

Community Legal
Education Association



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YOUTH RECORDS

PUBLICATION OF NAMES

Under the *Youth Criminal Justice Act*, the general rule is that the young person's identity cannot be published. There are, however, limited exceptions to this rule. A young person can be identified when:

- the young person has received an adult sentence,
- when a young person has received a youth sentence for a violent offence and the court decides that the ban on publication must be lifted to protect the public from the risk of the young person committing another violent offence,
- the information is used in the administration of justice,
- the young person is at large and dangerous and publication, for up to five days, is needed to apprehend the young person,
- the young person authorizes disclosure of information after becoming an adult.

Note: A violent offence is an offence in which the young person causes, attempts or threatens to cause bodily harm or endangers the life or safety of a person by creating a substantial likelihood of bodily harm (for example a high speed car chase).

WHO CAN KEEP YOUTH RECORDS?

The *Youth Criminal Justice Act* allows youth records to be kept by the following:

- youth justice and other courts,
- review boards,
- police forces,
- government departments and agencies (for specific purposes only),
- organizations administering or participating in an extrajudicial measure or in the administration of a sentence.

The police must keep a record of any extrajudicial measures they used when dealing with young persons.

Note: An *extrajudicial measure* is a means, other than through the court system, used to deal with a young person accused of committing a crime.

WHAT RECORDS CAN BE KEPT?

A record is anything that contains information and that is created or kept for the purposes of the *Youth Criminal Justice Act* or for investigating a crime under the Act.

The following are examples of records:

- medical, psychological, or psychiatric reports,
- pre-sentence reports,
- placement hearing reports,
- youth justice court's reasons for sentencing,
- weapon prohibition reports,
- progress reports,
- police records.

WHO HAS ACCESS TO YOUTH RECORDS?

The *Youth Criminal Justice Act* sets out who may have access to youth records:

A young person, the young person's lawyer, and the Attorney General are entitled to have access to a youth court record.

Parents of the young person and adults helping the young person have access during the proceedings and youth sentence.

Peace officers have access to the youth court record for case administration and law enforcement purposes, and a judge, court or review board may access the youth court record for related proceedings or re-offences by the young person.

If an adult sentence has been imposed and the time for appeal has expired, or the proceedings relating to the appeal are concluded, the record will be treated as an adult record.

HOW LONG DO YOUTH RECORDS LAST?

- Extrajudicial Sanctions: 2 years;
- Acquittal: 2 months after time to appeal or 3 months after appeal proceedings;
- Dismissal, withdrawal, or reprimand: 2 months after;
- Stay of charge: 1 year;
- Absolute discharge: 1 year;
- Conditional discharge: 3 years;
- Summary conviction: 3 years after the youth sentence is complete;
- Indictable conviction: 5 years after the youth sentence is complete.

A record for certain offences such as murder, may be retained indefinitely.

In some cases, subsequent convictions will extend the life of the original record.

Note: *Summary conviction offences* are minor crimes. The maximum penalty for an adult for such an offence is usually six months in prison, a \$2,000 fine, or both. Causing a disturbance is a summary conviction offence. *Indictable offences* are serious crimes and the maximum penalties are more severe. Arson and robbery are indictable offences.

EMPLOYMENT WITH A YOUTH RECORD

Employers do not have access to a youth record on their own (except where the government is the employer). They may ask in an interview whether the young person has a youth record and ask for a criminal record check. When the youth record is closed, young persons may inform employers that they do not have a record and that they have not been charged with, or found guilty of, a criminal offence.

TRAVELLING WITH A YOUTH RECORD

A youth record has no effect on travel in Canada. It can affect travel to other countries. Other countries may possibly obtain a youth record from the R.C.M.P. while the record is open. In some cases a record will remain open and can affect travel for five years, or longer if the young person commits an offence before their record is closed.

To enter the United States with a record, you will have to get an entry waiver, which can take a long time to obtain.

Once a youth record is closed in Canada, other countries will not be able to get access to it. However, our laws about closing of youth records do not bind other countries. They may keep the record on file indefinitely, even if the record is closed in Canada.

This area of the law is complex. Whether a young person has an open or closed record, they should speak to a lawyer with experience in youth criminal law before making travel plans to other countries.

Community Legal Education Association gratefully acknowledges Youth Justice Policy, Department of Justice Canada, for funding this project.

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