the disclosure of non-conviction information including, mental health and street check information, that contributes to prejudicial, adverse impacts for vulnerable Ontarians.

The social science evidence on police records is comprehensive. Before outlining our suggested framework for the Exemptions Regulation, we first outline some of the key research that speaks to the utility of police records for screening purposes and the disparate impact police records have on racialized, Indigenous and vulnerable communities. Our suggestions on the general framework for the Exemptions Regulation is followed by commentary on specific sections of the Exemptions Proposal Document.

Evidence-based research on the use and impact of police records

Police records have little predictive value in determining risk. Instead, police record check practices and the information released on record checks often lead to discrimination and exclusion.

The research on the usefulness of police record checks is comprehensive. Some key points from the research are as follows:

- There is no compelling evidence to support the assumption that workplace violence is perpetuated more by persons with criminal records than those without one. After a few years, there are no differences in the risk of offending between those with a prior conviction and those without.[1]
- Although criminal justice professionals do sometimes use a criminal record as one factor in a general risk assessment, employers and other agencies that request record checks are not good at predicting risk. Risk factors as interpreted by requesting background checks, namely, the existence or nature of convictions or arrests, "depart markedly from criteria included in commonly accepted and validated assessments of offender risk."[2]
- Looking at the workplace specifically:
    - There is no compelling evidence to suggest that workplace violence is perpetrated more by persons with criminal records than those without one. Indeed, it may even be the opposite: "Considering the problem of workplace crime in the aggregate, an assumption that much employee-perpetrated illegal activity may be due to employees with no prior criminal justice involvement is probably not unreasonable."[3]
    - Past criminal convictions are not correlated with an increased likelihood to commit a work-related offence in the future: "variables which normally predict subsequent criminal activity made no impact in trying to predict offenses against an employer."[4]
- Stable employment, as well as income, stable housing and social networks that employment can foster, are significant protective factors against future reoffending.[5]

This research speaks to the utility of records of criminal convictions. There is no evidence that non-conviction information is predictive of future behaviour or risk to public safety.[6] In fact, the disclosure of non-conviction information acts against the goals of community safety by creating barriers to employment and education opportunities. The research is clear that stable

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[1] Megan C. Kurlychek, Robert Brame, Shawn D. Bushway, "Scarlet letters and recidivism: Does an old criminal record predict future offending?" Criminology and Public Policy, 5 no. 3 (2006): 483, as well as Megan C. Kurlychek, Robert Brame, Shawn D. Bushway, "Enduring risk? Old criminal records and short-term predictions of criminal involvement," Crime and Delinquency, 53, no. 1 (2007): 64. See also A. Blumstein, and K. Nakamura, "Redemption in the presence of widespread criminal background checks," Criminology 47, no. 2 (2009): 327.

[2] Patricia Harris and Kimberly Keller, "Ex-offenders need not apply: the criminal background check in hiring decisions," Journal of Contemporary Criminal Justice 21, no. 1 (2005): 6.

[3] Ibid.

[4] Keith Soothill, Les Humphreys and Brian Francis, "Middle-class offenders as employees – Assessing the risk: A 35-year follow-up," Journal of Offender Rehabilitation, 52, no. 6 (2013): 407.

[5] Christa A. Gillis & D. A. Andrews. (2005). Predicting Community Employment for Federal Offenders on Conditional Release. Correctional Service of Canada; Curt T. Griffiths, Yvon Dandurand and Danielle Murdoch, The Social Reintegration of Offenders and Crime Prevention (Ottawa: National Crime Prevention Centre, 2007), http:// www.publicsafety. gc.ca/cnt/rsrcs/pblctns/scl-rntgrtn/scl-rntgrtn-eng.pdf; Dominique Fleury and Myriam Fortin, "When working is not enough to escape poverty: An analysis of Canada's working poor," Human Resources and Social Development Canada (working paper, 2006), http://tamarackcommunity.ca/downloads/vc/When_Work_Not_Enough.pdf; Christopher Uggen, "Work as a turning point in the life course of criminals: A duration model of age, employment and recidivism," American Sociological Review 65, no. 4 (2000): 529.

