



Statement of Jeminé Trough
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Before the

Committee on the Judiciary and Public Safety
The Honorable Charles Allen, Chair

Public Oversight Hearing
on
B24-0063, The “Second Chance Amendment Act of 2021”
B24-0110, “Criminal Record Expungement Amendment Act of 2021”

Thursday, April 8, 2021
9:30 a.m. – 3:30 p.m.

Virtual Hearing via Zoom

Greetings Chairman Allen, Councilmembers, staff, and residents. My name is Jeminé Truth and I serve as Assistant Chief in the Criminal Section of the Public Safety Division of the Office of the Attorney General for the District of Columbia (OAG). I am pleased to appear on behalf of Attorney General Karl A. Racine to testify regarding: B24-0063, the *Second Chance Amendment Act of 2021* and B24-0110, the *Criminal Record Expungement Amendment Act of 2021*.

I want to begin by thanking the Committee on the Judiciary and Public Safety for holding this hearing on these two important pieces of legislation. Criminal records, including those that do not result in conviction, can have long-lasting and devastating effects on individuals and families—making it harder to secure employment, housing, and even federal loans. And, due to over-policing and structural racism in the criminal legal system, these negative impacts fall disproportionately on Black and brown residents, perpetuating and exacerbating racial disparities in wealth, health, access to education, and many other aspects of life. Allowing residents to seal from public view criminal records that are preventing them from addressing essential life needs without a corresponding public safety benefit is a critical piece of advancing racial equity in the District.

The District's current statutory framework governing sealing and expungements is confusing, overly restrictive, and makes it too difficult for residents to seal an eligible record. OAG is being proactive in helping people get eligible records sealed under the current law. For example, OAG declined to prosecute over 290 arrests for curfew violation that were made during the protests sparked by the death of George Floyd. Many of these individuals are eligible to have their record of arrest sealed, but a motion must first be filed. OAG is trying to contact each of them

to obtain consent to file a motion to seal on their behalf. This process, however, is cumbersome and inefficient, and inevitably, we will not be successful in reaching all eligible arrestees.

I applaud Mayor Bowser and the Council for highlighting the need for reform and for holding this roundtable to receive input about what should be included in legislation creating a new process for sealing or expunging criminal records. OAG supports the ideas reflected in these bills: expanding the list of offenses that are eligible for sealing, shortening waiting periods, streamlining the process, including by automatically sealing many records, and eliminating automatic disqualifiers for records that are otherwise eligible for sealing. In my testimony today, I will highlight some considerations for the Council in drafting legislation that accomplishes these important goals.

For arrests that do not result in conviction, OAG supports automatic sealing of almost all misdemeanors. However, the legislation must include that records of these arrests still are readily accessible to law enforcement agencies and may be used for law enforcement purposes.

This is important for several reasons. First, prosecutors must be able to consider prior conduct for the purpose of making charging decisions and plea offers. It is important to note here that, as part of its efforts to reduce criminal legal system involvement where possible, OAG makes liberal use of its discretion to reach deferred prosecution and deferred sentencing agreements with criminal defendants. Successful completion of these diversion programs means the defendant does not have a record of conviction. This is an important tool. However, if the person ultimately reoffends, OAG must be able to access and use records of the prior arrest in making decisions, including whether to offer diversion, in the subsequent case. Next, the rules of evidence allow prosecutors in specific, limited circumstances to introduce evidence of prior conduct to prove the defendant committed the crime at issue. Even where an arrest is sealed, prosecutors must be able

to access and use the information of the prior arrest for these purposes. Finally, if OAG decides not to paper a case and it is automatically sealed, we must be able to unseal it if we later decide to prosecute the offense within the statute of limitations, for example, if new evidence is obtained after our “no papering” decision.

These concerns are particularly salient with arrests related to domestic violence. The intimate and repetitive nature of domestic violence means that incidents are rarely isolated. Due to a myriad of societal and personal factors, many victims of intimate partner or intrafamily violence are unable to leave their abusers even after an abusers’ arrest or prosecution. In these cases, OAG must be able to consider the person’s complete history in making charging and plea decisions, and to access and use the information in criminal trials and in our Civil Protection Order contempt cases. As long as these protections are in place, OAG supports automatic sealing of most misdemeanors as soon as the case ends or a no-paper decision is made.

For some misdemeanors, however, sealing should not be automatic. For misdemeanors in which the victim is a child or an elderly person, prosecutors should be given an opportunity to be heard before an arrest that does not result in conviction is sealed. For example, criminal abuse of a vulnerable adult or elderly person, criminal negligence, or financial exploitation of a vulnerable adult or elderly person, can all be charged as misdemeanors, as can many other offenses people use to target this population, such as second-degree fraud, telephone fraud, and second-degree identity theft. Some offenses against children, including “Lewd, Indecent, or Obscene Acts; Sexual Proposal to a Minor,” is also a misdemeanor. Loved ones and employers seeking caregivers for children and for elderly and vulnerable adults rely on background checks to protect the vulnerable person from exploitation and abuse. If these offenses are automatically sealed, it will be more difficult to protect children and vulnerable adults from those who might prey upon them. We urge

the Council to include in the legislation that arrests for these offenses require a motion to be filed before sealing is granted so the Court will have an opportunity to evaluate risks before sealing the arrest from public view.

For arrests that do result in conviction, there are additional considerations. As with non-convictions, the information must be available and usable by law enforcement agencies. For convictions, however, the fact of the conviction must also be usable for the purpose of increasing sentences pursuant to recidivism statutes. Driving Under the Influence (DUI) convictions provide an important example. Driving under the influence is extremely dangerous. According to the National Highway Traffic Safety Administration, 29 percent of the District's traffic fatalities in 2018 involved alcohol-impaired driving. And OAG's internal data shows that approximately 24 percent of our DUI cases in 2019 were committed by repeat offenders. For this reason, District law provides for sentencing enhancements for prior offenses. If a conviction for a DUI is sealed, it still must be able to be used for the purpose of increasing the sentence of repeat offenders.

OAG also supports expanding the list of convictions that are eligible for sealing, simplifying and reducing waiting periods for sealing convictions, and simplifying the standard in considering motions to seal convictions and non-convictions. Instead of including a list of arrests and convictions that makes one ineligible for sealing a record, the legislation should simply allow the Court to consider a person's prior criminal record and grant the motion if it finds it to be in the interests of justice.

OAG appreciates how complicated it is to craft legislation that appropriately balances the need to reduce harm from criminal records with the need to protect public safety. It is clear, however, that our current system does not go nearly far enough. Thank you for your important and careful work to modernize these statutes. OAG looks forward to continuing to work with you and

all stakeholders to achieve the important goal of expanding the eligibility for and simplifying the process of sealing criminal records. Thank you for considering my testimony.