

THE  
PUBLIC  
DEFENDER  
SERVICE

*for the District of Columbia*



CHAMPIONS OF LIBERTY

# **Collateral Consequences of Criminal Records in the District of Columbia: A Guide for Criminal Defense Lawyers<sup>1</sup>**

Created by the Community Re-entry Program of the Public  
Defender Service for the District of Columbia, Community  
Defender Division

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<sup>1</sup> This publication is for informational purposes only, and is not intended as legal advice. Because legal advice must be tailored to the specific circumstances of each case, and laws are constantly changing, the reader should consult with a lawyer before acting with regard to the subjects discussed in this publication. This is not an exhaustive list of the collateral consequences of a criminal conviction. The purpose of this outline is to highlight issues that may affect individuals re-entering to the D.C. community following a criminal conviction and/or period of incarceration.

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## Civil Forfeiture

Property used in the commission of a crime relating to a controlled substance, prostitution, or gambling may be subject to civil forfeiture and is taken as government property. For information regarding prostitution-related forfeiture, please turn to the section on prostitution-related nuisances in the Housing section.

### Drug Crimes

DC ST § 48-905.02, formerly cited as DC ST 1981 §33-552, known as the “District of Columbia Controlled Substance Act.” (Many of the cases citing this statute refer to DC ST § 33-552. Any direct quotes used will include the reference to the old statute.)

- Forfeiture sanction imposed by District of Columbia Controlled Substance Act is civil and remedial rather than criminal and punitive in purpose and effect. \$345.00 in United States Currency v. District of Columbia, 544 A.2d 680, 681 (DC 1988).
- Once the District has initiated timely a civil forfeiture proceeding under §33-552, those proceedings constitute the exclusive means by which the ownership of forfeitable property is to be determined. District of Columbia v. Dunmore, 749 A.2d 740, 741 (DC 2000).

### What is subject to forfeiture?

1. CONTROLLED SUBSTANCES that have been possessed, manufactured, distributed, dispensed, or acquired in violation of this law.
2. RAW MATERIALS, PRODUCTS, AND EQUIPMENT used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance.
3. PROPERTY USED, OR INTENDED FOR USE, AS A CONTAINER for control substances, raw materials, products, and equipment.
4. TRANSPORT VEHICLES, including aircraft, vehicles or vessels, which are used in the sale, possession or concealment of illegal substances.
  - a. BUT does not apply to:
    - i. Any person who is a *common carrier* in the transition of business as a common carrier unless it appears that the owner or person in charge is a consenting party to the violation of this provision.
    - ii. A violation that occurs by reason of any act or omission of the owner without his or her knowledge and consent.
    - iii. Any part of a bona fide security interest held by a party that did not have knowledge of nor consented to the act or omission.
5. BOOKS, RECORDS AND RESEARCH intended to be used in violation of this law.

6. CASH OR CURRENCY which has been used or intended to be used in violation of this law.
7. EVERYTHING OF VALUE furnished or intended to be used in exchange for the controlled substances, and all proceeds traceable to such an exchange.
  - a. BUT does not apply to:
    - i. The interest owned by an owner who did not have knowledge or did not give his or her consent to the prohibited act.
  - b. HOWEVER, all moneys, coins, and currencies found in *close proximity* to forfeitable drug manufacturing or distributing paraphernalia or records or the importation, manufacture, or distribution of controlled substances, are presumed to be forfeited. The burden of proof is upon the claimant to rebut this presumption.
    - i. \*\* “Proximity to drugs” creates a presumption that the money was used or intended for use in violation of the drug laws. No similar clause is found in the federal statute.

D.C. Code provision (§33-552(a)(7)(B) authorizing forfeiture of money solely because found in close proximity with drugs is unconstitutional but the government may forfeit money where there is some evidence the owner of money is tied to criminal activity. District of Columbia v. \$987 (Purvis Williams), 115 D. Wash. L. Rptr. 1393 (July 8, 1987).

1. In order for the presumption to exist to be constitutional under the Due Process Clause, there must be a rational nexus between the fact established (that money was in close proximity to drugs) and the fact sought to be proven (that the money had been used or was intended to be used in connection with a violation of the Act) \$987 (Purvis Williams) 115 D. Wash. L. Rptr. at 1398 (July 8, 1987).
  - 2.
8. REAL PROPERTY which is used or intended to be used in any manner to commit or facilitate the commission of a drug violation.
    - a. BUT DOES NOT apply to:
      - i. Any real property in which the owner has established that the act or omission occurred without the knowledge or consent of the owner.
      - ii. Any real property subjected to forfeiture for a misdemeanor possession of a controlled substance pursuant to § 48-904.01(d).
      - iii. Any interest in a bona fide security that is owned by a party who had no knowledge and did not consent to the act or omission that constituted the violation.

Burden of Proof:

1. DC ST §48-905.02(d)(3):

- The Mayor must establish probable cause.
  - i. “Probable cause presumably may be made by the government in an accompanying criminal case if one has been instituted: otherwise the statute envisions a preliminary showing of probable cause by the District.” District of Columbia v. Dunmore, 749 A.2d 740, 744 (DC 2000).
  - ii. Then the burden of proof shifts to the claimant to prove that the property was not involved in a drug related activity as specified in the statute.

\*\*\*NOTE REGARDING BURDEN OF PROOF:

- \$345.00 in United States Currency v. District of Columbia, 544 A.2d 680, 682 (DC 1988), states: “It follows...that in a §33-552 forfeiture action the government need prove its case only by a preponderance of the evidence.”
- HOWEVER, DC ST § 33-552 was amended by the legislature to place the burden of proof on the claimant once the District has established probable cause for the seizure. *See*, D.C. Law 7-162 § 2, Sept. 29, 1988, 35 D.C. Reg. 5733.

Notice – DC ST § 48-905.02(d)(3)(A).

- Notice of seizure of property, other than controlled substances, must be made. It is required that:
  - The government’s intention to forfeit and sell or otherwise dispose of the property must be:
    - Published
    - For at least 2 successive weeks
    - In a local newspaper of general circulation AND;
  - The government shall provide written notice of the seizure together with information on the applicable procedures for claiming the property to each party who is known or in the exercise of reasonable diligence should be known by the government to have a right of claim to the seized property.

Claimant’s response to the notice –

- Any person claiming the property must file a claim within **30** days from the date of receipt of notice of seizure.
  - The claim must state the person’s interest in the property.
- Upon filing, the person has to give **bond** for:
  - \$2,500 OR
  - 10% of the fair market value of the item (as appraised by the Chief of Metropolitan Police), whichever is lower, BUT
  - Not less than \$250.
  - \*\*If the property is forfeited, then the costs of the forfeiture proceeding will be deducted from the bonds. Any cost exceeding the amount of the bond will be paid by the claimant.
- Determining the fair market value

- The Chief of Police shall consider any verifiable and reasonable evidence of value that the claimant can present. DC ST § 48-905.02(d)(3)(B).
- What if the 30-day period for filing a claim expires?
  - Property will be **disposed** of if:
    - The government can determine that the property is forfeitable AND
    - The value of the property is less than \$250,000 or the property is a transport vehicle.
  - Property will be **returned** to the rightful owner if:
    - The government determines the property is not forfeitable. DC ST § 48-905.02(d)(3)(c).
  - A claim for forfeited property **after the 30 day period** has expired:
    - A person may file a remission or mitigation of forfeiture claim with the government either *before* or *after* the sale or disposition of the property, but the government only has to grant remission or mitigation if it finds that it is reasonable that:
      - The forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law, OR
      - Mitigating circumstances justify the remission or mitigation of the forfeiture. DC ST § 48-905.02(d)(3)(f)(i)-(ii).

#### Defenses to forfeiture:

- Innocent owner defense:
  - Federal statute – 21 U.S.C. § 881(a)(7)
    - No property shall be forfeited by reasons of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.
  - DC statute – Identical to above
    - Note: DC is one of the few jurisdictions that provides an innocent owner defense.
  - This defense is not a constitutional requirement. Bennis, 116 S. Ct. at 1000 (quoting Austin v. United States, 113 S. Ct. 2801, 2810 (1993)).
- Personal use defense:
  - DC:
    - DC ST § 33-552(a)(4)(C) or DC ST § 33-552(a)(8)(B).
    - United States v. Zarbough, 115 D. Wash. L. Rptr. 273 (February 11, 1987).
  - Federal:
    - 21 U.S.C § 881 – No defense to forfeiture available.
    - Federal Adoption of a State Seizure – Occurs when DC police turn the car over to the federal government under the federal statute when there is not enough evidence of intent to distribute under DC law. Under federal law, the property is more easily forfeited because the personal use defense is not available.

## **Gambling**

Any home, boat, shed, shelter, vehicle, room, or lot that is used for the purpose of playing any game of chance for money or property, including a lottery, shall be deemed a “gambling premises.”<sup>2</sup> It is unlawful for the owner, lessee, or occupier to knowingly permit such activity to take place in the District of Columbia.<sup>3</sup>

If found guilty of operating a gambling premises, all money, vehicles, furnishings, fixtures or equipment involved in the illegal activity shall be subject to seizure regardless of value.<sup>4</sup> The government has the burden of proving by a preponderance of the evidence that the forfeited property was involved in the illegal gambling activity.<sup>5</sup> Unless good cause can be shown to the contrary, the seized property will become the property of the District of Columbia and sold or used for government purposes. A guilty verdict can also lead to imprisonment and a fine.<sup>6</sup>

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<sup>2</sup> DC ST § 22-1705 (a) (1994).

<sup>3</sup> DC ST § 22-1705 (1994).

<sup>4</sup> DC ST § 22-1705 (1994).

<sup>5</sup> Spencer v. District of Columbia, 615 A.2d 586 (1992).

<sup>6</sup> DC ST § 22-1705(d) (1994).



## Democratic Participation

### Holding Public Office

#### **Public Office – City Council**

DC ST § 1-204.02 (formerly cited as DC ST § 1-225 (1981)) – No person shall hold the office of member of the Council, including the Office of the Chairman, unless he: (1) Is a qualified elector . . .

Therefore, a person is only prohibited from being on the D.C. Council while he or she is incarcerated as a result of a conviction for a felony. DC ST § 1-1001.02 (7).

#### **Public Office – Mayor**

DC ST § 1-204.21(c)(1) (formerly cited as DC ST § 1-241(1981)) – No person shall hold the Office of Mayor unless he: (A) Is a qualified elector . . .

Therefore, a person is only prohibited from being the Mayor while he or she is incarcerated as a result of a conviction for a felony.

#### **Public Office – Judge of a District of Columbia Court**

D.C. ST § 1-204.32(a)(1) – A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

D.C. ST § 1-204.32(c)(1) – A judge of a District of Columbia court shall be suspended, without salary – (A) upon – (i) proof of conviction of a crime referred to in subsection (a)(1) which has not become final. . . . Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed . . . , the judge shall be reinstated and shall recover any salary and all other rights and privileges of office.

### Jury Duty

#### **District of Columbia Jury Duty**

“An individual shall not be qualified to serve as a juror-- . . . if that individual has been convicted of a felony or has a pending felony or misdemeanor charge, except that an individual disqualified for jury service by reason of a felony conviction may qualify for jury service not less than one year after the completion of the term of incarceration, probation, or parole following appropriate certification under procedures set out in the **jury system plan.**” DC ST § 11-1901 (emphasis added).