[66] https://ccla.org/recordchecks/doc/Records-check-final-20140516.pdf

employment, and the income, housing and social supports that employment can foster, are significant protective factors against criminal justice involvement.

Police records also present equity issues. Black, Indigenous and other racialized groups are disproportionately represented in the justice system as are individuals with mental health issues and individuals experiencing poverty and homelessness. These vulnerable groups are also overrepresented in police databases with non-conviction information as they may be more likely to interact with police in street checks or mental health calls. Thus, the disclosure of non-conviction information has a disparate impact on BIPOC and other vulnerable communities, further marginalizing these groups and can lead to prohibited discrimination under the *Ontario Human Rights Code*.

The social science evidence summarized here directly informed the development of the PRCRA. The Act recognized that non-conviction information was generally not useful in screening applicants and highly prejudicial to individuals, particularly those from vulnerable communities. In order to prevent unnecessary barriers to employment and education, non-conviction information was only intended to be released in the narrow context of positions of authority or trust with vulnerable populations. Safeguards were introduced at all levels of police record check to protect against discrimination and adverse impacts to individuals and greater society. Our suggestions outlined below, suggest a framework for the exemptions, keeping the integrity and spirit of the PRCRA intact.

<u>Suggested Framework for the Exemptions Regulation</u>

As indicated above, the Exemptions Regulation should remain consistent with the PRCRA by keeping any exemptions narrow and clearly outlined and not including circumstances already contemplated and accommodated for in the Act. It is important to emphasize that in the drafting of the Act, consideration was already given to special circumstances that may warrant additional disclosure of otherwise protected non-conviction information for the protection of vulnerable persons, such as children and the elderly. This is a built-in safety valve intentionally designed to protect Ontario's most vulnerable, given the high-trust and sensitive nature of certain employment or volunteer positions.

Despite this already built-in "exceptional disclosure" mechanism, we do agree that there are certain circumstances which may warrant exemptions to the PRCRA more broadly. However, in order to preserve the intent of the PRCRA, any exemptions should be narrow and limited to a specific purpose. Our submissions center around ensuring clarity and consistency for employers, record check providers, including police services, and the general public.

We support the approach of beginning from the position that no exemptions should exist. From there, an analysis should be conducted to determine if there are any purposes that warrant an exemption and what that exemption would require. The final step would be to determine the parameters for each of the exempted purposes and ensure this is clearly outlined in the regulation. This would allow for consistency and the preservation of procedural fairness across different groups or sectors that may be eligible for an exempted record check process for one of the enumerated purposes.

Currently, the Regulation proposal lists a number of organizations or sectors that have requested exemptions and includes individualized rationales and exempted processes for each.

We agree that there are groups and rationales included in the proposal that warrant an exempted record check process. However, the individualized exempted record check processes for each group creates a lack of clarity and introduces red tape and confusion for the public and for record check providers in determining what information is released and for what purpose. We recommend setting out a limited list of purposes, for which an exempted record check is warranted, and outlining what the process would be for each purpose. This would create a short list of exemption types. Organizations and sectors that require checks for the specific listed purposes would be enumerated within each exemption type. This would create clarity and consistency in the exempted record check processes.

After reviewing all the proposed exemptions, we identified some purposes for exempted processes that we consider to be justifiable and appropriate. There are indeed circumstances where record check processes should not be limited by the Act. We suggest that exemptions should be allowed for record checks conducted for the following three purposes:

1. To assess risk of infiltration by organized crime
2. For the purposes of national security
3. Where a third party that is not bound by the PRCRA has their own requirements for record checks that cannot be accommodated by the Act.

