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CRIMINAL RECORDS & EMPLOYMENT IN WASHINGTON, DC:

What You Need To Know About Your Rap Sheet, And Your Right To A Job in Washington, DC

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CRIMINAL RECORDS AS A BARRIER TO EMPLOYMENT

TABLE OF CONTENTS

INTRODUCTION. WHY YOUR CRIMINAL RECORD IS IMPORTANT.....	IV
WHY IS MY CRIMINAL RECORD IMPORTANT?.....	IV
WHAT CAN THIS MANUAL DO TO HELP ME?	IV
CHAPTER 1: YOUR CRIMINAL RECORD AND HOW TO GET IT.	1
1.1 DO I HAVE A CRIMINAL RECORD?.....	1
1.2 WHAT IS ON MY CRIMINAL RECORD?	1
1.3 WHERE DO I GET A COPY OF MY CRIMINAL RECORD?.....	1
TABLE 1: SUMMARY OF HOW TO OBTAIN YOUR CRIMINAL RECORD	1
1.4 HOW TO GET YOUR METROPOLITAN POLICE DEPARTMENT CRIMINAL RECORD.....	2
A. <i>What Information Does The MPD Have?</i>	2
B. <i>How Do I Get My MPD Record?</i>	2
1. Getting Your MPD Criminal Record In Person.....	2
TABLE 2: MPD ADDRESS AND CONTACT INFORMATION.....	2
2. Getting Your MPD Criminal Record By Mail.....	3
FORM 1: MPD CRIMINAL HISTORY REQUEST FORM/MPD CRIMINAL HISTORY RECORD & INSTRUCTIONS	4
SAMPLE LETTER 1: LETTER TO REQUEST CRIMINAL RECORD FROM THE D.C. METROPOLITAN POLICE DEPARTMENT.....	6
1.5 HOW TO GET YOUR D.C. SUPERIOR COURT CRIMINAL RECORD.....	7
A. <i>What Information Does Superior Court Have?</i>	7
B. <i>How Do I Get My Superior Court Record?</i>	8
1. Getting Your Superior Court Record In Person.....	8
TABLE 3: SUPERIOR COURT ADDRESS AND CONTACT INFORMATION.....	8
2. Getting Your Superior Court Record By Mail.....	9
SAMPLE LETTER 2: SAMPLE LETTER TO D.C. SUPERIOR COURT	9
SAMPLE RECORD 2: SAMPLE SUPERIOR COURT RECORD	10
SAMPLE RECORD 3: SAMPLE SUPERIOR COURT COUNT DETAILS	11
1.6 HOW TO GET YOUR DISTRICT COURT RECORD.....	12
A. <i>What Information Does The District Court Have?</i>	12
B. <i>How Do I Get My District Court Record?</i>	12
1. Getting Your District Court Docket Sheets In Person.....	12
TABLE 4: DISTRICT COURT ADDRESS AND CONTACT INFORMATION	12
2. Getting Your District Court Docket Sheets By Mail.....	13
SAMPLE LETTER 3: SAMPLE LETTER TO U.S. DISTRICT COURT	13
1.7 HOW TO GET YOUR FEDERAL BUREAU OF INVESTIGATION RECORD.....	14
A. <i>What Information Does The FBI Have?</i>	14
1. How Do I Get My FBI Record?.....	14
SAMPLE LETTER 4: SAMPLE LETTER TO FBI.....	15
1.8 OTHER WAYS TO GET YOUR CRIMINAL RECORD.....	16
CHAPTER 2: HOW TO CLEAN UP YOUR CRIMINAL RECORD.	17
2.1 READING YOUR RECORD.....	17
TABLE 5: SUMMARY OF HOW TO CLEAN UP YOUR CRIMINAL RECORD	17
2.2 CORRECTING MISTAKES ON YOUR RECORD.....	18
A. <i>How Do I Know If There Is A Mistake On My Record?</i>	18
B. <i>How Can I Fix The Mistake On My Record?</i>	18
2.3 SEALING AN ARREST RECORD.....	20
A. <i>Can I Seal My Arrest Record?</i>	20
B. <i>How Do I Seal My Arrest Record?</i>	21
TABLE 6: U.S. ATTORNEY'S OFFICE ADDRESS AND CONTACT INFORMATION.....	23
2.4 EXPUNGING A CRIMINAL CONVICTION.....	24

A.	Can I Expunge Something From My Record?	24
2.5	SEALING YOUR JUVENILE RECORD	26
A.	How Do I Know If I Was Tried As A Juvenile?	26
B.	Can I Seal My Juvenile Record?	26
	TABLE 7: FAMILY DIVISION ADDRESS AND CONTACT INFORMATION	27
C.	How Do I Seal My Juvenile Record?	27
	TABLE 8: D.C. CORPORATION COUNSEL ADDRESS AND CONTACT INFORMATION	28
2.6	SETTING ASIDE CONVICTIONS UNDER THE YOUTH REHABILITATION ACT	29
A.	How Do I Know If I Was Sentenced Under The YRA?	29
B.	Can I Have My YRA Conviction Set Aside?	29
2.7	GETTING A PARDON.	31
	TABLE 9: OFFICE OF THE PARDON ATTORNEY ADDRESS AND CONTACT INFORMATION	31
CHAPTER 3: CAN AN EMPLOYER CHOOSE NOT TO HIRE ME OR FIRE ME BECAUSE I HAVE A CRIMINAL RECORD?		32
3.1	WHAT ARE EMPLOYERS ALLOWED TO ASK ON A JOB APPLICATION OR IN AN INTERVIEW?	33
3.2	A CRIMINAL RECORD CAN BAR YOU FROM JOBS IN CERTAIN FIELDS.	33
3.3	LICENSING REQUIREMENTS AND CRIMINAL RECORDS	35
3.4	THE BIG QUESTION: WHAT TO PUT ON A JOB APPLICATION	35
3.5	HOW TO EXPLAIN YOUR CRIMINAL RECORD ON A JOB INTERVIEW	37
3.6	ONCE YOU ARE ON THE JOB	38
CHAPTER 4: WHAT TO DO IF YOU HAVE BEEN DENIED A JOB, FIRED OR DENIED A PROMOTION BECAUSE OF YOUR CRIMINAL RECORD		39
4.1	ENFORCING YOUR RIGHTS IF YOU HAVE BEEN DISCRIMINATED AGAINST BECAUSE OF YOUR CRIMINAL RECORD	39
4.2	FAIR CREDIT REPORTING ACT	40
APPENDIX 1. OTHER STATES' RESOURCES		43
APPENDIX 2. GLOSSARY		43
APPENDIX OF FORMS		1
	SAMPLE MOTIONS 1 & 2: MOTION TO SEAL RECORDS & CERTIFICATE OF SERVICE	1
	SAMPLE MOTION 3: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SEAL RECORDS	2
	SAMPLE MOTIONS 4 & 5: ORDER TO SEAL RECORDS & MOTION TO PROCEED <i>IN FORMA PAUPERIS</i> 3	
	SAMPLE MOTIONS 6 & 7: MOTION TO EXPUNGE RECORDS OF DRUG POSSESSION CONVICTION & CERTIFICATE OF SERVICE	4
	SAMPLE MOTIONS 8 & 9: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE RECORDS OF DRUG POSSESSION CONVICTION & ORDER	5
	SAMPLE MOTIONS 10 & 11: MOTION TO EXPUNGE RECORDS OF CHILD KIDNAPPING CONVICTION & CERTIFICATE OF SERVICE	6
	SAMPLE MOTIONS 12 & 13: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE RECORDS OF CHILD KIDNAPPING CONVICTION & ORDER	7
	SAMPLE MOTIONS 14 & 15: JUVENILE RULE 118(b) MOTION TO SEAL JUVENILE RECORDS & NOTICE OF MOTION TO SEAL JUVENILE RECORDS	8
	SAMPLE MOTION 16: JUVENILE RULE 118(b) ORDER TO SEAL JUVENILE RECORDS	9
	SAMPLE MOTIONS 17 & 18: JUVENILE RULE 118(a) MOTION TO SEAL JUVENILE RECORDS & NOTICE OF MOTION TO SEAL JUVENILE RECORDS	10
	SAMPLE MOTION 19: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF 118 (a) MOTION TO SEAL RECORDS	11
	SAMPLE MOTION 20: JUVENILE RULE 118(a) ORDER TO SEAL JUVENILE RECORDS	12
	SAMPLE MOTIONS 21 & 22: MOTION TO SET ASIDE CONVICTION & CERTIFICATE OF SERVICE	13
	SAMPLE MOTION 23: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SET ASIDE CONVICTION	14
	SAMPLE MOTION 24: ORDER TO SET ASIDE CONVICTION	15

Introduction. Why Your Criminal Record Is Important.

This Manual discusses the law in Washington D.C. If you have a criminal record in another state, see Appendix ___ at the back of the Manual for information about additional resources in other states.

Why Is My Criminal Record Important?

Your criminal record can have a major impact on your life long after you were arrested, convicted or served time for an offense. In particular, having a criminal record can make getting a job harder. Many employers ask about your criminal record, and some employers make hiring and firing decisions based on what is in your criminal record. ***If you have a criminal record, you need to know what is in that record.*** Knowing your rights and knowing what is on your record can help you get and keep a job.

What Can This Manual Do To Help Me?

This Manual is intended to help you deal with any employment issues related to your criminal record.¹ This Manual will give you the tools you need to:

- Get and understand your criminal record;
- Clean up any mistakes;
- Seal, expunge or set aside cases that can be removed from your criminal record;
- Know your rights and your employer or potential employer's responsibilities; and
- Answer tough questions from an employer or potential employer about your criminal past.

While reading this Manual, if you see any words or terms that you do not understand, refer to the Glossary in Appendix 1 at the back of the Manual for an explanation.

¹ We would like to acknowledge and express our gratitude to the following organizations and individuals whose assistance and support have made this handbook possible: Americorps/VISTA, the National Association for Public Interest Law, the Legal Action Center, Ivy Lange, the individuals who were interviewed to provide information for this handbook, and especially, the District of Columbia Public Defenders Office whose guidance was essential in drafting this handbook.

Chapter 1: Your Criminal Record And How To Get It.

1.1 Do I Have A Criminal Record?

If you have ever been arrested in the District of Columbia, you have a D.C. criminal record. It does not matter whether or not you were convicted.

1.2 What Is On My Criminal Record?

The following information will almost always be in your criminal record:

- ✓ All arrests and offenses (other than traffic offenses) even if you were never convicted.
- ✓ Information explaining why you were arrested and how the matter was resolved.
- ✓ Any warrants for your arrest.
- ✓ Any protective orders from domestic disputes.

1.3 Where Do I Get A Copy Of My Criminal Record?

There are four different places where you can get your D.C. criminal record: the D.C. Metropolitan Police Department (MPD), the D.C. Superior Court, the D.C. federal District Court, and the Federal Bureau of Investigation (FBI). Each keeps different information about your criminal record and has different procedures for getting that information. Where you go to get your record depends on what information you need, how much time you have, whether you are able to go in person, and how much money you can afford to spend. ***Although some places allow you to obtain your criminal record by mail, it is faster and easier to get it in person.*** Here is a quick summary of this Chapter to help you make your decision:

TABLE 1: SUMMARY OF HOW TO OBTAIN YOUR CRIMINAL RECORD

	MPD	Superior Court	District Court	FBI
Information	MPD records only contain information regarding D.C. arrests that led to convictions.	Superior Court records only have information regarding matters heard in Superior Court.	District Court records only have information regarding matters heard in District Court.	FBI records have the most information, including arrests and outcomes from all states.
Time	You can get your MPD record the same day if you go in person or in 3 weeks by mail.	You can get your Superior Court record the same day if you go in person or in 2-4 weeks by mail.	You can get your District Court record the same day if you go in person or in 2-4 weeks by mail.	FBI records can only be obtained by mail and take 2-6 weeks.
Cost	\$5 for the record plus \$2-5 for the notary fee and \$24 for a set of fingerprints if you do a fingerprint search.	The record search is free but copies are 10 cents a page.	The record search is free but copies are 50 cents a page.	The FBI search costs \$18 and requires fingerprints, which cost \$24.

1.4 How To Get Your Metropolitan Police Department Criminal Record.

You can get a copy of your criminal record from the D.C. Metropolitan Police Department (MPD) either by going to MPD Headquarters in person or by requesting it through the mail. The MPD can search your criminal records either by your name or by your fingerprints. A fingerprint search is more accurate, but also more expensive because of the cost of having your fingerprints taken. You can have your fingerprints taken at the MPD for \$24.

A. What Information Does The MPD Have?

The D.C. Metropolitan Police Department is required by law to keep and make available "Arrest Records" containing the following information:

- Date of all arrests in the District of Columbia that led to convictions for the last 10 years. Arrests that did not lead to a conviction and arrests in any other state, including Virginia and Maryland, are not included. In addition, juvenile records and any records that has been sealed or expunged will not be included. See Chapter 2.3, 2.4, and 2.5 for more information on sealing, expungement, and juvenile records.
- The name of the police officer who arrested you.
- The "charge"—in other words, why you were arrested.
- The disposition of the matter—in other words, what was the final decision on the charge—including the sentence or circumstances of release.

See D.C. Code §§ 5-113.01, 113.06 (2001); see also D.C. Code § 2-1402.66 (2001).

B. How Do I Get My MPD Record?

1. Getting Your MPD Criminal Record In Person.

You can go to the MPD Headquarters in person to get a copy of your criminal record. It will take about 40 minutes. Here is where to go:

TABLE 2: MPD ADDRESS AND CONTACT INFORMATION

Room 3055 (Third Floor) D.C. Metropolitan Police Department Headquarters 300 Indiana Ave. N.W. Washington, D.C. 20001 <u>Phone Number:</u> (202) 727-2228 <u>Metro:</u> Judiciary Square (Red Line) or Archives/Navy Memorial (Green, Yellow, Blue and Orange Lines) <u>Bus:</u> D1, D3, D6 (Sibley Hospital-Stadium-Armory Line), 30, 32, 34, 35, 36 (Pennsylvania Ave. Line), 52, 54 (14 th St. Line), 71 (Brightwood-Petworth, Georgia Ave.-7 th St. Line), A9 (S. Capitol St. Line), V5 (Fairfax Village-L'Enfant Plaza Line), or V7, V8, V9 (Minnesota Ave.-M St. Line) <u>Hours:</u> Monday through Friday from 9:00 a.m. to 6:00 p.m. and until 8 p.m. on Wednesdays
--

You must have all of the following information with you or the MPD will not give you a copy of your criminal record:

- ✓ A picture ID, such as a driver's license, with a current or recent address ***or*** your birth certificate and Social Security card.
- ✓ A \$5 money order made out to the D.C. Treasurer.
- ✓ Your fingerprint card (only if you are requesting a fingerprint search)

***** NOTE *****

IF THERE IS AN OUTSTANDING ARREST WARRANT ON YOUR RECORD, YOU WILL BE ARRESTED WHILE YOU STAND IN LINE AT MPD HEADQUARTERS

You will have to fill out a MPD Criminal History Request Form like the one on page 4. Your MPD criminal history will look like the Sample MPD Record on page **Error!**
Bookmark not defined..

