

HOW TO READ A CRIMINAL RECORD

This tool is meant to assist employers in the interpretation of police record check results. It is an example only. **NOTE:** not all record checks will appear the same. Different police agencies may have different formats. The purpose is to illustrate key information you may see:

- A** Policing agency who performed the record check
- B** Date of the disposition and what that means
- C** Location of the offence if it is indicated
- D** Adult charge
- E** Youth Charge
- F** Disposition (Pending charge, Non-conviction, Conviction)

A **IMPORTANT!** Police records are maintained and stored in a variety of databases – and they do not all necessarily contain the same information.

NOTE: Sometimes, very old information can show up on a record check, and disclosure practices are up to each police force.

B The date of the disposition: the final outcome of an arrest or prosecution. In this example, the disposition, a sentence of probation, was made in June 1991. Since the disposition was 6 months probation (far right column), the individual's sentence ended in December.

CONSIDER: "how old is this person's record?"

C If you see a location here, this is likely the city where the disposition was made

This is the police service that laid the charge.

NOTE: some records may contain incorrect or non-conviction information. You can help the applicant by directing them to the police service that laid the charge to ask about **PURGE** of **SUPPRESSION**

D "SEC..." refers to the section of the *Criminal Code* (CC) under which the individual was charged. You can look up the offence definition in the Code.

ASSAULT (SEC 266 CC). One of the most common offences in Canada. See below PAGE 2 for key information.

! You might see jargon or abbreviations. This example means "Suspended Sentence" This and other abbreviations are explained on Page 2.

D **BREACH OF COURT ORDER (SEC 145 (2) CC).** One of the most common offences in Canada, and one of several types of "Administration of Justice" offences. These offences happen mostly when there is a violation of some "order" imposed for a previous offence. See PAGE 2 for key information.

E **BE AND THEFT (Youth Court).** All levels of record checks may reveal youth records (records for individuals aged 12-17). The *Youth Criminal Justice Act* sets out: (1) strict "periods of access" for disclosing various types of youth records; and (2) who can legally see the record. BE = Break and Enter

NOTE: Most employers, volunteer organizations are not authorized under the YCJA to see youth records. See HERE and HERE for more on youth records

OPEN CUSTODY. Not a jail, but a smaller facility, generally located in the community, where the youth lives under supervision.

F **OUTSTANDING CHARGE:** A person has been accused (charged), but the outcome in the case hasn't been reached (verdict and sentence)

CRIMINAL CONVICTIONS AND ABSOLUTE DISCHARGES AND RELATED INFORMATION

LOGO

NAME: JOHN DOE
DATE: MAY 23 2016

There are several types of checks, each with different information revealed. See HERE for a list

There will likely be a date stamp of when the check was processed

DATE AND PLACE OF DISPOSITION	CHARGE	DISPOSITION
1991 JUNE 25 BRAMPTON, ON	ASSAULT SEC 266 CC (PEEL REGIONAL PS XXX-XX)	SUSP SEN & PROBATION 6 MOS
2008 SEPT 08 WATERLOO, ON	BREACH OF COURT ORDER (WATERLOO REGION PS XXX-XX)	1 MOS CUSTODIAL SEN
2014 MAY 15 OSHAWA, ON	UNLAWFUL ASSEMBLY (DURHAM REGIONAL PS XXX-XX)	AWAITING DISPOSITION COURT DATE: 2014-06-20
2012 OCT 2 WINDSOR, ON	POSSESSION OF CONTROLLED SUBSTANCE (WINDSOR PS XXX-XX)	WITHDRAWN
1985 MAY 23 TORONTO, ON (Youth Court)	(1) BE & THEFT (2) MISCHIEF UNDER \$5000 (TORONTO POLICE SERVICES XXX-XX)	(1) 4 MOS OPEN CUSTODY & PROBATION 6 MOS (2) 4 MOS OPEN CUSTODY & PROBATION 3 MOS

RESTRICTED DISTRIBUTION

F **CONVICTION:** Different dispositions create different records. Fines, custodial sentence (jail/prison), a conditional sentence (jail sentence served in the community), intermittent sentence – these are sentences that result in **convictions**. These convictions would require a **Record Suspension (Pardon)** in order to keep them from being revealed on a record check.

The length. In the first row example, the sentence was "Probation 6 months." That means, 6 months after the date of the disposition in the far left column, the sentence is over (December 1991).

F **NON-CONVICTION:**

WITHDRAWN: A withdrawn, stayed, or acquitted entry means the person was not found guilty, nor convicted. They are legally innocent. These examples of Non-Conviction information should only show up on a vulnerable sector check.

NOTE: Non-conviction information is frequently equated with "guilt" which can result in discrimination and stigmatization.

DISCHARGE: A very common disposition. Person is found guilty, but no conviction. You might see **Absolute** or **Conditional** Discharge, which mean different things. See page 2.

NOTE: People who are discharged may believe they have no "record," even though this record can show up on basic record checks.

KEY TAKEAWAYS WHEN THINKING ABOUT A RECORD

1. Offences, and the circumstances around them, can vary dramatically
2. Judges can sentence people in a variety of ways, and many factors go into determining an appropriate sentence
3. Record checks reveal very little contextual information about the individual or the circumstances surrounding the offence
4. A record is a snapshot of a person's life, it does not tell the whole story. Learn more by talking to them, calling references
5. Consider important things like: AGE of record; TYPE of record (conviction/non-conviction); RELEVANCE of the record to position

Five types of offences make up nearly half of all criminal cases in Canada: (1) **Theft**; (2) **Impaired Driving**; (3) **Failure to Comply with Court Order**; (4) **Common Assault**; (5) **Breach of Probation**. Mischief is also very common. ***

From the Flow Chart **below**, you can get a sense of the types of dispositions, the terminology, and the frequency. Below is more information on types of dispositions.

