

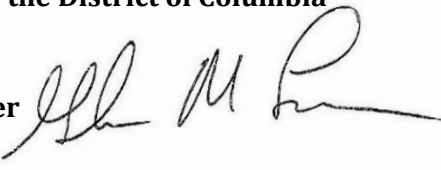
Government of the District of Columbia
Office of the Chief Financial Officer



Glen Lee
Chief Financial Officer

MEMORANDUM

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

FROM: Glen Lee
Chief Financial Officer 

DATE: December 20, 2022

SUBJECT: Fiscal Impact Statement – Second Chance Amendment Act of 2022

REFERENCE: Bill 24-63, Engrossed original as passed at first reading on December 6, 2022

Conclusion

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill costs \$300,000 in fiscal year 2023 and \$10.2 million over the financial plan.

Background

Criminal record clearing under District law is generally provided through expungement or sealing of a person's criminal record. Expungement is removing public access to a person's citation, arrest, charge, conviction, or related court proceedings by essentially erasing a person's arrest record and any criminal history. Sealing is removing public access to a person's citation, arrest charge, conviction, or related court proceeding, but allows access to certain parties including law enforcement and prosecutors. The bill expands how a person's arrest and criminal records can be cleared under District law. Specifically, the bill allows for:

- Automatic expungement for citations, arrests, charges, and convictions for decriminalized, legalized, and unconstitutional offenses;
- By-motion expungement for citations, arrests, and charges for actual innocence motions;

- Automatic sealing for citations, arrests, and charges that do not result in convictions, except for specified offenses;¹
- Automatic sealing for citations, arrest, charges, and convictions for all misdemeanors, except for specified offenses,² after a 10-year waiting period following sentence completion;
- By-motion sealing for citations, arrests, and charges for offenses³ that do not result in conviction and are otherwise ineligible for automatic sealing; and
- By-motion sealing for convictions, with some exceptions,⁴ following a 5-year waiting period for misdemeanor convictions and an 8-year waiting period for felony convictions.

The automatic expungement provisions are effective January 1, 2025, or within 90 days after the expiration of the waiting period defined in the bill. The automatic sealing provisions are effective January 1, 2027, or within 90 days after the expiration of the waiting period defined in the bill. By-motion expungement and sealing provisions are effective 90 days after a motion is granted.

The bill also restricts how criminal history reports⁵ can be used by criminal history providers. Criminal history providers⁶ are prohibited from providing criminal history information about non-convictions. The bill requires criminal history providers to provide the subject of criminal records with a copy of the criminal history report, the source of reported information, and the date on which the information was received from the source in a criminal history report.

The bill also provides a process by which a complaint can be filed with the Office of Human Rights (OHR) if a person claims to be aggrieved by a violation of the bill and provides for civil penalties if OHR determines that a violation has occurred.

Financial Plan Impact

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill costs \$300,000 in fiscal year 2023 and \$10.2 million over the financial plan.

The District of Columbia Courts, Metropolitan Police Department (MPD), Department of Motor Vehicles (DMV), and OHR all require additional resources to implement the bill. The needs of each agency are detailed below.

¹ Including intrafamily offense; parental kidnapping, criminal abuse of a vulnerable adult or elderly person, financial exploitation of a vulnerable adult or elderly person; refusal or neglect of guardian to provide for child under 14 years of age, an offense for which sex offender registration is required pursuant to Chapter 40 of Title 22, and the registration period has not expired, violation of the Sex Offender Registration Act of 1999, a dangerous crime, a crime of violence, and driving under the influence/operating a vehicle while impaired.

² *Id.*

³ *Id.*

⁴ Convictions in Severity Groups one, two, and three of the D.C. Sentencing Commission's Master Grid. See: <https://sdc.dc.gov/page/sentencing-guideline-grid-charts>.

⁵ Includes criminal history information that has been compiled for the purposes of evaluating a person's character or eligibility for employment, housing, or participation in any activity or transaction.

