

THEY DID THEIR TIME

LETTING PEOPLE MOVE ON FROM THE CRIME

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ONTARIO

A CONSENSUS IN FAVOUR OF CHANGE

Standing Committee on Public Safety and National Security (2018): “The Committee recognizes that a criminal record has a negative impact on a person’s ability to find employment, housing, education, travel, adoption and custody of children.”¹

Parole Board of Canada Public Consultations (2016): “According to 63% of respondents, the current process for applying for a record suspension hinders accessibility to the program. ... Furthermore, many said they believe the process represents further punishment.”²

Former Minister of Public Safety, Ralph Goodale (2019): After acknowledging the current record system was “punitive” in 2016,³ the former minister listed criminal record system as a key “to-do list” item for his successor.⁴

OBJECTIVE OF THE BILL

In recent years, public consultations, parliamentary committee work, ministerial, Parole Board of Canada and other government representatives have made clear the need for legislative change to remedy the punitively costly and inaccessible process for obtaining a criminal record suspension.

Building on the findings of government and legislative work, this proposed *Act to Amend the Criminal Records Act* aims to remove current criminal records barriers that perpetuate punishment, particularly for the poor, and that exacerbate obstacles to successful community integration. The bill reflects three key principles:

(1) Expiry, not suspension: Those who have been held accountable for their actions, fulfilled all aspects of their sentence and are trying to move on with their lives should not have records held in the limbo of “suspension”.

(2) No application: After two years (for summary convictions) or five years (for indictable offences) without new convictions or pending charges, convictions expire and records are removed from the RCMP’s database without need for an application by the individual or a review by the Parole Board of Canada (PBC).

(3) No fees: With the reduction in costs associated with streamlining and removing unnecessary bureaucracy from the expiry process, application fees are eliminated.

THE CRIMINAL RECORDS CRISIS

► **The increased use of record checks as a prerequisite screen for employment, volunteering, housing and education creates barriers for those with criminal records:** In Ontario alone, the use of record checks increased 7 per cent each year between 2003 and 2012, an increase that cannot be accounted for by population growth alone.⁵

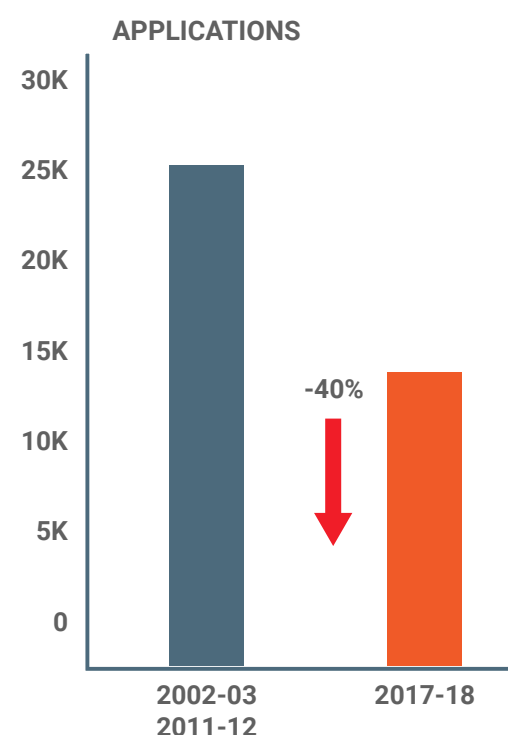
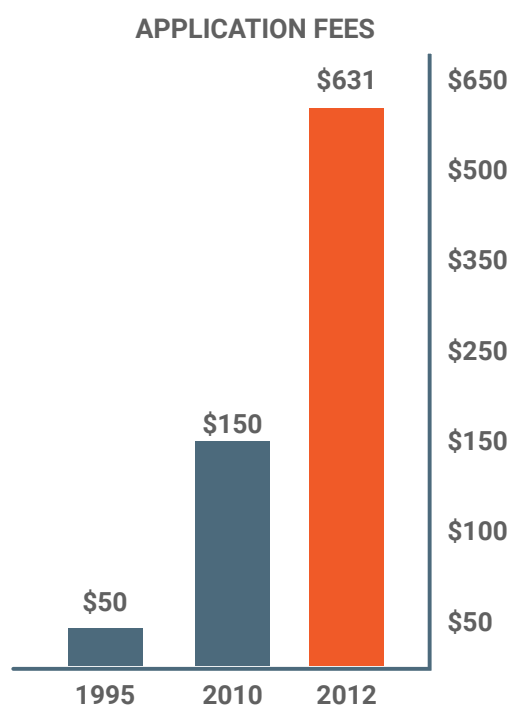
► **The waiting period for a record suspension doubled:** Waiting periods increased in 2012 from 3 years for a summary conviction and 5 years for an indictable conviction record to 5 years and 10 years, respectively.⁶

► **Astronomically high fees have put record suspensions beyond the reach of too many:** A fee of \$50 was first introduced in 1995; it was raised to \$150 in 2010; and then \$631 in 2012.⁷ In addition to this fee, applicants—many of whom are on social assistance and seeking record suspensions in the hopes of obtaining employment—pay hundreds of dollars in associated costs, including for fingerprinting and other record search fees.