For each of the three types of exemptions above, there should be an enumerated list of sectors or organizations that qualify for the exemption. For the first two purposes, an exemption should clearly outline what information is released/protected and the safeguards available to ensure procedural fairness. As part of the procedural safeguards, only information directly related to the specific exemption purpose should be released. There should be information provided about disclosure and review processes available to the applicant.

For the third exemption type, this should only apply to third party groups that are not subject by the PRCRA and should not include bound provincial organizations that set screening processes outside the parameters of the PRCRA.

The first and second purposes would warrant the release of additional non-conviction information, however a full exemption from the Act is not necessary. The first suggested purpose for an exempted process is to assess risk of infiltration by organized crime. Police Services, Correctional Institutions, Criminal Intelligence and other groups included in the exemptions proposal document would be included under this exemption type. For the purposes of determining risk of infiltration of organized crime, association information is important and relevant to the purpose. This means that the location or affiliation to particular individuals connected to organized crime would prove relevant information to be released for this purpose. However, specific mental health information would not be relevant. A process that releases the relevant association or location information without releasing the fact that there was a mental health issue would fulfill the requirement while also protecting the rights of the individual and guard against unnecessary stigma and discrimination associated with mental health issues.

A similar analysis/framework for disclosure can be done for exempted processes under the national security purpose. Information that is necessary for the purpose should be released but mental health related information that is not useful to the screening objectives, and that could lead to prohibited discrimination, should not be disclosed.

Feedback that is specific to each of the proposed exemptions in the consultations document is included below. We first list the proposed regulation, as drafted by the Ministry of the Solicitor General, and then provide our comment.

Feedback on each of the proposed exemptions

Screening Category #1	**Correctional Institutions, Parole Services**
Proposed Exemption	• Exemption proposed for staff, volunteers and contractors working in correctional institutions and youth justice facilities. • The exemption for adult probation and parole services would cease to exist. • Youth probation would continue to have an exemption. The proposal is a full exemption (none of the provisions of the PRCRA apply).
Examples of Positions covered by the Exemption (not exhaustive)	• Correctional Officers. • Youth Probation Officers, Youth Service Officers.
Reason for Exemption(s)	• Personnel, including volunteers, have access to ministry assets and highly sensitive information. • Correctional services have heightened needs to identify if an applicant has any associations with organized crime and there are significant safety risks at the facility (e.g. weapons, lethal drugs, planned violent attacks), and thus thorough screening of employees, volunteers and contractors is necessary. • In a Youth Justice context, employees and contractors work with children and youth that are uniquely vulnerable and staff have a high degree to control and authority including close personal contact. The unique vulnerabilities of these children require additional screening beyond what is permitted under a Vulnerable Sector Check. • In some cases, specific references to organized crime association may be captured in street checks and specific child protection concerns (e.g. violent thoughts about harming children) may be captured in police records for a (mental health) crisis call. This non-criminal information would be considered important for screening in these sectors.

JHSO Comments:
We agree that Correctional Services should have an exemption based on the risk of infiltration by organized crime and agree with the reason for exemption to that effect. We would suggest this group would be captured in the first JHSO-proposed exemption type (i.e., screening for risk of infiltration by organized crime). Only information that is relevant for the purpose of this type of screening should be released. Information about where an individual was apprehended or who they have been associated with, would be relevant to determine the risk of organized crime

connections. Information about whether an individual has had a mental health crisis involving the police would not be relevant for the intended purpose and can lead to prohibited discrimination.

We would suggest that the first reason involving access to highly sensitive information is not justifiable for a full exemption. There are many sectors that involve employees with access to highly sensitive, confidential information and this reason does not set apart this group from others with similar roles and responsibilities.

We do not agree with the reason regarding unique vulnerabilities of this group. As noted earlier, the PRCRA specifically contemplated individuals being in a position of trust or authority with vulnerable populations, as is the case with this sector, and provides an exceptional disclosure mechanism for this very reason. In addition, there are many groups that have intersecting and compounding vulnerabilities, including adults with disabilities and elderly populations. The Act has already created a process for exceptional disclosure to meet these additional screening needs and thus, an exemption for this purpose is not warranted.

