



2019 JAN -7 AM 9:44
OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

JAN 7 2019

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Ave., NW, Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

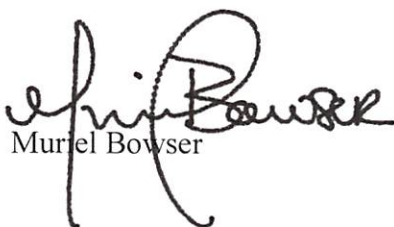
Enclosed for consideration and approval by the Council of the District of Columbia is a bill entitled the "Second Chance Amendment Act of 2019."

Each year, more than 40,000 people are arrested in the District of Columbia. Although about one-third of those individual are never prosecuted, a criminal record still exists and will follow those people for the rest of their lives, impacting their ability to find employment or housing. Approximately 10,000 people each year seek legal assistance from nonprofit organizations to seal their records. The process is time-consuming and confusing.

This legislation will radically reform the District's record sealing process, by mandating automatic sealing for non-dangerous, non-convictions, shortening the waiting periods before a person is eligible to seal their record, and expanding the eligibility of who can seal their record. For individuals who are arrested but not prosecuted, and for people who are charged but not convicted, the legislation would result in their records being sealed within 90 days of the termination of the case. For those with convictions, the legislation mandates a panel of legal experts review the types of convictions that should be eligible for sealing; it also reduces the time to seal those records.

I urge prompt consideration and approval of the measure. If you have any questions on this matter, please contact Deputy Mayor Donahue at (202) 286-5028.

Sincerely,


Muriel Bowser



Chairman Phil Mendelson,
at the request of the Mayor

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 8 of Title 16 to increase the number of eligible convictions that may be sealed, to reduce the number of years a resident must remain off papered to seal an eligible conviction, to simplify and shorten the process that a resident must undertake to seal a charge that does not end in a conviction, and to have a group of independent legal experts look at ineligible misdemeanors and felonies and issue a report with recommendations for eligibility.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Second Chance Amendment Act of 2019”.

Sec. 2. Chapter 8 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended as follows:

(1) A new section designation is added to read as follows:

“§ 16-803.01a. Sealing of public criminal records in cases that end without conviction.”

(2) A new section designation is added to read as follows:

“§ 16-803.03. Criminal Code Reform Commission Report on Ineligible Offenses for Record Sealing.”.

(b) Section 16-801 is amended as follows:

(1) Paragraph (5) is amended as follows:

34 (A) Strike the phrase “Disqualifying arrest or conviction” and inserting the
35 phrase “Disqualifying conviction” in its place.

36 (B) Subparagraph (B) is repealed.

37 (2) Paragraph (11) is amended as follows:

38 (A) Strike the phrase “executive-grade government position.” and
39 inserting the phrase “executive-grade government position; and” in its place.

40 (B) Add a new subparagraph (G) to read as follows:

41 “(G) The federal government.”.

42 (c) Section 16-803 is amended as follows:

43 (1) Subsection (a) is repealed.

44 (2) Subsection (b) is repealed.

45 (3) Subsection (c) is amended as follows:

46 “(c) A person who has been convicted of an eligible misdemeanor or an
47 eligible felony pursuant to the District of Columbia Official Code or the District of Columbia
48 Municipal Regulations may file a motion to seal the publicly available records of the arrest,
49 related court proceedings, and conviction if:

50 “(1) A waiting period of at least 5 years has elapsed since the
51 completion of the movant's sentence;

52 “(2) The movant does not have a disqualifying arrest or conviction;
53 and;

54

55 “(3) The court has granted no more than 4 prior motions from the
56 person under this subsection.

57 (4) Subsection (d) is amended as follows:

58 (A) Strike the phrase “The waiting periods in subsections (a), (b), and (c)
59 of this section” and insert the phrase “The waiting period in subsection (c) of this section” in its
60 place.

61 (B) Strike the phrase “movant’s arrests and convictions” and insert the
62 phrase “movant’s convictions” in its place.

63 (C) Strike the phrase “an arrest or conviction” and insert the phrase “a
64 conviction” in its place.

65 (5) Subsection (e) is amended by striking the phrase “The waiting periods in
66 subsections (a), (b), and (c) of this section” and inserting the phrase “The waiting period in
67 subsection (c) of this section” in its place.

68 (6) Subsection (f) is amended as follows:

69 (A) Strike the phrase “In a motion filed under subsections (a), (b), and (c)
70 of this section” and inserting the phrase “In a motion filed under subsection (c) of this section” in
71 its place.