2. Getting Your MPD Criminal Record By Mail.

On page 6, there is a sample letter requesting a MPD criminal record. If you your letter looks like the sample letter and you include all the necessary information, the MPD will mail you your criminal record in about 3 weeks. ***You must include all the necessary information and a \$5 money order and have the letter notarized or the MPD will not send you your record.*** This is what you need:

- ✓ Your full name and the name you used when you were arrested (if different).
- ✓ Your current address.
- ✓ Your date of birth, including the year.
- ✓ Your social security number.
- ✓ The place where you were born, including the state and/or country—e.g., Washington, DC, USA or Landover, MD, USA or San Salvador, El Salvador.
- ✓ Your race—e.g., Caucasian (white) or African-American.
- ✓ Your telephone number and/or e-mail address in case the MPD has trouble locating your record and needs to ask you for additional information.
- ✓ A \$5 money order made out to the D.C. Treasurer. ***Do not*** send cash or a check.
- ✓ A self-addressed, stamped envelope for MPD to mail your record back to you in.
- ✓ Your fingerprint card (only if you are requesting a fingerprint search).
- ✓ Your notarized signature on the finished letter. A notarized signature is like testifying in court under oath. Basically, you are swearing that everything you say in the letter is true to the best of your knowledge. To have your letter notarized, you must sign it in front of a Notary Public and pay a \$2 to \$5 fee. You can find a Notary Public in the phone book under "Notary Public" or you can go to the D.C. Public Defender's Service at 451 Indiana Avenue, N.W. or call (202) 626-1200.

FORM 1: MPD CRIMINAL HISTORY REQUEST FORM/MPD CRIMINAL HISTORY RECORD & INSTRUCTIONS

On the following page is a blank copy of the MPD Criminal History Request form that you will use to obtain a copy of your criminal record from the MPD if you visit the MPD in person. They will have copies there. Although you do not need to use this form to request your record by mail, including a completed copy with your letter may allow the MPD to process your request faster. Here is what you need to do to fill out the form:

1. You Must Fill Out These Boxes:

- "Date of Request": The day you are filling out the form.
- "Request Record of": Your name, with you *last name first*, followed by your first and middle name—e.g., "Doe, John Gerald."
- "Address": Your current address. If you have room, write in your phone number so that they can call you if they have any questions.
- "Sex": Male or female.
- "Race": For example, African-American, Caucasian, or Hispanic.
- "Birthdate": The day on which you were born, including the year.
- "Place of Birth": Where you were born, including the state and country—e.g., "Washington, D.C., U.S.A." or "Bethesda, MD, U.S.A." or "San Salvador, El Salvador."
- "Purpose of Request": In most cases, you will be requesting for "Employment/Licensing" so you should check that box. If you need a criminal record for a foreign visa, check the "Visa" box. If you need a criminal record for any other reason (like a housing application) check the "Challenge" box and write in the reason for your request in neat, small writing next to it.
 - "Method of Request": Check either "Mail" or "In Person." Despite what the form says, you cannot request this information over the phone. The boxes "NLET" and "Telephone" are for law enforcement use only.
 - "D.C. CODE §1-2530 IS QUOTED HERE FOR YOUR INFORMATION": Read this text and sign and date the form to officially request your record.
 - "RESULTS OF CRIMINAL HISTORY FILE SEARCH": Check the appropriate box, depending on whether you are requesting a "Name Search" or a "Fingerprint Search." As discussed above, a fingerprint search is more accurate but getting fingerprinted is more expensive.

2. It Will Help If You Can Fill Out These Boxes:

- "MP PDID Number": This stands for "Metropolitan Police, Police Department Identification Number." D.C. Superior Court uses this number to track your criminal history. See page 7. If you already have your PDID number, including it on this form may get you your record faster.

3. Do Not Fill Out These Boxes:

- "Requesting Agency"
- "Call- Back Number"
- "Signature of Agent"
- "Badge No."
- "SUBJECT UNDER ARREST" and "CORRECT COLOR CODE" boxes
- "Request Received By"
- "Date and Time Received"
- "Date and Time Returned"
- "Date of Arrest," "Charge(s)," and "Disposition": This section is filled out by MPD. They may give you a separate piece of paper with your record printed out on it instead of filling out these boxes. See the Glossary and the Sample Superior Court Record for an explanation of anything you do not understand in your completed record.
- "Documents Released": These are the documents that the MPD will give you with your criminal record. Usually, you will get your Criminal History Record and your Fingerprints. Prosecution Reports and Photographs are only released to law enforcement.
- "Date of Record Search"
- "Records Searched By"
- "Release Authorization"

Date of Request		METROPOLITAN POLICE DEPARTMENT Washington, D, C, CRIMINAL HISTORY REQUEST		MP PDID Number	
Request Record of: (Last, First, Middle Name)				Purpose of Request (check one)	
Address				<input type="checkbox"/> Law Enforcement Purposes (not for employment)	
Sex	Race	Birthdate	Place of Birth		
Requesting Agency			Call-Back Number		
Signature of Agent			Badge No.		Method of Request (check one)
IDENTIFICATION AND RECORDS DIVISION USE ONLY -(Check if applicable)					
<input type="checkbox"/> SUBJECT UNDER ARREST		<input type="checkbox"/> CORRECT COLOR CODE			
Request Received By		Date and Time Received		Date and Time Returned	
<input type="checkbox"/> Mail					
<input type="checkbox"/> In Person					
<input type="checkbox"/> NLET					
<input type="checkbox"/> Telephone					
D.C. CODE §1-2530 IS QUOTED HERE FOR YOUR INFORMATION					
It shall be an unlawful practice, punishable by a fine of not more than three-hundred dollars (\$300.) or imprisonment for not more than ten (1) days, or both, for any person to require the production of an arrest record or any copy, extract, or statement thereof, at the monetary expense of any individual to whom such record may relate. Such "arrest records" shall contain only listings of convictions and forfeitures of collateral that have occurred within ten (10) years of the time at which such record is requested. <i>(Dec. 13, 1977, D.C. Law 2-38, Title II, §266, 24 DCR 6038).</i>					
*I hereby authorize the release of my adult arrest record revealing convictions and forfeitures <i>within the past ten (10) years.</i>					
_____				_____	
Signature				Date	
RESULTS OF CRIMINAL HISTORY FILE SEARCH					
				<input type="checkbox"/> Name Search <input type="checkbox"/> Fingerprint Search	
TO: Criminal History Users					
This request concerns information whose collection, dissemination, and use are conditioned and restricted by applicable federal and District of Columbia statutes, and policy of the Metropolitan Police Department.					
Continued assistance by this department is conditioned upon your strict adherence to these regulations.					
<u>WARNING TO APPLYING AGENCIES:</u> The Metropolitan Police Department does not guarantee either the accuracy of the record or that the individual whose record is furnished is actually the same individual whose record was requested. To obtain accuracy, the record of the Court involved should be examined. Positive identification can only be determined by comparable fingerprints. Record of arrest obtained from the Metropolitan Police Department as detailed on this form are for convictions and forfeitures for the past 10 years prior to the date of request of this record, exclusive of periods of imprisonment, if any. This record does not reflect any cases which may be currently pending before the Courts or cases where convictions have been set aside pending appeals.					
CHIEF OF POLICE					
Date of Arrest	Charge(s)			Disposition	
Documents Released:					
<input type="checkbox"/> Criminal History Record		<input type="checkbox"/> Photograph		<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Prosecution Report		<input type="checkbox"/> Fingerprints		<input type="checkbox"/> Other: _____	
Date of Record Search	Records Searched By		Release Authorization		

SAMPLE LETTER 1: LETTER TO REQUEST CRIMINAL RECORD FROM THE D.C. METROPOLITAN POLICE DEPARTMENT

June 21, 2001

Metropolitan Police Headquarters
Mail Correspondence
300 Indiana Ave. NW.
Room 3055
Washington, D.C. 20001

To Whom It May Concern:

I am writing to request a police clearance for myself. I am including substantial personal information to aid you in an accurate search for my record.

My Name: John G. Doe
Birth Date: 01-24-1977
Social Security Number: 111-22-3333
Place of Birth: Washington, D.C., U.S.A.
Race: African-American
My address is: 1234 Some St., N.E.
Washington, D.C. 12345

Also Include:

- ✓ A Money Order for \$5.00 made out to the D.C. Treasury (*not* cash or check)
- ✓ A self-addressed, stamped envelope. See sample below.

My phone number is 202-345-6789 and my email is Jdoe@home.com in case you have any questions.

Thank you for your prompt attention to this matter.

Sincerely,

John G. Doe

I hereby certify that I have written this letter and that all of the information provided is true to the best of my knowledge.

State of District of Columbia
County of District of Columbia
Signature _____

Subscribed and sworn to before me this ____ day of _____, 2001.

Notary Public (Seal must be affixed)

Notary Public:

You must "notarize" your letter by signing it in front of a person called a Notary Public. To find a Notary Public, see the information on the previous page.

John G. Doe
1234 Some St., NE
Washington, D.C. 12345

John G. Doe
1234 Some St., NE
Washington, D.C. 12345

1.5 How To Get Your D.C. Superior Court Criminal Record.

In the District of Columbia, there are two kinds of trial courts: D.C. court (Superior Court) and federal court (District Court). Each court keeps its own records and will not have records of cases heard in the other court. Unless you were charged as part of a drug ring or other federal crime, you probably only have records in Superior Court.

Police Department Identification (PDID) Number

In order to get your records from the Superior Court, you *must* have your PDID number *or* your name and birthdate (including the year). If you ask nicely, you may be able to get your PDID number from the Clerk at the Criminal Information Center over the phone at (202) 879-1373 or (202) 879-4789.

A. What Information Does Superior Court Have?

The D.C. Superior Court keeps track of all of your arrests and convictions that were dealt with in Superior Court. Superior Court keeps three types of records:

- (1) **Criminal Records.** These records list all of your arrests and the status of any charges stemming from those arrests. They are kept on the computer if they happened after 1978. If an arrest occurred prior to 1978, you will have to request the paper file. A sample Superior Court criminal record appears on page 10. Superior Court criminal records include the following information:
 - Arrests, whether or not they resulted in convictions.
 - The status and disposition of any charges—in other words, what happened or is happening to that charge.

- (2) **Count Details.** These are records that list the details for each of the cases on your criminal record. Count Details are also on the computer so for pre-1978 charges you must request the paper Case Jacket (see below). A sample Superior Court Count Details appears on page 11. The Count Details contain important information about your case, including:
 - The name of your case—for example, "United States v. John G. Doe."
 - The name of the judge in your case.
 - The full name of the charge against you—for example, "first degree assault."
 - The plea you made in court—for example, "Guilty" or "Not Guilty."
 - The full disposition of the case, including dates and your sentence or fine.
 - The file number of the police report, which is called the Criminal Case Report or CCR number. If you see a mistake on your record that cannot be explained by the Count Details, you can go to the MPD at the address above and request the actual police record using the CCR number.
 - The badge number of the police officer who arrested you.

- (3) **Case Jackets.** For each case against you, there will be a Case Jacket, which will contain the same information as the Court Details plus any motions or other papers relating to your case. Looking at the Case Jacket is a good way to see what is happening in an "Open" case—in other words, a case that is not finished.

B. How Do I Get My Superior Court Record?

1. Getting Your Superior Court Record In Person.

You can get a copy of your D.C. criminal record from Superior Court *for free* by going to the Court in person. Here is where to go:

TABLE 3: SUPERIOR COURT ADDRESS AND CONTACT INFORMATION

Criminal Information Center, Room 4001 (Fourth Floor)
D.C. Superior Court
500 Indiana Avenue, N.W.
Washington, D.C. 20001
Phone Number: (202) 879-1373
Metro: Judiciary Square (Red Line) or Archives/Navy Memorial (Green, Yellow, Blue and Orange Lines)
Bus: D1, D3, D6 (Sibley Hospital-Stadium-Armory Line), 30, 32, 34, 35, 36 (Pennsylvania Ave. Line), 52, 54 (14th St. Line), 71 (Brightwood-Petworth, Georgia Ave.-7th St. Line), A9 (S. Capitol St. Line), V5 (Fairfax Village-L'Enfant Plaza Line), or V7, V8, V9 (Minnesota Ave.-M St. Line)
Hours: Monday through Friday from 9:00 a.m. to 4:00 p.m.

You must know or bring with you the following information or Superior Court will not give you a copy of your criminal record:

- ✓ Your PDID number *or* your full name and birth date (including the year).

To get your record, do the following:

- (1) Either ask the Clerk for your record or use one of the computers in the room. The computers only have information after 1978. If you need information from before 1978, you must ask the Clerk, fill out a form, and come back in a few days. The old records are kept in storage and take some time to find.
- (2) The Clerk or the computer will need your PDID number or your name and birthdate to find your criminal record. If you use the computer, the Clerk will print a copy of your record for you if you ask.
- (3) Once you have found your record, you can use the case numbers to obtain Court Details from the computer and/or Case Jackets from the Clerk. The Case Jackets for "Open" cases can be obtained from Rooms 4010 (misdemeanors) or 4000 (felonies) and those for "Closed" cases from Room 4001. The Sample Superior Court Criminal Record on page 10 will show you how to locate the case numbers and help you determine if your case is "Open" or "Closed."
- (4) There is a copying charge of 10 cents per page for Case Jackets and pre-1978 records.

2. Getting Your Superior Court Record By Mail.

Below, there is a sample letter requesting a Superior Court criminal record. If your letter looks like the sample letter and you include all the necessary information, you will get your criminal record from Superior Court in 2-4 weeks. You cannot obtain pre-1978 records by mail.

SAMPLE LETTER 2: SAMPLE LETTER TO D.C. SUPERIOR COURT

June 28, 2001

D.C. Superior Court
Criminal Information Center
500 Indiana Avenue
Room 4001
Washington, D.C. 20001

To Whom It May Concern:

I would like to request a copy of my criminal record from your office. Please find below my name, PDID Number, date of birth, and address.

Name: John G. Smith
PDID: 0101
Date of Birth: 01/24/1977
Address: 12 Some St., NE
Washington, DC 12345

Please send me a copy of my record to the above address as quickly as possible.

Thank you for your assistance.

Sincerely,

John G. Smith

Police Dept. Identification Number: This number is used to track and file your charges.

✓ Charge: If you do not understand the court's abbreviation of the charge, ask the clerk, an attorney, or a parole officer.
 ✓ Offense Date: The date on which the offense happened.

SAMPLE RECORD 2: SAMPLE SUPERIOR COURT RECORD

MCIS055
C1HXM

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL INFORMATION SYSTEM
SUMMARY BY PDID

DEFENDANT NAME: John Doe
PDID: 0000

06/19/01
PAGE:1

CASE NO	CHARGE	OFFENSE DATE	CONT/DISP DATE	BW	C/D	CONT/DISP
M0000003	A DEST PROP OVER 200	03 04 01	03 05 01		C	STATUS HEARING
D0000000	A DRINKING IN PUBLIC	01 25 00	02 01 00		D	NO PAPERED
F0000001	A POS. F/A DURING VI	08 03 98	07 08 99		D	DISMISSED
F0000001	B * ARMED BURGLARY II	08 03 98	10 21 99		D	CONFINEMENT ONLY
F0000001	C * 1ST DEG ASSAULT/BAT	08 03 98	07 13 99		D	VERDICT GUILTY
00000000	SEALED AND EXPUNGED					
S0000002	A FUGITIVE FROM JUSTI	08 22 83	06 11 86	*	D	DISMISSED

BW:
The * means that a bench warrant has been issued for your arrest on that charge and *you can be arrested on the spot.*

Conviction: The * means that you were convicted of this offense.

Case Number: The first letter of the case numbers tells you what kind of case it is.