Screening Category #2	**Police Services**
Proposed Exemption	• Exemption proposed for employees and contractors of police services. • The proposal is a full exemption (none of the provisions of the PRCRA apply).
Examples of Positions covered by the Exemption (not exhaustive)	• Police Officers. • Special Constables. • Police investigators. • Police auxiliary staff and volunteers. • Contractors providing goods/services to police. • Police Services Board members.
Reason for Exemption(s)	• Additional screening is required to mitigate potential risks to undermine administration of justice, infiltration of police by criminal organizations, and access to critical infrastructure and confidential information. Employees (agency or civilian) are in positions of trust/authority over vulnerable persons and can have access to firearms. Insufficient screening can jeopardize public safety, security and confidence in police. • Criminal prosecutions and other proceedings can be jeopardized when a police officer's historical background (e.g. misconduct, historical criminal behavior) results in a loss of credibility before the courts. Police services need to ensure that its members' background information does not impede their ability to enforce the law and protect the public. • Police Service Board members are responsible for independent civilian oversight and governance of police services. They have access to highly sensitive information which if used inappropriately, could compromise public safety.

JHSO Comments:
In our view, the justifiable reasons for an exemption for this group pertain to the first two JHSO-proposed exemption types: risk of infiltration by organized crime and national security. We would recommend that the above-mentioned restrictions to the release of non-conviction information apply in this case as well.

We would argue that the considerations around these being positions of trust and authority is already considered within the existing PRCRA vulnerable sector check framework, and therefore further exemptions for this purpose are not justified.

In terms of the risk that criminal prosecutions and proceedings would be jeopardized, the information that might be looked at in these proceedings would be related to convictions and police misconduct findings. If there is a concern about loss of credibility before the courts, screening processes need only to identify convictions and misconduct findings, and would not require a full exemption from the PRCRA. Other non-conviction information would most likely not be relevant to these proceedings and should not be released for this purpose.

Screening Category #3	**Administration of Justice Sector**
Proposed Exemption	• Crown Attorneys and support staff positions will be exempted and that may include a full exemption where there is a demonstrated public safety need (e.g. access to sensitive police intelligence). • For other positions (e.g. administrative staff), an exemption is proposed (limitation of no street check and mental health information).
Examples of Positions covered by the Exemption (not exhaustive)	• Crown Attorneys and support staff. • Court Staff. • IT individuals that support the justice sector. • Appointments to the Criminal Injuries Compensation Board.
Reason for Exemption(s)	• Individuals working in the administration of justice sector may have control over evidence and high-risk exhibits prior to and after submission to the court. Inappropriate use of this information could have a significant impact on the protection of the public/administration of justice. • Some individuals have access to confidential witness information (e.g. witness protection program) and these witnesses are specifically vulnerable to threats from criminal elements and organized crime. • Court staff are responsible for the care and maintenance of court files and documents, which may contain highly sensitive or confidential information protected by a statutory provision, common law rule or court order. Inappropriate release or use of this information could significantly impact the safety of individuals and undermine the administration of justice.

	• In some cases, specific references to organized crime association may be captured in street checks. This non-criminal information would be considered important for screening in this sector. • Additional screening is required to mitigate public safety risks and safeguard the administration of justice. • IT individuals have access to computer accounts/servers/systems/applications/databases with highly sensitive intelligence (e.g. police databases, judiciary etc.); there are also police service requirements (e.g. OPP), which have additional screening requirements to access their systems/servers.

JHSO Comments:
We suggest that the justifiable reasons for exemption for this group pertain to a risk of infiltration by organized crime.

We do not find that control over evidence and high-risk exhibits warrants an exemption under the Act. There are indeed, many professions that have access to important and delicate information or objects and an exempted screening process would not be useful or warranted in this case.