### *Jury System Plan*

Persons are disqualified from jury service who are “convicted of a felony or who have a pending felony or misdemeanor charge, except that individuals disqualified for jury service by reason of a felony conviction are qualified for jury service ten years after the completion of their entire sentence, including incarceration, probation and parole, or at such time as their civil rights have been restored.” Jury System Plan §7(f)

“Any juror convicted of a felony and who certified on the juror qualification form that it has been either ten years since the completion of the juror’s entire sentence, including incarceration, probation and parole, or that his civil rights have been restored, may be deemed qualified by the Clerk to serve as a grand or petit juror based on the juror’s certification and, if necessary, other competent evidence. Whenever requested by the Clerk, additional evidence shall be provided by such jurors to establish their qualification for jury service.” Jury System Plan §8

“The Clerk shall have authority to inquire into the criminal history records of any prospective or serving grand or petit juror for the purpose of corroborating and determining the juror’s qualifications for jury service and shall have the right to request and receive from local, state and federal authorities such criminal history records and information as is necessary. Criminal offender record information obtained under this Plan shall be used only for the purpose stated and shall be maintained secure from access except as necessary for the administration of the Plan.” Jury System Plan §9

### **Federal Jury Duty**

A person with a conviction for a federal or state felony is unable to serve on a federal grand or petit jury if “his civil rights have not been restored.” 28 U.S.C. § 1865(b)(5). In the District of Columbia, the only way to have one’s rights restored is to request a pardon from the President of the United States.

### **Voting**

All residents are allowed to vote in the District of Columbia so long as they are not incarcerated in a correctional institution as a result of a **conviction** of a crime that would be a **felony** in the District of Columbia. DC ST § 1-1001.02(2) & (7).

The Board of Elections shall cancel a registration “upon notification of a registrant’s incarceration for conviction of a felony.” DC ST § 1-1001.07(k)(1).



## DNA Testing Requirements

All DC Code offenders who are or have been convicted of a qualifying DC offense will be asked to give a sample when in the Bureau of Prisons or under supervision by CSOSA. The convictions for which a sample can be required are listed below. Typically, if it is a crime during the commission of which contact with another person or property is likely, a sample will be required. DC ST § 22-4151.

The following criminal offenses are qualifying offenses:

- (1) Any felony;
- (2) Any offense for which the penalty is greater than one year imprisonment;
- (3) [§ 22-1312\(b\)](#) (lewd, indecent, or obscene acts (knowingly in the presence of a child under the age of 16 years));
- (4) [§ 22-2201](#) (certain obscene activities involving minors);
- (5) [§ 22-3102](#) (sexual performances using minors);
- (6) [§ 22-3006](#) (misdemeanor sexual abuse);
- (7) [§ 22-3010.01](#) (misdemeanor sexual abuse of a child or minor); and
- (8) Attempt or conspiracy to commit any of the offenses listed in paragraphs (1) through (7) of this subsection.

DNA collected by an agency of the District of Columbia shall not be searched for the purpose of identifying a family member related to the individual from whom the DNA sample was acquired. DC ST § 22-4151.



## Employment<sup>7</sup>

### General Employment Considerations

#### Interview process:

During an interview, inquiries regarding arrest records without a business justification may be a violation of Title VII of the Civil Rights Act of 1964:

“The consideration of an applicant’s arrest record discriminates against minority group applicants in violation of Title VII, unless such consideration is shown to be essential to the safe and efficient operation of the employer’s business. Minority group applicants as a class are arrested substantially more frequently than Caucasians, the foreseeable result being that a substantially disproportionate percentage of minority group persons will be disqualified for employment. Furthermore, even if an employer does not consider arrest record information per se, the mere request for such information both tends to discourage applications by those with arrest records and tends to induce false or incomplete answers for which the applicant may be penalized. In the absence of any evidence of business justification for [the] practice of requesting arrest record information on its employment application forms, . . . this practice unlawfully discriminates against minority group persons as a class because of their race and/or national origin in violation of Title VII.”  
EEOC Dec. No. 74-2 (July 10, 1973)

Requiring an applicant to pay for his/her own criminal record is illegal:

“The facility shall pay the fee that is established and charged by the entity that provides the criminal background check results.” DC ST § 44-552(h). *See also* DCMR 503.7 (“It shall be unlawful to request from an applicant his or her record of arrests at the monetary expense of the applicant.”) However, “[n]othing in this subsection shall preclude the facility from seeking reimbursement of the fee paid for the criminal background check from the applicant for employment or contract work.” DC ST § 44-552(h).

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<sup>7</sup> Much of the information in this section comes from a publication of the D.C. Employment Justice Center (DCEJC) entitled “Criminal Records & Employment: What You Need to Know About Your Rap Sheet, and Your Right to a Job.” This publication can be obtained at [www.dcejc.org](http://www.dcejc.org).

Occupational Licensing Restrictions:

*Security Officer:*

A person who is in either of the following categories shall not be eligible for certification as a security officer unless he or she meets the burden of proving to the Office of Administrative Hearings that he or she is not a significant safety risk to the community and meets all other requirements for certification:

- (1) A person who has been released from incarceration for a felony conviction in any jurisdiction in the United States within two (2) years prior to the date of filing an application for certification; or
- (2) A person who has been released from incarceration for a misdemeanor conviction in any jurisdiction in the United States involving larceny or involving the illegal use, carrying, or concealment of a dangerous weapon within one (1) year prior to the date of filing an application for certification.

17 DCMR §2104.1

Apart from above prohibitions due to time, the Board of Appeals and Review must determine whether an applicant is a “significant safety risk” by considering (17 DCMR § 2104.4):

- (a) The nature of the crime for which the applicant was convicted and its relationship to the duties and circumstances of employment as a security officer;
- (b) Information pertaining to the degree of rehabilitation of the applicant since the crime, including, but not limited to, formal work experience or participation in vocational training, educational attainment, and family support;
- (c) The time elapsed since the conviction; and
- (d) Other evidence of personal motivation, including, but not limited to, community volunteer work and character references.

NOTE: Each applicant for certification is also required to submit a physician's certificate stating, to the best of the physician's knowledge after examining the applicant.... whether the applicant is not presently addicted to drugs or alcohol. (17 DCMR §2103.1)

*Private Detective:*

If a person is convicted of “false pretences, larceny after trust, embezzlement, or any other offense involving (in the judgment of the Mayor) fraudulent conduct, arising out of or based on employment as a private detective,” then a private detective license can be denied, suspended, or revoked. 17 DCMR §2010.1.

## **Licensing Requirements**

### General Licensing Requirements

There are certain professions that require a license, certification, or registration. DC ST § 47-2853.02. The following non-health professions requiring a license are (DC ST § 47-2853.04):

- Architect;
- Asbestos Worker;
- Attorney;
- Barber;
- Boxer/Wrestler;
- Certified Public Accountant;
- Clinical Laboratory Director;
- Clinical Laboratory Technician;
- Cosmetologist;
- Commercial Driver;
- Commercial Bicycle Operator;
- Electrician;
- Funeral Director;
- Insurance Agent;
- Insurance Broker;
- Interior Designer;
- Investment Advisor;
- Land Surveyor;

- Notary Public;
- Operating Engineer;
- Plumber/Gasfitter;
- Principal (public school);
- Private Correctional Officer;
- Professional Engineer;
- Property Manager;
- Real Estate Appraiser;
- Real Estate Broker;
- Real Estate Salesperson;
- Refrigeration and Air Conditioning Mechanic;
- Securities Agent;
- Securities Broker-Dealer;
- Security Alarm Agent;
- Special Police Officer;
- Steam Engineer;
- Taxicab/Limousine Operator;
- Teacher and Other Instructional Personnel (public schools only);
- Veterinarian;
- Elevator Mechanic;
- Elevator Contractor; and
- Elevator Inspector.

- A person applying for licensure, certification, or registration is not eligible if they have been convicted of an offense “which bears directly on the fitness of the person to be licensed.” DC ST § 47-2853.12(a)(1). ***However, this restriction does not apply to the following occupations (DC ST § 47-2853.12(a)(1)(A-J):***
  - Asbestos worker
  - Barber
  - Cosmetologist
  - Commercial bicycle operator
  - Electrician
  - Funeral director
  - Operating engineer
  - Plumber/gasfitter
  - Refrigeration and air conditioning mechanic
  - Steam engineer

Denial or Revocation Licensure Procedures:

- The licensing board, subject to the right of a hearing, may take certain disciplinary actions against an applicant or license holder (the above list of occupations under DC ST §47-2853.12 is exempted) if that person has been convicted in any jurisdiction of any crime involving any offense that bears directly on the fitness of the person to be licensed. DC ST § 47-2853.17(a)(5).
- In order to deny an applicant a license or certificate by reason of a conviction which bears directly on the fitness of the person to be licensed, the licensing board must consider the following criteria (DC ST §47-2853.17(c-1)(1-7)):
  - The specific duties and responsibilities necessarily related to the license sought
  - The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more of the duties or responsibilities specified under paragraph (1) of this subsection;
  - The time that has elapsed since the occurrence of the criminal offense or offenses;
  - The age of the applicant at the time of occurrence of the criminal offense or offenses;
  - The seriousness of the criminal offense or offenses;
  - Any information produced by the applicant, or produced on his behalf, in regard to his rehabilitation and good conduct; and
  - The legitimate interest in protecting property, and the safety and welfare of specific individuals or the general public.

- If a conviction of a criminal offense which bears directly on the fitness of the person to be licensed is the basis for denial of an application for a license or certificate under subsection (c) of this section, the denial shall be in writing and specifically state the evidence presented and reasons for the denial. A copy of the denial shall be provided to the applicant. DC ST § 47-2853.17(c-2).
  
- Disciplinary actions permitted include (DC ST § 47-2853.17(c)):
  - Deny a license or certificate to an applicant;
  - Revoke or suspend the license of any licensee or the certificate of a certified person, or may refuse to register a person;
  - Revoke or suspend the privilege to practice in the District of any person permitted to practice in the District;
  - Reprimand any licensee or person permitted to practice in the District;
  - Impose a civil fine not to exceed \$5,000 for each violation by any applicant, licensee, or person permitted to practice in the District;
  - Require a course of remediation, approved by the board, which may include
    - Therapy or treatment
    - Retraining; and
    - Reexamination
  - Require a period of probation
  - Issue a cease and desist order

### Licensed Health Care Professionals

A license is required to practice “medicine, acupuncture, chiropractic, registered nursing, practical nursing, dentistry, dental hygiene, dietetics, marriage and family therapy, massage therapy, naturopathic medicine, nutrition, nursing home administration, occupational therapy, optometry, pharmacy, pharmaceutical detailing, physical therapy, podiatry, psychology, social work, professional counseling, audiology and respiratory care or to practice as a physician assistant or occupational therapy assistant in the District.” DC ST § 3-1205.01.

In order to receive a license a person must not have “been convicted of an offense which bears directly on the fitness of the individual to be licensed.” DC ST § 3-1205.03(a)(1).

Disciplinary action may be taken against a license holder if they have “been convicted in any jurisdiction of any crime involving moral turpitude, if the offense bears directly on the fitness of the individual to be licensed. DC ST § 3-1205.14(a)(4). Discipline may involve a variety of measures including suspension or revocation of a license. DC ST § 3-1205.14(c).

## **Non-Licensed Personnel**

### Health-care and Community Residence Facility

This section of the law includes hospitals, maternity centers, nursing homes, community residence facilities for persons not in the custody of the Department of Corrections, group homes for mentally retarded persons, hospices, home care agencies, ambulatory surgical facilities, and renal dialysis facilities. DC ST § 44-501(a)(1)-(9).

No non-licensed person can be hired or contracted by a health-care or community residence facility without first being submitted to a “criminal background check.” DC ST § 44-552(b).

