

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To amend Title 16 of the District of Columbia Official Code to establish a process for sealing certain criminal records in cases of actual innocence, and for certain misdemeanors and felonies.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Criminal Record Sealing Act of 2006”.

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

(a) The table of contents is amended by adding after the phrase “7. Criminal Proceedings in the Superior Court.....16-701.” the phrase “8. Sealing of criminal records.....16-801.”.

(b) A new Chapter 8 is added to read as follows:

“CHAPTER 8

“CRIMINAL RECORD SEALING

“Section

“16-801. Definitions.

“16-802. Sealing of criminal records on grounds of actual innocence.

“16-803. Sealing of public criminal records in other cases.

“16-804. Motion to seal.

“16-805. Review by court.

“16-806. Availability of sealed records.

“16-807. Savings provision.

“§ 16-801. Definitions.

“For the purposes of this chapter, the term:

“(1) “Clerk” means the Clerk of the Superior Court of the District of Columbia.

“(2) “Completion of the sentence” means the person has been unconditionally discharged from incarceration, commitment, probation, parole, or supervised release, whichever is latest.

“(3) “Conviction” means the judgment (sentence) on a verdict or a finding of guilty, a plea of guilty or a plea of nolo contendere, or a plea or verdict of not guilty by reason of insanity.

“(4) “Court” or “Superior Court” means the Superior Court of the District of Columbia.

“(5) “Disqualifying arrest or conviction” means:

“(A) A conviction in any jurisdiction after the arrest or conviction for which the motion to seal has been filed;

“(B) A pending criminal case in any jurisdiction;

“(C) A conviction in the District of Columbia for an ineligible felony or ineligible misdemeanor or a conviction in any jurisdiction for an offense that involved conduct that would constitute an ineligible felony or ineligible misdemeanor if committed in the District of Columbia or prosecuted under the District of Columbia Official Code, or conduct that is substantially similar to that of an ineligible felony or ineligible misdemeanor.

“(6) “Eligible felony” means a failure to appear (§ 23-1327);

“(7) “Eligible misdemeanor” means any misdemeanor that is not an ineligible misdemeanor.

“(8) “Ineligible felony” means any felony other than a failure to appear (§ 16-1327).

“(9) “Ineligible misdemeanor” means:

“(A) An intrafamily offense, as defined in § 16-1001(5);

“(B) Driving while intoxicated, driving under the influence, and operating while impaired (§ 50-2201.05);

“(C) A misdemeanor offense for which sex offender registration is required pursuant to Chapter 40 of Title 22, whether or not the registration period has expired;

“(D) Criminal abuse of a vulnerable adult (§ 22-936(a));

“(E) Interfering with access to a medical facility (§ 22-1314.02);

“(F) Possession of a pistol by a convicted felon (§ 22-4503(a)(2));

“(G) Failure to report child abuse (§ 4-1321.07);

“(H) Refusal or neglect of guardian to provide for child under 14 years of age (§ 22-1102);

“(I) Disorderly conduct (peeping tom) (§ 22-1321);

“(J) Misdemeanor sexual abuse (§ 22-3006);

“(K) Violating the Sex Offender Registration Act (§ 22-4015);

“(L) Violating child labor laws (§§ 32-201 through 22-224);

“(M) Election/Petition fraud (§ 1-1001.08);

“(N) Public assistance fraud (§§ 4-218.01 through 4-218.05);

“(O) Trademark counterfeiting (§ 22-902(b)(1));

“(P) Attempted trademark counterfeiting (§§ 22-1803, 22-902);

“(Q) Fraud in the second degree (§ 22-3222(b)(2));

“(R) Attempted fraud (§§ 22-1803, 22-3222);

“(S) Credit card fraud (§ 22-3223(d)(2));

- “(T) Attempted credit card fraud (§ 22-1803, 22-223);
 - “(U) Misdemeanor insurance fraud (§ 22-3225.03a);
 - “(V) Attempted insurance fraud (§§ 22-1803, 22-3225.02, 22-3225.03);
 - “(W) Telephone fraud (§§ 22-3226.06, 22-3226.10(3));
 - “(X) Attempted telephone fraud (§§ 22-1803, 22-3226.06, 22-3226.10);
 - “(Y) Identity theft, second degree (§§ 22-3227.02, 22-3227.03(b));
 - “(Z) Attempted theft (§§ 22-1803, 22-3227.02, 22-3227.03);
 - “(AA) Fraudulent statements or failure to make statements to employee (§ 47-4104);
 - “(BB) Fraudulent withholding information or failure to supply information to employer (§ 47-4105);
 - “(CC) Fraud and false statements (§ 47-4106);
 - “(DD) False statement/dealer certificate (§ 50-1501.04(a)(3));
 - “(EE) False information/registration (§ 50 -501.04(a)(3));
 - “(FF) No school bus driver’s license (18 DCMR § 1305.1);
 - “(GG) False statement on Department of Motor Vehicles document (18 DCMR § 1104.1);
 - “(HH) No permit - 2nd or greater offense (§ 50-1401.01(d));
 - “(II) Altered title (18 DCMR § 1104.3);
 - “(JJ) Altered registration (18 DCMR § 1104.4);
 - “(KK) No commercial driver’s license (§ 50-405);
 - “(LL) A violation of building and housing code regulations;
 - “(MM) A violation of the Public Utility Commission regulations; and
 - “(NN) Attempt or conspiracy to commit any of the foregoing offenses (§§ 22-1803, 22-1805a).
- “(10) “Minor offense” means a traffic offense, disorderly conduct, or an offense that is punishable by a fine only, excluding any ineligible misdemeanor.
- “(11) “Public” means any person, agency, organization, or entity other than:
- “(A) Any court;
 - “(B) Any federal, state, or local prosecutor;
 - “(C) Any law enforcement agency;
 - “(D) Any licensing agency with respect to an offense that may disqualify a person from obtaining that license;
 - “(E) Any licensed school, day care center, before or after school facility or other educational or child protection agency or facility;
 - “(F) Any government employer or nominating or tenure commission with respect to:
 - “(i) Employment of a judicial or quasi-judicial officer; or

“(ii) Employment at a senior-level, executive-grade government position.

“§ 16-802. Sealing of criminal records on grounds of actual innocence.

“(a) A person arrested for or charged with the commission of a criminal offense pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion with the Clerk at any time to seal all of the records of the arrest and related court proceedings on grounds of actual innocence.

“(b) The burden is on the movant to establish that:

“(1) The offense for which the person was arrested or charged did not occur; or

“(2) The movant did not commit the offense.

“(c) If the motion is filed within 4 years after the prosecution has been terminated, the movant must satisfy the burden described in subsection (b) of this section by a preponderance of the evidence.

“(d) If the motion is filed more than 4 years after the prosecution has been terminated, the movant must satisfy the burden described in subsection (b) of this section by clear and convincing evidence.

“(e) In determining such motions, the court may, but is not required to, employ a rebuttable presumption that the movant is not entitled to relief if the court finds that the government has been substantially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the person could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

“(f) An acquittal does not establish a presumption that the movant is innocent or entitled to relief pursuant to this section.

“(g) A person whose conviction has been vacated pursuant to § 22-4135(g)(2), and whose subsequent prosecution is terminated without conviction, may file a motion with the Clerk pursuant to subsection (a) of this section or any other provision of law.

“(h) A person who is found to be actually innocent pursuant to this section or § 22-4135(g)(3) shall be entitled to the following relief with respect to such count or counts:

“(1)(A) The Court shall summarize in the order the factual circumstances of the challenged arrest and any post-arrest occurrences it deems relevant, and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant was arrested or that no offense had been committed.

“(B) A copy of the order shall be provided to the movant or his or her counsel.

“(C) The movant may obtain a copy of the order at any time from the Clerk of the Court, upon proper identification, without a showing of need.

“(2)(A) In a case involving co-defendants in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be sealed.

“(B) The Court shall order that the movant's name be redacted to the extent practicable from records that are not sealed. The Court may make an in camera inspection of these records in order to make this determination.

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

“(D) After references to the movant have been redacted as provided for in this paragraph, the Court shall order those records relating to co-defendants returned to the prosecutor or the Clerk.

“(3) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

“(4) The Court shall:

“(A) Order the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to seal any records that identify the movant as having been arrested, prosecuted, or convicted;

“(B) Order the prosecutor to arrange for any computerized record of the movant's arrest, prosecution, or conviction to be eliminated except for a restricted-access file that would permit the prosecutor and law enforcement agencies to retrieve sealed records if ordered to do so by the Court; and

“(C) Expressly allow the prosecutor and law enforcement agencies to maintain a publicly available record so long as it is not retrievable by the identification of the movant.

“(5) The Court shall order the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to file a certification with the Court within 90 days of an order to seal the records that, to the best of its knowledge and belief, all references that identify the movant as having been arrested, prosecuted, or convicted have been sealed.

“(6) The Court shall:

“(A) Order the Clerk to collect all Court records pertaining to the movant's arrest, record, or conviction and cause to be purged any computerized record;

“(B) Expressly allow the Clerk to maintain a record so long as the record is not retrievable by the identification of the movant; and

“(C) Order the Clerk to file under seal all Court records retrieved pursuant to this section, together with the certifications filed by the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency pursuant to this subsection, within 7 days after receipt of such records.

“(7) The Clerk shall place the records ordered sealed by the Court in a special file, appropriately and securely indexed in order to protect its confidentiality. Unless otherwise ordered by the Court, the Clerk shall reply in response to inquiries concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

“(i) The effect of relief pursuant to this section shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested or charged. No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, or charge, or trial in response to any inquiry made of him or her for any purpose.

“§ 16-803. Sealing of public criminal records in other cases.

“(a) A person arrested for, or charged with, the commission of an eligible misdemeanor pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and related court proceedings if:

“(1) A period of at least 2 years has elapsed since the termination of the case;
and

“(2) The movant does not have a disqualifying arrest or conviction.

“(b) A person arrested for, or charged with, the commission of any other offense pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and related court proceedings if:

“(1) A period of at least 5 years has elapsed since the termination of the case; and

“(2) The movant does not have a disqualifying arrest or conviction.

“(c) A person who has been convicted of an eligible misdemeanor or an eligible felony pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations may file a motion to seal the publicly available records of the arrest, related court proceedings, and conviction if:

“(1) A period of at least 10 years has elapsed since the completion of the movant’s sentence; and

“(2) The movant does not have a disqualifying arrest or conviction.

“(d) The waiting periods in subsections (a), (b), and (c) of this section, before which a motion to seal cannot be filed, must be satisfied with respect to all of the movant's arrests and convictions unless the movant waives in writing the right to seek sealing of an arrest or conviction as to which the prescribed waiting period has not elapsed.

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

“(f) The movant must seek to seal all eligible arrests and convictions in the same proceeding unless the movant waives in writing the right to seek sealing with respect to a

particular conviction or arrest.

“(g) In determining whether a movant is eligible to file a motion to seal because of a conviction, arrest, or pending charge, minor offenses shall not be considered.

“(h)(1) The Superior Court shall grant a motion to seal if it is in the interests of justice to do so. In making this determination, the Court shall weigh:

“(A) The interests of the movant in sealing the publicly available records of his or her arrest, related court proceedings, or conviction;

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

“(C) The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability.

“(2) In making this determination, the Court may consider:

“(A) The nature and circumstances of the offense at issue;

“(B) The movant's role in the offense or alleged offense and, in cases terminated without conviction, the weight of the evidence against the person;

“(C) The history and characteristics of the movant, including the movant's:

“(i) Character;

“(ii) Physical and mental condition;

“(iii) Employment history;

“(iv) Prior and subsequent conduct;

“(v) History relating to drug or alcohol abuse or dependence and treatment opportunities;

“(vi) Criminal history; and

“(vii) Efforts at rehabilitation;

“(D) The number of the arrests or convictions that are the subject of the motion;

“(E) The time that has elapsed since the arrests or convictions that are the subject of the motion;

“(F) Whether the movant has previously obtained sealing or comparable relief under this section or any other provision of law other than by reason of actual innocence; and

“(G) Any statement made by the victim of the offense.

“(i)(1) In a motion filed under subsection (a) of this section, the burden shall be on the prosecutor to establish by a preponderance of the evidence that it is not in the interests of justice to grant relief.

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

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

“(j) A motion to seal made pursuant to this section may be dismissed without prejudice to permit the movant to renew the motion after further passage of time. The Court may set a waiting period before a renewed motion can be filed.

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

“(l) If the Court grants the motion to seal:

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

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

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

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

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

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

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

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

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

“(m) No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose except that the sealing of records under this provision does not relieve a person of the obligation to disclose the sealed arrest or conviction in response to any direct question asked in connection with jury service or in response to any direct question contained in any questionnaire or application for a position with any person, agency, organization, or entity defined in § 16-801(11).

“§ 16-804. Motion to seal.

“(a) A motion to seal filed with the Court pursuant to this chapter shall state grounds upon which eligibility for sealing is based and facts in support of the person's claim. It shall be accompanied by a statement of points and authorities in support of the motion, and any appropriate exhibits, affidavits, and supporting documents.

“(b)(1) A motion pursuant to § 16-803 shall state all of the movant's arrests and convictions and shall either:

“(A) Seek relief with respect to all arrests and any conviction eligible for relief; or

“(B) Waive in writing the right to seek sealing of the records pertaining to any omitted arrests or convictions, including any arrests or convictions as to which the relevant waiting period in §16-803(a), (b), or (c) has not elapsed.

“(2) If the motion does not comply with the requirements of paragraph (1) of this subsection or the waiting period has not elapsed for any arrest or conviction that is eligible for sealing, then the motion shall be dismissed without prejudice unless the movant executes a written waiver with respect to that arrest or conviction.

“(c) A copy of the motion shall be served upon the prosecutor.

“(d) The prosecutor shall not be required to respond to the motion unless ordered to do so by the Court pursuant to §16-805(b).

“§ 16-805. Review by Court.

“(a) If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings in the case, that the movant is not eligible for relief or is not entitled to relief, the Court may dismiss or deny the motion.

“(b) If the motion is not dismissed or denied after initial review, the Court shall order the prosecutor to file a response to the motion. The prosecutor shall file the response within 60 days of the issuance of the order except where the arrest was not presented to the prosecutor for a charging decision, in which case the prosecutor shall file the response within 90 days of the issuance of the order.

“(c) Upon the filing of the prosecutor's response, the Court shall determine whether a hearing is required.

“(d) If the Court determines that a hearing is required, the hearing shall be scheduled promptly.

“(e) At the hearing, the movant and the prosecutor may present witnesses and information by proffer or otherwise. Hearsay evidence shall be admissible.

“(f) An order dismissing, granting, or denying the motion shall be in writing and include reasons.

“(g) The Court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant regarding the same offenses, arrests, or convictions unless the previous motion was dismissed or denied without prejudice.

“(h) An order dismissing, granting, or denying a motion for sealing is a final order for purposes of appeal.

“§ 16-806. Availability of sealed records.

“(a) Records sealed on grounds of actual innocence pursuant to §16-802 shall be opened only on order of the Court upon a showing of compelling need, except that, upon request, the movant shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under §16-802 was granted. A request for access to sealed court records may be made ex parte.

“(b) Records retained in a nonpublic file pursuant to § 16-803 shall be available:

“(1) To any court, prosecutor, or law enforcement agency for any lawful purpose, including:

“(A) The investigation or prosecution of any offense;

“(B) The determination of whether a person is eligible to have an arrest or conviction sealed or expunged;

“(C) The determination of conditions of release for a subsequent arrest;

“(D) The determination of whether a person has committed a second or subsequent offense for charging or sentencing purposes;

“(E) Determining an appropriate sentence if the person is subsequently convicted of another crime; and

“(F) Employment decisions.

“(2) For use in civil litigation relating to the arrest or conviction;

“(3) Upon order of the Court for good cause shown;

“(4) To any person or entity identified in § 16-801(11)(D), (E), or (F), but only to the extent that such records would have been available to such persons or entities before relief under §16-803 was granted. Such records may be used for any lawful purpose, including:

“(A) The determination of whether a person is eligible to be licensed in a particular trade or profession; and

“(B) Employment decisions; and

“(5) To the movant or the authorized representative of the movant, upon request, but only to the extent that such records would have been available to the movant before relief under § 16-803 was granted.

“(c) Any person, upon making inquiry of the Court concerning the existence of records of arrest, court proceedings, or convictions involving an individual, shall be entitled to rely, for any purpose under the law, upon the clerk’s response that no records are available under § 16-802(h)(7) or § 16-803(l)(5) with respect to any issue about that person’s knowledge of the individual’s record.

“§ 16-807. Savings provision.

“This chapter does not supersede any other provision of the District of Columbia Official Code providing for the expungement, sealing, or setting aside of criminal arrests or convictions.”

Sec. 3. Conforming amendments.

(a) Section 204(a) of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-534(a)), is amended by adding a new paragraph (14) to read as follows:

Amend
§ 2-534

“(14) Information that is ordered sealed and restricted from public access pursuant to Chapter 8 of Title 16 of the District of Columbia Official Code.”

(b) Chapter 19 of Title 23 of the District of Columbia Official Code is amended as follows:

(1) Section 23-1901(b) is amended as follows:

Amend
§ 23-1901

(A) Paragraph (4) is amended by striking the phrase “and release or parole hearings,” and inserting the phrase “and release, parole, record-sealing, and post-conviction hearings,” in its place.

(B) Paragraph (7) is amended by striking the word “offender” and inserting the phrase “offender, and about any court order to seal the offender’s criminal records” in its place.

(2) Section 23-1902(d)(1) is amended to read as follows:

Amend
§ 23-1902

“(1) Scheduling of a release, parole, record-sealing, or post-conviction hearing for the offender.”

(3) Section 23-1904 is amended as follows:

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

Amend
§ 23-1904

“(a) Crime victims shall have the right to be present at the defendant’s sentencing, release, parole, post-conviction, and record-sealing hearings.”

(B) Subsection (e) is amended to read as follows:

“(e) Crime victims shall have the right to make a statement at the defendant’s sentencing and record-sealing hearings. The absence of the crime victim shall not preclude the court from holding the sentencing or record-sealing hearings.”

Sec. 4. Fiscal impact statement.

The Council adopts the December 19, 2006 fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia