

*Consequences of a*  
**Youth Record**



**Public Legal Education and Information Service of New Brunswick** (PLEIS-NB) is a non-profit, charitable organization. We receive funding and in-kind support from Justice Canada, the New Brunswick Law Foundation and the Office of the Attorney General of New Brunswick. We create materials and resources to help people find information about laws and the justice system. We have a number of pamphlets, posters, games and videos about youth and the law. It is important to note that these publications do not contain a complete statement of the law on the topic of youth justice and laws change from time to time. For specific advice on your situation, you must talk to a lawyer.

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## Definitions

*This booklet refers to some important terms that people in the youth justice system use. For example, they may talk about “extrajudicial measures” and “extrajudicial sanctions”. Where possible, we have explained legal terms as we use them in this booklet. However, we have also included definitions of legal terms at the end of the booklet in the section, “Glossary of Important Terms”.*

*Please note: You should not rely on this booklet for legal advice. It provides general information only.*

# Introduction to Youth Records

A youth record sets out a young person's involvement in Canada's youth justice system. It can stay with a young person and cause problems for many years, even after the youth becomes an adult. This booklet will answer some common questions about youth records, what information they hold, and who has access to them. It will also explore some possible consequences and things you should know about making sure your youth record is closed.

## ***What is a Youth Record?***

When a person gets in trouble with the law, various authorities such as the police, the Crown prosecutor, the courts, and correctional agencies, keep records about the incident. Records can be in any form including paper, electronic media, microform, sound recording, or videotape. When records are about a person 12 to 17 years of age, they are called "youth records". If the police charge a young person with an offence, that would start a youth record of some kind. This is the case even if the young person does not go to court.

## ***Are there different kinds of Records?***

Yes, some typical youth records are:

- Youth Court records;
- police records;
- government or agency records about certain extrajudicial measures.

## ***What information might officials include in Youth Records?***

Youth records might include:

- the young person's name and aliases, if any;
- police notes, photographs, and other identifiers like fingerprints;

- extrajudicial measures used by the police;
- arrest and charge dates;
- what offence the young person is charged with, if at all;
- the outcome (ie. the disposition) of the charge (for example, finding of guilt, acquittal, stay of proceedings, withdrawal of the charge);
- the sentence the court imposed if the young person is found guilty;
- copies of court transcripts;
- information provided by the young person, family members, neighbours, former and present employers, school authorities, and victims;
- special reports prepared by the police, probation officers, youth workers, mental health professionals, and others.



# Protection of Young Person's Privacy

The **Youth Criminal Justice Act (YCJA)** governs how Canada deals with young persons in trouble with the law. This Act protects the rights of youth in a number of ways including protecting the young person's privacy. 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.
- It is against the law to publish any information that could let the public know who the young person is.

Protecting a young person's privacy helps to prevent society labeling the young person an "offender." Lawmakers believe this gives a young person a better chance of getting back on the right track.

## ***Are there situations when authorities might make a youth's name public?***

The YCJA only allows the publication of a youth's name in the following situations:

- If the youth goes to court and is found guilty and receives an adult sentence, the media can publicize the youth's identity.
- If the youth is convicted of a violent offence, receives a youth sentence and the judge gives permission to release the identity of the youth.
- If the location of the youth is unknown, the judge may also decide to release information about the youth's identity.
- If there is a high risk they will commit another violent offence and lifting the publication ban is necessary to protect the public.

Publication of a youth's name is not the same as providing access to a youth record. Publication is what happens if the authorities (or anyone else) make the young person's trouble with the law known to the public – for example, through print, radio, television, telecommunication, or electronic means. A record is kept private, with a few exceptions.

### ***Who has access to Youth Records?***

To protect a young person's privacy and give them a better chance at rehabilitation, there are tight controls on who has access to a youth's records. However youth records are totally confidential. There are certain people who are allowed to see what's in a youth record, even if the media cannot. Exceptions include people who work in the youth justice system such as youth court, police, and correctional agencies who must see the youth record to do their jobs. These officials are not allowed to share what's in a youth record with anyone else.



# How Long Youth Records Last

Many people think that a youth record automatically closes when a youth turns 18 years old. However, when a youth record closes has nothing to do with turning 18. Youth records can close before the young person turns 18, or they can stay open long after that. Generally, after a certain length of time officials must close most youth records. There are some exceptions. For example, if a person with a youth record turns 18 years old and is found guilty of another crime before his or her youth record is closed, it could become a permanent adult record. For more information, see the section called “After the Young Person Turns 18” on page 10.

## ***When a youth record closes depends on:***

- (a) Seriousness of the offence;
- (b) Outcome of the case;
- (c) Conviction of another offence while their youth is open.

## ***(A) Seriousness of the Offence***

### **Summary Conviction Offences**

Summary conviction offences are minor offences, such as causing a public disturbance or joyriding. Consequences for summary conviction offences are lighter than consequences for more serious offences, called indictable offences.

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 stay “clean” of 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 would only be 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 20s.

### **Indictable Offences**

Indictable offences are serious offences, such as a serious sexual or violent offence where a weapon was used or a victim was injured. Sentences for indictable offences are more severe than sentences for summary conviction offences.

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. They start when the young person has finished the whole sentence, including probation, and done everything the judge 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 old when they finish their sentence, they will still have an open record after they turn 18. In many cases, they will be in their 20s before their record is closed, even if they never commit another offence.

### **Hybrid Offences**

Hybrid offences are offences that can be treated as either summary conviction offences or indictable offences. It is up to the Crown prosecutor to decide which way to treat these offences. A young person who is charged with a hybrid offence won't know how long their record might last until the Crown prosecutor decides on the charge.

## **(B) Outcome of the Case**

For a young person, being charged with an offence always creates a youth record of some kind, whether or not the young person is brought to court. How long the record will last depends partly on the outcome of their case, and the sentence, if any. Here are some possible outcomes and their impact on youth records.

### **Extrajudicial Measure or Sanction**

Before police charge a young person, they must consider using community-based measures to hold the youth accountable (called *extrajudicial measures*). For example, the police may give a young person a warning. Or, the police or the Crown prosecutor can give the youth a caution. They might refer the young person to community programs or agencies that will help the youth stay out of trouble. Police can also use community-based responses to crime after they charge a young person. In all cases, the police must keep a record of any non-court consequences used with a young person. If an *extrajudicial sanction* is used, which is the most serious kind of community-based consequence, 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 has a 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 has a trial and the judge gives them a conditional discharge, their record will last for three years after the judge's decision. Judges give an absolute or conditional discharge 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 until two months after the appeal period ends, or until after all appeals have been heard and decided. The record will show that the young person has been charged but found not guilty.



## ***(C) Conviction of Another Offence Before Youth Record Closes***

As you have learned, when a youth record closes can vary. Generally, if you are found guilty of another offence before your record is closed, your youth record for the first offence will last longer. The final outcome will depend on whether this happens before or after you turn 18 years of age.

### **Before the Young Person Turns 18**

If the young person already has an open record, and they are found guilty of another offence before they turn 18, the record for the first offence will not be closed until the record for the later offence closes.

For example, if the young person is found guilty of an indictable offence two years after serving a sentence for a summary conviction offence, their record on the summary conviction offence will not close at the end of three years.

The conviction and sentence for the indictable offence means their record will remain open for at least five years after the end of their sentence for the indictable offence.

If the sentence for the indictable offence was for six months, the youth's 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 years will see they are a repeat offender.



## After the Young Person Turns 18

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

Youth Court, police, correctional agencies, or anyone else who dealt with the young person will no longer be prohibited from disclosing the youth record.

Access to the record will no longer be restricted. This does not apply, however, to records of judicial sanctions, acquittals, charges stayed or withdrawn, reprimands, absolute discharges, or conditional discharges.

# Consequences of Having a Youth Record

A youth record can create serious problems for the young person for many years, even after they become an adult. A person with a youth record may not be able to travel as he or she would like and they may have trouble getting a good job. This section of the booklet will deal with travelling and getting a job if you have a Youth Record. It will also provide some general information on what you can do.

## *Travelling With a Youth Record*

A youth record cannot stop a young person from travelling within Canada, but it can stop them from traveling to other countries. Some countries won't let a person in, even for a visit, if they have a record.

Here are a few examples of problems that can arise if a young person wants to travel to another country and you have a youth record:

- You might lose a chance at a job you want because you cannot get into the country where the job is;
- You might try to go to the United States with friends for a hockey game or a spring break vacation and officials turn you back at the border;
- You might have family you want to visit in a country that won't let you in;
- You might spoil a family holiday because you cannot get permission to enter the country your family wants to visit together.

## ***What you should know about travel to other countries when you have a youth record***

### **Border officials may be able to access your Youth Records from the RCMP**

Although youth records are treated differently than adult records, it's possible that another country could get access to a young person's record. Records for most offences are sent to the Royal Canadian Mounted Police. The RCMP shares the records of Canadians trying to get into some countries with the police and border officials of those countries.

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. 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: see "Making Sure Your Youth Record is Closed." This can be up to five years after the young person has finished their sentence for the offence. If the person commits another offence before their record is closed, their record will show both offences until it is time to close the record of the second offence. During this time, other countries may be able to get the young person's record from the RCMP.



