Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

UNITED STATES CRIMINALITY ASSESSMENT GUIDE

IRCC NEW YORK

A-2021-20914-000001

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Table of Contents

Overview: USA Criminality Information 2
States Which Do Not Report to the FBI 3
U.S. Penal Codes (Links) 5
U.S. Expungement / Pardon Guidance 6
Effect of Expungement for Canada 7
California 8
Florida 9
Illinois 10
Michigan 10
Minnesota 11
New York 11
Ohio 12
Pennsylvania 12
Texas 13
Washington 13
Wisconsin 13
Presidential Pardon or Expungement 14
United Kingdom Rehabilitation of Offenders Act 15
Age of Consent 19
Canada's age of consent 19
Canada Close in age exceptions ("Romeo & Juliet" Law) 19
United States age of consent 19
United States Close in age exceptions ("Romeo & Juliet" Law) 20
Sex Offender Registry 21
Sex Offender Registration and Notification Act (SORNA) 21
Purposes of the Sex Offender Registration and Notification Act (SORNA) 21
Regulatory Measure or Punishment 21
Passports and International Megan's Law 22
Tips and Definitions for Pre-Assessors 23

A-2021-20914-000002

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Old Legislation - Driving Offences 27
Criminality Chart 31
Appendix 1: Rehab File Creation 36
Appendix 2: Rehab Assessment Procedures including Officer Assessment 43
Appendix 3: TRP Procedures 50
Appendix 4: Useful Queries 59
Appendix 5: Police certificate library 60

Overview: USA Criminality Information

How FBI Fingerprint Checks Work. The FBI maintains several databases of information associated with people's fingerprints. In 1999, the government opened access to authorized state agencies and channel partners for purposes (including employment screening) other than criminal justice investigations.

Fingerprint checks typically involve searches against state and Federal Department of Justice records. Fingerprints can be taken and submitted electronically (through LiveScan technology) where available. If LiveScan isn't available (or the scans weren't adequate), fingerprint cards (with prints taken at a local police department) can be mailed in.

https://www.fbi.gov/services/cjis/identity-history-summary-checks

Accuracy: Despite the FBI database's reputation as the "gold standard" for criminal background checks, a 2013 NELP study pointed out that 50% of the records in the FBI database are missing disposition information. That means a background check could return arrests for which a person was later cleared, or charges that were later reduced (from felony to misdemeanor, for example).

Although a 2015 study conducted by the Government Accountability Office (GAO) found that the completeness of FBI records had improved since 2006, gaps still exist. Only 20 states reported that more than 75% of the records they submit to the FBI included disposition information. Few people realize that the FBI database isn't a complete cache of all criminal records. For one thing, the FBI relies on states to submit their records and state repositories also lack disposition data. In addition, some states do not report information to the FBI, see next page for details on these states. Lag times on reporting range from 1 to 555 days. Therefore, the best source for complete records that include final dispositions is still the county courthouses where the information is recorded.

IRCC New York requests FBI and all state police certificates from states in which applicants have lived, for more than 6 months, since the age of 18. If state police certificates are not available, court transcripts are requested.

United States Criminality Evaluation Service (UCES)

A-2021-20914-000003

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

The US Criminality Evaluation Service (UCES) is a service provided by IRCC New York to assist all IRCC staff in the assessment of US criminality information. Since its inception in 2015 (and re-launch in 2017), IRCC New York has processed over 200 referrals in support of offices across the International Network, the Centralized Network and the Domestic Network of IRCC. This service achieves network-wide consistency in the evaluation of US based criminal records, thereby reducing processing times and improving client service while providing efficient use of departmental resources and expertise within the network. For more detailed information, please refer to INT-2017-075 US Criminality Evaluation Service.

States Which Do Not Report to the FBI

A few U.S. states do not report their data to the FBI. Although they do not share their records, these states will provide a state record in addition to disposition documents which allow for a more complete assessment.

These states are:

- District of Columbia
- Hawaii
- Kansas
- Louisiana
- New Jersey
- Puerto Rico
- Tennessee
- Vermont

A-2021-20914-000004

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

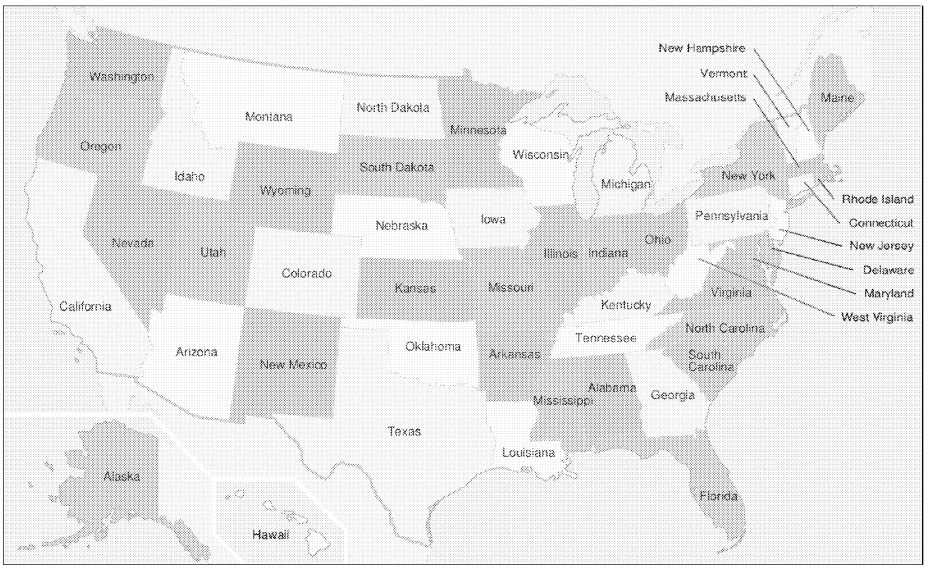
- Maine
- Virgin Islands.

Additionally, the state of Arizona does not provide a standard police certificate. However it does share records with the FBI. Should information be required regarding a charge or conviction in Arizona, applicants should be requested to provide all court disposition documents as well as evidence of completion of sentences imposed.

A-2021-20914-000005

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

U.S. Penal Codes (Links)



Alabama	Kentucky	North Dakota	**U.S. TERRITORIES**
Alaska	Louisiana	Ohio	American Samoa
Arizona	Maine	Oklahoma	Guam
Arkansas	Maryland	Oregon	Puerto Rico
California	Massachusetts	Pennsylvania	U.S Virgin Islands
Colorado	Michigan	Rhode Island	United States Code
Connecticut	Minnesota	South Carolina	
Delaware	Mississippi	South Dakota	
District of Columbia	Missouri	Tennessee	
Florida	Montana	Texas	
Georgia	Nebraska	Utah	
Hawaii	Nevada	Vermont	
Idaho	New Hampshire	Virginia	
Illinois	New Jersey	Washington	
Indiana	New Mexico	West Virginia	
Iowa	New York	Wisconsin	
Kansas	North Carolina	Wyoming	

A-2021-20914-000006

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

U.S. Expungement / Pardon Guidance

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

A-2021-20914-000007

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Effect of Expungement for Canada

In reviewing a rehabilitation application that includes an expungement or other permanent relief mechanism, it is recommended that a thorough review be conducted to determine whether the relief issued by the individual state equates to the conditions of a record suspension in Canada.

Canada (Minister of Citizenship and Immigration) v. Saini [2001] F.C.J. No. 1577 is the leading case in relation to the recognition of foreign pardons under Canadian law. In the Federal Court of Appeal's decision, a 3 pronged test was established to determine whether Canadian law will recognize a foreign pardon:

1. The foreign legal system as a whole must be similar to the Canadian one;
2. The content, aim and effect of the foreign law in question must be similar to Canadian law; and
3. No other valid reason exist that would compel Canadian authorities not to recognize the effect of the foreign law.

Foreign vs. Canadian Systems

With regards to the first part of the test, the United States has been found to possess legal traditions that reflect Canada's system. A previous legal opinion states that "there is a strong resemblance in the structure (separation of the executive, legislative, and judicial powers of state), history (found on democratic principles), philosophy (recognition of the rule of law and presumption of innocence) and operation (fair and independent judicial system) of the Canadian and US systems."

Content, Aim and Effect of the Foreign Law

In Canada, a record suspension is issued by The Parole Board of Canada (PBC). The aim of a Canadian Record Suspension is to eliminate the adverse effects and future disqualifications of a conviction for those who have demonstrated themselves to be rehabilitated.

Recognition of the Effect of the Foreign Law:

The third and final step is to determine whether there is some valid basis not to recognize the effect of the foreign pardon. As the Court explicitly recognized in Saini, the gravity of the offence can and should be considered when deciding whether or not to give effect to a foreign pardon. The application of the third branch of the Saini test therefore involves a measure of discretion in its application and requires an examination of the particular facts of each case. Therefore, provided that there is no reason not to recognize the foreign expungement in the circumstances, the expungement should be considered equivalent to a Canadian record suspension

A-2021-20914-000008

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

California

Overview

If you were convicted of an infraction, a misdemeanor, or a felony and were NOT sentenced to state prison or put under the authority of the Department of Corrections and Rehabilitation, you can petition for a dismissal. You are eligible to request a dismissal if you were given county jail time (including jail time for a felony offense), probation, a fine, or a combination of those three types of punishment rather than being sentenced to state prison. If you make a formal request to the court (petition) for a dismissal under section 1203.4 of the California Criminal Procedure, the court will make a decision on your request and may withdraw your guilty or no contest plea (or the guilty verdict if you went to trial) and enter a not guilty plea. Then the court will set aside and dismiss the charge. From that point forward, you are no longer considered to be "convicted" of the offense. Your record will be changed to show a dismissal rather than a conviction. After expunging your record, subject to certain exceptions, you can truthfully and legally answer "no" if you are asked by a prospective employer whether you have ever been convicted of a crime.

The first thing that someone who wants to apply for an expungement needs to understand is that if the petition is granted under section 1203.4, the case is not sealed, rather the conviction is set aside, the case is re-opened, and a new finding is entered. A criminal record is not actually "expunged" under this statute rather it is 'dismissed'. The conviction remains on your record for sex offender registration and immigration consequences. What the statute provides is, except as elsewhere stated, the defendant is 'released from all penalties and disabilities resulting from the offense'.

Based on legal reviews the effect of dismissal pursuant to section 1203.4 of the California Penal Code has been confirmed to be equivalent to a Canadian record suspension. As such an applicant who has been accorded relief under section 1203.4, would not be inadmissible as per subsections A36(1)(b) or A36(2)(b) of IRPA. Therefore, in the absence of any other criminality, the client in question is not criminally admissible. However, when faced with other cases involving a dismissal under section 1203.4, the assessing officer should look at the circumstances of the particular offence to determine whether any valid reason exists not to recognize its effect. It's very unlikely to come into play, particularly because this type of relief mechanism is generally reserved for less serious matters. It is advised that each case be examined on its individual facts and circumstances to ensure that the California disposition is not being applied in situations that would be adverse to the purpose and principles of pardon as applied in the Canadian context.

The legal opinion from the Canadian Department of Justice (DOJ) on "the test established by the Federal Court in Saini v. Canada (M.C.I.), [2002] 1 F.C. 200 (C.A.) to recognize various foreign relief methods - in short, the opinion concludes that the first two steps are met in that the California legal system is sufficiently similar to Canada's and that the aim, content and effect of subsection 1203.4 are similar to Canadian pardons. With that said, this opinion was rendered

A-2021-20914-000009

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

prior to the substantial changes to the Criminal Record Act (CRA) in 2012, one of which being the replacement of the term "pardon" to "record suspension". The amendment most relevant to the case at hand is the creation of a class of ineligible persons found in subsection 4(2) of the Act. This clause stipulates that individuals convicted of an offence contained in Schedule 1 are no longer eligible for record suspensions, namely all offences of a sexual nature committed against minors. This is particularly significant as it changes the "content" of a Canadian record suspension to include restrictions which did not exist before. It would be appropriate to use the third part of the Saini test to conclude that, as the individual possesses a record that would be excluded from relief in Canada, it would be contrary to the purposes and principles of a record suspension as applied in the Canadian context to recognize the foreign disposition."

Florida

Overview

Florida law, Section 943.053, Florida Statutes (F.S.), makes adult criminal history records public, with special provisions for access, unless the record has been sealed or expunged. The records may include arrests, charges and case dispositions. A **sealed record** is placed under highly restricted access. An **expunged record** is removed from record systems or files and destroyed (also called expunction). The law currently provides several means to seal or expunge certain categories of Florida criminal history records (both adult and juvenile).

When a criminal history record is sealed or expunged, the public will not have access to it. Certain governmental or related entities, primarily those listed in Section 943.059(4)(a), F.S, have access to the sealed record information in its entirety. Sections 943.0585 and 943.059, Florida Statutes (F.S.), set forth criteria that must be met in order to be eligible to have an adult or, if so desired, juvenile criminal history record sealed or expunged by a court.

In addition, these statutes require a person who wants to petition a court to seal or expunge his/her criminal history record in Florida, to first apply to the Florida Department of Law Enforcement (FDLE) for a Certificate of Eligibility. The issuance of a Certificate of Eligibility does not mean that your criminal history record is dismissed, rather it will be ordered sealed or expunged by the court. The granting of a petition for sealing or expungement filed by a statutorily-eligible petitioner is at the sole discretion of the court.

Adjudication Withheld: Previous legal opinion states that an 'adjudication withheld' is equivalent to a 'conditional discharge' in Canada which does NOT result in a conviction if the offender does not breach any conditions (see s. 730(1) of the C.C.C). Even with a breach of conditions, a formal conviction may not be entered as the presiding judge can allow the offender to continue on with their probation (s. 730(4) of the C.C.C) or make changes to the conditions (s. 732.2(3) of C.C.C). The same principle applies in Florida as Section 948.06(2) gives discretion to a judge to maintain a withheld adjudication following a subsequent offence. Regarding the definition set out in Section 921.0021(2), legal counsel is of the opinion that although Florida considers withheld adjudications to be convictions, the definition of conviction

A-2021-20914-000010

in Canada differs and does not encompass conditional discharges which is the Canadian equivalent.

