

Public Legal Education  
and Information Service  
of New Brunswick

*Youth Have Rights*



Youth Justice in New Brunswick  
PLEIS-NB

# Consequences of a **Youth Record**

CONFIDENTIAL

# Consequences of a Youth Record

A youth record is a record of a young person's involvement in Canada's youth justice system. A youth record can haunt a young person for many years, even after they become an adult. This can create problems for the young person.

## What This Booklet Tells You

This booklet explains:

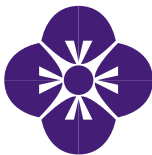
- ◆ some of the ways a youth record might linger;
- ◆ some of the problems this can cause for the young person;
- ◆ some things that the young person can do about it.

## Important Terms

To learn about youth records and the youth justice system, you will need to learn some important terms, like "extrajudicial measures" and "extrajudicial sanctions".

Where possible, we have explained the terms as we use them in this booklet. Otherwise, we have provided definitions of these terms starting on page 14.

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



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# Consequences of a Youth Record

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

If a person gets into trouble with the law (for example, they are investigated by the police, or they are charged with an offence), information is kept by several different authorities – such as the police, the Crown, the courts, and correctional agencies. This information is kept in records. Records can be in any form – such as paper, electronic media, microform, sound recording, or videotape. 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.

## ***Information Included in Youth Records***

Youth records might include:

- ◆ the young person's name and aliases, if any;
- ◆ police notes, photographs, and other identifiers like fingerprints;
- ◆ arrest and charge dates;
- ◆ what offence the young person is charged with, if any;
- ◆ the disposition of the charge (for example, finding of guilt, acquittal, stay of proceedings, withdrawal of the charge);
- ◆ the sentence imposed if the young person is found guilty;
- ◆ copies of courts 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.

## ***Types of Records***

Some typical youth records are:

- ◆ youth court records;
- ◆ police records;
- ◆ government or agency records relating to certain extrajudicial measures.

## ***The Difference between a “Record” and “Publication”***

A record is different from publication of the information it contains. Publication is what occurs 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.

## ***Protection of a Young Person’s Privacy***

Canada’s *Youth Criminal Justice Act* (YCJA), which governs how Canada deals with young persons in trouble with the law, is intended to respect and protect the rights of a young person in several ways. One way is by protecting the young person’s privacy. In most cases, it is against the law for anyone to publish the name of a young person dealt with under the YCJA, or any information that could lead to the young person’s being identified by the public. Lawmakers think that protecting a young person’s privacy is the best way to prevent society labeling the young person an “offender,” and, as a result, reducing their chances of successful rehabilitation. But just because publication doesn’t take place, that doesn’t mean youth records are totally confidential.

## ***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 their youth records. In general, youth court, police, correctional agencies, or anyone else who deals with a young person in trouble with the law is prohibited from disclosing youth records to anyone. But there are certain exceptions. In some cases, people who work in the youth justice system are permitted access to youth records in order to do their jobs.

## 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.

### Difficulty Traveling or Getting a Job

For example, a person with a youth record can be prevented from traveling as they would like, sometimes even after they become an adult. They can also have trouble getting a good job. For more information, see “Traveling With a Youth Record,” page 7, and “Getting a Job With a Youth Record,” page 10.

### A Youth Record Could Close or Become an Adult Record

Youth records could close before the young person becomes an adult, or the young person could become an adult with a youth record. Generally, a youth record will be closed after a period of time. However, a youth record will become an adult record if the adult commits a crime while the youth record is still open or if they receive an adult sentence. An adult record is permanent. In some cases, a youth record can form part of an adult record.

