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UNIFORM LAW CONFERENCE OF CANADA

UNIFORM POLICE RECORD CHECKS ACT, (2018)

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Uniform Police Record Checks Act (2018)

Contents

INTERPRETATION AND APPLICATION

Interpretation
1(1) In this Act,

"authorized body" means a body authorized for the purposes of section 6.3 of the *Criminal Records Act* (Canada); ("organisme autorisé")

Comments:
The *Criminal Records Act* is a federal piece of legislation that regulates, among other things, the procedure for record suspensions (or what were formally known as "pardons"). Section 6.3 of the *Criminal Records Act* allows a police force "or other authorized body" to disclose the fact of a record suspension in limited circumstances (i.e. in relation to an applicant for a paid or volunteer position with an organization responsible for the well-being of a child or vulnerable person). Using this definition for "authorized body" harmonizes this legislation with the *Criminal Records Act*.

"child" means a person under the age of 18 years; ("enfant")

Comments:
The purpose of this legislation is to achieve a balance between personal privacy and protection of the public. Personal privacy is protected by limiting the disclosure of non-conviction information to circumstances where it is necessary and relevant. The public is protected by allowing for the disclosure of sensitive information in appropriate circumstances.

Generally speaking, the legislation aims to limit the disclosure of non-conviction information. There is an exception for the disclosure of non-conviction information in circumstances where the applicant for a record check will be working with vulnerable persons and has a history of relevant non-conviction information (see s. 10). Children are a vulnerable group that require additional protection as compared to the ordinary public, such that there is a need to define this subgroup within the legislation.

"criminal offence" means, subject to subsection (3), an offence under the *Criminal Code* (Canada), the *Controlled Drugs and Substances Act* (Canada), or any other law of Canada; ("infraction criminelle")

Comments:
This definition limits the application of the disclosure regime to conviction and non-conviction information related to violations of federal statutes. Provincial/territorial offences, which are typically administrative and/or outside the

scope of relevancy, are excluded from the disclosure regime.

The term "criminal offence" is used within the definition of "non-conviction information" in section 1. It is also found within the definition of "straight summary conviction" in subsection 1(3) of the Schedule.

"Minister" means [insert title of appropriate Minister]; ("ministre")

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

(a) was dismissed, withdrawn or stayed, or

(b) resulted in a stay of proceedings or an acquittal; ("données de non-condamnation")

Comments:
This definition is an essential component of the legislation as it defines the parameters of what non-conviction information may be disclosed once the disclosure criteria in section 10 are met. This definition limits the scope of non-conviction information that may be disclosed to matters which resulted in a criminal charge. This definition purposefully eliminates the disclosure of non-conviction information which did not result in criminal charges. This is an important limitation as it eliminates the most prejudicial types of non-conviction information from the disclosure regime. These prejudicial files include police interactions involving things like drug overdoses, mental health apprehensions, files where an individual is merely suspected of wrongdoing, etc. These prejudicial files are entered into police databases without much oversight and the person to whom they apply has little to no ability to have the file reviewed, changed or challenged. Limiting non-conviction information to matters which resulted in charges recognizes that charge approval standards involve some modicum of oversight, as well as a degree of analysis, thereby enhancing the reliability and relevance of this information.

"police record check" means a search described in subsection 2(1); ("vérification de dossier de police")

Comments:
This definition, along with ss. 2(1) and 8, limit the kind of record checks that may be performed to those prescribed under the legislation. This will provide consistency across the jurisdiction in the type and manner of record check that may be performed, eliminating the unfairness that arises when different police forces apply different criteria when completing these checks.

"police record check provider" means,

(a) a chief of police,
(b) a member of a police force designated by a chief of police for the purposes of this Act,
(c) an entity permitted by the Royal Canadian Mounted Police to access the Canadian Police Information Centre systems,
(d) an authorized body, or
(e) a third party entity; ("fournisseur de vérifications de dossiers de police")

Comments:
This definition sets out who is permitted to access police databases for the purposes of conducting record checks under the legislation.

In this part of the act and elsewhere, the word "systems" is used to describe the online database connected to the Canadian Police Information Centre. In the *Police Record Checks Reform Act, 2015*, the word "database" is used instead. The ULCC Working Group on Criminal Record Checks was advised by Public Safety Canada that the word "systems" is more accurate.

"prescribed" means prescribed by the regulations under this Act; ("prescrit")

"third party entity" means an entity that has an agreement with a police force to provide services related to conducting a police record check, such as intake of requests, performance of searches or disclosure of results; ("entité tierce")

"vulnerable person" means a person who, because of his or her age, a disability or other circumstances, whether temporary or permanent,
(a) is in a position of dependency on others, or
(b) is otherwise at a greater risk than the general population of being harmed by a person in a position of trust or authority towards them. ("personne vulnérable")

Comments:
Under section 10, non-conviction information may only be disclosed when certain criteria are met. The criteria include a requirement that the non-conviction information in issue relate to a charge where the alleged victim was a "child" or "vulnerable person". This definition provides guidance to police record check providers regarding the meaning of "vulnerable person" for the purposes of assessing the criteria in section 10.

This definition is identical to the definition of "vulnerable person" in subsection 6.3(1) of the *Criminal Records Act*. This will help harmonize the two pieces of legislation and adds clarity to the application of the legislation.

