

CRIMINAL RECORDS CHECK POLICY

1. POLICY STATEMENT

The Government of the Northwest Territories (GNWT) Criminal Records Check Policy (Policy) and its guidelines set out how criminal records checks are conducted as part of the staffing process. The policy adheres to the principles of fairness, equity, and transparency, and is intended to:

- Protect the public interest in the delivery of GNWT programs and services
- Ensure the safety of clients and employees
- Safeguard public funds, property, and assets; and to,
- Ensure that residents have confidence in the public service.

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.

2. PRINCIPLES

The GNWT will adhere to the principles of fairness, equity, and transparency in implementing this Policy. Specifically, the GNWT commits that:

- (1) The requirement to obtain and maintain information related to an individual's pending criminal charges, criminal convictions, or criminal record shall be balanced with the respect for individuals' privacy and confidentiality of personal information.
- (2) Criminal records checks including, as applicable, vulnerable sector checks shall only be required where it is a *bona fide* occupational requirement based on a position's duties and responsibilities.
- (3) 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.
- (4) The existence of a criminal record will not necessarily preclude someone from employment.

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- (5) Persons with criminal records will be given reasonable opportunity to present relevant positive and counterbalancing information about their interactions with the criminal justice system.

3. DEFINITIONS

The following definitions apply to this policy:

Bona Fide Occupational Requirement – a condition of employment that is imposed and is necessary for the safe, efficient, and reliable performance of the job, the absence of which would be impossible to accommodate without undue hardship to the employer.

Criminal Record Check – or, police information checks, the process of conducting checks of the records stored in the National Repository of Criminal Records or in other national and local databases.

Deputy Head – the deputy minister of a department, superintendent of a divisional education council, chief executive officer or president of a board, authority, agency or any such person as may be appointed as deputy head.

Highly Sensitive Position - positions with 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).

Positions of Trust – positions that must be staffed with individuals whose trustworthiness, integrity, character, and identity would not place the GNWT, its clients or the public at risk. 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; or,

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- Duties involving the provision of support or advice directly to members of the Executive Council, including Ministerial Special Advisors and Executive Assistants.

Satisfactory Criminal Record Check – means either:

- A criminal record check or vulnerable sector check that indicates no criminal record or record suspensions regarding a vulnerable sector;

or

- A criminal record check that indicates a criminal record, pending charges or record suspensions regarding a vulnerable sector exist and an evaluation/assessment by the Deputy Head of the employing department or agency has found that any record convictions or pending charges are not relevant to the duties being performed or do not present a reasonably foreseeable risk to the GNWT, its clients or the public.

Vulnerable Person – a person who, because of their age, disability or other circumstances, whether temporary or permanent, (a) is in a position of dependency on others, or (b) is otherwise at a greater risk than the general population of being harmed by a person in a position of trust or authority towards them.

4. AUTHORITY AND ACCOUNTABILITY

(1) General

This Policy is issued under the authority of the Financial Management Board. The authority to make exceptions and approve revisions to this policy rests with the Financial Management Board. Authority and accountability are further defined as follows:

(a) Ministers

The Minister of Finance is accountable to the Financial Management Board for the implementation of this Policy.

(b) Deputy Minister

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The Deputy Minister of Finance is accountable to the Minister of Finance for the administration of this Policy.

(2) Specific

(a) Ministers

Ministers are accountable for the implementation of this Policy in their departments and agencies.

(b) Minister of Finance

- (i) Makes recommendations to the Financial Management Board for amendments to this Policy.
- (ii) May establish ministerial policies or guidelines necessary to the implementation of this Policy.

(c) Deputy Minister of the Department of Finance

- (i) Provides support, direction and assistance to Deputy Heads on this Policy and associated procedural or guideline issues.
- (ii) Review the decision to deny a job offer to an individual as the result of a criminal record check when requested by the individual.
- (iii) Ensures that all staff are aware that criminal record check information is to be treated in confidence.

(d) Deputy Heads

- (i) Authorize interim hiring of individuals based on a statutory declaration by the individual until satisfactory criminal record check is received.
- (ii) Conduct individual-specific assessments of persons to determine whether employment of the individual places the GNWT, its clients or the public at a reasonably foreseeable risk.
- (iii) Make final staffing decisions and authorize the hiring of individuals where a criminal record exists after evaluation of the criminal conviction or pending charges as relevant.

(e) Department of Finance

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- (i) Provides advice and assistance to departments on the application of this Policy, including assisting Deputy Heads in the assessment of statutory declarations, criminal records and other supporting documentation as may be submitted under the Policy.
- (ii) Confirms that the requirements of this Policy and associated procedures and/or additional guidelines are followed during the recruitment process.

