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OFFICE OF THE
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2017 NOV -6 AM 9:53

MURIEL BOWSER
MAYOR

NOV 6 2017

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Ave., NW, Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

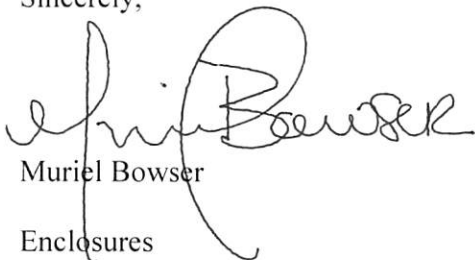
Enclosed for consideration and approval by the Council of the District of Columbia is a bill entitled the "Second Chance Amendment Act of 2017."

Each year, more than 40,000 people are arrested in the District of Columbia. Although about one-third of those individuals are never prosecuted, a criminal record exists and will follow those people for the rest of their lives, impacting their ability to find employment or housing. Approximately 10,000 people each year seek legal assistance from nonprofit organizations to seal their records. The process is time-consuming and confusing.

The legislation will radically reform the District's record sealing process by mandating automatic sealing for non-convictions, shortening the waiting periods before a person is eligible to seal their record, and expanding the eligibility of who can seal their record. For individuals who are arrested but not prosecuted, and for people who are charged but not convicted, the legislation would result in their records being automatically sealed within 90 days of the termination of the case. For those with convictions, the legislation mandates that a panel of legal experts review the types of convictions that should be eligible for sealing; it also reduces the waiting time to seal those records.

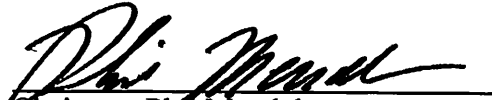
I urge prompt consideration and approval of this measure. If you have any questions on this matter, please contact Deputy Mayor Kevin Donahue at (202) 286-5028.

Sincerely,



Muriel Bowser

Enclosures


Chairman Phil Mendelson,
at the request of the Mayor

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8 A BILL
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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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15 To amend Chapter 8 of Title 16 to increase the number of eligible convictions that may be
16 sealed, to reduce the number of years a resident must remain off papered to seal an
17 eligible conviction, to simplify and shorten the process that a resident must undertake to
18 seal a charge that does not end in a conviction, to provide guidance to residents on how to
19 answer questions about criminal records on employment and housing applications, to
20 have a group of independent legal experts look at ineligible misdemeanors and felonies
21 and issue a report with recommendations for eligibility.
22

23 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
24 act may be cited as the “Second Chance Amendment Act of 2017”.

25 Sec. 2. Chapter 8 of Title 16 of the District of Columbia Official Code is amended as
26 follows:

27 (a) The table of contents is amended as follows:

28 (1) A new section designation is added to read as follows:

29 “§ 16-803.01a. Sealing of public criminal records in cases that end without conviction.”

30 (2) A new section designation is added to read as follows:

31 “§ 16-803.03. Criminal Code Reform Commission Report on Ineligible Offenses for
32 Record Sealing.”

33 (3) A new section designation is added to read as follows:

34 “§ 16-806.01. Impact of sealed records on applications for employment or housing.”

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

36 (1) Subsection (5) is amended as follows:

37 (A) By striking the phrase “Disqualifying arrest or conviction” and
38 inserting the phrase “Disqualifying conviction” in its place.

39 (B) Paragraph (B) is repealed.

40 (2) Subsection (11) is amended as follows:

41 (A) By striking the phrase “executive-grade government position.” and
42 inserting the phrase “executive-grade government position; and” in its
43 place.

44 (B) By adding a new paragraph (G) to read as follows:

45 “(G) The federal government.”.

46 (c) Section 16-803 is amended as follows:

47 (1) Subsection (a) is repealed.

48 (2) Subsection (b) is repealed.

49 (3) Subsection (c) is amended as follows:

50 (A) By striking the phrase “conviction if” and inserting the phrase
51 “conviction in up to 5 cases in a person’s lifetime if” in its place.