Same, expressions related to police forces
(2) Expressions used in this Act relating to police forces have the same meaning as in the [insert name of policing legislation]

Comments:
The uniform act has been drafted using the same expressions related to police forces as Ontario's *Police Record Checks Reform Act, 2015*. Under subsection 1(2) of the *Police Record Checks Reform Act, 2015*, the Ontario legislation specifies that these expressions have the same meaning as in the *Police Services Act*, an Ontario policing act. Other provinces may have policing acts which use different terminology. Jurisdictions may consider using this subsection to clarify the meaning of certain terms through a cross-reference to their policing act. If the jurisdiction uses different terms related to police forces, some further amendments to the act may be required to harmonize the wording of this act with other statutes.

For example, in British Columbia, the *Police Act* defines the leader of a municipal police department as the "chief constable". In Ontario, the leader of a municipal police force is defined as the "chief of police". The words "chief of police" are used in section 8 of the legislation and within the definition of "police record check provider" in section 1.

Offence under *Contraventions Act* (Canada)
(3) An offence prosecuted under the *Contraventions Act* (Canada) is not a criminal offence for the purposes of this Act unless a conviction for the contravention is entered after a trial on an indictment.

Comments:
This subsection identifies in what circumstances a conviction under the *Contraventions Act* will become disclosable under the legislation as a "criminal offence". Disclosure is limited to convictions following a trial when the charge was proceeded by way of indictment. In other words, the legislation limits disclosure to only the more serious forms of convictions under the *Contraventions Act*.

(4) Non-conviction information does not include information that is part of a record that may be kept under section 717.2 or 717.3 of the *Criminal Code* (Canada).

Comments:
Sections 717.2 and 717.3 of the *Criminal Code* relate to records kept in relation to criminal charges that are resolved by way of alternatives measures (also known as "diversion"). In certain circumstances, a criminal charge will be withdrawn or stayed after an accused successfully completes a diversion program. This subsection prevents information recorded during this process from becoming disclosable under the act as "non-conviction" information. This provision will foster open and candid participation in diversion programs, as accused persons will

be assured that this information will not be unnecessarily disclosed in the future should they successfully complete their diversion program.

Application, searches of Canadian Police Information Centre systems, etc.
2(1) This Act applies to persons who require a search to be conducted of the Canadian Police Information Centre systems or another police database maintained by a police service in Canada to determine whether the systems or databases contain entries relating to an individual in order to screen the individual, including without limitation,

(a) for the purposes of determining his or her suitability for employment, volunteer work, a licence, an office, membership in any body or to provide or receive goods or services; or

(b) for the purposes of assessing his or her application to an educational institution or program.

Comments:
This subsection defines the scope of the legislation's application. It clarifies that the legislation is focused on record checks performed for routine purposes such as backgrounds checks for volunteer or employment positions, membership in any body, and applications to educational institutions. Importantly, the legislation does not impact the ability of the police or other authorized bodies to conduct background checks for other legitimate purposes such as police investigations.

Exceptions
(2) This Act does not apply in respect of the following:

(a) [exemptions to be included by each jurisdiction]

(b) Any other searches that may be prescribed.

Comments:
This subsection allows each jurisdiction to incorporate exemptions to the regime where appropriate. In Ontario, this section has been used to exclude from the legislation's scope record checks performed for, among other things, the purposes of: (i) assessing the suitability of an individual applying for custody of a child that is not their biological child; (ii) processing of an individual's request to change their name legally; (iii) searches requested by sheriffs under the provincial *Juries Act*; (iv) searches conducted in relation to the administration of the *Firearms Act*; (v) searches required as part of Crown Counsel's duty to make disclosure to the accused about witnesses and other relevant persons in criminal cases.

With respect to the exception regarding Crown Counsel's duties in making disclosure, Ontario has included a further subsection clarifying that the exception applies to the Attorney General's functions in prosecuting both federal and provincial offences (see subsection 2(3) of the *Police Record Checks Reform Act, 2015*). This may be a sensible provision to consider should each jurisdiction agree

to exempt Crown disclosure obligations as part of their drafting of subsection 2(2).

Records

(3) This Act applies in respect of records in the custody or under the control of a police force or in the custody or under the control of another agency responsible for providing police services in Canada.

Comments:

This subsection ensures that the legislation applies to information that may be obtained by a police record check provider from other jurisdictions across Canada.

Record checks rely predominantly on digitally recorded information that is easily shared across provincial and territorial boundaries. As such, for the legislation to remain effective, it must apply to data obtained by police forces within the jurisdiction, but also anything that may be received from other jurisdictions that are not governed by similar legislation.

Crown bound

3 Except as otherwise provided in this Act or the regulations, this Act binds the Crown.

Disclosure under other Acts

4 For greater certainty, nothing in this Act,

(a) permits or requires the disclosure of information whose disclosure is prohibited under the *Criminal Code* (Canada), the *Criminal Records Act* (Canada), the *Youth Criminal Justice Act* (Canada), or any other law of Canada;

(b) affects the ability to collect, use or disclose personal information under [insert specific clause and/or name of any relevant privacy/freedom of information legislation];

(c) affects the ability to disclose personal information under the [insert name of policing legislation if it contains a disclosure power];

(d) affects an individual's right to access personal information about himself or herself under [insert name of any relevant privacy/freedom of information legislation]; or

(e) affects the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

Comments:

This section aims to further clarify the scope of the legislation. Nothing in the legislation will affect existing disclosure powers as set out in the acts referred to in the section, which are governed by their own criteria and exceptions. Specifically, subsection 4(a) recognizes the paramountcy of federal legislation that may impact upon record checks.

