

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend Chapter 8 of Title 16 of the District of Columbia Official Code to permit automatic expungement and expungement by motion for certain criminal records, to permit automatic sealing and sealing by motion for certain criminal records, to state the effect of expungement and sealing, to clarify access to sealed or expunged criminal records, and to provide for retroactive application; and to prohibit criminal history providers from reporting criminal history information related to records that have been sealed, expunged, or set aside, to authorize the Office of Human Rights to adjudicate complaints, and to provide penalties.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Second Chance Amendment Act of 2022”.

TITLE I. CRIMINAL RECORD SEALING AND EXPUNGEMENT.

Sec 101. Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by striking the phrase “8. Criminal Record Sealing” and inserting the phrase “8. Criminal Record Sealing and Expungement” in its place.

(b) Chapter 8 is amended to read as follows:

“CHAPTER 8

“CRIMINAL RECORD SEALING AND EXPUNGEMENT

“Section

“16-801. Definitions.

“16-802. Automatic expungement of criminal records.

“16-803. Expungement of criminal records by motion.

“16-804. Effect of expungement of criminal records.

“16-805. Automatic sealing of criminal records.

“16-806. Sealing of criminal records by motion.

“16-807. Effect of sealing of criminal records.

“16-808. Applicability.

“16-809. Savings provision.

“§ 16-801. Definitions.

“For the purposes of this chapter, the term:

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“(1) “Clerk” means the Clerk of the Superior Court of the District of Columbia.

“(2) “Completion of the sentence” means the person has been unconditionally discharged from incarceration, commitment, probation, parole, or supervised release, whichever is latest; provided, that nonpayment of fines, restitution, or any other monetary assessments imposed by the Court shall not prevent completion of a sentence.

“(3) “Conviction” means the entry of judgment on a verdict or a finding of guilty, a plea of guilty or a plea of nolo contendere, or a plea or verdict of not guilty by reason of insanity.

“(4) “Court” means the Superior Court of the District of Columbia.

“(5) “Public” means any person, agency, organization, or entity other than any:

“(A) Court;

“(B) Federal, state, or local prosecutor;

“(C) Law enforcement agency;

“(D) Licensing agency, with respect to a criminal offense that may disqualify a person from obtaining that license;

“(E) Licensed school, day care center, before or after school facility or other educational or child protection agency or facility; and

“(F) Government employer or nominating or tenure commission with respect to:

“(i) Employment of a judicial or quasi-judicial officer; or

“(ii) Employment at a senior-level, executive-grade government position.

“16-802. Automatic expungement of criminal records.

“(a) The Court shall order automatic expungement of all criminal records and court proceedings related only to citations, arrests, charges, or convictions for the commission of a criminal offense that has subsequently been decriminalized, legalized, or held to be unconstitutional by the Court of Appeals for the District of Columbia or the Supreme Court of the United States, or records related only to simple possession for any quantity of marijuana in violation of § 48-904.01(d)(1) before February 15, 2015, if:

“(1) The case was terminated by the prosecutor or otherwise reached a final disposition; and

“(2) The prosecutor has not:

“(A) Filed a written motion, which may be made ex parte, to:

“(i) Retain and sequester the record for a limited period of time; or

“(ii) Contest that a particular person qualifies for expungement under this section; and

“(B) Demonstrated by clear and convincing evidence that:

“(i) Retention is necessary for a lawful purpose, such as:

“(I) Investigating, prosecuting, or defending another criminal case;

“(II) Complying with disclosure obligations in another criminal case; or

“(III) Determining the person’s suitability for diversion, release, sentencing reduction, or record sealing in another case; or

“(ii) The person does not qualify for expungement under this section.

“(b) Eligible criminal records and court proceedings related to citations, arrests, charges, and convictions shall be expunged pursuant to subsection (a) of this section by January 1, 2025, or within 90 days after termination of the case by the prosecutor or final disposition, whichever is later.

“16-803. Expungement of criminal records by motion.