52 (B) Paragraph 1 is amended by striking the number “8” and inserting the
53 number “5” in its place.

54 (C) Paragraph 2 is amended by striking the phrase “disqualifying arrest or
55 conviction” and inserting the phrase “disqualifying conviction” in its place.

56 (4) Subsection (d) is amended as follows:

57 (A) By striking the phrase “The waiting periods in subsections (a), (b), and
58 (c) of this section” and inserting the phrase “The waiting period in subsection (c) of this section”
59 in its place.

60 (B) By striking the phrase “movant’s arrests and convictions” and
61 inserting the phrase “movant’s convictions” in its place.

62 (C) By striking the phrase “an arrest or conviction” and inserting the word
63 “a conviction” in its place.

64 (5) Subsection (e) is amended by striking the phrase “The waiting periods in
65 subsections (a), (b), and (c) of this section” and inserting the phrase “The waiting period in
66 subsection (c) of this section” in its place.

67 (6) Subsection (f) is amended as follows:

68 (A) By striking the phrase “In a motion filed under subsections (a), (b),
69 and (c) of this section” and inserting the phrase “In a motion filed under subsection (c) of this
70 section” in its place.

71 (B) By striking the phrase “arrests and convictions” and inserting the word
72 “convictions” in its place.

73 (C) By striking the phrase “conviction or arrest” and inserting the word
74 “conviction” in its place.

75 (7) Subsection (g) is amended by striking the phrase “arrest, or pending charge,
76 minor offenses shall not be considered” and inserting the phrase “minor offenses or non-
77 convictions shall not be considered” in its place.

78 (8) Subsection (i) is amended as follows:

79 (A) By striking the phrase “In a motion filed under subsection (a) or (c-2)”
80 and inserting the phrase “In a motion filed under subsection (c-2)” in its place.

81 (B) Paragraph (2) is repealed.

82 (d) Section 16-803.01a is added to read as follows:

83 “§ 16-803.01a. Sealing of public criminal records in cases that end without conviction.

84 “(a)(1) A person arrested for, or charged with, the commission of a dangerous crime
85 pursuant to § 23-1331 whose prosecution has been terminated without conviction may file a
86 motion to seal all publicly available records of the arrest or related court proceedings if:

87 “(A) A waiting period of at least 90 days has elapsed since the termination
88 of the case; and

89 “(B) Except as permitted by paragraph (2) of this subsection, the movant
90 does not have a disqualifying conviction.

91 “(2)(A) If a period of at least 3 years has elapsed since the completion of the
92 movant’s sentence for a disqualifying misdemeanor conviction in the District of Columbia or for
93 a conviction in any jurisdiction for an offense that involved conduct that would constitute a
94 disqualifying misdemeanor conviction if committed in the District, the conviction shall not
95 disqualify the movant from filing a motion to seal an arrest and related court proceedings under
96 this subsection for a case that was terminated without conviction before or after the disqualifying
97 misdemeanor conviction, except when the case terminated without a conviction as a result of the
98 successful completion of a deferred sentencing agreement.

99 “(B) If a period of at least 5 years has elapsed since the completion of the
100 movant’s sentence for a disqualifying felony conviction in the District of Columbia or for a
101 conviction in any jurisdiction for an offense that involved conduct that would constitute a

102 disqualifying felony conviction if committed in the District, the conviction shall not disqualify
103 the movant from filing a motion to seal an arrest and related court proceedings under this
104 subsection for a case that was terminated without conviction before or after the disqualifying
105 felony conviction, except when the case terminated without conviction as the result of the
106 successful completion of a deferred sentencing agreement.

107 “(3) In a motion filed under subsection (a) of this section, the burden shall be on
108 the movant to establish by a preponderance of the evidence that it is in the interests of justice to
109 grant relief.

