



St. Leonard's
Society of
Canada

Société
St-Léonard
du Canada



Study on Bill S-212: An Act to amend the Criminal Records Act, to
make consequential amendments to other Acts and to repeal a
regulation.

**BRIEF TO THE
STANDING SENATE COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS
44th Parliament, 1st Session**

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Submitted to:
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Background of St. Leonard's Society of Canada (SLSC)

SLSC is a national, membership-based charitable organization that brings together a network of individuals and independent community-based agencies collectively to advance our mission to promote a humane and informed justice policy and responsible leadership to foster safer communities.¹ We do this by endorsing evidence-based approaches to criminal and social justice, conducting research and developing policy, supporting our member affiliates, and advancing collaborative relationships and communication among individuals and organizations dedicated to criminal and social justice. Together, we proactively address the needs of people involved in the criminal justice system to achieve safer, healthier, and more inclusive communities.

For over fifty years, we have amplified the voices in our network and researched effective and humane ways to improve individual and collective well-being. SLSC remains dedicated to sharing what we learn so that we – and others – can contribute to meaningful changes that enhance every person's ability to live safely in their community. Today, SLSC's members offer a diverse range of social justice programs including shelters for homeless men and women; transitional residences for men, women, and youth; programs that address issues of problematic substance use, mental health, trauma, and life skills; and a wide array of employment, education, and training programs.

SLSC's Policy Position on the Impact of Criminal Records²

The consequences of having a criminal record can often be some of the most punitive elements resulting from a criminal conviction. Criminal records significantly hinder access to employment, housing, education, volunteering, and travel for people who have been impacted by 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, people have less-reliable means of sustaining themselves and their families. Research suggests that limiting one's ability to engage in legitimate work or volunteer opportunities minimizes the opportunity for a safe, successful return to the community.³ 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 active members of society.

When considering hiring someone with a criminal record, employers cite concerns about workplace security and public perception;⁴ however, there is no evidence to suggest that people with criminal records commit more crime in the workplace than 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.

¹ Incorporation #12894 06600 RR0001. Online: www.stleonards.ca. SLSC is not a religious organization.

² St. Leonard's Society of Canada. (2020). [SLSC Policy on Impact of Criminal Records](#).

³ Reiman, J. (1998). *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice*. Boston: Pearson.

⁴ 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.

The extent to which a criminal record creates barriers to successful community integration can coincide with an individual's personal characteristics such as race⁵ or age. This means that the barriers that result from bearing a criminal record are sometimes amplified when paired with additional vectors of stigma. 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 resources, housing, health care, and education, thereby increasing the potential for conditions of release to be compromised and the risk of re-contact 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.

While attempting to integrate successfully into the community, individuals face stigma, marginalization, and rejection from members of the public. This extends their punishment beyond their sentences and into everyday living. A search of legislation, statutes, and secondary sources; however, 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 re-offend 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 landlords, employers, and others 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, with limited accountability, can broaden the scope of the use of criminal records.

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.⁶ It is estimated that 1 in 9 Canadians has a criminal record.⁷ 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.

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

⁶ 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>

⁷ 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>

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.

As a result of our research and collective experience on the impact of criminal records, SLSC:

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

Considerations Regarding Bill S-212

SLSC considers Bill S-212 to be an excellent opportunity for Canada to establish a more humane, fair, and effective justice system. In our view, Bill S-212 addresses the interpersonal and systemic barriers to community integration that impact people with criminal records by establishing an automatic system for record expiry while simultaneously reforming the currently flawed administration process. As your committee deliberates this important Bill and any amendments, we recommend that members consider removing any mechanisms which may create civil impediments to reintegration, and reinforce those which strengthen the resolve of people impacted by the criminal justice system to move forward as law abiding and active members of society.

As one of the more than 80 [civil society organizations](#) on the [Fresh Start Coalition](#), SLSC endorses Bill S-212 given its ability to address legislative reforms [called for by the Coalition](#), such as:

- eliminating the application process, which is cumbersome, complicated to navigate, and inaccessible to the most marginalized groups of people;
- ensuring the system combats systemic discrimination by making a record suspension contingent on a lack of new convictions, as opposed to including considerations such as police contact or unproven allegations; and,
- reducing the timelines before people are eligible for a record suspension.

Bill S-212 creates opportunities for people to have fair access to life essentials and opportunities for self-sustainment such as housing, employment, and volunteering – opportunities that are vital to the people who access supports from SLSC’s network of ten affiliates, and the community corrections sector at large. These vital opportunities have also recently been recognized and reinforced by the [Government of Canada’s Federal Framework to Reduce Recidivism](#) and its five pillars - housing, education, employment, health, and positive support networks – which are grounded in the social determinants of health. The framework notes that these priority areas each fulfill important needs in successful reintegration.

There are many unsung heroes – frontline workers, clinical directors, and housing managers – who are working tirelessly within the community corrections sector to support the safe, effective, and humane integration of the people they support. Bill S-212 reinforces their efforts toward improved public safety outcomes by removing a critical barrier to the next steps for success needed by people with criminal records to move forward with their lives. Given this, SLSC strongly urges committee members to consider their responsibility to all Canadians and prioritize evidence-informed change within our justice system.

SLSC appreciates the opportunity to make this submission to the Committee for consideration. We trust that the members will keep at the forefront of its deliberations our shared objective of a fair, more humane, and effective justice system that recognizes the meaningful impacts that Bill S-212 will make possible on criminal justice reform.