“No facility shall employ or contract with any unlicensed person if, within the 7 years preceding a criminal background check . . . , that person has been convicted in the District of Columbia, or in any other state or territory of the United States where such person has worked or resided, of any of the following offenses or their equivalent in another state or territory:

- (1) Murder, attempted murder, or manslaughter;
- (2) Arson;
- (3) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm;
- (4) Burglary;
- (5) Robbery;
- (6) Kidnapping;
- (7) Theft, fraud, forgery, extortion or blackmail;
- (8) Illegal use or possession of a firearm;
- (9) . . . (repealed)
- (10) Rape, sexual assault, sexual battery, or sexual abuse;
- (11) Child abuse or cruelty to children; or
- (12) Unlawful distribution or possession with intent to distribute, a controlled substance.” DC ST § 44-552(e).



## Family

### Adoption and Foster Care

#### **Federal Law:**

The Adoption and Safe Families Act of 1997 (ASFA) creates a plan in which federal grants are given to states for foster care and adoption assistance. In order for a State to be eligible for the grant, it must have a plan in place that meets ASFA requirements.

#### Required criminal record checks:

ASFA requires states to provide procedures for criminal record checks for any prospective foster or adoptive parent before the foster or adoptive parent may be approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are made under the State plan. 42 U.S.C. § 671 (a)(20)(a). If such checks reveal convictions for the specified crimes, foster children may not be placed in their homes.

#### Specific crimes and effect on adoptive and foster rights:

An individual is completely barred from ever becoming a foster or adoptive parent if the individual has a felony conviction for:

1. Child abuse or neglect
2. Spousal abuse
3. A crime against children (including child pornography) or
4. Certain violent crimes which include:
  - a. Rape,
  - b. Sexual assault, or
  - c. Homicide
  - d. But NOT other kinds of physical assault or battery.

An individual will be barred from becoming an adoptive or foster parent if he/she has been convicted, within the past **five** years, of a felony for:

1. Physical assault
2. Battery or
3. A drug related offense.

#### Exceptions:

The State may chose to opt out of this program and implement its own laws pertaining to the effects of a criminal conviction on adoptive and foster parent eligibility.

**D.C. Law:**

DC ST § 4-1305 *et seq.*: DC has adopted basically the same requirements listed by ASFA but extends the consequences of a criminal conviction to **all** adults residing in the home in which the applicant resides.

Required criminal records check:

Any individual who seeks to be an adoptive or foster parent is required to obtain a criminal record check. DC ST § 4-1305.05(b). Also, any adult residing in the home of an individual who wishes to be an adoptive or foster parent must also automatically obtain a criminal record check. DC ST § 4-1305.02. “Adult” means an individual who is at least 18 years of age. DC ST § 4-1305.02(6). An applicant can apply for a criminal records check by submitting a complete set of fingerprints to the Child and Family Services Agency. Adults who become residents of the home of an individual who is seeking to become an adoptive or foster parent must submit fingerprints within 10 calendar days of becoming a resident of the home. DC ST §4-1305.03(b)(5).

Effect of a criminal conviction on adoptive and foster eligibility:

There is a mandatory ban prohibiting persons with certain convictions from becoming adoptive and foster parents if he/she or any other adult residing in the home has been convicted of:

1. Child abuse or neglect
2. Intrafamily abuse (as defined in DC ST § 16-1001(8)-(9) – commonly referred to as domestic violence offense)
3. A crime against children, including child pornography or
4. A crime involving violence, including:
  - a. Rape,
  - b. Sexual assault, homicide, assault, or battery (DC ST §4-1305.06(b))

An individual cannot adopt if he/she or any other adult residing in the home of the individual has been convicted of the following felony level crimes within the past **five** years:

1. PPhysical assault
2. Battery or
3. A drug-related offense (DC ST §4-1305.06(c))

Exceptions:

Even if the criminal record check produces a criminal conviction as listed above, an individual may be approved, after a discretionary agency review of the conviction and current circumstances, to become an adoptive or foster parent if it would be consistent with the health, safety, and welfare of the child. DC ST §4-1305.06(d).

## **Child Custody**

There is a rebuttable presumption that joint custody is in the best interests of the child; however, a finding by the preponderance of the evidence that a person committed the following offenses (a conviction will satisfy the preponderance standard):

- Child abuse;
- Child neglect;
- Parental kidnapping; or
- Intrafamily offense

DC ST § 16-914(2)(a)(2).

Intra-family Offenses: “If the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child’s emotional development. DC ST § 16-914(a)(3)(a-1).

An intrafamily offense is defined as “an act punishable as a criminal offense committed by an offender upon a person to whom the offender is related by blood, legal custody, marriage, domestic partnership, or with whom the offender has a child in common.” DC ST § 16-1001.

## **Child Support**

There are two basic options for clients who are in jail and need to change child support arrangements:

1. A motion to suspend child support payments
2. A motion to reduce a standing child support order for change in circumstances

Incarceration can lead to a child support obligation if the person incarcerated is the custodial parent of a child. The child support obligation may arise in one of the following ways:

1. If the child is placed in foster care, the child welfare agency can make a claim for child support from one or both of the parents.
2. If the child is placed with a relative pursuant to a state’s kinship care program, this familial placement will be treated like a foster care placement. The state can then make a claim for child support from one or both of the parents.

3. If a relative informally takes responsibility for a child and seeks public assistance to help care for the child, this can create a child support debt to the state for one or both of the parents.

Incarceration is not considered a “voluntary reduction of income or self-imposed curtailment of earning capacity.” Lewis v. Lewis, 637 A.2d 70, 73 (1994). “Whatever the philosophical aims of punishment, it seems to us problematical to add to the terms of imprisonment a cumulating debt of child support which the prisoner cannot presently pay and which will await him upon release.” Id. It is assumed that the incarcerated person’s income will be “essentially nothing” and therefore even the “nominal sum of \$50.00 per month would be an inappropriate award of child support.” Id.

[Motion](http://www.dcbar.org/for_the_public/legal_information/family/family_court_forms/index.cfm) to Modify Child Support can be obtained from D.C. Bar website at:  
[http://www.dcbar.org/for\\_the\\_public/legal\\_information/family/family\\_court\\_forms/index.cfm](http://www.dcbar.org/for_the_public/legal_information/family/family_court_forms/index.cfm)

### **Termination of Parental Rights**

The Adoption and Safe Families Act (ASFA) requires the District to terminate parental rights where the parent has been convicted of certain crimes against a child or a child is in foster care for 15 out of the most recent 22 months. (Adoption and Safe Families Act (ASFA) of 1997, 42 U.S.C. §§ 101, et seq.) This provision will be difficult for parents with children in foster care who are sentenced to a period of incarceration exceeding the 15 months set out in the ASFA.

D.C. Code adopts the ASFA 15 month provision. DC ST § 16-2354(b)(3)(A).

The District will also file a motion for the termination of parental rights if a court of competent jurisdiction has determined that the parent has (DC ST § 16-2354(b)(3)(C)):

- Committed murder of a child sibling or another child;
- Committed voluntary manslaughter of a child sibling or another child;
- Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
- Committed a felony assault that has resulted in serious bodily injury to the child who is the subject of the petition, a child sibling, or another child.



## **Federal Consequences**

PDS Community Defender Division recently completed and published an extensive study of all federal consequences of criminal convictions entitled “Internal Exile: Collateral Consequences of Conviction in Federal law and Regulations” published by the American Bar Association Commission on Effective Criminal Sanctions and the Public Defender Service for the District of Columbia:

For a complete copy of this study, please visit:

<http://www.pdsdc.org/Resources/Publication/Collateral%20Consequences%20of%20Conviction%20in%20Federal%20Laws%20and%20Regulations.pdf>



## Firearm Possession

From the outset, it must be noted that it is extremely difficult for any D.C. citizen to obtain a license to possess a firearm. However, no person convicted of a felony offense shall own or keep a firearm in his or her possession. DC ST § 22-4503.

No firearm registration will be issued if the person (DC ST § 7-2502.03):

- Has “been convicted of a crime of violence<sup>8</sup>, weapons offense<sup>9</sup>, or of a violation of” the registration regulations.
- Is “under indictment for a crime of violence or a weapons offense”
- Has “been convicted within 5 years prior to the application of any:
  - o Violation in any jurisdiction of any law restricting the use, possession, or sale of any narcotic or dangerous drug; or
  - o A violation of DC ST § 22-407, regarding threats to do bodily harm, or DC ST § 22-404, regarding assaults and threats, or any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm”;
  - o Two or more violation of DUI offenses;
  - o Intrafamily offenses.
- “Within the 5-year period immediately preceding the application, [has] been acquitted of any criminal charge by reason of insanity or [has] been adjudicated a chronic alcoholic by any court; provided that” the regulations shall not apply if a person can present with their application “a medical certification indicating that the applicant has recovered from such insanity or alcoholic condition and is capable of safe and responsible possession of a firearm.”

Federal law makes it a federal crime for anyone convicted of a felony or a crime of domestic violence to prohibit a firearm. There is a provision for removing this bar if a person’s civil rights are restored, but in the District of Columbia the only mechanism for such a restoration of civil rights is a Presidential pardon. (See 18 U.S.C. §§921-930; 18 U.S.C. § 922(g)(9)).

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<sup>8</sup>The term “crime of violence” means aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt or conspiracy to commit any of the foregoing offenses. DC ST § 7-2501.01; DC ST § 23-1331.

<sup>9</sup>“Weapons offense” means any violation in any jurisdiction of any law which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device. DC ST § 7-2501.01



## Housing

There can be extreme consequences for a family in public housing if a member of that household is arrested for and convicted of a crime that took place in public housing. Housing is also one of the most crucial elements to successful re-entry following contact with the criminal justice system. If a person with a criminal conviction is not fortunate enough to have a family member who is not living in public housing who is willing to take them in, it can be extremely difficult to find a place to live. In the current state of the public housing system, a person can be denied admittance for illegal activity – whether or not a conviction resulted.

If a person applying for public housing is denied due to a criminal conviction, that person has the right to grieve the denial and show rehabilitation. In the termination context of public housing, there is no right to show corrective action.

### **Applications for Public Housing**

#### **Federal Regulations**

Within the federal regulations, there are some permissive and some mandatory prohibitions from public housing.

24 C.F.R. § 982.553: Denial of admission and termination of assistance for criminals and alcohol abusers.

§ 982.553(a)(1)(i) “The PHA must prohibit admission to the program of an applicant for three years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity.

However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who has engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

§ 982.553(a)(1)(ii)(C): The PHA must prohibit admission if “any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

§ 982.553(a)(2)(i) Mandatory prohibition: The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. When screening applicants, the PHA must perform criminal history background

checks in order to determine whether any household member is subject to a lifetime sex offender registration requirement in the state where the housing is located and in other states where the household members are known to have resided.

24 C.F.R. § 982.553(a)(2)(ii) “Permissive prohibitions”

(A) The PHA may prohibit admission of a household...if any household member is currently engaged in, or has engaged in during a reasonable time before the admission”:

(1) Drug-related criminal activity

(2) Violent criminal activity

(3) Other criminal activity which “may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents...”

(4) Other criminal activity which “may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA...”

(B) “The PHA may establish a period before the admission decision during which an applicant must not to have engaged in the activities specified in para. (a)(2)(i) of this section (“reasonable time”).

24 C.F.R. § 960.205: Drug use by applicants: obtaining information from drug treatment facility.

§ 960.205(c)(1): The PHA (Public Housing Authority) may require each applicant to submit one or more consent forms for all household members 18 years or older, and for each family head or spouse regardless of age, that will allow the PHA to request and obtain information from drug abuse treatment facilities.