110 “(b)(1) Any person arrested for, or charged with, the commission of any other offense
111 pursuant to the District of Columbia Official Code or the District of Columbia Municipal
112 Regulations, whose prosecution terminated without conviction before the effective date of the
113 Second Chance Amendment Act of 2017, may file a motion to seal all publicly available records
114 of the arrest or related court proceedings if:

115 “(A) A waiting period of at least 90 days has elapsed since the termination
116 of the case; and

117 “(B) Except as permitted by paragraph (2) of this subsection, the movant
118 does not have a disqualifying conviction.

119 “(2)(A) If a period of at least 3 years has elapsed since the completion of the
120 movant’s sentence for a disqualifying misdemeanor conviction in the District of Columbia or for
121 a conviction in any jurisdiction for an offense that involved conduct that would constitute a
122 disqualifying misdemeanor conviction if committed in the District, the conviction shall not
123 disqualify the movant from filing a motion to seal an arrest and related court proceedings under
124 this subsection for a case that was terminated without conviction before or after the disqualifying

125 misdemeanor conviction, except when the case terminated without a conviction as a result of the
126 successful completion of a deferred sentencing agreement.

127 “(B) If a period of at least 5 years has elapsed since the completion of the
128 movant’s sentence for a disqualifying felony conviction in the District of Columbia or for a
129 conviction in any jurisdiction for an offense that involved conduct that would constitute a
130 disqualifying felony conviction if committed in the District, the conviction shall not disqualify
131 the movant from filing a motion to seal an arrest and related court proceedings under this
132 subsection for a case that was terminated without conviction before or after the disqualifying
133 felony conviction, except when the case terminated without conviction as the result of the
134 successful completion of a deferred sentencing agreement.

135 “(c)(1) For persons arrested for, or charged with, the commission of any other offense
136 pursuant to the District of Columbia Official Code or the District of Columbia Municipal
137 Regulations, whose prosecution terminated without conviction on or after the effective date of
138 the Second Chance Amendment Act of 2017, the Court shall, *sua sponte*, seal all publicly
139 available records of the arrest and related court proceedings after a waiting period of 90 days has
140 elapsed since the termination of the case, if:

141 “(A) The prosecutor does not object within the 90-day waiting period; and

142 “(B) The arrestee or chargee does not have a disqualifying conviction.

143 “(2) If the prosecutor objects to relief pursuant to this subsection within the 90-
144 day period, the burden shall be on the prosecutor to establish by a preponderance of the evidence
145 that it is not in the interests of justice to grant relief pursuant to this subsection.

146 “(3)(A) If a period of at least 3 years has elapsed since the completion of the
147 arrestee or chargee’s sentence for a disqualifying misdemeanor conviction in the District of

148 Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would
149 constitute a disqualifying misdemeanor conviction if committed in the District, the conviction
150 shall not disqualify the arrestee or chargee from filing a motion to seal all publicly available
151 records of the arrest or related court proceedings, except when the case terminated without a
152 conviction as a result of the successful completion of a deferred sentencing agreement.

153 “(B) If a period of at least 5 years has elapsed since the completion of the
154 arrestee or chargee’s sentence for a disqualifying felony conviction in the District of Columbia or
155 for a conviction in any jurisdiction for an offense that involved conduct that would constitute a
156 disqualifying felony conviction if committed in the District, the conviction shall not disqualify
157 the arrestee or chargee from filing a motion to seal all publicly available records of the arrest or
158 related court proceedings, except when the case terminated without conviction as the result of the
159 successful completion of a deferred sentencing agreement.

160 “(d) The waiting periods in subsections (a), (b), and (c)(3) of this section may be waived
161 by the prosecutor in writing.

162 “(e) In a motion filed under subsections (b) and (c)(3) of this section, the burden shall be
163 on the prosecutor to establish by a preponderance of the evidence that it is not in the interests of
164 justice to grant relief.

165 “(f) The Superior Court shall grant a motion to seal pursuant to subsections (a), (b), or
166 (c)(3) or provide relief over the objection of the prosecutor pursuant to subsection (c)(2) if it is in
167 the interests of justice to do so. In making this determination, the Court shall weigh:

168 “(1) The interest of the movant, arrestee, or chargee in sealing the publicly
169 available records of his or her arrest and related court proceedings;

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

173 “(3) The community’s interest in furthering the movant, arrestee, or chargee’s
174 rehabilitation and enhancing the movant, arrestee, or chargee’s employability.