The reason about IT individuals suggests that OPP has additional screening requirements to access their systems/servers, however OPP is a provincial organization that is subject to the PRCRA so there should not be requirements outside the Act's parameters.

In addition, Crown attorneys and some support staff including paralegals are governed by regulatory bodies that conduct their own background checks in order to recognize a member in good standing. These requirements are in place in recognition of the sensitive materials that lawyers and other legal professionals have access to and the positions of trust with members of the public. Therefore, additional screening outside the parameters of the PRCRA, other than for the purpose of assessing risk of infiltration by organized crime, would not be justifiable.

Screening Category #4	**Criminal Intelligence Service Ontario**
Proposed Exemption	• Exemption proposed for the staff of the Criminal Intelligence Service Ontario (CISO). • The proposal is a full exemption (none of the provisions of the PRCRA apply).
Examples of Positions covered by the Exemption (not exhaustive)	• All CISO employees.
Reason for Exemption(s)	• The role of Criminal Intelligence Service Ontario is to link organizations that are responsible for intelligence gathering, criminal investigation and enforcing provincial and federal laws. These connections make it possible for police and government to work together effectively to fight organized crime.

	• CISO provides specialized intelligence training to police officers and funding to support major organized crime investigations. • Staff have direct access to criminal intelligence systems and reports and access to highly confidential intelligence.

JHSO Comments:
We propose that this organization fits within our suggested exemption for risk of infiltration by organized crime. As indicated above, the information provided for this exemption should be restricted to information that is directly related to the purpose of the screening.

Screening Category #5	**Major Case Management**
Proposed Exemption	• Exemption proposed for positions that access to the Major Case Management (MCM) system. • The proposal is a full exemption (none of the provisions of the PRCRA apply).
Examples of Positions covered by the Exemption (not exhaustive)	• All positions with MCM access.

Reason for Exemption(s)	• MCM combines specialized police training and investigation techniques with a computer software system called Powercase. The software manages the vast amounts of information involved in investigations of serious crimes.
	• Police services across Ontario must use MCM as part of their investigation into certain types of serious crimes such as homicides, sexual assaults and abductions.
	• Since 2002, all municipal police services and the Ontario Provincial Police have had access to the Major Case Management system.
	• MCM contains highly sensitive information, such as:
	  ○ Tracking, sorting and analysing huge amounts of personal information about a crime: police notes, witness statements, door-to-door leads, names, locations, vehicles and phone numbers etc.
	  ○ Analysis of connections between cases so police services can reduce the risk that serial offenders will avoid being caught.

JHSO Comments:
We propose that this organization fits within our suggested exemption for risk of infiltration by organized crime. As indicated above, the information provided for this exemption should be restricted to information that is directly related to the purpose of the screening.

Screening Category #6	Office of the Provincial Security Advisor
Proposed Exemption	• Exemption proposed for the Office of the Provincial Security Advisor (OPSA). • The proposal is a full exemption (none of the provisions of the PRCRA apply).
Examples of Positions covered by the Exemption (not exhaustive)	• All OPSA employees.
Reason for Exemption(s)	• The Office of the Provincial Security Advisor provides advice and intelligence on areas of public safety and national security that fall within provincial responsibility. Increased screening enables access to information and intelligence from other security counterparts which may be required to ensure public safety or security. • In some cases, specific references to organized crime association may be captured in street checks and specific public safety concerns may be captured in police records. This non-criminal information would be considered important for screening in this sector.

JHSO Comments:
We propose that this organization fits within our suggested exemptions for risk of infiltration by organized crime and for the purposes of national security. As indicated above, the information provided for these exemptions should be restricted to information that is directly related to the purpose of the screening.