## How Long Youth Records Last

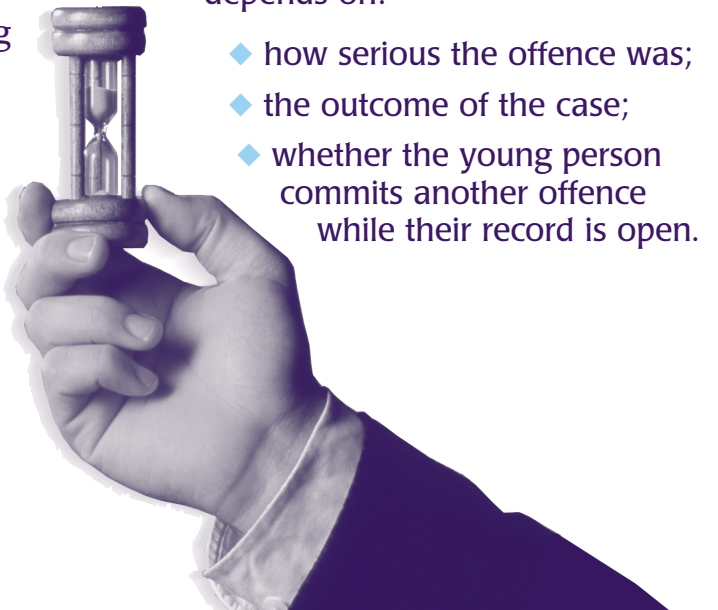
### Youth Records Don't Close Because the Young Person Turns 18

The time youth records last has nothing to do with turning 18. They can be closed before the young person turns 18, or they can stay open long after. They can even become permanent adult records.

### What the Length of a Youth Record Depends On

The time a youth record lasts depends on:

- ◆ how serious the offence was;
- ◆ the outcome of the case;
- ◆ whether the young person commits another offence while their record is open.





## Seriousness of the Offence

### Summary Conviction Offences

Summary conviction offences are minor offences, such as causing a public disturbance or shoplifting. Sentences for summary conviction offences are lighter than sentences for indictable offences: See “Indictable Offences”. For example, an adult found guilty of a summary conviction offence can generally only be fined up to \$2,000 or go to prison for up to six months, or both. If a young person is found guilty of a summary conviction offence, their record will last for three years after the end of their sentence, as long as the three years is a “clean period.” This means they need a three-year period that is “clean” of criminal activity. The three years don’t 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. How old the young person is when their record for a summary conviction offence is closed depends on how old they are when they are sentenced, and how long the sentence will last.

Their record will only be closed before they turn 18 if they finish their sentence before their 15th birthday. If they are 17 or older when they are 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 don’t 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. How old the young person is when their record for an indictable offence is closed depends on how old they are when they are sentenced, and how long the sentence will last. If they are 13 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 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 Crown counsel 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 Crown counsel decides. Most of the common youth offences are hybrid offences, such as shoplifting or vandalism.



## The 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 disposition of their case, and the sentence, if any.

### Extrajudicial Measure or Sanction

If the authorities use an extrajudicial sanction or other type of extrajudicial measure instead of prosecuting a young person in court, the young person won't have a court record. (Please see page 14 for definitions of

"extrajudicial measures and extrajudicial sanctions.")

Instead, if an extrajudicial measure is used, they will

have a record showing that an extrajudicial measure was used because they allegedly committed an offence. This record will last for two years, starting from the date they agree to enter the extrajudicial measures program.



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.

### 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

### Acquittal

If a young person is found not guilty, there will be a record for 2 months after the appeal period ends, or for 3 months after all appeals have been heard and decided. The record will show that the young person has been charged but found not guilty.

## ***Finding of Guilt of Another Offence Before Their Youth Record Closes***

Being found guilty of another offence before their record is closed makes a young person's record for the first offence last longer. Anyone who has access to the young person's record during the extended time before their record is closed will see that they are a repeat offender.

### **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 won't be closed until it is time to close the record for the later offence. For example, if the young person is found guilty of an indictable offence two years after they have finished serving a sentence for a summary conviction offence, their record on the summary conviction offence won't be closed at the end of three years. It will remain open for at least five years after the end of their sentence for the second, indictable offence. This means that if their sentence for the second offence is for six months, their record on the summary conviction offence will 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.

If a person is convicted of another offence after they turn 18, but while 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.



## Traveling With a Youth Record

A youth record can't stop a young person from traveling within Canada, but it can sometimes stop them from traveling to other countries. Some countries won't let a person in, even for a visit, if that country knows about their record.

### Possible Problems Traveling Outside Canada

Being unable to travel to another country can keep a young person from doing things they want or need to do. Here are just a few examples:

- ◆ A young person might lose a chance at a job they want because they can't get into the country where the job is.
- ◆ A young person might try to go to the United States with friends for a football game or a spring break vacation and be stopped at the border.
- ◆ A young person might have relatives they can't visit because the relatives live in a country that won't let the young person in.
- ◆ A young person might spoil a family holiday because they can't get permission to enter the country their family wants to visit together.