175 “(g) The Court may also consider:

176 “(1) The nature and circumstances of the alleged offense at issue;

177 “(2) The movant, arrestee, or chargee’s alleged role in the alleged offense;

178 “(3) The history and characteristics of the movant, arrestee, or chargee, including
179 the movant, arrestee, or chargee’s:

180 “(A) Character;

181 “(B) Physical and mental condition;

182 “(C) Employment history;

183 “(D) Prior and subsequent conduct;

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

186 “(F) Criminal history; provided, that a movant, arrestee, or chargee with
187 repeated violent offenses shall not be eligible for sealing; and

188 “(G) Efforts at rehabilitation;

189 “(4) The number of the arrests that are the subject of the motion;

190 “(5) The time that has elapsed since the arrests that are the subject of the motion;

191 “(6) Whether the movant, arrestee, or chargee has previously obtained sealing or
192 comparable relief under this section or any other provision of law other than by reason of actual
193 innocence; and

194 “(7) Any statement made by the victim of the alleged offense.

195 “(h) A motion to seal may be dismissed without prejudice to permit the movant to renew
196 the motion after further passage of time. The Court may set a waiting period before a renewed
197 motion can be filed.

198 “(i) A motion to seal may be dismissed if it appears that the movant has unreasonably
199 delayed filing the motion and that the government has been prejudiced in its ability to respond to
200 the motion by the delay in its filing, unless the movant shows that the motion is based on
201 grounds which the person could not have raised by the exercise of reasonable diligence before
202 the circumstances prejudicial to the government occurred.

203 “(j) If the Court grants a motion to seal pursuant to subsections (a), (b), or (c)(3) or
204 provides relief pursuant to subsections (c)(1) or (c)(2):

205 “(1)(A) The Court shall order the prosecutor, any law enforcement agency, and
206 any pretrial, corrections, or community supervision agency to remove from their publicly
207 available records all references that identify the movant, arrestee, or chargee as having been
208 arrested or prosecuted.

209 “(B) The prosecutor’s office and agencies shall be entitled to retain any
210 and all records relating to the movant, arrestee, or chargee’s arrest and prosecution in a
211 nonpublic file.

212 “(C) The prosecutor, any law enforcement agency, and any pretrial,
213 corrections, or community supervision agency office shall file a certification with the Court

214 within 90 days that, to the best of its knowledge and belief, all references that identify the
215 movant, arrestee, or chargee as having been arrested or prosecuted have been removed from its
216 publicly available records.

217 “(2)(A) The Court shall order the Clerk to remove or eliminate all publicly
218 available Court records that identify the movant, arrestee, or chargee as having been arrested or
219 prosecuted.

220 “(B) The Clerk shall be entitled to retain any and all records relating to the
221 movant, arrestee, or chargee’s arrest and related court proceedings.

222 “(3)(A) In a case involving co-defendants in which the Court orders the movant,
223 arrestee, or chargee’s records sealed, the Court may order that only those records, or portions
224 thereof, relating solely to the movant, arrestee, or chargee be redacted.

225 “(B) The Court need not order the redaction of references to the movant,
226 arrestee, or chargee that appear in a transcript of court proceedings involving co-defendants.

227 “(4) The Court shall not order the redaction of the movant, arrestee, or chargee’s
228 name from any published opinion of the trial or appellate courts that refer to the movant,
229 arrestee, or chargee.

230 “(5) Unless otherwise ordered by the Court, the Clerk and any other agency shall
231 reply in response to inquiries from the public concerning the existence of records which have
232 been sealed pursuant to this chapter that no records are available.