(c)(1)(i): The PHA can request that the facility inform the PHA when there is “reasonable cause to believe that the household member is currently engaging in illegal drug use.”

(c)(1)(iii) Authorizes the PHA to use any information obtained from the drug treatment facility in determining whether to prohibit the household member from public housing under §960.203.

§ 960.205(e) -- “A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members”:

§ 960.205(e)(ii): “Policy B—Request for certain household members. Under policy B, the PHA may submit a request to a drug abuse treatment facility only with respect to each proposed household member.”

§ 960.205(e)(ii)(A): “Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under § 960.205.”

## D.C. Regulations

14 DCMR § 6109 Applicant Family Selection Criteria:

DCHA may review the history of each applicant listed on the application regarding employment, personal habits or practices, and/or rental or personal credit history.

§ 6109.3 DCHA employ the following methods to review the applicant's history: "reference checks, including current or previous landlords, consultations with current and/or former neighbors, conducting home visits, reviewing police reports and/or criminal background checks of each member of the applicant family, including juveniles, as may be permitted by law."

§ 6109.4(a): Relevant information regarding personal habits or practices may include: (c) "The conviction of any applicant family member for a crime involving physical violence against persons or property or other criminal convictions that may adversely affect the health, safety, or welfare of other DCHA residents, staff or other members of the community, e.g., distribution or manufacture of illegal drugs or controlled substances, possession of an unlicensed firearm and/or ammunition, or child molestation"

§ 6109.5: If after an applicant is determined eligible and qualified for admission, the relevant property manager "uncovers" information regarding the applicant "that would lead a reasonable person to believe" that admission of the person to the property would adversely affect the other residents, the property manager may advise the Client Services Division and refer the application for further consideration.

§ 6109.6: If unfavorable information was discovered as under § 6109.2 or 6109.4, a review of the application will consider the "time, nature and extent of the applicant family's conduct," any factors which give indication of the probability of positive future conduct. Mitigating circumstance might include, but are not limited to:

- (a) length of time since offense or behavior was committed.
- (b) evidence of successful rehabilitation.
- (c) evidence of applicant's willingness to participate in social service activities or attend counseling
- (d) evidence of applicant's modification of previous disqualifying behavior, as well as availability of support.

§ 6109.7: With respect to criminal conviction(s) or activity:

- (a) The DCHA may deny admission to public or assisted housing to any applicant.
  - (1) If any adult member of the applicant's family (or any non-adult member who has been convicted of a crime as an adult) has been convicted of a felony, or a misdemeanor involving destruction of property or acts of violence against another person; or
  - (2) if applicant or any family member has participated in documented violent criminal behavior for which he/she has **not** been convicted. This violent criminal behavior must be documented by an arrest record, parole violation report, law enforcement criminal history report, or other official law enforcement record.
- (b) In accordance with the US Housing Act of 1937, as amended by the Housing Opportunity Program Extension Act of 1996, the DCHA will deny admission to any applicant who has been evicted from housing assisted under the US Housing Act, for drug-related criminal activity for three years following the eviction.

(c) In determining whether an applicant demonstrates that he/she has been successfully rehabilitated, DCHA may consider, but is not limited to, the following: acknowledgment of culpability; adequate and suitable employment or participation in a generally recognized training program; substance abuse treatment; successful completion of therapy directed at correcting the behavior that leads to the criminal activity; and existence of support network or support systems.

(d) information may be requested from various sources including, but not limited to, the applicant, landlords, clergy, employers, family members, social workers, parole officers, court records, drug treatment counselors, neighbors, and/or police department records.

### **Evictions from Public Housing**

It is important to note that there is no provision for showing rehabilitation or other corrective action in the eviction process.

### **Federal Regulations**

1. Terminating assistance for drug criminals:
  - a. PHA MUST terminate assistance for a family under the program if the PHA determines that:
    - i. Current drug use: Any household member is currently engaged in any illegal use of a drug; or
    - ii. Pattern of illegal drug use: A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.
    - iii. Methamphetamine production: Any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing. 24 CFR 982.553 (b)
2. Terminating assistance for other criminals:
  - a. The PHA MUST terminate assistance under the program for a family if the PHA determines that:
    - i. Violent criminal activity: Any household member has violated the family's obligation not to engage in violent criminal activity.
    - ii. Alcohol abusers: Terminating assistance for alcohol abusers. The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. 24 CFR 982.553.
3. Evidence of criminal activity:
  - a. The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in

the activity, regardless of whether the household member has been arrested or convicted for such activity. 24 CFR 982.553 (c).

4. Use of criminal record to terminate assistance: If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA shall:
  - a. Notify the household of the proposed action to be based on the information AND
  - b. Provide the subject of the record and the tenant with a copy of the criminal record. PHA can not pass along cost for criminal record to tenant. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record. 24 CFR 982.553 (d).
5. Informal hearings for participants: The PHA is required to give a participant family an opportunity for an informal hearing to consider whether the decision to terminate assistance because of current drug use, a pattern of drug use, alcohol abuse, methamphetamine production, or violent criminal activity is in accordance with the law, HUD regulations and PHA policies. 24 CFR 982.555 (a)(1)(v).
  - a. The PHA must give the opportunity for this informal hearing before the PHA terminates housing assistance for the family. 24 CFR 982.555(a)(2).
    - i. The PHA must give the family prompt written notice that the family may request a hearing. This notice must give a brief reason for the decision, state that an informal hearing is available, the manner in which to request such hearing, and confirmation that the hearing will proceed expeditiously. 24 CFR 982.555(c)(2).
    - ii. The family must have access to any PHA documents that the PHA will use in the hearing. 24 CFR 982.555(e)(2)(i).
    - iii. At the hearing, the family, at its own expense, may be represented by a lawyer. 24 CFR 982.555(e)(3).
    - iv. BURDEN OF PROOF: Factual determinations will be based on a preponderance of the evidence presented at the hearing. 24 CFR 982.555(e)(6).

## **D.C. Regulations**

14 DCMR § 6404: DCHA Termination of Tenancy

14 DCMR § 6404.4 – Consistent with District law, DCHA shall issue a thirty (30) day notice to vacate to Lessees, for lease violations, predicated on criminal activity that threatens the residents health, safety or right to peaceful enjoyment of the Development or drug related criminal activity on or off the Leased Premises or the Development.

Evictions - Case Law

HUD v. Rucker, 535 U.S. 125 (2002).

This decision reverses and remands a decision by the 9th Circuit, holding that the housing authority cannot pursue eviction of a tenant for off-premises criminal activity of household member, which tenant did not know of or have reason to know. The U.S.

Supreme Court, in an opinion delivered by Chief Justice Rehnquist, concluded that the required lease terms set out in the Anti-Drug Abuse Act did, in fact, give local PHAs “discretion to terminate the lease of a tenant when a household member or a guest engaged in drug-related activity, *regardless* of whether the tenant knew, or should have known about the drug-related activity.” (emphasis added). The Court finds that HUD regulations clearly delegate such discretionary powers to local PHAs. 535 U.S. at 129 (citing 56 Fed. Reg. 51560, 51567 (1991)). It also noted that Congress’ decision *not* to include any qualifying language regarding tenants knowledge in the statute, in conjunction with the use of the words “any” drug-related activity, should silence any discussion of an exception based on a knowledge requirement. *Id.* at 130-131.

### **Non-resident Bars from Public Housing**

If a person has received a barring notice from the DCHA that person is not authorized to be on DCHA property. A person who has failed to comply with the barring notice may be charged with “unlawful entry” and may be subject to probation or parole revocation proceedings. *See* 14 DCMR 9600 *et seq.*

### **Private Housing**

There are methods by which the government can force people to correct problems considered to be a “drug related nuisance” or a “prostitution related nuisance” at their private residence. No criminal conviction is necessary – activity is sufficient for proceedings to begin.

### **Drug or Prostitution-Related Nuisance Act**

“Drug-Related Nuisance Abatement Act of 1998,” DC ST § 42-3101 *et seq* (1981).

What does this statute do?

- Allows any real property that is used or intended for use in the sale, distribution, possession, storage, transportation, or manufacture of any controlled substances, including the packaging or repackaging of the drug or labeling or relabeling of its container, to be deemed a nuisance due to its adverse impact on the neighborhood.

How can the action be brought?

- Whenever there is reason to believe that a drug-related nuisance exists, the
  - US Attorney for DC,
  - Corporation Counsel of DC, or
  - Any community-based organization;May file an action in Superior Court of DC to abate, enjoin, and prevent the drug or prostitution-related nuisance. DC ST § 42-3102 *et seq* (1981).
- If a community-based organization brings the complaint:
  - It must be supported by at least 1 person residing, either as a tenant or otherwise, or owning property within 3000 feet of the alleged drug or prostitution-related nuisance.

- That person must have:
  - Witnessed the activities alleged, and
  - Be aware of the adverse impact on the community stemming from the alleged drug-related nuisance. DC ST § 42-3103(c) (1981).

Complaint:

- Complaint or affidavit shall describe the ***adverse impact*** of a drug or prostitution-related nuisance upon the surrounding community. [See below for examples of an adverse impact.] DC ST § 42-3103(a) (1981).
- NOTICE -- Must include notification attempts to the owner of the property at least 14 days in advance of filing complaint. DC ST § 42-3103(b) (1981).

What constitutes an adverse impact?

>> A wide range of factors, which can be attributed to prostitution or the use, sale or manufacture of controlled substances or drug paraphernalia, include:

- Arrests of persons on or near the property for criminal conduct.
- Search warrants served or executed at the property.
- A substantial number of complaints made to law enforcement about alleged drug activity.
- The discharge of a firearm.
- Increased resident fear of walking through or in public areas.
- Increased volume of vehicular and pedestrian traffic.
- Bothersome solicitations or approaches by persons wishing to sell controlled substances. DC ST § 42-3101 *et seq.*

Preliminary injunction:

- If it appears that there is a substantial likelihood that the plaintiff will be able to prove at trial that a drug or prostitution-related nuisance exists, the court may enter an order preliminarily enjoining the drug-related nuisance and granting other relief as the court deems appropriate. DC ST § 42-3104 *et seq.* (1981).

Burden of proof:

- Plaintiff has burden of establishing that a drug or prostitution-related nuisance exists by a preponderance of the evidence. DC ST § 42-3108 *et seq.* (1981).
- \*\*Compare to other states in which the drug or prostitution-related nuisance inflicts a criminal penalty and thus a higher standard of proof must be met.

Protection of witnesses:

- If proof of the existence of a drug or prostitution-related nuisance depends on witnesses who are not law enforcement officers, then the court may use its discretion to issue orders to protect those witnesses, including, placing the complaint and support affidavits under seal. DC ST § 42-3105 *et seq.* (1981).

Evidence of reputation:

- Evidence of general reputation of the ***property*** or ***tenants*** is admissible for:
  - Purpose of proving a drug or prostitution-related nuisance, or

- Proving the knowledge of the defendant of the nuisance. DC ST § 42-3109 *et seq* (1981).

Available relief:

- If the existence of drug or prostitution-related activities is found, then the court can enter an order ***permanently*** enjoining, abating, and preventing the continuance or recurrence of the nuisance.
- Order may include the following:
  - Assessment of reasonable attorney fees and costs to the prevailing party
  - Ordering the owner to make repairs to the property
  - Ordering the owner to make reasonable expenditures upon the property, including the installation of secure locks, hiring private security personnel, increasing lighting in common areas, and using videotaped surveillance of the property and adjacent alleys, sidewalks, or parking lots.
  - Ordering the property ***vacated, sealed, or demolished***; or
  - Any other remedy which the court deems appropriate. DC ST § 42-3110 *et seq* (1981).

