



CLASP

Mental Health Police Records Check Coalition



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of Patient Councils

Mental Health Police Records: Issues and Solutions

Presented by the Police Records Check Coalition (PRCC)

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February 1, 2012
Brampton, Ontario

Overview of Presentation

- ▶ How is a mental health related police record created?
- ▶ How is the Police Records Check Coalition engaging this issue?
- ▶ What does the new Ontario Association of Chiefs of Police Guideline for Police Record Checks say?
- ▶ What legislative changes are necessary to address the issues?
- ▶ Real-life impact of mental health police records: cross-border discrimination

What is a Mental Health Police Record?

A mental health police record can be created if:

- ▶ 911 call for help due to a mental health crisis
- ▶ Concerned family member intervenes and calls 911
- ▶ Concerned family member, friend or ACT team contacts a Justice of the Peace (Form 2)
- ▶ A police officer believes a person is having a serious mental health crisis and transports the person to the hospital for assessment (MHA s. 17 apprehension)
- ▶ A doctor orders a person to be taken to the hospital for assessment or treatment (Form 1, Form 9, CTO, etc.)

What is a Mental Health Police Record?

- ▶ Mental health police records are created as a result of medical intervention, not criminal contact. It is not a criminal record.
- ▶ Persons are not “arrested” under the MHA; they are “taken to an appropriate place for examination by a physician” (MHA s. 17)
- ▶ A mental health police record is generated regardless of whether the person is admitted to hospital.
- ▶ Police jurisdictions vary; some non-apprehensions may also result in the creation of a mental health record

Impact of the Record on Individuals

- ▶ Mental health information can appear on a police “background check” or “police record check” which are often required when applying for employment or volunteer opportunities.
- ▶ Such disclosures can negatively impact an individual's wellness, recovery and ability to pursue job placements, volunteer positions, school and practicum placements, freedom to seek professional qualifications, as well as access to services, facilities and travel.
- ▶ Such disclosures are discriminatory and contribute to the stigma of mental illnesses.

The Legislative Gap

- ▶ Although a police record may have a discriminatory effect, such records are not themselves discriminatory under the *Human Rights Code* (in Ontario).
- ▶ The *Police Services Act* and *Municipal / Freedom of Information Act(s)* give broad discretion to release information for “the protection of the public” without stringent protections for mental health
- ▶ Employers, workplaces, universities, and volunteer organizations are increasingly requesting background checks as part of their “risk management” policy
- ▶ An increasing number of other pieces of legislation require/authorize background checks
- ▶ Each police force sets its own record check policy!

Police Records Check Coalition (PRCC)

- ▶ PRCC believes that the practice of disclosing mental health record information is discriminatory to individuals who have contact with the police pursuant to the *Mental Health Act*.
- ▶ Such records are predicated on discriminatory notions of dangerousness associated with mental illnesses.
- ▶ For the past three years, PRCC has been working with various stakeholders across the province to address these important issues through education and advocacy.

Police Records Check Coalition (PRCC)

PRCC is co-chaired by:

- ▶ Canadian Mental Health Association Ontario
- ▶ Ontario Association of Patient Councils
- ▶ Psychiatric Patient Advocate Office
- ▶ York University Community and Legal Aid Services Program (CLASP)

- ▶ PRCC membership consists of over 40 organizations from across Ontario



LEARN

GUIDELINE FOR POLICE RECORD CHECKS

POLICE CRIMINAL RECORD CHECK
POLICE INFORMATION CHECK
POLICE VULNERABLE SECTOR CHECK

March 28, 2011

Available online at: <http://www.oacp.ca/content/news/article.html?ID=1047>

OACP Guideline for Police Records Checks

- ▶ In July 2011, the Ontario Association of Chiefs of Police released a new provincial police records check guideline
- ▶ Developed by OACP's Law Enforcement and Records Management Network (LEARN)
- ▶ Consultations held with Ontario Human Rights Commission, the PRCC co-chairs and membership, Justice for Children and Youth, Information and Privacy Commissioner's Office

OACP Guideline for Police Records Checks

- ▶ First Guideline to standardize police record check practices across all police services within the province
- ▶ **Guideline prohibits the disclosure of non-criminal, non-charge mental health information or mental health interactions with police**
- ▶ Prohibits the use of any mental health terminology from police record check reports (i.e. “put on Form 1,” “apprehended under MHA s.17,” “suicidal,” “mentally ill,” “diverted to crisis care,” “attended by mobile crisis intervention team,” etc.)

OACP Guideline for Police Records Checks

- ▶ Guideline defines and standardizes three levels of “record check”:
 - ▶ Criminal Record Check (CRC) (least invasive)
 - ▶ Police Information Check (PIC)
 - ▶ Vulnerable Sector Check (VSC) (most invasive)

OACP Guideline for Police Records Checks

Guideline concretely defines three levels of screening:

Police Criminal Record Check

- Indictable Convictions
- Summary Convictions



Police Information Check

- Outstanding charges
- Charges with dispositions
- Police contact depending on involvement



Police Vulnerable Sector Check

- Non criminal violent/threatening behaviour putting self or others at risk
- Pardoned offences pursuant to Criminal Records Act (driven by VS check)

For PIC and VSC, review of police contact information limited to past five years

Source: LEARN Draft Guideline for Police Records Checks. Presentation to Police Records Check Coalition. February 25, 2011.

