

# The Story Behind the Record

By Tonya Kent

Some people may think that anyone with a criminal record is an irredeemable bad person, and this may be in part because of how we portray people with criminal records in the media. When individuals with a criminal record are grouped and portrayed as having committed the most heinous crimes, it is not difficult to see why some people may hold these views.

However, there are a number of misconceptions in these perceptions:

1. The name of the entry on a criminal record does NOT tell the whole story of the offence
2. It is very difficult to obtain a pardon or record suspension for offences on a criminal record
3. A criminal record does not mean someone went to jail
4. People are more than the offences on their record!

## The Name of the Entry on a Criminal Record Does Not Tell the Full Story

If someone looked at a criminal record and saw an entry for “robbery”, many might assume that a weapon was involved or picture a very serious incident where a store was robbed or something of the sort. However, the legal definition of “robbery” is simply taking something from a person by force or a threat of force. That could simply be tussling over a cell phone with another person back and forth and then grabbing it. Due to the “force” that was used, it is considered robbery and not just simply “theft”.

Similarly, if you see “assault” on a criminal record, assuming that someone is inherently violent is not the way to view it, as an assault can be something as minor as a push. “Assault with a weapon” makes us think that someone might have been wielding a knife or a firearm. However, under the law, anything is a weapon if the court believes it was wielded as such. For example, many defence lawyers have had cases where a piece of paper, a tissue, an empty plastic water bottle, and other similar things were considered a weapon, leading to an “assault with a weapon” charge. Anything can be considered a weapon under the law, but on your criminal record, what the “weapon” was is not specified, allowing for someone looking at that record to make their own assumptions.

Likewise, a charge such as “uttering threats” sounds very serious when it could be something as simple as being angry in an argument and sending a Facebook or Instagram message in the heat of the moment. Many of us may have even done this before but have been lucky enough not to be charged by the police.

This is all to illustrate that there is more to the story behind the names of charges under the *Criminal Code*. Many of the offences in the *Code* have names that are misleading or cover a broad range behaviour and do not speak to the person, their qualities, or characteristics.

### A Criminal Record Does Not Mean Someone Went to Jail

Another myth about criminal records is that everyone with a record went to jail. There are many dispositions that may result in a criminal record but that do not result in a jail sentence. Frequently, when someone gets a criminal record that does not result in a jail sentence, the court will order that person to complete community service hours, anger management counselling, or different life skills programs to ensure they have the appropriate tools to address any life issues that come along. These alternate dispositions may be rarely assumed to have occurred, but the reality is that there are many instances where someone will have a criminal record but won't have spent any time in jail.

### It is Very Difficult to Obtain a Record Suspension for Offences on a Criminal Record

When someone obtains a criminal record, it generally takes between five to ten years, depending on the offence to request a pardon or record suspension from the government. Furthermore, requesting a record suspension does not mean that it will automatically be granted. There are people with simple possession of marijuana offences on their criminal record from twenty years ago that have not been able to obtain a record suspension, regardless of the fact that marijuana is now legal in Canada. Sometimes record suspensions are denied, even if someone has stayed out of legal trouble for a number of years, and unfortunately, the record follows the person around, ensuring they lose out on opportunities for jobs and travel.

Not receiving a record suspension has nothing to do with the qualities of the person seeking it but is rather an example of someone subject to bureaucratic decision-making that may not come with a reason for not granting the record suspension. Further, although the costs for a record suspension were recently reduced, the administrative fees associated with gathering the documentation to obtain a record suspension remain costly, and many may not have the financial means to afford the process, especially when it is already difficult for them to obtain employment because of that criminal record.

### People Are More Than the Offences on Their Record

Many of our clients come to us without having prior criminal records after having made a mistake that causes them to obtain a criminal record. Although they may have committed an offence, this should not come with a life sentence, as our system is meant to rehabilitate and reintegrate people back into society. One moment on one bad day does not tell the whole story of a person. Many of

our clients have families, some have post-secondary education, careers, or aspirations to travel or dreams for their education. Some of our clients have been convicted of more serious offences, but when you hear their life story and the way they have turned their life around, you would be impressed with the obstacles they have overcome and their dedication to doing well in life. This is why education and awareness around criminal records and what they represent is so crucial, and why we must allow people to move beyond their justice involvement.



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Tonya Kent has her own law practice, Tonya Kent Criminal Defence. Tonya has always been a fierce and passionate advocate that fights hard for her clients. She is currently the Recent Call Director – Toronto on the Criminal Lawyers' Association (CLA), a board member on the Choice in Health Clinic in Toronto, as well as a mentor for young Black women at the Women's Health in Women's Hands Clinic located in downtown Toronto.