► **As fees have risen, the number applications for record suspensions has decreased significantly:** Between 2002-03 and 2011-12, prior to the fees increasing to \$631, the Parole Board of Canada (PBC) received, on average, about 25,000 pardon applications per year. By contrast, over 40% fewer people applied for record suspensions in 2017-18.⁸

► **The majority of the \$631 application fee is used to fund a cumbersome and invasive review process that is not relevant to one’s likelihood of being criminalized in the future:** Empirical studies reveal that once someone has a number of crime-free years, the likelihood that they will commit another crime is effectively the same as someone who has never been convicted of a criminal offence.⁹ Passage of time is key; it can be monitored without a PBC review.

► **Restrictive and punitive changes over the past decade were billed as ways to increase public safety. Yet both before and after changes to the record suspension system, 95% of those who received a pardon or record suspension were not subsequently convicted of a criminal offence.**¹⁰



1) 30th Report of the Standing Committee on Public Safety and National Security, 42nd Parl, 1st Sess (December 11, 2018): <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/report-30/>.

2) Parole Board of Canada, *Executive Summary – Record Suspension User Fee Consultations (2016)*: <https://www.canada.ca/content/dam/pbc-clcc/documents/publications/Consultations-Executive-Summary-RS-PBC-2016.pdf>.

3) Alison Crawford, Public safety minister vows to overhaul ‘punitive’ criminal pardons system: <https://www.cbc.ca/news/politics/liberal-criminal-justice-pardons-1.3412533>.

4) Ed Tubb, Ralph Goodale on Wexit, hi unfinished business and losing his seat again 40 years later: <https://www.thestar.com/politics/federal/2019/11/02/ralph-goodale-on-wexit-his-unfinished-business-and-losing-a-seat-again-40-years-later.html>.

5) Canadian Civil Liberties Association, *False Promises, Hidden Costs: The case for reframing employment and volunteer police record check practice in Canada (2014)*: <http://www.ccla.org/recordchecks/falsepromises>

6) *Safe Streets and Communities Act, S.C. 2012, c. 1*: https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2012_1/.

7) *Pardon Services Fees Order, SOR/95-210*: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-95-210/page-1.html>; *Order Amending the Pardon Services Fees, SOR/2010-306*; *Pardon Services Fees Order – Order Amending, SOR/2012-12*.

RECENT DEVELOPMENTS:

END PIECEMEAL APPROACHES ... IT'S TIME FOR LEGISLATIVE CONSISTENCY

January 2016: The Minister of Public Safety announced that the government would consider meaningful reforms to the Criminal Records Act.¹⁰ We are still waiting for legislation.

August 2016: Parole Board of Canada public consultations confirmed too many cannot afford the fees and the current application process constitutes a significant barrier to obtaining a record suspension.

"According to 63% of respondents, the current process for applying for a record suspension hinders accessibility to the program"

96% of respondents indicated that the current fee is a barrier to people and for some the fees pose "an insurmountable financial burden and deters individuals from seeking a record suspension. ... [It] is viewed as prohibitive and perpetuating a vicious cycle: [can't afford user fee = can't apply for record suspension = unemployment]"¹¹

June 2018: Bill C-66 created a third stream of applications for the PBC to manage (in addition to record suspensions and grandfathered pardons), a process for expunging criminal records that arose from historical discrimination against LGBTQ2S communities. Even with a cost-free application process designed to be less punitive and more accessible than the standard record suspension process, few have had their records expunged.¹⁴

October 2018: The Prime Minister acknowledged the disproportionate burden of criminal records for simple possession of marijuana on Indigenous and other racialized individuals as the Minister of Public Safety announced future plans for legislation permitting cost-free applications for record suspensions relating to cannabis possession.¹⁵

Prime Minister Justin Trudeau: "We know that, because there is a disproportionate representation of young people, from minorities and racialized communities, who are saddled with criminal convictions for simple possession is a significant further challenge to success in the job market."¹⁶

This over-representation is, unfortunately, not limited to cannabis possession convictions; 28 per cent of those in federal prisons—and 40 per cent of women in federal prisons—are Indigenous, meaning that Indigenous¹⁷ Peoples and communities are disproportionately burdened by the punitive nature of the current record suspension system.

January 2017: Public Safety Canada public consultations demonstrated an overwhelming consensus among Canadians that the application process for record suspensions is punitively complex, waiting periods are too long, individuals need greater certainty that a record will truly be gone at the end of the process, and the importance of records expiring based on passage of time and without needless bureaucratic application procedures.