Subsections (b), (c) and (d) attempt to harmonize the act with other relevant legislation. For example, in Ontario, the *Municipal Freedom of Information and Protection of Privacy Act* and the *Freedom of Information and Protection of Privacy Act* are specifically mentioned under subsections (b) and (d), and the *Police Services Act* is mentioned under subsection (c). Under subsection (b), clauses 42(1)(f) and (g) of the *Freedom of Information and Protection of Privacy Act* are also specifically mentioned. Clauses 42(1)(f) and (g) are concerned with the sharing of information between law enforcement agencies. Other freedom of information acts contain similar clauses that jurisdictions may wish to specifically recognize in this part of the uniform act.

MANNER OF REQUEST, MANNER OF RESPONSE

Manner of requesting police record check
5 A person to whom this Act applies shall not request a police record check in respect of an individual in any manner other than in accordance with this Act.

Manner of responding to request for police record check
6 A police record check provider responding to a request for a police record check from a person described in section 5 or from an individual who requests a police record check in respect of himself or herself shall respond to the request in accordance with this Act.

Comments:
Sections 5 and 6 require that all record checks subject to the legislation be performed in accordance with the legislation's requirements. These sections ensure consistency in the manner and type of record checks that may be performed in the jurisdiction. One of the main criticisms of the *status quo* across Canada is that record checks are performed on an *ad hoc* basis, often with inconsistent search criteria and results from jurisdiction to jurisdiction, and even within a jurisdiction from police detachment to police detachment. Sections 5 and 6 will require everyone who falls within the scope of the legislation to comply with its requirements.

PROCEDURES GOVERNING POLICE RECORD CHECKS

Request for police record check
7(1) An individual may request in writing that a police record check provider conduct a police record check in respect of the individual or that the provider cause such a check to be conducted.

Same, request by person or organization
(2) A person or organization may request in writing that a police record check provider conduct a police record check in respect of an individual or that the provider cause such a check to be conducted.

Prescribed requirements
(3) A person making a request under this section shall comply with any prescribed requirements.

Type of Check
(4) A request shall specify the particular type of police record check being requested.

Fee
(5) A request shall be accompanied by any applicable fee.

Comments:
Subsections 7(1), (2) and (3) set out the procedure to be followed to request a record check. The legislation allows both individuals and organizations to request a record check so long as the request is made in writing and its follows the prescribed requirements under the legislation. Subsection (4) requires the applicant to request one of the three kinds of checks provided for under section 8 of the legislation. Subsection (5) anticipates that all record checks will be at a cost to be borne by the applicant.

Conducting police record check
Police forces
8(1) A chief of police or a member of a police force designated by a chief of police for the purposes of this Act shall conduct the following types of police record checks:

(a) Criminal record check.
(b) Criminal record and judicial matters check.
(c) Vulnerable sector check.

Comments:
This section limits and defines the three kinds of checks that will be permitted under the legislation. The list is exhaustive and is meant to bring consistency to the practice. This section must be read in conjunction with the Schedule, which sets out the kinds of records that may be disclosed under each type check. This section is important to standardizing record checks across the jurisdiction and brings much needed clarity and predictability to the process.

Others
(2) An authorized body, a third party entity or an entity permitted by the Royal Canadian Mounted Police to access the Canadian Police Information Centre systems may conduct any of the types of police record checks mentioned in subsection (1) if,

under an agreement with a police force or under the laws of Canada, the body or entity is permitted to conduct the particular type of check.

Consent of individual
(3) A police record check provider shall not conduct a police record check in respect of an individual unless the request contains the individual's written consent to the particular type of check.

> **Comments:**
> This subsection ensures that no record check is done on an individual without that person's consent. The legislation also requires that the individual consent to the "particular type of check" being requested. This will prohibit an employer or institution from obtaining a more intrusive type of record check without the applicant's knowledge and consent.

Disclosure in accordance with Schedule
9 A police record check provider shall not disclose information in response to a request for a police record check unless the information is authorized to be disclosed in connection with the particular type of police record check in accordance with the Schedule.

> **Comments:**
> Read together with section 19, this section makes it an offence to disclose information beyond that which is permitted to be disclosed in the Schedule. This is a critical component of the legislation which protects the privacy of individuals subject to a record check. The section also requires police record check providers to adhere to the Schedule, thereby adding consistency and predictability to the process.

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

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

(a) The criminal charge to which the information relates is for an offence specified in the regulations made under subsection 21(2)(c).
(b) The alleged victim was a child or a vulnerable person.
(c) After reviewing entries in respect of the individual, the police record check provider has reasonable grounds to believe that the individual has been engaged in behaviour indicating that the individual presents a risk

of harm to a child or a vulnerable person, having regard to the following:

(i) Whether the individual appears to have targeted a child or a vulnerable person.
(ii) Whether the individual's behaviour was repeated or was directed to more than one child or vulnerable person.
(iii) When the incident or behaviour occurred.
(iv) The number of incidents.
(v) The reason the incident or behaviour did not lead to a conviction.
(vi) Any other prescribed considerations.

Comments:

Subsections 10(1) and (2) govern the circumstances under which "non-conviction information" may be disclosed. Non-conviction information may only be disclosed in response to a "vulnerable sector check" and only where the three criteria for disclosure in subsection (2) are met. The criteria are designed to limit the disclosure of non-conviction information to situations where the information may be considered truly relevant, such that it outweighs society's interest in protecting privacy and the presumption of innocence. The criteria achieve this balance by limiting disclosure to circumstances where the non-conviction information relates to a relevant charge (as set out in the Regulations), and where the alleged offence involves a child / vulnerable victim, and where there are reasonable grounds to believe that the person in question has been engaged in behaviour indicating a risk of harm to a child or vulnerable person. To ensure consistency in the application of this final criterion, six factors are set out to help define what may constitute a behaviour that indicates a "risk of harm".