OACP Guideline for Police Records Checks

- ▶ The Criminal Record Check includes:
 - ▶ Criminal convictions (summary and indictable) from CPIC and/or local databases

OACP Guideline for Police Records Checks

The Police Information Check includes:

- a) Criminal convictions (summary and indictable) from CPIC and/or local databases.
- b) Outstanding entries, such as charges and warrants, judicial orders, Peace Bonds, Probation and Prohibition Orders. As per CPIC policy, information obtained from the Investigative Databank must be confirmed and authorized for release by the contributing agency.
- c) Absolute and conditional discharges.
- d) Family Court Restraining Orders.
- e) Charged and processed by other means such as Diversion will be released as “police contact” only.
- f) Dispositions including, but not limited to, Withdrawn, Dismissed, and cases of Not Criminally Responsible by Reason of Mental Disorder.
- g) A review of all available police contacts including but not limited to theft, weapons, sex offences, or violent, harmful and threatening behaviour.

Source: OACP LEARN Guideline for Police Records Checks. (2011). Pp 4.

OACP Guideline for Police Records Checks

The Vulnerable Sector Check may include:

- a) Criminal convictions (summary and indictable) from CPIC and/or local databases.
- b) Outstanding entries, such as charges and warrants, judicial orders, Peace Bonds, Probation and Prohibition Orders. As per CPIC policy, information obtained from the Investigative Databank must be confirmed and authorized for release by the contributing agency.
- c) Absolute and conditional discharges from local database only.
- d) Family Court Restraining Orders.
- e) Charged and processed by other means such as diversion.
- f) Dispositions including, but not limited to, Withdrawn, Dismissed, and cases of Not Criminally Responsible by Reason of Mental Disorder.
- g) A review of all available police contacts including but not limited to theft, weapons, sex offences, or violent, harmful or threatening behavior which may or may not have involved a mental health incident.
- h) As authorized for release by the Minister of Public Safety all pardoned criminal convictions, including non sex offences, identified as a result of a VS query.

Source: OACP LEARN Guideline for Police Records Checks. (2011). Pp 5.

OACP Guideline for Police Records Checks

The Vulnerable Sector Check WILL NOT include:

- a) Convictions under provincial statutes.
- b) Ministry of Transportation information (PARIS).
- c) Suspect information that would hinder an ongoing investigation or where the suspect has not been spoken to.
- d) Youth Criminal Justice Act (YCJA) information beyond the applicable disclosure period.
- e) Special Interest Police (SIP) category of CPIC.
- f) Information gathered outside formal occurrence reports (i.e., street checks, CAD) should not be released unless under exceptional circumstances.
- g) Any reference to contagious diseases.
- h) Victim/Complaint information should not be released unless under exceptional circumstances.
- i) Foreign information.
- j) **Mental Health Act terminology.**

Source: OACP LEARN Guideline for Police Records Checks. (2011). Pp 5.

OACP Guideline for Police Records Checks

A non-criminal, non-charge incident may be disclosed if:

- ▶ Incident placed the individual or others at risk of harm
- ▶ Incident involved the use of a weapon by the individual
- ▶ Based on how long ago the incident took place
 - Only disclosed for VSC level where the agency requesting the VSC records check has opted-in to receive mental health information and confirmed a *bona fide* need for such information
 - No mental health terminology used
 - Intention is to police the behaviour, not the illness

OACP Guideline for Police Records Checks

Suicide “threats” will not appear on report, only “attempts”

- ▶ Incident placed the individual or others at risk of harm
- ▶ Incident involved the use of a weapon by the individual
- ▶ Based on how long ago the incident took place

- ▶ The term “suicide” will not appear on the report
- ▶ Suicide attempts will be reported as “subject cautioned for violent behaviour”

OACP Guideline for Police Records Checks

Review panel to consider suppression of records:

- ▶ Based on how long ago the incident took place
- ▶ Based on additional information provided by the individual (i.e. letters of support from physicians)
- ▶ Based on age of the individual at the time of the incident
- ▶ Based on the level of screening (PCRC, PIC or VSC)

Moving Forward: The Need to Modernize Police Record Checks Regulation

- ▶ Increasing requests for records checks while courts demand greater procedural rigor
- ▶ Increasing hybridization and continuity of medical and emergency services with inadequate protection for personal health information
- ▶ Jurisdictional patchwork – dozens of police jurisdictions in Ontario having disparate policies and procedures

Moving Forward: The Need to Modernize Police Record Checks Regulation

- ▶ Increasing requests for records checks while courts demand greater procedural rigor
 - ▶ Trend towards statutorily requiring record check / vulnerable sector screening
 - Long-term Care Homes Act and Regulations (2010)
 - Retirement Homes Act and Regulations (2011)
 - ▶ Requirement for a records check proliferating: employment, volunteer positions, cross-border travel, professional and student practicum placements, access to school and university campuses, places where the Occupational Health and Safety Act applies
 - ▶ JN v. Durham Regional Police Service (2011 ONSC 2892) (May 2011)

