



**CLASP**

**Mental Health Police Records Check Coalition**



**OAPC**

Ontario Association  
of Patient Councils

# **A Suddenly Modest Proposal: Legislating Mental Health Police Record Checks**

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

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# Why the OACP Guideline Matters

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- ▶ Sets the first province-wide standard for conducting police record checks.
- ▶ Clearly defines three levels of record checks
  - ▶ Criminal Record Check (least invasive, least info disclosed)
  - ▶ Police Information Check
  - ▶ Vulnerable Sector Check (most invasive, most info disclosed)

# Why the OACP Guideline Matters

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- ▶ Prohibits the use of mental health terminology in all circumstances of non-criminal contact
  - ▶ Directly reduces stigma and discrimination
  - ▶ Removes a barrier to accessing emergency services
  - ▶ De-criminalizes mental illness

# Why the OACP Guideline Matters

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- ▶ Represents the first consensus between police and mental health stakeholders since 2005
- ▶ Developed in consultation with
  - ▶ 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
- ▶ Released in July 2011 to broad public support

# OACP Guideline: Reception

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## ▶ Stakeholder reaction positive

- ▶ Seen as a constructive consultation between mental health stakeholders and police
- ▶ Seen as reducing criminalization, stigmatization and discrimination
- ▶ Removes a barrier to seeking emergency help
- ▶ Fills an existing legislative gap

## ▶ Police reaction positive

- ▶ OACP: approx 85% of police jurisdictions attended training on the Guideline (June/July 2011, October 2011)
- ▶ OACP: approx. 1 in 3 police jurisdictions have already implemented the Guideline or intend to do so ASAP
- ▶ Aligns policing with modern attitudes towards mental illness

## ▶ Public reaction positive

- ▶ “They still do that?”

# OACP Guideline: Endorsement

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- ▶ **OAPSB should endorse the Guideline**
  - ▶ Encourage remaining jurisdictions to implement the Guideline
  - ▶ Achieve the full intention of the Guideline
  - ▶ Let the public and stakeholders know where you stand
  - ▶ Broadens the consensus around the issue
- ▶ **OAPSB should recommend the Ontario government implement the Guideline (or better) in statute / regulation**
  - ▶ The Guideline fills a legislative gap but is not a substitute for regulation
  - ▶ Without regulation significant problems remain for police forces and their Boards

# Boards Benefit from Legislative Guidance

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- ▶ Vulnerable Sector Checks are the most labour intensive to conduct
  - ▶ Require review of the most material
  - ▶ Involve some discretion in what material to include, consideration of mitigating circumstances, identification of incidents as mental health related, etc.
  - ▶ Involve discretionary determinations about what to disclose
  - ▶ Require internal reviews, up to the Board level and OIPRD
- ▶ Legislation will clarify and normalize practices across all jurisdictions and promote efficient processing

## Boards Benefit from Legislative Guidance

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- ▶ Vulnerable Sector Checks are the most likely to result in an appeal
  - ▶ Serious consequences of disclosure creates a barrier to employment, volunteer placement, professional qualification and may result in discrimination and secondary disclosure to friends and family
  - ▶ Appeals may be internal, to court, or to administrative tribunals like the Human Rights Tribunal or Office of the Independent Police Review Director
  - ▶ Appeals place discretion under the microscope
  - ▶ Appeals raise costs, demand lots of time, and require legal resources
- ▶ Legislation will limit appeals by clarifying statutory basis for disclosure and non-disclosure



## Boards Benefit from Legislative Guidance

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- ▶ Vulnerable Sector Checks require increasingly rigorous procedures: JN v. Durham Regional Police Service (2011 ONSC 2892) (May 2011)
  - ▶ 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 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)
- ▶ Legislation will guide procedures and avoid Charter challenges and “judge-made procedures”

## Boards Benefit from Legislative Guidance

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- ▶ **Public opinion about mental illness is changing**
  - ▶ Mental Health Commission of Canada has taken the position that under no circumstances should any non-criminal, non-charge mental health contact information be released
  - ▶ Mental Health Commission of Canada has worked with the Govt of Saskatchewan to develop such a protocol
  - ▶ British Columbia protects mental health related police records from disclosure under their Human Rights Code
  - ▶ Ontario Human Rights Commission has raised concerns both with disclosure of mental health information and its gathering and use (sharing)
  - ▶ OACP endorsed a resolution to de-emphasize the role of police in mental health and addictions cases (June 29 2011)
- ▶ **Legislate before they legislate you!**

## Boards Benefit from Legislative Guidance

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- ▶ More legislation is mandating Vulnerable Sector Checks
  - ▶ Education Act, Child and Family Services Act, Retirement Homes Act, Long-term Care Homes Act, Occupational Health and Safety Act, etc.
  - ▶ These laws require background checks but do not define them
  - ▶ These requirements externalize implementation costs onto police record departments without additional resources
- ▶ Legislation will ensure adequate resourcing for records departments to meet increasing demands
- ▶ Legislation ensure consistency across sectors (avoids discrimination, avoids pressure from specific sectors)

## Boards Benefit from Legislative Guidance

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- ▶ Existing legislation has not kept pace with policing demands
  - ▶ O.Reg. 265/98 “Disclosure of Personal Information” under the Police Services Act passed in 1998 and last amended in 2005
  - ▶ Since 2005, health information rights greatly expanded under the Personal Health Information Protection Act – public is more aware of health privacy and more demanding
  - ▶ Since 2005, police are increasingly involved in mental health cases with Community Treatment Orders, diversion plans, and mobile crisis teams, and protocols with local hospitals
- ▶ Legislation will modernize policing to match societal expectations

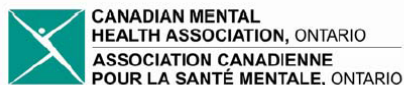
# Legislating Mental Health Record Checks

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- ▶ **Legislative standard**
  - ▶ Ensures adequate resourcing for records departments to meet increasing demands
  - ▶ Results in less arbitrary discretion → fewer appeals → avoid litigation and “systemic reviews”
  - ▶ Removes jurisdictional differences and inconsistency
  - ▶ Eliminates public confusion
  - ▶ Police no longer bear the political burden of developing and implementing policy
- ▶ The Guideline represents political consensus between OACP, mental health stakeholders, OHRC and... OAPSB?
- ▶ Mental health related contact with police is de-criminalized for tens of thousands of Ontarians every year

# Contact Us

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

<http://www.mentalhealthpolicerecords.ca>