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**Testimony of Sally Vandenberg
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**Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia**

Budget Oversight Hearing Regarding the Metropolitan Police Department

April 9, 2024

Legal Aid DC¹ submits the following testimony regarding the Second Chance Amendment Act of 2022 (the “Act”). This Act is a desperately needed reform to the District's outdated and restrictive criminal record sealing scheme, but it needs funding in order to go into effect. Our ask today is twofold.

First, we ask that this Committee ensure that this Act is funded in its entirety in the FY25 proposed budget. Our understanding is that the proposed FY25 budget funds the Second Chance Act, but that with current funding levels the portion of the Act that pertains to record sealing by motion will not take effect until January 2026. The administration's position is that for the by-motion portion to take effect on October 1, 2024, an additional \$1,022,000 for MPD must be allocated in this year's budget. We do not understand why any additional funding is needed for the by-motion portion of the Act to go into effect. We ask that this Committee push back on that request but do what is necessary for the Act to become law on October 1, 2024.

Second, we ask the Council to consider revisions to the Act that would expand eligibility as well as clarify aspects of the law that, in its current iteration, will have unintended consequences for District residents and complicate the implementation of the law.

¹ Legal Aid DC is the oldest and largest general civil legal services program in the District of Columbia. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal legal system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. For more information, visit www.LegalAidDC.org.

The Second Chance Amendment Act Brings Long Overdue Changes to the District's Restrictive Criminal Record Clearing Laws

The District's current record sealing laws are among the most restrictive in the nation.² In its 2022 statewide Reintegration Report Card, the non-profit Collateral Consequences Resource Center assigned the District grades of "F" and "D" respectively for felony and misdemeanor criminal record relief laws.³ The current statutory scheme is onerous and complex, imposing restrictive criteria and waiting periods that require an analysis of an extensive list of factors to accurately calculate.⁴

Under the current law, there is no ability to request record sealing for any felony convictions (save for failure to appear), options for sealing misdemeanor convictions are extremely limited, and the law is so complex that it often requires an attorney to analyze and screen someone for eligibility as well as assist someone seeking relief.⁵ Arrests that did not result in conviction are still subject to long waiting periods before relief may be requested, and the law requires individuals to wait for their entire eligible record to become sealable or waive their right to seek future sealing.⁶ If an individual can satisfy these restrictive criteria, they are not guaranteed any form of automatic relief. Instead, they must then convince the Court that it is "in the interests of justice" to seal the record.⁷

Stakeholders have advocated for changes to the District's record sealing laws for years. The passage of the Second Chance Amendment Act marked a significant improvement

² Margaret Colgate Love, The Reintegration Report Card: Grading the States on Laws Restoring Rights and Opportunities After Arrest or Conviction, at 14 (March 2022). For more information, visit <https://ccresourcecenter.org/the-many-roads-to-reintegration/>.

³ *Id.*

⁴ See D.C. Code § 16-803. These factors include: the type of charge, whether or not the charge resulted in conviction, whether the case was terminated before or after charging, whether a non-conviction was the result of a deferred sentence, whether an individual has a later conviction in any jurisdiction, whether an individual has a pending case in any jurisdiction, and whether an individual was convicted at any time in any jurisdiction of a charge that appears on a list of "ineligible" offenses.

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

in the relief available to District residents with criminal convictions and non-convictions. But until it is funded, District residents cannot access this relief. The Act provides a clearer and more approachable scheme to determine record sealing eligibility, making it easier for individuals to access relief without an attorney. The Act also includes automatic sealing for certain convictions and non-convictions and automatic expungement for decriminalized and unconstitutional offenses and records relating to simple possession of marijuana. Despite this marked progress, there are still several aspects of the Act that should be revised or clarified in the Budget Support Act so that it may be effectively implemented.

The Council Should Revise the Second Chance Amendment Act in the Budget Support Act So That It May Be Effectively Implemented in a Manner Consistent with Council's Apparent Intent

The Act includes three provisions that we believe will have unintended impacts that are contrary to the Council's intent.

First, the Act makes expungement automatic for offenses that have been decriminalized, legalized, or held unconstitutional and records relating to simple possession of marijuana.⁸ The Act also makes sealing automatic for eligible non-convictions after termination and eligible convictions after 10 years.⁹ However, the Act provides the Court with a delayed timeline to implement these automatic provisions of the law that stretches into October 2027.¹⁰ At the same time, the law does not specify that people with these types of records can move to seal their record before the automatic sealing provisions

⁸ See D.C. Law 24-284 Second Chance Amendment Act of 2022 § 16-802.

