

2014

Consequences of a Youth Record



A youth record sets out a young person's involvement in Canada's youth justice system. This booklet contains public legal information on frequently asked questions about a youth record, access to and closure of a youth record, and consequences of a record.



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What's Inside?

What is a youth record	3
Protection of a young person's privacy	3
How long does a youth record last?	4
Consequences of a youth record	6
Making sure a youth record is closed	8
Where to get help	10

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Glossary of Terms

Charge	A formal accusation that a person has committed an offence. The person charged has to respond to the charge formally; for example, by pleading guilty or not guilty in court.
Crown Prosecutor	A lawyer who presents the Crown's case in court against a person charged with an offence.
Disposition	The outcome of a criminal case – how it is finally settled. This could range from the charge being withdrawn, or to the person pleading guilty, or being found guilty, or not guilty.
Extrajudicial measure	A measure the authorities may use to hold a young person accountable for an offence they committed, instead of bringing them to court. Examples of extrajudicial measures include police warnings and cautions, crown cautions, referrals to community programs, and more formal extrajudicial sanctions.

Terms used in this glossary are underlined on their first instance of use.

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What is a Youth Record?

If a person gets in trouble with the law, records of the incident are kept by the police, **crown prosecutors**, courts and correctional agencies. Records can be kept in various forms including paper, electronic media, microfiche, audio recording or video.

Records about people aged 12 to 17, are called **youth records**. They are kept by the youth court, police and government agencies that handle **extrajudicial measures**.

What information is in a youth record?

Youth records might include:

- name and any aliases of the **young person**;
- police notes, photographs and other identifiers, such as fingerprints;
- extrajudicial measures used by the police;
- arrest and **charge** dates;
- offence the young person was charged with;
- outcome or **disposition** of the charge, for example, guilty, acquittal, stay of proceedings, withdrawal of the charge;
- **sentence** imposed if the young person was found guilty;
- information provided by the youth, family members, neighbours, former and present employers, school authorities and victims in connection with the proceedings;

- special reports prepared by the police, probation officers, youth workers, mental health professionals, and others;
- copies of court **transcripts**.

Protection of a Young Person's Privacy

The *Youth Criminal Justice Act* or YCJA governs how Canada deals with young persons in trouble with the law. This Act protects the rights of youth, including the right to privacy.

Protection of privacy helps prevent the youth from being labeled as an offender. Lawmakers believe this gives a young person a better chance of getting back on the right track.

In most cases, it is against the law for anyone to publish:

- the name of a young person charged with or found guilty of an offence, or
- any information that could let the public identify who the young person is.

When can authorities publicize a youth's name?

Following are some situations in which the publication of a youth's name is permitted under the YCJA:

- The youth is found guilty and receives an adult sentence.
- The youth receives a youth sentence for a violent offence and the court determines that there is a high risk the youth will commit another violent offence and lifting the publication ban is necessary to protect the public.
- Where a youth alleged to have committed a crime is at large and the judge is satisfied that the youth presents a danger to others, and that publication is necessary to apprehend the youth.

Publicizing a youth's name is not the same as providing access to a youth record.

Publication is what happens if the young person's trouble with the law is publicized through print, radio, television, social media or other electronic means. Access to a youth record is granted only to certain people involved in the youth justice system.

Who has access to youth records?

To protect a young person's privacy and give them a better chance at getting back on track, there are tight controls on access to youth records. Youth records must be kept confidential. Only people working in the youth justice system who need to see these records to do their jobs are allowed access. Some examples of such people are youth court workers, police and correctional agencies. These officials are not allowed to share what is in a youth record with anyone else unless specifically authorized by the YCJA.

How Long Does a Youth Record Last?

The record can be closed before the young person turns 18, or stay open long after that. In most cases, officials must close youth records after a certain length of time. There are exceptions, for example, if you turn 18 and are found guilty of another crime before your youth record is closed, your youth record can become a permanent adult criminal record.

