

THEY DID THEIR TIME

LETTING PEOPLE MOVE ON FROM THE CRIME

Senator Kim Pate
ONTARIO

A CONSENSUS IN FAVOUR OF CHANGE

Public Safety Canada Stakeholder Engagement on Automated Sequestering of Criminal Records (2022): "Perhaps the strongest message to come through in this process is that the current record suspension system is designed to fail – especially for racialized and marginalized groups – because it ignores the close link between reintegration and record suspensions... Most participants told us that a criminal record is a major obstacle to acquiring the things that others take for granted, such as meaningful employment, housing, and social acceptance. When they can find jobs, people with criminal records usually get lower pay. Housing is substandard and difficult to secure. The challenge of meeting basic human needs thus becomes a major obstacle to successful reintegration."¹

Former Minister of Public Safety Marco Mendicino (2022): "For too many law-abiding Canadians who've served their sentences, a criminal record carries a stigma that can block them from housing, employment, education and more. Helping more of them obtain a record suspension removes a major barrier that stands in the way of fully reentering society."²

Public Consultation on the Record Suspension Program (2017): Three in four participants (74%) said the process of applying for a record suspension is too hard, often mentioning the need to "streamline" the process with many mentioning making a record suspension automatic as particularly helpful.³

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". Expired records would be kept separate and accessible only to police for the purpose of investigations when the disclosure is in the interest of the administration of justice.

(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 kept separate in the RCMP's database only accessible in limited circumstances.

(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.⁴

► **The waiting period for a record suspension doubled:** Waiting periods increased in 2012 from 3 years for a summary conviction record and 5 years for an indictable conviction record to 5 years and 10 years, respectively.⁵ 74% of participants in public consultations held by the government thought that the waiting period for a summary offence was too long and 69% thought the same for an indictable offence.⁶

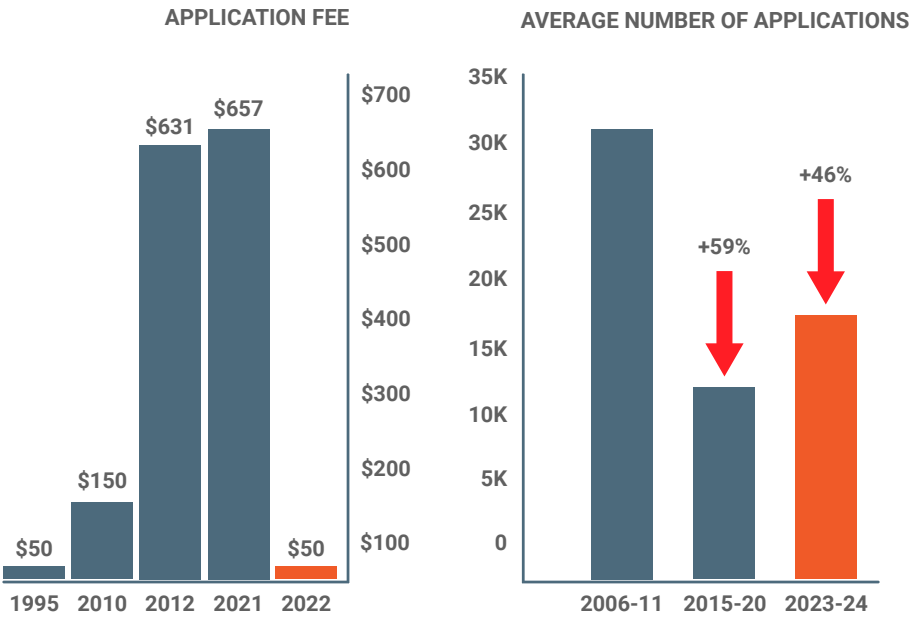
► **Reduction of the application fee has not addressed all cost-related barriers to completing the record suspension application:** While 2010-12 fee increases were reversed in January 2022, lowering fees from more than \$650 to \$50, there are still many additional costs associated with the process. The applicant may have to pay hundreds, if not thousands, of dollars to complete the process, including paying for fingerprinting, travel to retrieve records, legal fees, et cetera.

