

[Criminal Records Bill \(Re\)Introductory Speech](#)

Honourable Senators, I rise to speak to Bill S-214, *An Act to amend the Criminal Records Act, to make consequential amendments to other Acts and to repeal a regulation.*¹

This year, the *Criminal Records Act* turns 50. In 1970, this legislation was introduced based on an understanding—across party lines—that all of us benefit when individuals who have been held accountable for their actions and fulfilled all aspects of their sentences are able to move on with their lives and contribute to their communities.

Fifty years ago, Conservative Solicitor General Critic Robert McCleave marked the creation of the pardon system with the following words: “It is of importance that people should not be punished in a monetary way because of an offence for which they have served their time... They should not have a bad name hanging over them for the rest of their lives.... We have done something which would help a person obtain a pardon without going to frightful legal expense... the request is put in and it will be processed without any cost to the person concerned except the cost of the stamp and his time in writing the letter.”²

In the years since then, the name of the system has changed. It is no longer the pardon system; it is the record suspension system. As a result of changes to the rules, individuals now wait longer, pay more, have to meet more requirements, and face the spectre of records ceasing to be suspended. These changes have been said to make us safer, but the available evidence indicates they do not. Rather, they punish and discriminate.

Bill S-214 proposes a streamlined system of record expiry—sometimes known as expungement—after two or five years pass without new convictions or pending charges. The bill is based on the understanding that accessible criminal record relief and public safety go hand in hand.

As an exception to this streamlined deletion of criminal records, Bill S-214 would preserve the mechanism of vulnerable sector checks, to detect expired records when someone applies to work with children or other vulnerable people. It should, however, be noted that given the paucity of reporting when it comes to violence against women and children, as most know, and experts confirm, record checks are not effective means of protecting women and children from harm.

Canadians value humanity, fairness and common sense and there is general consensus on the need for accessible record relief as a non-partisan issue. In 2018, the House Public Safety Committee released a cross-party report that recognized the current criminal record system poses barriers to “employment, housing, education, travel, adoption and custody of children.” Liberal,

¹ **Note: the regulation repealed is the *Pardon Services Fee Order*, which is currently responsible for the \$631 registration fee**

² House of Commons Debates, 28th Parliament, 2nd Session at 6863-64 (May 12, 1970).

Conservative and NDP committee members agreed that it was time for the government to “examine a mechanism to make record suspensions automatic”, in at least some circumstances.³

Cost Concerns

One of the most significant barriers to accessibility in the current system is cost. The cost of a record suspension has soared from the cost of a postage stamp to submit the application referred to by Mr. McCleave to \$50 in 1995, then to \$150 in 2010 and then to \$631 in 2012.⁴ This does not include additional costs such as fingerprinting and obtaining original copies of records that can add hundreds of dollars. An automatic cost-of-living increase will add another \$13 this April⁵ and in the not too distant future, fees may exceed \$1500.

Peut-être que pour certains d’entre nous, 631 \$ (six cent trente et un dollars), cela ne semble pas beaucoup. Cependant, la plupart des demandeurs cherchent à obtenir un allègement de leur casier judiciaire dans l’espoir de trouver un emploi, généralement pour se sortir eux-mêmes et leur famille de la pauvreté.⁶

Since the introduction of the \$631 fee in 2012, applications for record suspensions have decreased by 40 per cent.⁷ Thousands of Canadians are unable to apply for record suspensions not because they are identified as a public safety risk, but because they are poor.

When the \$631 fee was established, the stated rationale for the fee hike was cost recovery. The danger of “cost-recovery” is that, as fewer applicants come forward, the administration costs per application must rise as a result. Maintaining cost-recovery will eventually cause fees to spiral even further out of control and out of reach.

The senselessness of adhering to this system is clear, when contrasted with other available means of recuperating costs. Public Safety officials recognize that every dollar invested in expiry of criminal records translates into two dollars of revenue for the government if individuals are able to secure employment and pay income tax.⁸

³ 30th Report of the Standing Committee on Public Safety and National Security, 42nd Parl, 1st Sess, <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/report-30/>

⁴ *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.

