



**Government of
Saskatchewan**

**Guidelines for Information Sharing
related to the
*Youth Criminal Justice Act (2003)***

**For School Division and
Young Offender Programs Personnel**

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Prepared by the Ministries of Education and
Corrections, Public Safety and Policing

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The contents of this document will be reviewed periodically and updated every two years to ensure that the content is current and accurate. Comments and suggestions for revisions can be forwarded to Joyce.Furman@gov.sk.ca (Ministry of Corrections, Public Safety and Policing) or Janice.Stocks@gov.sk.ca (Ministry of Education).

This document can be found on the websites of:
The Ministry of Education
The Ministry of Corrections, Public Safety and Policing
The Ministry of Justice and Attorney General

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PURPOSE

The *Youth Criminal Justice Act* (YCJA) is a federal law that contains specific requirements pertaining to the collection, publication, access, and destruction of information pertaining to young persons who are involved with extrajudicial sanctions, have been charged with an offence or have been found guilty of an offence under the Act. These guidelines are designed for individuals who are involved in the rehabilitation and reintegration of young persons who are in conflict with the law:

- **school division personnel**, including superintendents, coordinators, educational consultants, counsellors and school principals (or their designates); and,
- **young offender programs personnel**, including community/facility youth workers.

These guidelines are intended to promote effective and appropriate information sharing so that school division and young offender programs personnel working with young persons have the information they require to:

- understand the legal requirements that must be met to protect a young person's privacy;
- share information in an appropriate manner; and,
- support collaboration in rehabilitating and reintegrating young persons into the community.

- For the purposes of this document, “young person” is used to reference a “young person in conflict with the law.”
- School divisions have the authority to determine the school or program the young person will attend.
- Although in many cases school division directors of education may delegate responsibility regarding sharing of information to superintendents, superintendents may also designate specific individuals within the school division, such as coordinators or principals. For the purposes of this document, the school division personnel will be referred to as “the superintendent or designate.”
- Definitions of other terms used in this document can be found in **Appendix 1** on page 13.

BACKGROUND

The goals of the YCJA are to protect society and to manage and reduce the risk of offending for young persons ages 12 to 17 years¹. Communication among school division and young offender programs personnel requires a collaborative, coordinated approach. When planning for a young person's return to school, the emphasis should be on the young person's strengths and areas where support may be needed in the new school environment.

The principles of the YCJA indicate a commitment to:

- prevent crime by addressing the circumstances underlying offending behaviour;
- rehabilitate and reintegrate young persons into society;
- ensure that young persons are subject to meaningful consequences for their offences; and,
- protect public safety.

The YCJA protects the privacy of a young person's personal information.

Unauthorized disclosure of a young person's personal information can have serious consequences, including potential criminal charges, for the person who discloses the information. However, the sharing of information among school division and young offender programs personnel who provide services to young persons **is permitted under Section 125 (5) and (6) of the YCJA for the following reasons:**

- to ensure that educational, rehabilitative and reintegrative supports are in place;
- to satisfy safety concerns regarding the young person, victim and witnesses, as well as other children, youth and adults, including school staff;
- to ensure compliance with court orders; and,
- to obtain information for the preparation of reports.

School divisions have the authority to determine the school or program the young person will attend and to designate the school division personnel with whom the information can be shared. For the purposes of this document, school division personnel will be referred to as "the superintendent or designate."

Although there may be many processes in the transition of young persons from custody to school, the preferred model includes:

- pre-planning for reintegration;
- planning for admission to school; and,
- planning for monitoring the success of the plan.

¹ A young person who has not had his/her 18th birthday. Individuals 18 and older who are charged with an offence committed prior to their 18th birthday can be sentenced and supervised as a young person under the YCJA.

LEGISLATIVE CONTEXT

Guidelines for information sharing within this document are subject to the following legislation:

- the YCJA;
- *The Freedom of Information and Protection of Privacy Act (FOIPA); and*
- *The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIPA).*

Each of these is discussed in detail in the following sections.

Youth Criminal Justice Act

The YCJA broadly defines the processes that federal and provincial criminal justice systems (and others) use to respond to young persons in conflict with the law. Under the YCJA, a young person's record and identity are kept confidential. This safeguard is intended to limit the prejudicial impact for a young person of being labeled as an "offender" and, therefore, improve the likelihood of the young person's rehabilitation and reintegration.