The date a youth record closes depends on:

1. Seriousness of the offence;
2. Outcome of the case;
3. Conviction of another offence while the youth record is still open.

1. Seriousness of the Offence

The following table shows when a youth record for various offences closes. Contact a lawyer for legal advice for your unique circumstances.

Offence	Youth Record Closes
Summary Conviction Offences	<ul style="list-style-type: none"> • If a young person is found guilty and sentenced for a summary conviction offence, their record will last for three years after the end of their sentence. However, during this three year period the youth must not be involved in criminal activity. • The three-year period does not start when the young person commits the offence or is found guilty. It starts when the young person has finished the whole sentence, including probation. • The age of the young person when their record for a summary conviction offence closes depends on how old they were when they were sentenced, and how long the sentence lasted. • Youth records are only closed before a youth turns 18 if the youth has completed the sentence before their 15th birthday. • If youth are 17 or older when sentenced, they will have an open record into their 20's.
Indictable Offences	<ul style="list-style-type: none"> • If a young person is found guilty of an indictable offence, their record will last at least five years after they finish their sentence. It can sometimes remain open to the police and to the Attorney General for 10 years or more. The five years do not start when the young person commits the offence or when they are found guilty. The five years starts when the young person has finished the whole sentence, including probation, and done everything the judge has told them to do. • The age of the young person when their record for an indictable offence is closed depends on how old they were when they were sentenced, and how long the sentence lasted. If a youth is 13 years or older when they finish their sentence, they will still have an open record after they turn 18. In many cases, they will be in their 20's before their record is closed, even if they never commit another offence.
Hybrid Offences	<ul style="list-style-type: none"> • The duration of the record will depend on whether the Crown proceeds summarily or by way of indictment (see rules above for Summary Conviction Offences or Indictable Offences).



2. Outcome of the Case

Being charged with an offence always leads to the creation of a youth record of some kind, whether or not the young person is brought to court. However, records may be created even where no charges are laid.

How long the record will last depends on the outcome of their case and the sentence, if any. Here are some possible outcomes and their impact on youth records.

Non-Court Measures or Extrajudicial Sanction

Before the police charge a young person, they must consider using non-court measures to hold the youth accountable.

For example, the police may give a young person a warning or a caution. There can be a referral, either before or after a charge is laid, to community programs or agencies that will help the youth stay out of trouble.

In all cases, the police must keep a record of non-court consequences used with a young person. If an **extrajudicial sanction**, the most serious kind of community-based consequence, is used, the record will stay open for two years from the date the young person admits responsibility and agrees to the terms of the sanction.

Absolute Discharge

If a young person pleads guilty or is found guilty at trial and the judge gives them an absolute discharge, their record will last for one year after the judge's decision.

Conditional Discharge

If a young person pleads guilty or is found guilty at trial and the judge gives them a conditional discharge, their record will last for three years after the judge's decision. Absolute or conditional discharges are given depending on the seriousness of the case and other factors. The young person should talk to their lawyer about this.

Sentence for Guilt of a Summary

Conviction Offence

If a young person is found guilty of a summary conviction offence, their record will last for three years after they finish their sentence, including probation.

Sentence for Guilt of an Indictable Offence

If a young person is found guilty of an indictable offence, their record will last for at least five years after they finish their sentence, including probation.

Acquittal

If a young person is found not guilty, there will be a record for two months after the appeal period ends, or for three months after all appeals have been heard and decided. The record will show that the young person has been charged but found not guilty.

3. Subsequent findings of guilt before Youth Record closes

If you are found guilty of another offence before your record is closed, your youth record for the first offence may last longer. The final outcome depends on whether this happens before or after you turn 18 years old.

Before the Youth Turns 18

If the young person already has an open record, and is found guilty of another offence before turning 18, the record for the first offence may not be closed until the record for the later offence closes.

For example, if you are found guilty of an indictable offence two years after serving a sentence for a summary conviction offence, your record on the summary conviction offence will not close at the end of three years. The conviction and sentence for the indictable offence means your record will remain open for at least five years after the end of the sentence for the indictable offence. If the sentence for the indictable offence was for six months, your record on the summary conviction offence would last for eight years instead of three.

