

## **SECTION 3**

### **RECRUITMENT AND STAFFING**

#### **3.09 CRIMINAL RECORDS CHECK**

**AUTHORITY:** CIVIL SERVICE ACT  
CIVIL SERVICE ACT REGULATIONS

**ADMINISTRATION:** PEI PUBLIC SERVICE COMMISSION  
GOVERNMENT DEPARTMENTS/AGENCIES

## **1. PURPOSE**

1.01 The PEI Public Service Commission is committed to employment policies which respect all legal requirements of employment in the Provincial Civil Service and which ensure the appointment of only qualified persons of good character. This commitment is imperative to ensure the security of the Employer's property and assets and to ensure the safety and security of all persons who work for the Provincial Civil Service or rely on its services.

## **2. OBJECTIVES**

2.01 This Policy is to ensure the Government of Prince Edward Island protects the public interest in the delivery of public services by requiring New Hires and employees in Designated Positions to provide a satisfactory criminal record check.

2.02 This Policy will also ensure adherence to law requiring a causal connection between the presence or absence of a criminal record and the employment, based on the *Human Rights Act*, R.S.P.E.I. 1988, Cap. H-12, Clause 6(1)(b):

"No person shall refuse to employ or continue to employ any individual (b) because the individual has been convicted of a criminal or summary conviction offence that is unrelated to the employment or intended employment of the individual."

Employers do not have a presumptive right of access to the criminal history of their employees. However, a criminal conviction may bear meaning on a person's ongoing employment, if the conviction satisfies the requirements of "Relevant" and "Necessary".

## **3. INTERPRETATION**

3.01 In this Policy:

"Designated Position" means those positions designated by the Employer as being responsible for the Province's property and assets and/or a position working with a vulnerable demographic.

"New Hire" means a candidate to whom an offer of employment has been made. The term "an offer of employment" in this policy includes those

defined in section 9 and 10 of the *Civil Service Act*. Where applicable, it also includes volunteers, contractors, fee for service individuals, and contract employees.

3.02 There are two types of Criminal Record Checks (Standard and Vulnerable)

1) Standard (Four Types) - Levels 1 – 4

- a. Level 1 - Records of criminal conviction for which a pardon has not been granted
- b. Level 2 - Records of criminal conviction for which a pardon has not been granted and outstanding charges that the Police are aware of
- c. Level 3 - Records of criminal conviction for which a pardon has not been granted and outstanding charges that the Police are aware of and records of discharge which have not been removed (all charges regardless of disposition)
- d. Level 4 - Records of criminal conviction for which a pardon has not been granted and outstanding charges that the Police are aware of and records of discharge which have not been removed (all charges regardless of disposition) and check on all local Police databases, court and law enforcement agency databases (Also referred as “Police Record Check”)

2) Vulnerable Sector defined as a minor (less than 18 years of age) and;

- a) persons who, because of their age, a disability or other circumstance, whether temporary or permanent, are in a position of dependence on others; or
- b) are otherwise at a greater risk than the general population of being harmed by others in a position of authority or trust relative to them.

3.03 In Canada, criminal records are stored in Criminal Records Information Management Services, a centralized database operated by the Royal Canadian Mounted Police under the Canadian Police Information Centre since 1972. The Database contains all convictions for which a Pardon has not been granted, all charges regardless of disposition, outstanding

warrants, and charges, all judicial orders and any other information that may be of interest to Police Investigations.

#### **4. APPLICATION**

- 4.01 This policy will apply to New Hires and employees in Designated Positions.
- 4.02 Any individual who is an employee of the Provincial Civil Service as of the date this policy comes into force is exempt from the application of this policy, unless the employee is not in a designated position and subsequently is appointed to a Designated Position.