The YCJA identifies the individuals who may receive disclosure of a young person's information and specifies the circumstances in which it may be disclosed. On a case by case basis, information that is shared *may not necessarily* include the release of all of the young person's information. Youth workers are responsible for maintaining a balance between providing information and respecting a young person's statutory right to privacy, assessing each circumstance on a case-by-case basis.

The YCJA has a number of sentencing options that a judge can use, as well as mandatory and optional court-ordered conditions. These conditions or sentences can include, among others:

- curfew;
- addictions assessment and treatment;
- school attendance;
- abstaining from the use of intoxicants; and,
- restitution or community service orders.

The YCJA also has provisions respecting the use of Extrajudicial Sanctions (EJS) for dealing with the young person's offences outside the justice system. Part of the resolution can include completing the terms and conditions of an agreement requiring a young person to attend school, employment, treatment and/or other programs for a specified length of time. Persons responsible for EJS can include a youth worker, contracted service provider, or representative from a community-based organization.

The YCJA's specific requirements pertaining to the collection, use, publication, access and destruction of information regarding young persons are contained in **Appendix 2** on page 15.

The Freedom of Information and Protection of Privacy Act

FOIPA is a provincial law regarding the right of access to Government of Saskatchewan documents and a right of privacy with respect to the use or disclosure of personal information held by the Government of Saskatchewan. Section 28 of FOIPA provides acceptable purposes for a government institution to use personal information and section 29 establishes the rules for disclosure. For example, personal information may be used or disclosed:

- for the purpose for which the information was obtained or compiled by the government institution; or,
- with consent of the individual.

For additional information about these sections, select the link to FOIPA in the **Additional Resources** section on page 12.

The Local Authority Freedom of Information and Protection of Privacy Act

LA FOIPA is a provincial law regarding the right of access to documents and personal information of local authorities, such as boards of education, and the right of privacy with respect to personal information held by local authorities. The relevant provisions of LA FOIPA are similar to those of FOIPA.

LA FOIPA applies to all documents collected, compiled, used and released by local authorities. Boards of education must have meticulous and transparent policies and/or procedures governing access to these records. In addition, the YCJA requires that the records regarding young persons involved with the justice system must be stored separately from other records in a secure location and kept for only certain periods of time. **Appendix 3** on page 16 provides an overview of how the YCJA impacts schools.

ISSUES AND QUESTIONS

Why should school division and young offender programs personnel share information?

Under the YCJA, there are a number of circumstances² when schools may be asked for information **to assist in the management of a young person's case**, including:

- preparing court reports;
- participating in case conferences;
- developing case and community safety plans in cooperation with other service providers and professionals to assist in the supervision and rehabilitation of the young person; and,
- addressing safety concerns.

Information is required from school division and young offender programs personnel in order **to assist the court in making decisions**. These decisions may include:

- whether to deal with a case through extrajudicial means (alternative measures);
- judicial interim release (bail);
- the type of sentence; or,
- the conditions to be included in the court order.

Disclosure of information may be necessary **to ensure compliance by a young person** who has received a court order (e.g., a probation order) that may contain conditions such as:

- attending school;
- obtaining or continuing employment;
- participating in a program for employment or education/training;
- attending mental health treatment services; and/or,
- imposing non-association conditions, which means that the youth is not allowed to have contact with a certain person or group of persons.

Under the YCJA, information about a young person can be disclosed to a third party only for specific purposes that include:

- assisting a community youth worker or his/her supervisor to prepare a report for the court;
- facilitating the young person's rehabilitation and reintegration;
- ensuring compliance with a court order; and/or,
- ensuring the safety of students, staff and other persons, including victims and witnesses.

² The table on pages 6 and 7 lists the type of information that can be shared.

Within the context of this document, what is disclosure?

Disclosure is defined in Section 2(1) of the YCJA as “the communication of information other than by way of publication.”³ Disclosure is intended to ensure that the young person abides by a court order and is rehabilitated by appropriate programming and services, and that the safety of staff, students and others is protected.

To whom may information be disclosed?