⁵ PBC, March 31, 2020 Record Suspension Application Fee Increase (Service Fees Act): <https://www.canada.ca/en/parole-board/services/record-suspensions/record-suspension-application-fee-increase.html>

⁶ English translation: *Perhaps to some of us \$631 might not sound like much. But most applicants seek out criminal record relief in the hopes of finding employment—usually to lift themselves and their families out of poverty.*

⁷ 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>; fewer than 14,000 applications for 2018-2019: <https://www.canada.ca/content/dam/canada/parole-board/reporting-to-canadians/pmr/2017-2018/PBC%20Performance%20Monitoring%20Report%202017-2018.pdf>

⁸ Standing Committee on Public Safety and National Security, M-161 Study, testimony of Ms Angela Connidis (Public Safety Canada), Dec 6, 2018: <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/meeting-143/evidence>

Public Safety officials also indicate that record suspensions is the only program within their department held to this “full cost recovery” standard.⁹

We can speculate as to reasons why. Record suspensions are often spoken of as if they are a privilege, but in most legal systems that are comparable to Canada’s, the stigma of a record disappears if a person remains crime-free for a number of years.¹⁰ When the *Criminal Records Act* was introduced in 1970, a criminal record was not meant to be a permanent punishment. We have moved away from the terminology of “pardon” because it understandably conveyed the impression that it meant forgiving someone for their actions. In some cases, forgiveness for past wrongdoing may be sought or provided by victims or the community, but it may not always be an appropriate characterization of the post-conviction process. A record expiry scheme is not a scheme for forgiveness: it simply reflects the principle that punishment, at some time, must end or else risk perpetrating injustice.

Those who cannot afford a record suspension face punitive barriers to jobs, housing, education, volunteer work and even the ability to parent children – all of which hinder rather than enhance public safety. They face a discriminatory system that turns historical convictions into life-long sentences for those who are poorest.

Since the introduction of a previous version of this bill last year, our office has heard from Canadians and their families saving for record suspensions and working to navigate this punishingly complex system. Too often, concerns about publicly exposing their own or a loved-one’s historical criminal record prevent them from speaking out. They have done their part; they

⁹ Standing Committee on Public Safety and National Security, M-161 Study, testimony of Ms Angela Connidis (Public Safety Canada), Dec 6, 2018: “We don't have very many programs like the Parole Board where we are doing that. This is the only full cost recovery one within Public Safety's realm that I'm aware of”: <https://www.ourcommons.ca/DocumentViewer/en/42-1/SECU/meeting-143/evidence>

¹⁰ In Germany, most convictions automatically stop appearing on “conduct certificates” whenever someone has gone five years without a further conviction after the completion of their sentence: *Bundeszentralregistergesetz* (BZRG) [Central Federal Register Law] §34 (Ger). See also Christine Morgenstern, “Judicial Rehabilitation in Germany – The Use of Criminal Records and the Removal of Recorded Convictions” (2011) 3:1 Eur J Probation 20 at 29–30

In France, after three to ten years all but the most serious offences are expunged from the bulletins that the *Casier Judiciaire National* makes available for civil purposes: Art. 133-13 *Code Pénal* (Fr). See also Martine Herzog-Evans, “Judicial rehabilitation in France: Helping with the desisting process and acknowledging achieved desistance” (2011) 3:1 Eur J Probation 4 at 7–11.

In the United Kingdom, the *Rehabilitation of Offenders Act 1974* provides for the automatic expiry of all convictions for which a person was sentenced to up to four years in prison (after 7 offence-free years after sentence in this case, but with shorter waiting periods for shorter sentences and other dispositions—including no waiting period for simple cautions: see s 5 of the act for details). In New Zealand the *Criminal Records (Clean Slate) Act 2004* expunges convictions after a 7-year waiting period, but excludes all prison sentences and requires applications in the case of sexual offences and decriminalized offences. Australia has a mix of regimes because both the states and the commonwealth have jurisdiction over criminal law, but the scheme in Part VIIC of the *Commonwealth Crimes Act 1914* is representative: it provides for the removal of conviction records after ten offence-free years *post-conviction*, but excludes prison sentences of more than thirty months.

are working to contribute to their communities. They have paid, daily, the price of our failure to act.

Summary of Bill

Le projet de loi S-214 (S-deux cent quatorze) répond aux préoccupations que nous avons entendues de la part des Canadiens concernés, de la Commission des libérations conditionnelles du Canada et d'autres représentants du gouvernement, dans le cadre des consultations publiques, des travaux des comités parlementaires et des déclarations des ministres. Nous avons entendu que les frais, la bureaucratie et les délais d'attente liés à la suspension des dossiers sont trop souvent insurmontables et donnent lieu à un système discriminatoire, en particulier pour les personnes pauvres.¹¹

In response, Bill S-214 sets out a single, less cumbersome system in which criminal convictions expire after a certain number of crime-free years in the community. Research demonstrates that after a few crime-free years, those with historical convictions are no more likely to be subsequently convicted of a crime than a person who has never been convicted of a criminal offence.¹² Beyond this point, there is no use and no justice in continuing to punish them with a criminal record. By allowing records to expire based on the passage of time without subsequent convictions, we can reduce costs and eliminate punitive application fees. We can also ensure that the reach and impact of criminal records do not interfere with the ability of people to find places to live, work to support themselves and their families, and otherwise contribute to their communities—all of which lead to successful, crime-free community integration.