72 (B) Strike the phrase “arrests and convictions” and inserting the word
73 “convictions” in its place.

74 (C) Strike the phrase “conviction or arrest” and inserting the word
75 “conviction” in its place.

76 (7) Subsection (g) is amended by striking the phrase “arrest, or pending charge,
77 minor offenses shall not be considered” and inserting the phrase “non-convictions or minor
78 offenses shall not be considered” in its place.

79 (8) Subsection (i) is amended as follows:

80 (A) Strike the phrase “In a motion filed under subsection (a) or (c-2)” and
81 insert the phrase “In a motion filed under subsection (c-2)” in its place.

82 (B) Paragraph (2) is repealed.

83 (d) A new section 16-803.01a is added to read as follows:

84 “§ 16-803.01a. Sealing of public criminal records in cases that end without conviction.

85 “(a)(1) A person arrested for, or charged with, the commission of a dangerous crime
86 pursuant to § 23-1331(3) whose prosecution has been terminated without conviction may file a
87 motion to seal all publicly available records of the arrest or related court proceedings if:

88 “(A) A waiting period of at least 90 days has elapsed since the termination
89 of the case; and

90 “(B) Except as permitted by paragraph (2) of this subsection, the movant
91 does not have a disqualifying conviction.

92 “(2)(A) If a period of at least 3 years has elapsed since the completion of the
93 movant’s sentence for a disqualifying misdemeanor conviction in the District of Columbia or for
94 a conviction in any jurisdiction for an offense that involved conduct that would constitute a
95 disqualifying misdemeanor conviction if committed in the District, the conviction shall not
96 disqualify the movant from filing a motion to seal an arrest and related court proceedings under
97 this subsection for a case that was terminated without conviction before or after the disqualifying
98 misdemeanor conviction, except when the case terminated without a conviction as a result of the
99 successful completion of a deferred sentencing agreement.

100 “(B) If a period of at least 5 years has elapsed since the completion of the
101 movant’s sentence for a disqualifying felony conviction in the District of Columbia or for a
102 conviction in any jurisdiction for an offense that involved conduct that would constitute a

103 disqualifying felony conviction if committed in the District, the conviction shall not disqualify
104 the movant from filing a motion to seal an arrest and related court proceedings under this
105 subsection for a case that was terminated without conviction before or after the disqualifying
106 felony conviction, except when the case terminated without conviction as the result of the
107 successful completion of a deferred sentencing agreement.

108 “(3) In a motion filed under subsection (a) of this section, the burden shall be on
109 the movant to establish by a preponderance of the evidence that it is in the interests of justice to
110 grant relief.

111 “(b)(1) Any person arrested for, or charged with, the commission of any other offense
112 pursuant to the District of Columbia Official Code or the District of Columbia Municipal
113 Regulations, whose prosecution terminated without conviction before the effective date of the
114 Second Chance Amendment Act of 2019, may file a motion to seal all publicly available records
115 of the arrest or related court proceedings if:

116 “(A) A waiting period of at least 90 days has elapsed since the termination
117 of the case; and

118 “(B) Except as permitted by paragraph (2) of this subsection, the movant
119 does not have a disqualifying conviction.

120 “(2)(A) If a period of at least 3 years has elapsed since the completion of the
121 movant’s sentence for a disqualifying misdemeanor conviction in the District of Columbia or for
122 a conviction in any jurisdiction for an offense that involved conduct that would constitute a
123 disqualifying misdemeanor conviction if committed in the District, the conviction shall not
124 disqualify the movant from filing a motion to seal an arrest and related court proceedings under
125 this subsection for a case that was terminated without conviction before or after the disqualifying

126 misdemeanor conviction, except when the case terminated without a conviction as a result of the
127 successful completion of a deferred sentencing agreement.

128 “(B) If a period of at least 5 years has elapsed since the completion of the
129 movant’s sentence for a disqualifying felony conviction in the District of Columbia or for a
130 conviction in any jurisdiction for an offense that involved conduct that would constitute a
131 disqualifying felony conviction if committed in the District, the conviction shall not disqualify
132 the movant from filing a motion to seal an arrest and related court proceedings under this
133 subsection for a case that was terminated without conviction before or after the disqualifying
134 felony conviction, except when the case terminated without conviction as the result of the
135 successful completion of a deferred sentencing agreement.