If disclosure is necessary, the provincial director⁴, a youth worker, the Attorney General, a peace officer or any other person engaged in providing services to young persons may disclose information contained in a record (kept under the authority of sections 114 [police records], 115 [government records] and 116 [court records] of the YCJA) to any professional or other person engaged in the supervision or care of a young person. This includes a representative of any school board or school, or any other educational or training institution. A superintendent and/or principal may disclose information to other staff in the school when it is necessary to:

- ensure a young person abides by a court order;
- facilitate the young person’s rehabilitation and reintegration through an integration of services; or,
- ensure the safety of staff, students and others.

What type of information can be shared among school division and young offender programs personnel?

The following information can be shared among young offender programs and school division personnel. The information also may be shared with the young person and/or the young person’s caregiver.

Type of Information	Details
Demographic	<ul style="list-style-type: none">• young person’s name, age and address• young person’s family• contact information
Legal	<ul style="list-style-type: none">• nature of the offence (for example, property or violence)• nature of the report required by youth court and specific description of the reason for the request for information• timelines regarding when the information is required• history of the young person’s offences and measures taken related

³ Publication is defined as the communication of information by making information known or accessible to the general public through any means, including print, radio or television broadcast, telecommunication or electronic means.

⁴In Saskatchewan, this function has been delegated to the Executive Director of Young Offender Programs, Ministry of Corrections, Public Safety and Policing.

Type of Information	Details
	to the young person <ul style="list-style-type: none"> • type of order and conditions with which the young person is expected to comply, including the particular terms of the order that relate to school attendance or any other matter such as non-association with another student • expected expiry date of the order • safety concerns regarding staff, students or other persons
Program	<ul style="list-style-type: none"> • environment to which the young person is returning, including the school • interview information • recommendations from the community youth worker • student attendance • student program of courses at school
Response to Services	<ul style="list-style-type: none"> • young person's performance and behaviour in activities, such as school or employment • nature of any incidents giving rise to imposed discipline • period to which the information relates • planning and interventions that have been put in place • indication of the need for special supervision • information about the personality, character, maturity level, behaviour and attitude of the young person • information about the young person's willingness to make amends and/or participate in rehabilitative programming
Other	<ul style="list-style-type: none"> • any other information that is relevant to the case planning

Information is shared through a process of case management and Personal Program Planning and must be in accordance with the provisions of the YCJA.

What are some examples of the kind of information that cannot be shared by youth workers?

Information is shared on a need to know basis and is shared within the reasons that the YCJA permits (see page 5). Examples of information that would not be shared include *full details* of offences like auto theft, break and enter, drug trafficking and sexual assault. Information about a young person's history of offending cannot be shared if the access period has expired. See **Appendix 3** on page 16.

How can information be shared?

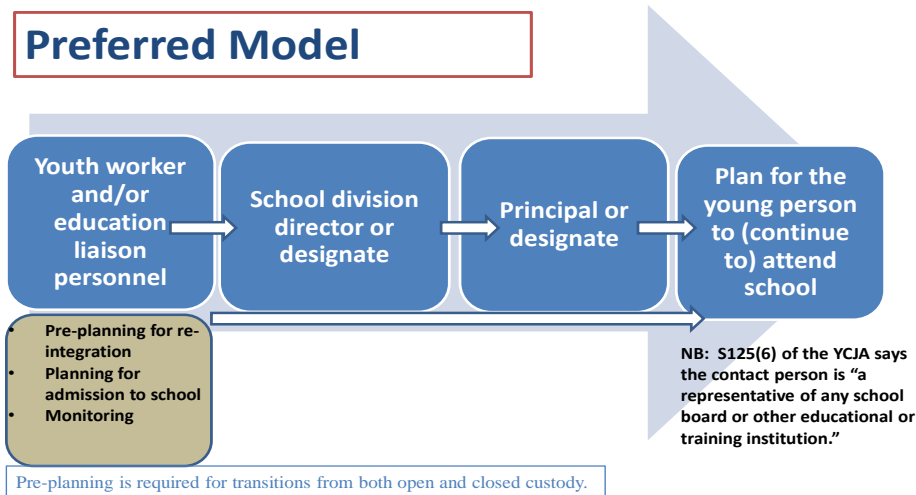
Because the YCJA does not specify how information should be shared, it can be shared verbally or in writing. For example, portions of the community safety plan (court-ordered conditions, programming plans, safety agreement) may be shared during a telephone call or meeting, or in writing, if the young person is expected to attend school and schools have a role in supporting this.

