

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser



Public Hearing on

B24-063, the “Second Chance Amendment Act of 2021”

**Bill 24-110, the “Criminal Record Expungement
Amendment Act of 2021”**

Testimony of
Chris Geldart

Acting Deputy Mayor for Public Safety and Justice

Before the
Committee on the Judiciary and Public Safety
Charles Allen, Chairperson
Council of the District of Columbia

April 8, 2021
9:30 AM

Good morning, Chairperson Allen, members, and staff of the Committee on the Judiciary and Public Safety. I am Chris Geldart, Acting Deputy Mayor for Public Safety and Justice, and I am here to testify in support of Mayor Bowser’s “Second Chance Amendment Act of 2021.”

This bill was first introduced in November 2017 and a hearing was held a month later. Modernizing our criminal record sealing laws is a racial justice and equity issue. A criminal record can have a lifetime impact on a person, reducing their ability to obtain a job, housing, or education. We believe this legislation needs to move forward this year so we can provide relief to tens of thousands of our residents.

I appreciate and want to acknowledge the two related bills introduced by Councilmembers Trayon White and Christina Henderson. My testimony today is based on what I think is our shared belief that everyone deserves a second chance.

The Current Record Sealing System in the District

Our current criminal records system is complicated, overly punitive, and sidelines far too many of our residents from pursuing meaningful opportunities to better their lives. It is based on an outdated worldview that assumes there is an ongoing risk posed by those who have had any interaction with the criminal justice system – even if that contact does not result in either a trial or conviction. The current system does not adequately weigh the deleterious impact of a criminal record on a person’s life. It is not grounded in recent research and literature. And, perhaps most importantly, it unnecessarily creates a false choice between public safety and reentry. In fact, public safety is enhanced when we give individuals access to opportunity and it is diminished when we put up barriers that make opportunity more distant and unachievable.

Each year, thousands of individuals are arrested in the District for offenses ranging from violent felonies to misdemeanors and outstanding warrants. Once arrested, each person will have a criminal record for a minimum of two years – even in a case where the arrest does not result in a trial, let alone a conviction. Currently, the burden is almost always on the individual to file a petition with the D.C. Superior Court, asking a judge to allow their arrest record to be sealed. The person must convince a judge that it is in the interest of justice to grant their motion to seal their record. The Superior Court judge has the discretion to reject the petition.

While some misdemeanor convictions are eligible to be sealed, the large majority of criminal offenses – including every felony, except failure to appear – are never eligible for sealing. Additionally, there are significant waiting periods before a person is eligible to file a petition with Superior Court. Furthermore, before a person is eligible to petition to seal an eligible misdemeanor conviction or felony failure to appear conviction, they must be “off papers” for eight years.¹ Lastly, for convictions, the resident is limited with regard to how many convictions may be sealed, and only the most recent conviction may be sealed, effectively establishing the cap at one.

¹ “Off papers” means that the individual has completed their term of incarceration, probation, supervised release, or parole and has satisfied any other requirements from the court and remained conviction free.

The “Second Chance Amendment Act of 2021”

When examining how best to reform the system, our legislation suggests three approaches:

- First, shorten the time period a person must wait before seeking to seal their record;
- Second, change the level of discretion D.C. Superior Court judges can use when reviewing petitions to seal a record; and
- Third, expand the types of offenses eligible for record sealing.

The complexities of the D.C. Code require two different types of analysis: one for non-convictions² and one for convictions. I will address these analyses, recommend a clarification for our proposed legislation, and finish with the Executive opinion on B24-110. While my office is still conducting an analysis of Councilmember Henderson’s RESTORE Act, we look forward to working with the Council on the ambitious reforms contained in all the bills.

A. Non-conviction records

In cases of arrests without conviction, District law currently places the burden on individuals to petition D.C. Superior Court to seal their non-conviction record. The process is time-consuming and frustrating. It must be improved.

Mayor Bowser’s bill would mandate the automatic sealing of many non-conviction records and shorten the timeframe for sealing them to 90 days, drastically shorter than the current two to four years.

For individuals arrested for crimes other than those designated under the D.C. Code as “violent or dangerous,”³ the burden to seal the record would shift from that person to the justice system. Under the Mayor’s bill, the D.C. Superior Court would seal non-conviction records within 90 days of the termination of the case. Following an order from the Court, the Metropolitan Police Department would seal their records relating to the non-conviction and send a certification back to the Court. The Court would then notify the resident that their records were sealed.

For non-convictions involving charges for violent or dangerous crimes, the person would still be eligible to seal the record after 90 days by filing a motion with the Superior Court. This process would be a significant improvement from the current waiting period of up to four years. The burden remains on the petitioner, however, and it allows an impartial third party, a Superior Court judge, to determine whether there is any remaining public safety value in maintaining the person’s record. This provision recognizes that there will be some instances where it is in the public interest to keep a record from being sealed, but it allows for that determination to occur in a much shorter period of time. Examples of this may be individuals with repeated arrests for similar allegations,

² A “non-conviction” is any disposition of a criminal case, other than a guilty plea, a plea of no contest, or a finding of guilt by a court. It includes arrests that do not result in prosecutions and prosecutions that do not result in a finding or admission of guilt.