- M—Misdemeanor
- F—Felony
- D—Domestic Dispute
- S—Special Proceeding (usually domestic dispute in another state)

Same Incident or New Incident: This letter tells you whether the charge is part of the same incident as the charge above or below it or whether it is from a new incident. For example:

- A—First Charge From First Incident
- B—Second Charge From First Incident
- C—Third Charge From First Incident

✓ Cont/Disp Date: The date on which the court heard the charge against you.
 ✓ C/D: This stands for "Continued or Disposed."
 • "D" means that the court "disposed of" your case by convicting you, dismissing the case, etc. and the case is "Closed." Look at the "Cont/Disp" column to see what happened. If your case is "Closed," ask the Clerk in Room 4001 for the Case Jacket. If your case is old, you may have to come back in a few days because the Case Jacket is in storage.
 • "C" means that the court "continued" your case by deciding to hear it later. If you have a "C," look for a newer line with a "D" that will tell you how that charge was "disposed of." Because a "Continued" case is an "Open" case, you can request the Case Jacket from the Clerk in Room 4010 (misdemeanors) or 4000 (felonies) and look at what has been filed on the case and what the results of motions have been.
 ✓ Cont/Disp: This tells you what the court decided. If you do not understand what is on this line, ask the clerk, an attorney, or a parole officer.

SAMPLE RECORD 3: SAMPLE SUPERIOR COURT COUNT DETAILS

Police Dept. Identification Number: This number is sued to track and file your charges.

Charge: If you do not understand the court's abbreviation of the charge, ask the clerk, an attorney, or a parole officer.

Police Badge No: The badge number of the officer who arrested you.

Offense, File & Judgment Date: The dates when the crime was committed, charges were filed against you, and the court made its decision. If there is no Judgment Date, then your case is still "open."

Case Number: The first letter of the case numbers tells you what kind of case it is: "M" means "Misdemeanor," "F" means "Felony," "D" means "Domestic Dispute," and "S" means "Special Proceeding," which is usually a domestic dispute in another state.

Case Name: The name of the case for this charge.

Judge: The name of the judge for your case.

CCR No: The file number of the police report or "Criminal Case Report." You can get to this report from the MPD using this number.

MCIS0504 C1HXM	SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CRIMINAL INFORMATION SYSTEM COUNT DETAILS		6/19/01
CASE NO: M 02386 01 C	UNITED STATES VS JOHN G. DOE		CASE AGE: 70
PDID: 0000	DOB: 01 01 81	JUDGE: SMITH, ANDREW A.	CAL: M10003
CHARGE: U023 DEST OF PROPERTY (MISD)	CCR NO: 0006794	NOI NO:	CITATION:
POLICE BADGE NO: P 614	PLEA: NOT GUILTY		JTWD:
OFFENSE DATE : 03 04 01	JUDGEMENT:		TRIAL TYPE:
FILE DATE : 03 05 01	JDGMT DT:		CONCUR:
ALT ST HRG DATE :	SENTENCE:		TYPE:
	COMMENT:		
CONTD DATE: 09 27 01	TIME: 0930	CONFINEMENT PERIOD :	/
CONTD FOR: STATUS HEARING	BY: F	FINE AMOUNT :	/
CONT RSN: DEF REQUESTS, ENTERS		OR CONFINEMENT :	/
SC GRAND JURY:		CONFINEMENT SUSPENDED:	/
SC GRAND JURY DATE:		ALT TIME SUSPENDED:	
DISPOSITION DATE :		FINE SUSPENDED:	
OTHER DISPOSITION:		PROBATION PERIOD:	
LAST UPDT DATE: 06 12 01	BY: C1SPF	VVCA AMT:	
NEXT:	CASE:	KEY:	
PF10 ==> RETURN TO CASE SUMMARY			

Plea: Whether you said you were innocent or guilty of the charges against you. Pleas of "Nolo Contendere" or "No Contest" are like pleading guilty.

All of this information tells you about what is currently happening with your case. Just like with your Superior Court Criminal Record, "Continued" means that the case is still "open" and "Disposition" means that it is "closed."

This information tells you about your sentence—in other words, what the court decided your punishment should be for this charge. You could have been sentenced to jail time or a fine. If this is blank, your case is still "open."

1.6 How To Get Your District Court Record.

As noted above, in D.C., there are two kinds of trial courts: D.C. courts (Superior Court) and federal courts (District Court). Each court keeps its own records and will not have records of cases heard in the other court. Unless you were charged as part of a drug ring or for some other federal crime, you probably only have records in Superior Court.

A. What Information Does The District Court Have?

The District Court—also called "United States District Court for the District of Columbia" or "federal court"—keeps track of your arrests and convictions from that particular court system. If your case was in District Court, you have a record in federal court but not necessarily at Superior Court. The District Court records are computerized back to 1991, and are on paper before that. District Court records include the following information:

- Arrests, whether or not they resulted in convictions.
- The status and disposition of any charges—in other words, what happened or is happening to that charge.
- The name of the judge who heard or is hearing the case.
- The names of any codefendants.

B. How Do I Get My District Court Record?

Because the District Court keeps criminal records—called "Docket Sheets"—based on cases instead of people, you must know the name for all of your cases. Generally, any cases in which you were involved will have your name in the title—for example, a case against John G. Smith would be called "United States v. Smith." However, if you were tried as part of a larger case—for example, a large drug ring prosecution—your name will probably not be in the case name. If you happen to have it, the Docket Number for your case will also work. You should request the "Docket Sheet" for each case.

1. Getting Your District Court Docket Sheets In Person.

You can get a copy of your Docket Sheets from the District Court for 50 cents a page by going in person. The District Court will not send copies of docket sheets by phone request, but you can call for information on your case.

TABLE 4: DISTRICT COURT ADDRESS AND CONTACT INFORMATION

Clerk's Office (First Floor) U.S. District Courthouse 333 Constitution Ave. NW Washington, D.C. 20001 <u>Phone Number:</u> 202-354-3120 <u>Metro:</u> Judiciary Square (Red Line) or Archives/Navy Memorial (Green, Yellow, Blue and Orange Lines) <u>Bus:</u> D1, D3, D6 (Sibley Hospital-Stadium-Armory Line), 30, 32, 34, 35, 36 (Pennsylvania Ave. Line), 52, 54 (14 th St. Line), 71 (Brightwood-Petworth, Georgia Ave.-7 th St. Line), A9 (S. Capitol St. Line), V5 (Fairfax Village-L'Enfant Plaza Line), or V7, V8, V9 (Minnesota Ave.-M St. Line) Hours: Monday through Friday from 9:00 a.m. to 4:00 p.m.
--

Wa

case. If your case was before the middle of 1991, your record is on microfiche and you will have to ask the Clerk for help. Once you have the Docket Number, you can get your Docket Sheet from the Clerk if your case is "Open"—in other words, still ongoing. If your case is "Closed," however, you will have to go the District Court's storage center in Suitland, Maryland. The Clerk can tell you how to get there and what you need to do once you are there.

2. Getting Your District Court Docket Sheets By Mail.

Below, there is a sample letter requesting a District Court Docket Sheet. If your letter looks like the sample letter and you include all the necessary information, you will get copies of your Docket Sheets from the District Court in 2-4 weeks. ***You must include all the necessary information or the District Court will not send you your Docket Sheets.*** This is what you need:

- ✓ The case name (usually this will be "United States v. Your Name") or the Docket Number.
- ✓ Your current address.

SAMPLE LETTER 3: SAMPLE LETTER TO U.S. DISTRICT COURT

June 28, 2001
Clerk's Office U.S. District Courthouse 333 Constitution Ave. NW Washington, D.C. 20001
To Whom It May Concern:
I would like to request a copy of the Docket Sheets for the following case or cases in which I was or am a defendant:
United States v. John G. Smith, Docket No. 12345
Please send these documents to me at the following address as quickly as possible:
John G. Smith 12 Some Street, NE Washington, DC 12345
Thank you for your assistance.
Sincerely,
<hr style="width: 20%; margin-left: 0;"/> John G. Smith

1.7. How To Get Your Federal Bureau of Investigation Record.

A. What Information Does The FBI Have?

The FBI keeps a list of all of your arrests and convictions in the United States, including those in D.C. The FBI is a good place to get your record if you have ever been arrested or convicted anywhere other than D.C. The FBI keeps track of juvenile records only if you committed two separate acts that would have been violent felonies if done by an adult or a single such act if you were 13 or older or any acts of drug distribution. See 18 U.S.C. §§ 5032, 5038(f) (2000).

1. How Do I Get My FBI Record?

The only way to get a copy of your FBI criminal record is by mail. You can call the FBI at (304) 625-3878 for specific questions about getting your record but they will not send your record without a written request. On the page 15, there is a sample letter requesting a FBI criminal record. If your letter looks like the sample letter and you include all the necessary information, the FBI will send your criminal record in 2-6 weeks. ***You must include all the necessary information and a money order for \$18 and your fingerprints or the FBI will not send you your record.*** This is what you need:

- ✓ Your full name.
- ✓ Your date of birth (including the year).
- ✓ Your place of birth (including the state and country)—for example, Washington, DC, USA or Landover, MD, USA or San Salvador, El Salvador.
- ✓ Your return address.
- ✓ A set of rolled-inked fingerprints. You can get fingerprints from the MPD for \$24. See page 2 for more information.
- ✓ A money order for \$18 payable to "Treasurer of the United States." If you cannot afford to pay \$18, you must send a notarized affidavit stating that you are unable to pay. See notary information on page 3. However, preparing and notarizing the affidavit will cost you \$2-5 plus travel costs to and from the Notary Public.

SAMPLE LETTER 4: SAMPLE LETTER TO FBI

June 21, 2001

FBI
CJIS Division, Attn: SCU, Mod. D-2
1000 Custer Hollow Rd.
Clarkburg, WV 26306

RE: FREEDOM OF INFORMATION ACT REQUEST

To Whom It May Concern:

This is a Privacy Act Request. I would like to receive a copy of my criminal record from the FBI. The following information should assist you in your search for my records.

Full Name: John G. Smith
Date of Birth: 12/24/1970
Social Security Number: 123-45-6789
Place of Birth: Bethesda, Maryland, U.S.A.

I have enclosed my fingerprints and a certified check or money order for \$18.00 made payable to the Treasurer of the United States. [Note: If you cannot afford the \$18.00 fee, you need to include a notarized affidavit stating you are unable to pay.]

Please send a copy of my criminal record to me at the following address:

2001 Some St., NE
Washington, DC 12345

Thank you in advance for your prompt reply.

Sincerely,

John G. Smith

"Privacy Act Request":

Write this both in the letter and on the envelope underneath your return address. See sample envelope below.

Also Include:

- A \$18 money order made out to "Treasurer of the United States" or a notarized affidavit that you are unable to pay.
- A set of fingerprints.

John G. Smith
2001 Some St., NW
Washington, DC 12345



PRIVACY ACT REQUEST

FBI
CJIS Division, Attn: SCU, Mod. D-2
1000 Custer Hollow Rd.
Clarkburg, WV 26306

1.8 Other Ways To Get Your Criminal Record.

You may be able to get a copy of your criminal record in other ways. For example, if you are currently involved in an "Open" case, your attorney can obtain a copy of your entire criminal record from the court. Also, your parole officer or probation officer might have access to your record and could make a copy for you. Finally, if you are incarcerated, your case manager can help you get your records by mail.

The Internet is also a good source for criminal records. You can use the Internet at public libraries or at the One-Stop Career Centers. Certain websites will collect your criminal record for a fee. However, not all websites have criminal records information for D.C. and websites can only report arrests for the past seven years. *See* 15 U.S.C. § 1681c(a)(2) (2000). They can, however, report convictions from more than seven years ago. *See id.* Some web sites that have D.C. records are:

<http://www.docusearch.com>
<http://www.amerusa-criminal-records.com>
<http://www.tracingamerica.com>
<http://www.secret-subject.com>

Chapter 2: How To Clean Up Your Criminal Record.

Now that you know what is in your criminal record, it is important to know how you can correct mistakes and make other changes to your criminal record. You may not be able to get certain jobs because of a specific arrest or criminal conviction on your record; however, if that arrest or conviction is removed—either by correcting a mistake or sealing or expunging the record—you may be able to apply for those jobs. So, it is important to take steps to correct mistakes, and to seal, expunge or set aside items from your criminal record whenever possible.

Because the correction of mistakes and the sealing, expungement, and setting aside of convictions in federal District Court always involves the filing of motions, *see* U.S. Dist. Ct. D.C. L. Cr. R. 49.1(h)(1), you will need a lawyer to assist you in altering your District Court record. If you have a federal District Court record, contact the Public Defender's Service at (202) 628-1200 or the D.C. Employment Justice Center at (202) 828-WORK (9675) for assistance. In addition, because the FBI automatically updates its records whenever a change is made somewhere else, you do not need to worry about correcting your FBI record. For these reasons, this Chapter focuses primarily on helping you clean up your MPD and Superior Court records.

2.1 Reading Your Record.

Using the sample criminal records in Chapter 1, the Glossary in the Appendix, and this Chapter, you should be able to determine whether your record contains mistakes or matters that can be sealed, expunged or set aside. If after consulting all of those sources you still do not understand something on your record, ask the Clerk where you got the record, a lawyer, your parole officer, your probation officer, or call the Public Defender's Service at (202) 628-1200 or the D.C. Employment Justice Center at (202) 828-WORK (9675).

This Chapter explains the different ways to clean up your record. Here is a quick summary of to help you figure out if you can change anything on your record:

TABLE 5: SUMMARY OF HOW TO CLEAN UP YOUR CRIMINAL RECORD

Things On Your Record That Can Be Cleaned Up	How To Clean Them Up
Clerical mistakes.	Prove to the record keeper that there is a mistake. <i>See</i> Chapter 2.2.
Arrest that did not result in a trial.	Seal the arrest. <i>See</i> Chapter 2.3.
A first-time misdemeanor drug possession conviction.	Expunge the conviction. <i>See</i> Chapter 2.4.
A first-time child kidnapping conviction.	Expunge the conviction. <i>See</i> Chapter 2.4.
Arrests or adjudications while you were under the age of 18.	Seal the juvenile records. <i>See</i> Chapter 2.5.
Conviction under the Youth Rehabilitation Act.	Set aside the conviction. <i>See</i> Chapter 2.6.
Any conviction.	Obtain a pardon. <i>See</i> Chapter 2.7.

2.2 Correcting Mistakes On Your Record.

A. How Do I Know If There Is A Mistake On My Record?

A mistake is something on your criminal record that is not correct. Sometimes a mistake is obvious—for example, there may be a felony on your record that you know you were not convicted of. Sometimes, however, it is hard to tell. Remember: An actual conviction that you disagree with is not a mistake. You should look for the following types of mistakes:

- **Incorrect Entries.** Is the date wrong? Is the charge listed not what you were actually charged with? Is the conviction listed not what you were actually convicted of? Make sure you read everything on your record carefully.
- **Incomplete Entries.** Every entry should have a "disposition." The disposition is what finally happened in your case. If you have a disposition, then your case is "closed." If you do not have a disposition, your case is "open." Examples of dispositions include "Dismissed" or "Convicted." "Continued" is not a disposition—a continued case is "open." Dispositions are important because: (1) when your employer or potential employer looks at your record, they may wrongly assume that you have been convicted of an "open" case; and (2) some dispositions can be sealed, expunged or set aside. Sealing, expunging and setting aside are discussed below at Chapter 2.3, 2.4 and 2.5.
- **Double Entries.** Make sure that no charge is listed twice. Double-listing can make your record seem longer than it is and scare away a potential employer. Compare all the information on the line with all the information on all other lines to make sure that nothing is has been double-listed. If the information is identical, then it is a double-listing. For example, this an incorrect double listing:

F012345	A	DISORDERLY CONDUCT	06/08/99	09/12/99	D	DISMISSED
F012345	A	DISORDERLY CONDUCT	06/08/99	09/12/99	D	DISMISSED

- **Cases That Should Be Sealed Or Expunged But Are Not.** If you have already sealed or expunged a case, your court record should look like the example below.