⁹ See D.C. Law 24-284 Second Chance Amendment Act of 2022 § 16-805.

¹⁰ The Act states that criminal records relating to decriminalized, legalized, or unconstitutional offenses or simple possession of marijuana shall be expunged by October 1, 2027, or within 90 days after termination of the case by the prosecutor or final disposition, whichever is later. See D.C. Law 24-284 Second Chance Amendment Act of 2022 § 16-802(b). Misdemeanor convictions eligible for automatic sealing shall be sealed by October 1, 2027, or within 90 days after the expiration of the 10-year waiting period, whichever is later. See D.C. Law 24-284 Second Chance Amendment Act of 2022 § 16-805(c)(2). And non-convictions that reach a final disposition prior to the effective date of the Second Chance Amendment shall be automatically sealed by October 1, 2027, or within 90 days after termination of the case by the prosecutor or final disposition, whichever is later. See D.C. Law 24-284 Second Chance Amendment Act of 2022 § 16-805(c)(1).

kick in. Therefore, paradoxically, during the implementation phase, someone with an arrest that is never eligible for automatic sealing can seek to have their record sealed more quickly than someone who is eligible for automatic sealing, because they can request sealing through a motion. We recommend that the Council fix this problem by, at a minimum, allowing individuals with records that are eligible for this automatic relief to move to seal or expunge records by motion prior to the date that the automatic provisions take effect.

Second, the District's current record sealing law allows individuals with fugitive from justice charges to seal their records where the arrest was not made in connection with any other violation of District or federal law, the individual waived an extradition hearing, and the individual appeared before the proper official in the jurisdiction from which he was a fugitive.¹¹ The Court has discretion to grant a motion to seal where an individual cannot satisfy the above criteria but it is "in the interest of justice" to seal the records.¹² By contrast, the Act increases the burden for sealing fugitive from justice convictions by requiring the movant to prove in all instances, even where the above criteria are satisfied, that sealing the record is "in the interests of justice."¹³ We believe that this was an unintended drafting error that should be corrected.

Third, the Act implements waiting periods before certain convictions are eligible for sealing, but those waiting periods run from when an individual completes their sentence.¹⁴ The Court has been clear that this is unworkable because the Court does not know when individuals complete their sentences.¹⁵ Practically speaking, in order for the Court to implement an effective process for sealing records, the waiting periods should begin at the date of conviction because that is information the Court has access to.

¹¹ See D.C. Code § 16-803.01(b).

¹² See *id.*

¹³ See D.C. Law 24-284 Second Chance Amendment Act of 2022 § 16-806.

¹⁴ See D.C. Law 24-284 Second Chance Amendment Act of 2022 §§ 16-805, 16-806.

¹⁵ Letter from Chief Judges Anna Blackburne-Rigsby and Anita Josey Herring to Councilmember Charles Allen (December 2, 2022).

The Council Should Revise the Second Chance Amendment Act in the Budget Support Act So That It Provides Increased Access to Record Clearing Relief for Impacted District Residents

Finally, we believe that the Act would benefit from revisions that would expand its impact and eligibility for District residents. The Act includes a provision that allows for sealing by motion where an individual is ineligible for automatic relief or the 10-year waiting period for eligible misdemeanor convictions has not yet run.¹⁶ However, the Act currently imposes a waiting period of 5 years before one is eligible to move for sealing of a misdemeanor conviction and 8 years before one is eligible to move for sealing of a felony conviction.¹⁷ In these instances, movants are already required to prove that sealing their conviction is “in the interests of justice.”¹⁸ Imposing these lengthy waiting periods merely saddles District residents with the countless ancillary consequences that a criminal record creates for years after they have successfully completed their sentences. Furthermore, the Act currently includes a list of criminal convictions that can never be sealed. We believe that this is unjust and District residents should always have at least the ability to request that the Court seal their record. District residents should have the opportunity to prove to the Court that sealing their criminal record is in the interest of justice, regardless of the nature of the offense. Foreclosing even the mere opportunity to present their case to the Court is unjust and contrary to the alleged principles of our criminal legal system, which boasts rehabilitation as one of its main tenets.

Conclusion

Thank you for the opportunity to submit this testimony. We hope the Council will act swiftly to ensure that the Second Chance Amendment Act is funded and implement revisions that will improve and expand access to this urgently needed relief for District residents.

¹⁶ See D.C. Law 24-284 Second Chance Amendment Act of 2022 § 16-806.

¹⁷ See *id.*

¹⁸ See *id.*