► **The decrease in fees has not removed most barriers to record suspensions:** Fee reductions have resulted in slightly more applications—an average of 16,847 applications per year between 2023 and 2024. However, this is barely half (54%) of the rates of applications prior to the 2010-12 fee increases and other application restrictions, so does not remedy the situation for the millions of Canadians in need of record expiry.⁷

► **The cumbersome, and invasive review process is in no way predictive of a person's likelihood of being criminalized in the future:** All research reveals that once someone has a number of crime-free years, the likelihood that they will commit another crime is effectively the same as for someone who has never been convicted of a criminal offence.⁸ Passage of time is key and can be monitored via the existing RCMP database of records, and all but eliminating the time and administrative costs associated with a PBC review.

► **The record suspension process is lengthy and complicated:** The process is convoluted, and some applicants seek out third-party and legal assistance to complete their applications. In response to this evidence and the fact that some end up simply abandoning the process in frustration,⁹ the government has allocated some \$18 million in funding to community organizations so that they can assist folks to apply for record suspensions.¹⁰

► **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.¹¹**



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.¹² 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]."*¹³

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 The PBC Performance Monitoring Report 2023-2024 indicates that as of March 31, 2024, they received only 82 expungement applications, 71 of which were found ineligible.¹⁵

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.¹⁶

*Former 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."*¹⁷

This over-representation is, unfortunately, not limited to cannabis possession convictions; 28% [now 33%] of all those in federal prisons— 40% [now 50%] of federally sentenced women — are Indigenous, meaning that Indigenous¹⁸ 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."*¹⁹

December 2018: The House of Commons Standing Committee on Public Safety and National Security urged 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."*²⁰

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 5 years of the program, only 845 suspensions were granted.²¹

June 2021: The Government introduced Bill C-31, which proposed, among other things, to get rid of some of the current application requirements and shorten the waiting periods to three years for summary offences and five years for indictable offences.²²

*Former Minister of Diversity, Inclusion and Youth, Bardish Chagger: "Our government is committed to combating systemic racism and discrimination in all aspects of society. We know that the criminal justice system disproportionately impacts racialized communities. For individuals who have completed their sentence and demonstrated to be law-abiding citizens, this legislation would reduce barriers to accessing a pardon, giving them a better chance to succeed and contribute in meaningful ways to society. As we stand together against all forms of discrimination, we need to dismantle systemic barriers so that our criminal justice system is more fair, effective, and keeps all Canadians safe."*²³

October 2022: Three years after Bill C-93, only 972 records suspension applications were submitted. Of these applications, 335 were rejected for technical issues alone, meaning than more than 1 of 3 applications for a cannabis record suspension were refused due to the current complicated and cumbersome process.²⁷ These statistics have marginally grown since then but remained consistent with this trend.²⁸

*"[Automatic record expiry] means that criminal records could be suspended and without requiring applications and fees. ... This will enable individuals convicted of simple drug possession to continue living their lives. They can continue their schooling, explore employment opportunities or participate in their communities without being held back by a prior conviction. ... This addition provides the bill with a mechanism to reduce the stigma associated with ... convictions."*²⁹

August 2022: The Government released a report following engagement on automatic record sequestering. Participants in the engagement agreed that automatic record sequestering would remove burdensome bureaucratic steps and the risk of bias which would increase the number of people receiving record suspension and in turn assist with access to "housing, employment, citizenship and reducing recidivism."²⁴

*"The current record suspension process is designed to fail. A criminal record is not just a record of wrongdoing; it is an unlimited extension of the person's sentence that makes it much more difficult for them to find a job, secure a living space or, more generally, reintegrate into society. This in turn contributes to recidivism."*²⁵

*"Removing the social stigma associated with a criminal record can have a huge ripple effect in a person's life, affecting employment, family relationships, housing, social participation, and more."*²⁶

November 2022: The Government passed Bill C-5 which included automatic record expiry for simple drug possession, two years after the completion of a sentence.

*"The Liberals previously set up a record suspension process for marijuana when it was legalized, but... I have to point out that that process cleared the records of only [then] 484 of the hundreds of thousands of people with records for simple possession. Bill C-5 will now clear them all. It will clear them all without an application process and without a fee."*³⁰

The Government has not yet implemented an automated expiry of drug possession records as the bill requires. Instead, the government is trying to implement Bill C-5 requirements via ministerial directives.³¹

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