

CRIMINAL RECORDS

What is a criminal record?

Who has a criminal record?

How do you erase a criminal record?



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INFORMATION EMPOWERS

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Criminal Records and Criminal History



What is a criminal record?

A criminal record is a computerized file managed by the Royal Canadian Mounted Police (RCMP) that lists a person's criminal history.

A person's criminal record contains

- a list of all the person's criminal charges and sentences, and
- the person's identity information, such as fingerprints or DNA.

■ Important!

There might be other records of the criminal charges **in addition to a person's criminal record**.

The **police** keep information when they stop someone, such as details of the events and the person's photos and fingerprints.

Courts also keep information on people who go to court. The information is kept in a public court file (the "plumitif"). The court file lists the charges against the person and the sentences (punishments) received. Anyone has access to a person's court file online or at the courthouse.

Court decisions are also public and often accessible by Internet.



Who has a criminal record?

The RCMP usually keeps information as soon as a person is charged with a crime, even if the person is no longer in Canada.

For example, a person can be accused of theft, assault, murder, breaking a condition, drug trafficking, breaking and entering or threatening someone.

A person is found guilty

A person can **plead guilty or be found guilty** of a crime. The person then receives one or more sentences, for example, a fine, probation with conditions to follow or a prison term. The person will then have a criminal record.

A person who receives an **absolute or conditional discharge** also has a criminal record, but it is temporary. The RCMP automatically erases the information

- one year after an absolute discharge, or
- three years after the probation period ends in the case of a conditional discharge.

Important! The information is not automatically erased for people who were discharged before July 24, 1992.

What is a discharge?

A judge can decide not to give a person a sentence, even if the person pleaded guilty or was found guilty. Instead, the judge can give the person a discharge.

A conditional discharge is when the judge orders the person to follow specific conditions (e.g., not take drugs, not contact the victim). An absolute discharge is when the person doesn't have to follow any conditions.

What if a **person under 18 is found guilty of a crime**? Usually, a person under 18 doesn't get a criminal record. But the information could be kept at a police station. See page 8 to find out how to erase this information.

Careful! If the person is convicted of another crime after turning 18, information about previous crimes could be added to the person's criminal record.

The charges are withdrawn, or the person is found not guilty (acquitted)

Charges can be withdrawn at any time if there is not enough evidence or if the person promised to follow conditions for some time (often called a section 810 peace bond).

A person could also be acquitted after a trial. This means the person was found not guilty.

In both situations, the person should not have a criminal record. But information about the criminal charges might still be available in police stations, court files and RCMP files. See page 8 to learn how to erase this information.

A person gets a ticket

Disobeying a municipal bylaw or the Highway Safety Code is not a crime. For example, being in a park after closing hours or approaching drivers on the road are not crimes. So, the person won't have a criminal record but could get a ticket. Also, information about the offence could be available in police stations and some court files.



Impact of a criminal record and a criminal past

Work



A criminal record can have consequences for a person when it comes to work. But Quebec's *Charter of human rights and freedoms* forbids employers from discriminating against someone with a criminal history in these two situations:

1. Employers can't fire, refuse to hire or put at a disadvantage a person who got a criminal record suspension (pardon).
2. Employers can't fire, refuse to hire or put at a disadvantage a person found guilty of a crime that has no relationship with the job. For example, being convicted of spousal assault isn't necessarily related to work in a large store.

Can employers ask a person about their criminal history or ask for a certificate of good conduct?

Yes. Employers can ask people about their criminal history. It's best to answer honestly.

Employers can also ask their employees or potential employees to provide a certificate of good conduct. This is one way employers can find out if someone has a criminal history because usually a person with a criminal past won't be able to get the certificate.

But a person with a criminal history can get a certificate in these situations:

- The person got a criminal record suspension (pardon).
- Some time has passed since the person got an absolute or conditional discharge.

For jobs involving vulnerable people, seniors or children, employers can ask for more than a criminal record check. For example, they can get information about situations even though the person wasn't charged.

Can an employer do a criminal background check on a person without that person's permission?

Yes. Employers can check the public court file (the “plumitif”) without asking for the person’s permission. But employers need permission to access a person’s criminal record or police file.

Filing a complaint

People who have been discriminated against because of their criminal history can file a complaint with the Commission des droits de la personne et des droits de la jeunesse (Quebec’s human rights commission). The Commission makes sure everyone’s rights are respected and will investigate complaints.

People working for the same employer for over two years and who are fired because of their criminal history can also file a complaint with the Commission des normes, de l’équité, de la santé et de la sécurité au travail or CNESST (labour standards, pay equity and workplace health and safety board).