Illinois

The Illinois Criminal Identification Act (20 ILCS 2630/0.01, et seq.) governs expungement and sealing of criminal records in Illinois. When you are arrested or charged with an offense, a criminal record is created, even if you are not found guilty. Your criminal records can be read by the public, including your family, friends, employers, trade organizations, banks, and credit agencies. To have your record erased or hidden you must file a Request with the court and have a judge approve your Request

Expungement: Erases arrests and court supervisions from your criminal record so it is like they never happened. Qualified Probations are only sealed by the State Police, but are erased by the arresting agency.

Sealing: Hides your criminal record from most of the public. Law enforcement agencies can still see sealed records. Employers required by law to conduct background checks can see sealed felony convictions. They cannot see sealed misdemeanor convictions or cases not resulting in convictions unless the employer is a law enforcement agency.

Executive Clemency: If you do not qualify for expungement or sealing, you can apply for a pardon from the Governor forgiving you for your criminal convictions. A pardon does not erase or hide your conviction on its own. If you get a pardon authorizing expungement, you can then apply to have your record expunged

Michigan

Overview

Setting aside a conviction is the process that clears a public criminal record. This is sometimes called an "expungement." In Michigan, there is one process to set aside a conviction on your adult record and a different process to set aside a juvenile conviction, called adjudication. There are many limits to setting aside a conviction, such as the number of convictions an individual has, the type of conviction, and the date of conviction. A judge will decide whether to set aside a conviction – it is not automatic.

Holmes Youthful Trainee Act (HYTA)

The Youthful Trainee Act (HYTA or YTA) is a special sentencing option available to defendants who commit crimes between the ages of 17 and 24. The age requirements are strict. If you commit a crime at 12:01 a.m. on your 24th birthday, you are not eligible. Not every offense is eligible for HYTA either. Youthful Trainee Status cannot be given for any offense that has a potential life sentence (murder, armed robbery), criminal sexual conduct, a major controlled

A-2021-20914-000011

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

substance offense (drug dealing or possession with intent to deliver), or a traffic offense (OWI, Reckless Driving). Also, if the offense occurs between the ages of 21 and 24 the prosecutor must agree to HYTA or else the judge has no authority to grant it. Upon successful completion of your sentence, you will not have a public record of the offense. You must plead guilty in order to get HYTA, meaning you cannot receive it by pleading no contest or by being found guilty at trial. You can receive it more than once, but be wary that many judges are reluctant to give it multiple times. HYTA allows you to have a non-public record of the offense meaning it will not show up as a conviction in any background check nor is the file accessible to the public in any courthouse. However, you can still be forced to register under the Sex Offender Registration Act (SORA) even though it flies directly in the face of the entire purpose of HYTA.

Minnesota

Overview

Expungement seals the record, which remains available for law enforcement purposes, for purposes of evaluating a candidate for a law enforcement position, or for purposes of background checks by the Department of Human Services. See § 609A.03 Subd. 7. In addition, "upon request by law enforcement, prosecution, or corrections authorities, an agency or jurisdiction subject to an expungement order shall inform the requester of the existence of a sealed record and of the right to obtain access to it as provided by this paragraph. For purposes of this section, a "'criminal justice agency' means courts or a government agency that performs the administration of criminal justice under statutory authority.

By statute, arrest records held by law enforcement must be returned to an arrested individual if proceedings are determined in the individual's favor before specified stages of the criminal justice process. Also by statute, criminal records held by any criminal justice agency will be sealed by court order—but not returned or destroyed—if an individual was (1) convicted in a type of case specified in the applicable statute, or (2) had proceedings resolved in specified ways that fall short of conviction.

Finally, the courts have held that they have the inherent power to require the sealing or destruction of judicial branch criminal records, and to a very limited degree, records held by other branches of state government.

New York

Overview

Unlike some other states, New York has no laws to erase or "expunge" criminal records. New York uses a process called sealing for some cases. Sealing means that the record still exists, but all related fingerprint and palm print cards, booking photos, and DNA samples may be returned to you or destroyed (except digital fingerprints are not destroyed if you already have fingerprints on file from a different unsealed case). Department of Criminal Justice System, Police, Prosecutor, and in some cases, court records, are hidden from the public.

A-2021-20914-000012

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Ohio

Overview

In Ohio, adult convictions cannot be expunged or completely erased from record. Instead of expunging Ohio laws allow a criminal record to be sealed. (Ohio Revised Code 2953.31-2953.62). When a record is sealed, the information (electronic and paper) is stored in a secure separate location. The criminal record still exists, but is available only by a limited poll of individuals.

In most cases, sealed records will not appear on background checks. Therefore, if a record is sealed, a person can honestly answer on applications for employment, licensing, and credit that the sealed record does not exist. It is our experience that applicants seeking entry either on a TRV or eTA application do not divulge a conviction for this reason.

Pennsylvania

Overview

Pennsylvania law provides three ways to clean up a criminal record: expungement, limited access order, and pardon.

Pennsylvania passed a new law, called the Clean State bill, which will further expand the options for sealing records, and includes automatic sealing of certain records. Most provisions of the bill will begin in June 2019.

If a court orders an expungement, all court and administrative criminal history record information related to the charge or conviction are destroyed. Expungement can be requested only for certain types of records:

- Non-conviction data (this includes charges and citations that result in a disposition of 'not guilty,' 'withdrawn,' 'dismissed,' 'dismissed-YOP/YES,' or 'nolle prosequi')
- Underage drinking convictions--at age 21 and upon completion of all court-ordered requirements, including the driver's license suspension
- Other summary offenses--after 5 years as long as the individual has been free from arrest or prosecution during that time

Accelerated Rehabilitative Program: The primary purpose of this program is the rehabilitation of the offender. These rules contemplate that ordinarily the defendants eligible for the ARD program are first offenders who lend themselves to treatment and rehabilitation rather than punishment and that the crime charged is relatively minor and does not involve a serious breach of the public trust. The program is intended to encourage offenders to make a fresh start after participation in a rehabilitative program and offers them the possibility of a clean record if they successfully complete the program. Because of the rehabilitative purpose of the program, and because the program permits prompt disposition of the charges, the descriptive title ‘‘accelerated rehabilitative disposition’’ was selected rather than such terms as ‘‘pre-

A-2021-20914-000013

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

indictment probation'' or ''deferred disposition. When the defendant shall have completed satisfactorily the program prescribed and complied with its conditions, the defendant may move the court for an order dismissing the charges. When the judge orders the dismissal of the charges against the defendant, the judge also shall order the expungement of the defendant's arrest record, resulting in no conviction.

Texas

Overview

Chapter 55 of the Texas Code of Criminal Procedure contains provisions for the expunction of arrest records, court records and criminal history record information. The statute specifically details the requirements and procedures to properly expunge records in Texas.
While most convictions cannot be removed from a person's record, Texas law does allow individuals to permanently remove information about an arrest, charge or conviction from their permanent records in certain circumstances. This is called an expunction. Once a person's record is expunged, all information is removed from the criminal record and that person can deny the incident ever occurred.

Washington

Overview

Sealing and Destroying

Criminal Cases: Under General Rule 15, sealing or redacting a court record may be ordered when a conviction has been vacated or when the court finds that compelling privacy or safety concerns outweigh the public interest in access to the record. **Current law does not allow for destroying the court record of a criminal action against an adult that results in a conviction or some adverse findings.**

Civil Cases: General Rule 15 allows for sealing or redacting of court records if the action is justified by compelling privacy or safety concerns that outweigh public interest in accessing the record. A party may request a hearing to destroy court records in a civil case only if there is express statutory authority to permit it.

An offender whose conviction has been vacated may state for all purposes that he or she has not been convicted of that crime. When a conviction is vacated, however, the court file is not destroyed and, unless it is sealed, the court file is still accessible to the public. The conviction may be used in a later criminal prosecution.

Wisconsin

Overview

A-2021-20914-000014

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

In Wisconsin, an individual can request expungement of a criminal record for minor crimes committed when the individual was under the age of 25. The individual must successfully complete the sentence, not carry a maximum period of imprisonment of six years or less and, if applicable, satisfy all conditions of probation.

If the sentencing judge determines that the young offender will benefit and society will not be harmed, Wis. Stat. section 973.015(1m) allows judges to order criminal record expungement for those who commit minor crimes while under the age of 25.

When a circuit court judge orders a case expunged, the public is no longer able to access the case through a Wisconsin Circuit Court Access (WCCA) website or in the clerk of circuit courts office.

An expungement decision must be made "at the time of sentencing." That is, the individual cannot come back later and show a judge that they turned their lives around or that they made a mistake as a young person but learned from it and are now responsible adults.

A court can only expunge the record if you were convicted of a criminal offense or adjudicated as a juvenile delinquent. If your case was dismissed, or if you were charged with a crime and found not guilty, you were not convicted.

Presidential Pardon or Expungement

Expungement is a judicial remedy that is rarely granted by the court and cannot be granted within the Department of Justice or by the President. Please also be aware that if you were to be granted a presidential pardon, the pardoned offense would not be removed from your criminal record. Instead, both the federal conviction as well as the pardon would both appear on your record. However, a pardon will facilitate removal of legal disabilities imposed because of the conviction and should lessen to some extent the stigma arising from the conviction.

Effect for Canada

For the purpose of determining admissibility to Canada under A36, a Presidential pardon has no effect, the charges and convictions on record are to be assessed and equated to offences under an Act of Parliament as per usual.

A-2021-20914-000015

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

United Kingdom Rehabilitation of Offenders Act

(Including British Overseas Territories of Bermuda and British Virgin Islands)

IRPA and the application of the UK Rehabilitation of Offenders Act 1974 (as amended) and the Bermuda Rehabilitation of Offenders Act 1977 (as amended) and the BVI Criminal Justice Alternative Sentencing Act 2005

Background

In 1974 the United Kingdom parliament enacted The Rehabilitation of Offenders Act (ROA), the purpose of which was to *"to rehabilitate offenders who have not been reconvicted of any serious offence for periods of years, [and] to penalize the unauthorized disclosure of their previous convictions"*. The Act has been amended on numerous occasions in subsequent years.

Bermuda's Rehabilitation of Offenders Act 1977 entitles individuals convicted of a criminal offence to be treated in a broadly similar manner to the UK Act and the legislation generally follows the intention and process of its UK counterpart. It was amended by the Criminal Code Amendment Act 2001.

Rehabilitation of offenders in the British Virgin Islands is provided for in the Criminal Justice Alternative Sentencing Act 2005.

This report examines these Acts as they apply to the rehabilitation of offenders for the purposes of inadmissibility to Canada under Immigration and Refugee Protection Act (IRPA).

The United Kingdom Rehabilitation of Offenders Act 1974[1]

In essence, the UK ROA provides that certain non-serious convictions are considered undisclosable from an individual's criminal record after the passage of stipulated rehabilitation time periods in order to prevent previous minor offences from adversely affecting that person's civic life in areas such as employment, finance, and civil legal proceedings. Absent any further serious convictions, and upon completion of the rehabilitation period a conviction is considered "spent", the effect of which is defined as *"for all purposes in law [that person shall be treated] as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction"*. The ROA does not apply to certain exempted professions and scenarios, such as the administration of justice, adoption, medicine, or employment involving contact with children and vulnerable people. The ROA also provides penalties for the unlawful access and disclosure of spent convictions by third parties.

[1] *Note: at the time of its enactment the ROA applied only to England & Wales, and Scotland. The provisions of the legislation were extended to Northern Ireland under The Rehabilitation of Offenders (NI) Order in 1978. In the intervening years, legislative authority has been largely transferred from Westminster to the devolved Northern Irish Assembly, Scottish Parliament, and Welsh Parliament. Variations to the ROA have been passed in those respective jurisdictions and Westminster including a reduction in rehabilitation time periods.*

A-2021-20914-000016

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

It should be noted that the UK ROA has been extensively revised and the current version runs to 50 pages. A "live" version of the Act can be accessed at: https://www.legislation.gov.uk/ukpga/1974/53. Up to date guidance on the Act can be accessed at: https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974 or see page 18 for a copy of the official UK government guidance.

Inadmissibility to Canada and the United Kingdom ROA

Two defining cases in the Canadian courts provide a roadmap to interpreting the relevance of the ROA when assessing inadmissibility to Canada:

The 1991 *Burgon* case at the Federal Court of Appeal in Canada [Burgon v. MEI, (1991) 122 N.R. 228 (FCA)], determined that the UK criminal convictions at issue ought generally to be assessed under the UK Powers of Criminal Courts Act 1973. The reasoning was based upon the similarities between the British and Canadian legal systems, and the judgement stated that there was *"no good reason for Canadian immigration law to thwart the goal of [the] British legislation"*.

Subsequently, the 2001 *Saini* case [Canada (M.C.I.) v. Saini [2002] 1 FCR 200] delivered a three-point test outlining the requirements to be satisfied for equating a foreign pardon to a record suspension in Canada. The *Saini* judgement determined that (1) the foreign legal system as a whole must be similar to that of Canada *(The systems must be "similar", not just "somewhat similar". The two systems need not be identical, but there must be a strong resemblance in the structure, history, philosophy and operation of the two systems before its law will be recognized in this context.)*; (2) the aim, content and effect of the specific foreign law must be similar to *corresponding* Canadian law *(The aims and rationale of the Canadian laws are to eliminate the potential future effects of convictions.)*; and (3) there must be no valid reason not to recognize the effect of the foreign law *(There will still be situations where Canadian immigration law must refuse to recognize the laws of close counterparts. There must be "some valid basis" or a "solid rationale" for not respecting the legislation of countries similar to ours. The seriousness of the offence can and should be considered under this third requirement.)*.