#### **5. PRODUCTION REQUIREMENTS**

##### New Hire

- 5.01 Any New Hire will be required to provide a current Criminal Record Check (the check must include vulnerable sector inquiry) and, if requested, an abstract of criminal record.
- 5.02 A New Hire's offer of employment shall be conditional on the employer being satisfied that the candidate either has no criminal record or has a criminal record which does not give rise to a reasonable concern regarding the security of the Province's property and assets and/or the safety and security of all persons who work for the Provincial Civil Service or rely on its services.
- 5.03 Any cost to a New Hire to obtain such a Criminal Record Check or criminal abstract shall be the responsibility of the candidate New Hire.

##### Designated Position

- 5.04 Any current employee that is employed in a Non Designated position and is given an employment offer in a Designated Position will be required to provide a Criminal Record Check prior to accepting the job offer.
- 5.05 Any cost associated with obtaining a Criminal Record Check once an individual is employed by the Provincial Civil Service, shall be paid by the Employer.

## **6. PROCESS**

- 6.01 An individual who is required to submit criminal record information pursuant to this policy shall:
- a) make application, in person, to the local police authority nearest their place of residence or other agency where so directed by their local police authority. Persons living in the Charlottetown area should note that police authorities in the Charlottetown area may not process such applications. Such applications may be made at the International Fingerprint Services Canada (I.F.S.C.) currently located at 119 Kent St. (See Attachment 1 for detailed Procedure)
  - b) upon application, provide proof of identity to the appropriate police authority or other agency.
  - c) submit the original Criminal Record Check to the Human Resources Manager or designate.
- 6.02 Where the Criminal Record Check indicates no criminal record exists:
- a) in the case of a New Hire, the offer of employment becomes effective; or
  - b) in the case of an employee in a Designated Position, no further steps will be taken.
- 6.03 Where the Criminal Record Check indicates the individual may have a criminal record, the Human Resources Manager or designate shall request the individual provide a criminal abstract in order to obtain further information on the matter.
- 6.04 An individual required to provide a criminal abstract shall contact a police authority or I.F.S.C. agency as noted above and submit an original of the criminal abstract to the Human Resources Manager or designate. The Manager or designate shall make and retain a copy of the abstract and return the original to the candidate. Provision of fingerprints may be a prerequisite to obtaining a criminal abstract.

## **7. CONFIDENTIALITY**

- 7.01 All criminal record checks and criminal abstracts will be forwarded to the Departmental Human Resources Manager or designate and marked “Confidential” and the Human Resources Manager or designate will adjudicate any findings of a criminal history. In order to adjudicate the findings, the Departmental Human Resources Manager or designate may consult with the PEI Public Service Commission to obtain legal or other professional resources, provided the consultation occurs in a manner which does not reveal the identity of the individual concerned.
- 7.02 A copy of the criminal record check and, if applicable, criminal abstract will be entered into a secure file and the original returned to the candidate. This information is strictly confidential and will be kept sealed and in a separate, locked storage area and does not become part of the official personnel file of the employee. Access to such information is restricted to a single administrative employee charged with responsibility for management of all information relating to criminal record checks and abstracts and to persons directly involved in the hiring process for the position for which the candidate applied. It will be used only in relation to the initial hiring decision.

## **8. CRIMINAL RECORD ESTABLISHED**

- 8.01 Where it is determined that a New Hire or an employee in a Designated Position has a criminal record, the PEI Public Service Commission shall consider each of the following factors before deciding to make an unconditional offer of employment, or to take any other actions:
- a) nature of the crime(s) and sentence(s) ordered by the court;
  - b) dates of conviction and sentence;
  - c) probability of re-offending;
  - d) risk to clients, staff and/or property and assets of the Department;
  - e) nature of the job;
  - f) requirements of relevant legislation, including the P.E.I. *Human Rights Act*; and
  - g) any other relevant and probative information received bearing on the character of the candidate and the other factors listed herein.

A Risk Assessment Form must be completed by the Divisional Director (Attachment 2).