Bill C-93's Piecemeal Approach: Unfinished Business

Bill S-214 builds on this Chamber's past work studying and calling attention to the need for accessible and effective criminal record relief.

Last year, Bill C-93 had the effect of adding more complexity to an already over-burdened system. Before Bill C-93, the Parole Board of Canada was already struggling to administer three different streams of record applications—the general record suspension process, the former pardon process for those still entitled to use it, and an expungement process for those criminalized as a result of historical discrimination against members of LGBTQ2S communities. To this, Bill C-93 added a new, fourth stream of applications—cannabis record suspensions.

When we passed Bill C-93 last year, we did so knowing that our work on the *Criminal Records Act* was not over. As then Public Safety Minister Ralph Goodale acknowledged, Bill C-93 “deals

¹¹ English translation: *Bill S-214 is a response to the concerns we have heard from affected Canadians, public consultations, parliamentary committee work and pronouncements by Ministers, the Parole Board of Canada and other government representatives. We heard that fees, bureaucracy and wait times related to record suspensions are too often insurmountable and have resulted in a discriminatory system, especially for those who are poor.*

¹² Megan C Kurlychek, 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; Alfred Blumstein & Kiminori Nakamura, “Redemption in the Presence of Widespread Criminal Background Checks” (2009) 47:2 *Criminology* 327.

with only one small part of the pardons process that is in need of broader reform”¹³ due to sweeping problems of “punitive” costs and inaccessibility.¹⁴

Cumbersome Application Processes

In addition, the effectiveness of “expedited” cannabis record suspensions has been limited because they are application-based. While the process does not require the \$631 application fee and wait time of up to 10 years faced by other record suspensions applicants, it still relies on a variation of the same record suspension process. It requires applicants to spend time and money—often hundreds of dollars—having their fingerprints taken, obtaining RCMP records and locating original documents from court and police record-keepers in jurisdictions where charges were originally laid.¹⁵ As of December 2019, these obstacles had resulted in only 234 applications and 118 cannabis record suspensions granted.¹⁶ This is a mere 118 of an estimated 250,000 Canadians who have some form of cannabis possession conviction.¹⁷

Four Application Streams

Each additional stream of applications for record relief has increased complexity and further stretched Parole Board resources. The board expressed concerns to the Legal Committee about the complex and bureaucratic nature of the criminal records systems and testified that having an integrated system to support the streamlining of the process would be useful.¹⁸ Bill S-214 provides just such an efficient, simplified system of record expiry.

The lack of accessibility associated with current record suspension processes has been studied in-depth. Public consultations undertaken by the Department of Public Safety in 2017 found that more than four out of five Canadians support some form of “automatic” record expiry¹⁹—that is, expiry of a record without the need for an application. A 2018 study by the House Public Safety Committee unanimously recommended that the government review “the complexity of the record suspension process, ... consider other measures that could be put in place to support

¹³ Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs Issue No.65 June 13, 2019 Study of Bill C-93, Testimony of Minister Ralph Goodale:

<https://sencanada.ca/en/Content/SEN/Committee/421/lcjc/65ev-54895-e>

¹⁴ Alison Crawford, *Public safety minister vows to overhaul ‘punitive’ criminal pardons system*:

<https://www.cbc.ca/news/politics/liberal-criminal-justice-pardons-1.3412533>.

¹⁵ Public Safety Canada, *About no fee, expedited pardons for individuals convicted of simple possession of cannabis*:

<https://www.canada.ca/en/public-safety-canada/news/2019/08/about-no-fee-expedited-pardons-for-individuals-convicted-of-simple-possession-of-cannabis.html>.

¹⁶ Kathleen Harris, ‘Incredibly low’: Only 118 pardons granted for pot possession in first 4 months:

<https://www.cbc.ca/news/politics/cannabis-pot-pardons-record-suspension-1.5376974>

¹⁷ Minister David Lametti cited in Charlie Pinkerton, *Canadians can now apply for free, no-wait pardons for cannabis possession charges*: <https://ipolitics.ca/2019/08/01/canadians-can-now-apply-for-free-no-wait-pardons-for-cannabis-possession-charges/>.

