

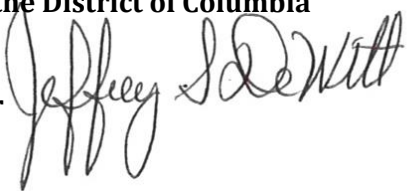
Government of the District of Columbia
Office of the Chief Financial Officer



Jeff DeWitt
Chief Financial Officer

MEMORANDUM

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

FROM: Jeff DeWitt
Chief Financial Officer 

DATE: September 15, 2014

SUBJECT: Fiscal Impact Statement – Record Sealing for Decriminalized and Legalized Offenses Amendment Act of 2014

REFERENCE: Bill 20-467, Draft Committee Print as shared with the Office of Revenue Analysis on September 4, 2014

Conclusion

Funds are sufficient in the FY 2015 through FY 2018 budget and financial plan to implement the bill.

Background

Under current law, a person convicted of an offense that was subsequently decriminalized can seek to seal any public records related to this offense.¹ The bill maintains this right, but provides a more comprehensive process for pursuing and approving motions to seal public records related to arrests, charges, and convictions for an offense that has been decriminalized. Among the changes proposed by the bill are the following items:

- Motions to seal public records should be filed in Superior Court and should be granted the following conditions are met: the offense is not connected to any other District or federal charges or convictions² or if the court determines it is in the interest of justice to do so;³
- If a motion to seal is successful, the court must instruct the prosecutor's office and any relevant law enforcement agencies to remove the identity of the offender from all publicly

¹ Criminal Penalty for Unregistered Motorist Repeal Amendment Act of 2012, effective October 22, 2012 (D.C. Law 19-183; D.C. Official Code § 16-803(c-1)).

² It is incumbent upon the prosecutor to prove by a preponderance of the evidence that the record is ineligible for sealing.

³ It is incumbent upon the movant to prove by a preponderance of the evidence that sealing the record is in the interest of justice.

The Honorable Phil Mendelson

FIS: Bill 20-647, "Record Sealing for Decriminalized and Legalized Offenses Amendment Act of 2014," Draft Committee Print shared with the Office of Revenue Analysis on September 4, 2014

available records⁴ and report to the court within ninety days that the records have been sealed;

- Clarifies that when such records are sealed, officials responding to public⁵ requests for records involving the offender must state that no records are available;
- Once the record is sealed, the offender shall not be subject to perjury or any other laws governing false statements for failure to acknowledge the arrest, charge, or conviction associated with the sealed offense;
- Allows any individual to request his or her arrest record for the purposes of determining his or her eligibility to file a motion to seal;⁶ and
- Imposes a penalty⁷ for any third party who requires the record be produced for any reason other than to assist in the filing of a motion to seal.

Most recently, the District decriminalized the possession of one ounce or less of marijuana.⁸ The changes offered by the bill, if enacted, will allow any individual who had been convicted of possession of a small amount of marijuana to benefit from the more comprehensive and protective record sealing process.

Financial Plan Impact

Funds are sufficient in the FY 2015 through FY 2018 budget and financial plan to implement the bill. The Metropolitan Police Department can absorb any costs associated with sealing public records and reporting back to Superior Court within its existing resources.

⁴ The offender's identity can be maintained in nonpublic records and files.

⁵ In this case, a member of the public explicitly includes entities not normally considered public, such as licensing agencies, licensed educational and child protection agencies, and government employers.

⁶ The bill allows the District to charge a nominal fee for the purpose of producing the records.

⁷ A fine of \$100 or up to 10 days in prison.

⁸ Marijuana Possession Decriminalization Amendment Act of 2014, effective July 17, 2014 (D.C. Law 20-126; 61 DCR 825).