### **Prostitution Related Nuisance**

Anyone who owns, leases or occupies a building for the purpose of lewdness, assignation, or prostitution in the District of Columbia is guilty of a nuisance. DC ST § 22-2713. The building and its furniture, fixtures, and contents are also declared a nuisance and shall be enjoined and abated.<sup>10</sup> It must be shown that the owners or lessees had actual knowledge of the activities taking place in the building. However, evidence of general reputation and the openness of the activities are admissible to establish the defendant's knowledge.<sup>11</sup>

The Attorney General of the United States, the Corporation Counsel of the District of Columbia or any citizen of the District of Columbia may file the action. If, upon presentation of the petition, the judge is satisfied that the nuisance complained of exists, then a temporary injunction shall be made. The defendant will be given three days notice in writing of the applicant's hearing. DC ST § 22-2714.

If the owner, lessee, or occupier is found to be guilty of knowingly maintaining a building where such behavior takes place, then the house is a nuisance per se and the court is compelled to order an issue of abatement.<sup>12</sup> It is not necessary to present a series of witnesses to testify that the house disturbed the neighborhood.<sup>13</sup> Also, a criminal conviction of prostitution is not necessary for a nuisance to be found under this statute. However, if a defendant does plead guilty in a criminal case to keeping a disorderly house stemming from prostitution, lewdness or assignation, then he is automatically

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<sup>10</sup> DC ST 22-2713(a) (1998).

<sup>11</sup> Holmes v. U.S., 50 App.D.C. 147 (1920).

<sup>12</sup> Thomas Circle Ltd. Partnership v. U.S., 372 A.2d 555 (1977).

<sup>13</sup> Raleigh v. U.S., 351 A.2d 510 (1976).

guilty of keeping a nuisance under this statute and thus the order of abatement is required.<sup>14</sup> The abatement order will direct the removal of all fixtures, furniture, or movable property used to conduct the nuisance and shall direct the sale of these items. The building will also be closed for any purposes for up to one year.<sup>15</sup>

Within three months after the home has been declared a nuisance and the order of abatement has been issued, the building and person responsible for maintaining the nuisance will be taxed \$300.00.<sup>16</sup>

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<sup>14</sup> U.S. v. Wade, 922 F.Supp. 6 (1997).

<sup>15</sup> DC ST § 22-2717 (1994).

<sup>16</sup> DC ST § 22-2720 (1970).



## Identification/Drivers' Licensing

### Identification

For those who are leaving prison under CSOSA supervision, CSOSA has a MOU with the DC Department of Motor Vehicles for the facilitation of getting a government issued ID. The basic idea of the MOU is that the DMV will allow CSOSA to “vouch” for their clients so that they are able to get a government issued ID. There is no waiver of the fee to get identification through the MOU; however, a payment plan can be made available with no down payment.

The situation with non-CSOSA clients is bleaker. They are stuck in the conundrum of “needing identification to get identification”. There are some resources for assistance with the fees, but they are few. Clients can call the PDS Re-entry Program at 202-824-2801 for assistance.

A helpful trick is to have your client register to vote so that he/she get a voter's registration card.

### Drivers' License

**Drug Offenses:** “The Mayor shall revoke the motor vehicle operator's permit of a District resident or the privilege to operate a motor vehicle in the District of a nonresident, convicted as a result of the commission of a drug offense or adjudicated a juvenile delinquent as a result of the commission of a drug offense. DC ST § 50-1403.02 (a). Where the person is imprisoned as a result of the drug offense, the revocation shall occur following the person's release from imprisonment. If a person does not have an operator's permit, or the permit is or has been revoked or suspended at the time of the conviction of a drug offense, the issuance or reinstatement of an operator's permit will be delayed for a period of at least 6 months and not more than 2 years. If a person is convicted for the commission of a drug offense or adjudicated a delinquent for the commission of a drug offense before the person is 16 years of age, the period of disqualification shall not begin to run until the person is 16 years of age. Notification of the conviction or adjudication shall be sent electronically by the court to the Mayor within one business day of the conviction or adjudication and shall include the person's name, address, date of birth, conviction date, driver's license number, if any, social security number, if any, the offense, and any other information required by the Mayor to take the action required by this section. The revocation shall be for not less than six months and not more than 2 years.” DC ST § 50-1403.02(a).

A drug offense is the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer

any substance the possession of which is prohibited under the Comprehensive Drug Abuse Prevention and Control Act of 1970, approved October 27, 1970 (84 Stat. 1236; 21 U.S.C. § 801 *et seq.*), Unit A of Chapter 9 of Title 48, or the law of any state, territory, or possession of the United States; or the operation of a motor vehicle under the influence of such a substance. DC ST § 50-1403.02(b)(1)(A-B).

Vehicle-related offenses: The Mayor may delay issuance of an operator's permit by disqualifying anyone not already in possession of a valid operator's permit when such individual is convicted of or adjudicated delinquent as a result of:

- (1) The commission of a stolen vehicle offense;
- (2) Operating a motor vehicle without a permit ([§ 50-1401.01\(d\)](#)--residents; [§ 50-1401.02\(i\)](#)--non-residents);
- (3) Operating a motor vehicle after revocation or suspension of an operator's permit ([§§ 50-1403.01](#)); or
- (4) Any felony in the commission of which a motor vehicle is involved. [50-1403.01](#)).

DC ST §50-1403.02 (a-1).



## Immigration

The Supreme Court recently issued a landmark decision in *Padilla v. Kentucky* recognizing that deportation is an integral part of the penalty that may be imposed on non-citizen clients who plead guilty to specified crimes. As a result of the *Padilla* decision, defense attorneys have an affirmative duty to advise their non-citizen clients of the adverse immigration consequences that may flow from a guilty plea. 130 S. Ct. 1473 (2010).

Immigration issues are extremely complex depending on the particular person and charge. Consultation with an attorney knowledgeable in the immigration code before considering a plea offer is crucial.

### **Resources:**

The Public Defender Service for the District of Columbia (PDSDC) website has information relating to immigration defense available at <http://www.pdsdc.org/PDS/CivilLegalServices.aspx>.

Defending Immigrant Partnership - has an immigration section with information about consequences to criminal convictions available at: <http://defendingimmigrants.org>.



## Probate

The Court will appoint personal representatives, successor personal representatives and special administrators according to a priority system as listed in DC ST §20-303(a)(1). ***However, a felon may not serve as a personal representative if his sentence has not expired or has expired within 10 years.*** This exclusion includes felonies committed in the District of Columbia or any other crime committed in another jurisdiction that, if committed in the District, would be a felony. If the individual has been pardoned on the basis of innocence of the felony, then the exclusion does not apply. DC ST §20-303 (b)(4).

While some eligibility provisions to becoming a personal representative of an estate are up to the court's discretion, the felony exclusion provision is a "positive disqualification in unequivocal terms." Dial v. Johnson, 259 F. 2d 189, 191 (U.S. App. D.C. 1958). The exclusion is not a discretionary matter and, if such disqualification is discovered after the letter has been issued, it will be revoked. Dial, 259 F. 2d at 191.

\*\* The "letter" is the official means by which a personal representative is appointed to the Court to administer the estate of a decedent.



## **Public assistance**

There is a federal ban from TANF (Temporary Assistance to Needy Families) and food stamps due to a felony drug conviction. Under the federal statute, however, states were given the authority to opt out of this ban or otherwise modify the ban, including making it for a shorter period of time or linking the ban to treatment. The District of Columbia opted entirely out of the TANF and food stamp felony drug conviction ban. DC ST § 4-205.71. Therefore, a felony drug conviction will not prevent a person from receiving public assistance benefits while residing in the District of Columbia.

There is a 10-year bar on receipt of TANF for those convicted of fraud in any federal benefit program. DC ST § 4-205.69.

There exists a ban on the receipt of TANF and food stamp benefits for fleeing felons (those who are fleeing an outstanding felony warrant to avoid prosecution) and persons in violation or probation or parole. DC ST § 4-205.70.



## Relief from Collateral Consequences

In the District of Columbia, a person may be relieved from the impact of collateral consequences by getting their criminal record sealed or by receiving a presidential pardon.

### **D.C. Criminal Record Sealing:**

#### **DC ST §16-802: Sealing an Arrest Record on the Grounds of Actual Innocence**

##### Who is Eligible:

- A person who is arrested for or charged with any crime (DC Code or DC Municipal Regulation); AND
- Whose prosecution did not result in a conviction (i.e., arrest only (no papered), dismissed for want of prosecution (DWP), dismissal by the court (nolle prosequi), acquittal, etc); AND
- Can prove that s/he is actually innocent.

Eligible Offenses: All offenses that resulted in non-conviction,<sup>17</sup> as long as the person can prove s/he is actually innocent.

Waiting Period: There is no waiting period to file; a person can file the motion at any time (*but see* Burden of Proof).

##### Burden of Proof:

- The movant (person filling the motion) must prove either (1) that the offense for which s/he was arrested or charged did not occur, OR (2) that the movant did not commit the offense.
- If the motion is filed within 4 years after the prosecution was terminated, then the burden is preponderance of the evidence. If the motion is filed more than 4 years after the prosecution was terminated, then the burden is clear and convincing evidence.

##### Effect of Sealing under § 16-802:

- Records sealed under § 16-802 (actual innocence) cannot be seen by anyone, including the prosecutor and police; however, the Court may permit your

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<sup>17</sup> A non-conviction is any result that is not a conviction, including no papers, DWPs, dismissals by the court and acquittals.

record to be opened if the judge finds there is a compelling need for the Court to open your record.

### **DC ST § 16-803: Sealing Publicly Available Records for Conviction and Non-Convictions**

#### Who is Eligible:

1. A person with a non-conviction,<sup>18</sup> subject to certain restrictions (i.e. waiting periods, no disqualifying convictions, burden of proof, etc.) *See below.*
2. A person who is convicted of an eligible misdemeanor<sup>19</sup> or felony Bail Reform Act (failure to appear), subject to certain restrictions (i.e. waiting periods, no disqualifying convictions, burden of proof, etc.) *See below.*

#### Eligible Offenses:

1. Non-convictions: all offenses, subject to certain restrictions.
2. Convictions: only eligible misdemeanor<sup>20</sup> convictions and felony Bail Reform Act (failure to appear), subject to certain restrictions.

#### Disqualifying Convictions:

1. A person cannot have any part of his/her DC criminal record sealed under DC ST 16-803 if s/he still has a pending case before any court in any jurisdiction.
2. A person cannot have any part of his/her DC criminal record sealed under DC ST § 16-803 if s/he has ever been convicted of any ineligible misdemeanor offense or **any felony offense** (other than Bail Reform Act)
3. A person can only move to seal his/her last (most recent) conviction, and non-convictions that have occurred since the most recent conviction.

#### Waiting Periods: Depends on the offense and disposition. *See chart below.*

- A person can file a motion to have multiple non-convictions sealed; however, before the motion can be filed, the waiting periods must be satisfied with respect to all of the movant's arrests and convictions, unless the movant

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<sup>18</sup> See Note 16.

