

WHAT IS A CRIMINAL RECORD?

IT SEEMS LIKE A BASIC QUESTION: What is a criminal record? Unfortunately, Canadian law and police policies do not offer a simple answer. We have outlined three basic categories of police records below. Information from all of these categories can be disclosed on a police record check – what exactly will be disclosed depends on the police service’s policies and the level of record check an individual requests. People who have never been convicted or found guilty of a crime, therefore, can have a “record” that will be disclosed on a police record check.

Please note that this information applies to adult records only – if you think you may have a youth record, you should look for specific information guides on youth records.

Criminal conviction	Non-conviction: Finding of guilt	Non-conviction: No finding of guilt
<ul style="list-style-type: none"> • Custodial sentence • Intermittent sentence • Suspended sentence • Conditional sentence • Fine or forfeiture 	<ul style="list-style-type: none"> • Absolute discharge • Conditional discharge 	<ul style="list-style-type: none"> • Police contact and surveillance • Mental health apprehension • Charges withdrawn • Charges withdrawn – “alternative measures” or diversion • Acquittal at trial • Stay of proceedings

Criminal convictions

A person who is found guilty of a criminal offence can receive either a criminal conviction or a discharge. A person will have a criminal conviction if they are sentenced to:

- a term of imprisonment (continuous or intermittent),
- a fine or forfeiture,
- a conditional sentence (where the sentence is to be served in the community), or
- a suspended sentence with probation (rehabilitative supervision in the community through probation).

A criminal conviction will remain on an individual’s record until the person applies for and receives a record suspension (formerly called a pardon) under the *Criminal Records Act*. As affirmed by the Supreme Court, “[t]he primary aim of a pardon, granted under the *Criminal Records Act (CRA)* is the removal, as completely as possible, of the negative consequences of conviction once the offender has fulfilled the sentence and enough time has elapsed to establish, with some degree of certainty, law abiding behaviour.” Not all criminal convictions are eligible for a record suspension.

Absolute and conditional discharges

A person who pleads or is found guilty of a criminal offence may also receive an absolute or conditional discharge. These are findings of guilt, but they are explicitly *not* criminal convictions.

You cannot receive a record suspension (pardon) for a discharge. The *Criminal Records Act* requires that these records be automatically sealed and removed from RCMP databases after one year for an absolute discharge and three years for a conditional discharge.

Individuals who are discharged are frequently told that they will not have a criminal record of convictions. While this is technically correct, it is misleading: the fact that a person received a discharge is widely disclosed on a basic “criminal record check,” at least within the one- and three-year retention time frames.

Other non-conviction records

There are a large number of court and police records that may be generated in connection with policing duties or criminal court proceedings. Police records can include details of alleged incidents where no charges were laid, apprehensions under provincial mental health legislation, withdrawn charges (via diversion, Crown assessment of no reasonable prospect of conviction, or as not in the public interest), stays of proceedings and acquittals. Although these records are not based on any finding of guilt, much less a criminal conviction, they frequently appear on police record checks. All of the following interactions can result in the creation of a non-conviction record:

Police contact and surveillance

People can come into contact with the police as victims, persons with mental health needs, witnesses, “persons of interest” or the targets of investigations into crimes alleged by others. In some jurisdictions it is common to disclose records of incidents where people were accused or suspected of a crime, even if no charges were ever laid. It can also be common practice to disclose 911 calls that involved suicide attempts or other mental health incidents.

Mental health apprehension

The police will generally have powers to detain people under provincial mental health legislation. This will often result in the person being transferred to a hospital.

Charges withdrawn

The Crown Attorney may decide to withdraw a person’s charges before a trial. This can happen when there is no reasonable prospect of conviction or if pursuing the charges is not in the public interest.

Other non-conviction records (cont'd)

Charges withdrawn – “alternative measures” or diversion

For certain charges usually involving minor and/or first-time offences, the Crown Attorney may agree to “drop” or withdraw charges if a person completes “diversion.” Diversion can include making a charitable donation, performing community service or entering into and completing a specific program.

Acquittal at trial

If the matter was taken to trial (usually six months to a year after arrest), and the person is found not guilty by a judge or jury, then they have been “acquitted” of the charges laid against them.

Stay of proceedings

This is a stoppage of the case against an accused without a determination of the merits of the case or without a finding of guilty or not guilty. A stay can be granted because of some form of procedural unfairness, such as a violation of certain *Charter* rights, to the accused person.

Some police services differentiate between non-conviction records created after someone was charged (sometimes referred to as non-conviction dispositions) and records that were created without a charge ever being laid (sometimes referred to as police contact records).

About this document

This document was produced by the Canadian Civil Liberties Association in May 2014. The research that informed this document was supported by a grant from the Office of the Privacy Commissioner of Canada. Please note that this is legal information, not legal advice. If you need advice about your individual circumstances, please consult with a lawyer. For more information about the Canadian Civil Liberties and our work on police record checks please visit www.ccla.org.