CASE NO	CHARGE	DATE	DATE BW	C/D	CONT/DISP
00000000	SEALED AND EXPUNGED				

- **Juvenile Cases.** No juvenile cases should ever appear on your record. If you see a date from before you turned 18, then that matter should not appear on your record unless you were tried as an adult. See Chapter 2.5 for more information on your juvenile record.
- **Bench Warrants.** If you see a "Bench Warrant" or "BW" listed on your record, you can be arrested at any time, including in the court building.

B. How Can I Fix The Mistake On My Record?

There are two types of mistakes: judicial mistakes (mistakes made by the judge) and clerical mistakes (mistakes made by anyone else). You may be able to correct a clerical mistake yourself, but you will need a lawyer's help to fix a judicial mistake because only a judge

can correct a judge's mistake. Because it is hard to tell a judicial mistake from a clerical mistake, the best thing to do is to follow the steps below until someone tells you that the mistake is judicial. At that point, talk to a lawyer. You can hire your own lawyer or contact the Public Defender's Service (PDS) at (202) 628-1200 or the D.C. Employment Justice Center (EJC) at (202) 828-WORK (9675) for help.

The procedure for correcting mistakes on your record is as follows:

- (1) **Show Proof of the Mistake To The Keeper of the Record.** You need to prove to the people who keep the record containing the mistake that there is a mistake. So, if the mistake is on a Superior Court record, talk to the Clerk at the Superior Court. If the mistake is on a MPD record, speak to someone in Room 3055. Proof of the mistake can be as simple as pointing out that something is listed twice or as complicated as showing that you had something on your record expunged. You can also request a correction by sending the proof and a letter by certified mail to the address listed in Chapter 1, but it is best to do this in person so that you can ask and answer questions. If the Clerk or other official refuses to correct your record, you will need to talk with a lawyer.
- (2) **Follow-Up.** If the Clerk or other official agrees to correct the mistake, call or check in person two weeks later to make sure that the change has been made. *Always get a copy of your corrected record.*
- (3) **Inform Everyone Who Has Your Criminal Record of the Correction.** To be on the safe side, you should also take or mail a copy the corrected record to everyone else who keeps criminal records. For example, if Superior Court corrects a mistake on your record, take a copy of the corrected record to the MPD and mail a copy to the FBI so that they can correct the mistake in their records. Always follow-up by calling or going to the office in person to make sure they have also corrected your record. Although you cannot follow-up with the FBI unless you request another copy of your FBI record, the FBI should automatically update its database and correct mistakes once they have been corrected in another system.

2.3 Sealing An Arrest Record.

Another option for cleaning up your criminal record is to "seal" certain arrests. "Sealing" means preventing anyone—even you—from seeing that part of your record without an order from a court. See D.C. Super. Ct. R. Cr. P. 118(f). *In the District of Columbia, an arrest that did not result in a trial can be sealed in certain circumstances.* See D.C. Super. Ct. R. Cr. P. 118; see also *District of Columbia v. Hudson*, 404 A.2d 175, 181 (D.C. 1979) (en banc). No other charges can be sealed. A sealed case will not appear on a MPD or FBI record and will look like this on a Superior Court criminal record:

CASE NO	CHARGE	DATE	DATE BW	C/D	CONT/DISP
00000000	SEALED AND EXPUNGED				

A. Can I Seal My Arrest Record?

You can only seal your record in regard to an individual arrest, not all arrests. You must also meet the following conditions:

- ✓ You were arrested in D.C. for an offense that occurred in D.C. See D.C. Super. Ct. R. Cr. P. 118(a); see also *Hudson*, 404 A.2d at 182.
- ✓ You were never tried for the offense—in other words, there was no trial and your criminal record says the charge was "Dismissed," "No Papered," or "Nolle Prosequi." See D.C. Super. Ct. R. Cr. P. 118(a); see also *Hudson*, 404 A.2d at 182.
- ✓ You filed a Motion to Seal Records before the deadline of:
 - ✓ 120 days from the dismissal of the charges against you *or*
 - ✓ 3 years from dismissal of the charges against you if you can show the court that there is "good cause" for an extension and that "manifest injustice" will result if you are not given an extension *or*
 - ✓ Anytime if the government does not object to your filing late. See D.C. Super. Ct. R. Cr. P. 118(a).
- ✓ You can prove that you are innocent of the offense you were arrested for and that the police had no other good reason to arrest you. See D.C. Super. Ct. R. Cr. P. 118(e) ("clear and convincing evidence" standard); *White v. United States*, 582 A.2d 1199, 1201 (D.C. 1990) (movant must show by clear and convincing evidence that offense did not occur or that he or she did not commit the offense); see also *Villavicencio v. United States*, 755 A.2d 436, 438 (D.C. 2000) (if arrest report shows facts sufficient to support probable cause to arrest movant for any offense, movant's innocence of offense listed on report does not entitle him or her to relief).

However, even if you do not meet all of these requirements, you should still attempt to seal your arrest record if you can prove you are innocent and will be harmed if the record is not sealed. See *Rezvan*, 582 A.2d at 938 (sealing is an equitable remedy so court may grant relief even where movant did not meet the requirements of Rule 118; movant could have records sealed despite being tried and acquitted if he could show clear and convincing evidence of innocence and other circumstances making it manifestly unjust not to seal the record, such as lack of probable cause, arrest in violation of other constitutional rights, or bad faith prosecution); see also *United States v. Poe*, 113 Daily Wash. L. Rptr. 833 (D.C. Super. Ct. 1985) (equitable

nature of remedy requires that movant behave fairly and forthrightly in order to be entitled to relief).

B. How Do I Seal My Arrest Record?

You will need help from a lawyer to write and file all of the necessary documents to have a court seal your records. You can hire your own lawyer or contact the Public Defender's Service (PDS) at (202) 628-1200 or the D.C. Employment Justice Center (EJC) at (202) 828-WORK (9675) for help.

- (1) **Write a Motion to Seal Records.** A Motion to Seal Records is an official document that you file with court asking it to seal your arrest record. Along with this Motion, you must write:
 - (a) A Certificate of Service, which tells the court that you gave a copy of your Motion to the government prosecutor;
 - (b) A Memorandum of Points and Authorities In Support of the Motion to Seal, which explains all the reasons why the court should seal your record; and
 - (c) A sample Order, which tells everyone to seal your records and which the judge can sign if he or she agrees with you.

In order to write your Motion and Memorandum, you will need to know the date of your arrest, the date the prosecution was terminated, and the docket number of your case. All of this information is on your criminal record. Your Motion to Seal, Certificate, Memorandum, and Order should look like the samples in the Appendix of Motions. You should include all information that supports your arguments and attach as exhibits your criminal record and any other documents supporting your argument, including a sworn affidavit in which you state that you are innocent. You should also include the following things:

- **Getting An Extension Of The Filing Deadline.** Because there is no way of knowing whether the government will object to your lateness, you should always try to show the court that there is "good cause" and "manifest injustice" if you have missed the 120 day deadline.
 - ✓ **Good Cause.** Showing "good cause" for an extension is telling the court the reasons why you did not file earlier. The fact that you did not know you could seal your record can be "good cause" for an extension. *See United States v. Horton*, 120 Daily Wash. L. Rptr. 187 (D.C. Super. Ct. 1992) (balancing test for good cause includes reasons for failure to make timely filing, weight of evidence in favor of movant, prejudice to government if extension is granted, and any other relevant factors). Other reasons include severe illness, incarceration, or anything else that physically prevented you from filing a Motion to Seal before the deadline.
 - ✓ **Manifest Injustice.** Showing the court that "manifest injustice" will result if you do not get the extension is telling the court how you will be hurt if you cannot seal your record. A good example of "manifest injustice" is that if your arrest is not sealed, you will not be able to get a job. *But see id.* (finding no "manifest injustice" where movant had multiple arrests because not clear that arrest in question was the one preventing him from getting a job). Any

violation of your rights, such as an illegal arrest, will also be evidence of manifest injustice. *See Rezvan v. District of Columbia*, 582 A.2d 937, 938 (D.C. 1990) (citing lack of probable cause, arrest in violation of other constitutional rights, or bad faith prosecution as examples of manifest injustice).

- **Proving Your Innocence.** If you can get an extension, the court may hold a hearing to see whether you should have your record sealed. *See White*, 582 A.2d at 1201 (court has broad discretion but cannot deny hearing when movant's sworn uncontroverted evidence is adequate to entitle movant relief). *But see Mahaise v. United States*, 722 A.2d 29, 30 (D.C. 1998) (movant not entitled to hearing despite government's failure to contradict movant's affidavit when movant's affidavit showed that movant committed assault). The court will only seal your record if you can prove that you are innocent of the offense you were arrested for and that the police had no other good reason to arrest you. *See D.C. Super. Ct. R. Cr. P. 118(e)* ("clear and convincing evidence" standard); *White*, 582 A.2d at 1201 (movant must show by clear and convincing evidence that offense did not occur or that he or she did not commit the offense); *United States v. Steingeiser*, 113 Daily Wash. L. Rptr. 57 (D.C. Super. Ct. 1985 (same)); *see also Villavicencio*, 755 A.2d at 438 (if arrest report shows facts sufficient to support probable cause to arrest movant for any offense, movant's innocence of offense listed on report does not entitle him or her to relief); *United States v. Smith*, 118 Daily Wash. L. Rptr. 2425, 2430-31 (D.C. Super. Ct. 1990) (same).

(2) **File Your Motion to Seal With D.C. Superior Court.**

(a) **Filing Fee.** Pay a \$20 filing fee in the Superior Court Criminal Finance Office, Room 4201. **Always get a receipt.** If you cannot pay the filing fee, you can file a Motion "In Forma Pauperis" and a notarized affidavit. An example of this Motion is on page 3. For more information on notarizing, see page 3. However, the cost of preparing and notarizing the affidavit will likely exceed the filing fee.

(b) **Bring Original and Four Copies.** File the "original" Motion, Certificate and Memorandum (the ones you or your lawyer actually signed) and 4 copies along with the filing fee receipt with the Clerk of the Superior Court, Room 4010 (misdemeanors) or 4000 (felonies). The Clerk will take the originals and two of the copies and give you back the other two with a stamp showing that you filed them.

(3) **File a Copy With the U.S. Attorney.** You must give a copy of your Motion, Certificate, Memorandum and Order to the government prosecutor so they can decide whether to oppose it. *See D.C. Super. Ct. R. Cr. P. 118(a)-(b)* (prosecutor is required to respond only if they do not intend to oppose the motion). In this case, the prosecutor is the United States Attorney so take one copy of everything to:

TABLE 6: U.S. ATTORNEY'S OFFICE ADDRESS AND CONTACT INFORMATION

U.S. Attorney's Office
555 Fourth Street, N.W.
Washington, D.C. 20001
Metro: Judiciary Square (Red Line) or Archives/Navy Memorial (Green, Yellow, Blue and Orange Lines)
Bus: D1, D3, D6 (Sibley Hospital-Stadium-Armory Line), 30, 32, 34, 35, 36 (Pennsylvania Ave. Line), 52, 54 (14th St. Line), 71 (Brightwood-Petworth, Georgia Ave.-7th St. Line), A9 (S. Capitol St. Line), V5 (Fairfax Village-L'Enfant Plaza Line), or V7, V8, V9 (Minnesota Ave.-M St. Line)
Hours: Monday through Friday from 9:00 a.m. to 5:00 p.m.

When you go into the building, go through the door to the left of the metal detectors. Have both of the copies of your Motion and other papers time-stamped and put one of the copies into the mailbox marked "Motions."

- (4) **Wait For The Court's Decision.** The Court can do one of three things: (1) Deny the Motion without a hearing; (2) Grant the Motion without a hearing; or (3) Hold a hearing and then make a decision. If the court requests a hearing, remember that you have to prove that you are innocent of the offense you were arrested for. You should bring all of your proof to the hearing.
- (5) **Get A Copy Of The Court's Order to Seal.** If the Court grants your Motion, it will either sign your Order or write its own Order directing the prosecutor and the MPD to turn your records over to the Court. The Court will then "seal" those records by putting them in a special file that no one can open without the Court's permission. The Order will also explain that the Court has found you innocent of the offense for which you were arrested. *See Hudson*, 404 A.2d at 182. You should keep a copy of this Order so that you can make sure that everyone seals your record and so you can show the Order to any potential employer who asks about the "Sealed" notation on your record.
- (6) **Follow Up.** You should wait 2 weeks and then check your records at Superior Court and the MPD to make sure they have sealed your arrest. If they have not, show them the Order and request that they do so.

2.4 Expunging A Criminal Conviction.

Expungement destroys a criminal charge and all of the official records related to it. An expunged record can never be used for any purpose by anyone. Basically, expungement makes it as if the arrest and trial never happened. *See* D.C. Code § 48-904.01(e)(2) (2001) (formerly § 33-351) ("The effect of [an expungement] order shall be to restore such person, in contemplation of this law, to the status he or she occupied before such arrest or indictment or information."); *see also* Memorandum of Understanding Respecting Procedures For Implementation of D.C. Code § [48-094.01] (describing each agency's responsibilities regarding expungement) (attached as Appendix to *O.J.M. v. United States*, 554 A.2d 1149 (D.C. 1989)). No expunged record should ever appear on your MPD report and an expunged conviction will look like this on a Superior Court record:

CASE NO	CHARGE	DATE	DATE BW	C/D	CONT/DISP
00000000	SEALED AND EXPUNGED				

A. Can I Expunge Something From My Record?

Under District of Columbia law, the only records you can have expunged are those relating to: (1) certain misdemeanor drug possession charges; and (2) the kidnapping of a child. You can expunge your record if you meet **all** of the following requirements for that offense:

FIRST-TIME MISDEMEANOR DRUG POSSESSION	KIDNAPPING OF:	
	YOUR OWN CHILD	SOMEONE ELSE'S CHILD
<ul style="list-style-type: none"> ✓ You were charged with possession of a controlled substance (drugs) and no other crime. <i>See</i> D.C. Code § 48-904.01(d),(e)(1). ✓ The court did not find you guilty, but put you on probation. <i>See</i> D.C. Code § 48-904.01(e)(1). ✓ You successfully completed probation, which means that you were not arrested for any other offenses while on probation and did not violate any of the other conditions of your probation. <i>See id.</i>; <i>see also Smith v. Smith</i>, 116 Daily Wash. L. Rptr. 1969 (D.C. Super. Ct. 1988) (in order to qualify for expungement, behavior while on probation must be nearly perfect). 	<ul style="list-style-type: none"> ✓ You were convicted of kidnapping your child in relation to a custody or visitation dispute. ✓ You have only been convicted of kidnapping once. ✓ Your youngest child—not necessarily the kidnapped child—has turned 18. <i>See</i> D.C. Code § 16-1026 (2001). 	<ul style="list-style-type: none"> ✓ You were convicted of kidnapping someone else's child in relation to a custody or visitation dispute. ✓ You have only been convicted of kidnapping once. ✓ It has been 5 years since your conviction or the child is no 18, whichever is longer.
<p>If you meet these requirements, the court must dismiss the charge at the end of your probation and you may move for expungement of the charge from your record. <i>See</i> D.C. Code § 48-904.01(e)(1); D.C. Super. Ct. R. Cr. P. 32(f)(2); <i>Neal v. United States</i>, 571 A.2d 222, 225-26 (D.C. 1990) (despite violations of conditions and probation officer's recommendation of revocation, trial court's revocation of probation and adjudication of guilt was improper where court lacked jurisdiction once probation was over; thus, probationer was entitled to dismissal and expungement); <i>O.J.M.</i>, 554 A.2d at 1151-52 (records of appeals from expunged charges should also be expunged).</p>	<p>Even if you meet all these requirements, it is up to the Court to determine whether to expunge your kidnapping conviction. <i>See</i> D.C. Code § 16-1026.</p>	

B. How Do I Expunge A Charge From My Record?

If you follow these steps, you should be able to expunge the drug possession or child kidnapping charge from your record. However, you may need the help of a lawyer. You can either hire your own lawyer or contact the Public Defender Service (PDS) at (202) 628-1200 or the D.C. Employment Justice Center (EJC) at (202) 828-WORK (9675).