<sup>19</sup> Statutorily eligible misdemeanors include any misdemeanor *except*: an intrafamily offense; driving while intoxicated, driving under the influence, and operating while impaired; a misdemeanor offense for which sex offender registration is required; criminal abuse of a vulnerable adult; interfering with access to a medical facility; possession of a pistol by a convicted felon; failure to report child abuse; refusal or neglect of guardian to provide for child under 14 years of age; disorderly conduct; misdemeanor sexual abuse; violating the Sex Offender Registration Act; violating child labor laws; election/petition fraud; public assistance fraud; trademark counterfeiting; attempted trademark counterfeiting; fraud in the second degree; attempted fraud, credit card fraud; attempted credit card fraud; misdemeanor insurance fraud; attempted insurance fraud; telephone fraud; attempted telephone fraud; identify theft, second degree; attempted identity theft; fraudulent statements or failure to make statements to employee; fraudulent withholding information or failure to supply information to employer; fraud and false statements; false statement/dealer certification; false information/registration; no school bus driver's license; false statement on DMV document; no permit – second or greater offense; altered title; altered registration; no commercial driver's license; a violation of building and housing code regulations; a violation of the Public Utility Commission regulations; and attempt or conspiracy to commit any of the foregoing offenses.

<sup>20</sup> See Note 18.

waives in writing the right to seek sealing of an arrest or conviction, for which the waiting period has not elapsed.

- The waiting periods may be waived in writing by the prosecutor.
- A motion to seal may be dismissed without prejudice to permit the movant to renew the motion after further passage of time. The Court may set a waiting period before a renewed motion can be filed.

Burden of Proof: Depends on the offense and disposition. *See chart below.*

	Waiting Period	Burden of Proof	Standard of Proof	Burden to Show What ...
Non-conviction of eligible misdemeanors and felony BRA	2 years since termination of the case	On the prosecutor	Preponderance of the evidence	That it is <u>not</u> in the interest of justice to grant relief
Non-conviction of ineligible misdemeanors and all felonies except BRA	5 years since termination of the case	On the movant	Preponderance of the evidence	That it is in the interest of justice to grant relief
Conviction of eligible misdemeanors and felony BRA	10 years since the completion of the sentence	On the movant	Clear and convincing evidence	That it is in the interest of justice to grant relief

Effect of Sealing under § 16-803:

- Records sealed under § 16-803 (non-innocence, convictions and non-convictions) cannot be accessed by the public, such as *most* employers, private individuals, banks and reporters. If they ask the Court about your record, the Court must answer that “no records are available.”
- **Records sealed under § 16-803 are available to:**
  1. **The Court, prosecutor or law enforcement agency (such as Pretrial Services Agency, CSOSA and the DC Jail) for any lawful purpose, including:**
    - Investigation or prosecution of any offense
    - Determination of whether person is eligible for sealing or expungement
    - Determination of release conditions
    - Determination of whether person has committed subsequent offense for charging or sentencing purposes
    - Determining appropriate sentence
    - Employment decision (of the agency)
  2. **For use in civil litigation relating to the arrest or conviction;**
  3. **Upon order of the Court, for good cause shown;**

4. Any agency that issues profession or occupational licenses, ONLY where the offense for which you were arrested or convicted might disqualify you from obtaining a license from that agency;
5. Any licensed school, day care center, before or after school facility or other educational or child protection agency or facility; OR
6. Any government employer with regards to employment at a senior level, executive-grade government position.

### **Youth Rehabilitation Act (DC ST § 24-901 et. seq.)**

Who is Eligible: A person who qualifies as a “youth offender.” Youth offender” means a person less than 22 years old convicted of a crime other than murder, first degree murder that constitutes an act of terrorism, and second degree murder that constitutes an act of terrorism. DC ST § 24-901(6).

#### Overview:

Convictions which are automatically set aside:

- (a) “[U]nconditional discharge of a committed youth offender before the expiration of the sentence imposed (DC ST § 24-906(a));
- (b) “Where a youth offender is sentenced to commitment and a term of supervised release . . . and the U.S. Parole Commission exercises its authority to terminate the term of supervised release before its expiration (DC ST § 24-906(c));
- (c) “Where a youth offender has been placed on probation by the court” and the court has “in its discretion, unconditionally discharged the youth offender from probation before the end of the maximum period of probation previously fixed by the court” (DC ST § 24-906(e)).

Convictions where there is discretion to set aside:

- (a) “If the sentence of a committed youth offender expires before unconditional discharge.” The U.S. Parole Commission has the discretion to set aside the conviction (DC ST § 24-906(b));
- (b) “If the sentence of a youth offender who has been placed on probation by the court expires before unconditional discharge.” The court has the discretion to set aside the conviction (DC ST § 24-906(e)).

“In any case in which the youth offender’s conviction is set aside, the youth offender shall be issued a certificate to that effect.” DC ST § 24-906(d). If it is the court that sets aside the conviction, the court will issue the certificate. DC ST § 24-906(e).

Effect: Convictions set aside under the Youth Rehabilitation Act are expunged; however the arrest record is still available unless the individual requests to have it sealed.

The Youth Rehabilitation Act gives the court flexibility in sentencing a youthful offender according to his individual needs; to separate youth offenders from more mature,

experienced offenders; and to afford the opportunity for a deserving youth offender to start anew through expungement of his criminal record. *Brown v. U.S.*, 579 A.2d 1158 (D.C. 1990).

A conviction that has been set aside under the Youth Rehabilitation Act may be used:

- (1) “In determining whether a person has committed a second or subsequent offense for purposes of imposing an enhanced sentence under any provision of law;”
- (2) In determining whether person has a subsequent conviction under the sentencing guidelines or under DC ST § 48-904.01 (regarding controlled substances).
- (3) “In determining an appropriate sentence if the person is subsequently convicted of another crime;
- (4) “For impeachment if the person testifies in his own defense at trial;”
- (5) “For cross-examining character witnesses;” or
- (6) “For sex offender registration and notification.” DC ST § 24-906(f).

### **Presidential Pardon**

In the District of Columbia, the President of United States has the power to determine whether a pardon should be granted. *See* U.S. Const., Art. II, Sec. 2. A President will make the determination whether a pardon should be granted based 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).

Who is Eligible: Under the Office of the Pardon Attorney’s regulations, a person is eligible for a pardon if:

- He/she was convicted of a federal offense or was convicted in Washington, D.C. *See* 28 Fed. Reg. § 1.4 (2001).

It has been 5 years since the person was convicted or released from prison, probation, parole or supervised release; whichever is the most recent date. *See* 29 Fed. Reg. § 1.2 (2001). How do you apply: The pardon application can be downloaded from the website of the Office of the Pardon Attorney, available at

[http://www.justice.gov/pardon/forms/pardon\\_form.pdf](http://www.justice.gov/pardon/forms/pardon_form.pdf)

What is the Effect of a Pardon: While a presidential pardon will restore various rights lost as a result of the pardoned offense and should lessen to some extent the stigma arising from a conviction, **it will not erase or expunge the record of your conviction.**

Therefore, even if you are granted a pardon, you must still disclose your conviction on any form where such information is required, although you may also disclose the fact that you received a pardon. In addition, most civil disabilities attendant upon a federal felony conviction, such as loss of the right to vote and hold state public office, are imposed by state rather than federal law, and also may be removed by state action.



## Sex offender registration requirements

DC ST § 22-4001: A person must register as a sex-offender if he/she has committed a registration offense. This includes that the person -

- Was convicted or found not guilty by reason of insanity of a registration offense
- Was determined to be a sexual psychopath.

A person is not deemed to have committed a registration offense if the disposition described above has been reversed or vacated, or if the person has been pardoned for the offense on the ground of innocence. DC ST § 22-4001(3)(B).

Registration offenses are –

- An offense under Chapter 30 (Sexual Abuse)
  - First degree sexual abuse
  - Second degree sexual abuse
  - Third degree sexual abuse
  - Fourth degree sexual abuse
  - Misdemeanor sexual abuse
  - First degree child sexual abuse
  - Second degree child sexual abuse
  - Enticing a child
  - First degree sexual abuse of a ward
  - Second degree sexual abuse of a ward
  - First degree sexual abuse of a patient or client
  - Second degree sexual abuse of a patient or client
  - Attempt to commit a sexual offense
  - Forcible rape, carnal knowledge or statutory rape as these offenses were proscribed until May 23, 1995 by DC ST § 22-4801; indecent acts with children as this offense was proscribed until May 23, 1995 by DC ST § 22-3801(a); enticing a child as this offense was proscribed until May 23, 1995 by DC ST § 22-3801(b); or sodomy as this offense was proscribed until May 23, 1995 by DC ST § 22-3802(a) where the offense was forcible or committed against a minor;
  - Any of the following offenses where the victim is a minor:
    - lewd, indecent, or obscene acts (DC ST § 22-1312)
    - obscenity (DC ST § 22-2201)
    - sexual performances using minors (DC ST § 22-3102)
    - incest (DC ST § 22-1901)
    - kidnapping (DC ST § 22-2001)
    - prostitution, pandering (DC ST § 22-2701, DC ST § 22-2703)

- Any offense under the DC Official Code that involved a sexual act or sexual contact without consent or with a minor, assaulting or threatening another with the intent to engage in a sexual act or sexual contact or with the intent to commit rape, or causing the death of another in the course of, before, or after engaging or attempting to engage in a sexual act or sexual contact or rape;
- An attempt or conspiracy to commit a crime, as proscribed by DC ST § 22-1803 or DC ST § 22-1805a which involved an attempt or conspiracy to commit an offense described above, or assault with intent to commit rape, carnal knowledge, statutory rape, first degree sexual abuse, second degree sexual abuse, or child sexual abuse, as proscribed by DC ST § 22-401;
- Assault with intent to commit any other crime, as proscribed by DC ST § 22-403, or kidnapping or burglary, as proscribed by DC ST § 22-801 or DC ST § 22-2001 where the offense involved an intent, attempt or conspiracy to commit an offense described above;
- An offense under the law of any state, under federal law, or under the law of any other jurisdiction, which involved conduct that would constitute an offense described above if committed in DC or prosecuted under the DC Official Code, or conduct which is substantially similar to that described above;
- Any other offense where the offender agrees in a plea agreement to be subject to sex offender registration requirements. DC ST § 22-4001(8).

DC ST § 22-4001(9): Sex offender means a person who lives, resides, works, or attends school in DC and who:

- Committed a registration offense on or after July 11, 2000;
- Committed a registration offense at any time and is in custody or under supervision on or after July 11, 2000;
- Was required to register under the law of DC on the day before July 11, 2000; or
- Committed a registration offense at any time in another jurisdiction and, within the registration period, enters DC to live, reside, work, or attend school.

For how long does a person have to register?