⁶ Persons or an organization that compiles criminal history reports, which include information about District of Columbia Official Code or District of Columbia Municipal Regulations criminal records or the criminal records of District residents, and either uses the reports or provides the reports to a third party.

Second Chance Amendment Act of 2022					
Total Cost by Agency (\$1,000s)					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
MPD	\$300	\$2,937	\$2,639	\$2,695	\$8,571
DMV	\$0	\$78	\$80	\$81	\$239
OHR	\$0	\$296	\$540	\$553	\$1,389
Total	\$300	\$3,311	\$3,259	\$3,329	\$10,199

District of Columbia Courts

Currently, if the Court orders the sealing or expungement of a criminal record by motion, then that record has inherently been identified by the person seeking relief. The bill's provisions requiring the Court to order the automatic sealing or expungement of eligible criminal records does not include such an obvious and inherent identifier and there is currently no statute in the District that provides for the automatic clearing of criminal records. The Court will need to develop a plan to review and identify all criminal records that may qualify for relief under the bill. The automatic record clearing provisions of the bill are retroactive and the process for the Court to identify eligible records will be extensive. This could require updates to informational technology systems that house criminal records or the development of new systems and processes to meet the requirements of the bill. The Court will most likely coordinate with other law enforcement agencies to ensure the most efficient implementation of the bill. The Court is not a District agency, therefore there is no fiscal impact to the District.

Metropolitan Police Department

MPD will need additional resources to automatically expunge and seal criminal records. Arrest records prior to 2018 are contained in a legacy system and it is unknown whether the records in this system can be filtered with an algorithm to automatically expunge and seal eligible arrest records or whether a manual review process will be required. MPD will need to hire a consultant to develop an implementation plan that identifies what records must be sealed and expunged and whether an algorithm can be applied. The cost of hiring this consultant is \$300,000 in fiscal year 2023. If the consultant finds that a technological solution is not feasible, MPD will likely need to hire an additional thirty employees for a period of four years to manually review each arrest record prior to 2018. MPD estimates that there are approximately 200,000 individual arrest records that would need to be reviewed. If required, the cost of hiring these employees would be \$2.21 million in fiscal year 2024 and \$6.79 million over the financial plan.

An algorithm can likely be developed for the current records management system. The cost of upgrading these systems is unknown at this time and can range from anywhere from \$200,000 (as seen in Pennsylvania)⁷ to \$6.1 million (as seen in Virginia).⁸ Since MPD's current system is only four years old and based on past upgrades, ORA estimates that MPD will need approximately \$500,000 for upgrades. The estimate will be updated when MPD has developed a scope of work and secured quotes from its IT vendor.

⁷ <https://www.legis.state.pa.us/WU01/LI/BI/SFN/2017/0/HB1419P3314.pdf>

⁸ <https://lis.virginia.gov/cgi-bin/legp604.exe?211+oth+HB2113FH2122+PDF>

MPD will also need to hire five additional employees to address an anticipated increase in by-motion expungements and sealings. Three employees will need to be hired in fiscal year 2024 and two more in fiscal year 2025. In total the cost of these employees is \$222,000 in fiscal year 2024 and \$984,000 over the financial plan. In total, MPD requires \$300,000 in fiscal year 2023 and \$8.57 million over the financial plan to implement the bill.

Second Chance Amendment Act Metropolitan Police Department Total Cost (\$1,000s)					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Records Management Consultant	\$300	\$0	\$0	\$0	\$300
Legacy System Records Review ^(a)	\$0	\$2,215	\$2,262	\$2,310	\$6,787
Current System and Ongoing Records Reviews ^(b)	\$0	\$222	\$377	\$385	\$984
Current System IT Upgrade	\$0	\$500	\$0	\$0	\$500
Total	\$300	\$2,937	\$2,639	\$2,695	\$8,571

Table Notes:

- (a) Assumes salary and fringe for thirty Grade 9, Step 5 Records Management Specialists. Assumes cost growth of 1.75 percent and fringe rate of 18.3 percent. Assumes fringe cost growth of 2.375 percent. Positions are no longer needed after fiscal year 2027.
- (b) Assumes three Grade 9, Step 5 Records Management Specialists from 2024 and two additional in 2025. Assumes cost growth of 1.75 percent and fringe rate of 18.3 percent. Assumes fringe cost growth of 2.375 percent.

Department of Motor Vehicles

District of Columbia residents, previous residents, and drivers who received a moving violation in the District may request a non-certified or certified copy of their three-year, five-year, ten-year, or full history driver record from the DMV. Traffic citations are included in these driver records and would now be subject to the expungement and sealing requirements specified in the bill. The DMV will need to hire an additional Correspondence Specialist starting in fiscal year 2024 to help with the initial and continuous questions from commercial drivers that will result from implementing the bill. Any costs that result from updating IT systems or processes can be completed with existing resources. In total, the DMV requires \$78,000 in fiscal year 2024 and \$239,000 over the financial plan to implement the bill.

Second Chance Amendment Act of 2022 Department of Motor Vehicles Costs					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Salary ^(a)	\$0	\$62,000	\$63,000	\$64,000	\$189,000
Fringe ^(b)	\$0	\$16,000	\$17,000	\$17,000	\$50,000
Total	\$0	\$78,000	\$80,000	\$81,000	\$239,000

Table Notes:

- (a) Assumes one Grade-9, Step-5 Correspondence Specialist, and cost growth of 1.75 percent
- (b) Assumes fringe rate of 25 percent and cost growth of 2.375 percent.

Department of Corrections

The Department of Corrections (DOC) currently seals or expunges a criminal record when required to do so by an order from the Court, issued in response to a motion filed by an individual offender. DOC conducts an electronic and physical search and seals any identified records. DOC does not anticipate a change to their record clearing process to comply with the bill.

DOC staff will require additional overtime to identify criminal records eligible for record clearing under the bill. Due to the unknown volume of records that may be identified, DOC will need to create an implementation plan to clearly define how they will comply with the court order to expunge and seal identified records and certify those actions with the Court. This will have a workload impact, the extent of which is not known at this time.

Office of Human Rights

OHR is currently responsible for investigating complaints filed by any individual that claims to have been unlawfully discriminated under protections granted in District law. The bill allows individuals who may be aggrieved by a violation of the bill's restrictions on criminal history reports to file a complaint with OHR and provides for civil penalties if OHR determines that a violation has occurred. OHR will need to hire additional employees to conduct investigations into these complaints. A Program Manager and Outreach Specialist must be hired in fiscal year 2024 to establish policies and procedures and to communicate to the public the complaint process ahead of the January 1, 2025 effective date for automatic expungements. Additionally, OHR must hire two Investigators to process complaints and investigate violations of the criminal history reports beginning in fiscal year 2025. In total, OHR requires \$296,000 in fiscal year 2024 and \$1.39 million over the four-year financial plan to implement the bill.

Second Chance Amendment Act Office of Human Right Total Cost					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Salary ^(a)	\$0	\$201,000	\$390,000	\$397,000	\$988,000
Fringe ^(b)	\$0	\$51,000	\$101,000	\$106,000	\$258,000
Supplies ^(c)	\$0	\$4,000	\$8,000	\$8,000	\$20,000
Outreach ^(d)	\$0	\$40,000	\$41,000	\$42,000	\$123,000
Total	\$0	\$296,000	\$540,000	\$553,000	\$1,389,000

Table Notes:

- (a) Assumes one Grade 14, Step 5 Program Manager and one Grade 11, Step 5 Outreach Specialist starting in fiscal year 2024 and one Grade 13, Step 5 Lead Investigator and one Grade 11, Step 5 Investigator starting in fiscal year 2025. Assumes cost growth of 1.75 percent.
- (b) Assumes fringe rate of 24.8 percent and fringe cost growth of 2.375 percent.
- (c) Assumes \$2,000 in supplies per new employee.
- (d) Assumes 2 percent cost growth.