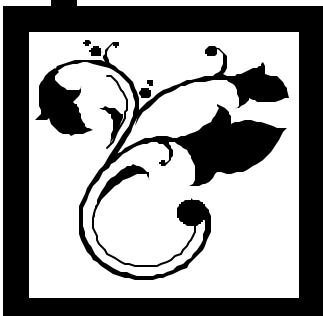


# **Understanding Criminal Records**

**John Howard Society of Alberta  
2000**

**With Financial Support From:  
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# INTRODUCTION

The purpose of this document is to provide individuals working in the criminal justice system with information about criminal records. It was necessary for a number of reasons:

- U First, given that approximately 10% of Canadians have a criminal record, it is critical that we understand how criminal records are stored, accessed and disposed of.<sup>1</sup>
- U Second, employers, community agencies and educational institutions are entitled to request record checks for prospective employees, volunteers and students, so we need to be aware of the kinds of information that can be disclosed.
- U Third, myths surrounding both adult and young offenders criminal records need to be dispelled.

In order to provide agencies with a solid understanding of the dimensions of criminal records, this document has been divided into four parts. Part one provides an overview of Canada's central criminal record system. Part two answers frequently asked questions regarding the accessibility, care, removal and impact of criminal records. Some of the information provided is the same for both adult and youth records; however, there are some significant differences. Part three looks at questions that relate directly to the criminal records of youth. The fourth part examines the legislation that governs the accessibility, care and removal of criminal records in Canada. Some legislation is intended to minimize the negative impact of having a criminal record, while other legislation authorizes the disclosure and sharing of criminal record information. A look at Canadian legislation gives us the opportunity to become familiar with the rights and responsibilities of the police, employers and individuals. Key terms are highlighted in bold text throughout the document and are defined in the Glossary.

This document is a summary of the law and regulations related to criminal records at the time of writing. Although we have tried to answer as many criminal record questions as possible, there are some that cannot be easily answered through a review of the legislation and policies. If you encounter questions that are not answered here, please refer to the list of contacts at the end of this document. Also, we are aware that there are sometimes errors in criminal record keeping. Should you become aware of a record that does not follow what we have indicated in this document, please advise us. We are interested in ensuring that this document remains accurate and also in tracking cases where the practice does not match the law or the regulations. Information on how to contact us is found at the end of this document.

# POLICE CRIMINAL RECORD SYSTEMS

## Creating Criminal Records

A record of individual criminal activity begins with an alleged offender's first contact with police. Local police create a file for their records, and if the charge is for an indictable or hybrid offence, they may send a copy of this information to the Canadian Police Information Centre (**CPIC**), managed by the Royal Canadian Mounted Police (RCMP). CPIC creates a temporary file until further action is taken by the courts. This temporary file is only accessible to the charging police department, who can add to and review the information in it as the person proceeds through the criminal justice system. The temporary file contains information related to the alleged offence, the person's physical characteristics, date of birth, cautionary warnings (for example, 'violent') and depending on the offence, fingerprints. There is a hard copy of all documents, as well as a microfiche copy of the accused's file. If no further action is taken by the court after five years, the temporary file is destroyed. If the charge results in a conviction, CPIC enters the information contained in the temporary file to its 'automated criminal convictions records retrieval system,' which is essentially a computerized database that is accessible by police officers across Canada. Once a conviction has been entered on the CPIC system, police across Canada will have access to the same information that was contained in the temporary file, as well as the record of conviction and sentencing.

The names of persons who have been charged but never convicted cannot be accessed from the CPIC database, except in cases in which a discharge has been granted. Even though discharges are not considered convictions, records of discharged offences are maintained by CPIC for a limited time.

Only criminal record information concerning indictable and hybrid offences is held by CPIC. Local or provincial police reporting systems may contain various record information relating to summary offences and provincial statutes, such as highway and traffic information. Local police services have independent systems of tracking persons with whom they have come in contact. Information entered into a local police service's system cannot be accessed by another police service unless that information is also entered into the CPIC database.

## The Canadian Police Information Centre

CPIC was set up in 1972 and is located at RCMP Headquarters in Ottawa. As mentioned above, CPIC maintains a computer-based information system that provides police officers across the nation with criminal record data that may be helpful in the arrest of suspects. Over 60,000 officers have access to the same information using computer terminals networked together and connected to the central system in Ottawa.

In addition to allowing officers from coast to coast to communicate almost instantaneously with one another, officers can access any one of the CPIC databases relating to:

- & vehicle information
- & criminal records (adult and youth)
- & dental records
- & offender information under the jurisdiction of the Correctional Service of Canada
- & wandering and missing persons.

The CPIC system also has access to the motor vehicle information systems in each province and territory. In addition, CPIC is connected to the United States **National Crime Information Centre** (NCIC). Through the Automated Canadian United States Police Information Exchange System, state police databases are connected to the CPIC system.

Information stored in local and provincial criminal records systems may or may not be found in the CPIC database. Since there is no legislation in place that requires local police to submit criminal information to CPIC (with the exception of the *Young Offenders Act*), the criminal records of the central system do not reflect the totality of records that exist.



