



SUBMISSION

JHSO Submission to the Legislative Review of the Police Record Check Reform Act, 2015 (PRCRA)



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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.

Introduction

Please accept this document as the submission of the John Howard Society of Ontario (JHSO) to the consultation for the 5-year review of the *Police Record Check Reform Act* (PRCRA). John Howard Society of Ontario has been leading research and advocacy on the issue of police records and employment and the disclosure of non-conviction records for years. Before we respond to the Ministry's specific consultation questions regarding the PRCRA, we think it is important to first reflect on the context in Ontario which gave rise to the need for the PRCRA – and which serves to underline the importance of preserving and even strengthening its intent.

As the demand for police record checks escalates across sectors – at the same time industries are facing labour shortage crisis, it should be noted – a growing number of Ontarians with police records face undue exclusion and discrimination. JHSO has extensively researched and documented the harm that this practice inflicts on Ontarians. Before the PRCRA was introduced, police services were routinely disclosing non-criminal and non-conviction interactions with Ontarians on police record checks. Calling 9-11 for help during a mental health; being stopped and questioned about a crime, but never actually being charged; being accused of a crime, but later being acquitted; and even having been the *victim* of a crime were records that were regularly released on standard record checks. Revealing these non-criminal interactions on police record checks had devastating consequences. People who had not been convicted of any criminal offence were put in situations where they lost employment, housing, and even the custody of their children. Indeed, JHSO heard from numerous legally innocent individuals who lost out on employment opportunities or were terminated from existing employment, or who had been rejected from academic programs or placements, or were denied cross-border travel. The situation was further complicated by the fact that there was no consistency of practice across police services, leading to further unpredictability and uncertainty for employers/volunteer agencies and those subject to record checks alike.

Non-conviction records can impact anyone. However, there are specific populations disproportionately impacted by police records in Ontario. These populations overlap significantly with communities that already experience significant discrimination, stigma and marginalization: this includes Indigenous, Black and other racialized communities, as well as individuals with mental health and substance use issues. There are **no human rights protections in Ontario** in the employment and housing context for individuals with non-conviction police records; that is, employers can legally deny access to employment or volunteer opportunities based on the presence of a non-conviction record, or any unsealed criminal convictions, for that matter. The absence of robust human right safeguards in Ontario – unlike in other Canadian provinces – is another key consideration underpinning the need for the PRCRA.

Another crucial factor supporting the approach taken in the PRCRA is the criminological evidence on the effectiveness of non-criminal and non-conviction information at predicting risk. Indeed, it is often taken for granted that police record checks are reliable and useful screening tools. In fact, there is **no research demonstrating that police record checks are effective as risk mitigation or management tools**. This is an especially important point to emphasize given that the type of information that can be disclosed on police record checks is highly sensitive and

personal, often resulting in the prejudicial and stigmatizing treatment of those with police records. We delve into the evidence in greater detail later in this submission.

JHSO worked closely with the Ministry of the Solicitor General, along with other stakeholders such as the Canadian Civil Liberties Association (CCLA), the Ontario Association of Chiefs of Police (OACP), and the Canadian Mental Health Association of Ontario (CMHA) to create the impetus for and inform the development of the PRCRA. Based on the absence of scientific evidence on the predictive validity of non-conviction records, and the widespread harm these records have on Ontarians, we called for change to address the devastating impacts of non-conviction disclosure on police record checks. A critical piece of regulation and standardization we called for was legislation around the disclosure of non-conviction information on police record checks. This is what the PRCRA sought to achieve, and in our view, it has largely succeeded at striking the appropriate balance between respecting privacy rights and preserving public safety. We have contributed to various consultations in the past on the PRCRA and regulations to the Act and we are pleased to provide our input on the current consultation.

The PRCRA 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 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. The 5-year review is an opportunity to consider whether there are changes that can be made to provide further clarity for record check providers, employers and individuals and to better protect the fundamental rights of Ontarians.

The following submissions respond to some of the questions posed in the consultation document, and outline JHSO's recommendations to strengthen the Act.

Does the information disclosed on a police record check provide adequate information/insight into an individual's risk to public safety?

The social science evidence on police records is comprehensive. As noted earlier, **police records have little predictive value in determining risk**. Some key points from the research are as follows:

- 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.”¹
- 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.”²
 - After a few years, there are no differences in the risk of offending between those with a prior conviction and those without.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

There is a decided lack of evidence on the efficacy of police record checks for predicting risk. Yet the evidence is clear that stable employment, and the income, housing and social supports that employment can foster, are significant *protective factors* against criminal justice involvement.

