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**Testimony of Julia Ward
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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 14, 2023

Legal Aid of the District of Columbia¹ submits the following testimony regarding the recently-passed Second Chance Amendment Act of 2022 (the “Act” or “Bill”). This Act is a desperately needed reform to the District’s outdated and restrictive criminal record sealing scheme, but it needs funding in order to get into effect. Our ask today is twofold.

First, we ask the Council to fully fund the Second Chance Amendment Act beginning in the FY23 supplemental budget so that District residents may avail themselves of the expanded access to criminal record sealing as soon as possible. In the alternative, we ask the Council to fund this Bill beginning with the FY24 budget. According to the fiscal impact statement, this bill will cost only \$300,000 in its initial year and \$10.2 million over the financial plan. This is a modest cost, especially when compared to the lifechanging impact this Bill will have on District residents looking to move on with a clean slate.

¹ Legal Aid of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. 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 justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org.

Second, we encourage 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.

The Second Chance Amendment Act Implements Long-Awaited Changes to the District's Restrictive Criminal Record Sealing Laws

The District's current record sealing laws are some of the most restrictive in the nation.² The current statutory scheme is onerous and complex, imposing burdensome and extremely restrictive criteria and processes for applying for record sealing.³ 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.⁴ There are also long waiting periods for sealing even non-convictions, and the law requires individuals to wait for their entire eligible record to become sealable or waive their right to seek future sealing.⁵

Stakeholders have advocated for changes to the District's record sealing laws for years. The passage of the Second Chance Amendment Act marks a significant improvement in the relief available to District residents with criminal convictions and non-convictions. The Act provides a clearer and more approachable scheme to determine record sealing eligibility. The Act also includes automatic sealing for certain convictions and non-convictions and automatic expungement for convictions of decriminalized and unconstitutional offenses. Despite this marked progress, there are still several aspects of the Act that should be revised or clarified in the Budget Support Act in order for it to be effectively implemented.

The Council Must Fund the Second Chance Amendment Act Now

As an initial matter, the Second Chance Amendment Act is a significant and long-awaited improvement to the District's criminal record sealing laws, but it requires funding in order to be implemented and available to District residents. Though the Mayor indicated that she funded the Act, it is not funded until the FY25 budget, meaning District residents will have to wait until October 2025 for the relief they desperately need. We ask the Council to fully fund the Second Chance Amendment Act beginning with the FY23 supplemental budget so that District residents may begin seeking its

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).

³ *See* D.C. Code § 16-803.

⁴ *See id.*

⁵ *See id.*

relief immediately and the already delayed-implementation process for automatic record sealing may begin. According to the Fiscal Impact Statement, this would cost a mere \$300,000 in the first year. If funding the Act in full is not possible starting with the FY23 supplemental budget, we ask that the Council fund the Act beginning with the FY24 budget. District residents cannot wait any longer for relief from the collateral consequences of their unsealed criminal records.

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

The Act includes two provisions that we believe have unintended impacts that are contrary to the Council’s intent.

First, the Act provides the Court with a delayed timeline⁶ to implement the automatic sealing provisions of the law, but the Act does not currently allow individuals with non-convictions that are eligible for automatic sealing with any other recourse in the meantime, specifically the right to file a motion to seal their arrests. As a result, during the implementation phase, someone with an arrest that is *not* 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 to move to seal any non-convictions that the Court has not yet automatically sealed while it is working to implement the new law. That way, those with eligible offenses do not face an insurmountable administrative hurdle to obtaining the sealing relief to which they are entitled.

Second, the Act increases the burden for sealing fugitive from justice convictions by requiring the movant to prove that sealing the record is “in the interest of justice” in all instances.⁷ Under the current law, in instances where the movant waived extradition and appeared before the demanding jurisdiction, the movant does not need to prove that sealing is “in the interest of justice.”⁸ We believe that this was an unintended drafting error that should be corrected.

⁶ The Act states that misdemeanor convictions eligible for automatic sealing shall be sealed by January 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). The Act also states that non convictions shall be automatically expunged by January 1, 2025, 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).

⁷ See D.C. Law 24-284 Second Chance Amendment Act of 2022 § 16-806.

⁸ See D.C. Code § 16-803.01.

Third, the Act implements waiting periods before certain convictions are eligible for automatic sealing, but those waiting periods run from when an individual completes their sentence.⁹ As stated by the Court, this is unworkable because the Court does not know when individuals complete their sentence.¹⁰ Practically speaking, in order for the Court to implement an effective process for automatically sealing records, the waiting periods should begin at the date of conviction because that is information the Court has access to.

The Council Should Revise the Second Chance Amendment Act in the Budget Support Act So That It Provides Maximum Access to Sealing 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 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.¹¹ In these instances, movants are already required to prove that sealing their conviction is “in the interest of justice.” 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 propounds 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 criminal record sealing. 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 with urgency to fund this critically needed law and take the time to make changes to the law so that it is as effective as possible.

⁹ See D.C. Law 24-284 Second Chance Amendment Act of 2022 §§ 16-805, 16-806.

¹⁰ Letter from Chief Judges Anna Blackburne-Rigsby and Anita Josey Herring to Councilmember Charles Allen (December 2, 2022).

¹¹ See D.C. Law 24-284 Second Chance Amendment Act of 2022 § 16-806.