

## LEGISLATIVE UPDATE

October 31, 2024

# Backgrounder

## ***Regulatory Amendments under the Police Record Checks Reform Act, and accordingly, the Child, Youth and Family Services Act***

### I. Context and Key Highlights

On April 17, and July 29, 2024 respectively, the Provincial Government filed regulations amending existing regulations under both the *Police Record Checks Reform Act, 2015* and the *Child, Youth and Family Services Act, 2017* ([O Reg 307/24](#) & [O Reg 308/24](#)). Both regulatory amendments will come into force and effect on January 1, 2025. These regulatory amendments may, depending on the services offered and/or unique structures of hospitals, have the following impacts:

1. Require heightened police record check types from those currently mandated;
2. Broaden the scope of individuals from whom an organisation requires a police record check;
3. Require updated police record checks on fixed-frequency cycles;
4. Establish a requirement for “offence declarations” and/or increase the frequency with which the organisation may currently require such declarations under the *Fixing Long-Term Care Act* (if applicable); and
5. Mandate internal “written documents” containing a host of specified information.

#### *Police Record Checks Reform Act (PRCRA)*

The *Police Records Check Reform Act, 2015 (PRCRA)* was proclaimed into force on November 1, 2018 and applies to police record check providers. The *PRCRA* is “intended to promote public safety while respecting privacy by creating consistent practices around the information disclosed in PRCs (police record checks), and how that information is disclosed”.<sup>1</sup> In achieving this intended purpose, the *PRCRA* establishes three “types” of criminal record checks:

1. Criminal Record Check (CRC);
2. Criminal Record and Judicial Matters Check (CRJMC); and
3. Vulnerable Sector Check (VSC).<sup>2</sup>

Each type of criminal record check contains increasingly disclosed information in accordance with the *PRCRA* and its regulations. For example, a VSC contains information not included in a CRJMC; and a CRJMC contains information not included in a CRC. Police record check providers are not permitted to include any information other than what is required by the specific type of search.<sup>3</sup> This broad disclosure

<sup>1</sup> Ministry of the Solicitor General, *Police Record Checks Reform Act, 2015 Background and Overview*, online: <[<sup>2</sup> \*Police Record Checks Reform Act\*, SO 2015, c 30, s 8\(1\).](https://www.ontariocanada.com/registry/showAttachment.do?postingId=36228&attachmentId=47618#:~:text=Purpose%20of%20the%20Police%20Record%20Checks%20Reform%20Act&text=The%20PRCRA%20is%20intended%20to,how%20that%20information%20is%20disclosed.></a>>.</p></div><div data-bbox=)

<sup>3</sup> *Ibid*, s 9.

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restriction is subject to exemptions for specified sectors. These specified sectors may require additional information disclosure under existing types of searches or establish entirely new types of searches under the legislation governing the respective sector.<sup>4</sup>

The exemptions contained under the *Fixing Long-Term Care Act* and the *Child, Youth and Family Services Act* may be of relevance to hospitals; and are outlined below. While this Backgrounder has been prepared to review the regulatory amendments under both the *PRCA* and *CYFSA*, the exemptions contained under *Fixing Long-Term Care Act* have been included solely for the purpose of comprehensiveness. For further clarity, the exemptions outlined under the *Fixing Long-Term Care Act* are pre-existent and already in force.

### *Fixing Long-Term Care Act (FLTCA)*

Long-term care home licensees are required to ensure screening measures are conducted prior to “hiring staff and accepting volunteers” in accordance with the regulations under the act.<sup>5</sup> For the purpose of police record checks, “accepting volunteers” does not include board members; which are distinctly addressed by section 256 of Regulation 246/22 under the *FLTCA*.<sup>6</sup> These required screening measures “shall include police record checks, unless the person being screening is under 18 years of age”.<sup>7</sup> Sections 252-256 of Regulation 246/22 contains a host of procedural and substantive requirements respecting screening measures.<sup>8</sup> The following are included in these requirements:

- For staff and volunteers:
  - “The police record check must be a vulnerable sector check”.<sup>9</sup>
  - The police record check must be accompanied by a “signed declaration” where a host of specified content must be included in such a declaration.<sup>10</sup>
- For members of the licensee’s “board of directors, its board of management or committee of management or other governing structure”<sup>11</sup>:
  - “The police record check must be a criminal record check”.<sup>12</sup>
  - The police record check must be accompanied by a “signed declaration” where a host of specified content must be included in such a declaration.<sup>13</sup>
- Based on the regulatory requirements, declarations are commonly required to be renewed on fixed pre-five-year cycles.<sup>14</sup>

In addition to the above exemptions to the *PRCRA*, exemptions are also contained in the *Child, Youth and Family Services Act (CYFSA)*.

<sup>4</sup> *Ibid*, s 22(1)(a) – together with – O Reg 347/18.

<sup>5</sup> *Fixing Long-Term Care Act*, SO 2021, s 81(1).

<sup>6</sup> O Reg 246/22, s 256.

<sup>7</sup> *Fixing Long-Term Care Act*, SO 2021, s 81(2)

<sup>8</sup> O Reg 246/22, s 252-256.

<sup>9</sup> *Ibid*, s 252(3).

<sup>10</sup> *Ibid*, s 252(4).

<sup>11</sup> *Ibid*, s 256(1).

<sup>12</sup> *Ibid*, s 256(5).

<sup>13</sup> *Ibid*, s 256(6)-(7).

<sup>14</sup> *Ibid*, ss 252(6)-(7), 253(4)-(5), 255(5), 256(10)-(11).

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### *Child, Youth and Family Services Act (CYFSA)*

The *Child, Youth and Family Services Act* enables regulatory power respecting police record check requirements.<sup>15</sup> On January 1, 2025 sections 116-131 of Regulation 155/18 under the *CYFSA* (the Regulation) will come into force and effect. These sections apply to “service providers”, which includes a licensee under the act and/or an entity “that provides a service funded under this act”.<sup>16</sup> Additional context respecting potential application is outlined below.

The Regulation also establishes an entirely new type of police record check: a “broad record check” – and outlines when such checks are required.<sup>17</sup> Broad record checks require providers to disclose information beyond the scope of a vulnerable sector check.<sup>18</sup> The Regulation also includes mutually exclusive tabled listings (reproduced as Appendix I to this Backgrounder) outlining which individuals are required to provide which type of record check (vulnerable sector check [s 120], or broad record check [s 121]).

Subject to the specific type of check required, and according timing mandates outlined in the section 120 and 121 tables, the Regulation requires that record checks be provided “at least every three years”.<sup>19</sup> In addition, and in the years intervening these three year fixed-cycles, individuals will be required to provide an “offence declaration”.<sup>20</sup> A host of specified content required to be included in such an offence declaration is outlined in section 128 of the Regulation.<sup>21</sup>

## II. *CYFSA* Applicability

### Service Provider

As outlined above, sections 116-131 of Regulation 155/18 apply to “service providers” under the *CYFSA*. The *CYFSA* defines service provider as including licensees under the act and/or an entity “that provides a service funded under this act”.<sup>22</sup> Hospitals are advised to consider the broad applicability of this definition and assess whether they receive funding under the *CYFSA* for service delivery.

If determined to fit the definition of service provider under the *CYFSA*, the mutually exclusive section 120 and 121 tables contained in the Regulation under the *CYFSA* become applicable. The section 120 and 121 tables utilise the following potentially applicable terminology respecting who a police record check is required from: “a person who has a professional affiliation with a service provider”.<sup>23</sup>

### Professional Affiliation

The Regulation further clarifies that, for the purpose of police record check requirements, “a person who has a professional affiliation with a service provider” includes:

<sup>15</sup> *Child, Youth and Family Services Act*, SO 2017, s 334, 349.

<sup>16</sup> *Ibid*, s 1.

<sup>17</sup> O Reg 155/18, s 119, 121.

<sup>18</sup> *Ibid*, s 119.

<sup>19</sup> *Ibid*, s 122(1).

<sup>20</sup> *Ibid*, s 128.

<sup>21</sup> *Ibid*, s 128.