In light of the evidence, we strongly submit that the current scope of information included on the three levels of record checks outlined in the PRCRA is more than sufficient and would

¹ 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.

² *Ibid.*

³ 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.

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.

strongly urge against considering expanding both the type of information revealed on record checks under the PRCRA, or the categories of workplaces exempt from its dictates.

Impact of police record checks on employment and housing

Police record checks continue to be a commonly used screening tool by employers. According to recent Canada-wide research on employer hiring practices conducted by JHSO, 60% of employers indicated that a record check should be required for all applicants.⁵ Not only is the use of police record checks in hiring a common practice but record checks are also often used to reject applicants that produce a positive result on their check. When asked whether they would hire a person with a criminal record, 62% of employers indicated that they would not hire the candidate.⁶

Police record checks are not just routine in the employment sphere. They are increasingly being utilized by housing providers as part of tenant applications.⁷ Without consideration of whether the results on a positive record check are relevant in the circumstances, many people with criminal records are being barred from accessing housing.

Police record checks also disproportionately impact Black and Indigenous populations and individuals experiencing mental health, addictions and poverty. These populations are over-represented among those with criminal records and face compounding barriers to accessing housing and employment. For example, a study in Toronto found that for identical job applications, a white applicant without a criminal record had a call back rate of 33%. This went down to 18% when a criminal record was introduced. However, a Black applicant with the identical application and no criminal record, had a call back rate of only 10% and this went down to 1% for a Black applicant with a criminal record.⁸

With limited options for employment, many individuals with past justice involvement face a lifetime of poverty and marginalization. A study by the federal government found that 14 years following release from federal correctional institutions, only half of individuals had employment and the median income was \$0.⁹ Of those that had an income, the average was \$14 000, at least half of the median income reported for the general population. The impacts for Indigenous populations are even more pronounced. Indigenous individuals earned an average of \$10 000, while non-Indigenous earners made an average of \$15 000.¹⁰

⁵ Upcoming JHSO report based on SSHRC funded research on employer perspectives around criminal records and hiring practices.

⁶ Ibid.

⁷ John Howard Society of Ontario. (2022) No Fixed Address: The Intersections of Homelessness and Justice Involvement. Retrieved from: <https://johnhoward.on.ca/wp-content/uploads/2022/05/No-Fixed-Address-Final-Report.pdf>; McAleese, S. (2022). Identifying, navigating, resisting, and eliminating structural stigma and the collateral consequences of punishment: The role of the penal voluntary sector in supporting people with criminal records in Canada.

⁸ Cruickshank, A. (2017, December 26) Black job seekers have harder time finding retail and service work than their white counterparts. Toronto Star. <https://www.thestar.com/news/gta/2017/12/26/black-job-seekers-have-harder-time-finding-retail-and-service-work-than-their-white-counterparts-study-suggests.html>

⁹ Babchishin, K. M., Keown, L & Mularczyk, K. P. (2021) Economic Outcomes of Canadian Federal Offenders. Public Safety Canada.

¹⁰ Ibid.

The evidence suggests that the information disclosed on a police record check is not an effective risk mitigation tool. In fact, employment, education, housing and social ties are so important to people leading stable lives, that widespread and unnecessary police record checks actually undermine, not enhance, public safety.

Proposed changes to the PRCRA

The PRCRA was a tremendous step forward for Ontarians who faced stigmatization and discrimination based on non-conviction information that was previously released on police record checks. The standardization and processes introduced in the Act provided much needed clarity and protections for individuals participating in police record checks by ensuring they consent to the process, can review their results and are availed of a process for reconsideration.

The PRCRA was pivotal for the issue of disclosure of non-conviction records. What remains an issue, that is increasingly impacting Ontarians, is the use of conviction information for the exclusion of people in employment and housing when there is no logical nexus between the conviction types and the reason for the police record check. Employers and housing providers are commonly using police record checks for all applicants and using *any* positive result as a reason to exclude the individual. The disclosure of information that is not relevant to the purpose of the police record check contributes to the misuse of information, discrimination, and stigmatization of people with past criminal justice system involvement. As employment and housing are key stabilizing factors that promote reintegration and protect against further involvement with the justice system, these exclusionary practices contradict efforts to promote public safety.

