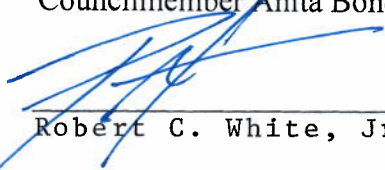




Councilmember Charles Allen



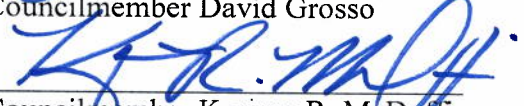
Councilmember Anita Bonds



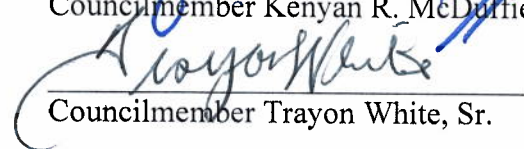
Robert C. White, Jr.



Councilmember David Grosso



Councilmember Kenyan R. McDuffie



Councilmember Trayon White, Sr.

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 8 of Title 16 to establish a process for expungement of records and qualify certain records for expungement, allow for automatic expungement or sealing of records in certain cases, expand the number offenses eligible for sealing to include all misdemeanors and most felonies and establish procedures for such, and allow for sealing of multiple convictions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Record Sealing Modernization Amendment Act of 2019".

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

(a) The Table of Contents is amended as follows:

(1) The section designation for § 16-802 is amended by striking the word "Sealing" and inserting the word "Expungement" in its place.

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

"§ 16-802a. Expungement for non-conviction."

(3) The section designation for § 16-803.02 is amended by striking the phrase "Sealing of public" and inserting the phrase "Expungement of" in its place.

(4) A new section heading is added to read as follows:

38                   “§ 16-803c. Sealing of criminal records for certain felony and misdemeanor  
39 convictions.”.

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

41                   (1) Paragraph (5)(C) is amended to read as follows:

42                               “(C) A conviction or arrest in the District of Columbia or any other  
43 jurisdiction during the waiting period prior to eligibility for record sealing or expungement.”

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

45                               “(6) “Eligible felony” means any felony that is not an ineligible felony.”.

46                   (3) A new paragraph (6A) is added to read as follows:

47                               “(6A) “Expungement” means the removal from access, by anyone except the  
48 subject of the record, of any records of the Court, the prosecutor, any law enforcement agency,  
49 and any pretrial corrections or community supervision agency concerning the person’s arrest,  
50 charges, court proceedings, or conviction.

51                   (4) Paragraph (7) is repealed.

52                   (5) Paragraph (8) is amended to read as follows:

53                               “(8) “Ineligible felony” means any felony categorized in Offense Severity Group  
54 1 or 2 of the Master Grid developed by the D.C. Sentencing Commission, except Attempt or  
55 Conspiracy to commit such a felony.

56                   (6) Paragraph (9) is repealed.

57                   (7) New paragraphs (12) and (13) are added to read as follows:

58                               “(12) “Qualifying misdemeanor” means any misdemeanor other than the  
59 following:

60                               “(A) Interpersonal violence as defined in § 16-1001(6)(B), intimate partner  
61 violence as defined in § 16-1001(7), and intrafamily violence as defined in § 16-1001(9).

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

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

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

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

68                   “(F) Possession of a pistol by a convicted felon (§ 22-4503(a)(2) [see now § 22-  
69 4503(a)(1)]);

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

71                   “(H) Refusal or neglect of guardian to provide for child under 14 years of age (§  
72 22-1102);

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

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

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

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

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

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

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

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

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

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

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

84                   “(T) Attempted credit card fraud (§ 22-1803, 22-223);

85                   “(U) Misdemeanor insurance fraud (§ 22-3225.03a);

86 “(V) Attempted insurance fraud (§§ 22-1803, 22-3225.02, 22-3225.03);  
87 “(W) Telephone fraud (§§ 22-3226.06, 22-3226.10(3));  
88 “(X) Attempted telephone fraud (§§ 22-1803, 22-3226.06, 22-3226.10);  
89 “(Y) Identity theft, second degree (§§ 22-3227.02, 22-3227.03(b));  
90 “(Z) Attempted identify theft (§§ 22-1803, 22-3227.02, 22-3227.03);  
91 “(AA) Fraudulent statements or failure to make statements to employee (§ 47-  
92 4104);  
93 “(BB) Fraudulent withholding information or failure to supply information to  
94 employer (§ 47-4105);  
95 “(CC) Fraud and false statements (§ 47-4106);  
96 “(DD) False statement/dealer certificate (§ 50-1501.04(a)(3));  
97 “(EE) False information/registration (§ 50-1501.04(a)(3));  
98 “(FF) No school bus driver’s license (18 DCMR § 1305.1);  
99 “(GG) False statement on Department of Motor Vehicles document (18 DCMR §  
100 1104.1);  
101 “(HH) No permit — 2nd or greater offense (§ 50-1401.01(d));  
102 “(II) Altered title (18 DCMR § 1104.3);  
103 “(JJ) Altered registration (18 DCMR § 1104.4);  
104 “(KK) No commercial driver’s license (§ 50-405);  
105 “(LL) A violation of building and housing code regulations;  
106 “(MM) A violation of the Public Utility Commission regulations; or  
107 “(NN) Attempt or conspiracy to commit any of the foregoing offenses (§§ 22-  
108 1803, 22-1805a).

109           “(13) “Sealing of a record” means the removal from access by the public of any records  
110 of the Court, the prosecutor, any law enforcement agency, and any pretrial corrections or  
111 community supervision agency, concerning the person’s arrest, charges, court proceedings, or  
112 conviction.”.

113           (c) Section 16-802 is amended as follows:

114                   (1) Strike the word “sealed” wherever it appears and insert the word “expunged”  
115 in its place.

116                   (2) The section heading is amended by striking the word “Sealing” and inserting  
117 the word “Expungement” in its place.

118                   (3) Subsections (a) through (h)(6) are amended by striking the word “seal”  
119 wherever it appears and insert the word “expunge” in its place.

120           (d) Section 16-802b is added to read as follows:

121           “§ 16-802b. Expungement for non-conviction.

122           “(a) This section applies only to a person who has been arrested and charged with an  
123 offense pursuant to the District of Columbia Official Code or the District of Columbia Municipal  
124 Regulations if:

125                   “(1) The arrest and criminal charge:

126                           “(A) Did not result in a conviction, including under the post-and-  
127 forfeiture procedure, as defined in § 5-335.01; or

128                           “(B) Resulted in a conviction which was vacated on appeal; and

129                   “(2) The person was not charged with a felony offense that is punishable by  
130 imprisonment for more than 15 years.

131 “(b) Not later than 90 days after the termination of the prosecution, if the person was not  
132 convicted, or 90 days after the date of the opinion vacating the conviction becomes final (unless  
133 the prosecutor agrees in writing to an earlier time), the Clerk of the Court shall:

134 “(1) Search diligently for and expunge each court record related to the person’s  
135 arrest and prosecution; provided that in a case involving co-defendants, the Clerk may require  
136 expungement of only those records, or portions thereof, relating solely to the person, and shall  
137 require redaction of the person's name to the extent practicable from records that are not  
138 expunged, but need not require redaction of references to the person that appear in a transcript of  
139 court proceedings involving the co-defendants;

140 “(2) Send to the prosecutor, any law enforcement agency, and any pretrial,  
141 corrections, or community supervision agency a notice of expungement and instructions for  
142 expungement of each record that the entity keeps as to the arrest and charges; and

143 “(3) Advise in writing the person entitled to expungement of the actions  
144 undertaken.

145 “(c) Within 30 days after receipt of the notice described in subsection (b)(2) of this  
146 section, the prosecutor, any law enforcement agency, and any pretrial, corrections, or community  
147 supervision agency shall:

148 “(1) Search diligently for and expunge each record related to the arrest,  
149 confinement, or charges; and

150 “(2) Advise in writing the person entitled to expungement of compliance.

151 “(d) A person who is arrested or confined by a law enforcement agency and then is  
152 released without being charged with the commission of a crime under to the District of Columbia  
153 Official Code or the District of Columbia Municipal Regulations is entitled to expungement of

154 all records relating to the matter; provided, that the law enforcement agency may retain  
155 fingerprints in a non-public file for the sole purpose of determining identity.

156 “(1) Within 90 days after the release of a person entitled to expungement under  
157 this subsection, the law enforcement agency shall notify the Clerk of eligibility for expungement.

158 “(2) Within 30 days after receipt of the notice, the Clerk shall follow the  
159 procedures prescribed in subsection (b).

160 “(e) If a law enforcement agency, a booking facility, or the Central Repository fails to  
161 expunge a record as required under this section, the person entitled to expungement may:

162 “(1) Seek redress by means of any appropriate legal remedy; and

163 “(2) Recover court costs including attorneys’ fees.

164 “(f) A person who is entitled to expungement under this section may not be required to  
165 pay any fee or costs in connection with the expungement.

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

171 (e) Section 16-803 is amended to read as follows:

172 “(a) Except as described in subsection (d), not later than 90 days after the completion of  
173 the person’s sentence in the case of a qualifying misdemeanor conviction, the termination of the  
174 prosecution if the person was not convicted, or the date of the opinion vacating the conviction  
175 becoming final (unless the prosecutor agrees in writing to an earlier time), the Clerk of the Court  
176 shall seal each court record, and instruct the prosecutor, any law enforcement agency, and any

177 pretrial, corrections, or community supervision agency to seal any record kept as to the  
178 conviction, charges, and arrest of a person who:

179                   “(A) Has been convicted of a qualifying misdemeanor; or

180                   “(B) Has been convicted of a drug-related felony, except when the felony  
181 was committed while armed; or

182                   “(C) Has been charged with, but not convicted of a felony offense that is  
183 punishable by imprisonment for more than 15 years, or the conviction of which was vacated on  
184 appeal.”.

185           “(b) Except as described in subsection (d), not later than 2 years after the completion of  
186 the sentence in the case of conviction, the termination of the prosecution if the person was not  
187 convicted, or the date of the opinion vacating the conviction becoming final (unless the  
188 prosecutor agrees in writing to an earlier time), the Clerk of the Court shall seal each court  
189 record, and instruct the prosecutor, any law enforcement agency, and any pretrial, corrections, or  
190 community supervision agency to seal any record kept as to the conviction, charges, and arrest of  
191 a person who:

192                   “(1) Has been convicted of a misdemeanor that is not a qualifying misdemeanor,  
193 except a misdemeanor offense that requires registration as a sex offender; or

194                   “(2) Has been convicted of a felony offense that is punishable by imprisonment  
195 for 5 years or less.

196           “(c)(1) The prosecutor may file a motion objecting to the sealing of records pursuant to  
197 subsection (a) or (b) of this section if the prosecutor has reason to believe that the person has a  
198 disqualifying arrest or conviction.

199                   “(2) The prosecutor must serve the subject of the motion with a copy.



200           “(3) Upon receipt of the motion, the Court shall provide the subject of the motion  
201 an opportunity to respond and a hearing, if one is requested.

202           “(d) The Court shall:

203                 “(A) Deny a motion filed pursuant to subsection (c) of this section, and order the  
204 records sealed, unless the prosecutor proves by a preponderance of the evidence that the person  
205 has a disqualifying arrest or conviction; or

206                 “(B) Grant a motion filed pursuant to subsection (c) of this section if the  
207 prosecutor proves by a preponderance of the evidence that the person has a disqualifying arrest  
208 or conviction. The Court shall notify the person of this decision and the person shall be eligible  
209 to seal the record in question in accordance with § 16-803c.

210           “(e) If the Court denies the motion to block sealing:

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

215                 “(B) The prosecutor, any law enforcement agency, and any pretrial,  
216 corrections, or community supervision agency shall be entitled to retain any and all records  
217 relating to the person’s arrest and conviction in a nonpublic file.

218                 “(C) The prosecutor, any law enforcement agency, and any pretrial,  
219 corrections, or community supervision agency shall file a certification with the Court within 60  
220 days that, to the best of its knowledge and belief, all references that identify the person as having  
221 been arrested, prosecuted, or convicted have been removed from its publicly available records.

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

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

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

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

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

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

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

244 (f) Section 16-803b is amended to read as follows:

245 “§ 16-803b. Expungement of records for decriminalized or legalized offenses.

246 “(a) A person arrested for, charged with, or convicted of a criminal offense pursuant to  
247 the District of Columbia Official Code or the District of Columbia Municipal Regulations that

248 was decriminalized or legalized after the date of the arrest, charge, or conviction may file a  
249 motion to expunge the record of the arrest, charge, conviction, and related Superior Court  
250 proceedings at any time.

251 “(1) The Superior Court shall grant a motion to expunge unless the prosecutor  
252 establishes by a preponderance of the evidence that the record is not eligible for expungement  
253 pursuant to this section because the conduct was not decriminalized or legalized.

254 “(b) If the Court grants a motion to seal under this section:

255 “(1) (A) The Court shall order the prosecutor, any law enforcement agency, and  
256 any pretrial, corrections, or community supervision agency to expunge all records that identify  
257 the movant as having been arrested, prosecuted, or convicted for the decriminalized or legalized  
258 conduct.

259 “(B) The prosecutor, any law enforcement agency, and any pretrial,  
260 corrections, or community supervision agency shall file a certification with the Court within 90  
261 days after the Court issues an order under subparagraph (A) of this paragraph that, to the best of  
262 its knowledge and belief, all references that identify the movant as having been arrested,  
263 prosecuted, or convicted for the decriminalized or legalized conduct have been expunged.

264 “(2) The Clerk shall expunge all available court records that identify the movant  
265 as having been arrested, prosecuted, or convicted for the decriminalized or legalized conduct.

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

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

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

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

276 “(6) No person as to whom relief pursuant to this section has been granted shall  
277 be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false  
278 statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or  
279 conviction in response to any inquiry made of him or her for any purpose.”

280 (g) Section 16-803c is added to read as follows:

281 “§ 16-803c. Sealing of criminal records for certain felony and misdemeanor convictions.

282 “(a) A person who has been convicted of any of the following offenses may file a motion  
283 to seal the publicly available records of the arrest, related court proceedings, and conviction if a  
284 waiting period of at least 2 years has elapsed since the completion of the movant's sentence and  
285 the movant does not have a disqualifying arrest or conviction:

286 “(1) A misdemeanor offense that requires registration as a sex offender, or a  
287 misdemeanor offense for which the record was not sealed under § 16-803 due to a decision by  
288 the Court to block sealing; or

289 “(2) A felony offense that is punishable by imprisonment for more than 5 years  
290 but not more than 10 years.

291 “(b) A person who has been convicted of a felony offense that is punishable by  
292 imprisonment for more than 10 years but not more than 15 years may file a motion to seal the  
293 publicly available records of the arrest, related court proceedings, and conviction if a waiting

294 period of at least 5 years has elapsed since the completion of the movant's sentence and the  
295 movant does not have a disqualifying arrest or conviction.

296 “(c) A person who has been convicted of a felony offense that is punishable by  
297 imprisonment for more than 15 years but not more than 20 years may file a motion to seal the  
298 publicly available records of the arrest, related court proceedings, and conviction if a waiting  
299 period of at least 8 years has elapsed since the completion of the movant's sentence and the  
300 movant does not have a disqualifying arrest or conviction.

301 “(d) A person who has been convicted of a felony offense that is punishable by  
302 imprisonment for more than 20 years, other than an ineligible felony, may file a motion to seal  
303 the publicly available records of the arrest, related court proceedings, and conviction if a waiting  
304 period of at least 10 years has elapsed since the completion of the movant's sentence and the  
305 movant does not have a disqualifying arrest or conviction.”.

306 (h) Section 16-804 is amended as follows:

307 (1) Subsection (b)(1) is amended to read as follows:

308 “(b)(1) A motion pursuant to § 16-803c shall state all of the movant’s arrests and  
309 convictions and shall seek relief with respect to any arrests and convictions eligible for relief.”

310 (2) A new subsection (f) is added to read as follows:

311 “(f) A movant may petition to seal the records relating to multiple convictions or  
312 charges.”

313 (i) Section 16-805 is amended as follows:

314 (1) Subsection (b) is amended to read as follows:

315 “(b) If the motion is not dismissed or denied after initial review, the Court shall  
316 order the record sealed unless the prosecutor files an objection to the motion within 60 days of  
317 the motion.”.

318 (2) Subsection (f) is amended to read as follows:

319 “(f) The Court shall order the arrests, charging, and conviction records sealed in  
320 accordance with this chapter, unless the Court finds, by a preponderance of the evidence, that:

321 “(1) The relevant time period required has not elapsed;

322 “(2) The person has a disqualifying arrest or conviction;

323 “(3) The person has not paid all fines, fees, and court costs, and satisfied  
324 any restitution obligation placed on the person as part of the sentence; or

325 “(4) The sealing of the record would pose a significant threat to public  
326 safety.”.

327 Sec. 3. Fiscal impact statement.

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

331 Sec. 4. Effective date.

332 This act shall take effect following approval by the Mayor (or in the event of veto by the  
333 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
334 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
335 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
336 Columbia Register.

337