(1) Create a Motion to Expunge.	(a) Drug Possession: Your probation officer should have given you a blank Motion to Expunge when you were discharged from probation. <i>See</i> Comment to D.C. Super. Ct. R. Cr. P. 32. If you did not receive this Motion, contact your probation officer or use the sample Motion to Expunge Drug Possession, Memorandum and Order in the Appendix of Forms.
	(b) Child Kidnapping: Use the sample Motion, Memorandum and Order in the Appendix of Forms.
(4) File Your Motion to Expunge.	(a) Drug Possession. File the "original" Motion and other documents (the ones you or your lawyer signed) along with 4 copies with the Special Proceedings Clerk in Superior Court Room 4010. The Clerk will give you back two stamped copies. There is no fee for filing.
	(b) Child Kidnapping. Same.
(3) Serve A Copy Of Your Motion On The Prosecutor.	(b) Drug Possession: You must give a copy of your Motion to the prosecutor so they can decide whether to oppose it. <i>See</i> D.C. Super. Ct. R. Cr. P. 32(f)(2). Take one copy of everything to the United States Attorney's Office at the address on page 21. When you go into the building, go through the door to the left of the metal detectors. Have both of the copies of all your documents time-stamped and put one of the copies into the mailbox marked "Motions." The prosecution has 10 days to challenge your Motion. <i>See id.</i>
	(a) Child Kidnapping: No notice is required.
(2) Hearing Before The Court.	(b) Drug Possession: If the prosecutor opposes your Motion, the Court will hold a hearing to determine whether you were discharged from probation and your conviction was dismissed. <i>See id.</i> If the Court finds both these things, it must expunge your record. <i>See id.</i>
	(a) Child Kidnapping: The court will inform you if it wishes to hold a hearing.

2.5 Sealing Your Juvenile Record.

There are a number of different protections for juvenile records. Generally, your juvenile record should never show up on your adult criminal history from the MPD or Superior Court unless you were tried as an adult. *See* D.C. Code § 16-2301(3) (2001). Also, juvenile records are rarely, if ever, reported to the FBI. *See* 18 U.S.C. §§ 5032, 5038(f) (2000) (juvenile adjudications only reported to FBI where juvenile found to have committed two separate acts that would have been violent felonies if done by an adult or a single such act if juvenile was 13 or older or juvenile committed any acts of drug distribution). Finally, because it is extremely rare for anyone under the age of 18 to be tried in federal District Court, *see* 18 U.S.C. § 5032 (2000), any juvenile record you may have in the District of Columbia will likely be at the Family Division of the D.C. Superior Court.

Because no one is allowed to see your juvenile record without your permission, you should not show your juvenile record to an employer or potential employer and you do not have to, and should not, give your permission for them to look at it. *See* Chapters 3 and 4 for more information on your rights. If a juvenile arrest or conviction appears on your criminal record, either you were tried as an adult, in which case you can still correct any mistakes (*see* Chapter 2.2), or you were tried as a juvenile and you can seal your juvenile record (*see* below).

A. How Do I Know If I Was Tried As A Juvenile?

Under D.C. law, you were a juvenile or "child" if you were under 18 years of age at the time in question. *See* D.C. Code § 16-2301(3). However, you may have been tried as an adult if you committed any of the following acts: murder, rape, burglary, armed robbery, or assault with intent to kill, rape, or rob. *See id.*

B. Can I Seal My Juvenile Record?

To seal your juvenile record, you must meet all of the following requirements:

- ✓ You must have been the subject of a "Petition" in the Family Division. A "Petition" is either the Family Division's decision to hear your case or a request by the Director of Social Services that the Family Division hear your case. *See* D.C. Code § 16-2305 (2001). Basically, if a court heard a case against you while you were a juvenile, you were the subject of a Petition. If you are unsure, go to the Family Division at the address on page 27 and ask to see your records.
- ✓ Two years must have passed since your final release from juvenile detention, supervision, or any other Family Court order.
- ✓ You must not have been convicted of a crime or been the subject of a Petition since the original Petition and there cannot be any current charges pending against you.

See D.C. Super. Ct. R. Juv. P. 118(b); D.C. Code. § 16-2335 (2001). However, you can still have your juvenile records sealed even if you were not the subject of a Petition if you can prove that you were innocent of the offense you were arrested for. *See* D.C. Super. Ct. R. Juv. P. 118(a). Finally, even if you were the subject of a Petition and you have gotten into trouble since that Petition, you may be able to convince the Family Division to seal your records. *See Rezvan v. District of Columbia*, 582 A.2d 937, 938 (D.C. 1990) (sealing is an equitable remedy).

TABLE 7: FAMILY DIVISION ADDRESS AND CONTACT INFORMATION

Room 4310 500 Indiana Avenue, N.W. Washington, D.C. 20001 <u>Phone Number:</u> (202) 879-1319 <u>Metro:</u> Judiciary Square (Red Line) or Archives/Navy Memorial (Green, Yellow, Blue and Orange Lines) <u>Bus:</u> D1, D3, D6 (Sibley Hospital-Stadium-Armory Line), 30, 32, 34, 35, 36 (Pennsylvania Ave. Line), 52, 54 (14 th St. Line), 71 (Brightwood-Petworth, Georgia Ave.-7 th St. Line), A9 (S. Capitol St. Line), V5 (Fairfax Village-L'Enfant Plaza Line), or V7, V8, V9 (Minnesota Ave.-M St. Line) <u>Hours:</u> Monday through Friday from 9:00 a.m. to 4:00 p.m.
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C. How Do I Seal My Juvenile Record?

Your juvenile record should have been sealed automatically. Obviously, however, if a juvenile arrest or adjudication (a juvenile conviction) appears on your criminal record, a mistake has been made and you will need to file a Motion to Seal with the Family Division of Superior Court. You may need the help of a lawyer. You can either hire your own lawyer or contact the Public Defender Service (PDS) at (202) 628-1200 or the D.C. Employment Justice Center (EJC) at (202) 828-WORK (9675).

The procedure for sealing your juvenile records is the same as that for sealing adult arrest records in Chapter 2.3 but with the following important differences:

- ✓ Juvenile matters are heard by the Family Division of D.C. Superior Court so you must file your Motion with the Clerk of the Family Division at the address listed below.
- ✓ Instead of notifying the U.S. Attorney of your Motion to Seal, you must notify the D.C. Corporation Counsel. *See* D.C. Super. Ct. R. Juv. P. 118(a). After you have filed your Motion with the Family Division, take a copy to the address on the following page. The attendant at the front desk will time-stamp your documents and direct you to the correct place to leave them. *See id.*; D.C. Super. Ct. Family Div. Gen. R. P.
- ✓ Instead of the requirement that you never went to trial, you must state whether or not you were the subject of a Petition.
 - **IMPORTANT:**
 - If you were the subject of a Petition, you do not need to prove that you were innocent and you should use the sample Juvenile Rule 118(b) Motion, Notice and Order in the Appendix of Forms.
 - If you were not the subject of a Petition, then you must prove that you were innocent and you should adapt the sample Juvenile Rule 118(a) Motion, Certificate, Memorandum and Order in the Appendix of Forms.

TABLE 8: D.C. CORPORATION COUNSEL ADDRESS AND CONTACT INFORMATION

<p>441 Fourth Street, N.W. Washington, D.C. 20001 <u>Metro</u>: Judiciary Square (Red Line) or Archives/Navy Memorial (Green, Yellow, Blue and Orange Lines) <u>Bus</u>: D1, D3, D6 (Sibley Hospital-Stadium-Armory Line), 30, 32, 34, 35, 36 (Pennsylvania Ave. Line), 52, 54 (14th St. Line), 71 (Brightwood-Petworth, Georgia Ave.-7th St. Line), A9 (S. Capitol St. Line), V5 (Fairfax Village-L'Enfant Plaza Line), or V7, V8, V9 (Minnesota Ave.-M St. Line) <u>Hours</u>: Monday through Friday from 9:00 a.m. to 5:00 p.m.</p>
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However, if you are convicted of a felony or adjudicated delinquent any time after your case is sealed, the sealing order is automatically nullified and your records are "unsealed" unless you successfully oppose such an action. *See* D.C. Super. Ct. Family Div. R. P(g).

2.6 Setting Aside Convictions Under The Youth Rehabilitation Act.

If you were sentenced under the Youth Rehabilitation Act ("YRA"), D.C. Code § 24-901 *et seq.* (2001), you may be eligible to have your conviction "set aside." See D.C. Code § 24-906. When a conviction is "set aside," the record of the conviction is removed from all public records, but law enforcement and the courts can still use a conviction that has been set aside for "legitimate purposes," such as sentencing you if you are later convicted of a different crime. *Lindsay v. United States*, 520 A.2d 1059, 1063 (D.C. 1987) (interpreting the now-repealed Federal Youth Corrections Act or FYCA, which the YRA mirrors and was intended to replace); see *United States v. McDonald*, 991 F.2d 866, 871-72 (D.C. Cir. 1993) (distinguishing a "set aside" under the YRA from an expungement for purposes of the federal Sentencing Guidelines); cf. *Barnes v. United States*, 529 A.2d 284, 286-89 (D.C. 1987) (policy goal of FYCA was to give delinquent youths a second chance to live within the law without the detriment of a conviction; thus, consideration of "set aside" conviction in sentencing for a subsequent crime does not defeat policy because youth is unreformed). Also, a "set aside" only removes the record of your conviction, so your arrest record will still appear on your MPD and Superior Court criminal records. Cf. *Lindsay*, 520 A.2d at 1063 (interpreting FYCA). However, a conviction which has been "set aside" cannot be revealed to a potential employer or other person doing a background search. Cf. *id.* (FYCA set asides remove the conviction from all records available to the public).

A. How Do I Know If I Was Sentenced Under The YRA?

You must have been under the age of 22 and tried as an adult in D.C. Superior Court for a crime other than murder to have been sentenced under the YRA. See D.C. Code § 24-901(6). The best way to know if you were sentenced under the YRA is to look at your Case Jacket (see Chapter 1.3.B for directions on how to get your Case Jacket) or to ask your lawyer or probation officer.

B. Can I Have My YRA Conviction Set Aside?

Your conviction should have been automatically set aside if you were "unconditionally discharged" from confinement or probation—in other words, released without parole—before the end of the maximum sentence. See D.C. Code § 24-906(a), (d). If you were discharged early but your conviction was not set aside, you may still be able to have it set aside by filing a motion within a short time after your probation or confinement was originally supposed to end. See sample Motion, Certificate, Memorandum and Order in the Appendix of Forms. See *Argueta v. United States*, 759 A.2d 1067, 1068 (D.C. 2000) (holding that trial court has discretion to set aside conviction based on *nunc pro tunc* motion filed within a "reasonable" time after probation ended, in this case 5 days). You will need the assistance of a lawyer, however. You can either hire your own lawyer or contact the Public Defender Service (PDS) at (202) 628-1200 or the D.C. Employment Justice Center (EJC) at (202) 828-WORK (9675).

If your conviction was set aside, you should have received a certificate stating that your conviction was set aside. See D.C. Code § 24-906(c). If your conviction was set aside, but it still appears on your record, you can use the certificate as proof that your record contains a mistake (see Chapter 2.1). If you did not get this certificate, call the Parole Board at (202) 585-7380.

If you served your entire sentence and were not released early, the Parole Board could have set aside your conviction. *See* D.C. Code § 24-906(b) (stating that the Parole Board "may, in its discretion, set aside the conviction if the youth serves the entire sentence). If they did not set aside your conviction, however, there is no way to make them do so. *Id.*

2.7 Getting A Pardon.

In extremely rare cases, you can get a pardon. A pardon is essentially forgiveness of your conviction. However, although a pardon removes any legal infirmities resulting from your conviction—for example, if you were convicted of a felony, your ability to vote will be restored—it will not seal or expunge the arrest or conviction from your records. In the District of Columbia, the President, rather than the Mayor, has the power to grant pardons. *See* U.S. Const., Art. II, Sec. 2. In the rare instances that he grants a pardon, the President does so on the recommendation of the Office of the Pardon Attorney in the Department of Justice. *See* 29 Fed. Reg. §§ 1.3(c), 1.9 (2001). Under the Office of the Pardon Attorney's regulations, you are eligible for a pardon if:

- ✓ You were convicted of a federal offense or were convicted in Washington, D.C. *See* 28 Fed. Reg. § 1.4 (2001).
- ✓ It has been 5 years since you were convicted or released from prison, probation, parole or supervised release, whichever is longer. *See* 29 Fed. Reg. § 1.2 (2001).

The Office of the Pardon Attorney has a form that must be used to apply for a pardon. *See* 28 Fed. Reg. § 1.1 (2001). To request an application for a pardon, visit, call or write to:

TABLE 9: OFFICE OF THE PARDON ATTORNEY ADDRESS AND CONTACT INFORMATION

U.S. Department of Justice Office of the Pardon Attorney 500 1 st St. NW Suite 400 Washington, D.C. 20530 <u>Phone</u> : 628-1200 <u>Metro</u> : Union Station (Red Line) <u>Bus</u> : 80 (N. Capitol St. Line), 96, 97 (E. Capitol St.-Cordoza Line), D1, D3, D6 (Sibley Hospital-Stadium-Armory Line), D4 (Ivy City-Union Station Line), D8 (Hospital Ctr. Line), X1 (Benning Rd.-Potomac Park Line), X2 (Benning Rd.-H St. Line), or X8 (Maryland Ave. Line) <u>Hours</u> : 9 a.m. to 5 p.m. Monday through Friday.
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Once the Office of the Pardon Attorney receives your application, they perform an investigation in which they look for evidence of rehabilitation. *See* 29 Fed. Reg. § 1.3(a) (2001). The Office of the Pardon Attorney will inform you when your application is granted or denied. *See* 28 Fed. Reg. §§ 1.7, 1.8 (2001).

Chapter 3: Can an Employer Choose Not to Hire Me or Fire Me Because I Have a Criminal Record?

Now that you know how to get a copy of your criminal record, this chapter will describe what information employers have a legal right to know, how to handle questions about your record on an application and in an interview, and what happens if an employer does a background check after you are on the job. If after reading this chapter you need or want more help on how to handle your criminal record in a job setting, come to the Employment Justice Center's Workers' Rights Clinic on Wednesday, from 6 a.m. to 8 p.m. at 1525 7th Street NW to discuss your legal issue.