These subsections will ensure that non-conviction information is not disclosed in routine record checks. These subsections also protect against the disclosure of irrelevant non-conviction information when a "vulnerable sector check" is performed.

In Ontario, the provincial government has proposed regulations for the *Police Record Checks Reform Act, 2015*, including a list of offences to be considered under subsection 10(2) of the legislation. The list of proposed offences includes crimes involving violence, as well as offences of sexual deviation. Other offences which speak to an individual's trustworthiness are also included (e.g. theft, fraud, etc.).

The wording of subparagraph 10(2)(c) is slightly different than the Ontario act. The Ontario act requires reasonable grounds to believe that the person has engaged in a "pattern of predation" indicating risk. The less stringent standard in the uniform act was suggested following the plenary debate at the 2018 conference.

Format of disclosure
(3) When disclosing a record containing non-conviction information authorized for exceptional disclosure, the police record check provider shall ensure that the record contains the definition of "non-conviction information" found in this Act and that the information is clearly identified as such.

Comments:
This subsubsection requires police record check providers to clearly distinguish disclosable non-conviction information from conviction information. This should assist in ensuring that non-conviction information is not confused for an actual criminal conviction. There are important distinctions between the two kinds of records that ought to be apparent on the face of the document when such disclosure is authorized.

Reconsideration
(4) If the individual submits a request for reconsideration in accordance with the regulations, the provider shall, within 30 days after receiving the reconsideration request, reconsider its determination in accordance with any requirements prescribed by the Minister.

Result of reconsideration
(5) Non-conviction information shall not be disclosed if, after a reconsideration, the provider determines the information does not meet the criteria listed in subsection (2).

Comments:
Subsections (4) and (5) set out the requirement for a "reconsideration" process. Reconsideration allows the applicant to make submissions to the police record check provider regarding whether the non-conviction information meets the criteria for exceptional disclosure in subsection 10(2). Reconsideration affords a measure of procedural fairness which helps ensure that only truly relevant non-conviction information is permitted to be disclosed.

The reconsideration process, unlike the process referred to in section 15, does not necessarily involve disputing the accuracy of the information, but rather whether the information should be included in the vulnerable sector check having regard to the criteria set out in section 10.

In Ontario, the Ministry of Community Safety and Correctional Services has proposed regulations for the *Police Record Checks Reform Act, 2015* setting out the requirements for their "reconsideration" process.

[Discretion to refuse to disclose non-conviction information]

[(6) A police record check provider may refuse to disclose non-conviction information authorized to be disclosed under this Act where it is requested in respect of an individual who is making an application for a paid or volunteer position with a person or organization which is not responsible for the well-being of a child or vulnerable person.]

Comments:
The ULCC decided to leave subsection 10(6) in square brackets for each jurisdiction to consider. It was a proposal suggested at the 2018 conference and is intended to provide the police with an additional tool to protect individual privacy in circumstances where it may be warranted.

This subsection is arguably needed because the act places no limitation on who may request a vulnerable sector check. As such, it is possible, if not likely that some employers and institutions may require individuals to conduct the most intrusive kind of record check, even though they will not be working with children or vulnerable persons. To address this issue, subsection 10(6) would allow police record check providers to decline to disclose non-conviction information otherwise authorized to be disclosed where it is not relevant to the job or position being applied for. The language is permissive, ultimately leaving the decision to the discretion of the police record check provider.

Without subsection 10(6), an individual could theoretically be asked by an employer for a vulnerable sector check, and have non-conviction information disclosed about them, even though he or she would not be working with children or vulnerable persons. In practice, this would mean that the employer could be entitled to non-conviction information about the individual if the criteria in section 10 were met, but would not be entitled to receiving information about relevant pardoned offences due to section 6.3 of the *Criminal Records Act* (which prohibits the disclosure of such information in these circumstances because the position being applied for does not relate to children or vulnerable persons). In other words, without subsection 10(6), an employer could receive unproven allegations about a prospective employee, while still being prohibited from receiving information about an actual criminal conviction that happened to be subject to a pardon. This appears inconsistent and subsection 10(6) aims to remedy this anomaly.

The language of subsection 10(6) tracks the "vulnerable person" exception to the disclosure of record suspensions under section 6.3 of the *Criminal Records Act*. This would promote consistency between the two pieces of legislation on a related subject matter.

The protection offered by this subsection currently does not exist in Ontario's *Police Record Checks Reform Act, 2015*. However, subsection 10(6) would be in line with the LEARN Guideline for Police Record Checks (i.e. the guideline for record checks which formed the basis of much of Ontario's legislation). In

particular, the LEARN Guideline states that the vulnerable sector check should be "restricted to applicants seeking employment and/or volunteering in a position of authority or trust relative to vulnerable persons in Canada only" (see Appendix C of the LEARN Guideline).

Legislators may alternatively consider limiting who may apply for a vulnerable sector check under section 8. However, this would necessarily require the police to have the power to refuse to conduct a vulnerable sector check. In practice, this would mean that some individuals, asked by their prospective employers to obtain a vulnerable sector check, would be refused this option. These individuals would then have to return to the prospective employer to explain the police's refusal to conduct the record check. Employers who learn that a record check had been refused may misconstrue this outcome as somehow being reflective of wrongdoing or concealment on the part of the individual. Alternatively, the employer may be unsatisfied with the less intrusive forms of record checks available.