“(a) The Court shall order expungement of all criminal records and court proceedings related only to citations, arrests, or charges for the commission of a criminal offense on the grounds of actual innocence if:

“(1) The case was terminated by the prosecutor or otherwise reached a final disposition and did not result in a conviction or acquittal pursuant to § 24-501; and

“(2) The person cited, arrested, or charged files a written motion and demonstrates, by a preponderance of the evidence, that the offense for which the person was cited, arrested, or charged:

“(A) Did not occur; or

“(B) Was not committed by the person.

“(b) A motion filed pursuant to subsection (a)(2) of this section:

“(1) Shall state:

“(A) The grounds upon which eligibility for expungement is based; and

“(B) Facts in support of the movant’s claim; and

“(2) May be:

“(A) Accompanied by a statement of points and authorities in support of the motion, and any appropriate exhibits, affidavits, and supporting documents; and

“(B) Filed at any time.

“(c) A copy of the motion and any amended motion shall be served upon the prosecutor.

“(d)(1) If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings in the case, that the movant is not eligible for relief or not entitled to relief, the Court may dismiss or deny the motion.

“(2) If the motion is not dismissed or denied after initial review, the Court:

“(A) Shall determine whether a hearing on the motion is required; and

“(B) May:

“(i) Order the prosecutor to file a response to the motion; and

“(ii) Set a deadline by which the response shall be filed.

“(3) At any hearing on the motion, the movant and the prosecutor may present witnesses and information by proffer or otherwise. Hearsay evidence shall be admissible.

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“(4) An order dismissing, granting, or denying the motion shall be:

“(A) In writing and include reasons for the decision;

“(B) A final order for purposes of appeal; and

“(C) Issued no later than 180 days after the motion is filed, unless there exists good cause for delay.

“(5) A motion made pursuant to this section may be dismissed without prejudice to permit the movant to renew the motion after further passage of time.

“(6) If the Court denies the motion, the Court shall entertain a second motion for the same relief no sooner than one year after the date on which the order on the initial motion was resolved, unless the second motion raises grounds different than the first motion, in which case, it shall be entertained at any time. If the Court denies the movant’s second motion, the Court shall entertain a third and final motion no sooner than one year after the date on which the order on the second motion was resolved, unless the third motion raises grounds different than the first 2 motions, in which case, it shall be entertained at any time.

“(7) If the Court grants the motion, it shall summarize in the order the factual circumstances of the challenged citation, arrest, or charge and any post-arrest occurrences it deems relevant, and shall rule as a matter of law that the movant did not commit the offense for which the movant was arrested or that no offense had been committed.

“(e) An acquittal or dismissal shall not establish a presumption that the movant is innocent or entitled to relief pursuant to this section.

“(f) Eligible criminal records and court proceedings related to citations, arrests, and charges shall be expunged pursuant to subsection (a) of this section within 90 days after a motion is granted.

“16-804. Effect of expungement of criminal records.

“(a) The effect of expungement shall be to restore a person, in the contemplation of the law, to the status they occupied before being cited, arrested, charged, or convicted.

“(b) No person as to whom criminal record expungement relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to acknowledge or disclose that citation, arrest, charge, prosecution, disposition, or conviction, in response to any inquiry made of them for any purpose.

“(c) If the Court orders that a criminal record be expunged:

“(1) The Clerk and each prosecutor and law enforcement, corrections, pretrial, and community supervision agency shall:

“(A) Eliminate from all publicly available physical and computerized records any references that identify the person as having been cited, arrested, prosecuted, or convicted;

“(B) Be entitled to retain records relating to the person’s citation, arrest, prosecution, and conviction in a nonpublic, restricted access file; and

“(C) Reply in response to public inquiries concerning the existence of the records that no records are available;

“(2) Each prosecutor and law enforcement, corrections, pretrial, and community supervision agency shall file a certification with the Court within 90 days after an order to expunge is issued that, to the best of its knowledge and belief, all references that identify the person as having been cited, arrested, prosecuted, or convicted have been expunged;

“(3) The Clerk shall:

“(A) Retain a nonpublic record, appropriately and securely indexed to protect its confidentiality, containing records retrieved pursuant to this section and the certifications filed pursuant to paragraph (2) of this subsection; and

“(B) Make reasonable efforts to provide a copy of the order to expunge and the certifications filed pursuant to paragraph (2) of this subsection to the person who was cited, arrested, charged, or convicted, or their counsel:

“(i) When the Court issues the order;

“(ii) When the certifications are filed pursuant to paragraph (2) of this subsection; and

“(iii) At any time, upon proper identification, without a showing of need;

“(4) In a case involving co-defendants in which the Court orders the person’s criminal records be expunged, the Court shall order, to the extent practicable:

“(A) That only those records, or portions thereof, relating solely to the person be redacted;

“(B) That the person’s name be redacted from records that are not expunged; and

“(C) The redaction of references to the person that appear in a transcript of court proceedings involving co-defendants; and

“(5) The Court shall not be required to order the redaction of the person’s name from any published opinion of the trial or appellate courts that refers to the person.

“(d)(1) Records retained in a nonpublic file pursuant to this section shall only be available to:

“(A) The person who was cited, arrested, charged, or convicted, or their counsel;

“(B) A prosecutor, defense attorney, law enforcement, corrections, pretrial, or community supervision agency, for the purpose of:

“(i) Investigating, prosecuting, or defending another criminal case;

“(ii) Complying with disclosure obligations in another criminal case; or

“(iii) Determining the person’s suitability for diversion, release, sentencing reduction, or record sealing in another case; and

“(C) Other persons or entities for the purpose of:

“(i) Use in civil litigation related to the citation, charge, arrest, or conviction; or

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“(ii) Upon order of the Court for good cause shown, such as for anonymized records for academic or journalistic purposes.

“(2) A request for access to or to disclose expunged records may be made ex parte and may be granted by the Court for good cause shown.

“(3) If the Court permits a requestor to access or disclose expunged records, the Court and the requestor shall take all reasonable measures to ensure that the records are secure and that the contents are not identifiably disclosed, published, or redistributed, such as by issuing a protective order or electronically limiting access to verified viewers.

“(4) A person, upon making inquiry of the Court concerning the existence of criminal records involving an individual, shall be entitled to rely, for any purpose under the law, upon the clerk’s response that no records are available with respect to any issue about that person’s knowledge of the individual’s record.

“16-805. Automatic sealing of criminal records.

“(a) Except as otherwise provided in this chapter and in subsection (b) of this section, the Court shall order automatic sealing of all criminal records and court proceedings related to:

“(1) Citations, arrests, or charges for the commission of a criminal offense; provided, that the case was terminated by the prosecutor or otherwise reached a final disposition and did not result in a conviction or acquittal pursuant to § 24-501; and

“(2) Citations, arrests, charges, and convictions for the commission of a misdemeanor offense that resulted in a conviction; provided, that a waiting period of at least 10 years has elapsed since completion of the sentence.

“(b) The Court shall not order automatic sealing pursuant to this section if the citation, arrest, charge, or conviction is for:

“(1) An intrafamily offense, as defined in § 16-1001(8);

“(2) Parental kidnapping, as described in § 16-1022;

“(3) Criminal abuse of a vulnerable adult or elderly person, as described in § 22-933;

“(4) Financial exploitation of a vulnerable adult or elderly person, as described in § 22-933.01;

“(5) Refusal or neglect of a guardian to provide for child under 14 years of age, as described in § 22-1102;

“(6) Incest, as defined in § 22-1901;

“(7) Misdemeanor sexual abuse, as defined in § 22-3006;

“(8) Violation of Chapter 30A of Title 22;

“(9) Violation of Chapter 31 of Title 22;

“(10) Violation of Chapter 31A of Title 22;

“(11) An offense for which sex offender registration is required pursuant to Chapter 40 of Title 22, and the registration period has not expired;

“(12) Violation of Chapter 40 of Title 22, as described in § 22-4015;

“(13) A dangerous crime, as defined in § 23-1331(3);

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“(14) A crime of violence, as defined in § 23-1331(4);

“(15) Driving under the influence (known as DUI) of alcohol or a drug, as described in § 50-2206.11;

“(16) Driving under the influence of alcohol or a drug; commercial vehicle, as described in § 50-2206.12; or

“(17) Operating a vehicle while impaired, as described in § 50-2206.14.

