

YOUTH RECORDS

- WHAT ARE THEY
- WHO CAN GET THEM
- FOR HOW LONG

PROHIBITION TO ACCESS

S. 118 YCJA

Except as authorized by the YCJA, no person shall be given access to a record and no information contained in it may be given to any person, where to do so would identify the young person to whom it relates as a young person dealt with under the YCJA

Offence

- Contravention of provisions re: access to youth records and subsequent disclosure of records is an offence: s. 138

Applies to what records?

Court and Review Board records

- information
- dockets
- PDR
- s. 34 reports (though special rules for this)

Applies to what records?

Police records

- local police records
- occurrence reports
- police notes

Applies to what records?

- RCMP records
 - CPIC basically (prints, photos youth court record)
 - Special Rules for who can get access and for how long found in s.120

Access to what records?

- Records of a person or organization that administers EJM or a youth sentence

Applies to what records?

- Government/Crown records
 - Government is allowed to keep records for purpose of investigating criminal offences, for use in court proceedings, administering a sentence or EJM and, for the purpose of determining the appropriateness of EJM

Adult Sentences

The YCJA record and disclosure provisions do **not** apply if an adult sentence has been imposed for the offence and the appeal periods have expired: s. 117

ACCESS CONSIDERATIONS

1. Who Can Access
 - proscribed persons only (see 119(1) and 125)
2. When Can the Information be Accessed
 - Access must be within the timelines set out in s.119(2) of the YCJA.

Who has access - s. 119(1)

- Young person
- Young person's counsel
- Attorney General
- Victim
- Parents

Who has access...

- Adult assisting the young person under s. 25(7) during offence proceeding or term of sentence
- Police officers for purpose of law enforcement or any purpose relating to the administration of the case, during proceedings or term of sentence
- Judge, court, review board
- Provincial director

Who has access...

- Person participating in conference or EJM
- Ombudsman, Privacy Commissioner, Coroner, or Child Advocate in course of duties
- Person acting under the *Firearms Act*
- Government employee:
 - Acting in exercise of duties under the Act
 - Supervising/caring for yp or investigating a provincial child welfare matter
 - Administering youth sentence where yp is in custody in adult facility

Who has access...

- Person carrying out criminal records check for purposes of employment/provision of services to municipal, provincial or federal government
- Employee or agent of federal gov't for purposes under *Statistics Act*
- Accused/counsel who swears affidavit that access is needed for full answer and defence
- Person designated by OIC (eg. Parental Responsibility Act; Information and Privacy Commissioner; Criminal Injuries Comp. Board)

Who has access...

- Person who makes an application to a **youth justice court judge** under section 119(1)(s) for access:
 - Must have valid interest in record
 - Must be desirable in the public interest for research or statistical purposes, or desirable in the interest of the proper administration of justice

Timelines for Access

S.119(2) sets out the access periods

- These access periods relate only to records where a charge has been laid – do not relate to EJM charges

S.128:

Prohibits use of record after time period expires (with exceptions); “seals” record

Timelines for Access...

EJS → 2 years after young person consents

Acquittal → 2 months after appeal period ends

Withdrawn/Judicial reprimand → 2 months

Stay → 1 year

Absolute discharge → 1 year

Conditional discharge → 3 years

Other sentence (summary) → 3 years after
sentence completed

Other sentence (indictable) → 5 years after
sentence completed

Exceptions to Timelines

Timelines in s.119(2) do not apply:

- To YP or YP's counsel
- Where a court order is issued under s.123 or s.126
- There is also no time limit for access to prohibition orders: s.119(3)

Exception to Timelines

If young person is over 18 and receives an adult conviction while the youth record is still accessible under s.119(2), the YCJA records provisions (Part 6) no longer apply to that record; **it is treated like an adult record**

Extrajudicial measures

Where YP involved in EJM – access to this only available to:

- Peace officer or Crown in order to decide whether to use EJM again
- Person participating in a conference in order to decide the appropriate EJM
- Peace officer, Crown or person participating in a conference for administration of the case
- Peace officer, for purpose of investigating an offence

Medical/Psych Reports

- Court may withhold all or part of a medical or psychological report (s. 34(9)) or pre-sentence report (s. 40(7))
- s.34 reports & DNA only released to YO, parent/assist, counsel, judge/review board, peace officer or accused for full answer & defence

Access To R.C.M.P. Records s. 120

Special access rules to R.C.M.P. records are set out in s. 120. Only the following persons may have access:

- Young person
- Young person's counsel or representative
- Employee or agent of government of Canada for statistical purposes
- Any person a youth justice court considers has a valid interest *if* it is desirable in the public interest or for research or statistical purposes
- AG or peace officer if YP has been charged with another offence for the purpose of investigation
- AG or peace officer to establish existence of an order, where a breach is alleged
- Any person for the purposes of the *Firearms Act*

Time Line:

- Indictable offence record kept in special repository for five additional years
- Murder/manslaughter record kept in special repository indefinitely

Disclosure of Information in a Record: s. 125

- The disclosure MUST be within the time limits set out in s. 119(2)
- Allowable purposes for disclosure are:
 - Police officer may disclose information in the conduct of an investigation of an offence, or to an insurance company investigating a claim

Disclosure of information in a record ...

- Co-Accused
- Extradition matters under Mutual Legal Assistance in Criminal Matters Act
- Provincial director or youth worker if necessary to prepare a report required by the YCJA
- **Information may be released by the provincial director, youth worker, Crown, police officer, or any other person engaged in the provision of services to a young person to schools/school boards in order to ensure compliance with an order, ensure safety of students/staff, or to facilitate the rehabilitation of the young person**

Youth Record and Travel

- US border has access to youth record during access phase
- US border does not follow the YCJA access rules