136 “(c)(1) For persons arrested for, or charged with, the commission of any other offense
137 pursuant to the District of Columbia Official Code or the District of Columbia Municipal
138 Regulations, whose prosecution terminated without conviction on or after the effective date of
139 the Second Chance Amendment Act of 2019, the Court shall, *sua sponte*, seal all publicly
140 available records of the arrest and related court proceedings after a waiting period of 90 days has
141 elapsed since the termination of the case, if:

142 “(A) The prosecutor does not object within the 90-day waiting period; and

143 “(B) The arrestee or chargee does not have a disqualifying conviction,
144 except as permitted by paragraph (c)(3).

145 “(2) If the prosecutor objects to relief pursuant to this subsection within the 90-
146 day period, the burden shall be on the prosecutor to establish by a preponderance of the evidence
147 that it is not in the interests of justice to grant relief pursuant to this subsection.

148 “(3)(A) If a period of at least 3 years has elapsed since the completion of the
149 arrestee or chargee’s sentence for a disqualifying misdemeanor conviction in the District of
150 Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would
151 constitute a disqualifying misdemeanor conviction if committed in the District, the conviction
152 shall not disqualify the arrestee or chargee from filing a motion to seal all publicly available
153 records of the arrest or related court proceedings, except when the case terminated without a
154 conviction as a result of the successful completion of a deferred sentencing agreement.

155 “(B) If a period of at least 5 years has elapsed since the completion of the
156 arrestee or chargee’s sentence for a disqualifying felony conviction in the District of Columbia or
157 for a conviction in any jurisdiction for an offense that involved conduct that would constitute a
158 disqualifying felony conviction if committed in the District, the conviction shall not disqualify
159 the arrestee or chargee from filing a motion to seal all publicly available records of the arrest or
160 related court proceedings, except when the case terminated without conviction as the result of the
161 successful completion of a deferred sentencing agreement.

162 “(d) The waiting periods in subsections (a), (b), and (c)(3) of this section may be waived
163 by the prosecutor in writing.

164 “(e) In a motion filed under subsection (b) or (c)(3) of this section, the burden shall be on
165 the prosecutor to establish by a preponderance of the evidence that it is not in the interests of
166 justice to grant relief.

167 “(f) The Superior Court shall grant a motion to seal pursuant to subsections (a), (b), or
168 (c)(3) or provide relief over the objection of the prosecutor pursuant to subsection (c)(2) if it is in
169 the interests of justice to do so. In making this determination, the Court shall weigh:

170 “(1) The interest of the movant, arrestee, or chargee in sealing the publicly
171 available records of his or her arrest and related court proceedings;

172 “(2) The community’s interest in retaining access to those records, including the
173 interest of current or prospective employers in making fully informed hiring or job assignment
174 decisions and the interest in promoting public safety; and

175 “(3) The community’s interest in furthering the movant, arrestee, or chargee’s
176 rehabilitation and enhancing the movant, arrestee, or chargee’s employability.

177 “(g) The Court may also consider:

178 “(1) The nature and circumstances of the alleged offense at issue;

179 “(2) The movant, arrestee, or chargee’s alleged role in the alleged offense;

180 “(3) The history and characteristics of the movant, arrestee, or chargee, including
181 the movant, arrestee, or chargee’s:

182 “(A) Character;

183 “(B) Physical and mental condition;

184 “(C) Employment history;

185 “(D) Prior and subsequent conduct;

186 “(E) History relating to drug or alcohol abuse or dependence and
187 treatment opportunities;

188 “(F) Criminal history; provided, that a movant, arrestee, or chargee with
189 repeated violent offenses shall not be eligible for sealing; and

190 “(G) Efforts at rehabilitation;

191 “(4) The number of the arrests that are the subject of the motion;

192 “(5) The time that has elapsed since the arrests that are the subject of the motion;

193 “(6) Whether the movant, arrestee, or chargee has previously obtained sealing or
194 comparable relief under this section or any other provision of law other than by reason of actual
195 innocence; and

196 “(7) Any statement made by the victim of the alleged offense.

197 “(h) A motion to seal may be dismissed without prejudice to permit the movant to renew
198 the motion after further passage of time. The Court may set a waiting period before a renewed
199 motion can be filed.

200 “(i) A motion to seal may be dismissed if it appears that the movant has unreasonably
201 delayed filing the motion and that the government has been prejudiced in its ability to respond to
202 the motion by the delay in its filing, unless the movant shows that the motion is based on
203 grounds which the person could not have raised by the exercise of reasonable diligence before
204 the circumstances prejudicial to the government occurred.

