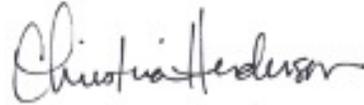


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2 Councilmember Charles Allen



Councilmember Christina Henderson

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6 Councilmember Brianne K. Nadeau



Councilmember Mary Cheh

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10 Councilmember Robert C. White.



Councilmember Brooke Pinto

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14 Councilmember Elissa Silverman



Councilmember Anita Bonds

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19 A BILL

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22 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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25  
26 To amend Chapter 8 of Title 16 to comprehensively revise the District’s criminal record sealing  
27 statutes, to increase the number of people eligible for relief, and to simplify and expedite  
28 the process for obtaining relief.

29  
30 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
31 act may be cited as the “The Record Expungement Simplification To Offer Relief and Equity  
32 (RESTORE) Amendment Act of 2021”.

33 Sec 2. Chapter 8 of Title 16 of the District of Columbia Official Code is amended to read  
34 as follows:

35 (a) The table of contents is amended to read as follows:

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“CHAPTER 8

“CRIMINAL RECORD SEALING

“Section

“16-801. Definitions.

“16-802. Effect of criminal record expungement.

“16-803. Effect of criminal record sealing.

“16-804. Eligibility for criminal record expungement.”.

“16-805. Eligibility for criminal record sealing.

(b) Section 16-801 is amended to read as follows:

“§ 16-801. Definitions.

“For the purposes of this chapter, the term:

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

“(2) “Conviction” means the entry of judgment of guilt or the entry of judgment of acquittal under D.C. Code § 24-501.

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

(c) Section 16-802 is amended to read as follows:

“§ 16-802. Effect of criminal record expungement.

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

“(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 recite or acknowledge their citation, arrest, charge, prosecution, or disposition, in response to any inquiry made of them for any purpose.

59           “(c) If a criminal record is expunged:

60                   “(1) The Clerk and each prosecutor, law enforcement agency, corrections agency,  
61 and community supervision agency shall reply in response to external inquiries concerning the  
62 existence of the records that no records are available.

63                   “(2) The Clerk and each prosecutor, law enforcement agency, corrections agency,  
64 and community supervision agency shall eliminate from all publicly available physical and  
65 computerized records any references that identify the person as having been cited, arrested, or  
66 prosecuted.

67                   “(3) The Clerk shall retain and sequester a nonpublic record, appropriately and  
68 securely indexed in order to protect its confidentiality;

69                   “(4) Each prosecutor, law enforcement agency, corrections agency, and  
70 community supervision agency shall file a certification with the Court within 30 days of an order  
71 to expunge the records that, to the best of its knowledge and belief, all references that identify  
72 the person as having been cited, arrested, or prosecuted have been expunged; and

73                   “(4) The Clerk shall provide a copy of the certifications to the person who was  
74 cited, arrested, or charged, or their counsel, both at the time of filing and at any time, upon  
75 proper identification, without a showing of need.

76           “(d) A request to access or disclose expunged records may be made ex parte:

77                   “(1) By the person who was cited, arrested, or charged; or

78                   “(2) By another party, upon a showing of good cause, and for the limited purpose  
79 of:

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

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

82                                   “(C) Using in civil litigation.

83                   “(e) If the Court permits a party to access or disclose expunged records, the Court, the  
84 parties, and the recipient shall take all reasonable measures to ensure that the record is secure and  
85 that its contents are not disclosed, published, or redistributed, such as issuing a protective order  
86 or electronically limiting access to verified viewers.”.

87                   (d) Section 16-803 is amended to read as follows:

88                   “§ 16-803. Effect of criminal record sealing.

89                   “(a) The effect of criminal record sealing shall be to remove all records related to a  
90 citation, arrest, charge, prosecution, or disposition from public view and to permit restricted  
91 access by specific actors for specific purposes related to advancing public safety or ensuring due  
92 process.

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

97                   “(c) If a criminal record is sealed:

98                                   “(1) The Clerk and each prosecutor, law enforcement agency, corrections agency,  
99 and community supervision agency shall reply in response to external inquiries concerning the  
100 existence of the records that no records are available;

101                                   “(2) The Clerk and each prosecutor, law enforcement agency, corrections agency,  
102 and community supervision agency shall eliminate from all publicly available physical and  
103 computerized records any references identify the person as having been cited, arrested,  
104 prosecuted, or convicted, except:

105                   “(A) In a case involving co-defendants, the person’s name be redacted  
106 from records that are not sealed, only to the extent that is practicable; and

107                   “(B) The person’s name may continue to appear in any published opinion  
108 of the trial or appellate courts; and

109                   “(3) The Clerk and each prosecutor and law enforcement agency may retain and  
110 sequester a nonpublic record, appropriately and securely indexed in order to protect its  
111 confidentiality;

112                   “(4) Each prosecutor and law enforcement agency shall file a certification with  
113 the Court within 30 days of an order to seal the records that, to the best of its knowledge and  
114 belief, all references that identify the person as having been cited, arrested, prosecuted, or  
115 convicted have been sealed;

116                   “(5) Each corrections agency and community supervision agency shall file a  
117 certification with the Court within 30 days of an order to seal the records that, to the best of its  
118 knowledge and belief, all references that identify the person as having been cited, arrested,  
119 prosecuted, or convicted have been eliminated; and

120                   “(6) The Clerk shall provide a copy of the order sealing the records and the  
121 certifications to the person who was cited, arrested, prosecuted, or convicted, or their counsel,  
122 both at the time of filing and at any time, upon proper identification, without a showing of need.

123                   “(d) A request to access or disclose sealed records may be made ex parte for any lawful  
124 purpose, including:

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

126                   “(2) Complying with disclosure obligations in another criminal case;

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

129                   “(4) Using in civil litigation; and

130                   “(5) Law enforcement hiring decisions.

131                   “(e) If the Court permits a party to access or disclose sealed records, the Court, the  
132 parties, and the recipient shall take all reasonable measures to ensure that the record is secure and  
133 that its contents are not disclosed, published, or redistributed, such as issuing a protective order  
134 or electronically limiting access to verified viewers.”.

135                   (e) Section 16-804 is amended to read as follows:

136                   “§ 16-804. Eligibility for criminal record expungement.

137                   “(a) A criminal record shall be expunged automatically within 30 days if:

138                   “(1) The person was:

139                                   “(A) Cited for, arrested for, charged with, or convicted of a criminal  
140 offense under the laws of the District that has subsequently been decriminalized or legalized; or

141                                   “(B) Cited, arrested, charged, or convicted under a District law that an  
142 appellate court found to be facially unconstitutional;

143                   “(2) The citation, arrest, or charge was not made in connection with and did not  
144 result in any other charges against the person;

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

147                   “(4) The United States Attorney for the District of Columbia or the Attorney  
148 General for the District of Columbia has not:

149                           “(A) Filed a written motion, which may be made ex parte, to retain and  
150 sequester the record for a limited period of time; and

151                           “(B) Demonstrated by a preponderance of the evidence that retention is  
152 necessary for a lawful purpose, such as:

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

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

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

158   “(iv) Using in civil litigation; and

159   “(v) Law enforcement hiring decisions.

160                   “(b) A criminal record shall be expunged by the Court within 180 days if:

161   “(1) The person was cited for, arrested for, or charged with, a criminal offense  
162 under the laws of the District of Columbia;

163   “(2) The case was terminated by the prosecutor or otherwise reached a final  
164 disposition and did not result in a conviction or an acquittal under D.C. Official Code § 24-501;  
165 and

166   “(3) The person files a written motion demonstrating by a preponderance of the  
167 evidence that:

168   “(A) The offense for which the person was cited, arrested, or charged did  
169 not occur;

170   “(B) The person did not commit the offense; or

171   “(C) It is in the interests of justice to expunge the records.

172           “(c) When determining whether it is in the interests of justice to expunge a criminal  
173 record, the Court may consider:

174                   “(1) The interests of the movant in expunging the records of the citation or arrest  
175 and related court proceedings;

176                   “(2) The community’s interest in furthering the movant’s rehabilitation and  
177 enhancing the movant’s employability;

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

181                   “(4) The nature and circumstances of the alleged offense;

182                   “(5) The movant’s role in the alleged offense and the weight of the evidence  
183 against the movant;

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

185                           “(A) Character;

186                           “(B) Physical and mental condition;

187                           “(C) Employment history;

188                           “(D) Prior and subsequent conduct;

189                           “(E) History relating to drug or alcohol abuse or dependence and  
190 treatment opportunities;

191                           “(F) Criminal history; and

192                           “(G) Efforts at rehabilitation;

193                   “(7) The time that has elapsed since the alleged offense;

194                   “(8) Any statement made by the victim of the alleged offense; and

195 “(9) Any other information it considers relevant.