Who should a youth worker contact to begin planning for the reintegration of a young person?

The director of education for each school division is responsible for delegating the responsibility for a young person's return to school. Therefore, the first point of contact should be the director of education or designate.

For a young person returning from custody, the youth worker will work in collaboration with education liaison personnel within the school division to facilitate the young person's reintegration into school.

In Transition From Custody to School



This model is preferred because it ensures appropriate planning and alignment of resources.

What should a superintendent (or designate) do if she/he has evidence that a student is not complying with the requirements of a court order?

As one of the reasons for sharing information is to *ensure* compliance by the young person with an order of the youth justice court, the information must be reported immediately to the youth worker. However, it would also be in the best interests of the young person and the school if information regarding the young person's successes and areas for support are also regularly shared by both the youth worker and the school division personnel.

Should parents/guardians be informed when a young person's information is shared with another agency?

Parents or guardians do not need to be informed when school division personnel or other service professionals share information with another agency. Sharing of information regarding a young person's involvement with the justice system is permitted under the YCJA for the reasons outlined in **Appendix 2** on page 15.

Will youth workers share information to ensure that safety concerns are addressed?

Youth workers will share information with school division/school personnel in order to ensure the safety of staff, students or other persons. For example, if a young person has assaulted or threatened another student at the school and a condition of his/her bail or sentence is that he/she is not to have contact with that student, the youth worker will notify the school division/school personnel of the condition. The superintendent or superintendent's designate will then take the necessary steps to resolve the safety issue.

What does a rating of "high risk to re-offend" mean?

All young persons serving a supervised sentence will be assessed for their level of risk to re-offend generally (very low to very high). Where a young person is assessed as high to very high risk to re-offend, an intensive level of supervision, supports and services are put in place to address the risk factors in order to reduce their risk of re-offending (e.g., school attendance, addictions, peer associations, anti-social patterns of behaviour).

If a young person has committed violent offences, an assessment can be administered through the health region to determine the likelihood of future violent offending.

Are there penalties for not sharing information?

While there are no specific penalties for not sharing information, information must be shared where it is required to support the rehabilitation of the young person and to ensure the safety of the community.

Are there penalties for inappropriately sharing information?

Criminal charges can be laid for the unauthorized sharing of confidential information. An example of unauthorized sharing would be if a person with authority to have information about a young person shares the information with school personnel not associated with the student, and who play no part in the supervision or control of the student. If convicted, the person may face a sentence of up to two years incarceration.

What is the process in the event that there is inappropriate disclosure or use of young offender information?

Under these circumstances, the party responsible for the inappropriate disclosure or use of young offender information must inform the other party and the youth involved.

Who is responsible for maintaining YCJA files in the school division?

The school division superintendent with responsibility for the school the young person is attending has responsibility for maintaining the YCJA files under advisement of the school division's privacy officer.

How do the superintendent and principal manage information that is disclosed?

The superintendent and principal are required to ensure that information pertaining to a young person is managed properly, including:

- sharing information for only the reasons identified in the legislation (see page 2).
- storing YCJA information and records separately and securely from other school records; and,
- properly transferring or destroying the information at the end of the access period and/or managing the information according to legislated retention/destruction schedules. **Appendix 3** on page 16 has detailed information about periods of access.

How should information regarding a young person's involvement in the justice system be stored?

This information must be kept separately and securely from other records that relate to the young person (for instance, the Cumulative Record at the school level). Electronic files or young offender information must be password protected and care must be taken with sensitive information. No person other than the superintendent or designate can see and have a copy of the record, for the purposes of:

- ensuring compliance with a court order;
- ensuring safety of staff, students or other persons; and,
- facilitating the rehabilitation of the young person.

While the YCJA prescribes the separate storage of YCJA records, there is also an administrative advantage to keeping this information separate from other records because the information can be easily destroyed without having to sort through and purge the youth's other records.

In the event that electronic information is outsourced to an external information technology organization, the management of the electronic records must be in compliance with the YCJA, FOIPA, and LA FOIPA.

What should happen to the information when a young person transfers to a school within or outside the school division?

In the event of a young person's transfer to another school, the superintendent or principal should manage the transfer of information about the young person's involvement with the justice system, along with the young person's Cumulative Record, according to board policy.

If the information is no longer relevant, it should be destroyed according to applicable legislation (and/or as described below where no legal requirements exist). In both cases, the designated school division personnel should notify the youth worker of the transfer to ensure the youth worker is aware that the information has been destroyed.

When should YCJA information about the young person be destroyed?

The destruction of information about the young person must be in compliance with the YCJA. YCJA information that is held on a young person cannot be maintained beyond the period of time that the information is relevant (e.g., a youth's six-month probation order ends and young offender personnel are no longer providing supervision) or the access period (see **Appendix 3** on page 16), whichever is sooner.

YCJA information, including electronic data, must be destroyed at the earliest of:

- when the purpose for which the information was provided no longer exists; or,
- at the end of the applicable access period; or,
- according to legal requirements.

Information cannot be disclosed after the end of the applicable access period.

How should information be destroyed?

Information contained in a physical record should be destroyed by secure means, such as shredding or burning. In the case of information in an electronic format, the information should be deleted, written over or otherwise rendered inaccessible.

SUMMARY

Sharing of information among school division and young offender personnel is critical to providing effective services to young persons involved with the justice system. Information sharing allows for the coordination of case planning and the implementation of appropriate rehabilitative supports. There are mechanisms integrated within the legislation for sharing of information when it is appropriate and limitations to protect the young person's identity. Overall, the intent of information sharing is to provide optimal rehabilitation for the young person and safety for everyone.

ADDITIONAL RESOURCES

The Freedom of Information and Protection of Privacy Act (FOIP)

<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/F22-01.pdf>

The Local Authority Freedom of Information and Protection of Privacy Act (LA FOIP)

<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/L27-1.pdf>

The Saskatchewan Information and Privacy Commissioner

<http://www.oipc.sk.ca/default.htm>

The Saskatchewan School Boards Association

<http://www.saskschoolboards.ca/index.php>

Youth Criminal Justice Act

<http://www.justice.gc.ca/eng/pi/yj-jj/ycja-lsjpa/ycja-lsjpa.html>

The Canadian School Boards Association

<http://cdnsba.org/>

Appendix 1

GLOSSARY OF TERMS

TERM	DEFINITION
community youth worker	An employee of the Ministry of Corrections, Public Safety and Policing who supervises a young person on court orders where a young person has been ordered by the court to report.
conference	A meeting that may be convened by a youth court judge, the provincial director, a police officer, a justice of the peace, a prosecutor or a community youth worker for the purpose of case planning.
court report	A report that the youth court judge may order to assist in sentencing or imposing conditions.
designate	A person who can act in the capacity of the superintendent.
disclosure	<p>The communication of information other than by way of publication (i.e., the communication of information by making it known or accessible to the general public through any means, including print, radio or television broadcast, telecommunication or electronic means). Some examples are:</p> <ul style="list-style-type: none"> • A peace officer may disclose information in the conduct of the investigation of an offence. • A youth worker may disclose information contained in a record if the disclosure is necessary for accessing information that relates to the preparation of a report required by the YCJA. • The provincial director⁵, a youth worker, the Attorney General, a peace officer or any other person engaged in the provision of services to young persons may disclose to any professional or other person engaged in the supervision or care of a young person, including a representative of any school board or school or any other educational or training institution, information to either: <ul style="list-style-type: none"> ○ ensure compliance of a court order by the young person; ○ ensure the safety of staff, students or other persons; or, ○ facilitate the rehabilitation and reintegration of the young person.
Extra-Judicial Sanction (EJS)	EJS is a way of resolving an offence outside of the justice system through the young person's participation in mediation or family group conferencing that may result in an agreement to address a young person's needs.
facility youth worker	Supervises and provides case management to a young person in a youth custody facility.
justice officials	Police officers, judges, crown attorneys.
Level of Service Inventory (LSI)	A structured professional judgement assessment, the LSI is the most comprehensive and popular instrument for assessing

⁵ In Saskatchewan, this function has been delegated to the Executive Director of Young Offender Programs, Ministry of Corrections, Public Safety and Policing.