Housing



A landlord can refuse to rent an apartment to someone with a criminal record.

Landlords can check a person’s criminal history before renting an apartment. They can ask questions of potential tenants and check the public court file (the “plumitif”).

Immigration



Having a criminal history can prevent a person from obtaining citizenship or permanent resident status in Canada. In some situations, it can also prevent a person from sponsoring someone else.

Travel



Each country decides the rules for letting foreigners onto their territory. Some countries forbid entry to people with a criminal record. To find out about a country's rules, check the "Travel Advice and Advisories" page on the Government of Canada website. You can also contact the Canadian government office in the country you want to visit.

Travel to the United States

It can be especially difficult to enter the United States with a criminal record, even for a stopover at an airport. Getting a discharge (absolute or conditional) doesn't automatically let you enter the United States. Some time must pass before all records are erased (see page 2).



Erasing criminal records

Asking for a criminal record suspension (pardon)

After a while, it is possible to ask the Parole Board of Canada for a criminal record suspension. This used to be called a pardon.

Criminal records that are suspended are kept apart from other criminal records by the RCMP. The information in them is confidential and not accessible except in rare situations.

A criminal record suspension can reduce the impact of a criminal record on work and help in the process of immigrating to Canada. But it doesn't necessarily let you travel to other countries. Each country decides who it will let enter its territory.

Depending on the seriousness of the crime, a person must wait five or ten years before asking the Parole Board of Canada for a criminal record suspension. The waiting period starts when the sentence is completed, for example, at the end of a probation period or when a fine is fully paid.

The Parole Board of Canada doesn't have to grant all requests for record suspensions. It decides on the request based on various criteria.

- Cost : \$631 + fees to obtain necessary documents (in 2018)
- Time it takes: from six months to two years

Note: A person who is guilty of a sexual crime involving a child usually can't get a criminal record suspension. Nor can a person who received more than three prison sentences of two years or more.

Asking for a waiver

American authorities don't recognize criminal record suspensions (pardons) in Canada. Entry into the United States is not guaranteed.

But it's possible to ask for a waiver that allows entry to the United States even with a criminal record. A waiver can only be used for the United States.

- Cost : around \$750 + fees to obtain necessary documents (in 2018)
- Time it takes: almost a year.

Erasing information in court files and police files

Courts and the police keep information on people accused of crimes.

When a criminal record is suspended, the Parole Board of Canada tells the police and the courts. Usually, courts will immediately make the court files inaccessible to the public. This means the information about the crime should not appear in the public court file (the “plumitif”).

If the charges are withdrawn or the accused received a discharge or was found not guilty, it is possible to apply for “non-disclosure of information contained in computerized records in criminal matters” to remove the information from public court files. You can apply by filling out a form and submitting it to the court. The form is available at the office of the court or on the Justice Québec website. The form indicates when the request can be made.

Important! Court decisions are public and often accessible on the Internet. So, it’s possible that the information is publicly available even if the person has taken steps to erase it.

It’s also possible to ask the police station to destroy fingerprints and photos. The request must be made to every police force the person was in trouble with. The police then send the request to the RCMP.

Useful Resources

Learn more about criminal records

Éducaloi

www.educaloi.qc.ca/en

Learn about criminal record suspensions

Parole Board of Canada

www.canada.ca/en.html

Click on More services, choose Policing, justice and emergencies, then click on Parole, record suspension, expungement and clemency

1 800 874-2652 (toll-free)

To learn more about waivers for entering the United States, contact U.S. Customs and Border Protection: www.help.cbp.gov/

Get help with a criminal record suspension

Alter Justice

Alter Justice offers free support and information services on criminal records and other records of criminal charges. (Service in English may vary.)

www.alterjustice.org (French only)

418 522-4343

File a complaint for discrimination based on criminal history

Commission des droits de la personne et des droits de la jeunesse
(Quebec's human rights commission)

www.cdpdj.qc.ca/en/Pages/default.aspx

1 800 361-6477

**Commission des normes, de l'équité, de la santé et de la sécurité au travail or
CNESST** (labour standards, pay equity and workplace health and safety board)

www.cnesst.gouv.qc.ca (French with some information in English)

1 844 838-0808

À propos d'Éducaloi

Éducaloi informs Quebecers of their rights and responsibilities in everyday language. To learn more, see the "About" section of the website www.educaloi.qc.ca.

Important!

The information in this guide is not meant as legal advice. If you need advice on a specific situation, consult a legal professional.

The legal information in this guide is up to date to August 15, 2018.

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