Screening Category #7	Special Investigations Unit
Proposed Exemption	• Partial exemption proposed for the Special Investigations Unit (SIU). • Street check and mental health information are not included in the exemption.
Examples of Positions covered by the Exemption (not exhaustive)	• SIU staff. • SIU investigators. • Volunteers.
Reason for Exemption(s)	• The function of the SIU is to conduct criminal investigations into circumstances involving police and civilians that have resulted in serious injury, death or allegations of sexual assault. • Legal cases can be jeopardized when an investigators historical background (e.g. misconduct) results in a loss of credibility before the courts. • Additional screening is required to ensure that employees have no organized crime affiliations or past criminal activity.

JHSO Comments:
We propose that the third reason provided fits within our suggested exemption for risk of infiltration by organized crime. As indicated above, the information provided for this exemption should be restricted to information that is directly related to the purpose of the screening.

The reasons for an exemption include the requirement to ensure that employees do not have organized crime affiliation just like some other sectors mentioned above. However, in the above cases (like police officers) a full exemption is provided while for this organization mental health information is not disclosed. We suggest that for all cases where the purpose of the exemption is related to infiltration by organized crime, mental health information is not necessary, invites prohibited discrimination and should not be disclosed.

Screening Category #9	**Alcohol and Gaming Commission of Ontario**
Proposed Exemption	• Partial exemption proposed for the Alcohol and Gaming Commission of Ontario (AGCO), licensees, registrants and appointees. • Mental health information is not included in the exemption.
Examples of Positions covered by the Exemption (not exhaustive)	• Applicants for licence and/or registration under the *Liquor Licence Act, Gaming Control Act, Cannabis Licence Act, Horseracing Licence Act*: OLG employees (certain positions). • Appointees to the Board of Directors of the Ontario Lottery and Gaming Corporation and the Alcohol and Gaming Commission of Ontario.
Reason for Exemption(s)	• Licensees and Registrants: Licensees and registrants must meet regulatory screening requirements set out by provincial legislation. An exemption is required to ensure that persons seeking registration will meet the statutory conditions of registration (e.g. investigations into the character, financial history and competence of an applicant). • Appointees: Appointees may have access to sensitive police intelligence information and are in a position of authority over policing, or licensing/registration matters.

JHSO Comments:
In our view the first reason above does not justify an exemption from the Act. There are many regulatory bodies in the province that collect information about character and competence that are not eligible for exemptions. Furthermore, additional information outside the police record checks in the PRCRA would not be needed to provide the specified information and may be more appropriately obtained using other screening mechanisms.

The second reason suggests this organization may be eligible for an exemption under the purpose of risk of infiltration by organized crime. If included under that exemption type, only information relevant to the specific purpose should be disclosed.

Screening Category #10	**Office of the Children's Lawyer**

Proposed Exemption	• The exemption will apply to the Office of the Children's Lawyer (OCL) only. • Exemption is limited to specific child protection concerns (e.g. family court matters with no criminal charges laid). • The Office of the Public Guardian and Trustee (OPGT) will be removed from the regulation as the OPGT engages in alternative screening processes.
Examples of Positions covered by the Exemption (not exhaustive)	• Employees of the Office of the Children's Lawyer who have access to information regarding custody and access and child protection matters. • Contracted services (e.g. lawyers, social workers, mental health experts) to the OCL in matters relating to custody and access and child protection.
Reason for Exemption(s)	• The OCL provides legal representation to children under the age of 18 in court cases involving custody and access and child protection, as well as civil, and estates and trusts cases. • The unique vulnerabilities of these children, who are the subject of custody and access and child protection cases, require additional screening beyond what is permitted under a Vulnerable Sector Check. • Contracted service providers (e.g. lawyers, social workers, mental health experts) are in positions of trust and have direct contact with vulnerable children. • Employees have access to extensive personal information about children who are the subject of custody and access and child protection cases. • Failure to adequately screen candidates for the above positions could expose the OCL's vulnerable clients to unnecessary risks of being victimized.

JHSO Comments:
We suggest that an exemption on the basis of the vulnerability of youth and children is not justifiable and is already contemplated in the PRCRA with the vulnerable sector check framework.

