


Councilmember Kenyan R. McDuffie

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the definition of the “completion of sentence” to clarify that failure to pay fines and fees does not count towards completion of a sentence; to amend the definition of “eligible felonies” to include certain non-violent offenses; to require automatic sealing of non-convictions, eligible misdemeanors, and eligible felonies after a certain period of time; to shift the burden of proof for record sealing from the individual to the prosecution.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “District of Columbia Clean Slate Amendment Act of 2019”.

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

(a) Section 16-801 is amended as follows:

(1) Paragraph (2) is amended to read as follows:

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

(2) Paragraph (6) is amended to read as follows:

36 “(6) “Eligible felony” means:
37 “(A) A failure to appear (§ 23-1327);
38 “(B) Prohibited acts A; penalties (§48-904.01);
39 “(C) Prohibited acts B; penalties (§48-904.02);
40 “(D) Prohibited acts C; penalties (48–904.03);
41 “(E) Prohibited acts D; penalties (§ 48–904.03a);
42 “(F) Distribution to minors (§ 48–904.06);
43 “(G) Attempt; conspiracy ((§48–904.09); and
44 “(H) Possession of drug paraphernalia (§ 48-904.10).”

45 (3) Paragraph (10) is amended by striking the phrase “or an offense that is
46 punishable by a fine only” and inserting the phrase “an offense that is punishable by a fine only,
47 or any offense later decriminalized or legalized in the District of Columbia” in its place.

48 (b) Section 16-802 is amended as follows:

49
50 (1) Subsection (a) is amended to read as follows:

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52 “(a) A person arrested for or charged with the commission of a criminal offense
53 pursuant to the District of Columbia Official Code or the District of Columbia Municipal
54 Regulations, the prosecution of which terminated without conviction, shall have their record sealed
55 within six months days of the acquittal, dismissal, dismissal for want of prosecution, not guilty
56 verdict, no papered, nolle diversion, or nolle prosequi.

57 (2) Subsection (b) is amended to read as follows:

58 “(b) The burden is on the prosecution to file a motion to oppose automatic
59 record sealing within the 90-day time period prescribed in subsection (a) of this section.”

60 (3) A new subsection (b)-(1) is added to read as follows:

61 “If the prosecution files a motion to oppose automatic recording sealing, the
62 court, shall hold a hearing within 30 days of the filing.”

63 (4) Subsection (d) is repealed.

64 (5) Subsection (e) is amended to read as follows:

65 “(e)(1) In determining such motions, the court may, but is not required to, employ
66 a rebuttable presumption that the person is entitled to relief. If the court agrees that the person is
67 entitled to relief, the record shall be sealed within 90 days of the determination.”

68 “(2) If the court determines that an individual is not entitled to relief, the
69 individual may appeal the decision within 60 days.”

70 (6) Subsection (f) is repealed.

71 (7) Subsection (g) is amended to read as follows:

72 “(g) A person whose conviction has been vacated pursuant to § 22-4135(g)(2), and
73 whose subsequent prosecution is terminated without conviction, shall have their conviction sealed
74 within 6 months days of the vacatur.”

75 (8) Subsection (h) is amended by striking the word “movant” wherever it appears
76 and inserting the word “individual.

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

78 (1) Subsection (a)(1)(A) is amended to read as follows:

79 “ (a) If a period of at least 2 years has elapsed since the completion of the
80 individual’s sentence for a disqualifying misdemeanor conviction in the District of Columbia or
81 for a conviction in any jurisdiction for an offense that involved conduct that would presently
82 constitute a disqualifying misdemeanor conviction if committed in the District, the conviction shall
83 not disqualify the individual from automatic sealing of arrest and related court proceedings under

84 this subsection for a case that was terminated without conviction before or after the disqualifying
85 misdemeanor conviction.”

86 (2) Subsection (a)(2)(A) is amended to read as follows:

87 “(A) If a period of at least 3 years has elapsed since the completion of the
88 individual’s sentence for a disqualifying misdemeanor conviction in the District of Columbia or
89 for a conviction in any jurisdiction for an offense that involved conduct that would presently
90 constitute a disqualifying misdemeanor conviction if committed in the District, the conviction shall
91 not disqualify the individual from automatic sealing of arrest and related court proceedings under
92 this subsection for a case that was terminated without conviction before or after the disqualifying
93 misdemeanor conviction.”

94 (3) Subsection (a)(2)(B) is amended to read as follows:

95 “(B) If a period of at least 7 years has elapsed since the completion of the
96 individual’s sentence for a disqualifying felony conviction in the District of Columbia or for a
97 conviction in any jurisdiction for an offense that involved conduct that would constitute a
98 disqualifying felony conviction if committed in the District, the conviction shall not disqualify the
99 individual from automatic sealing of arrest and related court proceedings under this subsection for
100 a case that was terminated without conviction before or after the disqualifying felony conviction,
101 except when the case terminated without conviction as the result of the successful completion of a
102 deferred sentencing agreement.

103 (4) Subsection (c) is amended to read as follows:

104 “(c) A person who has been convicted of an eligible misdemeanor or an
105 eligible felony pursuant to the District of Columbia Official Code or the District of Columbia
106 Municipal Regulations may have automatic sealing of publicly available records of the arrest,

107 related court proceedings, and conviction if a waiting period of at least 6 years has elapsed since
108 the completion of the individual's sentence.

109 (5) Subsection (d) is repealed.

110 (6) Subsection (f) is repealed.

111 (7) Subsection (g) is amended to read as follows:

112 "(g) In determining whether an individual is eligible to receive automatic sealing
113 because of a conviction, arrest, or pending charge, minor offenses shall not be considered.

114 (8) Subsection (h) is amended as follows:

115 (a) By striking the word "movant" wherever it appears and inserting the
116 word "individual".

117 (a) Subsection (h)(1) is amended by striking the phrase "grant a motion to
118 seal" and inserting the phrase "automatic sealing."

119 (9) Subsections (i)(2) and (3) are repealed.

120 (10) Subsections (j) is repealed.

121 (11) Subsection (k) is repealed.

122 (12) Subsection (1) is amended to read as follows:

123 "(l) If the Court grants automatic sealing under this section:

124 "(1)(A) The Court shall order the prosecutor, any law enforcement agency,
125 and any pretrial, corrections, or community supervision agency to remove from their publicly
126 available records all references that identify the individual as having been arrested, prosecuted, or
127 convicted.

128 "(B) The prosecutor's office and agencies shall be entitled to retain any and
129 all records relating to the individual's arrest and conviction in a nonpublic file.

130 “(C) The prosecutor, any law enforcement agency, and any pretrial,
131 corrections, or community supervision agency office shall file a certification with the Court within
132 90 days that, to the best of its knowledge and belief, all references that identify the individual as
133 having been arrested, prosecuted, or convicted have been removed from its publicly available
134 records.

135 “(2)(A) The Court shall order the Clerk to remove or eliminate all publicly available
136 Court records that identify the individual as having been arrested, prosecuted, or convicted.

137 “(B) The Clerk shall be entitled to retain any and all records relating to the
138 individual’s arrest, related court proceedings, or conviction in a nonpublic file.

139 “(3)(A) In a case involving co-defendants in which the Court orders the individual’s
140 records sealed, the Court may order that only those records, or portions thereof, relating solely to
141 the individual be redacted.

142 “(B) The Court need not order the redaction of references to the individual
143 that appear in a transcript of court proceedings involving co-defendants.

144 “(4) The Court shall not order the redaction of the individual’s name from any
145 published opinion of the trial or appellate courts that refer to the movant.

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

149 (d) Section 16-803.2 is amended to read follows:

150 “(a) A person arrested for, charged with, or convicted of a criminal offense pursuant
151 to the District of Columbia Official Code or the District of Columbia Municipal Regulations that
152 was decriminalized or legalized after the date of the arrest, charge, or conviction shall have

153 automatic sealing of the record of the arrest, charge, conviction, and related Superior Court
154 proceedings at any time.”

155 (e) Section 16-804 is repealed.

156 (f) Section 16-805 is repealed.

157 (g) Section 16-806 is amended by striking the phrase “movant” wherever it appears and
158 inserting the phrase “individual”.

159 Sec. 3. Fiscal impact statement.

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

163 Sec. 4. Effective date.

164 This act shall take effect following approval by the Mayor (or in the event of veto by the
165 Mayor, action by the Council to override the veto), a 60-day period of congressional review as
166 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24,
167 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
168 Columbia Register.