### **A computer check will reveal a Youth Record**

Whenever you try to travel to a country that has your record in their computer files, a computer check can show you have a record for a youth offence. Even if you are travelling someplace that needs no visa, the guards at the border can do a computer check when you try to enter the country.

### **Your Youth Record may show when you apply for a Visa**

If the person needs a visa to enter a country, the computer check will be done when their visa application is processed.

## **Your Youth Record may stay open in other countries even if it is closed in Canada**

Once another country gets a person's record, it can keep the record in its computer files forever. It is only in Canada that the law says that a youth record has to be closed after a certain period of time. Other countries don't have to obey Canadian laws.

## **The border crossing guard might refuse a young person entry to the United States at any time**

Most countries have laws to keep offenders out. Some countries are strict about this. The United States is one of those countries. The United States is especially strict about drugs. If a young person has a record for a drug offence, they may not be allowed into the United States even for a visit. Once American officials have a person's record in their files, it will likely remain there and can be used against the person. It doesn't matter if it is a youth record, or how long ago the person got it. It doesn't matter if their record in Canada has been closed. It is not just a drug record that can keep a person from getting into the United States. For many offences, it is up to the individual border guard whether the person gets in or not. One border guard might let them in, but the next time they try, they could be stopped by another guard on duty. If a person has a youth record and it's been shared with the United States, they can never know if they might be refused entry at the U.S. border.

## ***Tips for Young Persons Traveling Outside Canada***

- **Avoid traveling to other countries while your Youth Record is open**

Other countries will only check the RCMP files when the person is trying to enter, either 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. Do not travel to the United States or any other country until that time has passed. Make sure the RCMP has destroyed your file before you travel. If your youth record is no longer in the RCMP files, other countries will not be able to get it.



- **Do not try to sneak in**

If you must travel to another country before your record is closed, you should not try to sneak in past the border checkpoint. If you are caught, you won't be allowed in, either then or in the future. You should not lie if the authorities ask if they have a record.

- **Apply for an Entry Waiver**

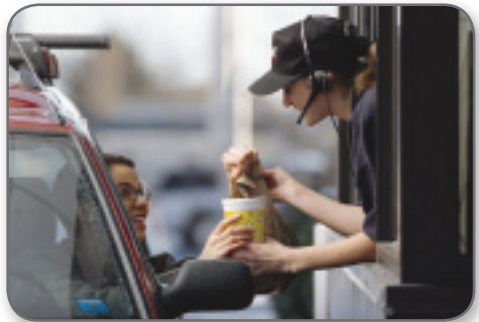
If your youth record is still open, find out whether you can get an entry waiver, for example, to get into the United States. Most waivers are for limited purposes and time periods. In some cases, you might be able to get a permanent waiver. To apply, you will have to fill out forms giving lots of information, including information about your record. It can take a long time to get the waiver, so you should apply in plenty of time. You still might not get in.

There may be things a young person can do before they travel in order to get into the country even though they have a record. Contact a lawyer for advice on what you have to do. 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 makes it harder for a young person to get a good job at the beginning of their working life. This can be a long-term problem because good early work experience helps a young person get desirable jobs when they are older. The young person also

might not be able to get some volunteer positions because of their record. Volunteer positions are often the best way of getting experience that will help the young person to get paid work that they want.



## **Employers might find out about a Youth Record**

During the time when a youth record is open, an employer who finds out about it can refuse to hire the young person. This means that, if the young person has been found guilty of a less serious crime, they might lose jobs because of their record for up to three years after they have finished their sentence. If the sentence includes probation, then the record will be open for three years after probation ends. If they have been found guilty of a more serious crime, their record might get in the way of jobs they want for five years after they finish their sentence.

## **Employer can ask the young person for a Police Record Check**

The police will not give any employer, except a government employer, information about a young person's record, even if the young person says they can. However, an employer can ask the young person to go to the police and get proof that the young person has no record. If the young person asks the police for a copy of their own record, the police will give it to them. A young person has the right to refuse to have a record check done. An employer doesn't have the right to insist on this. But, if the young person refuses, the employer might think it is because they have something to hide. There may be other people applying for the job who will be willing and able to provide a clean record check.

## **Employers might hear about the Youth Record by word of mouth**

In many smaller communities, people know most of what goes on. Word can get around about any trouble with the law that the young person has, even though their name will never be published in the newspaper or otherwise made public. Employers in the community will probably hear about it.



### **Employers can ask whether the young person has a Youth Record**

Often an employer can ask a young person if they have a youth record. If they ask about a youth record and the young person doesn't answer, they might think the young person has something to hide. They may give the job to someone else.

### **Employers can refuse to hire a young person with a Youth Record**

After a youth record is closed, it is against the law for an employer to refuse to hire someone because they committed a youth offence. Even if an employer finds out that a person has been in trouble with the law, they cannot refuse to hire that person simply because of a closed youth record. But until it is closed, most employers can decide not to hire the person at all. Employers can also decide not to hire the person for certain positions because of the type of crime they committed. For example, if they stole something, they might not be hired as a cashier.