Some jobs require criminal background checks or a "police clearance" to apply for them. Your boss or the company you work for might also do a background check – including a criminal records search – on you after you start working there. When a company hired by your employer does a background check, the employer gets a copy of your criminal record from the D.C. Police Department and from D.C. Superior Court. **This is why it is important for you to get a copy of your criminal record from these places and make sure they are accurate.** Below is a description of exactly what a company gets when it conducts a background check and whether they will need your permission to obtain certain records. See Chapter 1 for more detailed information.

D.C. Metropolitan Police Department (MPD).

A company that you are applying to work for or are working for must obtain your permission to get a copy of your MPD record by having you sign a notarized letter of release. *See* D.C. Code § 2-1402.66 (2000). The MPD record made available to a company only includes arrests that lead to **convictions in the last ten years**. *Id.* A company must pay a fee of \$5.00 to the MPD to get a copy of your criminal record, and, generally, they cannot make you pay for it. *Id.* So, if you are applying for a job and the company requests that you get a copy of your criminal record for the application, you should tell them that it costs \$5.00 and ask them to reimburse you. You should also review the record before you give it to your employer, to check for any mistakes. Companies do not have access to MPD records over the phone.

D.C. Superior Court.

D.C. Superior Court records are public, so they are available to a company by mail or in person. They must pay \$10.00 to have the clerk search for your records but they can obtain your records for free using the computers in the clerk's office. *But see* D.C. Super. Ct. R. Crim. P. 55(b) (requiring all persons searching for records other than their own to do so through the clerk). An employer or potential employer can request your D.C. Superior Court criminal record, and there is no time limit on the information they can obtain.

U.S. District Court.

Employers have the same access to information as you or the general public.

FBI.

Employers and the general public do not have access to your FBI report without your permission because your fingerprints are needed to get your record, and only you (and law enforcement) have these. Keep in mind that most of the information available from the FBI can be pieced together by going to the state and federal courts and police where you were arrested. Only government agencies or business regulated by the government (day care facilities, massage parlors, liquor stores, firearms dealers, security jobs, and lottery) can request a copy of your FBI record; however, they must notify you of the request in advance. Other private sector employers cannot request your FBI record, but may ask you to obtain a copy for them.

3.1 What Are Employers Allowed to Ask on a Job Application or in an Interview?

In a job application or interview, an employer can ask you about your criminal record, but in D.C., there are limits to what employers are allowed to ask or do.

- **If you are African-American or Hispanic, employers cannot ask you questions about arrests that did not lead to convictions.** However, if you are applying to a high security job, such as working for the police department, they can ask you such questions. *See* Title VII of the Civil Rights Act of 1964; *see also Reynolds v. Sheet Metal Workers*, 498 F. Supp. 952, 973 n.19 (D.D.C. 1980), *aff'd* 702 F.2d 221 (D.C. Cir. 1981).
- **Employers cannot make you pay for a copy of your own criminal record from the MPD.** *See* D.C. Code § 2-1042.66 (2000). That is, if an employer wants to see your MPD criminal record, he or she has to pay the \$5.00 fee.

3.2 A Criminal Record Can Bar You from Jobs in Certain Fields.

Some specific jobs in D.C. require background checks.

- **Hospitals, Jails, Charities:** A background check is *required* to work as a non-licensed employee at a place that provides direct care for people (like a hospital, a juvenile home, a jail or prison, an institution for the mentally ill, or a charity organization). *See* D.C. Code Ann. § 44-552 (2000) (requiring non-licensed persons in eleemosynary, curative correctional and penal institutions to undergo a criminal background check); *see also* 2001 D.C. Laws 14-40 (Act 14-105, eff. Oct. 13, 2001) (temporarily amending § 44-552 as to health care facilities such that, through June 2002, only convictions occurring during the preceding 7 years disqualify an applicant and a potential employer may charge the applicant for the cost of conducting the background check); *see, e.g.,* D.C. Mun. Regs., tit. 6, § 870 (firefighters); D.C. Mun. Regs., tit. 6, § 873 (police officers). *But see* D.C. Mun. Regs., tit. 4, § 503 ("It shall be unlawful to request from an applicant his or her record of arrests at the monetary expense of the applicant."). Convictions for some crimes will bar you from employment in this area. If you have been *convicted* of any of the following crimes anywhere in the U.S., you cannot get a job working in a

facility in health care, community residence facilities, or hospice and home care (remember that pleading guilty is the same as being convicted):

- Murder, attempted murder, or manslaughter;
- Arson;
- Assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm;
- Burglary;
- Robbery;
- Kidnapping;
- Theft, fraud, forgery, extortion or blackmail;
- Illegal use or possession of a firearm;
- Trespass or injury to property;
- Rape, sexual assault, sexual battery, or sexual abuse;
- Child abuse or cruelty to children; or
- Unlawful distribution, possession or possession with intent to distribute a controlled substance. **Remember:** If you have only a first-time offense for simple possession, you can get this expunged from your record. *See* Chapter 2.4 of this Manual.

If you get the job, the records are kept confidential by the health care facility for as long as you work there. When you stop working for that facility, the company must destroy any criminal record information pertaining to you within one year of your departure. *See* D.C. Code Ann. § 44-552.

- **Department of Recreation and Parks:** Volunteer work for the D.C. Department of Recreation and Parks also requires a background check, and volunteers will be barred for the same convictions listed above. *See* D.C. Code § 10-405 (2000).
- **Banks:** You cannot work in a bank or financial institution if you have been convicted of an offense involving dishonesty, breach of trust, or money laundering. *See* 12 U.S.C. §1829(a)(1) (1989 & 2000 Supp.). For most convictions, the bank can ask for an exception, but for some crimes – such as fraud, burglary, theft, and money laundering – you cannot work in a bank for 10 years after the conviction. *Id.* In addition, an employer can fire someone who has a conviction for dishonesty, breach of trust, or money laundering.
- **Any Job That Requires Carrying a Gun:** For example, a security guard. If you have been convicted of a misdemeanor crime of domestic violence, you cannot buy, own, or carry a firearm. *See* 18 U.S.C. § 922(g)(9) (2001). *But see, e.g., United States v. Singletary*, 268 F.3d 196, 205 (3rd Cir. 2001) (finding statute unconstitutional on other grounds) Any **felony** conviction (not only for domestic violence), or any **Civil Protection Order** (CPO) against you also bans possession or use of a firearm. *See* 18 U.S.C. §922(g)(1), (8). *But see, e.g., Singletary*, 268 F.3d at 205 (finding statute unconstitutional).

Thus, if you have been convicted of misdemeanor domestic violence, have a current CPO against you, or have any felony conviction, you are not permitted to hold a job that requires that you carry a gun.

3.3 Licensing Requirements and Criminal Records

You may be required to get a license to join a profession or advance in a career. However, you will not be allowed to get certain licenses if you have been convicted of particular crimes. ***The general rule for most occupational licenses is that you must not have been convicted of an offense which bears directly on your fitness to be licensed.*** See D.C. Code § 3-1205.03 (2000). This means your offense has to be unrelated to the license you want – for example, to get a bus driver’s license, you cannot have been convicted of (or currently indicted for) murder, mayhem, any drug violation, or any sexual offense. See D.C. Mun. Regs., tit. 18, § 201. A hacker or taxi driver’s license has the same restrictions. See D.C. Mun. Regs., tit. 31, § 1001 (2000). To get a license to be a security guard, your last conviction for a misdemeanor must be at least one year old and your last felony conviction must be at least two years old. See D.C. Mun. Regs., tit. 5, § 1001.

Some professions will consider a letter from a probation or parole officer as evidence of "good character." Others allow you to have a hearing before your request for a license is denied. If you are denied a license, you may have a right to challenge the decision; however, because each organization has its own rules, you should ask the licensing body how to appeal a denial.

3.4 The Big Question: What to Put on a Job Application

Do not give up all hope of getting a job when you see questions about your criminal record on a job application! The job application is the place to make yourself stand out from the other applicants. Filling out an application does not guarantee that you will be hired, but filling it out ***completely and honestly*** may increase the possibility of getting hired and keeping your job. The following is a list of helpful hints for answering questions about your criminal record on a job application:

- **The key to answering questions like these is to know your record.** Take a copy of your record with you when you fill out the application, but ***do not show it to the employer.***
- **Read the question carefully.** Often employers are only interested in felony convictions. For example, an employer will often ask, “Have you ever been convicted of a felony?” If you have only been convicted of a misdemeanor, then you should answer “No.”
- **Answer truthfully. Remember:** If you lie on your application, you can be fired or denied a job. It is pretty easy for an employer to check your record and there is nothing you can argue to get your job back. Also, it is a crime to lie on an application for some federal and D.C. government jobs.
- **Sometimes questions give time limits.** For example, a common question is, “Have you been convicted of a crime in the past seven years?” You can answer "No" if your last conviction was more than seven years ago.

- **“Have you ever been convicted of a crime, offense or violation of the law?”**
Remember the difference between conviction and arrest: A conviction is a guilty plea or court’s finding of guilt. An arrest that does not lead to conviction is any arrest that is dismissed, no papered, *nolle prosequi*, not guilty by reason of insanity, or a finding of not guilty. See Appendix for definitions. Also remember that you do not have to spend time in prison to have a conviction on your record. Probation, time served, community service, and other alternatives to prison can be the results of convictions. See Chapter 1 for more information.
- **“Have you ever been charged with a crime?”** You only have to respond "Yes" about a “charge” if you were arraigned. If the arrest was “no papered,” you were never charged with a crime. If you were arrested and let go without ever appearing before a judge, you were probably no papered. Look on your criminal record to make sure. Also, remember that a crime includes both misdemeanors and felonies (but not most traffic offenses).
- **You never have to reveal your juvenile records.** Juvenile cases in D.C. do not result in convictions, so it is truthful that a juvenile record in D.C. is not a conviction. See D.C. Code Ann. 16-2318 (2000).
- **What if you don’t answer the question?** There are risks to not answering. To the employer, it may appear that you do not understand the question. The employer may also jump to the conclusion that you have a record and are not willing to talk about it. Instead of not answering the question, you can avoid saying "Yes" or "No" by writing, “I will discuss this in an interview.” This way, you are not being untruthful, but you are not giving the employer a reason to reject your application just because you have a criminal record.
- **Do not just say “Yes”.** Most questions ask you to explain why you answered “Yes” to a question about your criminal record. There are several ways you can do this:
 - Make your answer a “Yes, but…” answer. Type a statement that explains your conviction and highlights the positive about your circumstances. An example might be explaining your charge, but noting that you learned how to use computers in a prison program. Another example is “Yes I have a felony conviction, but I got my GED while I was incarcerated.” This shows that you are educated, you are making efforts to improve, and you are ready to move on. You could also explain by a “Yes, but” answer that your conviction is more than ten years old and you have a clean police clearance. Bring copies of this statement when you fill out your application, and attach it to the form. You might convince the boss to hire you anyway.
 - Another explanation is to write “I will explain in an interview.” You can answer “Yes” to the question or leave it blank if you use this method. As noted above, employers might just be curious enough about what you have to say to grant you an interview.
 - Another option is to simply list your conviction and disposition when you are asked to explain. You can use the format of your criminal record print out from the courts, MPD, or the FBI. An example might be:

CHARGE	ARREST DATE	DISPOSITION DATE	DISPOSITION
Pos. fire arm	05/20/01	07/06/01	Pled Guilty, 6 months

- **"Fighting Back" Convictions for Domestic Abuse Victims:** If you were the victim of domestic abuse and you were convicted on assault, battery or another offense as a result of defending yourself, you should explain this to the potential employer even though you may not want to discuss the abuse.

In the end, only you can decide what is the best way to handle the tough questions. ***Do not let an application scare you away from applying for a job you want!*** You never know when someone might want to give you a chance.

3.5 How to Explain your Criminal Record on a Job Interview

The written application is just one part of applying for a job. If the employer likes your application, you will most likely have an interview. Employers only know what you tell them from your application, but they have the opportunity to ask you anything they want in an interview. The following points are some suggestions for answering questions about your criminal record in an interview:

- **Come prepared with an explanation.** When you have a criminal record, acknowledging and explaining it can be the best way to avoid being discriminated against because of your past. Many times, an interviewer will go over your written application with you question by question. In that situation, questions about your criminal record are sure to come up, so have a few key points in mind to discuss when you get to those questions. An example might be to have a list of jobs you have had since your incarceration, bring up a work program you did while in prison, or talk about how you have moved on since that time.
- **Steer the conversation to the positive.** Sometimes employers will start questioning you about the details of your conviction. Naturally, employers will want to know the name of the offense you were convicted of, because they may have a legitimate concern for their business. On the other hand, if the questions are about why you were incarcerated or what happened when you were arrested, the interviewer is going too far. You might think answering all the interviewer's questions will make him like you, but this is not generally the way it ends up. When the interviewer knows a lot about the situation, it makes your conviction more of a reason not to hire you than it otherwise would be. Instead, you should politely and respectfully tell the interviewer that you prefer not to talk about the details of your conviction, and remind him or her of the positive things you accomplished while incarcerated or since your release.
- **Focus on your life NOW.** One point you want to get across in the interview is that you are moving away from your criminal past. You can talk about your experiences since being incarcerated, or the anticipation and challenge of holding a job you can be proud of. Again, if you get stuck talking about your conviction, steer the conversation back to the present.
- **Stay relaxed to show confidence.** It is important that you do not "freeze" when asked questions about your criminal record. Body language is part of the interviewer's impression of you, so if your attitude changes abruptly, the interviewer will sense your nervousness. If you look like you do not know how to answer questions about your conviction, the interviewer might think you are not being honest. ***Practice interviewing with a friend, family member, or some other trusted person.*** Get comfortable with

admitting that your conviction happened and then practice moving on to other topics. Practicing will help you stay calm when you have to answer the tough questions in a real interview.

Applying for jobs and interviewing can be hard work but even if you do not get the first job you interview for, you will get better at it each time you try.

3.6 **Once You Are On the Job**

When you have a job, you may think that you are safe, and that your criminal record will no longer be a problem. Having a job does give you some security, but there are still some issues you should be concerned about:

- **An employer can do a background check at any time.** If an employer does a background check and discovers that you did not reveal something on your application, the employer can fire you for lying.
- **Employers often use the Internet or consumer reporting agencies to get your criminal record.** This means that you might not know when or what the employer is requesting. *Note:* Chapter 5 describes what rights you have when an employer does a background check through a consumer reporting agency.
- **Some employers buy insurance or bond their employees and insurance agencies might not bond people with criminal records because they are high risk.** One example of such bonds are "fidelity bonds," which are a type of insurance that a company can buy in case a worker steals from them or is dishonest. The federal government provides fidelity bond insurance to companies that are willing to hire people with criminal records. If the employer uses federal fidelity bonds, they might be more willing to hire ex-offenders; thus, you may want to ask an employer if they use fidelity bonds and what kind they use. However, the insurance companies that provide these bonds may do background checks on individual employees, although usually they will not. For more information on the federal fidelity bonding program, contact Ron Rubbin at 1-800-233-2258 or rrubbin@mclaughlin-online.com, or see the following web sites: www.doleta.gov and www.bonds4jobs.com.

Chapter 4: What to Do if You Have Been Denied a Job, Fired or Denied a Promotion Because of Your Criminal Record

This chapter is intended to provide accurate, general information regarding legal rights relating to employment in Washington, DC. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Employment Justice Center cannot ensure that the information in this fact sheet is current nor be responsible in anyway for how you use it. Consult an attorney or the appropriate agency about your rights in a particular situation.