- Shall start when a disposition occurs and continue until the expiration of any time being served on probation, parole, supervised release, conditional release or convalescent leave or 10 years after the sex offender is placed on probation, parole, supervised release, conditional release, or convalescent leave, or is unconditionally release from a correctional facility, prison, hospital or other place of confinement, whichever is latest, except that:
  - CSOSA may give a registrant credit for the time the sex offender was registered in another jurisdiction
  - CSOSA may deny a registrant credit for any time in which the sex offender is detained, incarcerated, confined, civilly committed, or hospitalized and for any time in which a registrant was registered prior to a revocation of probation parole, supervised release, conditional release or convalescent leave; and

- The registration period is tolled for any time the registrant fails to register or otherwise fails to comply
- Lifetime registration happens when a person
  - Has committed a lifetime offense:
    - First or second degree sexual abuse as proscribed by DC ST § 22-3002 or DC ST § 22-3003; forcible rape as this offense was proscribed until May 23, 1995 by DC ST § 22-4801; or sodomy as this offense was proscribed until May 23, 1995 by DC ST § 22-3802(a) where the offense was forcible;
    - First degree child sexual abuse as proscribed by DC ST § 22-3008 committed against a person under the age of 12 years, carnal knowledge or statutory rape as these offenses were proscribed until May 23, 1995 by DC ST § 22-4801 committed against a person under the age of 12 years, or sodomy as this offense was proscribed until May 23, 1995 by DC ST § 22-3802(a) committed against a person under the age of 12 years;
    - Murder or manslaughter as proscribed by DC ST § 22-2101 committed before, during or after engaging in or attempting to engage in a sexual act or sexual contact, or rape as this offense was proscribed until May 23, 1995 by DC ST § 22-4801
    - An attempt or conspiracy to commit an offense as proscribed by DC ST § 22-1803 or DC ST § 22-1805a or DC ST § 22-3018 or assault with intent to commit rape, carnal knowledge, statutory rape, first degree sexual abuse, second degree sexual abuse, or child sexual abuse, as proscribed by DC ST § 22-401, which involved an attempt, conspiracy or assault with intent to commit an offense described above; and
    - An offense under the law of any state, under federal law, or under the law of any other jurisdiction, which involved conduct that would constitute an offense described above if committed in the District of Columbia or prosecuted under the DC Official Code, or conduct which is substantially similar to that described above.
    - Was determined to be a sexual psychopath
    - Has been subject on 2 or more occasions to a disposition for a registration offense that involved a felony registration offense or a registration offense against a minor
    - Has been subject to 2 or more dispositions for a registration offense relating to different victims, each of which involved a felony registration offense or a registration offense against a minor.
  - In certain circumstances, a person may seek review of a determination by CSOSA that a person is required to register or required to register for life. DC ST § 22-4001(6).

#### Duties of those required to register

- Register with CSOSA as a sex offender

- Provide any information required for registration, and cooperate in photographing and fingerprinting
- Report any change of residence or other change in registration information
- Periodically verify address and such other registration information as CSOSA may specify, including complying with any requirement to return address verification forms or appear in person for the purpose of verification
- Report if the registrant is moving to another state, or works or attends school in another state and registers in any such state
- Acknowledge receipt of information concerning the registrant's duties, including reading and signing a form or forms stating that these duties have been explained to the registrant; and
- Meet with responsible officers and officials for the purpose of carrying out any requirements adopted by CSOSA.

**Penalties for failure to register:**

Registration may be a condition of release for probation/parole. Therefore, failure to register will likely be a violation of probation or parole.

Violation of registration requirements may be fined not more than \$1,000 or imprisoned for no more than 180 days, or both. If there is a prior conviction for failure to comply with the requirements of a sex offender registration program, the person shall be fined not more than \$25,000 or imprisoned for no more than 5 years, or both.



## **Social Security**

A “fugitive felon” who is fleeing to avoid prosecution or a person considered in violation of probation or parole is ineligible to receive SSI benefits. The Social Security Administration can terminate benefits and issue a Notice of Overpayment for recovery of benefits erroneously paid if they learn of a recipient’s fugitive felon status. 42 U.S.C. § 1382(e)(4) (2002).

A person who has been convicted of a felony (whether Federal or State) will be barred from being certified as a representative payee, unless the Commissioner determines that the certification would be appropriate notwithstanding such conviction. 42 USC § 1383 (a)(2)(A)(i).



## Student loans

Federal assistance to students is limited if the student is convicted of a drug related offense while receiving assistance. A drug conviction while receiving assistance will cause a period of ineligibility for federal student assistance.

A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any [Federal] grant, loan, or work assistance shall not be eligible to receive any [Federal] grant, loan, or work assistance from the date of that conviction for the period of time specified in the following table if (20 U.S.C.A. § 1091(r)(1)):

**If convicted of an offense involving:**

1. The possession of a controlled substance, then the ineligibility period is:
  - a. One year for the first offense
  - b. Two years for the second offense
  - c. Indefinite for the third offense
  
2. The sale of a controlled substance, then the ineligibility period is:
  - a. Two years for the first offense
  - b. Indefinite for the second offense

A student whose eligibility has been suspended due to a drug related conviction may resume eligibility before the end of the ineligibility period determined if (20 U.S.C.A. § 1091(r)(2)):

1. the student satisfactorily completes a drug rehabilitation program that complies with criteria prescribed in regulations and includes two unannounced drug tests; OR
2. the conviction is reversed, set aside, or otherwise rendered nugatory.

## Appendix A

### Consequences of Drug Related Convictions

Civil Forfeiture – Property used during the commission of a drug related offense may be subject to civil forfeiture proceedings. In order to preserve a right to claim the property, the claim must be filed within 30 days from the notice of seizure. (See page 3)

#### Democratic Participation –

Holding Public Office – A person is only prohibited from holding office as a city council member or Mayor while incarcerated for a felony conviction. A felony conviction will also suspend a judge of a District of Columbia court without salary. Reinstatement is only possible if the conviction is reversed. (See page 8)

Jury Duty – following a felony conviction, a person may not serve on a jury for 10 years following the completion of their sentence, whether it is probation or incarceration and parole. (See page 8)

Voting – a person currently incarcerated as a result of a sentence for a felony drug conviction may not vote. Once released from incarceration, the person may register to vote. (See page 9)

DNA Testing –DNA testing is required if you are convicted of any felony. (See page 10)

Driver’s Licensing – A person with a drug offense will have his/her license revoked for at least six months, but for no more than two years. There is no provision allowing for a restoration of a driver’s license through rehabilitation. (See page 33)

#### Employment –

Occupational Licensing Requirements – Any conviction can result in denial of occupational license if it is determined that the offense “bears directly on the fitness of the person to be licensed.” DC ST § 47-2853.12(a)(1); DC ST § 3-1205.03(a)(1) (See page 13). Specifically, a drug conviction will have an effect on getting an occupational license in the following areas:

- Security Officer- two year ban for any felony conviction. (See page 13)

Non-licensed professionals in health care and community residence facilities – A conviction for unlawful distribution or possession with intent to distribute a controlled substance will prevent a person from obtaining this type of job for seven years. (See page 16)

#### Family –

Adoption and Foster Care – A person is barred from becoming an adoptive or foster parent if he/she has had a felony drug conviction within the past five

years. There is an exception to this five-year ban if it is best for the health, safety, and welfare of the child. (See page 18)

Child custody – There is no statutory prohibition keeping a person with a drug conviction from seeking custody of his/her minor children. It is important to note, however, that any drug activity will be evidence in any custody proceedings. (See page 20)

Termination of parental rights – If a custodial parent is incarcerated and the child is in foster care for 15 out of the most recent 22 months, then the District may terminate parental rights. (See page 21)

#### Housing –

Public Housing – Application – There is a mandatory lifetime ban for persons convicted of manufacturing methamphetamines in public housing and three year ban for persons convicted of drug offenses while residing in public housing.

The D.C. Housing Authority may deny an application for housing if a member of the family has been convicted of a felony, or a misdemeanor involving drug related activity if they find such activity poses threat to the health or safety of residents. This, however, should not deter a person from filing an application, as there is opportunity to show rehabilitation or another change in circumstances. (See page 24)

Public Housing – Eviction – The D.C. Housing Authority may issue a 20-day notice to vacate for a conviction for drug related activity on the premises or for other documentation of illegal activity that is threatening the health or safety of other tenants or DCHA employees. There is no right to show rehabilitation or corrective actions in eviction proceedings. (See page 24)

Private Property – Drug Related Nuisance Act – A determination that private property is a drug related nuisance will allow the government to force the owner to correct the nuisance or face a forced vacation and demolition of the property. (See page 29)

Immigration – These issues are extremely complex depending on the particular person and charge. Consultation with an attorney knowledgeable in the immigration code before considering a plea offer is crucial. More information about immigration consequences is available at [www.pdsdc.org](http://www.pdsdc.org). (See page 35)

Probate – Anyone with a felony conviction within the last ten years is not allowed to serve as the executor of another person’s estate in the District of Columbia. (See page 36)

Sex Offender Registration – There is no sex offender registration requirement for this category of offense. (See page 43)

Social Security – Anyone who is convicted of a felony drug offense will be barred from being a representative payee for a Social Security benefits recipient, unless a waiver is granted. (See page 47)

Student Loan Assistance - There is a period of ineligibility for federal student loan assistance for felony drug convictions if you were a current student during the time of the conviction. (See page 48)

## Appendix B

### Consequences of Prostitution Convictions

In many areas, any crime of prostitution may have an effect. In some instances, only felonies have consequences – those prostitution-related crimes that are felonies are:

§22-2704: Abducting or enticing a child from his or her home for purposes of prostitution

§22-2705: Pandering; inducing or compelling an individual to engage in prostitution

§22-2706: Compelling an individual to live life of prostitution against his or her will

§22-2707: Procuring; receiving money or other valuable things for arranging assignation

§22-2708: Causing spouse to live in prostitution.

§22-2709: Detaining an individual in disorderly house for a debt contracted there

§22-2710: Procuring for house of prostitution.

§22-2711: Procuring for third persons

§22-2712: Operating house of prostitution.

Civil Forfeiture – Using a property for the purposes of lewdness, assignation, or prostitution is a per se nuisance in the District of Columbia. The contents of any structure in which this activity takes place is subject to civil forfeiture. In order to preserve a right to claim the property, the claim must be filed within 30 days from the notice of the seizure. (See page 3)

Democratic Participation –

Holding Public Office –A person is only prohibited from holding office as a city council member or Mayor while incarcerated for a felony conviction. A felony conviction will also suspend a judge of a District of Columbia court without salary. Reinstatement is only possible if the conviction is reversed. (See page 8)

Jury Duty – If convicted of a felony prostitution crime, a person may not serve on a jury for 10 years following the completion of the sentence, whether it is probation, incarceration or parole. (See page 8)

Voting – A person currently incarcerated as a result of felony conviction may not vote. Once released from incarceration, the person may register to vote. (See page 9)

DNA Registration – A person must give a DNA sample if convicted of a felony level offense. (See page 10)

Employment –

Occupational Licensing Requirements – A conviction for any crime in this category of offense will have an effect on getting an employment license, including in the health care industry, if required, if the offense is determined to “bear directly on the fitness of the person to be licensed.” DC ST § 47-

2853.12(a)(1); DC ST § 3-1205.03(a)(1) (See page 13). Specifically, the following occupation has a mandatory restriction:

- Security officer license: A person convicted of a felony offense within the last two years is barred from applying. (See page 13).