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## **9. REPORTING A CRIMINAL CONVICTION**

- 9.01 If an employee is charged or convicted of an offense at anytime, the employee is required to report such conviction, as soon as reasonably possible, to department management who will consult with the PEI Public Service Commission to review the details and assess the relevance of the conviction.
- 9.02 Failure to report the charge or conviction as soon as reasonably possible may result in disciplinary action up to and including dismissal. The need for immediate action within the workplace will be determined in accordance to the *Civil Service Act* and Human Resource Policy and Procedures Manual.
- 9.03 In assessing the relevance of charges, the Department will adhere to the Human Rights Legislation (6)(1)(b), as outlined in Section 3 of this Policy. The HR Manager for the Department is responsible for prompt investigation of the circumstances of the alleged misconduct by an employee to determine the appropriate response that balances the interests of the employee and the interests of the Employer, pending the outcome of court proceedings. The investigation will be completed in consultation with the PEI Public Service Commission.
- 9.04 The absence of legal culpability regarding the alleged misconduct does not eliminate the Employers obligation to investigate and/or address it in accordance to Section 31 of the *Civil Service Act*.

## **10. DECISION**

- 10.01 In all cases where an offer of employment is in issue, the Director responsible for the position to be filled shall consult with Human Resources Manager and Deputy or their designates, to determine whether to extend an offer of employment as a result of the application of this policy. As noted earlier, the Director and the Human Resources Manager or designate may consult on a confidential basis with others, provided they do so in accordance with section 7 of this policy.
- 10.02 In the event there is a difference of opinion between the Deputy, Director and the Human Resources Manager or designate whether to extend an offer of employment as a result of the application of this policy, the matter shall be referred to the CEO, PEI Public Service Commission whose

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decision on the matter shall be final.

**11. AUTHORITY**

*Civil Service Act*  
*Civil Service Act Regulations*

**12. ATTACHMENTS**

Attachment 1: Procedure to Obtain a Criminal Record Check  
Attachment 2: Criminal Record - Risk Assessment Form  
Attachment 3: Criminal Record Check - Q &A



## **ATTACHMENT 1: PROCEDURE TO OBTAIN A CRIMINAL RECORD CHECK**

1. You must make application, in person, to the local police authority closest to your residence, or to another agency where so directed by your local police authority. Please note that, Charlottetown area policing authorities do not process such requests. Residents of the Charlottetown area may make application at the International Fingerprint Services located at 119 Kent St, Charlottetown, PEI.
2. Proof of identity is required at the time of application for a criminal record check.
3. A fee may apply to process a criminal record check. Any cost to obtain a criminal record check is the responsibility of the candidate.
4. A criminal record check may take a few days to process.
5. A criminal record check must be obtained in person.
6. The original of the criminal record check must be submitted to the Human Resources Manager or designate. The original will be photocopied and returned to you.

**ATTACHMENT 2: CRIMINAL RECORD - RISK ASSESSMENT FORM**

THIS SECTION TO BE COMPLETED BY HUMAN RESOURCES  
(attached copy of the criminal abstract with name removed)

Candidate's file # \_\_\_\_\_ Date: \_\_\_\_\_

Position Offered: \_\_\_\_\_ Division: \_\_\_\_\_

THIS SECTION TO BE COMPLETED BY DIVISIONAL DIRECTOR  
Summarize nature of position:

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Based on job duties and responsibilities and accessibility to clients, staff and/or property and assets of the department, identify the risk.

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Requirements of relevant legislation, if applicable.

Any other relevant information to support/deny extending an offer of employment.

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Proceed with the offer of employment  
Director:  
Date:

Do not proceed with offer of employment

Proceed with the offer of employment  
HR Manager:  
Date:

Do not proceed with offer of employment

=====  
Proceed with the offer of employment

Do not proceed with offer of employment

CEO, PEI Public Service Commission\*: \_\_\_\_\_

Date: \_\_\_\_\_

(\*Required only if no agreement between Director and Human Resources Manager)