There is no statute that specifically prohibits employment discrimination against persons with criminal records, but federal and D.C. laws do offer some protection. Under Title VII of the federal Civil Rights Act of 1964 (Title VII), a public or private employer with 15 or more employees cannot discriminate against a worker because of that worker's race. *See* 42 U.S.C. § 2000e-2 (2000). Similarly, the D.C. Human Rights Act prohibits race discrimination against individuals by D.C. public or private employers regardless of size. *See* D.C. Code § 2-1402.11 (2000). Finally, the Fair Credit Reporting Act (FCRA) regulates the use of private investigative services that do background checks as well as how employers can use this information against their employees. Each of these laws, the protections they offer, and a description of how to enforce your rights is described below.

If you think you were denied a job, fired from a job or denied a promotion or other job benefits because you have a criminal record, you may have a race discrimination claim against your employer under Title VII or the D.C. Human Rights Act. In addition, if you are African-American or Hispanic, it may be a violation of your rights under Title VII for a company to refuse to hire you or fire you because of your criminal record because courts have found that asking employees about their criminal record has a disparate impact on African-Americans and Hispanics. "Disparate impact" means that a policy of asking about criminal records hurts African-Americans and Hispanics more than it hurts Caucasians or Asians, and that may be illegal. It is important to note that you must be able to prove that you were fired/not hired because you have a criminal record in order to successfully accuse your employer of race discrimination.

4.1 Enforcing Your Rights if You Have Been Discriminated Against Because of Your Criminal Record

The U.S. Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces Title VII. Similarly, the D.C. Office of Human Rights is the D.C. agency that enforces the D.C. Human Rights Act. If you believe you were denied a job, promotion, or were fired from a *private employer* in the District of Columbia because of your criminal record, you may file a claim of race discrimination with the EEOC's DC office and/or the D.C. Office of Human Rights. If you were discriminated against by the *federal or D.C. government*, you must file with the EEOC. ***We recommend you get the help of an attorney when considering filing with one of these offices.*** To keep your rights under both federal and D.C. laws you must file within 300 days, within 45 days if the discriminator was the federal government, or within 180 days if the discriminator was the D.C. government. When you go to one agency, tell them to

“cross file” your claim with the other agency, and you should check the box on the claim form that states “cross file.” When you cross file, you reserve the right to sue in federal or D.C. court. If you do not cross file, then you must sue in federal court if you filed with the EEOC or in D.C. court if filed with the D.C. Office of Human Rights.

- **EEOC Contact Information.** To file a discrimination claim with the EEOC, call (202) 275-7307 (ask for the investigator of the day), (202) 275-7377, or 1-800-669-4000 before going to the office to schedule an appointment. The EEOC office in D.C. is at 1400 L Street, NW, Suite 200, Washington, DC, 20005, close to the McPherson Square Metro. The EEOC will take claims Monday through Thursday from 9:00 a.m. to 3:00 p.m.
- **D.C. Office of Human Rights Contact Information.** To file a claim with the D.C. Office of Human Rights, call (202) 727-3900 to make an appointment. The D.C. Office of Human Rights is located at 441 4th Street, NW, Suite 970-North, Washington, D.C. 20001, near the Judiciary Square Metro stop. It is open Monday through Friday from 8:15 a.m. to 4:15 p.m.

If you need help to determine if you should file a claim, or need more instructions on how to file a claim, you can come to the D.C. Employment Justice Center’s Workers’ Rights Clinic. The Clinic is held every Wednesday from 6:00 p.m. to 8:00 p.m. at 1525 7th St., NW, between P and Q Streets, near the Shaw Metro stop on the Green Line.

4.2 Fair Credit Reporting Act

Some employers run background checks on employees or applicants by using investigative services. The investigative services are called “consumer reporting agencies.” They create consumer reports on people. “*Consumer reports*” can include any public record, including anything from your credit history to your driving record to your criminal record. “*Investigative consumer reports*” are more extensive background checks where the agency interviews people who know you.

The Fair Credit Reporting Act (FCRA) is a federal law that employers have to follow when they use investigative services. *See* 15 U.S.C. § 1681 *et seq.* (2000). An employer can only get a consumer report on you if you: (1) agree in writing, and (2) give them permission to do so before the search is conducted. For an investigative consumer report, the employer must have your permission at least three days before the search. The employer must give you written notice that it is going to use a consumer reporting agency. *See* 15 U.S.C. § 1681b(b)(2). In addition, you have to sign an agreement giving the employer permission to get a report. For a consumer report, this can be at any time before the search. *See* 15 U.S.C. § 1681b(b)(2); 15 U.S.C. § 1681d. Note that the “fine print” on some job applications may say that you are giving permission so, if you do not read carefully, you may give permission without knowing it.

The employer is also required to give you information about what the search will contain and your rights. *Id.* If the employer uses the information it received in the search against you (*i.e.*, you are not offered the job once the employer sees what is on your criminal record), the employer is required to give you the following:

- Oral or written notice of the adverse action—*e.g.*, “You are not hired.”
- The name, address, and telephone number of the consumer reporting agency that did the search;
- A statement that the consumer reporting agency is not making the adverse decision;
- Tell you about your right to a copy of the report;
- Tell you that you have a right to talk with the consumer reporting agency to make sure everything is correct—*e.g.*, make sure they have the right criminal record.

See 15 U.S.C. §§ 1681b(b)(3), 1681m.

No consumer reporting agency can release more than ***seven years*** of your criminal record to an employer. *See* 15 U.S.C. § 1681c. You can sue the employer and/or the consumer reporting agency if they did not give you notice or otherwise violated the FCRA. *See* 15 U.S.C. § 1681(n)-1681(o). Contact an attorney for assistance if you think you have a case against the employer.

In order to protect yourself, you might want to get a copy of your consumer report. To get a copy, call Equifax at 1-800-685-1111, or go to www.equifax.com for more information.

Appendix 1. Other States' Resources

If you have criminal records from states other than the District of Columbia, the procedures and law described in this manual are not appropriate resources. The following is a list of organizations in other states with Criminal Records expertise that you can contact if you have criminal records questions from those states:

California

Employee Rights Center
4265 Fairmount Avenue, Suite 210
San Diego, CA 92105
619-521-1372
fax: 619-283-7998
email: peterzaterc@hotmail.com

Employment Law Center
Legal Aid Society
1663 Mission Street, Suite 400
San Francisco, CA 94110
415-864-8848
fax 415-864-8199
www.las-elc.org

Maryland

Homeless Persons Representation Project
300 Cathedral Street, Suite 204
Baltimore, Maryland 21202
410 685 6589 ext/ 116
Fax 410 625 0361

New York

Legal Action Center
153 Waverly Place
New York, NY 10014
(212) 243-1313

Pennsylvania

Community Legal Services
Center City Office
1424 Chestnut St.
Philadelphia, PA 19102-2505
tel: 215-981-3700

Community Legal Services
Law Center North Central
3638 N. Broad St.
Philadelphia, PA 19140
tel: 215-227-2400

Virginia

Legal Services of Northern Virginia
6400 Arlington Blvd., Suite 630
Falls Church, VA 22042
(703) 534-4343

Appendix 2. Glossary

Acquittal: Where you were put on trial and found "Not Guilty" by a judge or jury.²

Adjudication: A decision by a court or judge in a juvenile case. Because juveniles cannot be tried under criminal laws, juvenile cases can never result in "convictions." Thus, when a juvenile is found to have committed an act that would be a crime if committed by an adult, this decision is called an "adjudication." See D.C. Code § 16-2318 (2001).

Affidavit: A document in which a person makes statements that they swear, under oath, are true to the best of their knowledge. Affidavits are used to present evidence to the court without actually testifying. Usually, an affidavit will be used to prove facts in a motion—for example, if you are filing a motion to expunge your record and you need to show the court that you are innocent of the crime for which you were arrested, you can swear in an affidavit that you are innocent. However, lying in an affidavit is like lying in court and you can be convicted of perjury for doing so.

Arrest: Taken into the custody of the police and detained.

Bench Warrant: A warrant for your arrest issued by a judge. When a person fails to show up for a court appearance in a criminal matter or a protection order hearing in a domestic dispute, the court may issue a bench warrant to arrest the person.

Case: Whenever something is considered by a court, it is a case. A case can be several different criminal charges brought against you by the government. A case can go through many stages as the court considers different things. A case will always be assigned a case number and that number will stay the same throughout all the stages of that case.

Case Jacket: The file where information about a case is stored by the court. It has all the court documents the lawyers filed, the orders or decisions of the court, and other important papers related to the case. Because a case jacket only relates to one case, it will not have all of your criminal history, only the documents related to that case.

Certificate of Service/Notice: A Certificate of Service or Notice is a document that goes at the back of a motion telling the court that you gave a copy of your motion to the government prosecutor. See "Motion." If your motion relates to a criminal matter, the prosecutor is the U.S. Attorney. See "United States Attorney." If your motion relates to a juvenile matter, the prosecutor is the D.C. Corporation Counsel. See "Corporation Counsel." Because you must always give the government a copy of your motion, you must always have a Certificate of Service or Notice.

Charge: The government's accusation that you committed a crime. After you are arrested for a crime or crimes, the police give the evidence of the crimes to the prosecutor. If the

² Unless otherwise stated, all definitions are based on *Black's Law Dictionary* (7th ed. 1999).

prosecutor thinks that there is enough evidence to convict you of each crime, he or she charges you by accusing you of those crimes in court. Thus, you can have several charges against you even if you were only arrested once. Because a charge is only an accusation, the prosecutor must still prove to the court that you actually committed those crimes.

Civil Protection Order (CPO): A court order that prohibits one person from coming near or threatening another individual. If a person in has a CPO against you in the District of Columbia, the CPO will be on your criminal record. This is an exception to the rule that civil cases do not show up on criminal records.

Clerk: A clerk is a person who works for a court and keeps track of all of the courts documents. Usually, a court will have several different clerk's offices and each will handle different types of documents—for example, D.C. Superior Court has a clerk for misdemeanor documents, a clerk for felony documents, and a clerk for juvenile documents. If you want to look at some of the court's records, the clerk is the person to ask. Also, if you want to file a motion or other document with the court, the clerk is the person you should give it to. See "Filing" and "Motion."

Closed Case: A case is "closed" when a final decision has been made and nothing else will happen with that case. A final decision can be the prosecutor deciding not to prosecute you (this is called "No Papered" or "Nolle Prosequi"), the judge dismissing the case, the judge or jury finding you "Not Guilty" (this is called "acquittal"), or the judge or jury finding you guilty and sentencing you to confinement or probation. If a case is not "closed," it is "open." A "Continued" case is "open."

Community Service: When you are convicted of a crime and the court sets you free with the requirement that you perform certain acts that will benefit the community, such as collecting garbage or cleaning a park.

Confinement Only: When your time in jail while waiting to be tried was long enough that, when you were convicted, you were set free, the court calls it "confinement only." This is also sometimes called "time served." When you see this on your record, it means that even though you did not serve any time after your trial, you were still convicted.

Consumer Report: Employers and potential employers often hire consumer reporting agencies to gather information about their employees or people they are thinking about hiring. A regular consumer report consists of any information contained in public records, such as your credit record, your driving record and your criminal record. *See* 15 U.S.C. § 1681a(d) (2000). An investigative consumer report consists of all the public information as well as information obtained by talking to your current and former employers, landlords, creditors, acquaintances and relatives. *See* 15 U.S.C. § 1681a(e) (2000). If someone decides to do an investigative report on you, they must give you written notice within three days of starting the investigation. *See* 15 U.S.C. § 1681d (2000). Federal law limits what information can be put in these reports. *See* "Fair Credit Reporting Act."

Continued: When the judge decides to wait and have your trial at a later date, your case has been "continued." A continued case is an open case because no final decision has been made about whether you are guilty of the crime.

Conviction: When you plead guilty to a crime or offense or a judge or jury finds you guilty, you have been convicted. Certain offenses, such as traffic violations, do not lead to convictions. You can have a conviction on your record even though you never served time in jail. See "Confinement Only."

Corporation Counsel: The Corporation Counsel are the lawyers who represent the District of Columbia government in non-criminal matters, including juvenile adjudications. See D.C. Code § 1-301.111 (2001). The United States Attorneys represent the D.C. government in criminal matters. Thus, if you need to notify the prosecutor in your case, you must notify Corporation Counsel if it is a juvenile case and the U.S. Attorney if it is a criminal case. See D.C. Code § 23-101 (2001).

Count Details: A record kept on the computers at the District of Columbia Superior Court. While the criminal records on the computer list all the cases that have been brought against you since 1978, the Count Details have specific facts about one case on your record, including the name of the judge in your case, the status of the case (in other words, whether your case is open or closed), and the number of the police report.

Crime: An act or acts by a person that are forbidden by a law. A crime can be a felony or a misdemeanor and are punishable by a fine, forfeiture, prison, probation, or parole.

Dismissal: When the court finds that the government's evidence in a criminal case, even if true, is not enough to find you guilty, the court will dismiss the case against you. Thus means that the case is closed.

Disposition: What the court decided to do about your arrest. The disposition will appear on your criminal record. A disposition can be letting you go totally free ("No Papered," "Nolle Prosequi," "Dismissal," "Confinement Only," "Not Guilty"), letting you go with conditions ("Probation," "Community Service"), making you pay a fine, or sending you to jail ("Conviction"). When your case has a disposition, that case is closed. "Continued" is not a disposition and a continued case is still open.

Docket Sheet: The United States District Court for the District of Columbia keeps track of information about cases on records called "Docket Sheets." Docket sheets in criminal cases contain the party names ("United States v. John G. Smith"), the disposition or outcome of the case, the judge in the case, and other important information.

Entry: One charge on your record. For example, if you are arrested for possession of drugs and possession of drug paraphernalia, you will be charged with both crimes and each charge will appear on a different line of your criminal record as a separate entry.

Expunge or Expungement: Expungement destroys a criminal charge and all of the official records related to it. An expunged record can never be used for any purpose by anyone. Basically, expungement makes it as if the arrest and trial never happened. When something is expunged, all evidence of it is removed from the public record and no one will ever be able to see it. Once a record is expunged, that arrest and/or conviction does not have to be revealed on a job application or even under oath in court.

Fair Credit Reporting Act: A federal law restricting what consumer reporting agencies can report to employers. *See* 15 U.S.C. § 1681 *et seq.* (2000). Under this law, consumer reporting agencies cannot report any arrests that occurred more than seven years ago. *See* 15 U.S.C. § 1681c(a)(2). They can, however, report convictions that occurred more than seven years ago. *See id.*

Filing: When you want a court to look at a document, such as a motion, you must file that document with the court. Filing a document usually involves going to the clerk's office at the courthouse, giving the clerk several copies of your motion and any other necessary documents, and having the clerk stamp those documents. You will always want to bring two extra copies for the clerk to stamp, one for you to keep to prove that you filed it and one to give to the government. *See* "Certificate of Service."

Fine: When, after finding you guilty, the court orders you pay a certain amount rather than going to jail or in addition to going to jail. A fine is sometimes referred to as "Forfeiture of Collateral."

Felony: A crime punishable by imprisonment of one year or more. Felonies are punished more harshly than misdemeanors because the government has determined that they are more serious or harmful. Examples of felonies are murder, attempted murder, burglary, and rape.

Forfeiture of Collateral: *See* "Fine."

Investigative Consumer Report: *See* "Consumer Reports."

