



# A GUIDE TO APPLYING THE CRIMINAL RECORD CHECK POLICY

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# INTRODUCTION

This guide presents information on applying the Criminal Record Check Policy and the guidelines for collecting and disclosing criminal records information. The Government of the Northwest Territories (GNWT) requires that criminal record checks including, if applicable vulnerable sector checks, be undertaken for key positions to uphold the safety and security of clients, employees, and assets. Except as otherwise stated, the Policy and its guidelines apply to all GNWT employees and volunteers, as well as persons applying for employment with the GNWT.

# JOB DUTIES

The job duties of a position determine whether a criminal record check and a vulnerable sector check is required.

The Policy identifies the following types of positions as requiring a criminal record check, including if applicable, a vulnerable sector check:

## POSITIONS OF TRUST

**Positions of Trust** must be staffed with individuals whose trustworthiness, integrity, character, and identity would not place the GNWT, its clients or the public at risk. Such positions require a criminal record check. Positions of trust feature one or more of the following criteria:

- Duties involving laying charges, investigating offences, attending court proceedings, dealing with evidence admitted to court, or providing security for prisoners.
- Duties involving direct control of substantial amounts of cash, goods, or restricted drugs.
- Duties involving international travel.
- Duties involving access to secure systems or facilities and responsibility for safeguarding public property and assets.
- Decision making at the executive and senior management level in the public service.
- Duties involving the provision of support or advice directly to members of the Executive Council, including Ministerial Special Advisors and Executive Assistants.

## HIGHLY SENSITIVE POSITIONS

**Highly Sensitive Positions** include duties involving contact with vulnerable members of society such as children, the elderly, persons with disabilities or residents in the GNWT's care (e.g., teachers, social workers, health care workers, youth workers). Such positions require a vulnerable sector check.

Typically, a position is identified as a position of trust or a highly sensitive position on the job description for the position, or in the case of casual employment following an assessment of the job duties/responsibilities.

# HIRING RISK ASSESSMENT MODEL

Additionally, the Human Resource Representative and hiring manager will use a Hiring Risk Assessment Model tool available from the Department of Finance - Human Resources on those positions not already identified as positions of trust or highly sensitive positions to determine if a position requires a criminal record check or vulnerable sector check.

The five factors used in the model are:

- Access to children and vulnerable persons.
- Access to financial assets.
- Access to sensitive information.
- Access to physical assets.
- Reputation.

# CRIMINAL RECORD VERIFICATION

A criminal record or vulnerable sector check is an additional verification step in the staffing process that is used to confirm the suitability of an individual prior to their appointment or placement in a position of trust or a highly sensitive position or other position identified as requiring verification.

There are distinct levels of criminal record and vulnerable sector checks:

## NAME BASED CRIMINAL RECORD CHECKS

Checks conducted based on the applicant's name(s) and date of birth to identify criminal convictions recorded in the National Repository of Criminal Records or in other national and local databases.

## CERTIFIED CRIMINAL RECORD CHECKS (FINGERPRINT-BASED)

Used to identify existing criminal convictions recorded in the National Repository of Criminal Records. A Certified Check produces a summary of an individual's offence convictions and, where authorized, non-convictions.

## NAME BASED VULNERABLE SECTOR CRIMINAL RECORD CHECKS

Conducted using the applicant's name and date of birth to identify criminal convictions and record suspensions/pardons for sexual offences.

## CERTIFIED VULNERABLE SECTOR CRIMINAL RECORD CHECKS

Checks intended for persons who will be occupying a position of trust to vulnerable persons. They are conducted using an individual's fingerprints to identify criminal convictions recorded in the National Repository of Criminal Records or in other national and local databases.

## CRIMINAL RECORD AND JUDICIAL MATTERS CHECKS

These checks disclose criminal convictions, absolute and conditional discharges (for a specified period), and outstanding charges, warrants, and certain court orders.