# ANSWERS TO FREQUENTLY ASKED QUESTIONS

## Accessing Criminal Records



### ***Who can access criminal records?***

A number of law enforcement agencies have access to criminal record information through direct access to CPIC, including provincial and municipal police services. Other law enforcement agencies with limited powers under federal or provincial legislation also have complete access to a person's criminal record through CPIC. These agencies include:

- |  |   |
|--|---|
| & Agencies authorized in the Young Offenders Act   | & Insurance crime prevention bureaus  |
| & Canadian Pacific Railway Police                  | & Parks Canada  |
| & Citizenship and Immigration Canada               | & Provincial correctional services  |
| & Correctional Service of Canada                   | & Provincial court services   |
| & Department of Agriculture                        | & Provincial securities commissions   |
| & Federal and Provincial Ministries of Environment | & Canada Customs and Revenue Agency   |
|  | & United States Customs, United States Immigration and individual state police departments. |



### ***What kind of criminal record information can be accessed?***

Three levels of criminal record information are available through CPIC. The level requested depends on the detail required. Agencies with complete criminal record access can receive any one of the following three levels of information:

**Full Criminal Record.** Contains:

- |                            |   |
|----------------------------|---|
| & Name                     | & Dates associated with each conviction |
| & Date of birth            | & Jurisdiction                          |
| & Personal characteristics | & Disposition                           |
| & Conviction history       | & Stays in proceedings                  |

& Withdrawn charges

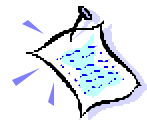
& Acquittals

& Absolute and conditional discharges

**Criminal Record Synopsis.** Contains personal information and conviction history only.

**Criminal Name Index.** Indicates only that a record may exist.

**Note:** Law enforcement officers are advised that the individual's criminal record information provided at any of the three levels **should not** be used as fact until they are confirmed with fingerprints.



### ***Can a person access their own criminal record?***

Yes. Under the *Privacy Act*<sup>2</sup> of Canada, every individual has the right to request access to their own criminal record **anytime**. Requests can be made informally to the RCMP or local police, or the request can be made formally under the *Privacy Act*. If the request is made under the *Privacy Act*, the costs normally associated with fingerprinting will not apply.

When individuals request copies of their own criminal record from the RCMP, they will generally receive their full criminal record. This includes stays, acquittals, etc. However, individuals can also request a portion of their record, such as convictions only. If there are no convictions, the RCMP will provide the person with a letter stating this.

If an individual finds that there are inaccuracies and errors in his/her criminal record, the person can request corrections under the *Privacy Act* at the local police service. For more information on how to use the *Privacy Act* to access and correct criminal record information, call the Privacy Commissioner at the number listed on page 26 of this document.





## ***What criminal record information do employers, community agencies and educational institutions have access to?***

Employers, community agencies and educational institutions can only obtain criminal record information if the individual consents. In Canada, no one can access another person's criminal record without the consent of the person to whom the record relates. This is one of the conditions related to **third party access** under Canadian law.

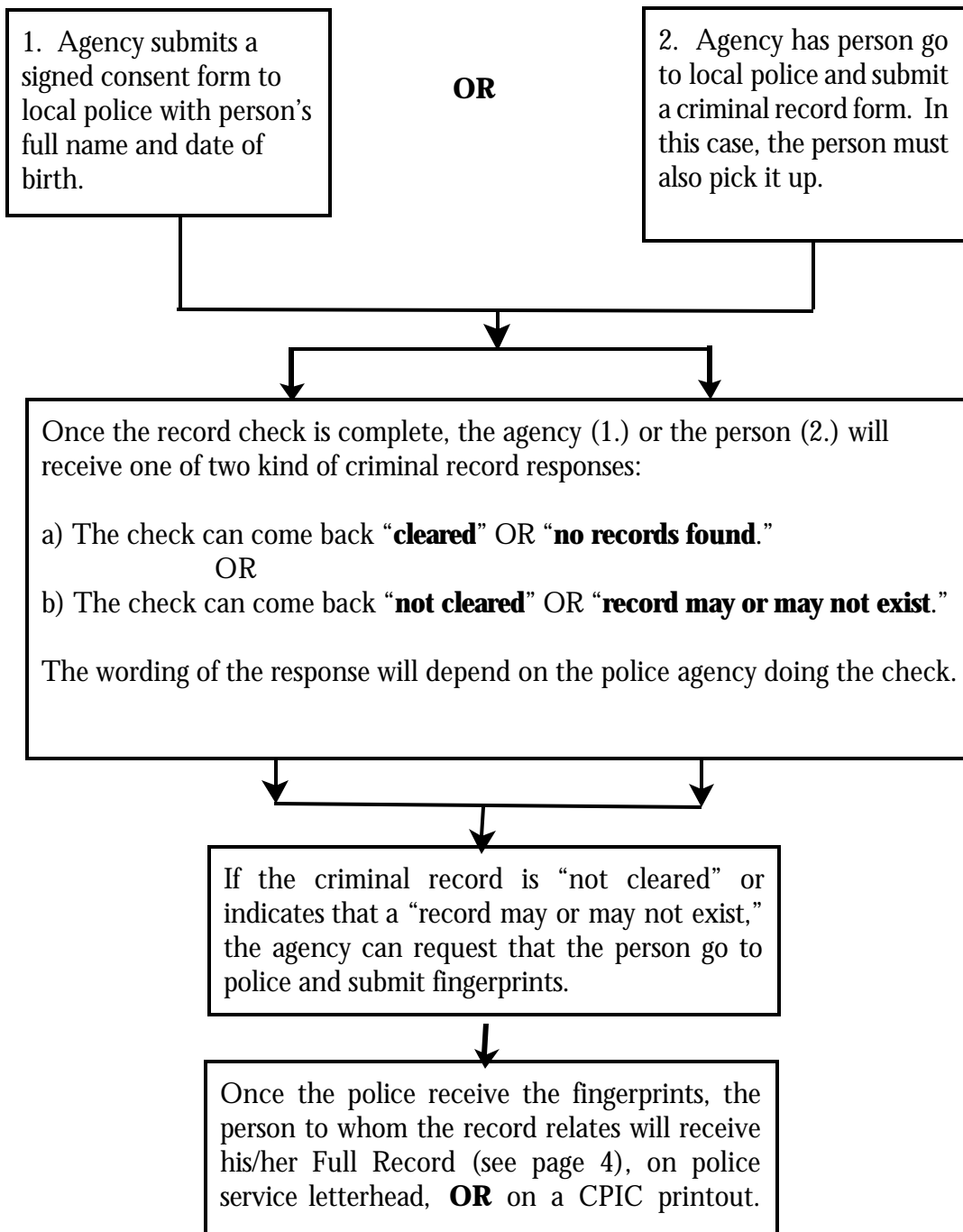
If an agency wishes to access criminal record information, they **must** inform the individual of the kind of criminal record information being sought. Some agencies may request that a Full Criminal Record be provided, but most request that only a Criminal Name Index search be done.