Legislators may also consider crafting a provision prohibiting persons or organizations from requiring an applicant to obtain a vulnerable sector check where it would not be relevant to the position being applied for. However, this option may create an adversarial relationship between the employer and prospective employee, as to enforce this mechanism would require the prospective employee to report the employer.

It is hoped that the public will be better informed about what types of positions truly require a vulnerable sector check. In the meantime, subsection 10(6) will afford some additional protection against the unnecessary disclosure of non-conviction information.

Manner of disclosure, youth records

11 If this Act authorizes the disclosure of a finding of guilt under the *Youth Criminal Justice Act* (Canada) in respect of an individual, the information shall be disclosed in a separate record from any record containing other information disclosed in respect of the individual in the prescribed form, if any.

Comments:

Findings of guilt under the *Youth Criminal Justice Act* ("YCJA") are generally treated differently than adult criminal convictions. The *YCJA* has specific disclosure criteria that are recognized within the Schedule. Section 11 ensures that where a *YCJA* record is permitted to be disclosed in accordance with the Schedule, it is provided as a separate record and in a prescribed form. The Ontario government recently released regulations for the *Police Record Checks Reform Act, 2015* aimed at standardizing this practice to ensure that youth records are handled appropriately.

Disclosure of results
12(1) A police record check provider shall disclose the results of a police record check to the individual who is the subject of the request and shall not disclose the results to any other person, subject to subsection (2).

Disclosure with consent
(2) If an individual provides written consent after receiving the results of a check about himself or herself under subsection (1), the police record check provider may provide a copy of the information to the person or organization who requested the check under subsection 7(2) or to another person or organization the individual specifies.

Comments:
Subsections (1) and (2) require the results of a criminal record check to be provided directly to the individual. Other persons or organizations may only receive the results with the written consent of the individual.

These provisions allow the person to whom the information relates to retain control over the information. These provisions also allow the individual an opportunity to review the record check for errors or a potential application for "reconsideration" before it is disclosed to a third party. These are helpful procedural protections that promote fairness and accuracy in the process.

Other requirements
(3) A police record check provider shall comply with any other requirements that may be prescribed respecting disclosure.

Restriction, use of information
13 A person or organization that receives information under subsection 12(2) shall not use it or disclose it except for the purpose for which it was requested or as authorized by law.

Comments:
This section prohibits the improper use of a record check. Along with section 19, this section makes it an offence to use or disclose a record check for a purpose beyond which was authorized by law, or which was agreed upon by the individual.

Given the sensitive nature of the information potentially disclosed in a record check, it is sensible to include some provision that protects against the unlawful dissemination of this information once it is disclosed.

Form of disclosure
14 The Minister may require the use of an approved form for any purpose under this Act.

ADDITIONAL REQUIREMENTS

Corrections
15(1) Every police record check provider shall create and implement a process to respond to a request from an individual to correct information in respect of the individual if the individual believes there is an error or omission in the information.

Prescribed requirements
(2) The process shall comply with any requirements the Minister may prescribe.

Comments:
Section 15 requires that every police record check provider institute a process that will allow individuals to correct information that may be improperly included in a record check. Unlike the "reconsideration" process in subsection 10(4), this section is primarily focused on correcting information that is inaccurate, as opposed to withholding information that may be irrelevant. Conviction and non-conviction information can be improperly registered to an individual because they share a similar name and/or date of birth as someone else, or simply because of a clerical error. In addition, police databases suffer from backlogs which result in outdated information sometimes being included in a record check (e.g. a conviction that has been overturned on appeal). Section 15 mandates a process through which an individual can correct these kinds of errors.

Statistics
16 Every police record check provider shall prepare and maintain the prescribed statistical information in connection with police record check requests and shall provide that information to the Minister on request.

Agreements
17 A police services board or [insert name of any official with the power to make agreements on behalf of the police] shall ensure that any agreement the board or [name of official] enters into with a third party entity or authorized body in respect of police record checks includes provisions respecting the entity's or body's compliance with this Act and the regulations.

Comments:
While most record checks are conducted by police forces, this work can be contracted out or delegated to third parties. Section 17 ensures that any third party entity or authorized body given the power to conduct these checks is required, by agreement, to comply with the legislation and its regulations. In Ontario, the Commissioner of the Ontario Provincial Police is one official who is permitted to make such agreements with third party entities or authorized bodies.

The terms "third party entity" and "authorized body" are defined in section 1.

Requirements respecting third party entities
18 A third party entity shall comply with any prescribed requirements in connection with police record checks.

ENFORCEMENT

Offence
19(1) A person or organization that wilfully contravenes section 5, 8, 9, 10, 11, 12, 13 or 18 is guilty of an offence.

Penalty
(2) A person convicted of an offence is liable to a fine [jurisdiction may include specific amount].

No prosecution without consent
(3) A prosecution shall not be commenced under this section without the Minister's consent.

Proof of consent
(4) The production of a document that appears to show that the Minister has consented to a prosecution under this section is admissible as evidence of the Minister's consent.

Comments:
Section 19 creates an offence for violations of the enumerated sections. This section enforces the most important powers and obligations set out in the legislation, including rules regarding the kinds of records that may be disclosed (ss. 8-9), when non-conviction information may be disclosed and how (s. 10), the treatment of youth records (s. 11), and who may receive a record check and how it can be handled once disclosure is complete (ss. 12-13). This section also requires all record checks within the scope of the legislation to be conducted in accordance with the legislation (s. 5), and that third party entities comply with the act where they are permitted to work with police record checks (s. 18).

