

STREET LAW SMARTS #26

RECORD SUSPENSIONS (PREVIOUSLY PARDONS)

The *Criminal Records Act* was changed in 2012 and pardons no longer exist. Now, if you have been convicted of a criminal offence as an adult, but you have completed your sentence and have been law-abiding since your conviction, then you may apply to the Parole Board of Canada to have the record of your criminal conviction suspended.

What does it mean to get a Record Suspension?

A Record Suspension does not change or erase the fact that you were convicted of a criminal offence. If you receive a Record Suspension, you cannot say that you do not have a criminal record. You can, however, say that you have been convicted of a criminal offence and that you have received a Record Suspension.

A Record Suspension will mean that your record will be kept separate from any other criminal records at the RCMP or any other government department, and that it cannot be disclosed to any person without the approval of the Minister of Public Safety and Emergency Preparedness.

However, even if you get a Record Suspension, the police may have access to the record of your name, date of birth, and last known address if they are investigating you at the scene of a crime.

If you received a sentence that included a driving or firearms prohibition and you get a Record Suspension, it does not cancel the prohibition.

Can you travel after you get a Record Suspension?

A Record Suspension does not guarantee that you will be able to enter the United States or receive a visa to enter another country. Many foreign countries, including the USA, do not recognize Canadian Record Suspensions (or previously – Pardons).

If you have a criminal conviction or any other type of criminal record and you want to travel to the USA, you should consider applying for a "Waiver of Grounds of Inadmissibility. There is a \$585 USD fee and it may take several months to be processed. The waiver is valid indefinitely. This procedure may require the disclosure of the suspended criminal record for review by American officials, as well as other personal information. An "Application for Waiver of Grounds of Inadmissibility" form can be found at <http://www.uscis.gov/i-601>

For more information on cross-border travel to the United States, see:

- The Department of Homeland Security website: www.DHS.gov
- Consulate General of the United States of America: (416) 595-1700

360 University Avenue, Toronto, Ontario. <http://toronto.usconsulate.gov>

Who does not need to apply for a Record Suspension?

You do not have to apply for a Record Suspension if you have not been convicted of a criminal offence (e.g. charges have been withdrawn or stayed).

You do not have to apply for a Record Suspension if you were found guilty of an offence but received an absolute or conditional discharge. After a certain length of time, your absolute or conditional discharge will automatically be purged from the automated Criminal Conviction Records Retrieval System (commonly known as CPIC) maintained by the Royal Canadian Mounted Police.

If you received an absolute discharge, your record will be purged 1 year after the court ordered your absolute discharge. If you received a conditional discharge, your record will be purged 3 years after the court ordered your conditional discharge.

However, even once your discharge is purged, the police may have access to the record of your name, date of birth, and last known address if they are investigating you at the scene of a crime.

You also do not have to apply for a Record Suspension if you have a youth record. For more information on youth records, see **Street Law Smarts #24: Youth Records**.

Who can apply for a Record Suspension?

You can apply for a Record Suspension regardless of citizenship or residence. You are eligible to apply for a Record Suspension when:

1. You have completed all parts of your sentence. This includes:
 - ◆ paying all court-ordered fines and monetary orders in full;
 - ◆ serving all of your time, including parole; and/or
 - ◆ completing all probation requirements.

AND

2. You have waited the required time period:
 - ◆ Summary offences: **5 years** after finishing sentence, or
 - ◆ Indictable offences: **10 years** after finishing sentence.

When a Record Suspension can be denied or revoked

You are ineligible for a Record Suspension if you were convicted of certain serious offences. Specifically, you will not be given a Record Suspension if you have been convicted of certain sexual offences involving children, or if you have been convicted of 3 or more indictable offences, each with a prison sentence of two or more years.

You will be denied a Record Suspension if you have been convicted of another offence during this 5 or 10 year waiting period.

You may also be denied a Record Suspension if you have not been "of good conduct". If your application is refused, you may reapply after 1 year.

The Parole Board of Canada may revoke a Record Suspension if you are later convicted of a summary or indictable offence, they find that you are no longer of good conduct, or they learn that either a false statement was made or important information was concealed when you applied.

How to apply for a Record Suspension?

You apply for a Record Suspension by submitting a written application to the Parole Board of Canada (PBC) with the required documentation and fee. To apply, there is a lot of documentation that you must collect (e.g. certified copy of criminal record, local police checks, court information, military records, etc.).

The application fee is \$631. There may also be other costs associated in the application process. For example, the cost of obtaining a copy of your criminal record from the RCMP or for obtaining records from the courts.

You can get a Record Suspension application form and guide from the Parole Board of Canada. It is also available online at <http://pbc-clcc.gc.ca/prdons/pardon-eng.shtml>.

For help, call the Clemency and Records Suspension Division of the Parole Board of Canada at 1-800-874-2652.

Employment

The Ontario Human Rights Code protects you from discrimination in employment opportunities if you have a record of conviction and have received a *pardon*. The Code is not updated to substitute the term Record Suspension for Pardon. If the *Code* is updated, then a person that has received a Record Suspension will not be able to be discriminated against (e.g. being denied a job because of having a Record Suspension). A person with a criminal record who has not received a Record Suspension or Pardon would not have this legal protection.

Contact the Human Rights Legal Support Centre: 1(866) 625-5179 or the Street Youth Legal Services lawyer at JFCY for more information about your rights under the *Human Rights Code* when applying for a job.

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. You must consent to the disclosure of the records requested.

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

Street Law Smarts #24: Youth Records

Street Law Smarts #25: Adult Records