¹⁸ Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs Issue No.65 June 13, 2019:

<https://sencanada.ca/en/Content/SEN/Committee/421/lcjc/65ev-54895-e>

¹⁹ Ekos Research Associates, Inc., Public Consultation on the Record Suspension Program at 17

http://publications.gc.ca/collections/collection_2017/sp-ps/PS4-229-2017-eng.pdf

applicants through the record suspension process and make it more accessible, ... and examine a mechanism to make record suspensions automatic.”²⁰

At Legal Committee, experts including the Canadian Bar Association and the Canadian Association of Black Lawyers recommended that relief from cannabis records not require an application.²¹ The Committee heard that a key barrier to this proposal was technological: it would require a national, comprehensive record-keeping system.²² Accordingly, the Committee in its report on Bill C-93 called on the government to “accelerate reforms to the *Criminal Records Act* [and] ... examine how best to improve co-ordination of the management of records across Canadian jurisdictions and to implement the necessary technological advances to allow for a more automated approach to criminal records relief that would not require an application process or fee.”²³

Bill S-214 will allow us to resolve the concerns emerging from the study of Bill C-93 by the Legal Committee and this Chamber. This bill includes a provision to ensure that when criminal records are disclosed, they are also registered in the RCMP’s Canadian Police Information Centre database (CPIC). CPIC would then serve as the centralized record system required to support automated record expiry, without the need for an application by the individual.

Honourable Colleagues, we have not forgotten the concerns we heard as we debated Bill C-93. Bill S-214 offers a means to ensure that no one is barred from accessing criminal records relief to which they are entitled—and that no one is unjustly punished with the continuing stigma of a criminal record—simply because they lack legal or financial resources.²⁴

Increased Use of Record Checks

As criminal record relief has become more unattainable, the use of criminal record checks has proliferated—increasing at approximately 7 per cent *per year*.²⁵ Three in five Toronto employers now require police background checks for all of their new employees.²⁶ Criminal record checks extend well beyond employment, to every facet of an individual’s life from applications for housing, school, volunteer work—and even, as recently reported by the John Howard Society, for beds in nursing homes.²⁷

²⁰ 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/>.

²¹ Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs Issue No.65 June 17, 2019: <https://sencanada.ca/en/Content/SEN/Committee/421/lcjc/65ev-54906-e>

²² Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs Issue No.65 June 13, 2019: <https://sencanada.ca/en/Content/SEN/Committee/421/lcjc/65ev-54895-e>

²³ Report of the Standing Senate Committee on Legal and Constitutional Affairs, Bill C-93: <https://sencanada.ca/en/committees/report/77829/42-1>

²⁴ Report of the Standing Senate Committee on Legal and Constitutional Affairs, Bill C-93: <https://sencanada.ca/en/committees/report/77829/42-1>

²⁵ Canadian Civil Liberties Association, *False Promises, Hidden Costs: The Case for Reframing Employment and Volunteer Police Record Check Practices in Canada* at 33—34

²⁶ John Howard Society of Ontario, *The Invisible Burden: Police Records and Barriers to Employment in Toronto* (2018) at 24–25, online: < <http://policerecordhub.ca/invisibleburden/>>.

²⁷ https://twitter.com/johnhoward_can/status/1205458768185757699?s=11

The ability of criminal record checks to increase public safety has long been contested. Research shows that past criminal convictions are not correlated with a likelihood to commit an offence in the future.²⁸ Yet these screening tools persist and directly affect the capacity of individuals to successfully integrate into society and impair self-sufficiency.

Discrimination Against Racialized Communities

The punitive nature of criminal records and record checks disproportionately burdens those who are already unjustly stigmatized. Today, individuals of African descent account for 8%²⁹ of federal prisoners whereas 30% of those in federal prisons—and 42% of women in federal penitentiaries—are Indigenous.³⁰ Denial of criminal record relief exacerbates the burden and stigma of a criminal record on those most likely to experience discrimination. It affects job prospects, housing situations and well-being, not just of those who have been criminalized, but also their families and children—and generations to come.

Conclusion

Honourable Senators, a growing body of government and legislative work continues to expose and underscore injustices within the criminal record system. We know that criminal records discriminate against those who are poor, those who are racialized and those with past histories of trauma and resulting mental health and addictions issues. They interfere with efforts to find employment, education and housing. We know that they create barriers to successful integration and can undermine, rather than enhance, public safety. We know that the process for suspending criminal records is punishingly expensive and unnecessarily complex. It is time for legislative change.

Honourable colleagues, let us work together to bring about long-overdue, evidence-based changes to the criminal records system in Canada. I look forward to your much appreciated contributions to this bill.

Miiigwetch, merci, thank you.

²⁸ See e.g. Megan C Kurlychek, 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

²⁹ Annual Report of the Office of the Correctional Investigator 2017-2018 <https://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20182019-eng.aspx>

³⁰ Indigenous People in Federal Custody Surpasses 30%: Correctional Investigator Issues Statement and Challenge <https://www.oci-bec.gc.ca/cnt/comm/press/press20200121-eng.aspx>