The *Police Record Checks Reform Act, 2015* in Ontario has set the fine for violating section 19 at $5,000.

ADMINISTRATIVE MATTERS

Directives
20 The Minister may issue directives to police record check providers with respect to matters to which this Act applies.

REGULATIONS

Lieutenant Governor in Council
21(1) The Lieutenant Governor in Council may make regulations,

(a) exempting any person or class of persons from any provision of this Act and attaching conditions to the exemption;
(b) defining, for the purposes of this Act and the regulations, any word or expression used in this Act that has not already been expressly defined in this Act;
(c) prescribing anything that, under this Act, may or must be prescribed or done by regulation, other than the matters in respect of which the Minister may make regulations under subsection (2);
(d) generally for carrying out the purposes and provisions of this Act.

Minister
(2) The Minister may make regulations,

(a) approving forms and requiring their use for any purpose under this Act;
(b) respecting statistical information that a police record check provider must prepare and maintain in connection with police record check requests;
(c) specifying offences for the purposes of the criteria for exceptional disclosure of non-conviction information under section 10;
(d) governing the process for conducting a reconsideration under section 10;
(e) specifying the period of validity for a police record check obtained under this Act.

Incorporation by reference
(3) A regulation made under clause (2)(d) may adopt, by reference, in whole or in part, and with such changes as are considered necessary, one or more documents setting out standards or procedures for reconsiderations.

Comments:
Recently, the Ontario government issued draft regulations for the *Police Record Checks Reform Act, 2015*. These regulations outline temporary exemptions to the legislation to allow for an orderly transition to the new regime, the handling of youth criminal records, the process to be followed for "reconsideration" under subsection 10(4), and the proposed list of offences that would be specified under

subsection 10(2) of the legislation.
The *Uniform Police Record Checks Act* proposes one further area of possible regulation. Under clause 21(2)(e), the Minister may specify the period of validity for a police record check obtained under the Act. Individuals are often asked to obtain a record check for each employment or volunteer position they apply for. This can result in the same record check being paid for and reproduced repeatedly. Specifying a period of validity will reduce the burden on job/volunteer applicants who usually bear the cost of these checks. A period of validity would also necessarily reduce the number of record checks the police would have to complete, promoting greater efficiency in the process and reducing the burden on the police when conducting these checks.

Coming into force

22 This Act comes into force on [assent, proclamation, specific or future date or according to the practice of the jurisdiction].

SCHEDULE

Authorized disclosure under s. 9 of the Act

1(1) For the purposes of section 9 of the Act, a police record check provider shall not disclose information of a type set out in Column 1 of the Table to this section as part of a police record check set out in Column 2, 3 or 4 in respect of an individual unless the information is authorized to be disclosed in accordance with the Table to this section.

Comments:
Together with sections 8 and 9, the Schedule sets out what is authorized to be disclosed under the three types of criminal record checks provided for under the legislation. The Schedule is the heart of the legislation, as it sets out in clear terms what kind of information may be disclosed under the three types checks. It represents a balanced approach to respecting privacy and protecting the public. It also provides clarity, consistency and predictability in the type of information that may be disclosed in a record check.

Interpretation, "pardon"

(2) In the Table,

"pardon" includes a record suspension within the meaning of the *Criminal Records Act* (Canada).

Comments:
The term "pardon" was changed to "record suspension" with amendments made to the *Criminal Records Act* in 2012. This definition clarifies that where the term "pardon" is used in the Table, it refers to both "pardons" received prior to the amendments, and "record suspensions" obtained after the change took place.

Interpretation, "straight summary conviction"

(3) In the Table,

"straight summary conviction" means a conviction for a criminal offence punishable only on summary conviction.

Comments:
This definition is an addition to the Ontario *Police Record Checks Reform Act, 2015*. Under the Ontario legislation, "summary convictions" are not disclosable within five years of the date of the summary conviction (see Table of Authorized Disclosure, Row 1). The term "summary conviction" is not defined in the Ontario act and could be construed to include any offence which is proceeded with by way of summary conviction. Under the *Criminal Code*, most offences including crimes of violence can proceed by way of summary conviction or indictment (e.g. sexual assault, assault causing bodily harm, etc.). These are known in the criminal law as "hybrid" offences.

It is unlikely that the Ontario legislature intended for all hybrid summary convictions to be subject to the five-year limitation period. The intention was likely to impose a five-year limitation period on what are known as "straight" summary convictions.

Straight summary convictions are offences which can only be proceeded with by way of summary conviction. Under the *Criminal Code*, there are approximately 47 such offences: ss. 66(1), 83, 89, 134, 174, 175, 176(2), 176(3), 177, 178, 179, 201(2), 206(4), 210(2), 211, 213, 250, 258.1, 335, 339(2), 364, 365, 393(3), 398, 401, 404, 425, 427, 447.1(2), 454, 456, 457, 462.2, 464(b), 465(1)(d), 486.6, 487.0197, 487.0198, 487.0199, 490.0312, 517(2), 539(3), 542(2), 648(2), 732.11, 742.31, 810.4.

Similarly, under the *Controlled Drugs and Substances Act*, subsection 4(5) is punishable only on summary conviction.

These offences are less serious in nature, thereby justifying a limitation on their disclosure to a five-year period. Some examples include being a member of an unlawful assembly, defacing a coin, operating a common gaming house, and possessing less than 30 grams of marijuana. Other straight summary offences relate to failing to comply with certain court orders like preservation demands and publication bans.

