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**Testimony of Megan Browder
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**Before the Committee on Judiciary and Public Safety
Council of the District of Columbia**

Public Roundtable on the Peace DC Plan

May 7, 2025

Legal Aid DC¹ submits the following testimony regarding proposed changes to the Second Chance Amendment Act (“SCAA”) to be included in the Peace DC Plan. We appreciate the Committee’s continued advocacy and support to effectuate the law’s intent of expanded record sealing. We urge the Council to act promptly and clarify that offenses that eventually will be eligible for automatic sealing can be sealed by motion now. Continued delay will make the District less safe and needlessly waste judicial, government, and litigant resources.

Expanded Eligibility for Record Sealing Promotes Public Safety

The Council and the Executive agree: “public safety is enhanced when we give individuals access to opportunity,”² and “[c]riminal records, including arrests that never result in

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.

² Comm. Rep. on Bill 24-0063, “the Second Chance Amendment Act of 2022,” at 2 (quoting the Dep. Mayor for Pub. Safety and Justice), <https://tinyurl.com/bd3x4c5m>.

conviction, carry significant ‘collateral consequences’ for housing, employment, public benefits, and education.”³ The District’s prior record-sealing process under the Criminal Record Sealing Act was “complicated, overly punitive, and sideline[d] far too many residents from pursuing meaningful opportunities to better their lives,”⁴ leading the Council to overhaul the process through the Second Chance Amendment Act. Introduced in 2021 and ultimately enacted in 2023, the purpose of the SCAA was to “streamlin[e] and enhanc[e] record sealing in the District.”⁵

However, despite the Council's clear intent, seemingly small drafting errors have had massive impacts. Under the SCAA, the court must automatically seal many arrests that do not result in a conviction or acquittals for less serious offenses (Section 16-805) and individuals can file a motion to seal arrests for more serious offenses (Section 16-806). These two provisions, which were enacted to work in tandem, have different effective dates. This mismatch risks undermining the Council’s comprehensive scheme. For example, a Legal Aid client who was arrested for writing on the sidewalk in chalk and never prosecuted faces significant employment hurdles because the arrest remains in the public record. Until D.C. Code § 16-805 is funded, they are not eligible for automatic sealing, but it is unclear whether they can file a motion to get the expanded relief at the heart of the SCAA.

Similarly, in 2016 another Legal Aid client was arrested, but not prosecuted (“no papered”) for simple assault. Had the alleged assault been against a family member, intimate partner, or household member (an “intrafamily offense”), it would expressly be eligible for sealing by motion. But because it was not, the client faces uncertainty as to whether and when they can move for relief. Even worse, litigants who have a pending record-sealing motion filed prior to March 1, 2025 face additional arguments that the SCAA retroactively bars their relief under the Criminal Record Sealing Act. For example, Legal Aid filed a motion to seal under the previous Section 16-803 on behalf of a client who sought relief for a no-papered destruction of property arrest. That motion, which was filed 15 months ago is still pending and will undoubtedly lead to additional litigation to determine whether the SCAA unintentionally limited the available sealing relief.

³ *Id.* at 4.

⁴ *Id.* at 2.

⁵ *Id.* at 290 (testimony of Elana Suttentberg, Special Counsel to the United States Attorney for the District of Columbia).

As currently enacted, the SCAA risks narrowing relief for the precise group of people for which it was intended to expand. Litigation over the correct interpretation of the law pulls time and additional resources away from other public safety initiatives for the courts, prosecutors, and litigants. The Committee’s proposed language is a simple way to obviate that need.

The Council Should Clarify the SCAA’s Expanded Eligibility

We support the Committee’s draft changes to the SCAA that allows individuals to move to seal criminal records, even if they are not part of the enumerated list in D.C. Code § 16-805(b). We respectfully ask that the Committee consider three additional changes:

- Waive the one-year bar on refiling for litigants whose motions were denied under Sections 16-803 and 16-806 but were filed prior to March 1, 2025. Some judges have denied motions that were timely filed under the Criminal Record Sealing Act because they have interpreted the gap created by the SCAA as retroactively barring relief. Clarifying the law without allowing these individuals to refile would arbitrarily punish them.
- Address the related “expungement gap” in D.C. Code § 16-802(b) by allowing individuals to move to expunge their eligible records prior to October 1, 2027. Automatic expungement, like automatic sealing, is not funded until 2027, and individuals should be able to move to seal these records for the same reasons.
- Remove the heightened bar for individuals moving to seal a fugitive-from-justice arrest under D.C. Code § 16-806(a)(2). Previously an individual could move to seal a fugitive-from-justice arrest by *either* showing: (1) that they waived extradition and appeared before the demanding tribunal, in which case the court had to seal the arrest upon motion *or* (2) that it was in the interest of justice to seal the record. The SCAA now requires a movant to prove that they waived extradition, appeared before the demanding tribunal, *and* that it is in the interest of justice to seal this type of arrest. This apparent drafting error raises the bar for many movants and precludes others from seeking record sealing relief at all if they did not waive extradition or appear.⁶

⁶ See, e.g., Comm. Rep. on Bill 19-889, “the Re-entry Facilitation Amendment Act of 2012,” at 10, <https://tinyurl.com/4y586k9h>.

Conclusion

The Second Chance Amendment Act has the potential to help DC residents access stable employment, housing, and benefits. We appreciate the Committee's amendments to ensure that these technicalities do not stop the Act from advancing public safety.