

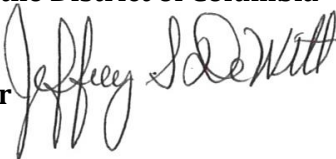
Government of the District of Columbia  
Office of the Chief Financial Officer



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

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**Conclusion**

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

**Background**

District law<sup>1</sup> 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.<sup>2</sup> 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

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

<sup>2</sup> 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.

courts to automatically seal all public records after ninety days<sup>3</sup> as long as the individual does not have any disqualifying convictions.<sup>4</sup> 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,<sup>5</sup> so if this Act is not effective before April 1, 2019, the Commission may not have a full six months to complete the report.

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

<sup>4</sup> 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.

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