³ D.C. Official Code §§ 23-1331(3) & 23-1331(4).

especially crimes like domestic violence, elder abuse, and sexual assault, where it may be inherently difficult to obtain the cooperation of the victim in order to pursue a prosecution. Under the Mayor’s bill, if there is no prosecutorial objection, or if an objection is overruled by a judge, the record would be sealed.

The Second Chance Act would also retroactively benefit tens of thousands of individuals with existing non-conviction records. It would make any person with a non-conviction record eligible to file a motion to seal that record beginning 90 days from the termination of the case. Many would be eligible to seal their non-conviction record as soon as this bill was to go into effect.

B. Conviction Records

Research around recidivism has continued to evolve and has expanded to trying to understand why a person recidivates. Time released from prison is one factor. But the ability of a returning citizen to have access to mental health and trauma counseling, a safe and stable place to stay, and access to employment, all in a timely manner, heavily influence whether a person recidivates. In light of this research and our policy goal of fully reintegrating returning citizens into the community, the Mayor’s bill would lower the number of years required to be “off papers” to seal an eligible conviction from eight years to five. Additionally, a five-year waiting period would help bring the District closer in line with research around “redemptive time.”⁴

We also believe it is important to change the number of convictions an individual is eligible to seal. Current District law is overly punitive and allows only the most recent single conviction to be sealed.⁵ Our legislation would allow up to five convictions to be sealed.

We are strongly supportive of the need to expand the offenses eligible for sealing. Current law makes every misdemeanor conviction eligible for sealing, unless it has been specifically designated as ineligible by D.C. Official Code § 16-801(9).⁶ Only one felony, failure to appear in

⁴ Redemptive time describes the period of time that after a person is released from jail and remains free of any subsequent convictions for a period of time, that person’s likelihood to recidivate is the same as a member of the general public.

⁵ D.C. Official Code § 16-801(5).

⁶ Those misdemeanors include:

- (A) Interpersonal violence as defined in § 16-1001(6)(B), intimate partner violence as defined in § 16-1001(7), and intrafamily violence as defined in § 16-1001(9).
- (B) Driving while intoxicated, driving under the influence, and operating while impaired (§ 50-2201.05);
- (C) A misdemeanor offense for which sex offender registration is required pursuant to Chapter 40 of Title 22, whether or not the registration period has expired;
- (D) Criminal abuse of a vulnerable adult (§ 22-936(a));
- (E) Interfering with access to a medical facility (§ 22-1314.02);
- (F) Possession of a pistol by a convicted felon (§ 22-4503(a)(2) [see now § 22-4503(a)(1)]);
- (G) Failure to report child abuse (§ 4-1321.07);
- (H) Refusal or neglect of guardian to provide for child under 14 years of age (§ 22-1102);
- (I) Disorderly conduct (peeping tom) (§ 22-1321);
- (J) Misdemeanor sexual abuse (§ 22-3006);
- (K) Violating the Sex Offender Registration Act (§ 22-4015);
- (L) Violating child labor laws (§§ 32-201 through 32-224);

court, is eligible for sealing. We support conducting a review of other felonies that should be considered eligible for record sealing. But we believe that should be done methodically, based on expert research and data and accounting for the complexity of our criminal code. In our legislation, the Criminal Code Reform Commission (CCRC), an independent research office, would be tasked with reviewing the District’s criminal laws to identify additional offenses that should be eligible for sealing, as well as whether and how to adjust the sealing waiting times for different types of convictions. The CCRC is composed of criminal justice experts who just completed a multi-year analysis of the District’s criminal laws and proposed a massive overhaul of them. We believe the CCRC is ideally suited to conduct the necessary informed review that would be required under our bill.

C. Clarifications to the Proposed Legislation

We would like to offer one drafting adjustment to improve the clarity of the bill.

We propose including the phrase “crime of violence” in the provision which allows for sealing of non-conviction records on page 4, line 83 of the Mayor’s bill to go along with the phrase “dangerous crime.” The exclusion of this term was a drafting error, and the change should be made in order to mirror the references to both types of offenses in the current D.C. Official Code.