The current government has recognized the importance of breaking down barriers for people with criminal records. The Ministry of Labour, Immigration, Training and Skills Development continues to fund initiatives that assist Ontarians with criminal records in accessing employment and the Minister himself has spoken publicly about the “power of second chances” and allowing people to move on from their criminal records.¹¹ The Ministry of the Solicitor General has made huge strides in supporting individuals in their re-entry from corrections to community with the roll out of the Community Reintegration Strategy.¹² The following recommendations align with these initiatives by helping to limit the opportunity for exclusion of people with criminal records and allowing more Ontarians to provide for themselves and their families. Further limiting the information disclosed on police record checks also protects the fundamental privacy rights of Ontarians.

Recommendations:

The following are suggested changes to the PRCRA that will provide additional clarity around disclosure, protect fundamental rights of Ontarians and promote public safety.

¹¹ Province of Ontario. (2023) Ontario Creating Safer Communities through Second Chance Hiring. Retrieved from: <https://news.ontario.ca/en/release/1002977/ontario-creating-safer-communities-through-second-chance-hiring>

¹² Province of Ontario. (2022) Ontario Hires 25 New Community Reintegration Officers. Retrieved from: <https://news.ontario.ca/en/release/1001432/ontario-hires-25-new-community-reintegration-officers>

1. Clarity should be provided to police services and record check providers on the disclosure of summary convictions.
2. Police record checks should only disclose information that has a logical connection to the purpose of the police record check.
3. Convictions should only be released within a prescribed period of time.
4. NCR should be subject to the same exceptional disclosure test as non-conviction information.

1. Clarity should be provided on the disclosure of summary convictions.

The PRCRA stipulates that summary convictions should not be disclosed on any level of police check “if the request is made more than five years after the date of the summary conviction”.¹³ We have heard that there is some confusion about the interpretation of this provision with respect to summary convictions that are stored on local police databases as opposed to summary convictions that are logged on CPIC. This has translated into some inconsistency of practice across different police services in Ontario. It is recommended that the Ministry of Solicitor General provides clarification on the disclosure of summary convictions to ensure equal application of the Act when it comes to summary conviction information disclosed by different record check providers.

It is our position that “straight” summary convictions that exist only on local police databases, and that are not eligible for fingerprinting and never appear on CPIC, **should not be released on any level of police record check defined under the PRCRA.** In the case of summary convictions where fingerprints are taken and the disposition is submitted to/visible on CPIC, those can be disclosed only within a five-year period after the date of the conviction, as stated in the PRCRA. This would ensure consistency in the disclosure of summary convictions across the various police services and ease administrative burden for the record check providers by requiring a CPIC check and not an additional local police database search.

2. Police record checks should only disclose information that has a logical connection to the purpose of the police record check.

Currently, police record checks provide conviction information regardless of whether it is relevant or appropriate to the volunteer or employment position a person is applying for. Not all convictions are relevant for all positions or record check purposes and the disclosure of personal information that is contained in police record databases should be limited to only what is necessary for the specific purpose, in line with Ontarians fundamental privacy rights.

Where a record check is justified, the requestor should only receive information that is relevant to the position/purpose in question. One potential mechanism for this has been suggested by the Information and Privacy Commissioner in British Columbia and a municipal police service in British Columbia.¹⁴ The suggested model creates general risk categories that could be relevant to the assessment of candidates, for example: drugs and alcohol, sex, violence and theft, fraud and mischief. The police record check request would then specify which category or categories of convictions are relevant and should be released. Another option would be for the requestor to

¹³ *Police Record Checks Reform Act*, 2015, S.O. 2015, c. 30, schedule.

¹⁴ Office of the Information and Privacy Commissioner for British Columbia. (2014) Investigation Report F14-01: Use of Police Information Checks in British Columbia. Retrieved from: <https://www.oipc.bc.ca/investigation-reports/1631>

be even more specific as to the types of convictions that are relevant and then only those convictions would be disclosed. Limits on information disclosed under the current framework would remain, this would just narrow further the information that is currently disclosed under each level of check.

Only releasing relevant information allows for public safety and risk management needs to be addressed while also protecting against unnecessary discrimination and preserving the privacy rights of Ontarians.

3. Convictions should only be released within a prescribed period of time.

Individuals with older convictions are often barred from housing or meaningful employment despite being able to demonstrate years without any further involvement in the criminal justice system. JHS front-line staff often hear from clients whose criminal records from 20 or 30 years ago prevent them from renting apartments or securing a job, despite the fact that since the one conviction, they have had no further involvement with the justice system and are desperately trying to move on from their old record. Employers and housing providers often do not consider the date of previous convictions and use any positive record check as a reason to exclude a candidate.