233 “(6) No person as to whom such relief has been granted shall be held thereafter
234 under any provision of law to be guilty of perjury or otherwise giving a false statement by reason
235 of failure to recite or acknowledge his or her arrest, charge, or trial in response to any inquiry
236 made of him or her for any purpose except that the sealing of records under this provision does

237 not relieve a person of the obligation to disclose the sealed arrest or prosecution in response to
238 any direct question asked in connection with jury service or in response to any direct question
239 contained in any questionnaire or application for a position with any person, agency,
240 organization, or entity defined in § 16-801(11).”.

241 (e) Section 16-803.03 is added to read as follows:

242 “§ 16-803.03. Criminal Code Reform Commission Report on Ineligible Offenses for
243 Record Sealing.

244 “(a) The Criminal Code Reform Commission shall submit to the Council’s Committee on
245 the Judiciary and Public Safety and the Deputy Mayor for Public Safety and Justice, within 6
246 months of the effective date of the Second Chance Amendment Act of 2017, a report that
247 contains the recommendation and rationale of the Commission to make any ineligible
248 misdemeanors, pursuant to § 16-801(9), and ineligible felonies, pursuant to § 16-801(8), eligible
249 for record sealing pursuant to § 16-803(c).”.

250 (f) Section 16-804 is amended as follows:

251 (1) By striking the phrase “§ 16-803(a), (b), or (c)” both times it appears and
252 inserting the phrase “§ 16-803(c)” in its place.

253 (2) By striking the phrase “arrests and convictions” wherever it appears and
254 inserting the word “convictions” in its place.

255 (3) By striking the phrase “arrests and any conviction” and inserting the word
256 “convictions” in its place.

257 (4) By striking the phrase “arrest or conviction” both times it appears and
258 inserting the word “conviction” in its place.

259 (g) Section 16-806 is amended as follows:

260 (1) Subsection (b) is amended as follows:

261 (A) By striking the phrase “§16-803.01, or” both times it appears and
262 inserting the phrase “§ 16-803.01, § 16-803.01a, or” in its place.

263 (B) By striking the phrase “§ 16-803(l)(1)(C)” and inserting the phrase “§
264 16-803(l)(1)(C) and § 16-803.01a(j)(1)(C)” in its place.

265 (2) Subsection (c) is amended by striking the phrase “§ 16-803(l)(5), or” and
266 inserting the phrase “§ 16-803(l)(5), § 16-803.01a(j)(5), or” in its place.

267 (h) Section 16-806.01 is added to read as follows:

268 “§ 16-806.01. Impact of sealed records on applications for employment or housing.

269 “(a) Except as provided in § 16-803(m) and § 16-803.01a(j)(6), and where federal law or
270 regulation or District law requires the consideration of an applicant’s criminal history for
271 purposes of obtaining housing or a housing accommodation or otherwise allows for denial of an
272 applicant due to certain criminal convictions, an applicant for employment or housing with a
273 sealed record on file with the Superior Court may answer “no record” with respect to any inquiry
274 related to:

275 “(1) Prior arrests, criminal court appearances, or convictions; and

276 “(2) Prior arrests, court appearances, and adjudications in any case of delinquency
277 or child in need of supervision that did not result in a complaint being transferred to the Superior
278 Court for criminal prosecution.”.

279 Sec. 3. Fiscal impact statement.

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

283 Sec. 4. Effective date.

284 This act shall take effect following approval by the Mayor (or in the event of veto by the
285 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
286 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
287 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
288 Columbia Register.

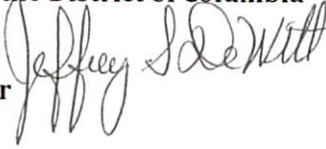
Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

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

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: October 27, 2017

SUBJECT: Fiscal Impact Statement – Second Chance Amendment Act of 2017

REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on October 27, 2017

Conclusion

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill.

Background

District law¹ establishes a number of conditions whereby an individual can motion to the clerk of the Superior Court of the District of Columbia for the Court to seal any records related to an arrest, court proceedings, or a conviction. Such conditions, including ineligible offenses, filing timelines, and burdens of proof, vary according to whether a conviction has occurred or the prosecution has terminated a case without conviction.