THEFT. You may see two types of theft: theft under \$5000 and theft over \$5000. The \$ amount is the value of the property. A common example of Theft under \$5000 is shoplifting. The *Criminal Code* does not distinguish between a \$5 theft or a \$4999 theft, so it is important to talk to the individual about the offence.

COMMON ASSAULT. The definition in the *Criminal Code* is very broad: examples could be spitting, a punch, or even a threat. Because the definition is so broad, it is one of the most frequent charges by police – the range of incidents is very large. Do not assume that direct physical harm or a weapon was involved, as there are other specific assault offences that would appear on the check. You may want to follow-up with the applicant for more info.

FAILURE TO COMPLY WITH AN ORDER AND BREACH OF PROBATION are both **ADMINISTRATION OF JUSTICE (AOJ)** offences, and **VERY** common on record checks.

Say an individual is charged with assault and is sentenced to PROBATION. As part of probation, they are given a "condition" – perhaps an order saying they can't associate with a family member or friend, or someone with a criminal record. Just by being in the same house as that family member or friend puts the individual in breach, and they are brought back before the court for new sentencing. Research has demonstrated how restrictive, onerous, or intrusive conditions can set people up to fail.

- ❖ When someone is charged with an AOJ, they are likely to be found guilty and sent to jail
- ❖ Conditions can include curfews, abstain from drugs/alcohol

MISCHIEF. Mischief is a common offence that may relate to damage of someone else's property or interfering with someone else's use of property. Like theft, mischief can be over or under \$5000 depending on the value of the property/damages. The range of scenarios that could be mischief and the types of dispositions are broad, meaning you may want more information from the individual about the circumstances.

DISPOSITIONS and GUILT. Custodial sentence, conditional sentence, probation, conditional/absolute discharge, fine, suspended sentence: these are dispositions where there was a finding of guilt. **Note: far more people PLEAD guilty than are found guilty, and the reasons for a guilty plea can vary from case to case.**

NON-CONVICTION DISPOSITIONS

Thousands of people every year in Ontario receive a non-conviction disposition (withdrawn or stayed charges, acquittals). For minor or first-time offences, prosecutors may withdraw (or "drop") a charge before trial if the individual completes a diversion program. But that is still a record that can show up on a record check.

DISCHARGES are common, and generally given for non-violent offences, but courts look at many circumstances, and there are qualifying criteria in the *Criminal Code*. Discharges should only show on a record check for a specific amount of time, after which the record is supposed to be removed from police databases:

Absolute discharges = 1 year.

Conditional discharges = 3 years. The person is placed on probation, and if completed successfully, the record is removed.

On November 1, 2018, new law – the *Police Record Checks Reform Act* – will come into force in Ontario and standardize record check processes across all police services. This law is also aimed at limiting the very stigmatizing non-conviction information (withdraw, stayed, and acquitted) that can show up on a record check.

CONVICTION DISPOSITIONS

CUSTODIAL SENTENCE. This means a person is sentenced to jail/prison. As the Flow Chart **below** shows, only about 1/3 of people are actually sentenced to jail – the majority of sentences are served in the community. You may think that most people go to jail for violent crimes. In fact, most custodial sentences in Canada are for breach of probation and failure to comply with a court order. It's very rare for someone to spend the entire sentence in jail. Release, with conditions, happens usually at 2/3 of the sentence.

COMMUNITY SENTENCE. A sentence served in the community, usually under supervision of a probation officer. Examples include: conditional sentence, suspended sentence, probation. Judges may use these when they feel the individual is not a danger to community, though multiple criteria must be met. Mandatory conditions (ex. reporting requirements) are part of a community sentence, as are other conditions (ex. counselling, treatment).

PROBATION. Someone can end up on probation as part of a conditional discharge; a condition of a suspended sentence; a sentence on its own; or following a prison term of less than two years (Griffiths 2011). Probation orders can include conditions: curfews, reporting requirements, attend program, avoiding people, avoid drugs and alcohol, community work. If the person violates a probation order, they will be charged with a new crime (BREACH), brought back before court, and likely sent to jail.

SUSPENDED SENTENCE (Susp Sent). The judge puts off sentencing, and orders probation for the individual. If they do not obey terms of probation, they can be brought back to court and sentenced more harshly.

FINE. A fine can be its own sentence, or attached to a community sentence. A judge will look at the seriousness of the offence and ability to pay in determining a fine. If an ordered fine is not paid, the individual can be charged and sentenced.

ALL ADULT CRIMINAL COURT DECISIONS IN ONTARIO, (2015):

117,815

(Statistics Canada Tables 35-10-0030-01 and 35-10-0027-01)

GUILTY: 64,611 (55%)

NOT GUILTY: 53,204 (45%)

SENTENCED

STAYED/WITHDRAWN:
51,155 (43%)

ACQUITTED: 992 (~1%)

OTHER*: 1,057 (~1%)

PROBATION:
36,554 (57%)

CUSTODY:
22,511 (35%)

FINE:
20,319 (31%)

CONDITIONAL
SENTENCE:
2,685 (4%)

OTHER**:
63,660 (99%)

* Other decisions include decisions of Not Criminally Responsible, special pleas, unfit to stand trial.

** Other types of sentences could include absolute and conditional discharges, suspended sentences, community service orders, prohibition orders. Sentenced outcome percentages do not add up to 100% because an individual can receive more than one type of sentence.

*** Adult Criminal Court Statistics in Canada 2014/2015, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14699-eng.htm>