“(c) Criminal records and court proceedings:

“(1) Related to citations, arrests, and charges sealed pursuant to subsection (a)(1) of this section:

“(A) For which the case was terminated by the prosecutor or otherwise reached a final disposition and did not result in a conviction or acquittal pursuant to § 24-501 prior to the effective date of the Second Chance Amendment Act of 2022, passed on 2nd reading on December 20, 2022 (Enrolled version of Bill 24-63), shall be sealed by January 1, 2027, or within 90 days after termination of the case by the prosecutor or final disposition, whichever is later; and

“(B) For which the case was terminated by the prosecutor or otherwise reached a final disposition and did not result in a conviction or acquittal pursuant to § 24-501 on or after the effective date of the Second Chance Amendment Act of 2022, on 2nd reading on December 20, 2022 (Enrolled version of Bill 24-63), shall be sealed within 90 days after termination of the case by the prosecutor or final disposition, whichever is later; and

“(2) Related to citations, arrests, charges, and convictions sealed pursuant to subsection (a)(2) of this section shall be sealed by January 1, 2027, or within 90 days after the expiration of the waiting period, whichever is later.

“16-806. Sealing of criminal records by motion.

“(a) The Court shall order the sealing of all criminal records and court proceedings related to:

“(1) Citations, arrests, and charges for the commission of a criminal offense; provided, that:

“(A) The case was terminated by the prosecutor or otherwise reached a final disposition and did not result in a conviction or acquittal pursuant to § 24-501;

“(B) The offense is an offense listed in § 16-805(b); and

“(C) The person cited, arrested, or charged files a written motion demonstrating, by a preponderance of the evidence, that it is in the interests of justice to seal the records;

“(2) Citations, arrests, and charges only for being a fugitive from justice; provided, that:

“(A) The person was arrested in the District as a fugitive from justice;

“(B) The person waived an extradition hearing pursuant to § 23-702(f)(1) and was released pursuant to § 23-702(f)(2) or detained pursuant to § 23-702(f)(3);

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“(C) The fugitive case was terminated by the prosecutor or otherwise reached a final disposition; and

“(D) The person cited, arrested, or charged files a written motion demonstrating, by a preponderance of the evidence, that:

“(i) They have appeared before the proper official in the jurisdiction from which they were a fugitive; and

“(ii) It is in the interests of justice to seal the records; and

“(3) Citations, arrests, charges, and convictions for the commission of a criminal offense that resulted in a conviction; provided, that:

“(A)(i) For a misdemeanor offense, a waiting period of at least 5 years has elapsed since completion of the sentence; and

“(ii) For a felony offense, a waiting period of at least 8 years has elapsed since completion of the sentence; except, that an offense in Offense Severity Group 1, 2, or 3 of the Master Grid, developed by the District of Columbia Sentencing Commission, at the time of the effective date of the Second Chance Amendment Act of 2022, passed on 2nd reading on December 20, 2022 (Enrolled version of Bill 24-63), shall not be eligible for sealing; and

“(B) The person cited, arrested, charged, or convicted files a written motion demonstrating, by a preponderance of the evidence, that it is in the interests of justice to seal the records.

“(b)(1) The Court shall grant a motion to seal pursuant to subsection (a) of this section if it is in the interests of justice to do so.

