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Ontario Association  
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**CLASP**

**Mental Health Police Records Check Coalition**

# Mental Health Police Record Checks: A New Standard for Ontario

**Presented by the Police Records Check Coalition (PRCC)**

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Office of the Independent Police Review Director  
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# Overview of Presentation

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- ▶ Emergence of the Problem with Mental Health Police Record Checks
- ▶ Client stories shared similar patterns and issues
- ▶ Clients unable to advocate for themselves
- ▶ Broader Systemic and Policy Concerns
  
- ▶ July 2011: New Provincial Guideline for Mental Health Police Record Checks
- ▶ Moving Forward

## What is the Problem?

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- ▶ In 2005 the PPAO began receiving calls from across the province about mental health and police record checks after human rights complaint drew attention to the issue
- ▶ Clients were asking for help – no where else to turn – isolated, had no independent information, and unsure of their rights
- ▶ Client stories were often very similar

# Typical Client Story about Police Contact

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A mental health police record can be created when:

- ▶ 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)
- ▶ Police are contacted by a landlord, neighbour, school
- ▶ Chance encounter with police as a “known person”
- ▶ 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.)

# Creation of the Mental Health “Record”

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- ▶ A mental health police record may be created regardless of whether the person is formally apprehended or not
- ▶ A mental health police record is generated regardless of whether the person is admitted to hospital
- ▶ Police may disclose any, all or none of this information as part of a “background check” to ensure “public safety”

## Client Confusion with their “Record”

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- ▶ In all these cases, the contact was non-criminal in nature
  - ▶ The client did nothing wrong, illegal or criminal
  - ▶ Help was being sought to treat a medical problem, not a crime problem
  - ▶ Police often obliged to respond to the scene to ensure safety of public and emergency responders
- ▶ Persons are not “arrested” under the MHA; they are “taken to an appropriate place for examination by a physician” (MHA s. 17)

# Client Confusion with their “Record”

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- ▶ Mental health terminology was revealed as part of their police “background check”
  - ▶ “Suspect placed on a Form 1”
  - ▶ “Suspect apprehended under the Mental Health Act”
  - ▶ “Subject attempted suicide”
  - ▶ “Subject taken to hospital for mental health assessment”
  - ▶ “Subject suspected of being schizophrenic”

# Client Stories tell the Impact of Records

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- ▶ Disclosure of mental health information and use of mental health terminology as part of a police background check stigmatizes mental illness as quasi-criminal in nature
- ▶ Reinforced stereotypes of mental illness as violent, unpredictable, dangerous – in fact the opposite is true
- ▶ Impedes recovery, independence, and full citizenship
- ▶ Re-victimizes
- ▶ May force the person to disclose mental illness to employer, family, and friends
- ▶ Negatively impact therapeutic relationship and trust with medical professionals, and attitudes towards police and emergency services
- ▶ Results in discriminatory hiring practices and volunteer placements
- ▶ Creates barriers to school and practicum placements, freedom to seek professional qualifications, as well as access to services, facilities and travel.



## Clients Unable to Protect their Rights

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- ▶ “There’s nothing I can do to help myself”
  - ▶ Police say it isn’t their fault – they have broad statutory discretion to release such information
  - ▶ Police say they aren’t discriminating under the Human Rights Code as it is only “information” not a “record of offenses”
  - ▶ Police say it is the employer who discriminates by not hiring, so file a human rights complaint against them
- ▶ Each force sets its own disclosure and appeal policies
- ▶ No provincial standard, no provincial assistance programs (legal aid, law clinics, pro bono system), and no provincial oversight

# Additional Systemic and Policy Concerns

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- ▶ Effecting huge numbers of people:
  - ▶ TPSB: “emotionally disturbed persons” account for 30% of all calls
  - ▶ TPSB: 75,000 man hours dedicated to EDP
  - ▶ TPSB: 52,000 officers dispatched
  - ▶ ODSP: 80% of ODSP recipients identify mental health as primary or secondary diagnosis
  - ▶ ODSP: 80% of ODSP recipients reside in GTA

## Additional Systemic and Policy Concerns

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- ▶ 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

# Police Records Check Coalition (PRCC)

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- ▶ We did something about it!

# Police Records Check Coalition (PRCC)

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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

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- ▶ Developed between July 2010 and April 2011
- ▶ Consultation between the:
  - ▶ Ontario Association of Chiefs of Police
  - ▶ OACP's Law Enforcement and Records Management Network (LEARN)
  - ▶ Police Record Check Coalition
  - ▶ Ontario Human Rights Commission
  - ▶ Justice for Children and Youth
  - ▶ Information and Privacy Commissioner's Office
- ▶ OACP Guideline released July 2011

# OACP Guideline for Police Records Checks

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- ▶ **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.)
- ▶ First Guideline to standardize police record check practices across all police services within the province



# OACP Guideline for Police Records Checks

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- ▶ Consultation fosters success:
  - ▶ As of November 2011, 35% of police jurisdictions in Ontario (incl. OPP) confirmed their compliance with the new Guideline or their earliest intention to come into compliance
  - ▶ Public reaction to the new Guideline very positive
  - ▶ Supports renewed calls for binding regulatory / statutory amendment

# OACP Guideline for Police Records Checks

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- ▶ 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

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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.

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# OACP Guideline for Police Records Checks

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

# OACP Guideline for Police Records Checks

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## **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

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## **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

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## 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

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Non-criminal violent incident may be disclosed if:

- ▶ Incident placed the individual or others at risk of physical 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

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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

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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

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- ▶ The legislative gap still exists
- ▶ Increasing requests for record checks
- ▶ Increasing legislation authorizing / requiring background checks (LTCHA, RTA, Education Act, Occupational Health and Safety Act, CFSA, Regulated Health Professions Act)
- ▶ Courts demanding constitutional-level of procedural rigour: JN v. Durham Regional Police Service (2011 ONSC 2892) (May 2011)
- ▶ Increasing hybridization and continuity of medical and emergency services with inadequate protection for personal health information (MCIT, CTOs, etc)

# Contact Us

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[http://www.sse.gov.on.ca/mohltc/ppao/en/Pages/SystemicAdvocacy/PoliceRecordsChecks.aspx?openMenu=smenu\\_SystemicAdvocacy](http://www.sse.gov.on.ca/mohltc/ppao/en/Pages/SystemicAdvocacy/PoliceRecordsChecks.aspx?openMenu=smenu_SystemicAdvocacy)