The criminal record release form must state the kinds of criminal record information the police service is being authorized to release. Consent to a records check is indicated by the individual's signing the form. The criminal record release form may also specify that the information be sent either directly to the agency requesting the check or that the individual pick up the record in person. For these reasons, **it is important that individuals read the criminal record release form very carefully.**

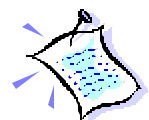
To see how agencies access an individual's criminal record, refer to Diagram 1 on the next page.

Diagram 1.

### Steps to Accessing a Person's Criminal Record



**Note:** "Not cleared" and "record may or may not exist" responses are indicators that a record is associated with the person's name. However, the existence of a record cannot be confirmed without submitting fingerprints.





## ***Are there certain volunteer, educational or employment positions for which a criminal record check is more likely to be done ?***

The following is a list of positions for which a criminal record check may be done prior to the hiring or acceptance of an individual:

- |   |   |
|---|---|
| & Banking, accounting, payroll and investment positions | & Optometrists  |
| & Cashiers  | & Peace officers  |
| & Child care workers and volunteers                     | & Physiotherapists  |
| & Chiropractors   | & Residence officers  |
| & Clerks of the courts                                  | & School staff (including principals, secretaries, teachers, classroom assistants and janitors) |
| & Comptrollers  | & Sheriffs  |
| & Correctional Centre or security positions             | & Social service workers and volunteers   |
| & Dentists  | & Special needs workers, volunteers   |
| & Doctors   | & Students of Criminology, Criminal Justice, Corrections, Policing and Social Work              |
| & Massage therapists                                    | & Veterinarians   |
| & Nurses  |   |
| & Officers of the courts                                |   |



## ***How much does it cost to get a criminal record check done?***

The cost of obtaining a criminal record check varies. Sometimes an agency will submit the criminal record check form on the individual's behalf and then ask the respective police service to invoice the agency. This is often done for the convenience of agencies who request numerous checks at one time. In other situations, the individual is responsible for covering the costs of having a criminal record check done.

In Alberta, most police services will charge \$25 for a criminal record check obtained for employment reasons. In some areas, there is no fee associated with volunteer record checks, and where there is a fee, it is nominal (for example, \$5).

In addition, the police charge \$26.75 for fingerprinting. Potential employees or volunteers might be asked to submit their fingerprints to police if a criminal name index search has indicated that there may or may not be a record. In this case, the employer may ask the applicant to submit fingerprints so that the record can be confirmed.

## Care and Removal of Criminal Records



### ***Does a discharge result in a criminal record?***

Yes. Although a discharge is **not** considered a conviction, a record of an absolute or conditional discharge is kept by CPIC and by the **charging police agency**. The Criminal Records Act states that, except in exceptional circumstances:

- & no record of an absolute discharge may be disclosed after one year from the discharge date
- & if the discharge is conditional, no record may be disclosed after three years.

When these specified time periods have passed, the automated CPIC database is **purged** of discharge records. Further, any hard copy documents, including fingerprints, are destroyed. In effect, once the purge date has passed, CPIC has no record of the discharged offence. However, a record of an offence for which an individual has received a conditional or absolute discharge **remains in existence** after the purge date has passed. Such records are archived in a special repository in Ottawa for five years after they have been purged from CPIC. The Criminal Records Act provides that in exceptional circumstances, when fingerprints of a discharged person have been found at the scene of a crime or in an attempt to discover the identity of a deceased or amnesic person, the name, date of birth and last known address of the person may be obtained, even if the discharge information has been purged from the database. This information is obtained from records kept in the special repository for criminal records in Ottawa.

In addition, if the discharge was given before July 24, 1992, a record of the offence may remain on CPIC and information may be obtained from the database in exceptional circumstances.

If a criminal record check is done **before** the purge date has passed, the check will indicate either that a record “may or may not exist” OR that it is “not cleared.” If a full record is then requested, it will show that a discharge was given. Individuals who received a discharge **before** July 24, 1992, can have their record purged from the system by submitting their request in writing to the RCMP, whose address can be found at the end of this document. Discharges given before this date will be not removed automatically.