# QUESTIONS AND ANSWERS

## IF I HAVE A CRIMINAL RECORD, DOES THAT MEAN I CANNOT GET A JOB WITH THE GNWT?

The GNWT does not prohibit the hiring of an individual with unrelated criminal convictions. The existence of a criminal record will not necessarily preclude someone from employment. If a qualified individual has a criminal record, the hiring deputy head must evaluate the nature, time, and extent of the record to assess if the individual is suitable relative to the job duties. An individual with a criminal record related to the duties and responsibilities of a position may be disqualified from further consideration if their appointment would place the Government, its clients, or the public at risk.

## WHO IS RESPONSIBLE FOR THE COST OF THE CRIMINAL RECORD CHECK?

Individuals are responsible for the payment of all fees related to the provision of any required criminal record check.

## HOW LONG IS MY CRIMINAL RECORD CHECK VALID FOR?

Criminal record check results are valid for a period of six months following their issuance. They may be used for multiple competitions or volunteer applications within that timeframe.

## WHAT HAPPENS IF I HAVE RECEIVED A RECORD SUSPENSION (PARDON)?

A record suspension removes a person's criminal record from the Canadian Police Information Centre (CPIC) database. Record suspensions were previously referred to as pardons. You do not have to identify if you have a record suspension; however, as required by the position a criminal record check may still be required. However, if you are applying for a highly sensitive position with duties involving contact with children, vulnerable persons or residents in the Government's care, the check will identify a record suspension involving a sexual offence which may make you ineligible for employment.

## HOW DO I KNOW IF I NEED A CRIMINAL RECORD CHECK?

All GNWT staffing advertisements and job descriptions shall be transparent and clearly communicate whether a criminal record check, including, if applicable, a vulnerable sector check, is a positional requirement. The Human Resource Representative, or in the case of teachers, the Superintendent of Education, will provide you with details on what type of verification you will require.

## WHO DO I GIVE THE CRIMINAL RECORD CHECK TO? WHO IS GOING TO SEE IT?

Return the completed criminal record check to whoever asked you to complete it. Criminal record checks are normally reviewed by the hiring manager and the Human Resource Representative. If there are indications of a criminal record, the information will be shared up the chain of command from the hiring manager to the Deputy Head, and in some instances, it may be shared with additional human resources representatives and legal advisors.

## I'VE BEEN WITH THE GNWT FOR YEARS; WHY AM I BEING ASKED TO DO A CRIMINAL RECORD CHECK NOW?

There are a number of reasons why an existing employee or volunteer might be asked to do a check, including:

- (a) you move to a different position within the GNWT and that position is considered a position of trust or highly sensitive position.
- (b) your position duties change and your job description now fits the definition of a position of trust or highly sensitive position.
- (c) if it appears the appropriate type of check was not done when you were hired.

Additionally, any person to whom this Policy applies who is charged with or convicted of a criminal offence at any time during their employment with the GNWT shall report it as soon as reasonably possible to the manager responsible for their work unit.

## PROCESS

Prior to initiating a competition or other staffing action, the job duties are reviewed to determine whether the position to be filled is a position of trust or a highly sensitive position.

When necessary, the Hiring Risk Assessment Model tool is used to determine what type of verification the position or casual duties requires.

Where a position is filled through competition, the job posting lists the requirement for a satisfactory criminal record check.

Criminal record checks may be required for any type of employment with the GNWT, including indeterminate, term, casual (including summer student), relief, job-share, executive management contract, board of management contract, transfer assignment, secondment, direct appointment, and intern. If a vacancy is to be filled through another type of staffing action and the position or duties have been identified as either a position of trust or a highly sensitive position, the offer must be conditional upon receipt of a satisfactory criminal record check.

Individuals are advised if a criminal record check or vulnerable sector is required.

Individuals must contact their local police office to obtain a criminal record check or vulnerable sector check.

Individuals who are denied a job offer or dismissed from probation as the result of an unsatisfactory criminal record check shall be afforded two business days after being provided notice to request a review of the decision by the Deputy Minister of Finance.

## ASSESSING RESULTS

If the results of the check indicate that the individual does not possess a criminal record, a job offer, or other appropriate staffing action, is extended to the individual.