<sup>22</sup> *Child, Youth and Family Services Act*, SO 2017, s 1.

<sup>23</sup> O Reg 155/18.

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- An employee;
- A volunteer;
- Board members;
- Placement students; and
- A person who is “under contract with the service provider to provide goods or services that relate to the provision of a service or provides goods or services under that contract”.

Hospitals are advised to review the definitions contained in the *CYFSA* and the Regulation to determine whether they are captured by the definition of “service provider”. In addition, hospitals should carefully consider the type, frequency, and declaration contents required.

### III. Type of Record Check Required

The type of police record check required by a hospital may be dependent upon the applicability of either, or both, the *FLTCA* or *CYFSA*. For example, a hospital who is both a licensee under the *FLTCA* and a “service provider” under the *CYFSA* should review the requirements of both acts, and their according regulations, to determine the types of record checks required.

### IV. Internal Documents Required

If applicable, the regulatory amendments under the *CYFSA* also require organisations receiving police record checks to “have written documents”.<sup>24</sup> These written documents must be made “available to any person who could be required to provide a police record check” and include the following:

- Processes for obtaining a police record check;
- Processes for submitting an offence declaration;
- Policies and procedures respecting the measures to be followed to keep police record checks and offence declarations confidential and secure, including policies and processes respecting the retention, transfer and disposal of records and declarations;
- Information about the right of a person who provides a police record check to provide a written statement about whether, in their opinion, the contents of the record are relevant to the position or role that the person holds or seeks to hold;
- Policies and Procedures respecting the way information included in a police record check, offence declaration and statement of relevance may be considered and used by a recipient; and
- Policies and procedures respecting the measures to be followed to ensure the protection of children who interact with a person required to provide a police record check under this Regulation until the record check is received.

### V. Timeline and Next Steps

The regulatory amendments will come into force and effect on January 1, 2025. For more information and additional inquiries, please contact *Ryan Matson, Governance and Legal Advisor* at [rmatson@oha.com](mailto:rmatson@oha.com).

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<sup>24</sup> O Reg 155/18, s 127.

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Appendix I

“Vulnerable sector checks”

**Section 120:** “A person referred to in Column 1 of the Table to this section shall, if they are 18 or older, provide a vulnerable sector check to the recipient set out opposite in Column 2 at the time set out opposite in Column 3 and in accordance with sections 117 to 131.”<sup>25</sup>

Item	Column 1 Person to provide vulnerable sector check	Column 2 Recipient	Column 3 Timing
1.	An adoption practitioner	Director	In accordance with subsection 122 (1)
2.	A person applying to be approved by a Director as an adoption practitioner	Director	In accordance with subsection 122 (4)
3.	A person who is undergoing training to become an adoption practitioner	Director	In accordance with subsections 122 (5) and (1)
4.	A counsellor to whom a society or licensee refers a parent, as defined in subsection 180 (1) of the Act, when ensuring counselling is made available pursuant to the Act	The society or licensee acting as the adoption agency	In accordance with subsections 122 (1) and (6)
5.	A facilitator of alternative dispute resolution for the purposes of section 17 of the Act who is on the provincial roster managed by the Ontario Association for Family Mediation	The Ontario Association for Family Mediation	In accordance with subsection 122 (1)
6.	A facilitator of alternative dispute resolution for the purposes of section 17 of the Act who is on the provincial roster managed by the George Hull Centre for Children and Families	The George Hull Centre for Children and Families	In accordance with subsection 122 (1)
7.	A facilitator of alternative dispute resolution for the purposes of section 17 of the Act, other than a person referred to in item 5 or 6	The society or community agency that is their employer	In accordance with subsection 122 (1)
8.	A person who seeks to be a facilitator of alternative dispute resolution referred to in item 5, 6 or 7	The Ontario Association for Family Mediation, the George Hull Centre for Children and Families or the society or community agency that would be their employer, as the case may be	In accordance with subsection 122 (7)
9.	A student, volunteer or employee of the Child and Parent Resource Institute, other than a person referred to in item 30 of the Table to section 121 of this Regulation	The Minister	In accordance with subsection 122 (1)
10.	A person appointed as program supervisor under subsection 53 (2) of the Act	The Minister	In accordance with subsection 122 (1)
11.	A person appointed as an inspector under section 273 of the Act, who as a part of their functions as an inspector	The Minister	In accordance with subsection 122 (1)

<sup>25</sup> O Reg 155/18, s 120.

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	may interact, without supervision, with a child or young person receiving a service provided by a service provider		
12.	A person seeking a position referred to in item 9, 10 or 11	The Minister	In accordance with subsection 122 (8)
13.	Unless required to provide a broad record check under section 121 of this Regulation, a person who has a professional affiliation with a service provider and because of such professional affiliation may interact, without supervision, with a child or young person receiving a service provided by the service provider	Service provider	In accordance with subsections 122 (1) and (2)
14.	Unless required to provide a broad record check under section 121 of this Regulation, a person seeking a professional affiliation referred to in item 13	Service Provider	In accordance with subsection 122 (9)

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**“Broad record checks”**

**Section 121:** “A person referred to in Column 1 of the Table to this section shall, if they are 18 or older, provide a broad record check to the recipient set out opposite in Column 2 at the time set out opposite in Column 3 and in accordance with sections 117 to 131.”<sup>26</sup>

Item	Column 1 Person to provide broad record check	Column 2 Recipient	Column 3 Timing
1.	A person who holds a licence under Part VIII of the Act to place children for adoption	Director	In accordance with subsection 122 (1)
2.	A person applying for a licence under Part VIII of the Act to place children for adoption	Director	In accordance with subsection 122 (4)
3.	The officers and directors of a corporation that holds a licence under Part VIII of the Act to place children for adoption	Director	In accordance with subsections 122 (1) and (10)
4.	The officers and directors of a corporation applying for a licence under Part VIII of the Act to place children for adoption	Director	In accordance with subsection 122 (4)
5.	A person who holds a licence under Part IX of the Act to operate a children’s residence or to provide residential care, directly or indirectly, in places that are not children’s residences	Director	In accordance with subsection 122 (1)
6.	A person applying for a licence under Part IX of the Act to operate a children’s residence or to provide residential care, directly or indirectly, in places that are not children’s residences	Director	In accordance with subsection 122 (4)
7.	A person who holds a position, including a position as an employee, volunteer or student, in the course of which the person provides care directly to a child or young person receiving residential care from a licensee under Part IX of the Act	Service provider	In accordance with subsection 122 (1)
8.	The officers and directors of a corporation applying for a licence under Part IX of the Act to operate a children’s residence or to provide residential care, directly or indirectly, in places that are not children’s residences	Director	In accordance with subsection 122 (4)
9.	The officers and directors of a corporation that holds a licence under Part IX of the Act to operate a children’s residence or to provide residential care, directly or indirectly, in places that are not children’s residences	Director	In accordance with subsections 122 (1) and (10)
10.	A person who seeks a position, including as an employee, volunteer or student, in the course of which the person would provide care directly to a child or young person receiving residential care from a licensee under Part IX of the Act	Service provider	In accordance with subsection 122 (9)
11.	A prospective adoptive parent seeking to adopt a child through a licensee	Adoption practitioner	In accordance with subsection 122 (11)

<sup>26</sup> O Reg 155/18, s 121.

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12.	A person who resides with a person referred to in item 11	Adoption practitioner	In accordance with subsections 122 (11) and (2) or (3) as the case may be
13.	A prospective adoptive parent seeking to adopt a child through a society	The society or adoption practitioner conducting the home study assessment	In accordance with subsection 122 (11)
14.	A person who resides with a person referred to in item 13	The society or adoption practitioner conducting the home study assessment	In accordance with subsections 122 (11) and (2) or (3) as the case may be
15.	A foster parent	Service provider	In accordance with subsection 122 (1)
16.	A person who resides with a foster parent	Service provider	In accordance with subsections 122 (1) and (2) or (3) as the case may be
17.	A person who seeks to be a foster parent	Service provider	In accordance with subsection 122 (9)
18.	A person who resides with a person who seeks to be a foster parent	Service provider	In accordance with subsections 122 (9) and (2) or (3) as the case may be
19.	An adoptive applicant	Adoption practitioner	In accordance with subsection 122 (12)
20.	A person who resides with a person referred to in item 19	Adoption practitioner	In accordance with subsection 122 (12)
21.	A person who is or seeks to be the primary caregiver for a child in a home that is a place of safety under subsection 74 (4) of the Act	The society	In accordance with subsection 122 (13)
22.	A person who resides with a person referred to in item 21	The society	In accordance with subsections 122 (13) and (2) or (3) as the case may be
23.	A person who is advised, by a society, that they require broad record check because they are a primary caregiver of a child who is or will be placed with them, where section 40 or 41 of Ontario Regulation 156/18 (General Matters under the Authority of the Minister) made under the Act applies to the placement	The society that advised of the requirement	In accordance with subsection 122 (13)
24.	A person who is advised, by a society, that they require a broad record check because they are a primary caregiver of a child who is or will be placed with them, where clause 42 (a) of Ontario Regulation 156/18 (General Matters under the Authority of the Minister) made under the Act applies to the placement	The society responsible for carrying out the evaluation	In accordance with subsection 122 (13)
25.	A person who resides with a person referred to in item 23 or 24	The society that advised of the	In accordance with subsections 122 (13)

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		requirement or responsible for carrying out the evaluation	and (2) or (3) as the case may be
26.	A person who has been delegated responsibility for the custody, care and control of a child by a licensee under Part VIII of the Act	Licensee	In accordance with subsection 122 (1)
27.	A person to whom a licensee under Part VIII of the Act seeks to delegate responsibility for the custody, care and control of a child.	Licensee	In accordance with subsection 122 (14)
28.	A person who holds a position, including an employee, volunteer or student, in the course of which the person may become responsible for the custody, care and control of a child under Part VIII of the Act	Licensee	In accordance with subsection 122 (1)
29.	A person applying for a position referred to in item 28	Licensee	In accordance with subsection 122 (8)
30.	A person who holds a position of an employee, volunteer or student of the Child and Parent Resource Institute, if the person will have direct, in-person contact with children as part of their duties	The Minister	In accordance with subsection 122 (1)
31.	A person applying for a position referred to in item 30	The Minister	In accordance with subsection 122 (8)
32.	A person who has a contract to provide goods or services at a Child and Parent Resource Institute, or who provides such goods or services, if the person will have direct, in-person contact with children as part of their role	The Minister	In accordance with subsection 122 (1)
33.	A person seeking a contract referred to in item 32, or seeking to provide goods or services under such contract, if the person will have direct, in-person contact with children as part of their role	The Minister	In accordance with subsection 122 (8)
34.	A person who has a professional affiliation with a service provider in a place of open custody, a place of temporary detention or a place of secure custody	The Minister if the place is operated by the Ministry or the service provider if the place is not operated by the Ministry	In accordance with subsection 122 (1)
35.	A person seeking a professional affiliation referred to in item 34	The Minister if the place is operated by the Ministry or the service provider if the place is not operated by the Ministry	In accordance with subsection 122 (4)
36.	A person with a professional affiliation with a service provider in a youth justice probation office that is funded or operated by the Ministry	The Minister if the probation office is operated by the Ministry or the service provider if the probation office is not	In accordance with subsection 122 (1)

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		operated by the Ministry	
37.	A person seeking a professional affiliation referred to in item 36	The Minister if the probation office is operated by the Ministry or the service provider if the probation office is not operated by the Ministry	In accordance with subsection 122 (4)
38.	A person designated under subsection 154 (1) of the Act to conduct such inspections or investigations as the Minister may require in connection with the administration of Part VI of the Act	The Minister	In accordance with subsection 122 (1)
39.	A person seeking a designation referred to in item 38	The Minister	In accordance with subsection 122 (15)
40.	A person who holds a position managing, supervising or providing support or assistance to a person referred to in item 38	The Minister	In accordance with subsection 122 (1)
41.	A person applying for a position referred to in item 40	The Minister	In accordance with subsection 122 (8)