



U.S. Department of Justice

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District of Columbia

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March 3, 2025

Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Members of the Council of the District of Columbia:

I am writing concerning the Second Chance Amendment Act of 2022 (L24-0284), many parts of which took effect on March 1, 2025. This law is a dramatic expansion of record sealing in the District that will shield a wide range of felony and misdemeanor criminal records in the District—including criminal convictions—from public access. My Office has not and cannot support this law as written. Notably, current law already permits a wide range of criminal records to be sealed. ***It is our hope that the Council will recognize that we are simply unable to comply with the demands of this new law and, accordingly, reconsider it.***

In 2022, this Office sent a letter imploring the Council to reconsider the Second Chance Amendment Act. In addition to the significant substantive concerns that were raised at that time, we stated that this law would be effectively impossible to implement. Our Office's capacity to implement this law has not changed since that December 2022 letter. Our Office lacks the prosecutors and support staff necessary to handle the unprecedented number of motions that will assuredly be filed in connection with this law. In addition to the resources that would be needed to litigate these motions, support staff resources would be needed to actually seal the records.

We appreciate Councilmember Pinto's leadership in recognizing that the criminal justice system is not ready to implement this law at this time, and her introduction of a bill two weeks ago that would have delayed implementation of the law, the "Safety Cluster Resource Alignment and Clarification Emergency Amendment Act of 2025" (B26-0128). We were discouraged that there was not sufficient support by other Councilmembers for this bill to move forward.

We also appreciate Councilmember Pinto's leadership in clarifying that the automatic provisions of the law were not intended to take effect until October 2027 through the "Second Chance Clarification Emergency Amendment Act of 2025." While this emergency bill being considered by the Council tomorrow will address some of our immediate concerns, we want to be clear that, even with this clarification, we still have significant concerns with the law. While

the “automatic” provisions of the law are the most unworkable, the “by-motion” provisions will similarly overwhelm the criminal justice system and are ill-advised.

Under this law’s dramatic expansion of record sealing effective March 1, 2025, ***every conviction*** our Office has obtained in D.C. Superior Court, save for the most serious felonies, is eligible to be sealed following a waiting period, no matter how many other convictions or what type of convictions that individual might have. ***Thus, the new law will allow every defendant ever convicted in the District of any misdemeanor and all but the most serious felonies to be eligible to file a motion to shield their criminal conviction and associated criminal records from public view.*** By contrast, under current law, only a conviction for an “eligible misdemeanor” or “eligible felony” can be sealed following a designated waiting period, though a defendant is ineligible to have their record sealed if they have a “disqualifying arrest or conviction.” The only constraint on an immediate deluge of motions is the capacity of the defense and movants to file such motions. This expansion will create significant administrability issues, as our Office would be required to review and respond to every motion filed. If resources were moved to focus on implementing these changes, it would necessarily be to the detriment of ongoing investigations and prosecutions. The backward-looking nature of this change in this law would require prosecutors and support staff to focus on the past rather than present threats. Further, under the current record sealing scheme, there is already a significant backlog of unsealed records across agencies that have been ordered by a court to be sealed. Given that current resources are insufficient to implement current law, it is unclear how sufficient resources would be newly available across agencies to implement this significantly expanded criminal record sealing scheme.

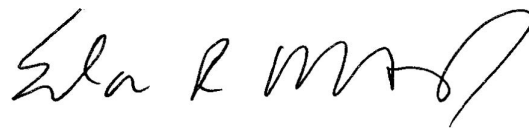
In addition to the immediate administrability concerns, we also reiterate the deep substantive concerns we have continually expressed about the law as passed. For example, as discussed above, ***the law allows virtually all convictions to be eligible for sealing, either by motion or automatically.*** A conviction means the defendant has been found guilty beyond a reasonable doubt of the crime, either by pleading guilty or being convicted at trial. The community has a significant interest in many types of convictions remaining available to the public, including background checks on individuals looking to purchase guns, work with children, or become employed in a position involving public trust. Even where certain limited entities have access to these sealed convictions, the broader community has an interest in knowing about serious prior convictions as well. For example, many employers hire individuals whose job is to work with children, even where those employers are not a “licensed school, day care center, before or after school facility or other educational or child protection agency or facility” that would have access to the sealed records under the bill. When a religious institution, library, swim lesson facility, music facility, soccer program, gymnastics program, or similar organization is looking to hire a person to work directly with children, the employer—and the parents who will trust that employer to work directly with their children—have an interest in conducting a full background check on the individual who they are hiring to ascertain if they have any convictions that should render them unsuitable to work with children. While exempting a number of serious offenses, the law still allows many other convictions to be eligible for sealing, including: aggravated assault while armed, voluntary manslaughter, armed robbery, carjacking, first degree burglary, assault with intent to kill, second degree child sexual abuse, and

third degree sexual abuse. These offenses, and other similar offenses, should not be eligible for sealing.

As a further example, ***under this law, a wide range of historical and future criminal records—including many convictions—will be “automatically” sealed, without any judicial review or opportunity for a prosecutor or victim to oppose that automatic sealing.*** Under this law, starting in 2027, the majority of misdemeanor convictions would be automatically sealed by the court 10 years after completion of the sentence, without regard to the nature of the conduct leading to the conviction, the views of the victim, the defendant’s rehabilitation, or the defendant’s subsequent criminal history (including subsequent arrests, convictions, or even pending cases). However, given the substantial interests of the community in access to information about convictions, and the interest of the victim in being heard on the sealing request, all convictions should be eligible for sealing *only* by motion, even where they are misdemeanors. Misdemeanor convictions that would be automatically sealed would include, for example, simple assault against a stranger, including when motivated by hate or bias or when committed against a child victim; voyeurism; and attempts to commit many felony offenses. Further, a wide range of “non-convictions” will be automatically sealed within 90 days after a case is terminated—such as when an arrest or prosecution results in a dismissal, acquittal, successful completion of diversion, “no paper,” or similar circumstances. The tremendous breadth of criminal records that would be “automatically” sealed under the law makes this law effectively impossible to administer. Further, this automatic sealing will create a lack of public transparency as to what happened in any given case, without any opportunity for a judge to ascertain whether it is appropriate for the criminal records at issue to be shielded from public view. Moreover, as this law is written, neither a prosecutor nor a victim will have an opportunity to oppose records being automatically sealed. Once the records are sealed, a victim will not have access to those records, and the government will be limited in its ability to share information about the case with the victim. Accordingly, we urge the Council to reconsider the “automatic” sealing and expungement provisions in this law before they take effect.

We appreciate the Council’s consideration of our substantial concerns with this law, and we look forward to continuing to work with the Council on important issues of public safety for the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed R Martin Jr", written in a cursive style.

Edward R. Martin, Jr.
United States Attorney for the District of Columbia