196 “(d) If the Court denies a motion to expunge a record under this section:

197 “(1) The Court shall entertain a second motion under this section no sooner than  
198 one year after the date that the order on the initial motion becomes final;

199 “(2) If the Court denies the movant’s second motion under this section, the Court  
200 shall entertain a third and final motion under this section no sooner than one year following the  
201 date that the order on the second motion becomes final; and

202 “(3) The Court shall not entertain a fourth or successive motion under this  
203 section.”.

204 (f) Section 16-805 is amended to read as follows:

205 “§ 16-805. Eligibility for criminal record sealing.

206 “(a) A criminal record shall be sealed automatically within 30 days if:

207 “(1) The person was cited for, arrested for, or charged with a criminal offense  
208 under the laws of the District; and

209 “(2) The case was terminated by the prosecutor or otherwise reached a final  
210 disposition and did not result in a conviction or an acquittal under D.C. Official Code § 24-501.

211 “(b) A criminal record shall be sealed by the Court within 180 days if:

212 “(1) The person was convicted of a criminal offense under the laws of the District;

213 “(2) The person has completed their sentence and been discharged from  
214 incarceration, commitment, probation, parole, or supervised release;

215 “(3) At least a period of:

216                           “(A) 3 years has elapsed since the person was convicted of any offense  
217 under the laws of the District that constitutes a crime of violence, as defined by D.C. Official  
218 Code § 23-1331(4);

219                           “(B) 2 years has elapsed since the person was convicted of any offense  
220 under the laws of the District of Columbia punishable by imprisonment for a term exceeding one  
221 year; and

222                           “(C) one year has elapsed since the person was convicted of any offense  
223 under the laws of the District of Columbia; and

224                           “(4) The person files a motion demonstrating by a preponderance of the evidence  
225 that it is in the interests of justice to seal the records.

226                           “(c) A criminal record shall be sealed by the Court within 180 days if:

227                           “(1) The person was arrested in the District of Columbia as a fugitive from  
228 justice;

229                           “(2) The arrest was not made in connection with and did not result in any other  
230 charges against the person;

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

233                           “(4) The person files a written motion demonstrating by a preponderance of the  
234 evidence that:

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

237                           “(B) It is in the interests of justice to seal the records.

238           “(d) When determining whether it is in the interests of justice to seal a criminal record,  
239 the Court may consider:

240                   “(1) The interests of the movant in sealing the publicly available records of the  
241 arrest and related court proceedings;

242                   “(2) The community’s interest in furthering the movant’s rehabilitation and  
243 enhancing the movant’s employability;

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

247                   “(4) The nature and circumstances of the offense;

248                   “(5) The movant’s role in the offense;

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

250                           “(A) Character;

251                           “(B) Physical and mental condition;

252                           “(C) Employment history;

253                           “(D) Prior and subsequent conduct;

254                           “(E) History relating to drug or alcohol abuse or dependence and treatment  
255 opportunities;

256                           “(F) Criminal history; and

257                           “(G) Efforts at rehabilitation;

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

259                   “(8) Any statement made by the victim of the offense; and

260                   “(9) Any other information it considers relevant.

261 “(e) There shall be a rebuttable presumption that it is in the interests of justice to grant a  
262 motion to seal a criminal record if a period of 10 years has elapsed since the person was  
263 discharged from incarceration, commitment, probation, parole, or supervised release.

264 “(f) If the Court denies a motion to seal a record under this section:

265 “(1) The Court shall entertain a second motion under this section no sooner than  
266 one year after the date that the order on the initial motion becomes final;

267 “(2) If the Court denies the movant’s second motion under this section, the Court  
268 shall entertain a third and final motion under this section no sooner than one year following the  
269 date that the order on the second motion becomes final; and

270 “(3) The Court shall not entertain a fourth or successive motion under this section.

271 “(f) This section shall not be construed to limit the court’s ability, on its own initiative, to  
272 seal a criminal record as equitable relief.”.

273 Sec. 3. Fiscal impact statement.

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

277 Sec. 4. Effective date.

278 This act shall take effect after approval by the Mayor (or in the event of veto by the  
279 Mayor, action by the Council to override the veto), a 60-day period of congressional review as  
280 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
281 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
282 Columbia Register.