

STREET LAW SMARTS #24

YOUTH RECORDS

Youth records are different from adult criminal records. Youth records are those linked to if you were a suspect or an accused in the youth criminal justice system when you were under age 18.

Information kept in your youth record includes any reports that have been prepared for the court, charges that have been laid and any history of being found guilty by the court and sentences you have received. The rules on youth records are laid out in the *Youth Criminal Justice Act*.

How long will your youth record last?

A youth record does NOT automatically disappear when you turn 18. Instead, the law sets out a period of time when your record is open and can be accessed by certain people. How long your youth record lasts depends on three things:

- ◆ the seriousness of the crime;
- ◆ the sentence you were given; and
- ◆ whether you commit another crime while your record is open.

If you were...	... your record can be accessed for
Given an extrajudicial sanction, like diversion	2 years after you agree to participate in the program
Acquitted (found not guilty)	2 months after the appeal period ends if there is no appeal or 3 months after your appeal is finished if the appeal court agrees with the not guilty finding
Found guilty and received a reprimand, or your charge was withdrawn, or your charge was dismissed but you were not acquitted	2 months after you are reprimanded or the charge is withdrawn or dismissed
Found guilty and received an absolute discharge	1 year after you are found guilty
Found guilty and received a conditional discharge	3 years after you are found guilty
Found guilty and sentenced for a summary conviction offence (a low level offence)	3 years after you completed your sentence
Found guilty and sentenced for an indictable offence (a more serious offence)	5 years after you completed your sentence

Found guilty and sentenced for murder, attempted murder, manslaughter, or aggravated sexual assault	Potentially permanent
---	-----------------------

If you commit another crime before your record is closed, the time limit to access the record will extend to the longest time period and all of your other records will remain open.

You do not need to apply for a record suspension for a youth record because it will be destroyed or sealed automatically. **BUT**, if you receive an adult conviction – JM check this conviction only or discharge too? for another offence while your youth record is open, your youth records becomes part of your adult record and neither will go away without a record suspension. For more information, see **Street Law Smarts #26: Record Suspensions (previously pardons)**.

Access and disclosure of your youth record

Both access and disclosure of your record, before and after the access periods, are strictly limited. It is illegal to disclose your youth record to a third party, and someone that unlawfully discloses your youth record can be charged with an offence under the *Youth Criminal Justice Act*.

Who can see your record when it is open?

During the access period, the law limits who can see or “access” your record. People who can access the record include:

- You, your lawyer, your parents, or other adults that the court says can assist you in the court proceedings
- The Crown Prosecutor
- A coroner or ombudsman
- The judge, court or any commission dealing with proceedings against you
- Certain government employees (e.g., if they are helping to administer your sentence)
- Police officers who are accessing the record for law enforcement purposes
- The Director of the Correctional Facility where you serve your sentence
- The victim of the offence
- The lawyer of another accused who needs your record in order to mount a defence (e.g., if another youth claims that you were an accomplice to their crime, then their lawyer can access your record and your lawyer can access theirs)
- A government organization, during a hiring process

Your record might also be accessed by any other person who successfully proves to a judge that she has an interest in the matter and that accessing the file is in the interest of justice. This requires a special court order.

What happens to your youth record after the access period?

After the access period, your record is sealed. It will be permanently archived or physically destroyed. You should make sure that this is done by confirming with your local police that the RCMP and the local police have both sealed your record(s).

Police records

Police might also keep records of their interactions with you. Police records contain information about contact you have had with the police and can include:

- ◆ information about any arrests
- ◆ suspected criminal activity
- ◆ findings of guilt (youth) and convictions (adults)
- ◆ fingerprints and photographs
- ◆ 911 calls
- ◆ Interviews
- ◆ witnesses and victim reports
- ◆ other non-criminal activity based information (for example: incidents or detainments under the *Mental Health Act* where police were involved)

Some police records will be related to incidents that led you to be dealt with under the *Youth Criminal Justice Act*. Those police records will be subject to the same access and sealing provisions as youth records.

BUT, other police records not related to your involvement under the *Youth Criminal Justice Act* may not get sealed and can be kept by the local police force for as long as the local police service's record keeping rules say.

If you are having problems with an outstanding police record, contact JFCY for help. JFCY is working to make sure that all local police force record keeping rules go along with the ideas and strict access rules from the *YCJA*.

Employment

Many job applications ask: "Do you have a criminal record?" or "Have you ever been convicted of a criminal offence?"

If you only have a youth record, you can honestly answer "No" to these questions. **Your record is a "youth record", not a "criminal record" and youth are "found guilty", not "convicted."** The words are different on purpose to protect your reputation.

Employers may also ask for your consent to do a background check during your application process. The depth of the record check will depend upon the type of job that you are applying for, and each police service has a different procedure for disclosing records they have. Although it is illegal for an employer to ask about your youth record, the police may disclose information to you with your consent. It is then up to you whether you want to give it to a potential employer.

JFCY believes that this disclosure is contrary to the rules in the Youth Criminal Justice Act. People might assume that you are voluntarily giving consent to access and subsequently disclose your record, when in fact, to be considered for gainful employment, you do not have a choice but to consent.

If you are having problems with or are concerned about records disclosed on a police records search that you requested, contact JFCY for help.

For more information on the access, disclosure, and destruction of records held by the police, see:

Street Law Smarts #25: Adult Police Records

Street Law Smarts #26: Record Suspensions (previously pardons)