With regard to part 2 of the *Saini* test, it is submitted that whereas IRPA and the Canadian Criminal Records Act stipulate minimum eligibility periods of 5 years (IRPA; summary offences under CRA) and 10 years (indictable offences under CRA) any lesser eligibility periods under the provisions of UK legislation do not preclude an individual from being considered eligible for rehabilitation or record suspension because the second *Saini* test states the foreign legislation must be "similar" to corresponding Canadian law, and not exactly "replicate" corresponding Canadian law. Therefore, with certain exceptions[2], application of the legal reasoning adopted by the Canadian courts in these two cases implies that *any* beneficiary of the UK ROA may be considered not inadmissible for the purposes of IRPA.

[2] Part 3 of the *Saini test* allows discretion not to give effect to a foreign pardon: *"If there is any valid basis upon which to deny recognition to a foreign pardon, then a potential immigrant can and should still be considered "convicted"*.

A-2021-20914-000017

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

That the UK ROA is applicable when considering rehabilitation in Canada is reflected in Operational Guidance contained in ENF 14 / OP 19 Para. 27 which states that while "the effect of a foreign pardon does not necessarily render the person admissible to Canada, the following factors must be taken into account… The UK Rehabilitation of Offenders Act automatically pardons eligible individuals without the person having to apply [for rehabilitation in Canada]..."

The Bermuda Rehabilitation of Offenders Act 1977 as amended

Bermuda is a self-governing British Overseas Territory with a bicameral parliament, whose Head of State is the British monarch represented by a Governor. Bermudians are automatically entitled to full British citizenship and Westminster ultimately retains responsibility for Bermudian matters of foreign affairs. It is submitted that these integral associations with the United Kingdom deem the first test in *Saini* satisfied without need for further clarification.

Regarding the second *Saini* test, in view of the fact that the Bermuda ROA closely follows its UK predecessor in aim, content, and effect, and considering that the UK ROA has been considered above to satisfy the aforementioned requirements it is submitted that the Bermuda ROA similarly satisfies the test. Whilst the Bermuda ROA invokes a seven year eligibility period, it is again submitted that the intention of *Saini* is that the foreign law is similar to, but does not necessarily exactly replicate, corresponding Canadian law.

In comparison to the UK ROA, the Bermuda Act is very concise and may be summarized as follows:

- persons are entitled to rehabilitation and certain convictions treated as spent
- a period of seven years must have elapsed since last conviction or release from prison after serving a sentence imposed in respect of that conviction, whichever period last expires
- ROA does not apply to excluded sentences: death sentence (repealed 1999), life imprisonment, imprisonment exceeding three years, detention at Her Majesty's Pleasure

Although the Bermuda act does refer to subsequent offences or specifically named excluded offences, the effects and limitations of rehabilitation are essentially similar to the UK legislation. The Act also provides penalties for unauthorized disclosure of spent convictions.

Part 3 of the Saini test allows for assessment of whether there are any valid reasons not to recognize the effect of the foreign law. As with all foreign pardons, there may be cases in which an officer reviews elements of the foreign pardon further in this respect.

The British Virgin Islands (BVI)

The British Virgin Islands are a British Overseas Territory with a constitutional framework similar to that of Bermuda, governed by a 13 member legislative assembly. It is submitted that the same principles with regard to the *Saini* test apply to the BVI and are satisfied.

Rehabilitation of offenders in the BVI is provided for in the Criminal Justice Alternative Sentencing Act 2005, Section 50 of which states,

A-2021-20914-000018

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

"Subject to the provisions of this section, where a person has been convicted of or sentenced for an offence or offences of which he was convicted, if the relevant period in Schedule 4 applicable to the sentence has elapsed, the conviction of that person is spent and that person, in respect of such conviction, shall be treated for all purposes in law as a person who has not committed or been charged with or the subject of that conviction."

Schedule 4 states,

"1. If the sentence was one of more than six months but not more than thirty months imprisonment, detention in a youth custody or training centre the relevant period is seven years from the date of conviction; if the sentence was six months or less imprisonment, detention in a youth custody or training centre, or a fine the period is five years from the date of conviction; if the sentence was suspended, the period is the same as if it had been immediate.

2. If the offender was conditionally discharged, placed on probation, or made the subject of a care order, or an attendance centre order, the relevant period is two years from the date of conviction or that for which the order remains in force, whichever is longer."

UK Rehabilitation of Offenders guidar

A-2021-20914-000019

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Age of Consent

Canada's age of consent

From 1890 until recently, the age at which a youth could consent to non-exploitative sexual activity was 14 years. On May 2006 a change was made to the Criminal Code of Canada, the age of consent for non-exploitative sexual activity is now 16 years.

In some cases, the age of consent is higher (for example, when there is a relationship of trust, authority or dependency).

In other words, a person must be at least 16 years old to be able to legally agree to sexual activity unless an exception (as outlined below) applies.

Canada Close in age exceptions ("Romeo & Juliet" Law)

A 14 or 15 year old can consent to sexual activity as long as the partner is **less than five years older** and there is no relationship of trust, authority or dependency or any other exploitation of the young person. This means that if the partner is 5 years or older than the 14 or 15 year old, any sexual activity is a criminal offence.

There is also a "close in age" exception for 12 and 13 year olds. A 12 or 13 year old can consent to sexual activity with a partner as long as the partner is **less than two years older** and there is no relationship of trust, authority or dependency or any other exploitation of the young person. This means that if the partner is 2 years or older than the 12 or 13 year old, any sexual activity is a criminal offence.

United States age of consent

In the United States, age of consent law regarding sexual activity are at the state level. There are several statutes related to protecting minors from sexual predators, but laws regarding specific age requirements for sexual consent are left to individual states, territories, and the District of Columbia. Depending on the jurisdiction, legal age of consent ranges from 16 to 18 years old in some places, civil and criminal laws within the same state conflict with each other.

- Age of consent 16 : Alabama, Alaska, Arkansas, Connecticut, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Washington, West Virginia
- Age of consent 17: Colorado, Illinois, Louisiana, Missouri, New Mexico, New York, Texas, Wyoming.
- Age of consent 18: Arizona, California, Delaware, Florida, Idaho, North Dakota, Oregon, Tennessee, Texas, Utah, Virginia, Wisconsin.

A-2021-20914-000020

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

United States Close in age exceptions ("Romeo & Juliet" Law)

For the purposes of age of consent, the only provision applicable is 18 U.S. Code § 2243 refers to situations where such younger person is under the age of 16 years, has attained 12 years of age, and the older person is more than 4 years older than the 12-to-15-year-old. Persons under 12 are handled under 18 USC 2241c under aggravated sexual abuse. Therefore, the age is 12 years if one is within 4 years of the 12-to-15-year-old's age, 16 under all other circumstances. This most likely reflects congressional intent to not unduly interfere with a state's age-of-consent law, which would have been the case if the age was set to 18 under all circumstances. This law is also extra-territorial in nature to US Citizens and Residents who travel outside of the United States.

Most of these state laws refer to statutory rape using other names instead of "statutory rape" in particular such laws may refer to: "carnal knowledge of a minor," "child molestation," "corruption of a minor," "sexual misconduct," and/or "unlawful carnal knowledge". The laws of Georgia, Missouri, North Carolina, Mississippi, and Tennessee specifically refer to "statutory rape", with each state defining it differently. Nevada criminalizes "statutory sexual seduction", while Pennsylvania criminalizes "statutory sexual assault".

In most states there is not a single age in which a person may consent, but rather consent varies depending upon the minimum age of the younger party, the minimum age of the older party, and/or the differences in age. Some states have a single age of consent. 30 US states have age gap laws which make sexual activity legal if the ages of both participants are close to one another, and these laws are often referred to as "Romeo and Juliet laws". Other states have measures which reduce penalties if the two parties are close in age, and others provide an affirmative defense if the two parties are close in age. Even though state laws regarding the general age of consent and age gap laws differ, it is common for people in the United States to assume that sexual activity with someone under 18 is statutory rape.

A-2021-20914-000021

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Sex Offender Registry

Sex Offender Registration and Notification Act (SORNA)

Title 1 of the Adam Walsh Child Protection and Safety Act of 2006 established a comprehensive, national sex offender registration system called the Sex Offender Registration and Notification Act (SORNA). SORNA aims to close potential gaps and loopholes that existed under prior laws, and to strengthen the nationwide network of sex offender registrations.

Purposes of the Sex Offender Registration and Notification Act (SORNA)

Sex offender registration and notification programs are important for public safety purposes. Sex offender registration is a system for monitoring and tracking sex offenders following their release into the community. The registration provides important information about convicted sex offenders to local and federal authorities and the public, such as offender's name, current location and past offenses. Currently, the means of public notification includes sex offender websites in all states, the District of Columbia, and some territories. Some states involve other forms of notice. (For the list of State by State Sex Offender Registries, click here)

Regulatory Measure or Punishment

An interpretation of the rehabilitation eligibility provision which would lead to a conclusion that the person would never be eligible for rehabilitation because of a person's obligation to register as a sex offender for life in the US is unreasonable. An interpretation of the legal framework which renders it impossible for a person to ever qualify to apply for rehabilitation does not appear to be consistent with the underlying intention of the criminal rehabilitation provisions of IRPA/IRPR - noting that in Canada an individual continues to have an obligation to register as a sex offender notwithstanding that the individual has been granted a pardon

As a specific example, the requirement to register as a sex offender under The General Laws of Massachusetts, Chapter 6, Section 178D cannot be said to be "an imposed sentence" for the purposes of the rehabilitation provision of s.17(a) of the Immigration and Refugee Protection Regulations (IRPR).

Pursuant to the General Laws of Massachusetts, a judge taking a guilty plea or admission to sufficient facts to a sex offence must inform the defendant that he or she may be subject to the sex offender registration provisions of §§ 178C-178P. G.L. c. 6 ("registration law") and accordingly be required to register as a sex offender with the Sex Offender Registry Board. To the same effect, an individual convicted of a sexual offence in Canada may be ordered to

A-2021-20914-000022

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

comply with the Sex Offender Information Registration Act, S.C. 2004, c. 10 (SOIRA) pursuant to section 490.011(1) of the Criminal Code.

The SOIRA and the Massachusetts registration law have similar objectives. These pieces of legislation in both jurisdictions do not require registration as a form of punishment but rather enacted to protect the public and give quicker access to police services for investigative purposes. As stated in the emergency preamble to the statute's revision in 1999, the purpose of the sex offender registration law is to protect "the vulnerable members of our communities from sexual offenders." In particular, the Legislature stated that "the danger of recidivism posed by sex offenders, especially sexually violent offenders who commit predatory acts characterized by repetitive and compulsive behavior, to be grave and that the protection of the public from these sex offenders is of paramount interest". Similarly, section 2 of the SOIRA sets out that the purpose of the Act is to enhance public safety by assisting police in the investigation of crimes of a sexual nature.

Passports and International Megan's Law

The passport identifier provision of International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders (IML) (Public Law 114-119) went into effect on October 31, 2017.

The IML prohibits the Department of State from issuing a passport to a covered sex offender without a unique identifier, and it allows for the revocation of passports previously issued to these individuals that do not contain the identifier (22 USC 212b).

The identifier is a passport endorsement, currently printed inside the back cover of the passport book, which reads: "The bearer was convicted of a sex offense against a minor, and is a covered sex offender pursuant to 22 United States Code Section 212b(c)(l)." Since endorsements cannot be printed on passport cards, covered sex offenders cannot be issued passport cards.

Only the DHS/ICE Angel Watch Center (AWC) can certify an individual as a "covered sex offender." Therefore, any questions by the applicant about such status must be directed to and resolved by AWC.

Applicants who have questions for AWC regarding their status or believe they have been wrongly identified as a covered sex offender as defined in Title 22 United States Code 212b(c)(1) should contact AWC at DHSintermeganslaw@ice.dhs.gov.

A-2021-20914-000023

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

U.S. Criminal Disposition Terms

Nolo Contendre: *Conviction* (means "I do not wish to contend")

Nolle Prosequi: ***NO*** *Conviction* (means "Do not prosecute")

Imp Sen SS: *Conviction.*
Imp Sen SS = Suspended Sentence = Suspended Imposition of Sentence (SIS)
In this case the defendant is still *charged and convicted*. It just means the defendant's duty to start serving his sentence has been delayed pending good behavior during a probationary period. If the defendant has good behavior during the probationary period, the sentence will be thrown out. NOTE, however, that even though the sentence is thrown out, the *charge* AND the *finding or plea of* guilty will remain with the defendant and the defendant's public record.

Deferred Adjudication: *May not result in a conviction*
An 'adjudication withheld' is equivalent to a 'conditional discharge' in Canada which does NOT result in a conviction if the offender does not breach any conditions (see s. 730(1) of the C.C.C.). Even with a breach of conditions, a formal conviction may not be entered as the presiding judge can allow the offender to continue on with their probation (s.730(4) of the C.C.C) or make changes to the conditions (s.732.2(5)(e) of C.C.C).

Deferral of Sentence: *Conviction*.
Technically, US courts often treat a Deferred Sentence as one that does NOT result in a conviction (assuming good behavior during the probationary period) because they supposedly discard both the *guilty plea* and the *sentence*. Effectively, the charge is dismissed without a conviction being entered. However, section 15.2 of ENF2/OP18 manual explicitly treats even a deferred sentence similarly to a suspended sentence, and considers it is a conviction.

Expungements and Sealed Records
Many applicants aver this should NOT make them inadmissible because they have filed for and received a court order expunging or sealing their records. Notwithstanding, even if a conviction is "expunged" the applicant may still be inadmissible for the purpose of entry to Canada. When in doubt, conduct an examination of the effect of the expungement in the state from which it was issued issuance compare it to Canada *v*. Saini.

