What follows is a response to Online Consultation on the Review of Record Suspensions, available at this website address: <https://www.publicsafety.gc.ca/cnt/cnslttns/rcrd-sspnsn/index-en.aspx>

John Howard Society response re: record suspension, November 2016

1. In your own words, what should the purpose of a record suspension be?
* *The purpose of a record suspension or sealing a criminal record should be that is it no longer searchable, and no longer serves as an obstacle to individual looking for employment, business or volunteer opportunities.*
* *Changes to the Criminal Records Act must allow for people with criminal records to access all opportunities that will help strengthen individual ties to the community, through improved access to employment, vocational and training programs, safe and affordable housing and meaningful volunteer opportunities.*
1. Which term do you prefer: "record suspension," "pardon," or other?

*Other: I would support the term "closed record"*

**3. Some people are not eligible for a record suspension. Please indicate whether you consider each of the criteria listed below to be too lenient, fair, or too strict.**

a) People convicted of some crimes are not eligible to receive a record suspension.

Too lenient

Fair

Too strict

Don’t know/ Not sure

b) People convicted of more than three indictable offences for which a sentence of two years imprisonment or more was imposed for each are not eligible for a record suspension.

Too lenient

Fair

Too strict

Don’t know/ Not sure

c) People convicted of sexual offences against minors are not eligible for a record suspension, unless the convicted person was close in age to the victim (less than five years older), was not in a position of trust or authority (e.g., working as a teacher or coach) and did not use or threaten violence or intimidation while committing the crime.

Too lenient

Fair

Too strict

Don’t know/ Not sure

**The questions in this section ask about the eligibility criteria for two different types of crimes: Summary Offences, and Indictable Offences. These may be understood as follows:**

* **A Summary Offence generally includes less serious crimes, such as shoplifting.**
* **An Indictable Offence generally involves more serious crimes, such as assault or sex offences.**

4. For a summary offence, applicants must wait five years after the completion of their sentence to apply for a record suspension. Do you think this waiting period is too short, too long or is it appropriate?

Too short

Too long

Appropriate

Don’t know/ Not sure

5. If you said too long or too short, how long should people have to wait?

* For summary offences, the waiting period before a criminal record is closed/sealed/pardoned (preferably through a free and automatic process) should be three years – this is the same waiting period that is used in Canada’s youth criminal justice system.

6. For an indictable offence, applicants must wait 10 years after the completion of their sentence to apply for a record suspension. Do you think this waiting period is too short, too long or is it appropriate?

Too short

Too long

Appropriate

Don’t know/ Not sure

7. If you said too long or too short, how long should people have to wait?

* For indictable offences, the waiting period before a criminal record is closed/sealed/pardoned (preferable through a free and automatic process) should be five years – this is the same waiting period that is used in Canada’s youth criminal justice system.

8. Are there other factors that should be considered in determining how long to wait before a person can apply for a record suspension?

* If there are specific concerns about an individual case, these concerns should be raised by a judge during the sentencing hearing. This judicial discretion could allow for options such as (a) extending the crime-free period before the record is expunged, or (b) requiring an application and review process rather than a free and automatic operation of law process.

**Please indicate whether you agree or disagree with the following statement:**

9. For some crimes, a record suspension should be granted automatically as long as the applicant meets the following factors: completed their sentence, paid any fines, and have remained crime-free for a prescribed period of time.

Agree

Disagree

Don’t know/ Not sure

10. If you agree, please indicate which crimes you think this should apply to?

* I am supportive of a free and automatic process for sealing/closing/pardoning criminal records, similar to what we see in Canada’s youth justice system.
* I think that this free and automatic process should apply to everyone in Canada with a criminal record, unless specific concerns were raised about the specific nature of the crime at the time of sentencing.
* I do not think that outstanding fines should prohibit someone from having their criminal record sealed/closed/pardoned.

**Please indicate whether you agree or disagree with the following statement:**

11. In addition to the factors above (i.e. applicant completed their sentence, paid fines and remained crime-free for a prescribed period of time), for some crimes, applicants should have to meet additional factors, such as; (1) the applicant has maintained good conduct, that is behavior that supports a law-abiding lifestyle; (2) the record suspension will help them reintegrate into society, for example, by obtaining employment and/or an education; and, (3) the applicant has made a genuine effort to reintegrate into society by developing a lifestyle that is no longer associated with criminal behaviour.

Agree

Disagree

Don’t know/ Not sure

12. If you agree, please indicate which crimes you think this should apply to (e.g. property crimes, sex crimes or other)?

I don't think any of the conditions described in Question 11, or in Question 13 B) C) D) E) F) are relevant and need to be considered or be part of the record closing process in regard to any crime.