“(2) In making a determination to grant a motion to seal, the Court:

“(A) Shall weigh:

“(i) The interests of the movant in sealing the publicly available records of their citations, charges, arrests, or convictions;

“(ii) The community’s interest in furthering the movant’s rehabilitation and enhancing the movant’s reintegration into society through education, employment, and housing; and

“(iii) The community’s interest in retaining access to those records, including the interest of current or prospective employers in making fully informed hiring or job assignment decisions and the interest in promoting public safety; and

“(B) May consider:

“(i) The nature and circumstances of the offense;

“(ii) The movant’s role in the offense or alleged offense;

“(iii) The history and characteristics of the movant, including the movant’s:

“(I) Character;

“(II) Physical and mental condition;

“(III) Employment history;

“(IV) Prior and subsequent conduct;

“(V) History relating to substance abuse or dependence and treatment opportunities;

“(VI) Criminal history; and

“(VII) Efforts at rehabilitation;

“(iv) The time that has elapsed since the offense;

“(v) Any statement made by the victim of the offense;

“(vi) The position of the prosecutor, if any; and

“(vii) Any other information it considers relevant.

“(c)(1) A motion to seal filed pursuant to this section:

“(A) Shall state:

“(i) All of the movant’s unsealed and unexpunged citations, arrests, charges, and convictions, as reasonably known to the movant;

“(ii) The grounds upon which eligibility for sealing is based; and

“(iii) Facts in support of the movant’s claim; and

“(B) May be accompanied by a statement of points and authorities in support of the motion, and any appropriate exhibits, affidavits, and supporting documents.

“(2)(A) If the Court determines that the motion filed pursuant to this section does not comply with the requirements of paragraph (1) of this subsection, the movant shall have 30 days after being notified by the Court of the noncompliance to amend their original motion to include all of their citations, arrests, charges, and convictions.

“(B) If the movant fails to amend their original motion within 30 days after notification by the Court, then the motion shall be dismissed without prejudice.

“(d) A copy of the motion and any amended motion shall be served upon the prosecutor; provided, that the prosecutor shall not be required to respond to the motion unless ordered to do so by the Court.

“(e) The waiting periods in subsection (a)(3)(A) of this section may be waived by the prosecutor in writing.

“(f)(1) If the movant files a motion to seal a record that is not in the Court database or a record and related court proceedings that are not in a publicly available database, the motion to seal and responsive pleadings shall not be available publicly.

(2) If the Court grants a motion to seal, it shall order that the motion and responsive pleadings be sealed to the same extent and in the same manner as the records pertaining to the record and related court proceedings.

(3) If the Court denies a motion to seal, the Court, the United States Attorney’s Office, the Office of the Attorney General, and the law enforcement agency that arrested the movant shall be entitled to retain any and all records relating to the motion in a nonpublic file.

“(g) A person to whom a District arrest has been attributed, who attests under oath that the person was incorrectly identified or named, may file a motion to correct publicly available records of the arrest if the law enforcement agency did not take fingerprints at the time of the arrest and no other form of reliable identification was presented by the person who was arrested.

“(h) A movant shall not be required to:

“(1) Satisfy the waiting periods in subsection (a)(3)(A) of this section with respect to all of the movant’s citations, arrests, charges, and convictions; or

“(2) Seek relief with respect to all the arrests, charges, or convictions eligible for relief.

“(i)(1) If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings in the case, that the movant is not eligible for relief or not entitled to relief, the Court may dismiss or deny the motion.

“(2) If the motion is not dismissed or denied after initial review, the Court:

“(A) Shall determine whether a hearing on the motion is required; and

“(B) May:

“(i) Order the prosecutor to file a response to the motion; and

“(ii) Set a deadline by which the response shall be filed.

“(3) At any hearing on the motion, the movant and the prosecutor may present witnesses and information by proffer or otherwise. Hearsay evidence shall be admissible.

“(4) An order dismissing, granting, or denying the motion shall be:

“(A) In writing and include reasons for the decision; and

“(B) A final order for purposes of appeal; and

“(C) Issued no later than 180 days after the motion is filed, unless there exists good cause for delay.

“(5) A motion made pursuant to this section may be dismissed without prejudice to permit the movant to renew the motion after further passage of time.