A-2021-20914-000024

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Helpful Distinctions

Driving without a License

- CCC 320.18(1) – Operating while prohibited

Motor Vehicle Theft

- CCC 333.1

Taking a Motor Vehicle or Vessel without Consent = Joyriding

- CCC 335(1)

Theft vs. Larceny vs. Burglary vs. Robbery

- **Theft** = **Larceny** – CCC 322(1)
- **Robbery** is theft but may also involve the use of force or the threat of force (thus a victim need be present and threatened)
- **Burglary** is entering a structure ***with the intent to commit a crime within***. It usually involves theft. Note that a victim may or not be present.

Trespassing

- Trespassing equates to an offence under provincial head of power. If there is damage to property, you may consider CCC 430 - mischief
- Trespassing at Night- CCC 177

Assault vs Battery

- **Assault** requires the application of force, it may also include uttering or conveying a threat
- **Battery** is actual harmful contact.

Thus:

- **Assault** – CCC 265
- **Battery** – CCC 268(1) (**Aggravated Assault**)
- **Assault with a Weapon or Causing Bodily Harm-** CCC 267

If the record is unclear whether the US charged offense of "Assault" is for actual contact with the victim or uttering a threat, default to Simple Assault (CCC 265(1))

Domestic Assault: Under US laws, this is often treated separately from normal assault or battery. Under the CCC, however, domestic assault is the same as assault or battery. It does not receive any special distinction.

A-2021-20914-000025

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Resisting Arrest

Normal Resisting Arrest / Obstructing a Peace Officer

- CCC 129(a)
- e.g. – Refusing to answer questions

Assaulting an Officer while Resisting Arrest

- CCC 270
- e.g – hitting an officer while resisting arrest

Flight from Peace Officer

- CCC 320.17
- CCC 320.19

NOTE: these are different from **Obstruction of Justice** (CCC 139): **Obstruction of Justice** usually refers to interfere with the normal course of justice ***in the judicial process***.

Ambiguous / Unknown Quantities of Drugs or $ Amounts

In **Drug Possession** offenses, or **Criminal Mischief**, or **Larceny** cases, the punishment severity will be determined by the quantity of drugs or the value of the thing destroyed or stolen. Try to discern from statements in the application or court records regarding quantity. If necessary, locate the state statute the applicant was charged with to discern quantity as it will have an impact of the equivalence.

A-2021-20914-000026

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Driving Offences

Impaired Driving – CCC 320.14 Operation while Impaired

Impaired driving offences (CCC 320.14) come under many names in the USA, including but not limited to: Driving Under the Influence (DUI), Driving while Impaired (DWI), Driving While Ability Impaired (DWAI), Operating under the influence (OUI), etc.

Careless/Negligent Driving- CCC 320.13

The leading Canadian case on dangerous driving is the decision of the Supreme Court of Canada in *R. v. Hundal, [1993] 1 S.C.R. 867* which determined that a breach of s.320.13 requires a **marked** and **significant** departure from the standard of care which could be expected from a prudent driver in similar circumstances; a mere departure from the standard expected of a reasonably prudent person will meet the threshold for civil negligence but will not be sufficient for penal negligence.

For s.320.13 to apply, *mens rea* (guilty mind) must be established by viewing the circumstances of the offence objectively and determining if he drove in a manner that was dangerous to others that were or could have been expected to be in the area. The objective *mens rea* is based on the premises that a reasonable person in similar circumstances would have been aware of the risks arising from the conduct. The basis of liability for dangerous driving is advertent negligence and a disregard for the safety of the public; inadvertent negligence would likely equate to "Careless Driving" from a provincial traffic act. Negligence, in legal terms, is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

In *R. v. Hundal*, the court found that "negligent driving can be thought of as a continuum that progresses, or regresses, from a momentary lack of attention giving rise to civil responsibility through careless driving under a provincial Highway Traffic Act, to dangerous driving under the Criminal Code." The risk posed by the negligent driver must be of such a nature and degree that the actor's failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him (weather conditions, speed, traffic), constitutes a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

A-2021-20914-000027

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Old Legislation - Driving Offences

Vs

New Legislation - Offences Relating to Conveyances

The new impaired driving legislation significantly reforms the entire Criminal Code regime dealing with transportation offences, including raising the penalties for drug-impaired driving and alcohol-impaired driving, and came into force on December 18, 2018. It is important to make the distinction between the date the offence was committed vs the date of conviction. The December 18th date refers to the date the offence was committed. As a result, if someone committed a DUI offence on December 12, 2018 and got convicted on January 2, 2019, the prior to December 18 chart applies.

The following sections of this Legislative Summary present the various conveyance-related offences in the form of tables and compare the punishments currently provided in the Code ("current legislation") with the punishments provided in the bill.

Dangerous Operation

Table 1 - Dangerous Operation: Current Punishment and Punishment Under Bill C-46

Offence	Punishment			
	Current Legislation (ss. 249 and 787)		Bill C-46 (Part 2) (New ss. 320.13, 320.2 and 320.21)	
Dangerous operation	Indictment	Summary Conviction	Indictment	Summary Conviction
	Max: 5 years	Max: $5,000 and 6 months	Max: 10 years	Max: 2 years less a day
Operation causing bodily harm	Indictment		Indictment	Summary Conviction
	Max: 10 years		Max: 14 years Min: [a] $1,000; 30 days; 120 days	Max: 2 years less a day Min: [a] $1,000; 30 days; 120 days
Operation causing death	Indictment		Indictment	
	Max: 14 years		Max: Life Min: a $1,000; 30 days; 120 days	

A-2021-20914-000028

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Operation While Impaired

Table 2 - Operation While Impaired: Current Punishment and Punishment Under Bill C-46

Offence	Punishment			
	Current Legislation (ss. 253, 255(1), 255(2), 255(2.1), 255(3), 255(3.1) and 255(3.3))		Bill C-46 (Part 2) (New ss. 320.14, 320.19, 320.2 and 320.21(1))	
	Indictment	Summary Conviction	Indictment	Summary Conviction
Operation while impaired	Max: 5 years Min: [a] $1,000; 30 days; 120 days	Max: 18 months Min: [a] $1,000; 30 days; 120 days	Max: 10 years Min: [a] $1,000; Min: [a, b] $1,000; 30 days; 120 days	Max: 2 years less a day Min: [a, b] $1,000; 30 days; 120 days
Operation while impaired (low blood drug concentration)			Summary Conviction	
			Max: $1,000	
Operation while impaired causing bodily harm	Indictment		Indictment	Summary Conviction
	Max: 10 years Min: [a] $1,000; 30 days; 120 days		Max: 14 years Min: [a] $1,000; 30 days; 120 days	Max: 2 years less a day Min: [a] $1,000; 30 days; 120 days
Operation while impaired causing death	Indictment		Indictment	
	Max: Life Min: [a] $1,000; 30 days; 120 days		Max: Life Min: [a] $1,000; 30 days; 120 days	

Flight from a peace officer

Table 3 - Flight from a Peace Officer: Current Punishment and Punishment Under Bill C-46

Offence	Punishment			
	Current Legislation (ss. 249.1 and 787)		Bill C-46 (New ss. 320.17 and 320.19(5))	
	Indictment	Summary Conviction	Indictment	Summary Conviction
Flight from a peace officer	Max: 5 years	Max: $5,000 and 6 months	Max: 10 years	Max: 2 years less a day
Flight causing bodily harm or death	Indictment		(Not applicable)[a]	
	Max: 14 years (for bodily harm) Max: Life (for death)			

A-2021-20914-000029

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Failure or Refusal to Comply with a Demand

Table 4 - Failure or Refusal to Comply with a Demand: Current Punishment and Punishment Under Bill C-46

Offence	Punishment			
	Current Legislation (ss. 254(5), 255(2.2), 255(3.2) and 255(3.3))		Bill C-46 (New ss. 320.15, 320.19(1), 320.19(4), 320.2 and 320.21)	
	Indictment	Summary Conviction	Indictment	Summary Conviction
Failure or refusal to comply with a demand	Max: 5 years	Max: 18 months Min: [a] $1,000; 30 days; 120 days	Max: 10 years Min: [a] **$2,000**; 30 days; 120 days	Max: 2 years less a day Min: [a] $2,000; 30 days; 120 days
Failure or refusal to comply with a demand when the person knows, or ought to know, that he or she caused an accident resulting in bodily harm	Indictment		Indictment	Summary Conviction
	Max: 10 years Min: [a] $1,000; 30 days; 120 days		Max: 14 years Min: [a] $1,000; 30 days; 120 days	Max: 2 years less a day Min: [a] $1,000; 30 days; 120 days
Failure or refusal to comply with a demand when the person knows, or ought to know, that he or she caused an accident resulting in death	Indictment		Indictment	
	Max: Life Min: [a] $1,000; 30 days; 120 days		Max: Life Min: [a] $1,000; 30 days; 120 days	

A-2021-20914-000030

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Failure to stop after an accident

Table 5 - Failure to Stop After an Accident: Current Punishment and Punishment Under Bill C-46

Offence	Punishment			
	Current Legislation (ss. 252 and 787)		Bill C-46 (New ss. 320.16, 320.19(5), 320.2 and 320.21)	
Failure to stop after an accident	Indictment	Summary Conviction	Indictment	Summary Conviction
	Max: 5 years	Max: $5,000 and 6 months	Max: 10 years	Max: 2 years less a day
Failure to stop after an accident resulting in bodily harm	Indictment		Indictment	Summary Conviction
	Max: 10 years		Max: 14 years Min: [a] $1,000; 30 days; 120 days	Max: 2 years less a day Min: [a] $1,000; 30 days; 120 days
Failure to stop after an accident resulting in death	Indictment		Indictment	
	Max: Life		Max: Life Min: [a] $1,000; 30 days; 120 days	

Operation While Prohibited

Table 6 - Operation While Prohibited: Current Punishment and Punishment Under Bill C-46

Offence	Punishment			
	Current Legislation (ss. 259(4) and 787)		Bill C-46 (New ss. 320.18(1) and 320.19(5))	
Operation while prohibited	Indictment	Summary Conviction	Indictment	Summary Conviction
	Max: 5 years	Max: $5,000 and 6 months	Max: 10 years	Max: 2 years less a day

A-2021-20914-000031

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Criminality Chart

DRIVING OFFENCES PRIOR TO DECEMBER 18 2018

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Dangerous Driving (no injury)	249(1) CCC	5 years	A36(2)(b)
Dangerous Driving (with injury)	249(3)	10 years	A36(1)(b)
Flee Police	249.1	5 years	A36(2)(b)
Flee Police (injury /by dangerous driving)	249.1(4)(a)	14 years	A36(1)(b)
Flee Police (death)	249.1(4)(b)	Life imprisonment	A36(1)(a)
Fail to Stop at Scene of accident	252	5 years	A36(2)(b)
Fail to Stop at Scene (person injured)	252	10 years	A36(1)(b)
Fail to Stop at Scene (person killed)	252	Life imprisonment	A36(1)(b)
DWI or Care or Control over 80 mgs	253	5 years	A36(2)(b)
Refuse /Fail to provide blood or breath	254(5)	5 years	A36(2)(b)
Refuse/Fail to comply with demand	254(5)	5 years	A36(2)(b)
Impaired Driving (causing harm)	255(2)	10 years	A36(1)(b)
Driving over 80 mgs (causing harm)	255(2.1)	10 years	A36(1)(b)
Refuse/Fail to provide (causing harm)	255(2.2)	10 years	A36(1)(b)
Impaired Driving (causing death)	255(3)	Life imprisonment	A36(1)(b)
Refuse/Fail to provide breath/blood(death)	255(3.2)	Life imprisonment	A36(1)(b)
Driving while Disqualified	259(4)	5 years	A36(2)(b)

OFFENCES RELATING TO CONVEYANCE POST DECEMBER 18 2018

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Dangerous Operation	320.13(1)	10 years	A36(1)(b)
Dangerous Operation causing bodily harm	320.13(2)	14 years	A36(1)(b)
Dangerous Operation causing death	320.13(3)	Life Imprisonment	A36(1)(b)
Flight from peace officer	320.17	10 years	A36(1)(b)
Failure to stop after an accident	320.16(1)	10 years	A36(1)(b)
Failure to stop after an accident resulting in bodily harm	320.16(2)	10 years	A36(1)(b)
Failure to stop after an accident resulting in death	320.16(3)	Life imprisonment	A36(1)(b)
Operating While Impaired	320.14	10 years	A36(1)(b)
Operating While Impaired (low blood drug concentration)	320.14(4)	Summary	Not inadmissible
Operating While Impaired causing bodily harm	320.14 (2)	14 years	A36(1)(b)
Operating While Impaired causing death	320.14(3)	Life imprisonment	A36(1)(b)
Failure or refusal to comply with a demand	320.15(1)	10 years	A36(1)(b)
Failure or refusal to comply with a demand when the person knows, or ought to know, that he or she caused an accident resulting in bodily harm	320.15(2)	14 years	A36(1)(b)
Failure or refusal to comply with a demand when the person knows, or ought to know, that he or she caused an accident resulting in death	320.15(3)	Life imprisonment	A36(1)(b)
Operation while prohibited	320.18	10 years	A36(1)(b)

A-2021-20914-000032

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

ASSAULT OFFENCES

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Uttering threats	264.1	5 years	A36(2)(b)
Uttering Threats (to burn/destroy/kill animal)	264.1(1)(c)	5 years	A36(2)(b)
Criminal Harassment	264(1)	10 years	A36(1)(b)
Assault	266	5 years	A36(2)(b)
Aggravated Assault	268	14 years	A36(1)(b)
Assault with a weapon or causing bodily harm	267	10 years	A36(1)(b)
Assaulting a peace officer	270	5 years	A36(2)(b)
Aggravated Assaulting of peace officer	270.02	14 years	A36(1)(b)
Sexual Assault	271	10 years	A36(1)(b)
Sexual assault with a weapon, threats to a third party or causing bodily harm	272(1)	14 years	A36(1)(b)
Sexual Assault (with a firearm)	272(1)	14 years	A36(1)(b)
Aggravated Sexual Assault	273(1)	Life imprisonment	A36(1)(b)
Aggravated Sexual Assault (with a firearm)	273(2)(a)	Life imprisonment	A36(1)(b)
Attempt to commit murder	239	Life imprisonment	A36(1)(b)
Murder	229	Life imprisonment	A36(1)(b)
Causing bodily harm by criminal negligence	221	10 years	A36(1)(b)
Causing death by criminal negligence	220	Life imprisonment	A36(1)(b)

DANGEROUS WEAPONS OFFENCES

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Pointing a firearm	87 CCC	5 years	A36(2)(b)
Dangerous Weapon	88	10 years	A36(1)(b)
Carrying a Concealed Weapon	90	5 years	A36(2)(b)
Unauthorized Possession of a firearm	91	5 years	A36(2)(b)
Possession of a restricted weapon w/ammunition	95	10 years	A36(1)(b)
Careless Storage/Use/Handling of a firearm	86	2 years	A36(2)(b)

OBSTRUCTION POLICE OFFENCES

Offence Description	Criminal Code section	Maximum Penalty	IRPA Section
Public Mischief	140 CCC	5 years	A36(2)(b)
Fail to comply with bail	145(3)	2 years	A36(2)(b)
Fail to comply with probation order	733.1(1)	2 years	A36(2)(b)
Fail to attend court	145(2)	2 years	A36(2)(b)
Personate police officer	130	2 years	A36(2)(b)
Obstruct police	129	2 years	A36(2)(b)
Obstruct Justice (indemnifying surety)	139(1)	2 years	A36(2)(b)
Obstruct Justice (bride witness/juror)	139(2)	10 years	A36(1)(b)
Perjury	131,132	14 years	A36(1)(b)

A-2021-20914-000033

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

THEFT OFFENCES

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Theft, $5000 or less	322,334 (b) CCC	2 years	A36(2)(b)
Theft, over $5000	322, 334 (a)	10 years	A36(1)(b)
Possession of Stolen Property under $5000	354,355 (b)	2 years	A36(2)(b)
Possession of Stolen property over $5000	354, 355 (a)	10 years	A36(1)(b)
Fraud, less than $5000	380(1)	2 years	A36(2)(b)
Fraud, over $5000	380(1)(a)	10 years	A36(1)(b)
Taking MV without consent	335	Summary	Not inadmissible
Forgery	366	10 years	A36(1)(b)
Theft/Forgery of credit card	342(a), (b)	10 years	A36(1)(b)
Use /Possess of stolen credit card	342(c)	10 years	A36(1)(b)
Use revoked/cancelled credit card	342(d)	10 years	A36(1)(b)
Robbery (without firearm)	343, 344(b)	Life imprisonment	A36(1)(b)
Robbery (with firearm)	343, 344(a)	Life imprisonment	A36(1)(b)
Extortion (without firearm)	346(1), (1.1)(b)	Life imprisonment	A36(1)(b)
Break and Enter w/intent to commit – house	348	Life imprisonment	A36(1)(b)
Break and Enter with intent to commit- non dwelling	348	10 years	A36(1)(b)
Passing Bad Checks, under $5000	362(1)	2 years	A36(2)(b)
Passing Bad Checks, over $5000	362(1)	10 years	A36(1)(b)
Personation with Intent	403	14 years	A36(1)(b)

INDECENT ACT OFFENCES

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Indecent act	173(1) CCC	2 years	A36(2)(b)
Indecent act- exposing genitals	173(2)	2 years	A36(2)(b)
Keeping a common bawdy house	210(1)	2 years	A36(2)(b)
Inmate or found in a bawdy house	210(2)	Summary	Not inadmissible
Stopping/ impeding traffic for the purpose of offering, proving or obtaining sexual services	213(1)	Summary	Not inadmissible
Communicating to provide sexual services in public place, school, playground	213(1.1)	Summary	Not inadmissible
Obtaining sexual services for consideration	286.1	5 years	A36(2)(b)
Obtain/communicate/sexual services/ with a person under 18 years old	286.1(2)	10 years	A36(1)(b)
Receive financial/material benefit knowing it is obtained from sale of sexual services	286.2	10 years – under 18	A36(1)(b)
Advertising sexual services for consideration	286.4	5 years	A36(2)(b)

CRIMES AGAINST CHILDREN OFFENCES

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Endangering Welfare of child / Corrupting	172(1)	2 years	A36(2)(b)
Corrupting Morals	163	2 years	A36(2)(b)
Child Abandonment	218	5 years	A36(2)(b)
Sexual Contact	153	10 years	A36(1)(b)

A-2021-20914-000034

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

ANTISOCIAL BEHAVIOUR OFFENCES

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Nudity	174(1)	Summary	Not inadmissible
Disturbing the Peace	175(1)	Summary	Not inadmissible
Trespassing at Night	177	Summary	Not inadmissible
Vagrancy	179(1)	Summary	Not inadmissible
Public or Common Nuisance	180(1)	2 years	A36(2)(b)
Sexual Touching	151	10 years	A36(1)(b)
Invitation to Sexual Touching	152	10 years	A36(1)(b)
Incest	155(1)	14 years	A36(1)(b)
Criminal Mischief	430	2 years	A36(2)(b)
Attempt to commit indictable offence	463	Varies	One half the punishment
Conspiracy to commit indictable offence	465	Varies	Same punishment

MILITARY OFFENCES / OTHER OFFENCES

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
AWOL – Absent without Leave	90 National Defence Act	2 years	A36(2)(b)
Desertion	88 NDA	Life imprisonment	A36(1)(b)
Trespassing on Military Base	288 NDA	Summary	Not inadmissible
Using Gun Pellets- Hunting Birds	15(1) Migratory Bird Act	3 years	A36(2)(b)
Selling Drug Sample	14.1 Food & Drug Act	3 years	A36(2)(b)
Illegal Entry into a country	124 IRPA	2 years	A36(2)(b)
Making False Declaration – Hunting	6 Cdn Wildlife Act	5 years	A36(2)(b)
Currency Declaration – duty at POE	12-Proceeds of Crime Act	Seizure/inadmissible	A124 IRPA
Making False Tax Return	239 Income Tax Act	2 years	A36(2)(b)
Animal Cruelty	445 CCC	5 years	A36(2)(b)

MARIJUANA/COCAINE/HEROIN OFFENCES PRIOR TO OCTOBER 17 2018

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Possession of Marijuana up to 30 grams	4(1) CD&S Act	Summary	Not inadmissible
Possession of Hashish up to 1 gram	4(1)	Summary	Not inadmissible
Possession of Marijuana /Hashish	4(1)	5 years less 1 day	A36(2)(b)
Possession of Cocaine/Heroin	4(1)	7 years	A36(2)(b)
Possession of Amphetamines, LSD, Mescaline, Psilocybin	4(1)	3 years	A36(2)(b)
Trafficking Marijuana, Hashish or Possession for the purpose to Traffic	5	5 years less one day	A36(2)(b)
Trafficking Cocaine/Heroin or Possession for the purpose to Traffic	5	Life imprisonment	A36(1)(b)
Cultivation of Marijuana	7	14 years	A36(1)(b)
Importing /Exporting Amphetamines, LSD, Mescaline, Psilocybin	6	10 years	A36(1)(b)

A-2021-20914-000035

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Trafficking Amphetamines, LSD, Mescaline, Psilocybin or possession for the purpose	5	10 years	A36(1)(b)
Trafficking Barbiturates or Anabolic Steroids or Possession for the purpose of trafficking	5	3 years	A36(2)(b)
Importing/Exporting Marijuana or up to 1 kilo of Heroin/Cocaine	6	Life imprisonment	A36(1)(b)
Importing/Exporting Heroine/Cocaine more than 1 kilo	6	Life imprisonment	A36(1)(b)
Production of Hashish	7	Life imprisonment	A36(1)(b)
Production of Cocaine / Heroin	7	Life imprisonment	A36(1)(b)
Production of Amphetamines, LSD, Mescaline, Psilocybin	7	10 years	A36(1)(b)
Production of Barbiturates, Anabolic Steroids	7	3 years	A36(2)(b)
Possession of drug paraphernalia	7(1)	Summary	Not inadmissible
Laundering proceeds	9(1)	10 years	A36(1)(b)

MARIJUANA/COCAINE/HEROIN OFFENCES POST OCTOBER 17 2018

Offence Description	Criminal Code Section	Maximum Penalty	IRPA Section
Possession of Marijuana more than 30 grams	8(1) of the Cannabis Act	5 years less one day	A36(2)(b)
Possession of Cocaine/Heroin	4(1)	7 years	A36(2)(b)
Possession of Amphetamines, LSD, Mescaline, Psilocybin	4(1)	3 years	A36(2)(b)
Trafficking Marijuana, Hashish or Possession for the purpose to Traffic	5	5 years less one day	A36(2)(b)
Trafficking Cocaine/Heroin or Possession for the purpose to Traffic	5	Life imprisonment	A36(1)(b)
Importing /Exporting Amphetamines, LSD, Mescaline, Psilocybin	6	10 years	A36(1)(b)
Trafficking Amphetamines, LSD, Mescaline, Psilocybin or possession for the purpose	5	10 years	A36(1)(b)
Trafficking Barbiturates or Anabolic Steroids or Possession for the purpose of trafficking	5	3 years	A36(2)(b)
Importing/Exporting Marijuana or up to 1 kilo of Heroin/Cocaine	6	Life imprisonment	A36(1)(b)
Importing/Exporting Heroine/Cocaine more than 1 kilo	6	Life imprisonment	A36(1)(b)
Production of Cocaine / Heroin	7	Life imprisonment	A36(1)(b)
Production of Amphetamines, LSD, Mescaline, Psilocybin	7	10 years	A36(1)(b)
Production of Barbiturates, Anabolic Steroids	7	3 years	A36(2)(b)
Possession of drug paraphernalia	7(1)	Summary	Not inadmissible
Laundering proceeds	9(1)	10 years	A36(1)(b)

A-2021-20914-000036

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Appendix 1: Rehab File Creation

Organizing Files

You will want to organize each folder's contents in such a way that it fully presents the information surrounding the applicant's circumstances in the best way possible. It is recommended to use this arrangement (based on the Rehabilitation and Temporary Resident Permit Document Checklist):

1. IMM 1444
2. Additional application information / addendums, personal statements
3. IMM 5476 (Use of a Representative)
4. Civic information: birth certificate, Passport, licences, etc.
5. National police certificates (includes Federal FBI certificate)
6. State police certificates
7. Court documents and certificates of disposition, criminal record information
8. Documentation indicating if / when the applicant completed their sentence
9. Documentation and evidence of rehabilitation
10. Personal recommendations / character references
11. **IPRMS Receipt**

A-2021-20914-000037

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Creating RHB Files

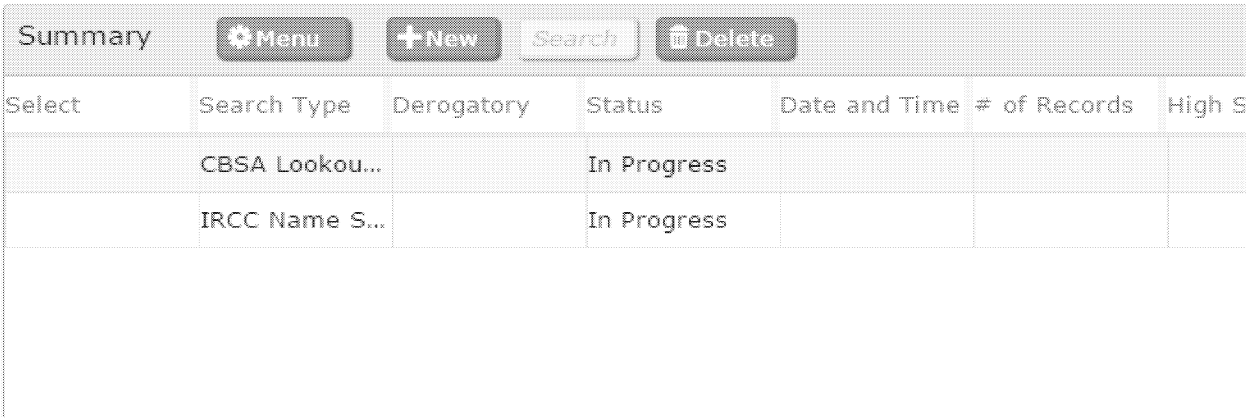
1. In GCMS, go to the **SEARCH** tab -> Sub-tab: **Integrated** -> Applet: **CRITERIA**, hit **"New"** and enter in the client details as it appears on the passport or other identifying document, e.g. the applicant's passport card, E-passport, driver license, or birth certificate.

Enter in the**:**

- Complete name
- Date of birth
- Gender
- Country of birth (COB)

Hit **Search All**, and hit the **Refresh** button. Search progress will be displayed under the

Applet: **SUMMARY**, in the IRCC Name and CBSA Lookout entries:



Keep refreshing until the Status fields are listed as "Complete".

If the search results to **NO RECORD**, click **New Client**.

- **IMPORTANT:** If the name found is not complete as reflected on the passport, create a new entry and enter in the client's name based on the passport. The new entry will be listed as the "Primary" name and the old name will be set to "Former". If there are no errors in the information fields of the old name, set the old entry to "AKA".

If the client is found in FOSS (Applet: **IRCC Integrated Search Hit List**), click the corresponding UCI.

A-2021-20914-000038

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

If you are unable to proceed, that means that the client has not been entered yet in GCMS. To resolve this select the box in the Select field in the row, save (Ctrl-S), and click the tab **PROMOTE CLIENT**. You will be brought to the Client List.

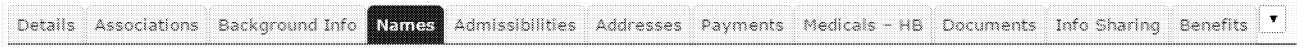
2. Under the client list, you must enter in the client's information, which is divided between two applets:

Upper Applet

Complete the **mandatory** fields, whose information is based on the information provided on the application:

- Marital status
- Citizenship
- Country of Residence
- Contact information (telephone numbers, e-mail)
    - If the applicant has a paid representative (has IMM 5476), their e-mail address should reflect the representative's e-mail address.

Lower Applet

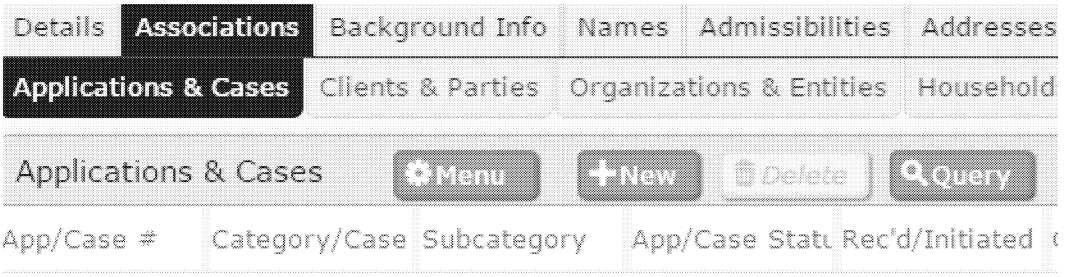


Enter information into the following tabs:

- *Documents*: Enter in the applicant's passport information under the Travel Documents subtab.
- *Address*: Refer to item 8 of IMM 1444. Make it a habit to enter a residential and a mailing address, even if they are the same address. This would only change if the client has a paid representative. The mailing address should be that of the representative's.
- *Names:* Refer to item 7 of IMM 1444. Enter all other names that the applicant has used as AKAs.
- *Associations*: Click "New" and enter: "RHB" under the Category/Case column. In the Rec'd/Initiated column, enter in the date the application was received at the office (look for the stamp on the front of the application). Hit save, and a prospective file number will appear in the in the App/Case # column.
    - If creating a TRP, enter "TRP" under Category/Case and always "OVS" (overseas) under the Subcategory column. You also must enter the date received.

A-2021-20914-000039

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information



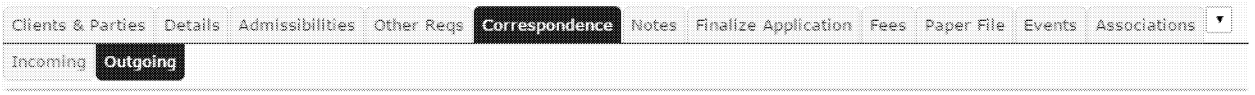
3. You are now in the prospective application.

Upper Applet

The following are mandatory fields:

- Rec'd Via: Set this to "Mail".
- If creating a TRP, you must additionally enter the Province of Destination, City of Destination, NOC and Occupation.

Lower Applet



Enter information in the following tabs:

- *Fees*: Hit "New", change the Type to "IPRMS Receipt", enter in the IPRMS receipt number, and hit "Allocate".
    - Always ensure that the receipt has been set to "Allocated".
- *Associations -> Organizations & Entities*: Enter in the corresponding organization based on the client's purpose of travel to Canada.
    - O18489422978 = RHB Personal
    - O18489550508 = RHB Business
- *Clients & Parties*: Enter the client's paid representative, if they have one:
    - If they have a paid representative: Hit "New" -> Enter in the family name and first name of the representative, and search. Select the appropriate entry, and ensure that the representative's membership numbers match. Afterward, set their Relationship column to "Paid Rep".

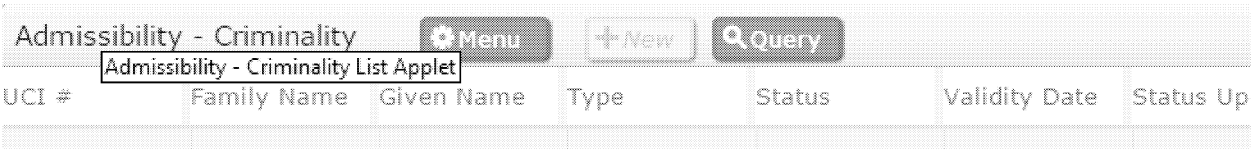
You are now ready to promote the file. Hit the **PROMOTE APPLICATION** button at the top of the upper applet.

4. Print and attach the label for the application.

A-2021-20914-000040

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

5. Enter in the applicant's police certificates. To do so, navigate to the *Admissibility -> Criminality* subtab in the RHB file you just promoted. Click on the link labeled "Criminality" under the Type column of the row that appears underneath in Applet: **ADMISSIBILITY – CRIMINALITY**.



On the lower half of the page, click on "Police Certificates". To add a certificate hit "Add", then "Add" on the window that pops up. For each police certificate (federal, state), enter information in the following columns:

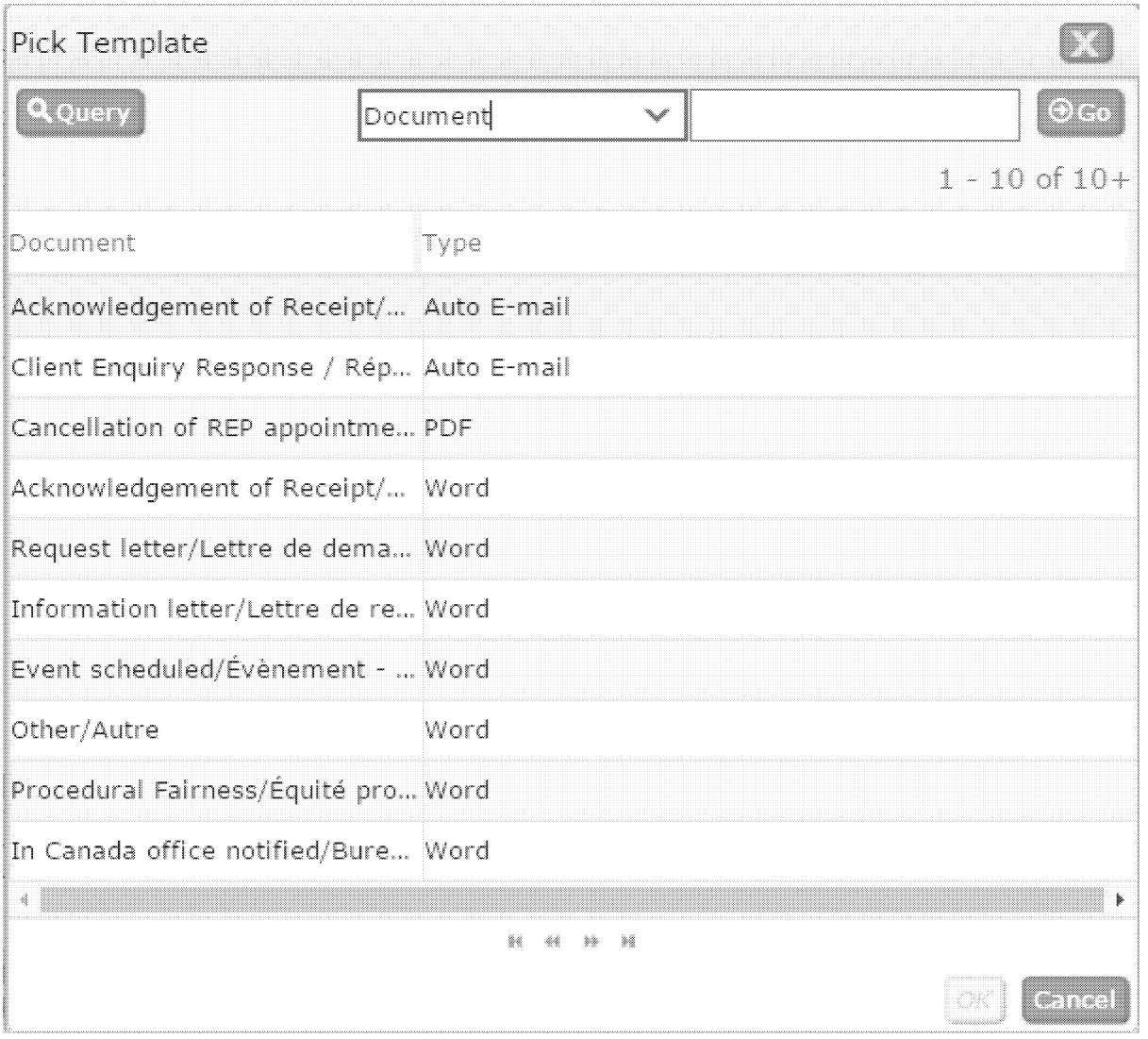
- Country of Issue
- Document Name (Federal PC, NJ PC, NY PC, etc.)
- Issue Date
- Issuing Author
- Place of Issue
- Result (two choices)
    - Adverse Info: Applicant has arrest / criminal history information included
    - No Adverse Info

6. Generating AoRs (Acknowledgement of Receipt/Accusé de reception): Navigate back to the RHB file, and go to the *Correspondence -> Outgoing* tab in the Lower Applet.

Hit "New", and under the Document column click the magnifying glass appearing in the corner of the box. A list will appear with various types of correspondence templates:

A-2021-20914-000041

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information



Select the entry Acknowledgement of Receipt/Accusé de reception with a Type of "Word". Set the Via column to a value of "E-mail", and change the Status to "Generate". Hit Ctrl-Alt-Enter, go to Applet: **CORRESPONDENCE ATTACHMENTS**, and download the Word template file listed within.

Open the file once downloaded, and at the prompt choose the **Acknowledgement Letter** (located at GCMS Templates/Templates-Modeles/Office Specific Templates/International/New York/Temporary Resident Permit-Rehabilitation/TRP RHB AOR Letter (Sept 2015).

Edit the letter to indicate the type of application (Criminal Rehabilitation, remove all mentions of TRPs) and enter in the date of receipt of the application.

A-2021-20914-000042

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

This refers to your application for a Temporary Resident Permit/Criminal Rehabilitation, received on Date File Received. Your file number is listed above.

Your application has been placed in our processing queue.

Our office is currently processing Temporary Resident Permit and Rehabilitation applications in an average of six (6) to twelve (12) months. These are, however, complex cases and there are no guaranteed processing times.

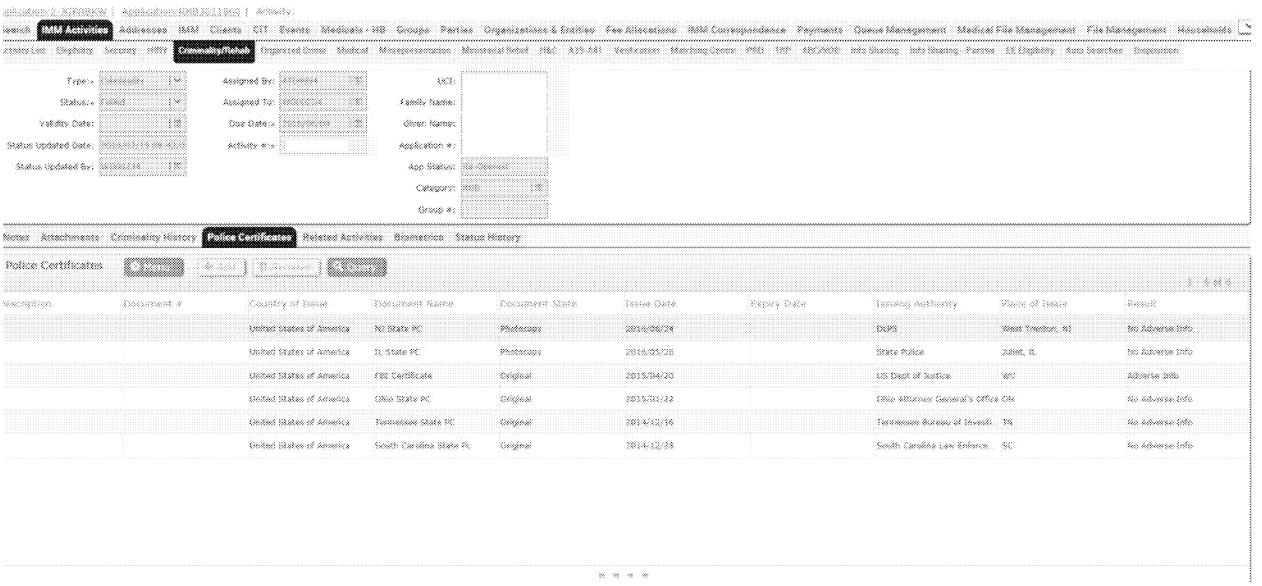
Save the AoR (filename should be that of the RHB number, and the file should be saved to your H: drive), and upload it to GCMS by first deleting the Word file already in Correspondence Attachments, then hitting "New" to upload your file. Afterwards the applet will appear similarly to the picture below.

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

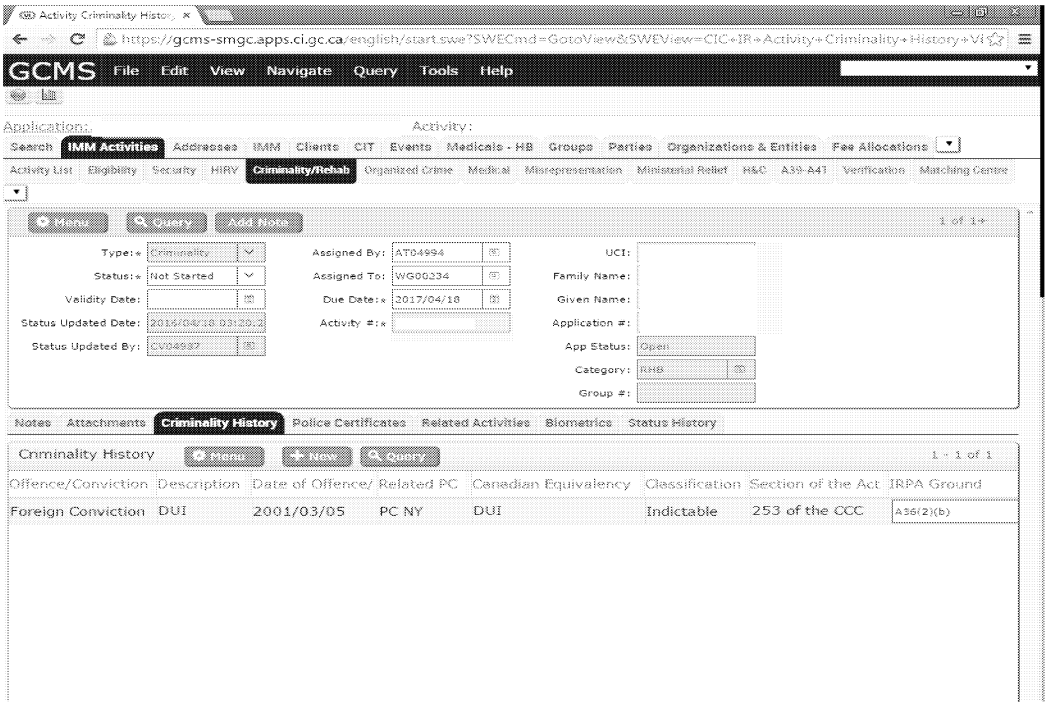
Appendix 2: Rehab Assessment Procedures including Officer Assessment

Steps

1. Make sure Police Certificates are in GCMS, like below:



2. Input convictions in GCMS like below:



A-2021-20914-000044

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

3. Assign the file to Shelving – TRP-decision shelf on paper file tab.

4. Assign file to CBO under Criminality.

5. In cases where there is a rehab and TRP, assess the rehab first and associate the TRP.

6. Enter a note in GCMS to indicate there is an active TRP case. If rehabilitation is approved, we will advise the office processing the TRP . If rehabilitation is refused, we will assess the TRP.

Message Templates & Examples

Search done - SEARCH RESULTS

Subject is XXX national, SEX, MARITAL STATUS, AGE:

Conviction(s), Sentence(s), and Canadian Equivalent(s):
DATE of CONVICTION, STATE. Subject was convicted of CHARGE. Subject was sentenced to Penalty/fined/suspended/probation. This offence equates to a violation of section 253 of the CCC, a hybrid offence punishable via indictment by up to 5 years' imprisonment.

Inadmissibility: A36(2)(b)

If the offence/conviction is not found under an Act of Parliament, state offence is found under provincial head of power.

Rehabilitation Eligibility:
Based on the information on file, it appears subject became eligible as of DATE, 5 years after all punishments were completed.

Docs on file:
- FBI dated DATE
- State PC from X
- Court disposition documents
- Statement / Statutes
- Letters of Reference attesting to subject's good character

Note:
Subject has taken responsibility for his actions. Subj writes INPUT QUOTE FROM APPLICATION. Subj has completed all punishments imposed and paid all fines required under the law. Subject has not had any other issues with the law since YEAR. Subj presents stable employment working as JOB in STATE and presents a stable residential history having resided only in STATE SINCE YEAR.

A-2021-20914-000045

Immigration, Refugees and Citizenship Canada | Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Key statements that can also be included with assessment:

Rehabilitation considerations including:

- Steps taken towards rehabilitation
- Likelihood of not offending again
- Accepting responsibility for the offence
- Evidence of remorse for any harm done
- Understanding of gravity of the offence, of the damage they have done to themselves and to others
- Evidence of restitution, where possible, to victims of their crimes
- Counselling or therapy if crime included or resulted from drug, alcohol or sexual abuse, psychological disturbance or a history of assaults (include evidence of attendance and/or successful completion of any program)
- Stability in employment and family life, participation in educational and skill training programs and community life

Officer Assessment Procedures

The conviction does not equate to a Canadian offence

For a person to be inadmissible for criminality or serious criminality, their conviction will have to be equated to an existing Canadian offence. In the event that a conviction does not equate to a Canadian offence, the person would not be inadmissible and therefore would not require a positive rehab decision.

Recording convictions that do not equate to a Canadian offence in GCMS:

In the Rehabilitation Application, a Criminality Assessment is automatically created.

- Add notes in GCMS briefly explaining why the person is considered not inadmissible.
- Go into the Criminality Activity
- Click on "Criminal History" tab. Click on "New" to create a record. Fill the following fields:
  - **Offence/Conviction** : most of the time it is "Foreign Conviction"
  - **Description:** Add a brief description of the offence and sentence
  - **Date of Offence/Conviction**: add the date of the **conviction** (not the date of occurrence of the actual offence). Only indicate the date of the offence if using provision 36(1)c or 36(2)c
  - **Assessment Results**: Pick the value "No Equivalency in Canadian Law"
- Enter "Passed" under the Criminality Activity

A-2021-20914-000046

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

The person is deemed to be rehabilitated

Regulation 18 of the *Immigration and Refugee Protection Regulations* (IRPR) sets out the requirements for a person to be considered deemed rehabilitated (see Annex for full provision). In short, if 10 years or more have passed since the completion of any imposed sentence from a conviction that would have made them inadmissible for criminality and, since that time, they have not been convicted of any other offences, they are deemed rehabilitated and no longer are inadmissible[3]. Any person who has been deemed rehabilitated does not require a positive rehabilitation decision.

Please see below on how to properly record a situation where someone is "deemed to be rehabilitated" on a file in GCMS.

Recording "deemed rehabilitation" in GCMS:

In the Rehabilitation Application, a Criminality Assessment is automatically created. Add notes in GCMS briefly explaining the conviction and your conclusion. Then,

- Go into the Criminality Activity
- Click on "Criminal History" tab. Click on "New" to create a record. Fill the following fields:
  - **Offence/Conviction** : most of the time it is "Foreign Conviction"
  - **Description:** Add a brief description of the offence and sentence
  - **Date of Offence/Conviction**: add the date of the **conviction** (not the date of occurrence of the actual offence). Only indicate the date of the offence if using provision 36(1)c or 36(2)c
  - **Classification**: pick the value – most of the time it is "Indictable"
  - **Section of the Act of Parliament**: Indicate which Section of the Criminal Code or other section that the offence equates to.
  - **IRPA Ground**: Indicate which subsection of A36 applies (in this situation, it should be A36(2)(b) – the only situation where someone can be found deemed rehabilitated).
  - **Assessment Results**: Pick the value "Deemed Rehab"
- Enter "Passed" under the Criminality Activity

The person concerned is not eligible for rehabilitation

For a person to be eligible to benefit from a positive rehab decision, a prescribed period of time must have elapsed, as per R17. The prescribed period of time is 5 years after the completion of an imposed sentence as a result of a conviction.

[3] Persons inadmissible for serious criminality are never eligible for deemed rehab.

A-2021-20914-000047

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Recording rehab eligibility in GCMS:

In the Rehab application**:**

- Click on the "Details" tab. Then, click on the "Rehabilitation" tab.
- An Activity called "Crim Rehabilitation" should be visible (it is automatically created once the Criminality is set to "Failed").
- Under the column "Eligible for Rehab", enter Yes or No depending on the situation.
- Under the next column "Eligibility Date", enter the date the person is (or will be) eligible for rehab
- If a person is not eligible for rehab, you will note that the Status of the "Crim Rehabilitation" activity will automatically flip to "Not Eligible for rehabilitation"
- Click on "History"
- Change "App Status" to "Cancelled"
- Change App Status Reason to "Other"
- "Not eligible for Rehab"

A-2021-20914-000048

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Recording a criminal inadmissibility finding in the rehabilitation application in GCMS:

- Add notes in GCMS briefly explaining the conviction and your conclusion.
- Go into the Criminality Activity (go into Admissibilities , then Criminality)
- Click on "Criminality" – it will bring you into the Criminal Activity. Click on the "Criminal History" tab. Click on "New" to create a record (for each offence). Fill the following fields:
  - **Offence/Conviction** : most of the time it is "Foreign Conviction"
  - **Description:** Add a brief description of the offence and sentence
  - **Date of Offence/Conviction**: add the date of the **conviction** (not the date of occurrence of the actual offence). Only indicate the date of the offence if using provision 36(1)c or 36(2)c
  - **Classification**: pick the value – most of the time it is "Indictable"
  - **Section of the Act of Parliament**: Indicate which Section of the Criminal Code or other section that the offence equates to.
  - **IRPA Ground**: Indicate which subsection of A36 applies
- Once you have entered all the convictions in the criminal history, enter "Failed" under the Criminality Activity (**ignore the error message that pops up**).
- Go back to application.
- Click on "Details" tab
- Click on "Rehabilitation" tab
- This will bring up the Rehabilitation processing fields. Under "Type" choose either "Criminal Rehabilitation" for 36(2)(b) or "Serious Crim Rehab" for 36(1)(b).
- Under "Eligible for Rehab" choose "Yes"
- Under "Eligibility Date" enter the appropriate date
- Under "Status" select as appropriate. For regular Crim rehab under 36(2)(b), select either "Rehab Granted" or "Rehab Refused" For Serious Crim rehab under 36(1)(b) there is an extra step. If you are going to approve, select "Positive Recommendation" then enter, then select "Rehab Granted". If you are going to refuse, select "Negative Recommendation" then enter, then select "Rehab Refused".
- Return to Final Decision and enter either "Approved" or "Refused" as appropriate.
- Issue Correspondence.

A-2021-20914-000049

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Rehabilitation Not Required

❖ *Applicant is not inadmissible*

When it is determined that a person does not require rehab because they are not inadmissible, this conclusion should be captured in GCMS (Criminality decision = "Passed" – see above GCMS details). In addition, the file must be closed (see box below for more details). The letter that is sent to them should clearly indicate that they are not inadmissible to Canada.

Closing an application in GCMS when applicant is *not inadmissible* and does not require rehab:

You **cancel** the application

- Click on "History"
- Change "App Status" to "Cancelled"
- Change App Status Reason to "Not Required"

For US Citizens approved for RHB – Need to create an info alert to nullify referral flag they may have

1) Proceed to UCI
2) Proceed to **Associations>Applications & Cases**
a. Click **New**
b. In **Category** enter *Assess Admissibility*
c. Save (CTRL + S)
d. Click on **App #**
e. Proceed in, on the top right set the admissibility assessment's Status to Passed. You can do criminality, but you can also do other.
f. Set **Final** to Complete.
3) You can then proceed to the UCI, the Secondary Referral in the GCMS column should be unchecked.
4) A referral flag will still appear if an Info Alert exists and has Case **Status** = *Open*, **Case Status Reason** = *Approved*.
a. To nullify the PIL Flag: Go to Client, go to Associations, click on Info Alert file # , click on **History,** change the Case **Status** to *Closed* and enter Case Status Reason as *Cancelled*.

A-2021-20914-000050

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Appendix 3: TRP Procedures

Receiving TRP Applications

Completeness of applications

Pursuant to R10, a complete application should meet the following requirements:

1. Be made in writing using the form provided by IRCC;
2. Be signed by the applicant;
3. Be accompanied by evidence of payment of the applicable fee;
4. Include all required information and documents:
    a. Contain the name, birth date, address, nationality and immigration status of the applicant and of all family members of the applicant, whether accompanying or not, and a statement whether the applicant or any of the family members is the spouse, common-law partner or conjugal partner of another person;
    b. Indicate whether they are applying for a visa, permit or authorization;
    c. Indicate the class prescribed by these Regulations for which the application is made;
    d. Include the name, postal address and telephone number, and fax number and electronic mail address, if any, of any person or entity — or a person acting on its behalf — representing the applicant;
5. 5) Include a declaration that the information provided is complete and accurate.

Fees

When a complete application for a TRP is received with an acceptable fee and form, but little or no supporting documentation, create a file in GCMS, process and allocate the fees.

Any incomplete application without a required fee (or with an incorrect fee) may be returned without creating a file. However, if it appears that the file relates to urgent or important travel, on a discretionary basis payment may be requested.

Before returning any file, examine whether they qualify for any exemption.

Fee Exemptions

Several exemptions exist: for diplomats, persons invited by the Government of Canada, visiting forces, applications received with a study permit, etc. Fees should be refunded if they have paid and should have been exempt in one of these categories. Exemption codes can be found at this link.

A-2021-20914-000051

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Public Policy Exemption

As of 1 March 2012 the public policy exemption applies to an FN to whom a TRP is being issued at a port of entry (POE) or a visa office abroad, who is inadmissible solely on the grounds of criminality under section 36(2) of IRPA, and who both:

1) Was convicted of an offence and received no term of imprisonment as part of the sentence imposed.

2) Has had no other convictions or committed any other acts that would render the person inadmissible.

- No prison sentence of any length, including suspended sentence.
- Only one conviction of any kind.
- A client can only benefit from this exemption one time.
- If the client has not paid the fee, first examine whether they qualify.
- If client has asked for the exemption, determine whether they qualify.
- We may need to request evidence to determine the applicability of the policy.
- When in doubt, please check with an officer before taking any further action.
- We do not refund fees under the Public Policy Exemption where a client has paid but might be exempt.
- In addition, the Cost Recovery fees must be allocated so that “Complete” appears in the Cost Recovery box
- The code for the one-time public policy exemption is M31.

A-2021-20914-000052

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Creating TRP Applications

Steps for file creation can be found in GCMS online help under Process a Temporary Resident Permit Application, steps 1-11.