If the results indicate that the appointee may have a criminal record:

- (a) The individual is asked to undergo a Certified Criminal Records Check, including if applicable, a Certified Vulnerable Sector Criminal Record Check.
- (b) An individual whose check includes information about a criminal conviction or the suspension of a criminal record regarding a vulnerable sector shall be provided the opportunity to submit, without delay, a detailed explanation of the circumstances that led to the criminal finding and any relevant documentation.

## PROVIDING COUNTERBALANCING INFORMATION

- (c) The individual will be provided a reasonable opportunity to submit a detailed explanation and relevant documentation, such as court transcripts or evidence of rehabilitative steps that they have undertaken.

This may include:

- Copies of court transcripts related to the matter.
- Documentation setting out rehabilitative steps completed, such as certificates of completion for programs.

- (d) The Deputy Head assesses the risk by considering the details of the record in relation to factors specifically related to the bona fide occupational requirements of the position being filled and decides whether to extend a job offer or conditional job offer to the individual.

Assessment by a Deputy Head will include consideration of relevant factors, including the time that has elapsed following the incident, the relevance of the recorded incident to the occupational requirements, the seriousness of the offence, the conduct of the individual since the incident, any established pattern of repeat adverse behaviour, and any reasonable factor to suggest adverse behaviour may be repeated.

## PROBATIONARY HIRING

In circumstances where it is necessary to meet operational requirements and where there is no increased risk to vulnerable persons, the GNWT may authorize an individual to begin performing the duties of their role prior to receiving the results of a criminal record check.

In such circumstances, a Deputy Head may authorize the individual to submit a Statutory Declaration and supporting documentation setting out that the individual does not have an existing criminal record or pending criminal charges against them, or which provides the details of an existing criminal record, as an interim measure until the criminal record check process is complete.

The final job offer is subject to a satisfactory criminal record check. Interim Statutory Declarations do not eliminate all risks to the GNWT or the public. Deputy Heads must carefully consider the risks associated with hiring an individual prior to receiving the individual's criminal record check.

Should the individual declare they have never been charged, convicted or discharged of a criminal offence and after receiving authorization from the Deputy Head, a job offer conditional upon a satisfactory criminal record check will be extended to the individual.

Should the individual declare they have been charged, convicted or discharged of a criminal offence:

- (a) The individual is asked to provide information relevant to an assessment of the factors as outlined in the Policy.
- (b) The Deputy Head assesses the risk by considering the details of the record in relation to factors specifically relevant to the duties and responsibilities of the position and decides whether to extend a job offer or conditional job offer.
- (c) Should a job offer not be extended, the individual has two business days after being provided notice to request a review of the decision by the Deputy Minister of Finance.

The individual will provide a satisfactory check to the Department of Finance – Human Resources for placement on the personnel file and preparation of a job offer.

If the check is unsatisfactory, the job offer is withdrawn. The individual may be charged with a criminal offence if a false Statutory Declaration was submitted.

If the employee does not provide the satisfactory check within a defined period (e.g., six months), the job offer is withdrawn and his or her employment with the GNWT is terminated. Any employee who falsifies submissions made in accordance with this Policy may be subject to disciplinary action up to and including dismissal.

# SUPERINTENDENTS OF EDUCATION

Superintendents of Education will follow this process to obtain criminal record checks, vulnerable sector checks and record suspensions for teachers.

# PRIVACY NOTICE STATEMENT

The GNWT is committed to protecting personal information that individuals provide through its recruitment process. The confidentiality of information obtained through this Policy must be respected in accordance with the *Access to Information and Protection of Privacy Act*.

## RECORDS RETENTION AND DISPOSAL

Criminal record checks obtained during the staffing process are secured and retained for a period of one year, after which they are destroyed. The confidentiality of this information is strictly restricted to staff members directly responsible for the staffing and management of the position.

## REFERENCES

Criminal Record Check Policy

Collective Agreement with the NWTTA

Canadian Criminal Records Information Services