

Chapter 10: Records, Fingerprints, Photos, DNA

This chapter will cover records and why they are important.

Part 1: Types of records: Police, Youth Court, Government and DNA.

Part 2: Who can see your records.

Part 3: How records can affect your future, including employment and travel.

Part 1: Understanding Records

1. What is a record?

A record is any document or file that contains information about you. These records can be in paper form, electronic form, or a combination of the two. There are many types of records that are kept for different reasons. However, there is no such thing as a “Criminal Record” for a young person in Canada and only adults are given “Criminal Records. Youth have “Youth Court Records” – more information on this below.

2. What is a “Police Record”?

A police record contains all the information kept by the police and the police can check these at any time. A police record may include information about:

- arrests,
- investigations,
- suspected criminal activity,
- extrajudicial measures,
- extrajudicial sanctions,
- findings of guilt (for youth),
- convictions (for adults),
- fingerprints,
- photographs,
- 911 calls,
- interviews, and
- witness and victim reports.

s.115

3. What is a “Youth Court Record”?

A youth court record contains all the information the court keeps about young people who go to court. The youth court record includes information about:

- your charges,
- the outcomes of your cases,
- findings of guilt,
- sentences, and
- reports that were given to the judge (for example, a pre-sentence report).

s.114

4. What is a “Government Record”?

A government record contains all the information kept by a government agency or government department. Some government agencies and departments work in connection with youth courts, for example, by running youth programs or helping with investigations. Those government agencies may keep the same kinds of records as the youth court record, and may also keep other information about you. s.116

5. What are “DNA Records”?

If you found guilty of certain offences, you will be required to give a DNA sample. For other offences, the prosecutor can ask the judge to order you to give a DNA sample. If your case will or might require you to give a DNA sample, you should talk to a lawyer about it.

Usually, the person taking the DNA sample will get your DNA by taking some of your saliva, a strand of your hair, or pricking your skin to collect some blood. If you provide a DNA sample, someone working for the government will use the sample to create a report which will be kept in your “DNA Record.” Your bodily sample will also be kept.

R. v. K.M., 2011 ONCA 252

s. 487.05 and s. 487.051 of the *Criminal Code of Canada*

Part 2: Accessing the Records

6. Can I get copies of my records?

Yes. You have a right to get copies of all of your records at any time before or after your case is finished.

s.119(1)(a); s.124

7. Who else can see my records?

Only the people listed in the *Youth Criminal Justice Act* are allowed to see your records. The list of people includes the following:

- your lawyer,
- your parents,
- the victim(s),
- an adult who is assisting you,
- the police,
- judges,
- people helping the court (for example, in a conference), and
- people dealing with your sentence if you are found guilty.

s.119(1)

In some situations, the people in this list are allowed to tell others about parts of your Youth Court Record. For example, the police can people in charge of supervising you and for safety purposes which can include telling your school about the rules you are supposed to follow if it is necessary to keep other people safe or if the school is required to help you obey the rules. s.125

In very special cases, a judge can give other people permission to see the records. However, the judge will have to take your right to privacy very seriously and cannot give anyone permission to see the records without a good reason.

s. 119(1)(s)

Toronto Star Newspaper Ltd. v. Ontario, 2012 ONCJ 27

8. Who can see records of my participation in Extrajudicial Measures or Extrajudicial Sanctions (EJM or EJS)?

The people listed in Question 2 may be allowed to see what extrajudicial sanctions you were given. For other kinds of extrajudicial measures (not extrajudicial sanctions), only the police or people involved in a conference can see records of your extrajudicial measures. See *Chapter 5 – Extrajudicial Measures and Extrajudicial Sanctions*.

Part 3: How Records Can Affect Your Future

9. Is my Youth Court Record destroyed when I turn 18?

No. Your records are not automatically destroyed at the age of 18.

10. How long will my Youth Court Record last?

The length of time your Youth Court Record will last depends on the nature of the offence and the outcome of your case. This period of time is called the “access period.” Here are some of the access periods for Youth Court Records:

- a) If you are given an extrajudicial sanction (EJS), your record is kept for 2 years after you agree to the sanction.
- b) If you are found “not guilty” your record is kept for 2 months after the deadline for an appeal. If there is an appeal you have to wait longer.
- c) If the charges are dismissed or withdrawn or the judge gives you a reprimand, your record is kept for 2 months.
- d) If the charges are stayed, the record is kept for 1 year.
- e) If the judge gives you an absolute discharge, your record is kept for 1 year from the day you were found guilty.
- f) If the judge gives you a conditional discharge, your record is kept for 3 years from the day you were found guilty.
- g) If you are found guilty of a less serious offence (summary offences), your record is kept for 3 years from the end of the sentence.
- h) If you are found guilty of a more serious offence (indictable offences), your record is kept for 5 years from the end of your sentence.

- i) If you are found guilty of another offence before the time has expired on your first record, then the time will start running again. The new time will be either 3 years or 5 years, depending on if it is a serious offence or less serious offence.

11. What happens if I get convicted of a crime after I turn 18?

After you turn 18, you are considered an Adult and if you are found guilty, you will be “convicted” of an offence. If this happens before the access period on your Youth Court Record has passed, your Youth Court Record is added to your Adult Criminal Record and will last forever. s. 119(9)

12. What happens at the end of the access periods?

At the end of the relevant access period, your records can not be given to anyone else. Anyone who knows about your records is not even allowed to tell anyone else about it. Police records have to be physically destroyed. Other records can either be destroyed or permanently sealed so that no one else can see them. s. 128(1)-(7)

In special cases, a person can ask a judge to let him or her see the record after the access period. The judge will decide whether to let the person see the record, but the record can not be used against you. s. 123

13. How long will the police keep my fingerprints, photographs and DNA samples?

Your fingerprints and photographs are kept by the local police and by the RCMP. DNA records are kept in the National DNA Databank.

As noted in Question 12, local police records should be destroyed at the end of the access period. RCMP records are automatically destroyed at the end of the access period. The bodily samples for your DNA record and the DNA record in the databank are also destroyed at the end of the access period.

If you were charged with a serious “indictable” offence, then the RCMP can keep your fingerprints and photographs for an extra 5 years beyond the access period. This is not true for DNA records, which must be destroyed at the end of the access period even for indictable offences.

s. 120(3)

If you were charged with a serious violent offence then your DNA samples and DNA record can be kept forever.

s.9.1(2) of the *DNA Identification Act*

If you were charged with a serious violent offence and the prosecutor is asking the judge for an adult sentence, then the RCMP can keep your photographs and fingerprints forever.

s.120(3)

****The law about fingerprints, photographs, and DNA samples is complicated. If you have any questions you should ask a lawyer.*

14. What happens at the end of the access periods?

At the end of the relevant access period, your records can not be given to anyone else. Anyone who knows about your records is not even allowed to tell anyone else about it. Police records have to be physically destroyed. Other records can either be destroyed or permanently sealed so that no one else can see them. s. 128(1)-(7)

In special cases, a person can ask a judge to let him or her see the record after the access period. The judge will decide whether to let the person see the record, but the record can not be used against you. s. 123

15. What if people who have my records use them after the access periods?

It is against the law to use records after the access period and they may be charged and found guilty of an offence. If you think your record has not been sealed or destroyed at the end of the access period, you should check to make sure this has been done with the RCMP and local police. You can ask a lawyer for help with this.

16. On a job application, how can I answer the question, “Do you have a Criminal Record?” or “Have you ever been convicted of a criminal offence?”

You can honestly answer “no” to these questions. You may have a Youth Justice Court record (Youth Record) but you do not have a “Criminal Record” unless you are charged and found guilty (“convicted”) for an offence you committed after you turn 18.

17. What if a potential employer asks for a “Police Record Check”?

Employers may 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. Unfortunately, the decision you make may affect your chances of getting the job.

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 the access period for your record has expired and a police record check shows a record of that incident, you should contact the police and ask them to give you with a clean record as required by the YCJA. A lawyer can also help you do this.