Record suspensions provide an opportunity for individuals to have their old records sealed but there are a number of barriers to accessing this option, including the cumbersome process and administrative red tape. While the federal government has indicated willingness to consider automatic sealing of some criminal records through amendments to the *Criminal Records Act*, absent imminent action on their part, there could be an opportunity through the PRCRA to create the same effect. The PRCRA already has time limits for the disclosure of youth records and summary convictions. **Introducing a time limit for indictable offences, similar to the current rules for summary convictions would ensure that old police records are not preventing Ontarians from successfully moving on from past criminal justice system involvement.** While this would curb the discriminatory use of old criminal records, these older records could still be used in ways that meaningfully and fairly enhance public safety. Similar to the exceptional disclosure mechanism for convictions that are sealed, convictions that are older may also be released if relevant to a position that involves the individual to work with vulnerable populations.

4. NCR should be subject to the same exceptional disclosure test as non-conviction information.

Based on feedback we have heard from police services, the exceptional disclosure criteria has effectively limited the circumstances where non-conviction information is disclosed on record checks. It is our view that the exceptional disclosure test is a successful mechanism for balancing public safety concerns and limiting the disclosure of non-conviction information that has prejudicial impacts on Ontarians.

One opportunity to amend the PRCRA in terms of exceptional disclosure provisions is around the treatment of Not Criminally Responsible (NCR) findings. **Charges where an individual was found NCR should be subjected to the same exceptional disclosure assessment test as non-conviction information.** In other words, where an individual has any NCR finding on a charge, which according to the PRCRA Table can be disclosed under a VSC, that information should not be authorized for disclosure unless it satisfies all of the criteria of the PRCRA subsection 10(2)

test. The purpose is to reflect that findings of NCR are not treated as criminal matters, but rather mental health matters. There is still considerable stigma around people with mental issues, and our concern is that employers who see NCR charges on an applicant's record check will exclude the applicant because they appear to have a mental health issue. Limiting the NCR information that shows up on a VSC promotes fairness, privacy, and prevents stereotyping individuals with mental health issues as dangerous.

In terms of the regulation governing exemptions to the PRCRA, JHSO provided submissions to the consultations in 2021. Those submissions outline our suggested approach to streamline the exemptions framework and can be found [here](#).

Moving Forward: Enhancing Awareness and Streamlining Police Record Check Processes

Organizations, companies and housing providers often lack the understanding of what level of check is appropriate, how to interpret the results of a criminal record check and the utility of record checks as part of screening processes. This can result in blanket record check policies that are inappropriate in the circumstances and exclusionary practices that keep many Ontarians out of the workforce and housing options. A lack of education around police record checks is preventing many Ontarians from providing for themselves and their families and counteracting efforts to promote public safety.

Over the past decade, JHSO has provided evidence-based education and resources for employers around best practices for employment opportunities for people with criminal records. The resources include information on how to interview/ask about criminal records, how to contextualize someone's justice system involvement, how to assess the relevance of a record to a specific position and on demystifying misconceptions and stigma around people with criminal records. JHSO also recently spearheaded the founding of Canada's first [Fair Chances Coalition](#), a group of cross-sector employers and organizations committed to fairly assessing job candidates with criminal records. The Fair Chances Coalition website has a wealth of resources for employers on police record checks, how to determine if record checks are necessary, what record check to choose, legal analysis, and importantly, information to destigmatize criminal records.

It is our view that a government-led or government-endorsed education campaign for Ontarians would be very beneficial in helping to clarify when to use criminal record checks, which level of check to choose, and what role record checks can play in screening processes. This would provide clarity to employers and housing providers, help prevent discrimination and exclusion of people with criminal records and reduce the burden on police services due to unnecessary checks. JHSO would be pleased to partner with the government and support such an initiative, as we have considerable experience in providing education and training to employers around record check policies and practices, and have already built a suite of resources aimed at Ontario employers and volunteer agencies.

In addition to the barriers experienced by individuals, the non-profit sector is also facing tremendous barriers to timely recruitment arising from delayed and expensive record check processes. Unnecessary record check requests may be contributing to a backlog with providers resulting in the delays experienced by organizations. The fees associated with a vulnerable sector check can also be prohibitive, particularly for marginalized populations. Increased

education and awareness on police record checks, and the recommendations above to further streamline the disclosure of information, would not only help prevent discrimination and exclusion but could also help ease the burden on police record check providers and prevent long wait periods for checks. In addition to government-led education, consistency introduced around timelines and fees for vulnerable sector checks would help ensure organizations can function at full capacity to provide vital services to Ontarians.

Thank you for considering our submissions. We would be happy to discuss any of the above in further detail.