5. PROVISIONS

(1) Types of Criminal Record Checks

- (a) **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.
- (b) **Name Based Vulnerable Sector 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 and which can only be completed for applicants who will be occupying a position of trust to vulnerable persons. Name Based Vulnerable Sector Criminal Record Checks can also identify if the applicant has a criminal record suspension or criminal record pardon for sexual offences and can identify adverse information in other national and local databases.
- (c) **Certified Criminal Record Checks** – checks conducted using an individual's fingerprints to identify any existing criminal convictions recorded in the National Repository of Criminal Records or in other national and local databases. A Certified Criminal Record Check produces a summary of an individual's offence convictions and, where authorized, non-convictions.
- (d) **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. They also are used to identify if the applicant has a record suspension or pardon for sexual offences and to identify adverse information in other national and local databases.
- (e) **Criminal record and judicial matters checks:** In general, these disclose criminal convictions, absolute and conditional discharges for a specified

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period of time, and outstanding charges, warrants, and certain court orders.

(2) Job Duties/Types of Employment

(a) Criminal Record Checks are conducted as required for appointments and placements to positions of trust or highly sensitive positions. The policy is operated in accordance with the *Canadian Charter of Rights and Freedoms*, the *Human Rights Act*, SNWT 2002, c 18, as well as the parameters set out in the *Criminal Records Act*, RSC 1985, c C-47.

(b) 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
- Intern

(c) Criminal record checks may also be required for any type of volunteer role with the GNWT.

(d) Employees and volunteers who have not undergone the required type or level of check in relation to their duties shall be required to undertake completion of any checks required promptly on request and continuation of employment or volunteer duties shall be assessed based on the results of the check.

(e) Employees who apply on positions of trust or a highly sensitive position, who are being considered for transfer or promotion to a such a position, or who assume such additional duties in their current positions are required to submit a satisfactory criminal record check or complete other steps as directed prior to appointment, transfer, or reclassification.

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- (f) 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. The supervisor will consult with Human Resources to review the details, and the Deputy Head responsible for their department will assess the relevance of the charge or conviction to determine whether it is appropriate for the individual to continue in their role with the GNWT.
- (g) Failure to report a charge or conviction as soon as reasonably possible may result in disciplinary action up to and including discharge.
- (h) Any employee who fails to comply with the above or falsifies submissions made in accordance with this Policy may be subject to disciplinary action up to and including dismissal.

(3) Probationary Hiring

- (a) 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.
- (b) 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 receipt of the individual's criminal record check.

(4) Assessment

- (a) If a record check includes information about a criminal conviction or the suspension of a criminal record regarding a vulnerable sector, an assessment is required to determine whether the information disclosed in the record is relevant to the *bone fide* occupational requirements of the

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position and whether allowing the individual to be employed by or volunteer with the GNWT places the GNWT, its clients or the public at risk.

- (b) An individual whose criminal record check or vulnerable sector 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, such as copies of court transcripts related to the matter, and documentation setting out rehabilitative steps that the individual has completed in relation to their conviction. This information will be included in the assessment by the Deputy Head and will form the basis of determining whether the circumstances involved should prohibit the person from employment or volunteer duties with the GNWT.
- (c) Assessment by a Deputy Head will include consideration of relevant factors, including:
 - i. The time that has elapsed following the relevant incident(s) involved in a conviction(s).
 - ii. The relevance of the recorded incident(s) or pattern of incidents to the *bone fide* operational requirements of the role.
 - iii. The seriousness of the offence and the nature and severity of the abuse of trust that would occur if the individual were to behave in a manner specified in their record while an employee or volunteer of the GNWT.
 - iv. The conduct of the individual since the incident(s) involved in a conviction(s).
 - v. Any established pattern of repeat adverse behaviour relevant to the duties and responsibilities of the position; and,
 - vi. Any reasonable factor to suggest that adverse behaviour may be repeated and threaten the GNWT's ability to continue business safely and efficiently.
- (d) Individuals must be provided reasonable opportunity to discuss the circumstances of the criminal record or to otherwise provide information relevant to an assessment of the above factors.

(5) Review

- (a) Individuals who are denied a job offer or dismissed from probation as the result of an unsatisfactory criminal record check shall be afforded two

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business days after being provided notice to request a review of the decision by the Deputy Minister of Finance.

(6) Payment of Fees

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

(7) Validity

- (a) Criminal record check results are valid for a period of six months following their issuance and may be used for multiple competitions or volunteer applications.

(8) Confidentiality

- (a) The confidentiality of information obtained through this Policy must be respected in accordance with the *Access to Information and Protection of Privacy Act*.
- (b) Except as described here, disclosure of the information resulting from a criminal record check is restricted to the necessary use of individual staff members directly responsible for the staffing and management of the position being staffed.

In some circumstances, the information may be disclosed to other appropriate human resources or legal advisors and management in the chain of command, provided the information is necessary for and directly related to the carrying out of their duties.

- (c) Criminal record checks obtained during the staffing process are secured and retained for a period of one year, after which they are destroyed.
- (d) Any employee who fails to comply with this Policy may be subject to disciplinary action up to and including dismissal.
- (e) Any employee who participates in the review of a criminal record check and fails to comply with the confidentiality of information entrusted to them may be subject to disciplinary action up to and including dismissal.

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6. PREROGATIVE OF THE FINANCIAL MANAGEMENT BOARD

Nothing in this Policy shall in any way be construed to limit the prerogative of the Financial Management Board to make decisions or take action with respect to security and protection of the public service or the public interest.