Take note of the following:

The following fields must be completed in order for an officer to finalize the application:

- **# of Entries**: Defaults to Multiple
- **Province**: Must be filled to finalize (UNK if not stated)
- **City**: Must be filled to finalize (UNK if not stated)
- **NOC**: Must be filled
- **Occupation**: Must be filled – Use a NOC title if the given title is not useful

If possible, complete the following fields with a specified or approximate date:

- **Stay/Program - From Date:** Fill with stated or approximate date
- **Stay/Program - To Date:** Fill with stated or approximate date
- **Purpose of Visit**
- **Other Description**

A-2021-20914-000053

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

TRP Pre-Assessment Procedures

In the Lower Details screen enter:

- **Case Type:** Usually 80, unless they will be applying for a Study or Work Permit
- **Prohibiting section** (A36, etc.)
- **Canadian Criminal Code section** (or other law)

A-2021-20914-000054

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Message Template - the template below should be filled out as follows:

****** Reason for Travel/Supporting Documentation:**
Why the applicant wishes to go to Canada – urgency – documentation of the reasons (invitations, employer dispatch letters – requested validity/dates of the permit (if present). Include dates to the extent indicated. If event is past, note this.

****** Criminal History:**
1. Disposition:

Describe charges, disposition, (convicted, dismissed, etc.) and sentences. Avoid confusing charges and dispositions as separate cases, or vice versa. Use numbers 1. 2. etc. to list separate charges, but if there are several "cycles" listed in a PC that each may have multiple charges, use numbers to match those cycles where possible and keep the charges or counts together. Mention any later dismissals, expungements, etc. relating to the charge. Indicate the dates, and whether it is the arrest or conviction date (arr. / conv.).

****** Circumstances Surrounding and Leading to the Offence(s) (brief description) and any Extenuating Factor (Optional):**
Make this section as brief as possible – two or three lines should suffice. OMIT/DELETE for typical DUI cases with no exceptional circumstances.

****** Official Documents Submitted Corroborating Criminal Record:**
PCs should be listed, but in the event that many documents are provided, you may make a summarized description such as "Several court and probation documents." If few or no documents are present, indicate this.

****** Applicable inadmissibility section of the Act:**

Ex. Inadmissible under 36(2)(b) of the Act [or other subsection]

If you are uncertain, state that client "appears" or "may be" inadmissible. If there has been an expungement, refer to it in this section without making a conclusion.

If client appears to be or believes they are deemed rehabilitated, note this prominently.

Be certain to flag Serious Criminality cases 36(1)(b) and note that cases where charges have been laid are usually determined to be 36(2)(c) pending disposition of the case.

****** Previous Entry to Canada: Previous TRP's or Visas Issued or Refused:**
Indicate NONE for clients with previous record.

Summarize or copy in previous records. If copying, make sure they are in order, most recent first.
Port of Entry interactions such as Deportations, Allowed to Leave, etc. are particularly important, but many Alerts do not have significant value.

If there is a recent permit issued that may be valid, particularly from a POE, check the validity date and include this in the notes – and on the file jacket.

****** Other Documents Submitted:**
Mention letters of reference, proof of treatment, volunteer work, previous travel, employment or financial document, etc. Summarize if they are very numerous; do not create long itemized lists, particularly for straightforward cases.

****** Remarks:**
Any additional factors that an officer should be aware of. **OMIT/DELETE** in most cases.

A-2021-20914-000055

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Shared File Processing in the USA Network

Files may be assigned to another office, i.e. Washington, in peak periods or at other times to maximize the use of resources.

1. Managers in Los Angeles and the other mission agree on a time frame and number of files to be distributed (e.g. XX files per week for Y weeks, or a set number on an ad hoc basis).

2.

- Los Angeles staff triage pre-assessed files in the queue to identify those that are **not excessively complex, thick, or urgent**.
- Selected files are scanned in their entirety then uploaded as eDocs in GCMS.
- Secondary office must be added before assigning files.
- Files in a weekly batch are placed into a temporary processing group and named according to the scheme TRP WA Jan07 (for example).
- Files are assigned to the mission (WA = RC-6136, NY=RC-6030 and LA = RC-6051) with a due date of one week.
- The paper files for this procedure should be kept together in a separate place.
- The mission is advised by email when a new group is assigned.
- Point of contact in LA is MPM assistant,

3.

- Officers identify files using queries (see Appendix).
- The officer at the other mission processes and finalizes the files.
- It should not be necessary to advise LA when the files are complete.
- If document requests or other assistance are required, however, officer should place requirements in notes and send an email to LA requesting action. LA will advise by reply when the request is received.

4.

- LA staff will track the files using a query, either for the group, or for files assigned to the mission.
- LA completes POE or refusal letters and all other routine finalization steps.
- The assignment to the other mission is deleted.

A-2021-20914-000056

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Officer Processing and Finalization

1. Review the pre-assessment notes, do record check as required, and review the file materials.

2. Verify whether the admissibility assessment in the notes is correct, and rectify any errors in your notes.

3. Information and clarification regarding aspects of the USA justice system as they impact A36 can be found in OP 18, Section 15.2, which contains a table called U.S. Criminal Dispositions.
    a. Various types of deferred adjudication and diversion do not result in a conviction as the charge is dismissed at the end of the process. But as the client normally enters a tentative guilty plea and accepts a sentence, we reckon them inadmissible A36(2)(c) until the dismissal is made.
    b. Most states have a process for expungement or dismissal. Officers must decide on a case by case to recognize this as equivalent to a Record Suspension; to simplify the question, it should be recognized unless there is a strong reason not to (see material on part 3 of the "Saini test").
    c. Discharges usually have the same meaning as in Canada, but in New York and possibly some other states, there is a conviction and the sentence is discharged.

4. Make a decision, and explain it briefly in the notes, weighing risk criteria against compelling need to travel and benefit.

5. Other aspects of the permit, such as validity dates, entries, etc. do not need to be referred to in the notes unless they are exceptional, differ from the request by the applicant, or need to be signalled to the POE officer for some reason.

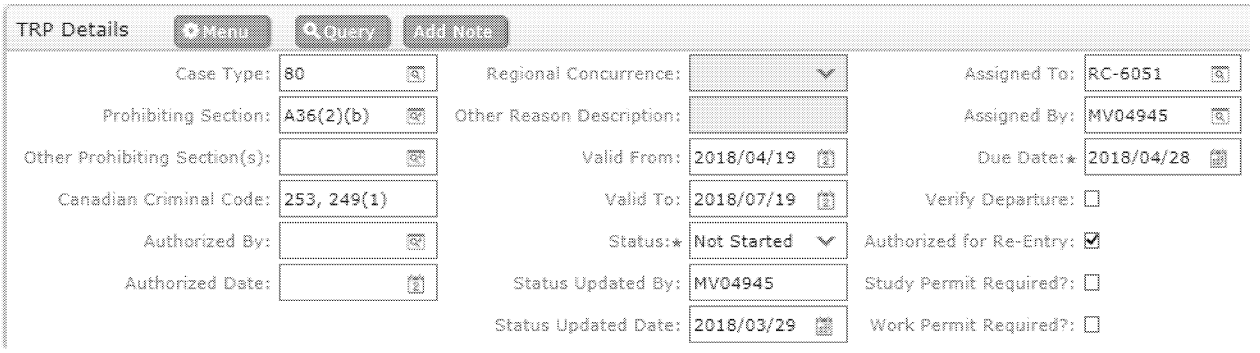
6. **CLIENT NOT INADMISSIBLE**: We frequently receive applications where either the client does not realize they are not inadmissible, or they do realize it but want a formal determination that they are not. In these cases we explain the determination in the GCMS notes, withdraw the application, and issue a withdrawal letter which briefly explains the decision, which the client can present to a POE to facilitate entries to Canada. CBSA can cancel the inadmissibility flag.

7. **PILOTS**: We often receive TRP applications from commercial aircraft pilots with DUIs. In order to be considered:
    a. We verify that they are registered with the FAA as an active pilot. See link.
    b. If the client was already a pilot at the time of the DUI, the file must contain evidence the conviction was disclosed as required to the FAA under their regulations, or to the current employer, preferably both.

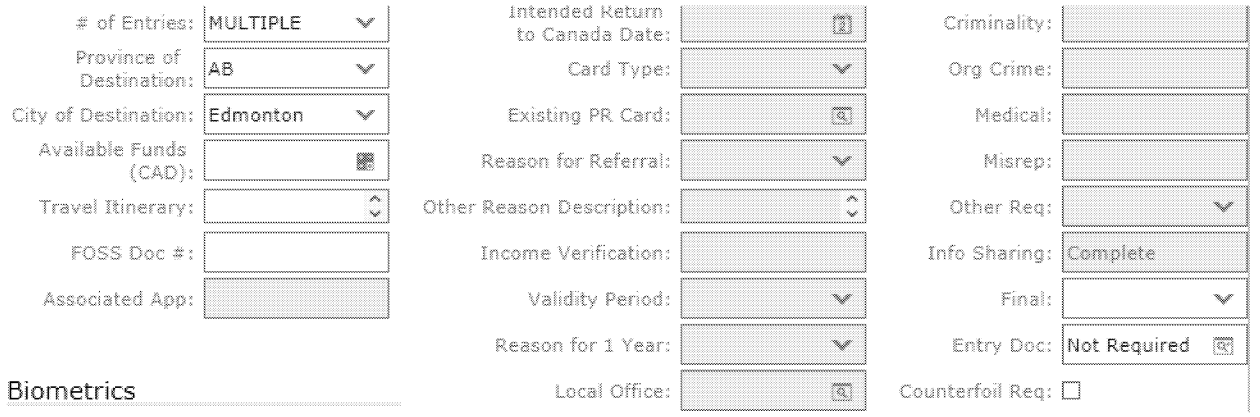
A-2021-20914-000057

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

8. **Complete the lower part of the details screen**:



9. Verify coding in left column from pre-assessment.
10. Enter the Valid From and Valid To dates in center column.
11. Check Authorized for Re-Entry if you wish to give permission to leave and re-enter within validity.
12. **IMPORTANT: Save with Ctrl-S or Alt-Enter prior to entering decision.**
13. Change Status to Passed or Failed.
14. **Complete the upper part of the Details Screen**:



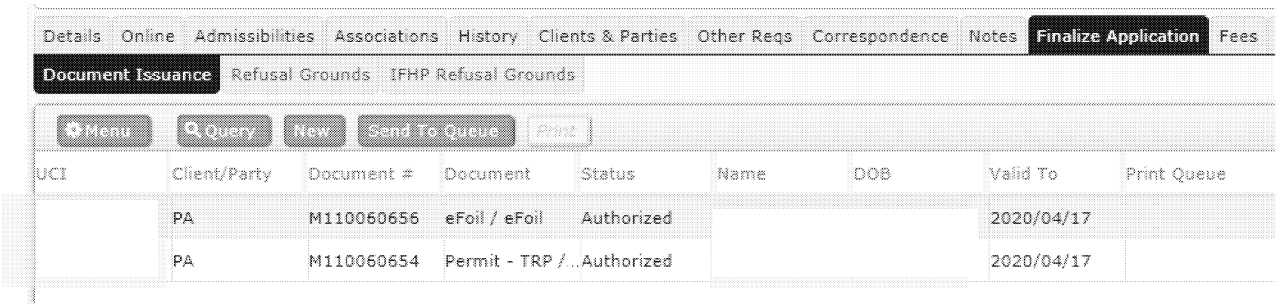
Only the **Final** decision has to be entered, but take note of the following:

- Counterfoil Req: is seldom checked. Most non-exempt nationals will have a Green Card and do not require a counterfoil. If it is checked, verify whether it is really needed.
- # of Entries **refers to the counterfoil**, not to whether leaving Canada will invalidate the permit, and can usually be ignored.
- Final decision will not process without the Province, City and NOC codes.

A-2021-20914-000058

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

15. **Complete the Finalize Application:**



- The Permit will appear in this tab after finalization. Change Status to Authorized and save Ctrl-S. An eFoil (eTA) or counterfoil will appear as required, as long as passport information is valid.
- For **Refusals**, enter the reasons: Normally the A36 inadmissibility as well as A24(1).
- Go to Correspondence / Outgoing and set the letter to Generate.
- The PA will send the letter.

Corrections

If you discover you have made an error in issuing the permit, it can be corrected, but this is more laborious than with visas. The following procedure applies to changing the decision, or correcting the validity dates or re-entry authorization:

1. Cancel the permit and eTA (if approved) in Finalize Application tab.
2. In History, change status to **Re-Opened** (not Re-Issue).
3. Delete the final decision.
4. Go back to Details and create a new permit. You must re-enter all of the screens from all steps of processing.
5. Continue through the remaining officer steps. Fix outgoing correspondence if required.

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Appendix 4: Useful Queries

Tab: IMM -> Other

For Other Mission – identifying assigned files:

This will only find files not decided yet.

App/Case #	D*
Category	TRP
Findec	Is Null
Assigned To	RC-6136
Primary Office	Los Angeles

For either mission – Check progress of a group:

App/Case #	D*
Category	TRP
Group Name	TRP WA May 21
Primary Office	Los Angeles

For either mission – Check all files assigned to Other Mission:

App/Case #	D*
Category	TRP
Status	Open or Closed
Assigned To	RC-6136
Primary Office	Los Angeles

A-2021-20914-000060

Immigration, Refugees and Citizenship Canada / Immigration, Réfugiés et Citoyenneté Canada
Information disclosed under the Access to Information Act
L'information divulguée en vertu de la loi sur l'accès à l'information

Appendix 5: Police certificate library

Use this link to access the library of sample State Police Certificates:

http://cicintranet.ci.gc.ca/connexion/tools-outils/certificat/america-amerique/usa-eu-eng.aspx

A-2021-20914-000061