**13. Please indicate how important you consider each of these factors to be in deciding whether to provide a record suspension or not.**

a) An applicant has remained crime-free for a prescribed period of time

Very important

Somewhat important

Not very important

Not at all important

Don’t know/ Not sure

b) An applicant has paid any court-ordered fines as part of the sentence

Very important

Somewhat important

Not very important

Not at all important

Don’t know/ Not sure

c) An applicant has maintained good conduct since completing his/her sentence

Very important

Somewhat important

Not very important

Not at all important

Don’t know/ Not sure

d) A record suspension will be beneficial to the applicant, helping them re-integrate into society

Very important

Somewhat important

Not very important

Not at all important

Don’t know/ Not sure

e) An applicant has made a genuine effort to reintegrate into society

Very important

Somewhat important

Not very important

Not at all important

Don’t know/ Not sure

f) The public’s confidence in the justice system could be negatively impacted by a record suspension

Very important

Somewhat important

Not very important

Not at all important

Don’t know/ Not sure

14. What changes, if any, do you think should be made to these factors?

**The only factor that should be considered is whether the individual has remained crime free. None of the other factors, which are all subjective should be considered at all.**

15. To the best of your knowledge, would you say that the process of applying for a record suspension is easy or hard?

Very easy

Somewhat easy

Somewhat hard

Very hard

Don’t know/ Not sure

16. In your opinion, how could the process be improved?

* The process should become free and automatic – as we see in Canada’s youth criminal justice system.
* This option makes criminal record expungement and operation of law and would eliminate the need for many resources that are required by the current record suspension program.
* Many countries (for example, Australia, England, and Spain) have an automatic pardon process which minimizes the long-term collateral consequences of a criminal record.
* A free and automatic process would eliminate the current two-tired system that is created by high costs (including the $631 user fee) and complicated application process (which is particularly difficult for those with literacy issues).
* As long as someone’s criminal record remains unsealed/open/unpardoned in the Canadian Police Information Centre [CPIC] they will be subjected to discrimination by employers, landlords, and prohibited from many activities/opportunities in the community. A free and automatic process would ensure equal access to the human rights protections provided through the Canadian Human Rights Act.

**While the criminal records of suspended offences are not destroyed or wiped off, the *Criminal Records Act* requires that these records are sealed and kept apart from other criminal records in all systems under federal control. However the suspended record can be unsealed and disclosed by the Minister of Public Safety in instances of national security and for the administration of justice. This can include a criminal investigation or the screening of persons seeking employment in sensitive positions in areas such as law enforcement or other positions of trust with children or vulnerable persons.**

**17. Based on this information, please indicate whether you agree or disagree that the following factors should be considered in making a decision to disclose a suspended record.**

a) Suspended offence is relevant to the reason for the request

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Don’t know/ Not sure

b) Suspended offence involved violence

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Don’t know/ Not sure

c) Suspended offence involved a breach of trust

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Don’t know/ Not sure

d) Suspended offence involved vulnerable persons

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Don’t know/ Not sure

e) Amount of time elapsed since the offence was committed

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Don’t know/ Not sure

f) Age of the subject at the time of the offence

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Don’t know/ Not sure

g) Severity of the sentence imposed for the suspended offence

Strongly agree

Somewhat agree

Somewhat disagree

Strongly disagree

Don’t know/ Not sure

18. In your opinion, are there other factors that should be considered in making a decision to disclose a suspended record?

* Decisions about opening/unsealing a record should be made on a case-by-case basis.

**The *Criminal Records Act* does not provide for expunging criminal records - that is, wiping off of the records permanently so they can never be accessed again. This is different from a record suspension, which could potentially be revoked or accessed under special circumstances.**

19. Are there crimes where the criminal record should be completely wiped off? For example, an offence that is no longer a crime or is very minor?

Yes

No

Don’t know/ Not sure

20. What types of offences would you suggest be in this category?

* Any offences that no longer appear as crimes in the Criminal Code of Canada / historical offences.
* For example, the Federal Government has recently introduced Bill C-32 which would repeal Section 159 of the Criminal Code of Canada (a discriminatory law that criminalizes anal intercourse outside of marriage between a man and a woman). When this law is repealed, this conviction should be automatically expunged from a person’s criminal record.

21. In addition to the type of offence, are there any other circumstances (for example where the offence was committed more than 20 years ago) where you think a crime might be totally expunged – that is, wiped off of the records entirely?

* As suggested in the question, if an individual remains crime-free for 20 years then the criminal record should be entirely expunged.
* Even when a criminal record has not been permanently expunged, people with closed/sealed/pardoned records need to have full protection under the Canadian Human Rights Act after a free and automatic process that removes their conviction information from CPIC after three years (summary offences) or five years (indictable offences).