We do not disagree with the assertion that young people involved in custody and access and child protection cases present particular vulnerabilities. However, these additional intersecting issues are not unique to youth in these categories. Indeed, elderly adults with compounding issues or adults with developmental disabilities are also extremely vulnerable but are not included in the exemptions.

That is not to suggest that the exemptions should be opened to include all the potential vulnerable groups. Rather, we emphasize again that the PRCRA has created a particular process designed for individuals that work with vulnerable groups in a position of trust or authority, and already provides an exceptional disclosure mechanism that provides for the disclosure of otherwise sealed records for this very purpose. Creating additional exemptions, on top of this existing exceptional disclosure mechanism, for organizations on the basis of this purpose introduces redundancy and also opens the government up for potential liability by groups representing other vulnerable groups, not included in the exemptions.

Screening Category #11	Child and Parent Resource Institute
Proposed Exemption	• Partial exemption would be limited to the consider information related to specific child protection concerns (e.g. family court matters with no criminal charges laid).
Examples of Positions covered by the Exemption (not exhaustive)	• Employees, volunteers and student placements at the Child and Parent Resource Institute (CPRI).
Reason for Exemption(s)	• Personnel, including students, have access to ministry assets and highly sensitive information. • Employees and contractors work with children and youth that are uniquely vulnerable because they have complex mental health needs, behavioral, developmental or physical challenges. • Some children and youth also live-in residential care. • The unique vulnerabilities of children and youth receiving Child and Parent Resource Institute (CPRI) services requires additional screening beyond what is permitted under a Vulnerable Sector Check. • In some cases, specific references to child protection concerns might be captured in police records involving a (mental health) crisis or personal injury call. This non-criminal information could be considered important for screening in this sector.

JHSO Comments:
Similar to the category above, our view is that the positions of trust and authority with vulnerable youth described here meet the criteria for a vulnerable sector check under the PRCRA, but do not justify an exemption to the Act.

Screening Category #12	Financial Services
Proposed Exemption	• Exemption limited to waiving second consent and disclosure of a police record to the Financial Services Regulatory Authority (FSRA). • Street check and mental health information are not included in the exemption.
Examples of Positions covered by the Exemption (not exhaustive)	• License applicants of FSRA. • FSRA investigators.
Reason for Exemption(s)	• FSRA as a regulatory agency, has direct access to the Canadian Police Information Centre (CPIC) databases. • Direct access to CPIC provides the regulatory agency with the ability to check for further conviction information to assess the integrity of individuals and assess risks of theft and fraud to the investing public. FSRA investigators must meet third party screening requirements to ensure continued access to CPIC.

	• An exemption is required due to operational challenges presented by the requirements in the PRCRA pertaining to consent and disclosure of police record checks.

JHSO Comments:
It was explained to us that the financial services sector requires an exemption for the purposes of compliance with federal legislation. If that is the case, the exemption should be limited to the specific information that is required for the third-party bodies or legislation involved.

We suggest that direct access to CPIC should not negate the procedural safeguards around disclosure and that if there is a justifiable reason for a partial exemption, there should be a process set out for disclosure and review to ensure procedural fairness for the applicant involved in these screenings.

Screening Category #13	**Inspectors, Investigators, etc.**
Proposed Exemption	• Exemption will be specific to situations where an exempted check is required by third party justice partner (e.g., Royal Canadian Mounted Police) in order to access their databases or information; OR; for intelligence/sensitivity reasons (e.g., where a person will have access to information about confidential informants).
Examples of Positions covered by the Exemption (not exhaustive)	• Various Ontario Public Service inspectors/investigators (fire investigators, agriculture, conservation officers, etc.). • External inspectors/investigators employed by organizations with legislated responsibilities to ensure compliance with the law. • Supervisors and support staff for inspectors/investigators.
Reason for Exemption(s)	• Inspectors and Investigators could potentially interfere with the administration of justice and jeopardize public safety if infiltrated by organized crime. Additional screening requirements are necessary to mitigate this risk. • However, the amount of information that would be considered would be linked to risk. • Third party requirements would also be tied to essential job duties (i.e. requirements from law enforcement. organizations such as the Ontario Provincial Police and the Royal Canadian Mounted Police) which have independent screening requirements in place to protect their information and assets.