### Other Countries May Get Information on Youth Records

Records for most offences are sent to the Royal Canadian Mounted Police. The RCMP shares the adult criminal records of Canadians trying to get into some countries with the police and border officials of those countries. Although youth records are treated differently than adult

records, (the RCMP does not share youth records with other countries) it's possible that another country could get access to a young person's record some other way. Whether a young person has an open or closed youth record, they 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 a Youth Record is Closed," page 12. This can be five years or longer 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.

### Computer Check Will Reveal a Youth Record

Whenever that person tries to travel to a country that has information on their record in their computer files, a computer check can show they have a record for a youth offence.

## *Traveling With a Youth Record*

### **When the Young Person Applies 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.

### **When the Young Person Tries to Cross the Border**

If the person needs no visa, the guards at the border can do a computer check when they try to enter the country.

### **Even If the Young Person's Youth Record is Closed in Canada, It May Stay Open in Other Countries**

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 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, and the U.S. has found out about it, 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 the United States knows about it, they can never know if they might be refused entry at the U.S. border.

### **Traveling Outside Canada**

Other countries will only check their files when the person is trying to enter, either as a visitor or as an immigrant.



## Traveling With a Youth Record

### Avoid Traveling to Other Countries While the Youth Record is Open

The best thing a person can do is to avoid traveling to other countries until they know their youth record has been closed. They should find out how long their record is expected to last. Then, they should not try to get into the United States or any other country until that time has passed. Then, they should make sure their file is closed before they travel.

### Don't Try to Sneak In

If the person must travel to another country before their record is closed, they should not try to sneak in past the border checkpoint. If they are caught, they won't be allowed in, either then or in the future. In any case, the person should not lie if the authorities ask if they have a record. The person should talk to a lawyer before traveling.

### Other Possibilities

There may be things the person can do before their trip so they can get into the country even though they have a record. They should find out from a lawyer what they have to do.

### Entry Waivers

For example, to enter the United States, they may have to get what is called an entry waiver. Most waivers are for limited purposes and time periods. In some cases, they might be able to get a permanent waiver. To apply, they will have to fill out forms giving lots of information, including information about their record. It can take a long time to get the waiver, so the person should apply in plenty of time. They might not get it at all. They should ask a lawyer for help with the application.





## Getting a Job With a Youth Record

### It May Be Hard to Get a Good Job

A youth record can make 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 or more after they finish their sentence.

### They 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. Once the young person has it, they can give it to anyone they want. Many employers know this. 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.



## ***Getting a Job With a Youth Record***

### **They Might Hear About the Youth Record through 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.

### **They Can Ask the Young Person Whether They Have 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 can't 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 a Youth Record is Closed***

After their youth record is closed, a young person can honestly say they don't have a record. They can even say they have never committed a criminal offence. 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.

### **Knowing When It is Time for the Youth Record to Be Closed**

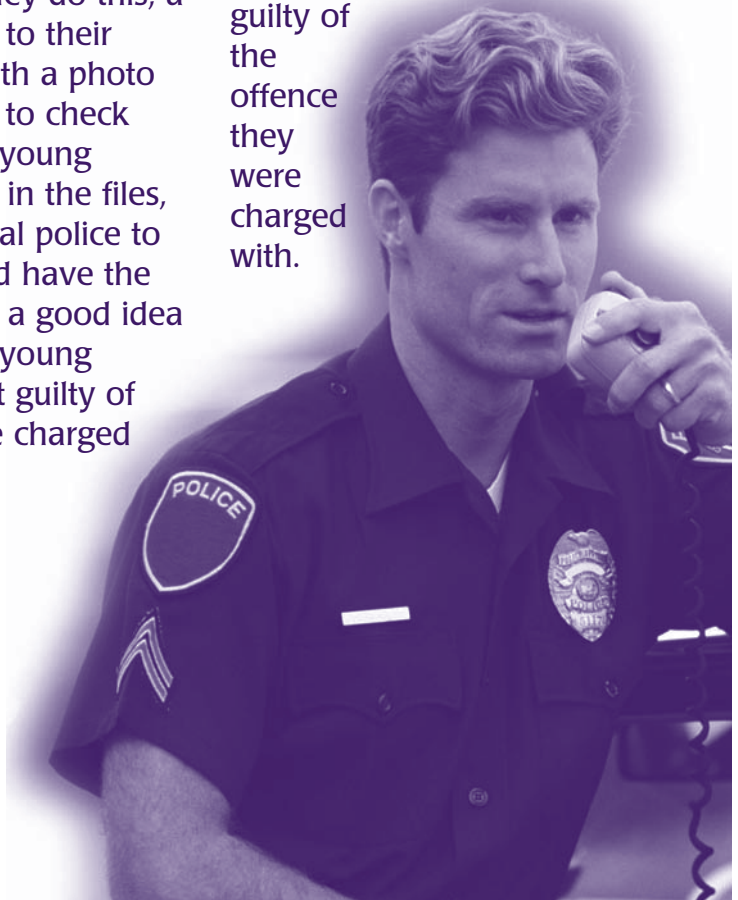
For information on when it is time for a youth record to be closed, see "What the Length of a Youth Record Depends On," page 3.

