

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



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

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

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: November 28, 2012

SUBJECT: Fiscal Impact Statement – “Re-entry Facilitation Amendment Act of 2012”

REFERENCE: Bill 19-889 – Draft Committee Print shared with the Office of Revenue Analysis on November 16, 2012

Conclusion

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

Background

The bill makes various changes to D.C. Official Code to make it easier for persons with criminal histories to reintegrate into society.

Specifically, the bill provides limited liability for employers by disallowing the introduction of information regarding a criminal history of a current or former employee as evidence in a civil action against an employer, so long as the employer can demonstrate that in his hiring decision, the employer considered the former employee’s criminal history in conjunction with his ability to fulfill the requirements of the work, as well as other factors.

Second, the bill allows individuals to request their arrest records that contain a listing of *all adult arrests*, regardless of the date and disposition of the arrest, and the conviction, or completion of a sentence, for determining eligibility or filing a motion for sealing or expunging that record, in the District or elsewhere. The bill also allows a person to request, directly or through an authorized proxy, production of his or her arrest records *for all adult convictions in the last 10 years for which the sentence was completed*. The bill allows the District to charge a nominal fee for both types of arrest records. Current law does not specify the types of reports that could be produced, and

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FIS: Bill 19-899, "Re-entry Facilitation Amendment Act of 2012," draft Committee Print shared with the Office of Revenue Analysis on November 16, 2012.

expressly prohibits any charges.¹ The bill clarifies that any charges beyond the nominal fees allowed would result in fines set forth by recent legislation enacted that regulates such fines.²

Third, the bill excludes from the list of misdemeanors not eligible for criminal arrest record sealing violence towards a person with whom the offender shares or had shared a residence without any familial ties or romantic relations.³ Current law has a broader definition that includes violence towards any person who lives or had lived in the same homestead, regardless of the type of relation.

Fourth, the bill expands opportunities, and reduces the waiting period,⁴ for a person to submit a motion to seal criminal arrest records. For *arrests or charges for an eligible misdemeanor*, the bill allows for a motion if at least 5 years has elapsed since the completion of the movant's sentence for a disqualifying misdemeanor conviction, or at least 10 years has elapsed since the completion of the movant's sentence for a disqualifying felony conviction. Current law prohibits any motion to seal records if the movant has any disqualifying arrest or conviction regardless of the time that has passed. For *all other criminal offenses that are not defined as eligible convictions*, the bill reduces the waiting period from 5 years since the termination of the case to 4 years, and allows for a 3 year wait if the case terminated without a charge. Similar allowances are made for disqualifying misdemeanor convictions that had happened prior to the charge for which the movant is seeking to seal criminal records. Finally, for *persons convicted of an eligible misdemeanor or an eligible felony*, the bill reduces the waiting period from 10 years to 8, or if the said person can attest that he or she was incorrectly identified or named, and the law enforcement agency did not take the necessary steps to positively identify the arrested person (for example through fingerprinting or by checking identification documents).

Fifth, the bill defines the conditions under which a person who is a fugitive from justice may file for a motion to seal his or her criminal records, describes the conditions for granting this motion, and the actions to be taken after granting this motion.

Sixth, the bill gives the movant 30 days to comply with the requirements of law, if the Court finds that the motion to seal criminal records does not comply with the requirements of the law.⁵ No such allowance is present in current law. The bill also clarifies that if an arrest or related court proceedings are not in a publicly available database, the motion to seal these records, whether approved or not, cannot be made publicly available.

Finally, the bill authorizes, but does not require, the Mayor to issue a Certificate of Good Standing to any person previously convicted of a crime in the District. Such certificates will include information on the person's last sentence, information on any outstanding or pending charges, pending or current sentences, writs and holds.

¹ See D.C. Official Code § 2-1402.66.

² Criminal Fine Proportionality Act of 2012, engrossed on November 1, 2012 (D.C. Bill 19-214).

³ D.C. Official Code § 16-801(9)(A).

⁴ D.C. Official Code § 16-803.

⁵ D.C. Official Code § 16-804.

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Financial Plan Impact

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill. The provisions of the bill regarding criminal arrest record sealing can be implemented without any additional resources.

Because the bill authorizes, but does not obligate the Mayor to issue Certificates of Good Standing, this provision does not have a fiscal impact. Should the Mayor choose to exercise this authority he may have to work with limitations on the arrest and conviction records available to the District, or he may choose to appropriate funds to a new program that administers these certificates.