**Note:** There have been instances where absolute and conditional discharges have not been removed from the CPIC system after the specified time period. In such cases, the individual’s criminal record check has come back “not cleared” or stated that a “record may or may not exist.” If this occurs, the individual should notify local police, who will



forward a letter to RCMP Head-quarters in Ottawa informing them of the error and requesting that the discharge be removed from CPIC.



### ***Does a withdrawn charge or a stay in proceedings result in a criminal record?***

Yes. Withdrawn charges and stays will remain on the CPIC system and on the system of the charging police service. However, the information can be removed from CPIC under the following circumstances:

- 1) Individuals can ask the charging police service to have the stayed or withdrawn charge removed. This can be done for both violent or non-violent offences at any time after the charge was stayed or withdrawn. It is up to the charging police service whether they agree to make the written request to the RCMP to remove the information.
- 2) Charges relating to non-violent incidents will automatically be removed after five years if no further criminal activity has been recorded, even if no letter is written by the charging police service.
- 3) In cases where the withdrawn or stayed charges were for violent offences or where there were other additional charges that were not withdrawn or stayed, a record of the charges will remain on the system until the offender turns 70 if no letter is written requesting removal. If a criminal record check is done **before** a request for removal has been submitted, the check will indicate that a record “may or may not exist” OR the record will come back “not cleared.”

**Note:** Even minor assaults such as slapping or pushing would be considered violent and would require the letter to be written asking that the record be removed.



### ***Does a pardon erase a criminal record?***

No, a pardon does not erase a criminal record. Under the *Criminal Records Act*<sup>3</sup>, all records of cases in which a pardon has been granted must be stored separately from other records. As a result, the National Parole Board (NPB) and the RCMP have developed procedures to deal with both hard copy criminal record files and criminal record information on the CPIC system.

**Hard copies.** When the NPB grants a pardon, it has 30 days to notify the RCMP’s Pardon Unit. All hard copy information is removed from other criminal record files and shelved in the Pardon Unit’s

office, keeping them separate from other records. The NPB also notifies any federal department or agency that is in possession of the criminal record. In accordance with the *Criminal Records Act*, these departments must seal and separate pardoned criminal records from other records.

**CPIC records.** When the NPB grants a pardon, it has 30 days to notify the RCMP's Criminal Records Section. The Criminal Records Section moves all hard copy pardoned criminal record information to the Pardons Unit offices. The offices of the Pardons Unit are inaccessible to most users of the CPIC system. Information in the automated CPIC database concerning a pardon is moved to another area of the database which has **restricted** access and is available only to the Pardon Unit and the Criminal Records Section. The Pardon Unit has complete access to this area of CPIC, while the Criminal Records Section has limited access. When the pardoned record is moved to the restricted area on CPIC, Canada's police officers will be provided with no evidence that a criminal record existed. Further, there will be no indication that the person was pardoned.

**Note:** The Pardon Unit also advises the police service that generated the original file relating to the pardoned record. That police service then has 90 days to seal their records. It is also worth noting that if an individual does not keep the peace and be of good behaviour, his or her pardon can be revoked. Only the National Parole Board has the authority to revoke a pardon. Any unpardoned convictions will remain accessible by police on CPIC.



***Will a criminal record check reveal that a pardon has been given?***

Once a pardon has been granted, police officers will be provided with no evidence that a criminal record existed.



***How long is a criminal record kept by CPIC?***

The length of time a criminal record is kept by CPIC varies. When an offence is entered into a person's CPIC criminal record, it is assigned an automatic purge date. Every month, a list is generated that provides the RCMP Criminal History Section with the entries that **must** be purged from the system.

The *Criminal Records Act* and RCMP Ministerial Directives determine the conditions under which

records are purged from CPIC. See Table 1 for the 6 purging categories and conditions. For young offender purge categories and conditions, see Part III regarding the Care and Removal of youth records.

When the last entry in an individual’s criminal record reaches its purge date, all information about that person is **removed from the system**. Hard copy documents kept by the RCMP, including fingerprints, are destroyed. The individual will no longer have a criminal record and there will be no indication on the CPIC system that a record existed. When a person’s criminal record is purged by CPIC, they notify the police agency that contributed the record to CPIC of the purge. However, the contributing police agency does not have to remove the record from its system.

**Note:** If a person has received a pardon, and the pardon is revoked before the assigned purge date, his or her record is moved from the restricted section back to the section accessible by all police services. The person will then have to wait for a specified duration before reapplying for a pardon. An automatic purge date is then reassigned to the offence.



Table 1.

### Categories and Criteria for Purging Adult Criminal Record Information from CPIC

CATEGORY	PURGE CONDITIONS
<b>Criminal Code Offences with a Disposition</b>	<p>In most cases, when the person turns 80 years old AND there has been no criminal activity reported in the previous 10 years.</p> <p>EXCEPTIONS TO THIS ARE WHERE:</p> <ul style="list-style-type: none"> <li>- the person was sentenced to life</li> <li>- was classified as a dangerous offender, and/or</li> <li>- is still under a court ordered sentence</li> </ul> <p>In each of these instances, the record is kept UNTIL:</p> <ul style="list-style-type: none"> <li>• the sentence is complete and the person has been crime free for 10 years,</li> <li>• the person is 100 years old, or</li> <li>• there is confirmation that the person is deceased.</li> </ul>

<b>Criminal Code Offences with no Disposition (Stays, Withdrawn Charges and Acquittals)</b>	The person makes a request to the charging police service to have record purged. (See page 10).
<b>Alternative Measures Programs (Diversion Programs)</b>	This information is not entered into the CPIC system. Information related to charges entered but subsequently dealt with by a diversion program is purged from the CPIC system.
<b>Discharges (Absolute and Conditional)</b>	Absolute Discharges are purged from the system after 1 year. Conditional Discharges are purged from the system after 3 years.
<b>Pardons</b>	Pardoned records are purged from the part of CPIC that is accessible by police and moved to a part that is accessible by certain people only.