TERM	DEFINITION
	<p>offender risk anywhere in the world. It assesses risk based on a broad array of eight different categories:</p> <ul style="list-style-type: none"> • criminal history; • family; • education/employment; • leisure and recreational activities; • peer association; • pro-criminal attitude; • anti-social pattern; and, • substance use.
pre-sentence report	<p>A report provided by a youth worker for the court when the young person has already been found guilty of an offence. It contains information that will assist the court in making a decision on the type of sentence to impose on a young person.</p>
probation order	<p>A judge may make a probation order that includes court-ordered conditions a young person is to abide by in the community for the duration of the probation.</p>
need to know	<p>The sharing of information required by an individual or organization to fulfill their roles and responsibilities. An administrative action certifying that a given individual requires specified confidential information in order to perform his or her assigned duties.</p>
non-association	<p>A court order specifying non-contact with a certain person or group of persons.</p>
school division/school personnel	<p>Superintendent, principal, vice-principal, teacher and other staff in the school.</p>
young offender programs personnel	<p>Community youth worker, facility youth worker, Judicial Interim Release Program Worker (JIRP Worker), supervisor, regional director.</p>
young person in conflict with the law	<p>A young person who is 12 years of age or over, but less than 18 years of age, who is involved with extra-judicial sanctions, who has been charged with an offence or has been found guilty of an offence under the YCJA.</p> <p>Throughout the document, “young person” is used to reference a “young person in conflict with the law.”</p>

Appendix 2

YCJA PROVISIONS REGARDING THE SHARING OF INFORMATION

Section 125 (6) and (7)	
(1) A peace officer may disclose to any person any information in a record kept under section 114 (court records) or 115 (police records) that it is necessary to disclose in the conduct of the investigation of an offence.	
Schools and others	<p>(6) The provincial director, a youth worker, the Attorney General, a peace officer or any other person engaged in the provision of services to young persons may disclose to any professional or other person engaged in the supervision or care of a young person — including a representative of any school board or school or any other educational or training institution — any information contained in a record kept under sections 114 to 116 if the disclosure is necessary:</p> <ul style="list-style-type: none"> (a) to ensure compliance by the young person with an authorization under section 91 or an order of the youth justice court; (b) to ensure the safety of staff, students or other persons; or (c) to facilitate the rehabilitation of the young person.
Information to be kept separate	<p>(7) A person to whom information is disclosed under subsection (6) shall:</p> <ul style="list-style-type: none"> (a) keep the information separate from any other record of the young person to whom the information relates; (b) ensure that no other person has access to the information except if authorized under this Act, or if necessary for the purposes of subsection (6); and (c) destroy their copy of the record when the information is no longer required for the purpose for which it was disclosed.

Appendix 3

ACCESS PERIODS*

SANCTION	PERIOD ENDING
Extrajudicial sanction	Two years after the young person consents to be subject to the sanction
Young person is acquitted of the offence otherwise than by reason of a verdict of not criminally responsible on account of mental disorder	Two months after the expiry of the time allowed for the taking of an appeal or; if an appeal is taken, the period ending three months after all proceedings in respect of the appeal have been completed
Charge dismissed for any reason other than acquittal, the charge is withdrawn, or the young person is found guilty of the offence and a reprimand is given	Two months after the dismissal, withdrawal, or finding of guilt
Charge is stayed with no proceedings being taken against the young person for a period of one year	At the end of the one-year period
Guilty finding, sentence is absolute discharge	One year after the young person is found guilty
Guilty finding, sentence is conditional discharge	Three years after the young person is found guilty
Guilty finding for a summary conviction offence, other sentence such as probation or custody imposed	Three years after the youth sentence imposed in respect to the offence has been completed
Guilty finding for an indictable offence, other sentence such as probation or custody imposed	Five years after the youth sentence imposed in respect of the offence has been completed
Guilty of a subsequent summary conviction offence, while already found guilty and convicted of a summary conviction or indictable offence	The latest of the period calculated for the previous summary conviction or indictable offence; and, the period ending three years after the youth sentence has been completed
Guilty of a subsequent indictable offence, while already found guilty and convicted of a summary conviction or indictable offence	Five years after the sentence imposed has been completed

* Period of access is defined as the period of time during which a youth record can be given to those listed in the YCJA. Access to a young person's record begins once the young person is convicted. The period of time after which access is denied starts once a young person has successfully completed all portions of the sentence.

Appendix 4

OVERVIEW OF THE YOUTH JUSTICE SYSTEM

Source: Reproduced, in part, with permission from *The Need to Know*, Canadian School Boards Association, 2003