Moving Forward: The Need to Modernize Police Record Checks Regulation

- ▶ JN v. Durham Regional Police Service (2011 ONSC 2892) (May 2011)
 - ▶ Finds that full procedural fairness protections apply to all police record checks (not just mental health), affording rights of appeal, reasons for the decision, criteria for making the decision, etc.
 - ▶ Finds that a violation of Charter s. 7 will have occurred where procedural protections not afforded
 - ▶ Determined in this case that Charter s. 7 had been breached, and that a judge so finding has the power to substitute the decision of the Chief / Board with the correct decision (to withhold disclosure of information)
 - ▶ Confirmed that statute allows police to disclose relevant information as their default position, subject to applicant appeal for suppression (note: new mental health Guideline reverses this through policy for mental health cases)
 - ▶ Takes judicial notice of the fact that the OIPRD should have been involved (complainant should have been directed to OIPRD)
 - ▶ Confirmed that "police record checks" matters fall under the PSA "policy" heading rather than the "service / conduct" heading for the purposes of OIPRD / police review

Moving Forward: The Need to Modernize Police Record Checks Regulation

- ▶ Consequences of increasing requests and JN case without regulation:
 - ▶ Insufficient resources for police force
 - ▶ Interjurisdictional inconsistency and “forum shopping”
 - ▶ Inconsistent range of criteria for releasing “relevant information” and other criteria (time period for considering record, characterization of non-criminal acts as “violent”, etc.)
 - ▶ Increase in local appeals, public scrutiny, and complaints
 - ▶ Further lawsuits and Charter challenges to flesh out the law

Moving Forward: The Need to Modernize Police Record Checks Regulation

- ▶ Increasing hybridization and continuity of medical and emergency services with inadequate protection for personal health information
 - ▶ “Silo” integration and emergency service innovation (Legislative Select Committee Recommendations 2010, MH Advisory Group Report 2010, Ontario Comprehensive MH Strategy 2011)
 - ▶ Increasing deployment of Mobile Crisis Teams
 - ▶ Significant increase in use of community treatment orders
 - ▶ Custody deaths: Weeks Inquest (2010)
 - ▶ Recent mental health hospitalization, need for ongoing medication, possible drug addition
 - ▶ Need for active hydration, close monitoring, and medical care
 - ▶ Needs should have been identified at the scene of arrest
 - ▶ FIPPA / PHIPA increasingly coming into conflict

Moving Forward: The Need to Modernize Police Record Checks Regulation

- ▶ Challenges needing regulation:
 - ▶ Public expectations and rights different in policing / health contexts
 - ▶ for institution to use and disclose information with/out consent or notification (ex: including a suicide in CPIC)
 - ▶ to review, correct, suppress or delete information
 - ▶ retention of information (duration and relevance)
 - ▶ Assessment of information
 - ▶ criminalization of health needs and information
 - ▶ what is policing information vs personal health information?
 - ▶ what should be included in CPIC?
 - ▶ Many “info leakages” without regulation
 - ▶ community treatment plans including police and probation officers
 - ▶ info firewall between MCIT nurse/social worker and police officer?
 - ▶ personal health information shared with USA Dept of Homeland Security
 - ▶ FIPPA / PHIPA interface often problematic or unclear
 - ▶ ex: access to hospital records without warrant / subpoena

Moving Forward: The Need to Modernize Police Record Checks Regulation

- ▶ Jurisdictional patchwork – dozens of police jurisdictions in Ontario having disparate policies and procedures
 - ▶ Public confusion
 - ▶ “Back door” loophole allowing disclosures through other jurisdictions within and outside of Ontario
 - ▶ Differences between Canadian jurisdictions (BC vs Ontario Human Rights implications)

Moving Forward: The Need to Modernize Police Record Checks Regulation

- ▶ Public demand clearly in favour of regulatory consistency:
 - ▶ Public reaction to OACP Mental Health Guideline (July 2011) very positive
 - ▶ Police compliance and uptake of OACP Guideline encouraging

Mental Health Records at the Border

“I am not a criminal but on November 2010 Homeland Security at Pearson Airport refused me entry to the US. In December 2006 I had attempted suicide. I was unconscious. My partner called 911 for medical assistance. U.S officials had information that in December 2006 the police had responded to my home.

To gain admission to the U.S I was fingerprinted, photographed and my family physician was required to submit a detailed medical report to Homeland Security's physician here in Toronto (who charged a \$250 processing fee). I also signed a paper stating that the information I provided will be released to representatives of the Government of the United States of America and I had no control over how that information will be utilized.

My privacy rights and my right to be free of discrimination on the basis of a disability were lost in all of this.”

~ Lois Kamenitz

Contact Us



CLASP

Mental Health Police Records Check Coalition



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Visit the **Police Records Check Coalition** website:

http://www.sse.gov.on.ca/mohltc/ppao/en/Pages/SystemicAdvocacy/PoliceRecordsChecks.aspx?openMenu=smenu_SystemicAdvocacy