## The Impact of Having a Criminal Record



### ***How does a criminal record impact the ability to travel?***

A criminal record does not impact the ability to travel within Canada; however, if a person wishes to travel outside of Canada, there are a number of considerations.

Every country has its own rules and practice about visitors with criminal records. It is recommended that people with criminal records who want to visit a foreign country contact that country's consulate or embassy to obtain information on each country's practice.

Some countries, like the United States, may require a person to get a **travel waiver**. Travel waivers are documents that allow persons with criminal records to travel to the United States. Waivers can be obtained at the Department of U.S. Immigration located in the Edmonton and Calgary International Airports or at any border crossing. The processing cost is \$120 U.S. The waiver is good for **five years**. If there are questions about travel waivers, the U.S. Immigration Department can be contacted at both international airports (see contact numbers at the end of this document). It takes six to nine months to process a waiver.



Since the United States and some other foreign countries have access to the CPIC system, customs officials use the CPIC system to determine whether individuals have criminal records. If a person has a criminal record and/or travel waiver, **U.S. Customs will enter the person's criminal record information into their own system - where it will stay indefinitely.** If a person tries to enter the U.S. in the future, regardless of whether he or she has received a pardon, Customs officials will have the criminal record documented in their system.

Canadian pardons do not have legal force outside of Canada. The United States is not compelled to destroy their copy of the record when a Canadian pardon is granted. This means that if U.S. customs have previously entered a person's name into their own system, they would have that person's criminal record even though the record would no longer appear on CPIC. In such cases, people with a pardon may also wish to consider applying for a travel waiver.

**Note:** Information from CPIC is retained indefinitely in the U.S. computer system if customs is alerted to the existence of a record for any person attempting to cross the border. If a person has a record and has entered the U.S. in the past **without** their record being checked, a pardon will be helpful because it will remove the record from CPIC. Since that person's name no longer appears on CPIC, that individual no longer has a criminal record. If Customs asks whether the individual has a criminal record, the individual can say "no." This also applies if a person has received a pardon and has never entered the U.S. The best advice in any situation is to be as honest as possible and remember that Customs can deny or allow a person to enter the U.S. at their discretion. Travellers should also assume that any criminal record information provided to Customs officials will be entered on their police information system for future reference.



### ***How does a criminal record impact educational opportunities?***

There are numerous educational programs that may require a criminal record check before an applicant is accepted. For example, individuals with convictions related to fraud may be denied entry into an educational program related to bookkeeping or accounting. A criminal record may also be a detriment when applying to policing, corrections, or criminology programs. Many Universities require a criminal records check for professional programs such as dentistry, medicine and law.



## ***What can pardoned individuals say when an employer asks if they have a criminal record?***

Employers should only ask criminal record related questions if it directly impacts the job. Further, under the *Criminal Records Act*, federal government job applications **cannot** ask questions that could expose a conviction for which a pardon has been granted.

If an employer wishes to obtain information about a person's criminal record history, the question should be phrased: "Have you ever been convicted of an offence for which you have not received a pardon?" In this case the individual can answer "No." If the question is not asked in a manner that recognizes the possibility of a pardon, the individual can respond one of two ways:

- 1) If the question arises in an interview situation, the employee can answer "Yes, I had a criminal record, but I have received a pardon."
  
- 2) If the question is found on an application form related to federal jurisdiction (e.g., if the employer is the federal government or a bank), the person can ask for a copy of the application and forward it to the Canadian Human Rights Commission. The Commission will then advise the employer that the question is inappropriate.

# YOUNG OFFENDER RECORDS

## Youth Records



### ***How many different types of youth records are there?***

There are four types of youth records: youth court records, police records, government records and private records.



### ***What is a 'youth court record?'***

When young people appear in youth court, they receive what is called a **youth court record**. An offender's youth court record is kept by the youth court itself, a review board, or any other court dealing with matters related to the offence.

Youth court records differ from adult court records in a number of respects:

- 1) Youth court records do not list convictions, but instead record "findings of guilt." Youth court records register young persons' findings of guilt and other information about offences that have not resulted in guilty findings. Examples include personal circumstances and any reports done for the purposes of sentencing.
- 2) Youth court records are mandated by the *Young Offenders Act*<sup>4</sup>, whereas adult records are mandated by the *Criminal Records Act*.



### ***What is a 'police record?'***

When a young person is charged with an offence, the police agency responsible for the investigation may keep a record relating to the young person's charge or 'alleged' offence information. If the charge was for a hybrid or indictable offence, the offence information, photographs and fingerprints contained in the record may be forwarded to the RCMP's central repository, CPIC. The information

contained in the offender's record kept by CPIC may be accessed by certain individuals until the non-disclosure date has been reached.



### ***What is a 'government record?'***

Government records contain information gathered by a government agency or department and may be kept:

- for the purposes of an investigation of an offence allegedly committed by a youth
- for use in proceedings against a young person in a youth court
- for use by the court in handing down a disposition to a young offender
- in deciding whether or not alternative measures are appropriate for the youth
- as a result of alternative measures



### ***What is a 'private record' and what information can be in it?***

A private record is a record of any information obtained by any person or organization as a result of the use of alternative measures, or for the purpose of administering or participating in the administration of the disposition. Information such as the offence committed, the disposition given and personal information about the offender are examples of what might be contained in a private record.