205 “(j) If the Court grants a motion to seal pursuant to subsections (a), (b), or (c)(3) or
206 provides relief pursuant to subsections (c)(1) or (c)(2):

207 “(1)(A) The Court shall, to the extent consistent with the District of Columbia
208 Home Rule Act, effective December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01),
209 order the prosecutor, any law enforcement agency, and any pretrial, corrections, or community
210 supervision agency to remove from their publicly available records all references that identify
211 the movant, arrestee, or chargee as having been arrested or prosecuted.

212 “(B) The prosecutor’s office and agencies shall be entitled to retain any
213 and all records relating to the movant, arrestee, or chargee’s arrest and prosecution in a
214 nonpublic file.

215 “(C) The prosecutor, any law enforcement agency, and any pretrial,
216 corrections, or community supervision agency office shall file a certification with the Court
217 within 90 days that, to the best of its knowledge and belief, all references that identify the
218 movant, arrestee, or chargee as having been arrested or prosecuted have been removed from its
219 publicly available records.

220 “(2)(A) The Court shall order the Clerk to remove or eliminate all publicly
221 available Court records that identify the movant, arrestee, or chargee as having been arrested or
222 prosecuted.

223 “(B) The Clerk shall be entitled to retain any and all records relating to the
224 movant, arrestee, or chargee’s arrest and related court proceedings.

225 “(3)(A) In a case involving co-defendants in which the Court orders the movant,
226 arrestee, or chargee’s records sealed, the Court may order that only those records, or portions
227 thereof, relating solely to the movant, arrestee, or chargee be redacted.

228 “(B) The Court need not order the redaction of references to the movant,
229 arrestee, or chargee that appear in a transcript of court proceedings involving co-defendants.

230 “(4) The Court shall not order the redaction of the movant, arrestee, or chargee’s
231 name from any published opinion of the trial or appellate courts that refer to the movant,
232 arrestee, or chargee.

233 “(5) Unless otherwise ordered by the Court, the Clerk and any other agency shall
234 reply in response to inquiries from the public concerning the existence of records which have
235 been sealed pursuant to this chapter that no records are available.

236 “(6) No person as to whom such relief has been granted shall be held thereafter
237 under any provision of District law to be guilty of perjury or otherwise giving a false statement

238 by reason of failure to recite or acknowledge his or her arrest, charge, or trial in response to any
239 inquiry made of him or her for any purpose, except that the sealing of records under this
240 provision does not relieve a person of the obligation to disclose the sealed arrest or prosecution
241 in response to any direct question asked in connection with jury service or in response to any
242 direct question contained in any questionnaire or application for a position with any person,
243 agency, organization, or entity defined in § 16-801(11).”.

244 (e) A new section 16-803.03 is added to read as follows:

245 “§ 16-803.03. Criminal Code Reform Commission Report on Ineligible Offenses for
246 Record Sealing.

247 “(a) The Criminal Code Reform Commission shall submit to the Council’s Committee on
248 the Judiciary and Public Safety and the Deputy Mayor for Public Safety and Justice, within 6
249 months of the effective date of the Second Chance Amendment Act of 2019, a report that
250 contains the recommendation and rationale of the Commission to make any ineligible
251 misdemeanors, pursuant to § 16-801(9), and ineligible felonies, pursuant to § 16-801(8), eligible
252 for record sealing pursuant to § 16-803(c), no later than September 30, 2020.”.

253 (f) Section 16-804(b) is amended as follows:

254 (1) Strike the phrase “arrests and convictions” wherever it appears and insert the
255 word “convictions” in its place.

256 (2) Paragraph (1) is amended as follows:

257 (A) Strike the phrase “§ 16-803(a), (b), or (c)” both times it appears and
258 insert the phrase “§ 16-803(c)” in its place.

259 (B) Subparagraph (A) is amended by striking the phrase “arrests and any
260 conviction” and inserting the word “convictions” in its place.

261 (C) Subparagraph (B) is amended by striking the phrase “arrest or
262 conviction” both times it appears and inserting the word “conviction” in its place.

263 (g) Section 16-806 is amended as follows:

264 (1) Subsection (b) is amended as follows:

265 (A) Strike the phrase “§16-803.01, or” both times it appears and inserting
266 the phrase “§ 16-803.01, § 16-803.01a, or” in its place.

267 (B) Paragraph (5) is amended by striking the phrase “§ 16-803(l)(1)(C)”
268 and inserting the phrase “§ 16-803(l)(1)(C) and § 16-803.01a(j)(1)(C)” in its place.