#### Family –

Adoption and Foster Care – A conviction of a prostitution crime is not a stated prohibition to becoming an adoptive or foster parent. However, any individual who seeks to become an adoptive or foster parent or lives in a home with another adult who seeks to become an adoptive or foster parent must automatically obtain a criminal record check. (See page 18)

Child custody – There is no statutory prohibition keeping a person with a prostitution conviction from seeking custody of his/her minor children. It is important to note, however, that any prostitution related activity may be evidence in any custody proceedings. (See page 20)

Termination of parental rights – If a custodial parent is incarcerated and the child is in foster care for 15 out of the most recent 22 months, then the District may terminate parental rights. (See page 21)

#### Housing

Public Housing – Application – While a prostitution conviction is not a mandatory exclusionary offense, the DCHA may review police reports and/or criminal background checks of each member of the applicant family. If any adult member of the applicant family has been convicted of a felony, then the DCHA may deny the application. It may also review and deny an application based on the personal habits or practices of anyone in the applicant family. Such information includes any criminal convictions that may adversely affect the health, safety, or welfare of other DHCA residents, staff, or other members of the community. (See page 24)

Public Housing – Eviction – The DCHA may evict a tenant due to any prostitution crime conviction in which the criminal activity occurred on the premises of the property where the dwelling is located. (See page 27)

Private Property – Any person who has been convicted of knowingly operating a premise for lewdness, assignation or prostitution is guilty of maintaining a nuisance. The building in which this illegal activity took place can be closed for up to a year against any purpose of its use. (See page 29)

Immigration – These issues are extremely complex depending on the particular person and charge. Consultation with an attorney knowledgeable in the immigration code before considering a plea offer is crucial. More information about immigration consequences is available at [www.pdsdc.org](http://www.pdsdc.org). (See page 35)

Probate – Anyone with a felony conviction within the last ten years is not allowed to serve as the executor of another person’s estate in the District of Columbia. (See page 36)

Sex offender registration – If convicted of any prostitution crime in which the victim was a minor, the offender must register with the sex offender registration. (See page 43)

Social Security – Anyone who is convicted of a felony offense will be barred from being a representative payee for a Social Security benefits recipient. However, the statutory provision allows for an exception. (See page 47)

## Appendix C

### Consequences of Sex Offenses

#### Democratic Participation –

**Holding Public Office** – A person is only prohibited from holding office as a city council member or Mayor while incarcerated for a felony conviction. A felony conviction will also suspend a judge of a District of Columbia court without salary. Reinstatement is only possible if the conviction is reversed. (See page 8)

**Jury Duty** – If convicted of a felony sex crime, a person may not serve on a jury for 10 years following the completion of the sentence, whether it is probation, incarceration or parole. (See page 8)

**Voting** – A person currently incarcerated as a result of felony conviction may not vote. Once released from incarceration, the person may register to vote. (See page 9)

**DNA Testing Requirement** – A person must give a DNA sample if convicted of any felony offense or certain misdemeanor sex offenses, involving minors. (See page 10)

#### Employment –

**Licensing Requirements** – A conviction for any crime in this category of offense will have an effect on getting an employment license, including in the health care industry, if required, if the offense is determined to “bear directly on the fitness of the person to be licensed.” DC ST § 47-2853.12(a)(1); DC ST § 3-1205.03(a)(1) (See page 13). Specifically, the following occupation has a mandatory restriction:

- **Security officer license:** Any person convicted of a felony conviction within the last two years is restricted from applying for a license. (See page 13)

**Non-licensed personnel in health care and community residence facilities** – A conviction of rape, sexual assault, sexual battery, sexual abuse or the equivalent in the District of Columbia or any other jurisdiction will prevent a person from obtaining this type of job for seven years. (See page 16)

#### Family –

**Adoption and Foster Care** – There is a lifetime mandatory bar against persons convicted of the following offenses: first degree sexual abuse, second degrees sexual abuse, child sexual abuse, rape or sexual assault conviction or the equivalent in the District of Columbia or any other jurisdiction, from being approved as a foster or adoptive parent. These convictions will also prevent any other adult living in the same household from becoming a foster or adoptive parent while living with the convicted sex offender. An exception to

this prohibition exists if the court believes it would be consistent with the health, safety, and welfare of the child. (See page 18)

Child custody – If the conviction resulted from a crime committed against a family member, someone with whom the offender shares or shared a residence, or someone with whom the offender maintains or maintained a romantic relationship, then custody and visitation will only be awarded if the child or custodial parent can adequately protected from harm inflicted by the other party. (See page 20)

Termination of parental rights – The District of Columbia will file to terminate parental rights if the parent has been convicted of a felony assault that has resulted in serious bodily injury to a child. (See page 21)

### Housing

Public Housing – Application – There is a mandatory lifetime ban against persons convicted of sex offenses requiring them to be a lifetime sex offender registrant.

Also, the DCHA may deny an application to public or assisted housing based on a felony conviction of any member of the household. Information regarding personal habits, including convictions of any family member for a crime involving physical violence or any conviction that would adversely affect the health, safety or welfare of other residents, staff or members of the community, is also considered in the application review. Therefore, all sex crime convictions may lead to the denial of the application. (See page 24)

Public Housing – Eviction – The DCHA may evict a tenant due to any sex crime conviction in which the criminal activity occurred on the premises of the property where the dwelling is located. (See page 24)

Immigration – These issues are extremely complex depending on the particular person and charge. Consultation with an attorney knowledgeable in the immigration code before considering a plea offer is crucial. More information about immigration consequences is available at [www.pdsdc.org](http://www.pdsdc.org). (See page 35)

Probate – Anyone with a felony conviction within the last ten years is not allowed to serve as the executor of another person’s estate in the District of Columbia. (See page 36)

Sex offender registration – An offender will be required to register if convicted of any crime within this category. Convictions of first or second degree sexual abuse, first degree child sex abuse, attempted first degree sexual abuse, attempted second degree sexual abuse, or attempted child sexual abuse require a lifetime registration. (See page 43)

Social Security – Anyone who is convicted of a felony sex offense will be barred from being a representative payee for a Social Security benefits recipient. However, the statute allows for a waiver of this provision. (See page 47)

## Appendix D

### Consequences of Violent Offenses (other than sex crimes and intrafamily violence – for sex crimes see Appendix C; for intrafamily violence see Appendix)

This is a very broad category of crimes. Instances where only specific offenses within the category of violent crimes have statutory consequences have been noted.

#### Democratic Participation –

**Holding Public Office** – A person is only prohibited from holding office as a city council member or Mayor while incarcerated for a felony conviction. A felony conviction will also suspend a judge of a District of Columbia court without salary. Reinstatement is only possible if the conviction is reversed. (See page 8)

**Jury Duty** – If convicted of a felony crime of violence, a person may not serve on a jury for 10 years following the completion of the sentence, whether it be probation, incarceration or parole. (See page 8)

**Voting** – A person currently incarcerated as a result of felony conviction may not vote. Once released from incarceration, the person may register to vote. (See page 9)

**DNA Testing Requirement** – Any person convicted of a felony offense and certain misdemeanor offenses are required to give a DNA sample. (See page 10).

#### Employment –

**Occupational Licensing Requirements** – A conviction for any crime of violence will have an effect on getting an employment license, including in the health care industry, if required, if the offense is determined to “bear directly on the fitness of the person to be licensed.” DC ST § 47-2853.12(a)(1); DC ST § 3-1205.03(a)(1) (See page 13). Specifically the following occupation has a mandatory restriction for felony level violent offenses:

- **Security officer license:** Any person convicted of a felony offense within the last two years is barred from applying or a misdemeanor weapons offense. (See page 13).

**Non-licensed personnel in health care and community residence facilities** – A conviction of murder, attempted murder, manslaughter, arson, assault, battery, assault and batter, assault with a dangerous weapon, mayhem, threats to do bodily harm, robbery, kidnapping or the equivalent in the District of Columbia or any other jurisdiction will prevent a person from obtaining this type of job for seven years. (See page 16)

## Family –

Adoption and Foster Care – A crime of violence will prevent an individual from ever being approved as a foster or adoptive parent. A person is barred from being an adoptive or foster parent if there is another adult in the home with a conviction of a crime of violence. If the crime is a physical assault or battery then the bar is for five years, otherwise it is for life. An exception to this prohibition exists if the court believes it would be consistent with the health, safety, and welfare of the child. (See page 18)

Child custody – There is no statutory prohibition keeping a person with a violent conviction (other than intrafamily violence) from seeking custody of his/her minor children. It is important to note, however, that any violent activity will be evidence in any custody proceedings. (See page 20)

Termination of parental rights – The District of Columbia will file to terminate parental rights if the parent has been convicted of a felony assault that has resulted in serious bodily injury to a child. (See page 21)

## Housing

Public Housing – Application – The DCHA may deny an application to public or assisted housing based on a felony conviction of any member of the household. Information regarding personal habits, including convictions of any family member for a crime involving physical violence or any conviction that would adversely affect the health, safety or welfare of other residents, staff or members of the community, is also considered in the application review. Therefore, all violent crime convictions may lead to the denial of the application. (See page 24)

Public Housing – Eviction – The DCHA may evict a tenant due to any violent crime conviction in which the criminal activity occurred on the premises of the property where the dwelling is located. (See page 24)

Immigration – These issues are extremely complex depending on the particular person and charge. Consultation with an attorney knowledgeable in the immigration code before considering a plea offer is crucial. More information about immigration consequences is available at [www.pdsdc.org](http://www.pdsdc.org). (See page 35)

Probate – Anyone with a felony conviction within the last ten years is not allowed to serve as the executor of another person's estate in the District of Columbia. (See page 36)

Social Security – Anyone who is convicted of a felony offense will be barred from being a representative payee for a Social Security benefits recipient. However, the statutory provision allows a waiver. (See page 47)

## Appendix E

### Consequences of Intrafamily Violence

#### Democratic Participation –

**Holding Public Office** – A person is only prohibited from holding office as a city council member or Mayor while incarcerated for a felony conviction. A felony conviction will also suspend a judge of a District of Columbia court without salary. Reinstatement is only possible if the conviction is reversed. (See page 8)

**Jury Duty** – If convicted of a felony crime of violence, a person may not serve on a jury for 10 years following the completion of the sentence, whether it be probation, incarceration or parole. (See page 8)

**Voting** – A person currently incarcerated as a result of felony conviction may not vote. Once released from incarceration, the person may register to vote. (See page 9)

**DNA Testing Requirement** – A person convicted of a felony or certain misdemeanor offenses is required to submit a DNA sample, and persons convicted of a misdemeanor level intra-family offense will not be required. For a list of the specific offenses for which a sample is required, see page 10 of this outline.

#### Employment –

**Licensing Requirements** – A conviction for any crime of violence will have an effect on getting an employment license, including in the health care industry, if required, if the offense is determined to “bear directly on the fitness of the person to be licensed.” DC ST § 47-2853.12(a)(1); DC ST § 3-1205.03(a)(1) (See page 13).

#### Family –

**Adoption and Foster Care** – A crime of intrafamily violence, including child abuse or neglect, spousal abuse, and crimes against children will prevent an individual from ever being approved as a foster or adoptive parent. A person is barred from being an adoptive or foster parent if there is another adult in the home with a conviction of a crime of intrafamily violence. An exception to this prohibition exists if the court believes it would be consistent with the health, safety, and welfare of the child. (See page 18)

**Child custody** – A crime of intrafamily violence will affect a person’s ability to get or retain custody of his/her children. There is rebuttable presumption that joint custody is in the best interest of children, unless a crime of intrafamily violence has occurred. (See page 20)

**Termination of parental rights** – The District of Columbia will file to terminate parental rights if the parent has been convicted of a felony assault that has resulted in serious bodily injury to a child. (See page 21)

## Housing

Public Housing – Application – The DCHA may deny an application to public or assisted housing based on a felony conviction of any member of the household. Information regarding personal habits, including convictions of any family member for a crime involving physical violence or any conviction that would adversely affect the health, safety or welfare of other residents, staff or members of the community, is also considered in the application review. Therefore, all violent crime convictions may lead to the denial of the application. (See page 24)

Public Housing – Eviction – The DCHA may evict a tenant due to any violent crime conviction in which the criminal activity occurred on the premises of the property where the dwelling is located. (See page 24)

Immigration – These issues are extremely complex depending on the particular person and charge. Consultation with an attorney knowledgeable in the immigration code before considering a plea offer is crucial. More information about immigration consequences is available at [www.pdsdc.org](http://www.pdsdc.org). (See page 35)

Probate – Anyone with a felony conviction within the last ten years is not allowed to serve as the executor of another person's estate in the District of Columbia. (See page 36)

Social Security – Anyone who is convicted of a felony offense will be barred from being a representative payee for a Social Security benefits recipient. However, the statutory provision allows for a waiver. (See page 43)