### ***Do alternative measures, a discharge, stay, acquittal or withdrawn charge still result in a police record?***

Yes, once a charge has been laid, a record of the charge and whether there has been a finding of guilt is recorded, even if the charge is withdrawn or stayed or if the accused is acquitted or granted a discharge. However, these records are automatically removed from CPIC after certain periods of time (see the section on "Care and Removal of Youth Records").

Participation in the Alternative Measures program is recorded even though the youth may have charges against him dropped upon completion of the program. Participation in the Alternative Measures Program is registered either by the RCMP in CPIC or by the respective police agency for two years from the point the young person agrees to be in the program. After two years, the file is destroyed.

## Accessing Youth Records



### *Who can access youth records?*

No one can access a youth record, except those authorized under the *Young Offenders Act*.

Under the *Young Offenders Act* there are strict limitations regarding who can access a youth record. Section 44.1 states that the following people can access a youth's record:

- |  |   |
|--|---|
| & The young person                       | & Attorney General  |
| & The young person's parents or guardian | & Staff who are responsible for the care and supervision of the young person                              |
| & The young person's legal counsel       | & A government of Canada employee for statistical purposes  |
| & Any judge, court, review board         | & Any person who determines the granting of criminal record checks required for all levels of government. |
| & Any peace officer                      |   |
| & Alternative Measures Program staff     |   |

Anyone not authorized by the Act who wishes to access a youth's record must do so by bringing their request to youth court to be heard by a judge. For example, if a prospective employer wishes to access a youth's record, the employer must go before a youth court judge and show that he or she has a 'valid interest' in the contents of the record. The employer would need to prove that the youth's record would have an impact on his or her ability to perform duties related to the job.

The *Young Offenders Act* states that once a youth's criminal record has reached the **non-disclosure** period, no court, review board, police or government agency can disclose any information contained in that record. Under the *Young Offenders Act*, it is an offence to disclose youth records after they have reached the non-disclosure date. Illegally disclosing a youth's record carries a punishment of up to two years in prison.



## ***What kind of youth record information can be accessed?***

A variety of youth record information can be accessed by authorized persons only. The *Young Offenders Act* provides the provinces with the authority to access and share young offender information among professionals.

In Alberta, the province used the Act develop the “Young Offender Information Sharing Protocol.” The Protocol relates to sharing of information about young persons who have committed offences that threaten the safety of others, like arson, criminal negligence, or possession of explosives or firearms.

The Protocol permits youth workers responsible for gathering information for court ordered reports to share a number of matters about a young person, such as the:

- |  |   |
|--|---|
| & Youth’s name                         | & Family circumstances                                      |
| & Youth’s age                          | & Indicators of violent tendencies or patterns of behaviour |
| & Type of offence                      | & History of substance abuse                                |
| & Previous offence                     | & Any court orders and their expiry date                    |
| & Type of disposition                  | & Groups of persons who might be at risk from the youth.    |
| & Expiry date of young offender status |   |

Under the Protocol, information is provided to schools on a **need to know** basis only. Information not related to the school’s concerns should not be disclosed. For example, even though a young person has an active criminal record, this does not mean it will be disclosed to the school. However, if the school has expressed concern over a youth’s violent behaviour, relevant criminal record information could be released to the school. This information may then be used to monitor the youth’s behaviour in school. Further, if the student transfers schools, that information must follow the student.

Schools, in turn, may provide the following information to youth workers and others responsible for preparing predisposition and other reports:

- |                        |                  |
|------------------------|------------------|
| & Student’s attendance | & School conduct |
| & Course performance   |                  |

Where information is shared between a youth worker and the school, the Protocol and the *Young Offenders Act* state that the information must be kept in confidence, secure and separate from other student files. Both the Act and the Protocol limit the information shared to those who need to

know. This helps to ensure that the young person's identity and rights are not unnecessarily compromised.

## Care and Removal of Youth Records



### ***What is non-disclosure?***

Non-disclosure means that a youth's record **cannot** be provided to anyone unless the case meets the criteria below. Under the *Young Offenders Act*, a specified period of time must elapse before the record of an offence reaches non-disclosure. Table 2 provides the time periods for offences to reach non-disclosure. After the non-disclosure dates have been reached, the young person is deemed not to have committed an offence for summary conviction and indictable offences, and for offences that resulted in alternative measures or discharges.

Police records kept by the RCMP in CPIC are destroyed (deleted, shredded or otherwise physically destroyed) upon reaching the non-disclosure date. When a record has reached non-disclosure, CPIC should provide officers with no indication that a record ever existed. Each individual offence must reach non-disclosure before the record can be destroyed.

However, there are exceptions where the record information is **not** destroyed once it has reached non-disclosure. Records relating to serious offences are transferred from the CPIC data base to a special records repository. After transfer, there is no longer a record of the offence on CPIC. The following are some examples of serious offences for which records are kept in a special RCMP records repository for an indefinite period of time:

- |                               |                   |
|-------------------------------|-------------------|
| & Aggravated sexual assault   | & Kidnapping      |
| & Assault with a weapon       | & Manslaughter    |
| & Assault causing bodily harm | & Murder          |
| & Arson                       | & Robbery         |
| & Attempted murder            | & Sexual assault. |

The complete list of offences for which records are kept can be found at the end of the *Young Offenders Act*.

**Note:** Investigating police agencies, government agencies and youth courts are **not** required to destroy their youth records. However, once record of the offence has reached non-disclosure, none of these agencies can disclose a youth's record to anyone without first having gone to a youth court judge for consent.



Table 2.

### Categories and Criteria for Non-disclosure of Youth Record Information from CPIC

CATEGORY	NON-DISCLOSURE AND RECORD DESTRUCTION DATES
<b>Acquittal</b>	Two months after the expiration of the time allowed for the taking of an appeal; or if an appeal is held, three months after all proceedings have been completed
<b>Withdrawn, Dismissed or Stayed Charge</b>	One year after withdrawal, dismissal or stay
<b>Alternative Measures</b>	Two years after the youth agrees to participate in the program
<b>Absolute Discharge</b>	One year after the youth is found guilty
<b>Conditional Discharge</b>	Three years after the youth is found guilty
<b>Summary Conviction Offence</b>	Three years after all dispositions related to the offence have been completed
<b>Indictable Offence</b>	Five years after all dispositions related to the offence have been completed



### *What happens to the records of youths who re-offend?*

This depends on whether the young person's record has reached non-disclosure.

If a young person re-offends **before** the non-disclosure period is reached, the time for non-disclosure of the first offence will be extended until the non-disclosure period for the new offence.



If he or she is now an adult, the youth criminal record can be used in court. Further, the youth record can continue to be used until the youth charge reaches the non-disclosure period.

If the young person re-offends **after** the first offence(s) has reached non-disclosure, the record will remain in non-disclosure and **cannot** be used in either adult or youth court. If the youth criminal record reached non-disclosure, and the young person gets into trouble as an adult, the person will be treated as adult with no prior criminal record.



### ***Does a young offender need a pardon?***

It depends. If the young person does not re-offend before the offence reaches non-disclosure, then the youth criminal record will be destroyed and a pardon will not be needed. However, if the young person reoffends before the non-disclosure time has elapsed and he or she is now an adult, a pardon will need to be obtained for offences contained in the youth and adult records.

**Note:** A young offender record does not cease to exist simply because the individual turned 18. The specified non-disclosure time has to pass before the record can be destroyed.



## **The Impact of Having a Youth Record**



### ***What can young people say when employers ask if they have a record?***

Under the *Young Offenders Act*, there is a prohibition against disclosing any youth record to unauthorized individuals. This provision prohibits the disclosure of any youth record information where it could identify the young person. However, in instances where security clearance must be granted by the government of Canada, a province or municipality for purposes of employment, a youth's criminal record may be disclosed. Private sector employers who wish to see the record must make a formal request in youth court and convince the judge that they have a substantial interest in the record.

If an employer asks orally or in writing whether a youth has ever been convicted of an offence the young person can truthfully say **no** or decline to answer. Under the *Young Offenders Act*, young persons are not convicted of offences but, rather, are found guilty. Further, youth records are not public information and therefore no documentation should be made available to the public which could tie a youth with his or her criminal record.

However, some employers ask the youth to make the request to the police agency for the youth's record. Young people are able to access their own criminal record. When employers ask the young person to provide their own record (or proof of no record) "voluntarily," the youth is left with two choices. First, they can agree to provide their record. Or, they can refuse and withdraw their application for employment. While employers who proceed in this way are technically breaching the *Young Offenders Act*, it is a common practice, one which puts youth in a difficult position.

## LEGISLATION RELATED TO CRIMINAL RECORDS

Canadian legislators have developed laws at both the federal and provincial levels that attempt to strike a balance between the public's right to know and an individual's right to privacy. There are a number of federal laws that relate specifically to the handling of criminal records. These laws define their accessibility, disclosure and disposal. There are four Acts in place to ensure the proper handling of criminal records. These Acts are safeguards for both the individual and for agencies who have the authority to maintain criminal records.

The ***Criminal Records Act***, given Royal Assent in 1985, regulates a number of criminal record matters, including:

- & Who can apply for pardons and when
- & The role of the NPB in the pardon process
- & How a pardon effects a person's criminal record
- & How pardoned criminal records should be stored by the RCMP and other government agencies
- & Information on revoking pardons

The ***Young Offenders Act*** is the only Act that sets out provisions for the maintenance and disclosure of youth records. Enacted in 1985, it has undergone a series of amendments. One of the most important amendments to the Act came in 1995, allowing for a greater degree of youth record sharing among professionals. This amendment led to the development of information sharing protocols in a number of provinces, including Alberta. The *Young Offenders Act* legislates the handling of youth records in a number of significant ways, including:

- & Who can access and disclose youth court records
- & When youth court records can be disclosed
- & Authorizing the RCMP to possess and destroy youth records
- & Non-disclosure criteria
- & The establishment of special record repositories that have their own criteria for the disclosure and destruction of records that belong to young persons found guilty of serious offences
- & Sharing information between school officials and persons involved in the care and supervision of young persons
- & Ensuring that the privacy of the young person is maintained and that the negative consequences associated with having a criminal record are minimized as much as possible, in order to give the young person the best possible opportunity in life without suffering the impact of having a record as they reach adulthood.

The ***Access to Information Act*** and the ***Privacy Act*** were both enacted in 1983. These Canadian laws set out strict limitations on the accessibility and disclosure of individual records, including

criminal records. More specifically, these laws deal with the accessibility of federal government information and protecting the privacy of individuals. Alberta enacted similar legislation in 1995. Like other provincial legislation of this kind, Alberta's ***Freedom of Information and Protection of Privacy Act***, relates to information held by provincial departments and agencies. The federal and provincial acts are significant in the care of criminal records for a number of important reasons.

- & The public's ability to obtain someone's personal information is limited (including obtaining criminal history information).
- & An individual's right to have his/her personal information kept confidential is protected.
- & Individuals have the right to access their own information held by government agencies and to inspect it for inaccuracies.

The freedom of information and privacy acts try to balance two competing interests: public safety and the individual. While these laws have set up numerous provisions to protect a person's right to privacy, they also authorize law enforcement agencies to disclose the name and personal history of people considered dangerous for the purposes of public safety.



## GLOSSARY

**Canadian Police Information Centre (CPIC):** The central police repository where Canada's police agencies can access information on a number of police matters. CPIC is maintained by the RCMP and contains information relating to criminal records, property and missing persons. The centre is Canada's only national police networking computer system ensuring officers all across the country can access the same information. CPIC is also interfaced with the United States National Crime Information Centre.

**Charging Police Agency:** The police service that charged the person. This means that the information gathered by the charging police service is in their jurisdiction.

**Criminal Name Index:** One category of criminal record information, accessible on CPIC, that only indicates whether a record may or may not exist. This type of criminal record information is most often requested for employment and volunteer positions in community organizations.

**Criminal Record Synopsis:** One category of criminal record information, accessible on CPIC, that contains personal information and conviction history only.

**Full Criminal Record:** One category of criminal record information, accessible on CPIC, that contains personal information, conviction history and any other police related information.

**National Crime Information Centre (NCIC):** The United States equivalent to the Canadian Police Information Centre (CPIC). NCIC holds American police related information.

**Non-disclosure:** The period when any offence information relating to a young offender cannot be disclosed. Every offence has a specified time period that must elapse before it reaches the non-disclosure period. These time periods are described in the *Young Offenders Act*.

**Purged Record:** Purging a record means removing it from the CPIC system. Purging a file erases it completely from CPIC, providing no indication that a record ever existed. The Clemency and Pardons Division of the National Parole Board will notify the RCMP and all other federal agencies holding the record to purge it.

**Third Party Access:** In Canada, agencies who request access to criminal records must have the consent of the individual, in writing, before the police can release the criminal record information to the third party.

## CONTACT NUMBERS FOR FURTHER INFORMATION

Clemency and Pardons Division:  
National Parole Board  
340 Laurier Avenue West  
Ottawa, Ontario K1A 0R1  
Phone: 1-800-874-2652

### **Canadian Criminal Record Information Services:**

RCMP Headquarters  
1200 Vanier Parkway  
Ottawa, Ontario K1A 0R2  
Phone: (613) 998-6362

To obtain further information relating to criminal records or security checks, call your local police service or RCMP detachment.

#### *RCMP Purge Unit:*

Box 8885  
Ottawa, Ontario K1G 3M8

To have a discharge purged if it was received before July 24, 1992, submit request in writing.

### **Information Commissioner of Canada**

#### **Privacy Commissioner of Canada:**

112 Kent Street, 3<sup>rd</sup> Floor  
Ottawa, Ontario K1A 1H3  
Phone: 1-800-267-0441

### **Alberta's Office of the Information and Privacy Commissioner:**

To obtain information from a provincial department or agency, a request must be made to the individual department's *Freedom of Information and Privacy Coordinator*. The request must be made in writing and the department has 30 days to respond to the request.

### **Canadian Human Rights Commission:**

For inquiries relating to discrimination based on pardoned conviction.  
400-90 Sparks Street  
Ottawa, Ontario K1A 1E1

Phone: (613) 995-1151

**Consulate or Embassy Offices:**

To make inquiries about travelling to foreign countries (including the United States), check the local telephone directory (yellow pages) under consulates.

**To obtain a travel waiver for the U.S.:**

Calgary International Airport

Phone: (403) 221-1730

Edmonton International Airport

Phone: (780) 890-8439

**John Howard Societies in Alberta:**

Calgary John Howard Society

917 - 9 Avenue SE

Calgary, Alberta T2G 0S5

Phone: (403) 266-4566

Edmonton John Howard Society

#301, 10526 Jasper Avenue

Edmonton, Alberta T5J 1Z7

Phone: (780) 428-7590

Grande Prairie John Howard Society

9909-112 Avenue

Grande Prairie, Alberta T8V 1V5

Phone: (780) 532-0373

Lethbridge John Howard Society

#7, 909-3 Avenue North

Lethbridge, Alberta T1J 4K3

Phone: (403) 327-8202

Medicine Hat John Howard Society

#208, 535-3 Avenue SE

Medicine Hat, Alberta T1A 0H2

Phone: (403) 526-5916

Red Deer John Howard Society

5018-50 Street

Red Deer, Alberta T4N 1Y3

Phone: (403) 343-1770

John Howard Society of Alberta

2<sup>nd</sup> Floor, 10523 - 100 Avenue

Edmonton, AB T5J 0A8

Phone: (780) 423-4878

Fax: (780) 425-0008

Email: [info@johnhoward.ab.ca](mailto:info@johnhoward.ab.ca)

## REFERENCES

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2. Privacy Act, R.S.C. 1985, c. P-21
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4. Young Offenders Act, R.S.C. 1985, c. Y-1