"When asked if this waiting period [of five years for a summary conviction] is too long, too short or appropriate, three in four participants (74%) said it is too long. ... [Regarding the ten-year waiting period,] nearly seven in ten participants (69%) said they felt it was too long."

"About three in four participants (74%) say the process of applying for a record suspension is either very hard (37%) or somewhat hard (37%)"

"Nearly nine in ten participants (86%) say there are crimes where a criminal record should be completely wiped off the criminal record, particularly minor crimes in general, minor drug offenses (particularly possession of marijuana)"

"Over four in five participants (83%) agreed that record suspensions should be automatic for some crimes if the convicted person has completed their sentence, paid any fines due, and has remained crime-free for a prescribed period."¹⁸

December 2018: The House of Commons Standing Committee on Public Safety and National Security urges the Government to address the cost and complexity of obtaining a record suspension, including by exploring expiry of a record, without need for an application.

Standing Committee on Public Safety and National Security: "The Committee recognizes that an applicant's financial situation and ability to pay may be a barrier to applying, therefore the Committee recommends that the Government review record suspension fees, and fee structure ... That the Government review the complexity of the record suspension process and consider other measures that could be put in place to support applicants through the record suspension process and make it more accessible ... That the Government examine a mechanism to make record suspensions automatic in specific and appropriate circumstances."¹⁸

August 2019: Bill C-93 created a fourth stream of applications to the PBC, "expedited" cannabis record suspensions. Despite waiving the \$631 application fee, the wait time of up to 10 years, and some of the onerous application requirements, the process still entails hidden fees and remains inaccessible for too many. In the first 4 months of the program, only 118 record suspensions were granted.¹⁹

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[PARL.CA/LEGISINFO](https://www.parl.ca/legisinfo)

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8) Standing Committee on Public Safety and National Security, M-161 Study, testimony of Mr. Daryl Churney (Executive Director General, Parole Board of Canada), December 6, 2018: <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/meeting-143/evidence>

9) Megan C Kurylychek, Robert Brame & Shawn D Bushway, "Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?" (2006) 5:3 Criminology & Pub Pol'y 483: https://www.albany.edu/bushway_research/publications/Kurylychek_et_al_2006.pdf; Alfred Blumstein & Kiminori Nakamura, "Redemption in the Presence of Widespread Criminal Background Checks" (2009) 47:2 Criminology. 327: http://www.search.org/files/pdf/Redemption_Blumstein_Nakamura_2009Criminology.pdf.

10) Parole Board of Canada, *Performance Monitoring Report 2016/2017* at 60: <https://www.canada.ca/content/dam/pbc-clcc/documents/publications/Performance-Monitoring-Report-2016-2017.pdf>.

11) Alison Crawford, *Public safety minister vows to overhaul 'punitive' criminal pardons system*: <https://www.cbc.ca/news/politics/liberal-criminal-justice-pardons-1.3412533>.

12) Parole Board of Canada, *Executive Summary – Record Suspension User Fee Consultations* (2016): <https://www.canada.ca/content/dam/pbc-clcc/documents/publications/Consultations-Executive-Summary-RS-PBC-2016.pdf>.

13) Ekos Research Associates, Inc., *Public Consultation on the Record Suspension Program: Final Report*: <https://www.publicsafety.gc.ca/cnt/rsrcs/pblctns/rcrds-spsnsn-prgrm/rcrds-spsnsn-prgrm-en.pdf>.

14) Bill C-66, *Expungement of Historically Unjust Convictions Act*: <https://www.parl.ca/LegisInfo/BillDetails.aspx?billid=9273414&Language=E>; Kathleen Harris, *Law permitting destruction of LGBT criminal records has seen low uptake so far*: <https://www.cbc.ca/news/politics/expungement-lgbt-criminal-record-1.4872703>.

15) Kathleen Harris, *Liberal government to waive fee, waiting time for pot pardons*: <https://www.cbc.ca/news/politics/pardon-pot-possession-goodale-1.4866175>.

16) Kathleen Harris, *Liberal government to waive fee, waiting time for pot pardons*: <https://www.cbc.ca/news/politics/pardon-pot-possession-goodale-1.4866175>.

17) Office of the Correctional Investigator, *Annual Report 2017-2018*: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20172018-eng.aspx>.

18) 30th Report of the Standing Committee on Public Safety and National Security, 42nd Parl, 1st Sess (December 11, 2018): <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/report-30/>

19) Kathleen Harris, "Incredibly low": Only 118 pardons granted for pot possession in first 4 months (December 1, 2019) <https://www.cbc.ca/news/politics/cannabis-pot-pardons-record-suspension-1.5376974>