The bill reduces the waiting period to request a record sealing from eight years to five years for eligible misdemeanor and felony convictions, as long as the individual does not have a disqualifying conviction.² The bill also limits, in cases with a conviction, the number of record sealings to five cases in a person's lifetime.

In cases where an individual has been arrested for or charged with the commission of an eligible offense, but the prosecution has terminated the case without a conviction, the bill requires the

¹ Criminal Record Sealing Act of 2006, effective May 3, 2007 (D.C. Law 16-307; D.C. Official Code § 16-801 et seq.).

² A disqualifying conviction is a conviction in any jurisdiction that occurs after the offense related to the motion to seal has been filed or a conviction for an ineligible offense.

The Honorable Phil Mendelson

FIS: "Second Chance Amendment Act of 2017," Draft Bill as shared with the Office of Revenue Analysis on October 27, 2017

Courts to automatically seal all public records after ninety days³ as long as the individual does not have any disqualifying convictions.⁴ If the individual does have a disqualifying conviction, the record sealing is not automatic, but requires the individual to wait three years (for a disqualifying misdemeanor) or five years (for a felony conviction) from the completion of a sentence, before he or she can file a motion to seal records. In these cases, whether or not there is a disqualifying conviction, the burden is on the prosecutor to determine that a record sealing is not in the interest of justice.

Individuals requesting record sealing after prosecution has terminated the case of a dangerous crime may file a motion to the Court after a ninety day waiting period, but the burden of proof in this case is on the filer of the motion. The bill also requires these individuals to wait three years or five years from the completion of a disqualifying conviction's sentence. The bill establishes the conditions the Court should weigh in considering record sealing requests when an individual has a disqualifying conviction or when the terminated case is related to a dangerous crime.

The bill also requires the Criminal Code Reform Commission to submit a report to the Mayor and the Council, within six months of the bill's effective date, that includes recommendations on ineligible misdemeanors and felonies that should be made eligible for record sealing.

The bill ensures that any individual whose records have been sealed can safely report on employment and housing applications that they have no prior arrests, criminal court appearances or convictions.⁵ However, the bill does require an individual to truthfully answer a direct question asked in connection with jury service, employment with a public entity, or when federal or District law or regulation requires criminal history consideration for obtaining housing or housing accommodation.

Financial Plan Impact

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The Superior Court for the District of Columbia will implement the bill's record sealing provisions. The Court's responsibility to automatically seal some dismissed cases is a new requirement and many of the timeframes for an individual to file have been reduced. The Office of Revenue Analysis is unable to determine whether or not these changes will create an administrative burden on the Courts or whether they could alleviate some current burdens; however, the DC Courts are funded in the federal budget and any impacts would be incorporated into that budget process. The record sealing provisions will have no impact on the District's budget or financial plan.

The Criminal Code Reform Commission can produce the required report without additional resources, but it may need to delay other work to accomplish it. Additionally, the Commission is

³ Previously, the individual would have to file a motion to seal records after a two-year waiting period.

⁴ This provision applies only to dismissals that occur after the effective date of the Act. Dismissals that occur prior to the effective date require the individual to file the motion to seal.

⁵ Individuals are also deemed to have no records for arrests, appearances, and adjudications in cases of delinquency or child in need of services that were not transferred to the Superior Court for criminal prosecution.

The Honorable Phil Mendelson

FIS: "Second Chance Amendment Act of 2017," Draft Bill as shared with the Office of Revenue Analysis on October 27, 2017

slated to sunset on October 1, 2018,⁶ so if this Act is not effective before April 1, 2018, the Commission may not have a full six months to complete the report.

⁶ Criminal Code Reform Commission Establishment Act of 2016, effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code § 3-156).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Alana Intrieri
Executive Director
Office of Policy & Legislative Affairs

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: October 30, 2017

SUBJECT: Legal Sufficiency Review of the "Second Chance Amendment Act of 2017," a Bill to Amend Chapter 8 of Title 16 of the District of Columbia Official Code (AE-17-602)

This is to Certify that this Office has reviewed the above-referenced proposed bill and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.


Janet M. Robins