269 (2) Subsection (c) is amended by striking the phrase “§ 16-803(l)(5), or” and
270 inserting the phrase “§ 16-803(l)(5), § 16-803.01a(j)(5), or” in its place.

271 Sec. 3. Fiscal impact statement.

272 The Council adopts the fiscal impact statement in the committee report as the fiscal
273 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
274 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

275 Sec. 4. Effective date.

276 This act shall take effect following approval by the Mayor (or in the event of veto by the
277 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
278 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
279 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
280 Columbia Register.

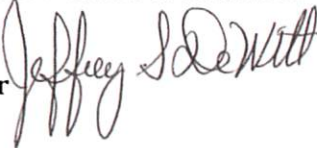
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: December 21, 2018

SUBJECT: Fiscal Impact Statement – Second Chance Amendment Act of 2019

REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on December 18, 2018

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill.

Background

District law¹ establishes conditions whereby an individual can motion to the clerk of the Superior Court of the District of Columbia for the court to seal any records related to an arrest, court proceedings, or a conviction. Such conditions, including ineligible offenses, filing timelines, and burdens of proof, vary according to whether a conviction has occurred or the prosecution has terminated a case without conviction.

The bill reduces the waiting period to request a record sealing from eight years to five years for eligible misdemeanor and felony convictions, as long as the individual does not have a disqualifying conviction.² The bill also limits, in cases with a conviction, the number of record sealings to four cases in a person's lifetime.

In cases where an individual has been arrested for or charged with the commission of an eligible offense, but the prosecution has terminated the case without a conviction, the bill requires the

¹ Criminal Record Sealing Act of 2006, effective May 3, 2007 (D.C. Law 16-307; D.C. Official Code § 16-801 et seq.).

² A disqualifying conviction is a conviction in any jurisdiction that occurs after the offense related to the motion to seal has been filed or a conviction for an ineligible offense.

The Honorable Phil Mendelson

FIS: "Second Chance Amendment Act of 2019," Draft Bill as shared with the Office of Revenue Analysis on December 18, 2018

courts to automatically seal all public records after ninety days³ as long as the individual does not have any disqualifying convictions.⁴ If the individual does have a disqualifying conviction, the record sealing is not automatic, but requires the individual to wait three years (for a disqualifying misdemeanor) or five years (for a felony conviction) from the completion of a sentence, before he or she can file a motion to seal records. In these cases, whether or not there is a disqualifying conviction, the burden is on the prosecutor to determine that a record sealing is not in the interest of justice.

Individuals requesting record sealing after prosecution has terminated the case of a dangerous crime may file a motion to the court after a ninety-day waiting period, but the burden of proof in this case is on the filer of the motion. The bill also requires these individuals to wait three years or five years from the completion of sentence for a disqualifying conviction. The bill establishes the conditions the court should weigh in considering record sealing requests when an individual has a disqualifying conviction or when the terminated case is related to a dangerous crime.

The bill also requires the Criminal Code Reform Commission to submit a report to the Deputy Mayor for Public Safety and Justice and the Council's Committee on the Judiciary and Public Safety, within six months of the bill's effective date, that includes recommendations on ineligible misdemeanors and felonies that should be made eligible for record sealing.

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The Superior Court for the District of Columbia will implement the bill's record sealing provisions. The court's responsibility to automatically seal some dismissed cases is a new requirement and many of the timeframes for an individual to file have been reduced. The Office of Revenue Analysis is unable to determine whether these changes will create an administrative burden on the courts or whether they could alleviate some current burdens; however, the D.C. Courts are funded in the federal budget and any impacts would be incorporated into that budget process. The record sealing provisions will have no impact on the District's budget or financial plan.

The Criminal Code Reform Commission can produce the required report without additional resources, but it may need to delay other work to accomplish it. Additionally, the Commission is slated to sunset on October 1, 2019,⁵ so if this Act is not effective before April 1, 2019, the Commission may not have a full six months to complete the report.

³ Previously, the individual would have to file a motion to seal records after a two-year waiting period.

⁴ This provision applies only to dismissals that occur after the effective date of the Act. Dismissals that occur prior to the effective date require the individual to file the motion to seal.

⁵ Criminal Code Reform Commission Establishment Act of 2016, effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code § 3-156).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Alana Intrieri
Executive Director
Office of Policy and Legislative Affairs

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: December 17, 2018

SUBJECT: Legal Sufficiency Review – Draft “Second Chance Amendment Act of 2018”
(AE-18-665)

This is to Certify that this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.



Janet M. Robins