For a complete understanding of this definition, it should be read in conjunction with the definition of "criminal offence" in section 1 of the act.

TABLE
Authorized Disclosure

Item	Column 1 Type of Information	Column 2 Criminal record check	Column 3 Criminal record and judicial matters check	Column 4 Vulnerable sector check
1.	Every criminal offence of which the individual has been convicted for which a pardon has not been issued or granted.	Disclose. However, do not disclose straight summary convictions if the request is made more than five years after the date of the straight summary conviction.	Disclose. However, do not disclose straight summary convictions if the request is made more than five years after the date of the straight summary conviction.	Disclose. However, do not disclose straight summary convictions if the request is made more than five years after the date of the straight summary conviction.
2.	Every finding of guilt under the *Youth Criminal Justice Act* (Canada) in respect of the individual during the applicable period of access under that Act.	Disclose.	Disclose.	Disclose.
3.	Every criminal offence of which the individual has been found guilty and received an absolute discharge.	Do not disclose.	Disclose. However, do not disclose if the request is made more than one year after the date of the absolute discharge.	Disclose. However, do not disclose if the request is made more than one year after the date of the absolute discharge.
4.	Every criminal offence of which the individual has been found guilty and received a conditional discharge on conditions set out in a probation order.	Do not disclose.	Disclose. However, do not disclose if the request is made more than three years after the date of the conditional discharge.	Disclose. However, do not disclose if the request is made more than three years after the date of the conditional discharge.
5.	Every criminal offence for which there is an outstanding charge or warrant to arrest in respect of the individual.	Do not disclose.	Disclose.	Disclose.

6.	Every court order made against the individual.	Do not disclose.	Disclose current orders. However, do not disclose court orders made under the [insert provincial mental health act] or under Part XX.1 of the *Criminal Code* (Canada). Do not disclose court orders made in relation to a charge that has been stayed, dismissed, withdrawn, or which is subject to a pardon.	Disclose current orders. However, do not disclose court orders made under the [insert provincial mental health act] or under Part XX.1 of the *Criminal Code* (Canada). Do not disclose court orders made in relation to a charge that has been stayed, dismissed, withdrawn, or which is subject to a pardon.
[7.]	[Every criminal offence with which the individual has been charged that resulted in a finding of not criminally responsible on account of mental disorder.]	[Do not disclose.]	[Do not disclose.]	[Disclose. However, do not disclose if the request is made more than five years after the date of the finding or if the individual received an absolute discharge.]
8.	Any conviction for which a pardon has been granted.	Do not disclose unless disclosure is authorized under the *Criminal Records Act* (Canada).	Do not disclose unless disclosure is authorized under the *Criminal Records Act* (Canada).	Do not disclose unless disclosure is authorized under the *Criminal Records Act* (Canada).
9.	Any non-conviction information authorized for exceptional disclosure in accordance with section 10.	Do not disclose.	Do not disclose.	Disclose. Set out the information in the prescribed form (if applicable).

Comments:

The Schedule sets out the kinds of records that may be disclosed under each type of check, with the least intrusive check being the "criminal record" check and the most intrusive being the "vulnerable sector" check.

The "criminal record check" restricts disclosure only to adult criminal convictions for which a pardon has not been granted. Straight summary

convictions that are more than five years old are excluded from disclosure, given the less serious nature of these offences. Under this check, youth convictions are disclosable, but only if the retention period for such disclosure (as outlined in the *YCJA*) has not elapsed. In addition, convictions for which a pardon has been granted can be disclosed, but only where the strict disclosure criteria in the *Criminal Record Act* have been met. These exceptions bring the legislation into harmony with the *YCJA* and the *Criminal Records Act*.

The "criminal record and judicial matters" check adds some additional records that may be disclosed. These include absolute and conditional discharges (one and three years after their pronouncement respectively). These additions again harmonize the legislation with the *Criminal Records Act*, which explicitly specifies retention periods for discharges granted under the *Criminal Code*. Discharges, however, are not criminal convictions, explaining why they are not included in the first type of check.

The judicial matters check also discloses outstanding criminal charges or warrants, as well as current court orders with some limitations. Outstanding criminal charges are those which have been approved, but have not yet been resolved. There is some prejudice to the applicant in disclosing this information, as the person is still presumed innocent at this stage of the proceedings. However, unlike dismissed, stayed or withdrawn charges, there may be a strong likelihood that the person will be convicted in the near future, such that the information could be highly relevant to an individual's background check. Indeed, in some jurisdictions like British Columbia, a charge is only approved where there has been a determination by the prosecutor that there is a "substantial likelihood of conviction". While fallible, this standard provides some measure of reliability to approved charges that justify disclosure at this more sensitive level of record check.

The judicial matters check also allows for current court orders to be disclosed (e.g. probation orders, firearms prohibitions, peace bonds, etc.). Court orders made in relation to stayed, dismissed or withdrawn charges are excluded; as are court orders connected to offences which have been pardoned. For example, a firearms prohibition connected to an offence overturned on appeal would be excluded from consideration. Court orders related to findings respecting one's mental health are also excluded. This exception recognizes that mental health information is particularly sensitive and does not typically correlate to risk except in limited circumstances already covered under the "vulnerable sector" check disclosure criteria (i.e. through the disclosure of conduct that results in criminal charges and/or convictions).