JHSO Comments:
There are reasons included here that support an exemption for the purpose of screening for risk of infiltration by organized crime.

The Royal Canadian Mounted Police is not bound by the PRCRA and would therefore represent a third party that is not bound by the Act that may have requirements beyond the Act. The exemption for this purpose should be limited to information that is involved with this third party's requirements. The Ontario Provincial Police is a provincial organization bound by the PRCRA and should not require screening outside the parameters of the Act.

Screening Category #14	**Publicly Funded District School Boards, Provincial and Demonstration Schools, School Authorities, and Licensed Child Care Settings**

Proposed Exemption	• An exempted check would be limited to information available through a Vulnerable Sector Check and some additional information that would include:
	  ○ Outstanding restraining orders, including family court restraining orders, under the *Child Youth and Family Services Act, 2017* (CYFSA);
	  ○ Provincial charges and convictions under the CYFSA;
	  ○ Provincial charges and convictions under the *Child Care and Early Years Act, 2014*; and
	  ○ Provincial charges and convictions under the *Highway Traffic Act, 1990*.

Examples of Positions covered by the Exemption (not exhaustive)	• School board and school authority employees. • Individuals who provide goods or services at a school site of a board who come into direct contact with pupils on regular basis. • Licensed child care employees. • Licensed home child care providers and in-home service providers. • Individuals who are ordinarily a resident of a premise where home child care is provided. • Individuals who are regularly at a premise where home child care is provided. • Home child care visitors and other home child care agency staff who may interact with children. • Volunteers and students in schools and child care settings.
Reason for Exemption(s)	• Individuals who work in education and child care are in positions of trust/authority and have direct contact with children and youth who are vulnerable and some of which have unique vulnerabilities including mental health needs, behavioral, developmental or physical challenges. • Students who attend Provincial and Demonstration schools or access services through provincial and demonstration schools are blind, deaf, deaf-blind or have severe learning disabilities; and many live at the schools from Monday to Friday. Employees can directly impact the health, safety and welfare of these vulnerable populations. • The vulnerabilities of these children require additional screening beyond what is permitted under a standard Vulnerable Sector Check.

JHSO Comments:
We suggest that an exemption on the basis of the vulnerability of youth and children is not justifiable and is already contemplated in the PRCRA with the vulnerable sector check framework and its built-in exceptional disclosure mechanism. Intersecting and compounding vulnerabilities articulated for this population are not unique to vulnerable children and therefore, do not distinguish this group from other sectors eligible for vulnerable sector checks.

The proposed exemptions also include additional information including orders and charges under other Acts including the *Child Youth and Family Services Act*, the *Highway Traffic Act* and the *Child Care and Early Years Act*. Information collected under these Acts are in some cases not available to police and in other cases not able to be released by police services. The information requested under this exemption go beyond an exemption of the PRCRA to introduce an entirely different regime for the specified groups. Instead, if the government believes there should be additional screening involving information from these other Acts like the *Child Youth and Family Services Act*, the screening processes should be set out in separate legislation.

There are also issues of reliability for information like outstanding restraining orders. We have heard from police services that information in their databases on restraining orders can be outdated and the courts do not always share updated information when orders are changed or removed. Releasing this information through a police record check would be highly prejudicial and may not even be accurate, contributing to considerable rights infringement.

Finally, this information disproportionately affects racialized populations, particularly Black and Indigenous populations. Black and Indigenous children and families are disproportionately represented in child welfare cases and overpoliced, increasing the likelihood of police contact for things like custody order compliance. The information collected to this effect would be greatly prejudicial and have a disparate impact for already marginalized groups.