

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To create limited liability for employers who hire or retain returning citizens if the employer has taken certain steps to make a good-faith determination that hiring or retaining a returning citizen is favorable; to amend Title 16 of the D.C. Official Code to exclude interpersonal violence as an ineligible misdemeanor; to reduce the time a movant must wait before filing a motion to seal his or her case; to allow a movant the opportunity to amend the original motion to seal within 20 days if the movant failed to include all misdemeanors and felonies; to provide that a motion to seal a case that is not in the court database or a case that is not in a publicly available database shall also not be made publicly available; to permit movants to obtain certifications from the court that their records have been properly sealed under Title 16; and to create a certificate of good standing, issued by the Department of Corrections, for qualifying returning citizens.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Re-entry Facilitation Amendment Act of 2012”.

Sec. 2. Limited Liability.

(a) Information regarding a criminal history record of an employee or a former employee shall not be introduced as evidence in a civil action against an employer or its employees or agents if that information is based on the conduct of the employee or former

1 employee, and if the employer has made a reasonable, good faith determination that the  
2 following factors favored the hiring or retention of that applicant or employee:

- 3 (1) The specific duties and responsibilities of the position being sought or held;
- 4 (2) The bearing, if any, that an applicant's or employee's criminal background  
5 will have on the applicant's or employee's fitness or ability to perform one or more of the duties  
6 or responsibilities;
- 7 (3) The time that has elapsed since the occurrence of the criminal offense;
- 8 (4) The age of the person at the time of the occurrence of the criminal offense;
- 9 (5) The frequency and seriousness of the criminal offense;
- 10 (6) Any information produced regarding the applicant's or employee's  
11 rehabilitation and good conduct since the occurrence of the criminal offense; and
- 12 (7) The public policy that it is generally beneficial for persons with criminal  
13 records to obtain employment.  
14 employment.

15 Sec. 3. Title 16 of the District of Columbia Official Code is amended as follows:

16 (a) Section 16-801(9)(A) is amended to read as follows:

17 “(A) Intimate partner violence, as defined in § 16-1001(7) and intrafamily violence, as  
18 defined in § 16-1001(9).”

19 (b) Section 16-803 is amended as follows:

20 (1) Subsection (a)(1) is amended to read as follows:

21 “(1) A period of at least 1 year has elapsed since the termination of the case; and”

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

1           “(1) A period of at least 4 years has elapsed since the termination of the case; and”

2           (3) Subsection (c)(1) is amended to read as follows:

3           “(1) A period of at least 7 years has elapsed since the completion of the movant’s  
4 sentence; and”

5           (c) Section 16-804 is amended as follows:

6           (1) Subsection (b) is amended as follows:

7           (A) Paragraph (2) is amended to read as follows:

8           “(2) If the motion does not comply with the requirements of paragraph (1)  
9 of this subsection, then the movant shall have twenty (20) days to amend his original motion to  
10 include all of the movant’s arrests and convictions, unless the movant executes a written waiver  
11 with respect to the arrest or conviction that the movant failed to include. If the movant fails to  
12 amend his original motion within twenty (20) days or to execute a written waiver, then the motion  
13 shall be dismissed without prejudice.”

14           (B) A new paragraph (3) is added to read as follows:

15           “(3) If the waiting period has not elapsed for any arrest or conviction that  
16 is eligible for sealing, then the motion shall be dismissed without prejudice unless the movant  
17 executes a written waiver with respect to that arrest or conviction.”

18           (2) A new subsection (e) shall be added to read as follows:

19           “(e) If the movant files a motion to seal a case not in the court database or a case  
20 not in a publicly available database, the motion to seal shall not be available publicly. The  
21 prosecutor’s office and agencies shall be entitled to retain any and all records relating to the motion  
22 to seal a case not in the court database or a case not in a publicly available database in a non public

1 file.”

2 (d) Section 16-806 is amended as follows:

3 (1) Subsection (a) is amended to read as follows:

4 “(a) Records sealed on grounds of actual innocence pursuant to § 16-802 shall be  
5 opened only on order of the Court upon a showing of compelling need, except that, upon request,  
6 the movant, or the authorized representative of the movant, shall be entitled to a copy of the sealed  
7 records to the extent that such records would have been available to the movant before relief under  
8 § 16-802 was granted and shall also be entitled to all certifications filed with the Court pursuant to  
9 § 16-802(h)(5). A request for access to sealed court records may be made *ex parte*.”

10 (2) Subsection (b)(5) is amended to read as follows:

11 “(5) To the movant or the authorized representative of the movant, upon request,  
12 but only to the extent that such records would have been available to the movant before relief  
13 under § 16-803 was granted. The movant, or the authorized representative of the movant, shall  
14 also be entitled to all certifications filed with the Court pursuant to § 16-803(l)(1)(C).”

15 (3) A new subsection (d) shall be added to read as follows:

16 “(d) Nothing in this section shall be considered to be an “unsealing” of records  
17 and except for the provisions in this section, all sealed records shall remain sealed.”

18 Sec. 4. The Office on Ex-Offender Affairs and Commission on Re-entry and  
19 Ex-Offender Affairs Establishment Act of 2006, effective March 8, 2007 (D.C. Law 16-243;  
20 D.C. Official Code § 24-1301 *et seq.*) is amended by adding a new section 5 (D.C. Code §  
21 24-1304) to read as follows:

22 “Sec. 5. Issuance of Certification of Good Standing

1 (a) The Department of Corrections (“Department) shall issue a certificate of good  
2 standing to any person previously convicted of a crime in the District, when the Department is  
3 satisfied that:

4 (1) The applicant has conducted himself or herself in a manner warranting such  
5 issuance for a minimum period in accordance with subsection (b) of this section;

6 (2) If the applicant was under the supervision of the United States Parole  
7 Commission (USPC) or the Court Services and Offender Supervision Agency (CSOSA), that the  
8 applicant completed his or her supervision under that agency in good standing.

9 (A) To ensure that applicant completed his or her supervision under  
10 USPS or CSOSA in good standing, the Department must ask for, and obtain, certification from  
11 the USPC or the CSOSA as to the applicant’s completion of supervision in good standing; and

12 (3) The relief to be granted is consistent with the public interest.

13 (c) The minimum period of good conduct by the individual referred to in subsection (a)  
14 shall be as follows:

15 (1) Where the most serious crime of which the individual was convicted is a  
16 criminal offense where the penalty of imprisonment does not exceed more than one year, the  
17 minimum period of good conduct shall be one year;

18 (2) Where the most serious crime of which the individual was convicted is a  
19 criminal offense where the penalty of imprisonment does not exceed more than five years, the  
20 minimum period of good conduct shall be three years; and

21 (3) Where the most serious crime of which the individual was convicted is a  
22 criminal offense where the penalty of imprisonment exceeds five years, the minimum period of

1 good conduct shall be five years.

2 (d) Such minimum period of good conduct by the individual shall be measured either  
3 from the date of the payment of any fine imposed upon an individual or the suspension of  
4 sentence, or from the date of his or her sentence.

5 (e) If an individual, who has been issued a certificate of good standing by the  
6 Department of Corrections, is arrested, the Department has the discretion to either temporarily or  
7 permanently revoke the individual's certificate of good standing.

8 (f) If an individual is convicted of a crime after being issued a certificate of good  
9 conduct, the Department must revoke the individual's certificate of good standing. The  
10 individual may reapply for a certificate of good standing following the standards set forth in  
11 subsection (a), (b), and (c) above.

12 (g) A person who knowingly uses or attempts to use a revoked certificate of good  
13 standing in order to obtain or to exercise any right or privilege that he would not be entitled to  
14 obtain or to exercise without a valid certificate shall be guilty of a misdemeanor.”.

15 (h) No certificate issued under this section shall be deemed or construed to be a pardon.

16 Sec. 5. Fiscal impact statement.

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

20 Sec. 6. Effective date.

21 This act shall take effect following approval by the Mayor (or in the event of veto by the  
22 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as

1 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December  
2 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of  
3 Columbia Register.