“(6) If the Court denies the motion, the Court shall entertain a second motion no sooner than one year after the date on which the order on the initial motion was resolved. If the Court denies the movant’s second motion, the Court shall entertain a third and final motion no sooner than one year after the date on which the order on the second motion was resolved.

“(j) Criminal records and court proceedings related to citations, arrests, charges, and convictions sealed pursuant to subsection (a) of this section shall be sealed within 90 days after a motion to seal is granted.

“16-807. Effect of sealing of criminal records.

“(a) The effect of criminal record sealing shall be to remove all records related to a citation, arrest, charge, prosecution, disposition, or conviction from public view and to permit restricted, nonpublic access by specific parties for specific purposes.

“(b) No person as to whom criminal record sealing relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge or disclose that citation, arrest, charge, prosecution, disposition, or conviction, in response to any inquiry made of them for any purpose.

“(c) If the Court orders that a criminal record be sealed:

“(1) The Clerk and each prosecutor and law enforcement, corrections, pretrial, and community supervision agency shall:

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“(A) Eliminate from all publicly available physical and computerized records any references that identify the person as having been cited, arrested, prosecuted, or convicted;

“(B) Be entitled to retain records relating to the person’s citation, arrest, prosecution, and conviction in a nonpublic, restricted access file; and

“(C) Reply in response to public inquiries concerning the existence of the records that no records are available;

“(2) Each prosecutor and law enforcement, corrections, pretrial, and community supervision agency shall file a certification with the Court within 90 days after an order to seal is issued that, to the best of its knowledge and belief, all references that identify the person as having been cited, arrested, prosecuted, or convicted have been sealed;

“(3) The Clerk shall:

“(A) Retain a nonpublic record, appropriately and securely indexed to protect its confidentiality, containing records retrieved pursuant to this section and the certifications filed pursuant to paragraph (2) of this subsection; and

“(B) Make reasonable efforts to provide a copy of the order to seal and the certifications filed pursuant to paragraph (2) of this subsection to the person who was cited, arrested, charged, or convicted, or their counsel:

“(i) When the Court issues the order;

“(ii) When the certifications are filed pursuant to paragraph (2) of this subsection; and

“(iii) At any time, upon proper identification, without a showing of need;

“(4) In a case involving co-defendants in which the Court orders the person’s criminal records be sealed, the Court shall order, to the extent practicable:

“(A) That only those records, or portions thereof, relating solely to the person be redacted;

“(B) That the person’s name be redacted from records that are not sealed; and

“(C) The redaction of references to the person that appear in a transcript of court proceedings involving co-defendants; and

“(5) The Court shall not be required to order the redaction of the person’s name from any published opinion of the trial or appellate courts that refer to the person.

“(d)(1) Records retained in a nonpublic file pursuant to this section shall only be available to:

“(A) The person who was cited, arrested, charged, or convicted, or their counsel;

“(B) A prosecutor, defense attorney, law enforcement, corrections, pretrial, or community supervision agency, for any lawful purpose, including:

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“(i) Investigating, prosecuting, or defending another criminal case;  
“(ii) Complying with disclosure obligations in another criminal case;

“(iii) Determining the person’s suitability for diversion, release, sentencing reduction, sealing, or expungement in another case;

“(iv) The determination of conditions of release for a subsequent arrest;

“(v) The determination of whether a person has committed a second or subsequent offense for charging or sentencing purposes;

“(vi) Determining an appropriate sentence if the person is subsequently convicted of another crime;

“(vii) Employment decisions;

“(viii) Sex offender registration and notification;

“(ix) Gun offender registration; or

“(x) In determining whether a person has been in possession of a firearm in violation of § 22-4503;

“(C) Except for records sealed pursuant to § 16-806(a)(2), a person or entity identified in § 16-801(5)(D), (E), or (F), but only to the extent that such records would have been available to that person or entity before relief was granted. Such records may be used for any lawful purpose, including:

“(i) The determination of whether a person is eligible to be licensed in a particular trade or profession; or

“(ii) Employment decisions; and

“(D) Other persons or entities for the purpose of:

“(i) Use in civil litigation related to the citation, charge, arrest, or conviction; or

“(ii) Upon order of the Court for good cause shown, such as anonymized records for academic or journalistic purposes.