Anyone who has access to the young person's record during that time will see they are a repeat offender.

After the Youth Turns 18

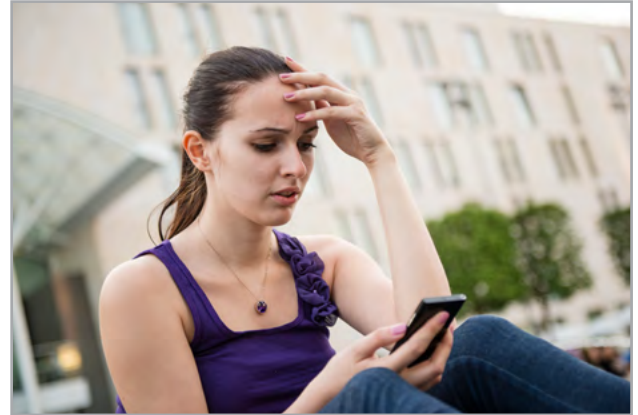
If a person is convicted of another offence after they turn 18, and their youth record is still open, their youth record could become part of their permanent adult record.

Youth Court, the police and correctional agencies will no longer be prohibited from disclosing the youth record. This does not apply to records of extrajudicial sanctions, acquittals, charges stayed or withdrawn, absolute or conditional discharges or reprimands.

Consequences of Having a Youth Record

A youth record can create problems for a youth, even after they become an adult. This section deals with travelling and getting a job if you have

a youth record. It also provides some general information on what you can do to prepare yourself.



Travelling With a Youth Record

Having a youth record can limit travel opportunities. For example, you may be unable to get a travel visa or denied access to a country by a border official.

Most countries have laws restricting entry by someone with a record. Some countries, like the United States, have very strict laws, especially about drugs. They may deny entry, even for a visit, to someone who has a record for a drug offence.

For many offences, it is up to the individual border guard whether a person gets in or not. One border guard might let you in, another may not. If your youth record has been shared with the United States, you never know if you might be refused entry at the U.S. border.

Once American officials have someone's youth record in their files, it will likely remain there, regardless of whether it has been closed in Canada or how old it is. Only in Canada does the law say that a youth record has to be closed after a certain period of time, and other countries do not have to obey Canadian laws.

A youth record may show up when you apply for a travel, study or work visa. Some countries will not process a visa for someone that has a

youth record. Each country has their own rules – Canadian laws do not apply.

If a young person has a record for an offence they committed while they were under 18, it will be kept by the RCMP until it is time to close it.

Whether you have an open or closed youth record, you should speak to a lawyer who has experience in youth criminal law before making travel plans to other countries.

Tips for Young Persons Travelling Outside Canada

- **Avoid travelling to other countries while your Youth Record is open.** Other countries will check RCMP files if you try to enter as a visitor or as an immigrant. Avoid traveling to other countries until you know your Youth Record has been closed. Find out how long your record is expected to last and make sure the RCMP has destroyed your file before you travel.
- **Do not try to sneak into another country.** If you must travel to another country before your record is closed, you should not try to sneak past the border checkpoint. If you are caught, you will not be allowed in, either then or in the future. Do not lie if the authorities ask if you have a record.
- **Apply for an Entry Waiver before you leave.** If your Youth Record is still open, find out whether you can get an entry waiver, for example, for the United States. Most waivers are for limited purposes and time periods, but in some cases, you can get a permanent waiver. There are forms to fill out requiring lots of information, including about your record. It can take a long time to get a waiver, so apply early and be prepared for the fact that your application may be denied.

There may be other things you can do before you leave. Contact a lawyer for advice. If you are completing entry waivers, be sure to ask a lawyer for help with the application.



Getting a Job with a Youth Record

A youth record can make it harder for a young person to get a job at the beginning of their working life. This is sometimes a long-term problem because early work experience is useful when applying for more desirable jobs later on.

Volunteer positions are good ways to get work experience but having a youth record might also prevent you from getting a volunteer position.

When you apply for a job, an employer may ask you if you have a youth record. If you lie and the employer finds out, they may choose to hire someone else. An employer can also ask you for a police record check. You are entitled to refuse, but if you do, the employer might think you have something to hide and choose to hire someone else.

With the exception of a government employer, the police will not give employers information about a youth record - even if you give your permission. If you ask the police for a copy of your youth record, they will give it to you.

Employers faced with the knowledge that you have a youth record may decide not to hire you. Employers can also decide not to hire you for

certain positions because of the type of crime committed. For example, if you stole something, you might not be hired as a cashier.

If your record has been closed, or if you had been found guilty of an offence that is not connected to the job, nobody can fire you, refuse to hire you or put you at a disadvantage because of your record.

However, an employer can fire you and give a different reason. For example, they can say you do not have the qualifications and skills required for the job. In such cases, it might be difficult to prove you were fired solely because of your record.



Making Sure a Youth Record is closed

In order to avoid the difficulties that a youth record can cause, it is important to ensure that officials close the record when they are supposed to. Once a youth record is closed, a young person can honestly say they do not have a criminal record. You can follow up by doing the following:

Check whether the RCMP file copy of your record is destroyed

When it is time to close a youth record, the RCMP has to destroy the copy in its files. In order to make sure this happens, go to your local police station with your photo ID and ask the police to

check their files. If your record is still there, ask your local police to contact the RCMP and have the record destroyed. It is a good idea to do this even if you were found not guilty of the offence on your record.

Make sure the local Police remove their copy of your record from their active files as well.

If you are not in agreement with the existence or accessibility of your youth record(s), you should speak with a lawyer who has experience in youth criminal justice matters.

Glossary Continued

Extrajudicial sanction	The most formal type of extrajudicial measure used by the authorities to hold a young person accountable for an offence. This sanction is used only when other extrajudicial measures such as warnings, cautions, or referrals are not adequate to hold the young person accountable. Extrajudicial sanctions have conditions that the young person must obey, failing which they can be brought to court.	Transcript	A copy of the record of a trial, prepared by a court clerk, from a tape recording.
Indictable offence	A serious offence that carries more severe consequences than a summary conviction offence.	Young person	A person 12 years of age or older, and less than 18; in other words, a person who is neither a child nor an adult.
Probation	Time spent by a person found guilty of an offence, under the supervision of a probation officer, as part of their sentence. Probation usually imposes conditions, some of which may be as follows: a curfew; a prohibition against carrying a weapon; not going to a particular place; being in contact with a certain person(s).	Youth record	A record of a young person's involvement in the youth justice system.
Sentence	A court's judgment against a person who is found guilty of an offence, imposing the legal consequences of guilt, such as a fine, custody, probation, or some combination of these.		
Summary conviction offence	A minor offence that carries less severe consequences than an indictable offence.		

Where to Get Help

Department of Justice Canada	Visit the website for more information about the Justice System in Canada.	www.justice.gc.ca/youth
Clicklaw	Clicklaw is a website aimed at enhancing access to justice in British Columbia. It features legal information and education designed for the public from over 24 contributor organizations.	www.clicklaw.bc.ca
Law Students Legal Advice Clinics	These clinics provide information and assistance about choosing or being an executor, and youth records. In the Lower Mainland, law students from the University of British Columbia hold free legal clinics in different locations.	Lower Mainland: 604.822.5791 Victoria: 1.250.385.1221 www.lslap.bc.ca
Lawyer Referral Service	Offers referrals to lawyers who can provide up to a half-hour consultation for \$25.	Lower Mainland: 604.687.3221 Outside Lower Mainland: 1.800.663.1919 lawyerreferral@bccba.org
Legal Services Society Call Centre	Can answer legal questions and direct people to other information or services that can help them solve their legal problems. They do not give legal advice.	Lower Mainland: 604.408.2172 Outside Lower Mainland: 1.866.577.2525

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