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Opinion: Canada's criminal record suspension system requires reform

Applying for a record suspension is so complicated that an industry has been spawned to help applicants complete the paperwork.

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"We live in a society that has become less forgiving and more judgmental.

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Ralph Mastromonaco writes.

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Ten years ago, the Conservative government enacted the Safe Streets and Communities Act. Despite its name, this legislation has not kept Canadians safer and has failed to address the problems of a criminal justice system that remains rooted in the 19th century, that continues to over-charge and over-incarcerate.

Politicians espouse "tough on crime" policies to get elected. That campaign rhetoric converts into "tough" laws. The 2012 "safe streets" legislation came straight from the "law and order" political playbook.

The legislation increased sentences, reduced the availability of house arrest as a sentencing option and extended mandatory minimum sentences to a wide range of infractions. This did little to prevent crime, but contributed to costly court docket congestion and unnecessary imprisonment.

The tough-on-crime agenda also compromised the ability of people who have served their sentence and lived crime-free to successfully reintegrate into the broader community.

The “pardon,” our societal expression of empathy and forgiveness, was replaced with the perfunctory “record suspension.” The waiting period to apply for this record suspension was increased from three years to five years for those convicted of summary offences and from five years to 10 years for indictable offences. A new condition was imposed requiring applicants to prove that a “measurable benefit” would arise from the record suspension.

Today, applying for a record suspension involves an eight-step process described in a 28-page manual. It is so complicated that an industry has been spawned to help applicants complete the paperwork, for a fee that most cannot afford. In the “safe streets” criminal justice system, delaying and making it complicated for a person with a criminal record to move on with their life and find stability somehow keeps Canadians safer.

We live in a society that has become less forgiving and more judgmental. The stigma of a criminal record seriously prejudices the ability of people to rebuild their lives, even after they have paid their debt to society.

A criminal record significantly hinders a person’s ability to secure employment, pursue studies, obtain housing, credit, insurance, to travel or volunteer. This prejudice is all the more acute for Indigenous and racialized people who are disproportionately convicted and incarcerated by our criminal justice system. This is not a partisan issue, and the solution should not be partisan, either. The Conservatives can only be blamed for the first three of the 10 years that have passed since this legislation was enacted. The Liberals have allowed this regime to persist for the last seven years. A regime they called misguided and mean-spirited when they were in opposition.

The record suspension system is in woeful need of transformational reform. A spent records model must be adopted as soon as possible.

A spent records model has been adopted in other countries and is in fact the model that is used in Canada for young people under the Youth Criminal Justice Act. An individual’s criminal record is automatically sealed after a defined period of time. This model acknowledges the principle that a sentence and its societal consequences must end at a defined point in time.

Public safety would not be compromised. As with Canada’s youth records system, police and other justice system participants would retain access to spent records for specific purposes such as criminal investigations. The existing vulnerable-sector check regime that allows certain records to be unsealed if an individual is applying to work or volunteer with vulnerable individuals such as children would also remain in place, ensuring that certain spent records could be disclosed when people apply for these sensitive positions. Despite a decade of “safe streets” law and policy, Canadians understand the importance of assisting people with criminal records in their efforts to rebuild their lives.

I am convinced that Canadians believe in the promise of a second chance. Our laws must keep that promise.

Ralph Mastromonaco practises criminal law in Montreal. He is a member of the national steering committee of the Fresh Start Coalition.