



June 29, 2022

## St. Leonard's Society of Canada Submission to Public Safety Canada

### ***Engagement on the Automated Sequestering of Criminal Records***

St. Leonard's Society of Canada (SLSC) is a membership-based, charitable organization dedicated to community safety. The mission of SLSC is to promote a humane and informed justice policy and responsible leadership to foster safe communities. It:

- a. Endorses evidence-based approaches to criminal and social justice;
- b. Conducts research and develops policy;
- c. Supports its member affiliates; and
- d. Advances collaborative relationships and communication among individuals and organizations dedicated to social justice.

SLSC is pleased to submit its perspective on the impact of criminal records on behalf of its membership in conjunction with Public Safety Canada's consultations on the Automatic Sequestering of Criminal Records.

### **Background**

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The consequences of having a criminal record can sometimes be some of the most punitive elements resulting from a criminal conviction. Criminal records significantly hinder access to employment, housing, and travel for people who have been involved with the criminal justice system. Yet, access to these basic needs for successful community integration are essential. Employment provides individuals with economic security and, without it, individuals have less-reliable means of sustaining themselves. Research has suggested that limiting opportunities to engage in legitimate work or volunteer opportunities minimizes the opportunity for a safe, successful return to the community.<sup>1</sup> This in turn is counter-productive to the overall aims of the criminal justice system, including contributing to public safety by returning people to the community as law abiding and contributing members of society.

When considering hiring someone with a criminal record, employers cite concerns about workplace security and public perception;<sup>2</sup> however, there is no evidence to suggest that people with criminal records commit more crime in the workplace compared to those without a criminal record. Overcoming barriers to employment is difficult, as those with criminal records must compete against applicants without a criminal record for (sometimes scarce) employment opportunities.

The extent to which a criminal record creates barriers to successful community integration can coincide with an individual's personal characteristics such as race<sup>3</sup> or age. This means that the barriers that result from bearing a criminal record are sometimes amplified when paired with additional stigmatizing characteristics that an individual may experience. This has serious implications for marginalization, equity, and principles of sentencing. It is concerning that similar individuals convicted of comparable crimes can experience vastly different consequences as a result of their criminal records. This creates disparate access to, for example, financial

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<sup>1</sup> Reiman, J. (1998). *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*. Boston: Pearson.

<sup>2</sup> Nally, J.M., Lockwood, S., Ho, T., & Knutson, K. (2014). Post-Release Recidivism and Employment among Different Types of Released Offenders: A 5-Year follow-up Study in the United States. *International Journal of Criminal Justice*, 9(1), 16-34.

<sup>3</sup> Pager, D. (2003). The Mark of a Criminal Record. *American Journal of Sociology*, 108(5), 937-975.

resources, housing, health care, and education, thereby increasing potential for conditions of release to be compromised and risk of recontact with the criminal justice system.

It is also concerning that individuals face consequences for their criminal convictions, over and beyond the sentence handed to them by a judge and deemed by the court to be proportionate to the offence. The consequences of bearing a criminal record continue long after an individual has completed the sentence.

### **Issues/Scope:**

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While attempting to integrate successfully into the community, individuals face stigma, marginalization, and rejection from members of the public such as landlords and employers, extending their punishment beyond their sentences and into everyday living; however, a search of legislation, statutes, and secondary sources does not produce any official, stated purpose of administering criminal records. Creating and retaining criminal records likely stemmed from the need for a risk-assessment tool when sentencing those who reoffend and making parole decisions; but, criminal records are used for much more than this today.

What was once likely reserved for government use only, criminal records are now also used by members of the public, such as landlords and employers, as a risk-assessment tool in deciding suitable tenants and employees. This is problematic because the scope of their interpretation of a criminal record is limited. For example, it is unlikely that most employers consider the range of criminal code offences, how similar offences differ from one another, and which parts of each offence merit nuanced consideration. There is a likelihood for employers to misuse information regarding a criminal record in assessing a job applicant's risk to the workplace.

People with criminal records are further stigmatized and negatively affected as a result of the expanded use of criminal records beyond the criminal justice system into everyday living. Further, the criminal justice system's capacity for habilitation and integration is hindered. The government attempts to address some of these consequences by offering record suspensions, but these consequences could be better addressed, or better yet prevented, if the purpose and appropriate scope of criminal records were identified. Without a stated purpose, the government can broaden the scope of the use of criminal records with limited accountability.