### **Employers can fire a young person if they find out about their Youth Record after hiring them**

If a person already has a job, and the employer finds out about the youth record, they can fire the person.

## **Making Sure Your Youth Record is Closed**

In order to avoid the difficulties that having a youth record can cause, it's important to take steps to make sure a youth record is closed when it's supposed to be. After their youth record is closed, a young person can honestly say they do not have a criminal record. For information on when it is time for a youth record to be closed, see the section "How Long Youth Records Last", on page 5. You can follow up by:

- **Check whether the RCMP file copy of your record is destroyed**

When it is time to close a youth record, the Royal Canadian Mounted Police have to destroy the copy that is in their files. In order to make sure they do this, a young person can go to their local police station with a photo ID and

ask the police to check the RCMP files. If the young person's record is still in the files, they can ask their local police to contact the RCMP and have the record destroyed. It is a good idea to do this even if the young person was found not guilty of the offence they were charged with.

- **Contact local Police to be sure their copy of your record is removed from their active files**

When it is time to close a youth record, local police do not have to destroy their copy, but after it is closed, they are not supposed to let anyone see it without a court order. They should remove it from their active files. A young person can contact the local police to make sure they have done this. It is a good idea to do this even if the young person was found not guilty of the offence they were charged with.

## Glossary of Important Terms

### Age Definitions:

**Adult:** A person 18 years of age or older.

**Child:** A person less than 12 years of age.

**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.

### 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

What we call the state when it represents all the citizens by dealing with a person accused of an offence.

### Crown Prosecutor

A lawyer who presents the Crown's case in court against a person charged with an offence.

## **Custody**

Time spent in a youth facility by a young person found guilty of an offence.

## **Discharge**

Release of a person from custody.

## **Absolute Discharge**

A sentence imposed (after a finding of guilt) that “discharges” the young person from any further obligations. For most purposes, the young person is essentially deemed to have been not guilty of the offence.

## **Conditional Discharge**

When a youth is given a conditional discharge, s/he must respect a set of conditions (set by the judge) for a specified period of time. The sentence will be “discharged” and the youth will be found to have been guilty for most purposes.

## **Disposition**

The outcome of a criminal case – how it is finally settled which could range from the charge being withdrawn, 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.

## **Extrajudicial sanction**

The most formal type of extrajudicial measure used by the authorities to hold a young person accountable for an offence they committed. The authorities use an extrajudicial sanction only when other extrajudicial measures (such as warnings, cautions, or referrals) are not adequate to hold the young person accountable. For example, an extrajudicial sanction may be used because the offence was serious, or because of the number and nature of previous offences committed by the young person. Extrajudicial sanctions carry terms and conditions that the young person must obey, or else they can be brought to court.

### **Hybrid offence**

An offence that might be treated as a summary conviction offence (with lighter consequences) or an indictable offence (with tougher consequences), depending on Crown prosecutor's decision. Sexual offences are an example of a hybrid offence.

### **Indictable offence**

A serious offence that carries tougher consequences than a summary conviction offence.

### **Offence**

A crime.

### **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, such as a curfew or a prohibition against carrying a weapon.

### **Prosecute**

To conduct court proceedings against someone charged with an offence, in order to determine whether they are guilty or not guilty of the offence.

### **Publication**

What occurs if the authorities (or anyone else) make the name or identity of a young person in trouble with the law known to the public – for example, through print, radio, television, telecommunication, or electronic means.

### **Record**

Information kept by the authorities, in paper or electronic form, about a person's involvement in the justice system.

**Youth record:** A record of a young person's involvement in the youth justice system.

**Adult record:** A record of an adult's involvement in the criminal 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 lighter consequences than an indictable offence.

## **Transcript**

A copy of the record of a trial, prepared by a court clerk from a tape recording.

## **Youth justice court**

A court where youth matters are heard. Sometimes called "Youth Court".

# **Getting More Information About Youth Justice on the Internet**

## **Other PLEIS Publications for youth include:**

Youth Have Rights: Youth Justice in New Brunswick Workbook

In Trouble with the Law: Youth Rights

Youth Justice Lesson Plan

Chasing Away Rain Clouds Lesson Plan Guide

Understanding and Preventing Abuse: A Workbook for Aboriginal Youth



Youth Justice: "New Brunswick's Own Website for Youth and the Law"

[www.youthjusticenb.ca](http://www.youthjusticenb.ca)

For more information on youth justice from Justice Canada, visit:

[www.justice.gc.ca/youth](http://www.justice.gc.ca/youth)

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