### **Making Sure the RCMP File Copy 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.

### **Making Sure Local Police Remove Their Copy from Their Active Files**

When it is time to close a youth record, local police don't 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.



## ***Where to Get More Information About Youth Justice on the Internet***

***Public Legal Education and Information Service of New Brunswick – Youth Justice Website:***

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

***The People's Law School, "Youth Justice Renewal, Teacher's Guide":***

<http://www.publiclegaled.bc.ca/youthjustice.htm>

***Public Legal Information Association of Newfoundland, "For the Record – The Youth Criminal Justice Act":***

[http://www.publiclegalinfo.com/publications/PLIAN\\_Book.pdf](http://www.publiclegalinfo.com/publications/PLIAN_Book.pdf)

***Department of Justice Canada, "Youth Justice Renewal":***

<http://canada.justice.gc.ca/en/ps/yj/index.html>

***Department of Justice Canada, "YCJA Explained":***

<http://canada.justice.gc.ca/en/ps/yj/repository/index.html>

***Department of Justice Canada, "Publication and Records":***

<http://canada.justice.gc.ca/en/ps/yj/repository/3modules/07public/3070301a.html>

## ***Definitions of Important Terms***

### ***Adult***

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A person 18 years of age or older.

### ***Charge***

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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.

### ***Child***

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A person less than 12 years of age.

### ***Crown***

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

### ***Crown Prosecutor***

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

### ***Custody***

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

### ***Discharge***

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Release of a person from custody.

### ***Absolute Discharge***

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Release without conditions.

### ***Conditional Discharge***

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Release on conditions.

### ***Disposition***

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How a criminal case is finally settled: for example, charge is withdrawn, person pleads or is found guilty, person is found not guilty.

### ***Extrajudicial measure***

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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**

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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**

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An offence that might be treated as a summary conviction offence (with a lighter sentence) or an indictable offence (with a tougher sentence), depending on Crown counsel's decision.

## **Indictable offence**

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

## **Offence**

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A crime.

## **Probation**

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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**

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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**

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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**

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

### **Youth record**

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

### **Adult record**

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A record of an adult's involvement in the criminal justice system. A youth who receives an adult sentence will get an adult record.

### **Sentence**

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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**

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A minor offence that carries a lighter sentence than a indictable offence.

### **Transcript**

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

### **Young person**

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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.

### **Youth justice court**

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



## Public Legal Education and Information Service of New Brunswick

Public Legal Education and Information Service of New Brunswick is a non-profit organization. We create materials about the laws and the justice system to help people find the information about laws in New Brunswick. We have a number of pamphlets, posters and videos about youth and the law.

If you have questions about youth justice or would like more information about the *Youth Criminal Justice Act* and the changes to the way we deal with youth crime in Canada you can contact PLEIS-NB to receive free copies of our other youth justice products or visit our website at [www.youthjusticenb.ca](http://www.youthjusticenb.ca)

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### PLEIS-NB publications for youth include:

*Youth Justice in New Brunswick Toolkit*

*Supporting Youth with Disabilities in the Justice System*

*Youth Justice – How Do You Fit In?*

*Youth Have Rights*

*Youth Justice Newsletter*

*Dating Violence*

*Sexual Harassment in Schools*

*Let's Stop Bullies Activity Book*

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