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- (M) Election/Petition fraud (§ 1-1001.08);
 - (N) Public assistance fraud (§§ 4-218.01 through 4-218.05);
 - (O) Trademark counterfeiting (§ 22-902(b)(1));
 - (P) Attempted trademark counterfeiting (§§ 22-1803, 22-902);
 - (Q) Fraud in the second degree (§ 22-3222(b)(2));
 - (R) Attempted fraud (§§ 22-1803, 22-3222);
 - (S) Credit card fraud (§ 22-3223(d)(2));
 - (T) Attempted credit card fraud (§ 22-1803, 22-223) [§§ 22-1803, 22-3223];
 - (U) Misdemeanor insurance fraud (§ 22-3225.03a);
 - (V) Attempted insurance fraud (§§ 22-1803, 22-3225.02, 22-3225.03);
 - (W) Telephone fraud (§§ 22-3226.06, 22-3226.10(3));
 - (X) Attempted telephone fraud (§§ 22-1803, 22-3226.06, 22-3226.10);
 - (Y) Identity theft, second degree (§§ 22-3227.02, 22-3227.03(b));
 - (Z) Attempted identify theft (§§ 22-1803, 22-3227.02, 22-3227.03);
 - (AA) Fraudulent statements or failure to make statements to employee (§ 47-4104);
 - (BB) Fraudulent withholding information or failure to supply information to employer (§ 47-4105);
 - (CC) Fraud and false statements (§ 47-4106);
 - (DD) False statement/dealer certificate (§ 50-1501.04(a)(3));
 - (EE) False information/registration (§ 50-1501.04(a)(3));
 - (FF) No school bus driver’s license (18 DCMR § 1305.1);
 - (GG) False statement on Department of Motor Vehicles document (18 DCMR § 1104.1);
 - (HH) No permit - second or greater offense (§ 50-1401.01(d));
 - (II) Altered title (18 DCMR § 1104.3);
 - (JJ) Altered registration (18 DCMR § 1104.4);
 - (KK) No commercial driver’s license (§ 50-405);
 - (LL) A violation of building and housing code regulations;
 - (MM) A violation of the Public Utility Commission regulations; and
 - (NN) Attempt or conspiracy to commit any of the foregoing offenses (§§ 22-1803, 22-1805a).

Council Bills on Record Sealing

Councilmember Trayon White’s legislation, the “Criminal Record Expungement Amendment Act of 2021,” Bill 24-110, would shorten the waiting period for a person to seal their eligible felony criminal record from eight years to two years. The bill would expand the felony convictions eligible to be sealed, to include felony theft and felony drug possession. We support the bill’s objective to expand crimes eligible for sealing and shorten waiting periods. However, we believe the better approach is through an independent, expert analysis of the District’s criminal laws, as proposed in our legislation. This option would allow us to move forward in a deliberate, thoughtful way.

Councilmember Christina Henderson’s bill, the “Record Expungement Simplification to Offer Relief and Equity Act of 2021,” would rewrite Chapter 8 of Title 16 of the D.C. Code. While my office is still conducting a review of the bill, it would require D.C. Superior Court to automatically expunge all convictions for crimes that have been decriminalized and to automatically seal non-convictions; shorten waiting periods for criminal records to become eligible to be sealed; and shorten timeframes for judges, responding parties, and agencies who certify records are sealed to respond to motions.

As these bills show, there continues to be significant interest in modernizing our criminal record sealing laws. My commitment is to work with Councilmembers on making this happen during this Council Period.

The Essential Role of the D.C. Superior Court

As we work together on this critical issue, I must emphasize the essential role of the D.C. Superior Court in any efforts to modernize our record sealing process. The Mayor’s bill was drafted with input from the previous Superior Court Chief Judge and court staff. In our ongoing discussions with the Court, they have expressed concerns over requirements enacted by Council that cannot be done with their current technology and staffing. As we know, the Superior Court operates independently of the Mayor and Council, with its judges appointed by the President and confirmed by the Senate. Their funding goes through the federal appropriations process and exists outside the District Government’s budget. We must include the direct involvement of the Court to ensure the legislations’ intent matches the Court’s capacity. Otherwise we risk enacting a law that cannot be fully implemented by the Court, thereby frustrating our residents and failing to meet their needs and expectations.

Working Together to Improve Our Residents’ Lives

I am eager to work with Councilmembers to forward these important reforms to our criminal justice system. I thank all the witnesses who testified on this important subject and appreciate their continued input into the final product. The way criminal records are created, processed, and tethered to a resident negatively impacts their chance to go to school, earn a degree or trade skill, or even be allowed to live in an apartment building. This collective impact impedes their ability to be a positive contributing resident.

As the three complementary bills show, we are all pushing in the same direction. Beyond enactment of a final bill, there will be many steps needed to bring actual relief to the residents:

- Residents will require educational outreach on the impacts of the new law.
- Record sealing clinics will need to be set up to connect residents and pro bono attorneys.
- And we will need attorneys and legal staff to help handle the caseloads.

This is an issue that I believe must be approached as a partnership between the Executive, the Council, the Superior Court, and advocates for reform.

I look forward to working with you on this important criminal justice reform. Thank you for the opportunity to testify today. I am available to answer any questions.