Criminal records have a direct impact on every person convicted of a crime, including people supported by SLSC affiliates. They can also sometimes impact people who were charged, but not convicted, of a crime and those who were merely investigated for a crime.<sup>4</sup> It is estimated that 1 in 9 Canadians has a criminal record.<sup>5</sup> Criminal records indirectly impact all Canadians as they serve as a barrier to successful community integration. Additionally, the administration of criminal records is counter-productive to many of the principles and purposes of sentencing such as proportionality, parity, rehabilitation, and protection of the public.

While record suspensions exist as a means to address the consequences that come with bearing a criminal record, there are many barriers to obtaining one. Barriers include prohibitive fees, a complicated application process, extensive administration and operational expenses, and waiting periods of 5 and 10 years for summary and indictable convictions, respectively. Canada has seen examples of proposed legislation to address the many barriers to obtaining a record suspension, such as Bill S-258 put forward by Sen. Kim Pate in 2019. Progressive legislation that would see the automatic expiry of criminal records after a certain number of years removes the onerous burden on individuals, and the record suspension system, and significantly reduces associated barriers.

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<sup>4</sup> Canadian Civil Liberties Association. (2012). Presumption of Guilt? The Disclosure of Non-Conviction Records in Police Background Checks. Retrieved from <http://ccla.org/oldsite/wp-content/uploads/2012/09/CCLA-NCD-Report.pdf>

<sup>5</sup> Canadian Civil Liberties Association. (2014). False Promises, Hidden Costs: The Case for Reframing Employment and Volunteer Police Record Check Practices in Canada. Retrieved from <https://www.ccla.org/recordchecks/falsepromises>

## Recommendations

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St. Leonard's Society of Canada appreciates the opportunity to engage with Public Safety regarding the Automatic Sequestering of Criminal Records (ASCR). With respect to implementing an ASCR process, SLSC strongly recommends that Public Safety ensure that the department:

- supports practices that seek to address both interpersonal and systemic barriers to community integration that impact people with criminal records;
- supports legislative reforms that prioritize the interest of successful community integration; and
- establishes opportunities to ensure that people with criminal records have fair access to life essentials and opportunities for self-sustainment such as housing, employment, and volunteering.

Should you have any questions or concerns related to the information submitted regarding ASCR or the impact of criminal records contained herein, please do not hesitate to contact me at [anita@stleonards.ca](mailto:anita@stleonards.ca) or directly at 613-233-5170.

Sincerely,



Anita Desai, Executive Director

## Additional Information

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### SLSC Reports/Publications:

- Desai, A. (2015). *Social Enterprise and Labour Market Integration for Individuals Exiting the Criminal Justice System*. Ottawa, ON: St. Leonard's Society of Canada.
- White, E. (2011). *Re: Parole Board of Canada Proposal Pardon User Fee Increase (Brief to the Standing Committee on Legal and Constitutional Affairs)*. Ottawa, ON: St. Leonard's Society of Canada.

### External Reports/Publications:

- John Howard Society of Ontario. (2018). The Invisible Burden: Police Records and the Barriers to Employment in Toronto. Retrieved from <https://policerecordhub.ca/wp-content/uploads/2018/02/The-Invisible-Burden-Report-FINAL.pdf>.
- Pate, K. (2019, March 19). Criminal records have become a lifelong stigma. *Policy Options*. Retrieved from <https://policyoptions.irpp.org/magazines/march-2019/criminal-records-become-lifelong-stigma/>.
- Ruddell, R., and Winfree L. T. Jr. (2006). "Setting Aside Criminal Convictions in Canada." *The Prison Journal*, 86(4), 452-469.
- Sugie, N. (2017). Criminal Record Questions, Statistical Discrimination, and Equity in a 'Ban the Box' Era. *Criminology & Public Policy*, 16(1), 167-175.
- Uggen, C., Vuolo, M., Lageson, S., Ruhland, E., & Whitman, H. (2014). The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment. *Criminology*, 52(4), 627-654.