The "vulnerable sector" check is the most intrusive type of check, allowing for the same disclosure as the other checks, but with one important addition. As

set out in section 10 of the legislation, this type of check permits the disclosure of non-conviction information in prescribed circumstances.

The Table above is different in some ways from Ontario's *Police Record Checks Reform Act, 2015*. After much debate, the ULCC Working Group on Criminal Record Checks recommended some changes to the Table, which are summarized below:

- In Row 1, it is recommended that the prohibition against disclosing summary convictions after five years be specifically linked to "straight" summary convictions. The difference and its rationale are explained above under the commentary to subsection 1(3) of the Schedule. This alteration is more of a clarification than a substantive change.

- In Row 6, it is recommended that only "current" court orders be disclosed through judicial matters and vulnerable sector checks. The Ontario act does not specify the word "current", thereby raising the possibility that expired court orders could be disclosed under their regime. This was likely not the intent of the legislation, given that expired orders are not routinely disclosed in record checks. For example, before the *Police Record Checks Reform Act, 2015* was introduced, the Ontario guidelines for police record checks specified that only current court orders were to be disclosed under the more sensitive types of checks (see LEARN Guideline, pp. 9-11). Similarly, in British Columbia, only current court orders are disclosed under the Guidelines for Police Information Checks (see pp. 8, 19, 51).

- In Row 6, it is recommended that court orders related to "stayed" and "dismissed" charges also be removed from the disclosure regime. The Ontario model only specifies "withdrawn" charges in this fashion, likely because in Ontario the practice is to withdraw charges once the prosecution opts not to proceed with a case. In other jurisdictions, the practice is to enter a "stay of proceedings". Row 6 has been amended accordingly to reflect these different practices.

  In addition, it is recommended that court orders connected to a charge which is "subject to a pardon" be excluded from the disclosure regime. Under the *Criminal Record Act*, pardons effectively erase criminal convictions save for exceptional circumstances. However, pardons do not typically affect court orders that may have been connected to the underlying conviction. As such, it is possible for someone to conduct a record check, have no conviction appear because of the operation of a pardon, but still have a related court order disclosed to their detriment. It would be inconsistent to allow a court order to be disclosed in circumstances where federal legislation prohibits the disclosure of the

related criminal conviction. The inclusion of the words "or which is subject to pardon" in Row 6 aims to rectify this issue.

- In Row 6, the Ontario model prohibits the disclosure of "restraining orders made against the individual under the *Family Law Act*, the *Children's Law Reform Act* or the *Child and Family Services Act*." This measure was consistent with Ontario's pre-existing guidelines for criminal record checks (see LEARN Guideline, pp. 9-11). The ULCC Working Group on Criminal Record Checks identified differences between Ontario's family law acts and similar acts in other jurisdictions. Given these differences, it is suggested that each jurisdiction evaluate this issue individually to determine whether to remove these orders from the disclosure regime. In particular, it was noted that some jurisdictions have changed their family law acts to provide for robust protection orders that may be recommended for disclosure under Columns 3 and/or 4 in Row 6 of the Table.

- Finally, the Ontario legislation includes a row in the Table dealing with findings of not criminally responsible by reason of mental disorder ("NCRMD") under the *Criminal Code*. This row is reproduced above (Row No. 7) in square brackets for each jurisdiction's consideration.

  The Ontario legislation permits the disclosure of NCRMD findings in limited circumstances and only in connection with vulnerable sector checks. Specifically, NCRMD findings can be disclosed within five years of the finding, unless an absolute discharge was granted, in which case no disclosure is permitted.

  The ULCC Working Group on Criminal Record Checks debated this issue repeatedly and identified the following factors which may militate in favour of excluding NCRMD findings from the disclosure regime.

  First, NCMRD findings are not findings of guilt, but rather a recognition that the accused is not responsible for the offence because of a mental health issue.

  Second, as a matter of practice, the federal government (through the RCMP) does not typically disclose NCRMD findings in routine background checks. As such, removing NCRMD findings from the disclosure table would harmonize the uniform act with the federal government's general approach to this issue.

  Third, an accused found NCRMD does not have the ability to obtain a "pardon" under the *Criminal Record Act* because NCRMD findings are not findings of guilt. As such, NCRMD findings will remain on one's

record forever, even though they do not represent a guilty verdict. In other words, the accused should not be prejudiced by a record that he or she has no way of removing.

Fourth, disclosing NCRMD findings will further stigmatize individuals with mental health problems. The Mental Health Commission of Canada's National Strategy emphasizes the expansion of policies that encourage recovery and social inclusion, as well as limiting the disclosure of mental health information. Eliminating NCRMD findings from the disclosure table would be in line with the national strategy.

Fifth, patients found NCRMD are subject to close and constant monitoring by review boards established in each province and territory. These review boards are legislatively mandated to oversee patients where "the safety of the public is the paramount consideration." To manage risk, review boards are empowered to impose a wide array of conditions and restrictions on the individual found NCRMD, whether the person is in-patient or living in the community under conditions. The individual is only absolutely discharged when the review board is satisfied that he or she "is not a significant threat to the safety of the public." These measures afford an additional layer of protection for the public that do not exist vis-à-vis other "non-conviction" findings.

Sixth, studies have shown that people found NCRMD have lower rates of recidivism as compared to the general public, thereby attenuating the risk associated with removing these findings from the disclosure table.

Should jurisdictions opt to include NCRMD findings in the disclosure table, they are encouraged to impose some limitation on the disclosure of this information, as set out in the Ontario act and at Row 7 above in square brackets.