“(2) A request for access to or to disclose sealed records may be made ex parte and may be granted for good cause shown.

“(3) If the Court permits a requestor to access or disclose sealed records, the Court and the requestor shall take all reasonable measures to ensure that the records are secure and that the contents are not identifiably disclosed, published, or redistributed, such as by issuing a protective order or electronically limiting access to verified viewers.

“(4) A person, upon making inquiry of the Court concerning the existence of criminal records involving an individual, shall be entitled to rely, for any purpose under the law, upon the clerk’s response that no records are available with respect to any issue about that person’s knowledge of the individual’s record.

“16-808. Applicability.

“The sealing and expungement relief available under this chapter shall apply retroactively.

“16-809. Savings provision.

“This chapter shall not supersede any other provision of the District of Columbia Official Code providing for the expungement, sealing, or setting aside of criminal citations, arrests, charges, or convictions.”.

## TITLE II. CRIMINAL HISTORY REPORTS

### Sec. 201. Definitions.

For the purposes of this title, the term:

(1) “Criminal history provider” means a person or 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. The term “criminal history provider” does not include a government agency or a person or organization that provide reports solely to a government agency for purposes other than determining suitability for government employment.

(2) “Criminal history report” means 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; except, that information collected or disseminated solely for journalistic purposes shall not be a criminal history report.

(3) “Government agency” means any office, department, division, board, commission, or other agency of the District government, the government of the United States, or the government of another jurisdiction within the United States.

### Sec. 202. Restrictions on criminal history reports.

A criminal history provider:

(1) Shall, unless otherwise prohibited by District or federal law:

(A) Provide the subject of a criminal record with a copy of the criminal history report the criminal history provider used or provided;

(B) State the source of reported information and the date on which the information was received from the source in a criminal history report; and

(C) Use 2 identifiers, such as date of birth and name, before reporting a person’s criminal record; and

(2) Shall not, unless otherwise required by District or federal law:

(A) Provide information relating to the following:

(i) A criminal record that has been expunged, sealed, or set aside;

and

(ii) A criminal record that the criminal history provider knows is inaccurate; or

(B) Include criminal history information in a criminal history report if the criminal history information has not been updated to reflect changes to the criminal history information occurring 30 days or more before the date the criminal history report is provided.

Sec. 203. Filing a complaint with the Office of Human Rights; exclusive remedy.

(a) A person claiming to be aggrieved by a violation of this title may file an administrative complaint with the Office of Human Rights within one year after the unlawful discriminatory act, or discovery thereof, in accordance with the procedures set forth in Title III of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01 *et seq.*).

(b) The administrative remedies in subsection (a) of this section are exclusive. A person claiming to be aggrieved by a violation of this title shall not have a private cause of action in any court based on a violation of this title.

Sec. 204. Penalties.

(a) Except as provided in subsection (b) of this section, if the Office of Human Rights determines that there is probable cause to believe that a violation of this title has occurred, it shall certify the complaint to the Commission on Human Rights, which may impose the following penalties, of which half shall be awarded to the complainant and half shall be awarded to the District and deposited into the General Fund:

(1) For a first violation, a fine of up to \$1,000; and

(2) For a second or subsequent violation, a fine of up to \$5,000.

(b) For any violation of this title that occurs within 6 months after the applicability date of the Second Chance Amendment Act of 2022, passed on 2nd reading on December 20, 2022 (Enrolled version of Bill 24-63), the Commission on Human Rights shall issue warnings and orders to correct instead of imposing a penalty pursuant to subsection (a) of this section.

### TITLE III. APPLICABILITY; FISCAL IMPACT STATEMENT; EFFECTIVE DATE

Sec. 301. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 302. Fiscal impact statement.

**ENROLLED ORIGINAL**

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 303. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia