

CHAPTER EIGHT : CRIMINAL REFERENCE CHECKS

CRIMINAL REFERENCE CHECKS	CRIMINAL REFERENCE CHECKS
January 20, 2017 Revised: September 2017 Revised: September 2019 Revised: October 2020	Policy Number: 8.0 See Human Resources Policy 3.7

Policy

North Hastings Children's Services requires all successful external candidates for full and part-time positions, students, board members and all volunteers who will be working directly with children, to provide a Criminal Reference Check completed by a police force, include a vulnerable sector check/screening and provide annual Offence Declarations. Checks are not required for employees making a move within North Hastings Children's Services.

NHCS requires verification of persons who are employed by or contracted with outside organizations (e.g., special needs resource consultant, bus drivers, etc.) or individuals (i.e. a psychiatrist contracted with a parent) have completed background screening prior to interacting with children in their program.

Examples of individuals employed by or contracted with outside organizations include, but are not limited to special needs resource consultants, speech and language pathologists, supply staff not employed by the licensee such as temporary staff, etc.

Police Vulnerable Sector Checks (PVSC's) and offence declarations are part of the screening process to determine suitability to work/interact (and continue to work/interact) with children.

Definitions;

"Offence declaration" means a written declaration signed by an individual that lists all of the individual's convictions for offences under the Criminal Code (Canada), if any, during the period specified in the declaration.

"Volunteer" means any individual who comes into the program on a recurring basis and interacts with children; individuals who teach, assist with the care or supervision of children; provide support or undertake defined activities that have direct contact with children without payment, financial gain or reward; complement, not replace the work of paid staff; prohibited from tasks that put themselves or children in a potentially vulnerable or unsafe situation.

The following are examples of volunteers who require a vulnerable sector check:

- Parents assisting on an occasional or recurring basis with child care programming, such as excursions, field trips, etc.

- Board Member

The following are examples of individuals who are **not** considered volunteers:

- Parents who engage with their child and other children at arrival or pick up time in the program (e.g., reading a book; having a conversation with children)
- Individuals who are paid by an organization that the licensee has contracted to provide a service and are not left alone with the children in care (e.g., the licensee enters into a contract with a dance company that sends dance teachers to teach children in the program)
- Individuals from the community engaging in the child care for a specific event where they are not left alone with the children in care (e.g., presentations by community organization/recreational programs; local librarian; fire fighter)
- Parents attending a child care or school event and are not assisting with the care for or supervision of children

“Other Persons at Child Care Centre”: Any person who provides child care or other services to a child who receives child care at the child care centre, other than an employee, volunteer or student.

Effective March 8, 2021 the CCEYA has been amended to exempt certain individuals from requirements related to offence declarations and attestation requirements when attending a child care premises to provide services such as consultations or the delivery of presentations to children.

These individuals include:

- active duty first responders (i.e. police, fire, and emergency medical/paramedic professionals)
- professionals governed by the Regulated Health Professions Act, 1991
- professionals governed by the Social Work and Social Service Work Act, 1998

Procedures

1.0 Process for Obtaining Criminal Record Check

1.1 The vulnerable sector check, shall be considered to be satisfied only if the criminal reference check is,

- (a) conducted by a police force; and*
- (b) prepared no earlier than six months before the day it is obtained by the licensee.*

NHCS needs to obtain an original document. With regards to students/volunteers, NHCS may accept a copy of a police vulnerable sector check instead of the original document, except that:

(a) if more than six months but less than five years have passed since the day the vulnerable sector check was performed, the volunteer or student must also provide an offence declaration that addresses the period since that day; and (b) the licensee may not accept a copy of a vulnerable sector check if five or more years have passed since the day it was performed and in this case, the volunteer or student must provide a new vulnerable sector check or copy.

A Vulnerable Sector Check for each employee must be available for review and must be the original document or a true copy of the original document. A true copy is a photocopy made by the licensee of the original check that includes the following: the words "true copy", the name of individual who reviewed the original, the date of review and signature.

An original document received must be initialed and dated by the Coordinator, Admin or Executive Director on the date it was received. If a letter or signature is required to obtain the Vulnerable Sector Check it must be provided by the Executive Director.

- 1.2 Applicants will be advised that they will need to provide a criminal reference check as part of the hiring process and must supply a new vulnerable sector check, on or before every fifth anniversary after the date of the most recent vulnerable sector check.
- 1.3 North Hastings Children's Services will supply the candidate with the necessary forms, or the candidate may obtain the forms directly from the police.
- 1.4 Where a vulnerable sector check has not yet been obtained and a person has already started interacting with children:
 1. There is written evidence (e.g., receipt) from the local police force that confirms that a request for a vulnerable sector check was submitted.

Or

There is a written plan for obtaining the vulnerable sector check that includes an estimation of the length of time it will take to obtain the vulnerable sector check.

 2. Additional measures to support children's safety have been implemented
 - Not leaving children alone/unsupervised with the individual until a vulnerable sector check is obtained;
 - A declaration from the new hire requiring a vulnerable sector check that the person does not have any previous offences that would contravene Section 9 of the Act; and
 - Staff verbally confirm that the additional measures are followed.
- 1.5 If a person turns 18 years old while in a position where he or she interacts with children receiving child care at a child care centre operated by a licensee, the licensee shall obtain from the person, within one month after the person turns 18 years old, a statement that discloses every previous finding of guilt of the person

under the Youth Criminal Justice Act (Canada), if the person received an adult sentence.

If a person turns 19 years old while in a position where he or she interacts with children receiving child care at a child care centre operated by a licensee, the licensee shall require the person to apply to obtain a vulnerable sector check within one month after the person turns 19 years old.

- 1.6 Where any statute of Ontario or Canada prohibits the disclosure of information Contained in a vulnerable sector check:

There is a criminal reference check on file for an individual for whom a vulnerable sector check was required, and an attestation that confirms that a criminal reference check has been obtained due to a statute of Ontario or Canada that prohibits the disclosure of information contained in a vulnerable sector check in respect of a person.

2.0 Process for submitting an Offence Declaration

- 2.1 North Hastings Children's Services will supply the employee with the necessary Offence Declaration Form every calendar year except the years in which a vulnerable sector check was obtained.
- 2.2 The Offence Declaration Form must be provided within 15 calendar days of the anniversary date of the previous offence declaration or vulnerable sector check.

3.0 Procedure in the Event of a Positive Criminal Reference Check or conviction of an offence under the Criminal Code (Canada)

- 3.1 In the event of a positive criminal reference check, the individual will be provided with the police response and ask for written particulars surrounding the convictions listed. The individual will be given an opportunity to meet with the selection committee to discuss the results of the check.
- 3.2 Any person convicted of an offence under the Criminal Code (Canada) must provide an offence declaration, as soon as reasonably possible.
- 3.3 The Executive Director will review the offense(s), taking into consideration:
- the nature of the offense(s);
 - sentencing received;
 - the length of time since the offenses were committed;
 - the candidate's employment record, qualifications and references;
 - the specific duties and responsibilities associated with the position applied for and the relevance of the particular conviction to the position; and
 - the risk posed to the program and children as a result if employing the candidate in the position.
- 3.4 A decision will be based on Section 9 (1) of the CCEYA, 2014 and the selection committee's assessment of whether the candidate could be considered a high-risk person to have in contact with children.

Child Care and Early Years Act, 2014

9(1) No individual shall provide child care, operate a premises where child care is provided or enter into an agreement described in section 7 (home child care) if:

1. The individual has been convicted of any of the following offences:

i. An offence under this Act.

ii. An offence under any of the following sections of the Criminal Code (Canada):

A. Section 151 (sexual interference).

B. Section 163.1 (child pornography).

C. Section 215 (duty of persons to provide necessities).

D. Section 229 (murder).

E. Section 233 (infanticide).

iii. Any other federal or provincial offence prescribed by the regulations.

2. The individual has been found guilty of professional misconduct under the Early Childhood Educators Act, 2007, the Ontario College of Teachers Act, 1996, the Social Work and Social Service Work Act, 1998 or another prescribed Act, and based on that finding,

i. the individual's membership in the regulatory body established under that Act was revoked and the individual has not been readmitted since that time,

ii. a certificate or documentation issued to the individual under that Act that authorized the individual to practice was revoked and has not been reissued since that time, or

iii. the individual's authority to practice was restricted in any other way prescribed by the regulations.

3.5 The committee will document its discussion and the reasons for its decision.

3.6 The individual will be advised in writing of the committee's decision.

4.0 Responsibility for Costs

4.1 The organization will pay for any costs associated with obtaining a Criminal Reference Check for non-new hires.

5.0 Retention Documentation

5.1 All information obtained through a Criminal Reference Check and Offence Declaration(s) is strictly confidential and will be treated as personal information within the meaning of section 38 of the Freedom of Information and Protection of Privacy Act and section 28 of the Municipal Freedom of Information and Protection of Privacy Act; CCEYA

5.2 The Executive Director will note in the individual's file, the date of the Criminal Reference Check and the date the check was accepted by the Board of

Directors. Any other documentation, including documentation of the Committee's discussion, will be kept in a secured file.

- 5.3 The original or true copy of the PVSC, and original offence declarations will be maintained on the individual's file.
- 5.4 Individual files (staff, volunteers, board) will be locked at all times and will be accessible only to the Chairperson of the Board of Directors (in the case of the board) and Executive Director (in the case of staff and volunteers).
- 5.5 If a candidate is not suitable for employment, all information regarding the Criminal Reference Check will be returned to the individual.

6.0 Other Persons at Child Care Centre

Prior to interacting with children in the program persons who are employed by or contracted with outside organizations (e.g., special needs resource consultant, bus drivers, etc.) or individuals (i.e. a psychiatrist contracted with a parent) have to provide the following;

a) an offence declaration OR

b) An attestation from the person's employer or from the person or entity who retained the person's services that indicates that:

- the employer, person or entity has retained and reviewed a vulnerable sector check from that person;

AND

- the vulnerable sector check was performed within the last five years;

AND

- the vulnerable sector check did not list any convictions for any offences under the *Criminal Code (Canada)* listed in subparagraph 1 ii of subsection 9 (1) of the *Child Care and Early Years Act, 2014*.

Every year thereafter, no later than 15 days after the anniversary date of the most recent offence declaration or attestations, if the person continues to provide such child care or other services, another declaration or attestation must be provided.

7.0 Break in Employment

If a licensee's relationship with a person in respect of whom it has previously obtained a vulnerable sector check has a break in employment and then subsequently resumes, NHCS must obtain a new VSC or offence declaration upon the person's return if they would have provided a VSC or offence declaration during the period of their leave.

Where an individual previously completed an educational placement with the licensee and is then hired by the licensee as a staff, this is considered a break in employment or

other relationship because the individual's relationship with the licensee ended and was then resumed, regardless of the change in position.

The Coordinator shall ensure that this policy and procedures are reviewed as follows at the child care centre:

1. With employees, before they begin their employment.
2. With volunteers or students who will be interacting with children at the child care centre, before they begin to volunteer or before they begin their educational placement.
3. With each person described in paragraph 1 or 2, at least annually after the first review and at any other time when changes are made to the policy or a procedure.