Memorandum of Points And Authorities: An official document that you file with the court explaining why the court should do or not do something. Usually, a Memorandum will accompany a motion. *See* "Motion."

Microfiche: A film that has a miniature photocopy of a document on it. A special projector is needed to look at the document on microfiche.

Misdemeanor: A crime less serious than a felony, usually punishable by fine, penalty, forfeiture or imprisonment for less than a year. Examples include drinking in public or possession of a small amount of drugs.

Motion: An official document that you file with the court asking it to do something—for example, a Motion to Seal Records asks the court to seal your records. You must always give a copy of your motion to the government prosecutor and a motion must always include a

Certificate of Service or Notice, which tells the court that you did so. See "Certificate of Service/Notice." A motion will almost always include a sample Order, which is a document for the court to sign if it decides to do what you ask. See "Order." Sometimes you will need to include a Memorandum of Points and Authorities in support of your motion, which explains all the reasons why the court should give you what you are asking for. See "Memorandum of Points and Authorities." Finally, a motion must always be filed with the court. See "Filing."

No Contest: See "Nolo Contendere."

No Papered: When the prosecutor decides not to pursue the charges against you. In the District of Columbia, this term is used when the prosecution drops the case before trial. The term "Nolle Prosequi" means the same thing as "No Papered." Whenever your case has been "No Papered" or "Nolle Prosequi," it is closed.

Nolle Prosequi: See "No Papered."

Nolo Contendere: This is a type of guilty plea that is used when you are admitting that the government has all the information that it needs to convict you and have decided not to fight it out. This type of guilty plea cannot be used against you as an admission of guilt in another trial but it is up to the court whether to let you use this instead of just pleading guilty.

Not Guilty: When you are put on trial and the judge or jury finds that there is not enough evidence that you did the crime you are accused of, they find you to be "Not Guilty." When you are found "Not Guilty," you have been acquitted and your case is closed. Being found "Not Guilty" is not the same as being innocent because you may have actually done the crime but the prosecutor could not prove it.

Notarize: Certain types of documents must be notarized to be useful. A document is notarized when you sign it in the front of a person called a Notary Public, who also signs the document for a fee. By signing the document before the Notary Public, you are swearing that, as far as you know, everything said in the document is true. Notary Publics generally charge a \$2-5 fee. Most banks will have a Notary Public or you can look under "Notary Public" in the phone book.

Notary Public: See "Notarize."

Offense: An offense can be a crime or a less serious infraction, such as a traffic violation. See "Crime."

Open Case: An open case is a case in which a final decision about whether you are guilty has not been made. Generally, if your record says that a case is "continued," that case is still open. Once a final decision has been made and your case has been "Dismissed," "No Papered," or "Nolle Prosequi," or you have been found guilty or "Not Guilty," that case is closed. See "Acquittal," "Closed," "Continued," and "Disposition."

Orders: An order is a decision by a judge. Although an order usually tells someone to do something, it can also just say things. For example, if the judge decides that you are entitled to have an arrest expunged from your record, he or she will write an order that tells all record keepers to remove the arrest and says that you are innocent of the crime you were arrested for. Often, when you file a motion asking a judge to do something, you will include a sample order, which the judge can just sign if he or she agrees with you.

Parole: When you are released from prison before the end of your sentence, you have been placed on "parole." Usually someone is put on parole for good behavior while in prison. Parole lasts from your release until the time when you would have been released had they kept you in prison. While you are on parole, you must obey certain conditions—such as not engaging in other crimes—or you will be sent back to prison. Your parole officer is in charge of making sure you do not violate the conditions of your parole.

PDID Number: Police Department IDentification number. The first time you are arrested in the District of Columbia, the D.C. Metropolitan Police Department assigns you a random number that is unique to you. This number, called a PDID Number, is used to keep track any arrests or convictions that occur from then on. Thus, by simply entering your PDID Number into one of the computers at D.C. Superior Court, you can find your entire criminal history.

Petition: When someone wants the Family Division of D.C. Superior Court decides to hear the case of a juvenile, they send a "Petition." The Director of Social Services can petition the Family Division to hear a case after it has received a complaint about the juvenile or the Family Division can petition itself. *See* D.C. Code § 16-2305 (2001). Basically, if you were brought before a court as a juvenile, you were the subject of a Petition.

Probation: When the court convicts you of a crime but, rather than put you in prison, sets you free with certain conditions, you are on "probation." The conditions of probation usually include not returning to the place where the crime occurred, not associating with anyone who was convicted of the same crime, and meeting regularly with your probation officer. If you violate the terms of probation, the court may send you to prison.

Prosecutor: The prosecutor is the lawyer who represents the government in the case against you. If you are or were a juvenile, the prosecutor is the Corporation Counsel. *See* "Corporation Counsel." Otherwise, the prosecutor is the United States Attorney. *See* "United States Attorney."

Sealing: When arrest records are gathered into a file and removed from public access, they are "sealed." Unlike expunged records, sealed records can sometimes be opened by the court and used against you if you commit another crime.

Setting Aside: A conviction which has been set aside has been removed from your record and cannot be seen by anyone but the judge and the prosecutor. Thus, an employer or potential employer cannot see a conviction that has been set aside. However, a conviction which has been set aside can be used against you if you commit another crime.

United States Attorney: The government attorneys who act as prosecutors in D.C. criminal cases. The top U.S. Attorney is the Attorney General. See "Corporation Counsel" and "Prosecutors."

Verdict: The decision of the jury. The jury can either find that you are "Not Guilty" and acquit you or find that you are guilty and convict you. See "Acquittal," "Conviction," and "Not Guilty."

SAMPLE MOTIONS 14 & 15: JUVENILE RULE 118(b) MOTION TO SEAL JUVENILE RECORDS & NOTICE OF MOTION TO SEAL JUVENILE RECORDS

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION**

Name of Child: John G. Smith
Date of Birth: _____
Address: _____
Docket Nos.: _____

MOTION TO SEAL RECORDS

I was dismissed from the Family Division's jurisdiction at least 2 years ago on [date], see Juvenile Record of John G. Smith (attached as Exhibit A); and

I have not been found guilty of any criminal or juvenile offense since the above date, and no proceeding is pending seeking such conviction or adjudication. See id.; Superior Court Criminal Record of John G. Smith, PDID No. 12345 (attached as Exhibit B).

Under Section 16-2335 of the D.C. Code, I request that the Family Division seal all of my case and social records, and all law enforcement records and files, as well as those of any other agency that was active in my case.

John G. Smith

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION**

Name of Child: John G. Smith
Date of Birth: _____

NOTICE OF MOTION TO SEAL RECORDS

To: D.C. Corporation Counsel
441 Fourth Street, N.W.,
Washington, D.C. 20001

You are hereby notified that in accordance with D.C. Code § 16-2335 and Rule 118 of the Rules Governing Juvenile Proceedings of the Superior Court of the District of Columbia, a motion to seal the above named child's legal, social, and law enforcement records was filed in the Family Division on [date].

Unless you request a hearing within 10 days of the mailing of this notice, you will be notified that the child's records have been ordered sealed, that your own records concerning the child must be sealed, that you must furnish the Division with a certificate of compliance with the order, and that you must reply with respect to any inquiry that no record exists with respect to such child. Thereafter, inspection of files and records included in the order may be permitted only in special circumstances in accordance with D.C. Code § 16-2335(d).

Date: _____
Clerk of the
Family Division

SAMPLE MOTION 16: JUVENILE RULE 118(b) ORDER TO SEAL JUVENILE RECORDS

**SUPERIOR COURT OF THE DISTRICT OF
COLUMBIA
FAMILY DIVISION**

Name of Child: John G. Smith
Date of Birth: _____
Docket Nos.: _____

ORDER TO SEAL RECORDS

Upon a motion pursuant to D.C. Code § 16-2335 and Rule 118 of the Rules Governing Juvenile Proceedings of the Superior Court of the District of Columbia, and notice of such motion having been sent to the following persons, institutions, or agencies:

D.C. Corporation Counsel
441 Fourth Street, N.W.
Washington, D.C. 20001

IT IS HEREBY ORDERED

1. That all cases and social records and all law enforcement records and files of the above-named child, wherever kept and including but not limited to all docket numbers listed above, be and are hereby sealed, inspection to be permitted after entry of this order only in accordance with D.C. Code § 16-2335;
2. That all persons, institutions or agencies named above shall receive copies of this order, that they shall seal or otherwise expunge all records in their possession concerning the child, and that they shall furnish a certificate of compliance to the Family Division within 5 days of receipt of this order;
3. That all persons, institutions or agencies having notice or knowledge of this order, although not named in the order, shall seal or otherwise expunge all records in their possession concerning the child;

4. That thereafter all persons, institutions or agencies receiving copies of this order other than the child himself/herself, and all persons, institutions or agencies having notice or knowledge of this order, although not named in the order, must reply with respect to any inquiry about the child that no record exists with respect to such child, and the child himself/herself may reply with respect to such inquiry that no record exists concerning him/her.

Whoever willfully discloses, receives, makes us of, or knowingly permits the use of information concerning a child in violation of this order or in violation of D.C. Code §§ 16-2331 to 16-2335 may be fined or imprisoned in accordance with D.C. Code § 16-2336.

Date: _____
Judge _____

SAMPLE MOTIONS 17 & 18: JUVENILE RULE 118(a) MOTION TO SEAL JUVENILE RECORDS & NOTICE OF MOTION TO SEAL JUVENILE RECORDS

**SUPERIOR COURT OF THE DISTRICT OF
COLUMBIA
FAMILY DIVISION**

Name of Child: John G. Smith
Date of Birth: _____
Address: _____
Docket Nos.: _____

MOTION TO SEAL RECORDS

Pursuant to Rule 118(a) of the Rules Governing Juvenile Proceedings of the Superior Court of the District of Columbia, Movant John G. Smith respectfully requests that the Court seal all records pertaining to his/her arrest on [date] in the possession of this Court, the District of Columbia Metropolitan Police Department, and any other agency maintaining such records.

The following facts, set forth in greater detail in the accompanying Memorandum of Point and Authorities, support Movant's Motion:

1. Movant was not the subject of a Petition relating to his/her arrest on [date];
2. Movant has filed this Motion within 120 days of the termination of the prosecution or, in the alternative, Movant has shown good cause why an extension of the filing period should be granted and why such extension is necessary to prevent manifest injustice; and
3. Clear and convincing evidence exists that the offense for which Movant was arrested did not occur or, in the alternative, that Movant did not commit that offense.

WHEREFORE, for these and such other reasons as may appear to the Court, Movant respectfully requests that this Motion be granted.

Respectfully Submitted,

John G. Smith

CERTIFICATE OF SERVICE

I hereby certify that on [date] copies of the foregoing Motion to Seal Records and all memoranda, exhibits, affidavits and/or other documents attached thereto, including a Motion to Proceed *In Forma Pauperis*, if any, were served by hand or via first-class mail, postage prepaid, on:

D.C. Corporation Counsel
441 Fourth Street, N.W.,
Washington, D.C. 20001

John G. Smith

**SAMPLE MOTION 19: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF 118 (a)
MOTION TO SEAL RECORDS**

**SUPERIOR COURT OF THE DISTRICT OF
COLUMBIA
FAMILY DIVISION**

Name of Child: John G. Smith
Date of Birth: _____
Address: _____
Docket Nos.: _____

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION TO
SEAL RECORDS**

Pursuant Rule 118(a) of the Rules Governing Juvenile Proceedings of the Superior Court of the District of Columbia ("Rule 118"), Movant John G. Smith respectfully requests that the Court seal all records pertaining his/her arrest on [date] in the possession of this Court, the District of Columbia Metropolitan Police Department, and any other agency maintaining such records.

In order to qualify for the sealing of an arrest record under Rule 118, the movant must show that he or she was arrested for a delinquent act under District of Columbia Code § 16-2301(7) but was never the subject of a petition under § 16-2305. *See* D.C. Super. Ct. R. Juv. P. 118(a)(1). In addition, a movant must file a Motion to Seal Records within 120 days of the dismissal of the charges or, if the government objects to the lateness of the filing, the movant must show good cause why an extension of the filing period should be granted and why manifest injustice will result if such an extension is denied. *See id.* Finally, a movant must show by clear and convincing evidence that the offense for which he or she was arrested did not occur or that movant did not commit the offense. *See* D.C. Super. Ct. R. Cr. P. 118(a)(5). As set forth below, Movant has satisfied all of these requirements and is entitled to an order sealing his/her arrest record.

First, Movant was arrested on [date] for the offense of [name of offense], an crime under the District of Columbia Code and thus a delinquent act under § 16-2301(7). *See* District of Columbia Family Division Juvenile Record of John G. Smith (attached as Exhibit A).

Second, at the time of his/her arrest on [date], Movant was a juvenile under District of Columbia Code § 16-2301(3). *See* Birth Certificate of John G. Smith (attached as Exhibit B).

Third, Movant was never the subject of a petition under terminated without conviction prior to trial on [date]. *See* Juvenile Record of John G. Smith.

Fourth, Movant filed this Motion to Seal Records within 120 days of the termination of all charges against him/her or, in the alternative, if the filing is untimely and the government objects, there is good cause to extend the filing period and manifest injustice will result if an extension is denied. Specifically, good cause to extend exists because Movant was unaware of his/her right to move for the sealing of the arrest record during the 120-day period and/or because Movant was unable to file during the 120-day period due to [other reasons]. *See* Affidavit of John G. Smith (attached as Exhibit C); *see also* *United States v. Horton*, 120 Daily Wash. L. Rptr. 187 (D.C. Super. Ct. 1992) (movant's lack of knowledge of right to move to seal can be "good cause" to extend filing deadline). Furthermore, manifest injustice will result if an extension is not granted because Movant is innocent of the offense for which he/she was arrested and will be denied employment opportunities if his/her arrest record is not sealed. *See* Affidavit of John G. Smith.

Finally, clear and convincing evidence exists that Movant is innocent of the offense for which he/she was arrested. *See* Affidavit of John G. Smith; Affidavit of Witness (attached as Exhibit D), etc.

For these reasons, Movant is entitled to relief under Rule 118. In the alternative, if Movant does not meet the requirements of Rule 118, Movant requests that this Court grant him/her equitable relief and seal his/her arrest record pursuant to *Rezvan v. District of Columbia*, 582 A.2d 937, 938 (D.C. 1990) (sealing is an equitable remedy and court may grant relief even if movant does not meet the requirements of Rule 118).

WHEREFORE, for these and such other reasons as may appear to the Court, Movant respectfully requests that this Motion be granted.

Respectfully Submitted,

John G. Smith

SAMPLE MOTION 20: JUVENILE RULE 118(a) ORDER TO SEAL JUVENILE RECORDS

**SUPERIOR COURT OF THE DISTRICT OF
COLUMBIA
FAMILY DIVISION**

Name of Child: John G. Smith
Date of Birth: _____
Address: _____
Docket Nos.: _____

ORDER

Upon a motion pursuant to District of
Columbia Superior Court Rule of Criminal Procedure
118,

IT IS HEREBY ORDERED

1. That all records, files and other paper
or electronic documents relating to the above-named
case number, wherever kept, be and are hereby sealed;
and

2. That the District of Columbia
Metropolitan Police Department shall receive a copy of
this order, and that they shall seal or otherwise
expunge all records, files and other paper or electronic
documents in their possession relating to the above-
named case number.

In addition, Movant John G. Smith has
demonstrated by clear and convincing evidence that
he/she is innocent of the offense for which he/she was
arrested or that the offense in question did not occur.

Date: _____
Judge

