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District of Columbia Code
Title 1

SUBCHAPTER II.—FREEDOM OF INFORMATION [NEW]

§ 1–1521. Public policy

Generally the public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To that end, provisions of this act shall be construed with the view toward expansion of public access and the minimization of costs and time delays to persons requesting information.
March 29, 1977, D.C.Law, No. 1–96, § 2(201), 23 D.C.Reg. No. 24, p. 3744.

§ 1–1522. Right of access to public records—Allowable costs—Time limits

(a) Any person has a right to inspect, and at his or her discretion, to copy any public record of the Mayor or an agency, except as otherwise expressly provided by section 1–1524, in accordance with reasonable rules that shall be issued by the Mayor or an agency after notice and comment, concerning the time and place of access.

(b) The Mayor or an agency may establish and collect fees not to exceed the actual cost of searching for or making copies of records, but in no instance shall the total fee for searching exceed 10 dollars for each request. For purposes of this subsection "request" means a single demand for any number of documents made at one time to an individual agency. Documents may be furnished without charge or at a reduced charge where the Mayor or agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Notwithstanding the foregoing, fees shall not be charged for examination and review by the Mayor or an agency to determine if such documents are subject to disclosure.

(c) The Mayor or an agency, upon request reasonably describing any public record, shall within 10 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

(d) In unusual circumstances, the time limit prescribed in subsection (c) of this section may be extended by written notice to the person making such request setting forth the reasons for extension and expected date for determination. Such extension shall not exceed 10 days (except Saturdays, Sundays and legal public holidays). For purposes of this subsection, and only to the extent necessary for processing of the particular request, 'unusual circumstances' are limited to:

(1) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(e) Any failure on the part of the Mayor or an agency to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request.

and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request, unless such person chooses to petition the Mayor pursuant to section 1-1527 to review the deemed denial of the request.
March 29, 1977, D.C.Law, No. 1-96, § 2(202), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1523. Letters of denial

(a) Denial by the Mayor or an agency of a request for any public record shall contain at least the following:

(1) the specific reasons for the denial, including citations to the particular exemption(s) under section 1-1524 relied on as authority for the denial;

(2) the name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and

(3) notification to the requester of any administrative or judicial right to appeal under section 1-1527.

(b) The Mayor and each agency of the District of Columbia shall maintain a file of all letters of denial of requests for public records. This file shall be made available to any person on request for purposes of inspection and/or copying.
March 29, 1977, D.C.Law, No. 1-96, § 2(203), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1524. Exemptions

(a) The following matters may be exempt from disclosure under the provisions of this subchapter:

(1) Trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;

(2) Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(3) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—

(A) interfere with enforcement proceedings,

(B) deprive a person of a right to a fair trial or an impartial adjudication,

(C) constitute an unwarranted invasion of personal privacy,

(D) disclose the identity of a confidential source and, in the case of a record compiled by a law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(E) disclose investigative techniques and procedures not generally known outside the government,

(F) endanger the life or physical safety of law enforcement personnel;

(4) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(5) Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon;

(6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute—

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(7) Information specifically authorized by Federal law under criteria established by a Presidential Executive order to be kept secret in the interest of national defense or foreign policy which is in fact properly classified pursuant to such Executive order.

(b) Any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from the Council of the District of Columbia. This section shall not operate to permit non-disclosure of information of which disclosure is authorized or mandated by other law.

March 29, 1977, D.C.Law, No. 1-96, § 2(204), 23 D.C.Reg. No. 24, p. 3744.

§ 1-1525. Recording of final votes.

Each agency having more than 1 member shall maintain and make available for public inspection a record of the final votes of each member in each proceeding of that agency. (Oct. 21, 1968, Pub. L. 90-614, title II, § 205; 1973 Ed., § 1-1525; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

Legislative history of Law 1-96. — See note to § 1-1521.

§ 1-1526. Information required to be made public.

Without limiting the meaning of other sections of this subchapter, the following categories of information are specifically made public information:

(1) The names, salaries, title, and dates of employment of all employees and officers of the Mayor and an agency;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by the Mayor or an agency;

(5) Correspondence and materials referred to therein, by and with the Mayor or an agency, relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party;

(6) Information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies; and

§ 1-1527. Administrative appeals.

(a) Any person denied the right to inspect a public record of a public body may petition the Mayor to review the public record to determine whether it may be withheld from public inspection. Such determination shall be made in writing with a statement of reasons therefor in writing within 10 days (excluding Saturdays, Sundays, and legal holidays) of the submission of the petition.

(1) If the Mayor denies the petition or does not make a determination within the time limits provided in this subsection, or if a person is deemed to have exhausted his or her administrative remedies pursuant to subsection (e) of § 1-1522, the person seeking disclosure may institute proceedings for injunctive or declaratory relief in the Superior Court for the District of Columbia.

(2) If the Mayor decides that the public record may not be withheld, he shall order the public body to disclose the record immediately. If the public body continues to withhold the record, the person seeking disclosure may bring suit in the Superior Court for the District of Columbia to enjoin the public body from withholding the record and to compel the production of the requested record.

(b) In any suit filed under subsection (a) of this section, the Superior Court for the District of Columbia may enjoin the public body from withholding records and order the production of any records improperly withheld from the person seeking disclosure. The burden is on the Mayor or the agency to sustain its action. In such cases the court shall determine the matter de novo, and may examine the contents of such records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in § 1-1524.

(c) If a person seeking the right to inspect or to receive a copy of a public record prevails in whole or in part in such suit, he or she may be awarded reasonable attorney fees and other costs of litigation. (Oct. 21, 1968, Pub. L. 90-614, title II, § 207; 1973 Ed., § 1-1527; Mar. 29, 1977, D.C. Law 1-96, § 2, 23 DCR 9532b.)

§ 1–1528. Oversight

On or before the 30th day of June of each calendar year, the Mayor shall compile and submit to the Council of the District of Columbia a report covering the public-record-disclosure activities of each agency and of Executive Branch as a whole during the preceding calendar year. The report shall include:

(1) The number of determinations made by each agency not to comply with requests for records made to such agency under this subchapter and the reasons for each such determination;

(2) The number of appeals made by persons under Section 1–1527(a), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this subchapter, and the number of instances of participation for each such person;

(4) A copy of the fee schedule and the total amount of fees collected by each agency for making records available under this subchapter;

(5) Such other information as indicates efforts to administer fully this subchapter; and

(6) For the prior calendar year, a listing of the total number of cases arising under this subchapter, the total number of cases in which a request was denied in whole or in part, the total number of times in which each exemption provided under section 1–1524 was cited as a reason for denial of a request, and the total amount of fees collected under section 1–1522(b). Such report shall also include a description of the efforts undertaken by the Mayor to encourage agency compliance with this title.

March 29, 1977, D.C.Law, No. 1–96, § 2(208), 23 D.C.Reg. No. 24, p. 3744.

§ 1–1529. Definition

For the purposes of this subchapter, the terms "Mayor", "Council", "District", "agency", "rule", "rulemaking", "person", "party", "order", "relief", "proceeding", "public record", and "adjudication" shall have the meaning as provided in section 1–1502.

March 29, 1977, D.C.Law, No. 1–96, § 2(209), 23 D.C.Reg. No. 24, p. 3744.

* * *

Subchapter IV. Offenses and Penalties.

§ 33-541. Prohibited acts A; penalties.

(a) (1) Except as authorized by this chapter, it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess, with intent to manufacture or distribute, a controlled substance.

(2) Any person who violates this subsection with respect to:

(A) A controlled substance classified in Schedule I or II which is a narcotic drug, phencyclidine, or a phencyclidine immediate precursor, is guilty of a crime and upon conviction may be imprisoned for not more than 15 years, or fined not more than $100,000, or both; except that a person convicted of manufacturing phencyclidine or a phencyclidine immediate precursor may be imprisoned for not more than 25 years, fined not more than $200,000, or both;

(B) Any other controlled substance classified in Schedule I, II, or III, except for phencyclidine or a phencyclidine immediate precursor, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than $50,000, or both;

(C) A substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than $25,000, or both;

(D) A substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than 1 year, fined not more than $10,000, or both.

(b) (1) Except as authorized by this chapter, it is unlawful for any person to create, distribute, or possess with intent to distribute a counterfeit substance.

(2) Any person who violates this subsection with respect to:

(A) A counterfeit substance classified in Schedule I or II which is a narcotic drug, phencyclidine, or a phencyclidine immediate precursor, is guilty of a crime and upon conviction may be imprisoned for not more than 15 years, fined not more than $100,000, or both;

(B) Any other counterfeit substance classified in Schedule I, II, or III, except for phencyclidine or a phencyclidine immediate precursor, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than $50,000, or both;

(C) A counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than $25,000, or both;

(D) A counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than 1 year, fined not more than $10,000, or both.

(c) (1) Except as hereinafter specifically provided in this subsection, any person who violates subsection (a) (1) or (b) (1) of this section shall be imprisoned for a mandatory-minimum term as hereinafter prescribed and shall not be released on parole, granted probation, or granted suspension of sentence prior to serving such mandatory-minimum sentence.

(A) Any person who violates subsection (a) (1) or (b) (1) of this section with respect to a controlled or counterfeit substance classified in Schedule I or II, which is a narcotic drug, shall serve a mandatory-minimum sentence of not less than four (4) years;

(B) Any person who violates subsection (a) (1) or (b) (1) of this section with respect to any other controlled or counterfeit substance classified in Schedule I, II or III shall serve a mandatory-minimum sentence of not less than 20 months;

(C) Any person who violates subsection (a) (1) or (b) (1) of this section with respect to any other controlled or counterfeit substance classified in Schedule IV or V shall, if the quantity of such substance or counterfeit substance involved in such violation shall exceed $15,000 in retail value at the time of such violation, serve a mandatory-minimum sentence of not less than 1 year.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the court may, in its discretion, waive the mandatory-minimum sentencing provisions of subparagraphs (A) and (B) of paragraph (1) of this subsection when sentencing a person who has not been previously convicted in any jurisdiction in the United States for knowingly or intentionally manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance included in Schedule I, II or III if the court determines that the person was an addict at the time of the violation of subsection (a) (1) or (b) (1) of this section, and that such person knowingly or intentionally manufactured, distributed or possessed with intent to manufacture or distribute a controlled substance included in Schedule I, II or III for the primary purpose

of enabling the offender to obtain a narcotic drug or abusive drug which he required for his personal use because of his addiction to a narcotic drug or an abusive drug.

(d) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 1 year, fined not more than $1,000, or both.

(e) (1) If any person who has not previously been convicted of violating any provision of this chapter, or any other law of the United States or any state relating to narcotic drugs or depressant or stimulant substances is found guilty of a violation of subsection (d) of this section and has not previously been discharged and had the proceedings dismissed pursuant to this subsection, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him or her on probation upon such reasonable conditions as it may require and for such period, not to exceed 1 year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him or her from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under § 33-548 for 2nd or subsequent convictions) or for any other purpose.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained under paragraph (1) of this subsection) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such

arrest, or indictment, or trial in response to any inquiry made of him or her for any purpose.

(f) The prosecutor may charge any person who violates the provisions of subsection (a) or (b) of this section relating to the distribution of or possession with intent to distribute a controlled or counterfeit substance with a violation of subsection (d) of this section if the interests of justice so dictate. (Aug. 5, 1981, D.C. Law 4-29, § 401, 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(c) (1), 28 DCR 4348; Mar. 9, 1983, D.C. Law 4-166, §§ 9, 10, 30 DCR 1082; Sept. 26, 1984, D.C. Law 5-121, § 2(a), 31 DCR 4046; Mar. 15, 1985, D.C. Law 5-171, § 2(a), 32 DCR 730; Feb. 28, 1987, D.C. Law 6-201, § 2(c), 34 DCR 524.)

a person who is unable to pay the cost of an appeal to apply for leave to appeal *in forma pauperis*. There shall be no duty on the court to advise the defendant of any right to appeal after sentence is imposed following a plea of guilty or *nolo contendere*. If the defendant so requests, the clerk of the court shall prepare and file further a notice of appeal on behalf of the defendant. (Revised 11/16/76)

(d) JUDGMENT. A judgment of conviction shall set forth the plea, verdict or finding, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. Except with respect to petty misdemeanors, the penalty for which does not exceed six months or a fine of not more than $500.00 or both, the judgment, indicating the sentence of commitment, shall be signed by the judge, certified by the clerk, and then transmitted to the authority taking custody of or having supervision over the defendant. (Revised 11/16/76)

(e) WITHDRAWAL OF PLEA OF GUILTY. A motion to withdraw a plea of guilty or of *nolo contendere* may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. (Revised 11/16/76)

(f) [ABROGATED] [11/1/82]

(g) DISCHARGE FROM PROBATION, DISMISSAL OF PROCEEDINGS, AND EXPUNGEMENT OF OFFICIAL RECORDS PURSUANT TO D.C. CODE 1983, §33-541(e).

(1) Discharge from Probation and Dismissal of Proceedings. If a person has been placed on probation pursuant to D.C. Code 1983, §33-541(e)(1), the Social Services Division shall, upon expiration of probation, notify the Court in writing as to whether the person has successfully completed probation. The Division shall mail a copy of the notice to the person, his attorney, the prosecutor, the Metropolitan Police Department, and the Clerk of the Criminal Division. The prosecutor may file and serve a response in opposition within ten (10) days. The Court may hold a hearing to determine whether the person has successfully completed probation. If the Court so determines, it shall enter an order discharging the person from probation and dismissing the proceedings against him. The Court may, with notice as provided above, take such action prior to the expiration of the maximum period of probation imposed. If an order of discharge and dismissal is entered, the clerk shall thereafter retain a nonpublic record of the case solely for use by the Courts in determining whether, in subsequent proceedings, such person qualifies for treatment under §33-541(e)(1).

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(2) EXPUNGEMENT OF OFFICIAL RECORDS. A person who has been discharged from probation and whose charges have been dismissed pursuant to §33-541(e)(1) and subparagraph (g)(1) of this rule may file with the Court and serve upon the prosecutor a motion for expungement of all official records relating to the offense. The prosecutor may file and serve an opposition within ten (10) days. If the Court, after hearing, determines that the person was discharged from probation and that the proceedings against him were dismissed under §33-541(c)(1), the Court shall enter an order expunging all official records of the offense to the extent required by §33-541(e)(2). In a case involving co-defendants, the Court shall first sanitize the records to be expunged. The order of expungement shall not affect the nonpublic record maintained under §§33-541(e)(1) and subparagraph (g)(1) of this rule.

COMMENT: This rule modifies Federal Rule of Criminal Procedure 32 in several instances. Generally, the structure of the Federal Rule has been revised to reflect more accurately the chronological sequence of sentence and judgment events. Where appropriate, the word "pronounce" rather than "impose" has been used in the rule.

Paragraph (1) of this Rule now prescribes the time when the Court may pronounce sentence. The Federal Rule merely provides for imposition "without unreasonable delay". (Revised 11/1/82)

Paragraph (b) of this Rule modifies paragraph (c) of the Federal Rule. First, this Rule exempts the District of Columbia Traffic Branch from the requirements in paragraph (b). Second, when consent of the defendant is needed for the judge's inspection of the presentence report, this Rule allows this consent to be on the record as an alternative to it being in writing. Third, the Rule provides for disclosure of material in a presentence report to both the counsel for the defendant and the prosecutor. Fourth, reports made by the Department of Corrections of the District of Columbia and the Board of Parole of the District of Columbia have been added to the list of reports considered to be a presentence investigation. Fifth, reports pursuant to 18 U.S.C. §§4208(b) and 5034 are not applicable to the Superior Court and thus were deleted from the list of reports considered to be a presentence investigation.

§ 4-131. Records — Required.

The Mayor of the District of Columbia shall cause the Metropolitan Police force to keep the following records:

(1) General complaint files, in which shall be entered every complaint preferred upon personal knowledge of the circumstances thereof, with the name and residence of the complainant;

(2) Records of lost, missing, or stolen property;

(3) A personnel record of each member of the Metropolitan Police force, which shall contain his name and residence; the date and place of his birth; his marital status; the date he became a citizen, if foreign born; his age; his former occupation; and the dates of his appointment and separation from office, together with the cause of the latter;

(4) Arrest books, which shall contain the following information:

(A) Case number, date of arrest, and time of recording arrest in arrest book;

(B) Name, address, date of birth, color, birthplace, occupation, and marital status of person arrested;

(C) Offense with which person arrested was charged and place where person was arrested;

(D) Name and address of complainant;

(E) Name of arresting officer; and

(F) Disposition of case;

(4A) The Metropolitan Police force shall maintain a computerized record of a civil protection order or bench warrant issued as a result of an intrafamily offense; and

(5) Such other records as the Council of the District of Columbia considers necessary for the efficient operation of the Metropolitan Police force. (R.S., D.C., § 386; June 11, 1878, 20 Stat. 107, ch. 180, § 6; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(a); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 1; 1973 Ed., § 4-134.)

§ 4-132. Same — Criminal offenses.

(a) In addition to the records kept under § 4-131, the Metropolitan Police force shall keep a record of each case in which an individual in the custody of any police force or of the United States Marshal is charged with having committed a criminal offense in the District (except those traffic violations and other petty offenses to which the Council of the District of Columbia determines this section should not apply). The record shall show:

(1) The circumstances under which the individual came into the custody of the police or the United States Marshal;

(2) The charge originally placed against him, and any subsequent changes in the charge (if he is charged with murder, manslaughter, or causing the death of another by the operation of a vehicle at an immoderate speed or in a careless, reckless, or negligent manner, the charge shall be recorded as "homicide");

(3) If he is released (except on bail) without having his guilt or innocence of the charge determined by a court, the circumstances under which he is released;

(4) If his guilt or innocence is so determined, the judgment of the court;

(5) If he is convicted, the sentence imposed; and

(6) If, after being confined in a correctional institution, he is released therefrom, the circumstances of his release.

(b) The Attorney General, the Corporation Counsel, the United States Magistrate for the District, the Clerk of the District Court, the Clerk of the Superior Court of the District of Columbia, and the Director of the Department of Corrections shall furnish the Chief of Police with such information as the Mayor of the District of Columbia considers necessary to enable the Metropolitan Police force to carry out this section. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 362; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 4-134a.)

§ 4-133. Reports by other police.

Reports shall be made to the Chief of Police, in accordance with regulations prescribed by the Mayor of the District of Columbia, of each offense reported to, and each arrest made by, any other police force operating in the District. (June 29, 1953, 67 Stat. 100, ch. 159, title III, § 303; 1973 Ed., § 4-134b.)

§ 4-133.1. Participation of District of Columbia Metropolitan Police Department in the National Crime Information System.

(a) *Dissemination of adult arrest records to law enforcement agents.* — (1) Notwithstanding any other provision of law, the Metropolitan Police Department of the District of Columbia shall disseminate its unexpurgated adult arrest records to members of the court and law enforcement agents, including the Identification Division of the Federal Bureau of Investigation. Such dissemination shall be done without cost and without the authorization of the persons to whom such records relate.

(2) Any records disseminated under this section shall be used in a manner that complies with applicable federal law and regulations.

(b) *Definitions.* — For purposes of this section:

(1) The term "member of the court" shall include judges, prosecutors, defense attorneys (with respect to the records of their client defendants), clerks of the court, and penal and probation officers;

(2) The term "law enforcement agent" shall include police officers and federal agents having the power to arrest; and

(3) The term "unexpurgated adult arrest records" shall include arrest fingerprint cards. (Dec. 12, 1989, 103 Stat. 1903, Pub. L. 101-223, § 7.)

§ 4-134. Notice of release of prisoners.

(a) Whenever the Board of Parole of the District of Columbia has authorized the release of a prisoner under § 24-204, or the United States Board of Parole has authorized the release of a prisoner under § 24-206, it shall notify the Chief of Police of that fact as far in advance of the prisoner's release as possible.

(b) Except in cases covered by subsection (a) of this section, notice that a prisoner under sentence of 6 months or more is to be released from an institution under the management and regulation of the Director of the Department of Corrections shall be given to the Chief of Police as far in advance of the prisoner's release as possible. (June 29, 1953, 67 Stat. 100, ch. 159, title III § 304; 1973 Ed., § 4-134c.)

§ 4-135. Records open to public inspection.

The records to be kept by paragraphs (1), (2), and (4) of § 4-131 shall be open to public inspection when not in actual use, and this requirement shall be enforceable by mandatory injunction issued by the Superior Court of the District of Columbia on the application of any person. (R.S., D.C., § 389; June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(b); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 2; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(13); Oct. 25, 1972, 86 Stat. 1108, Pub. L. 92-543, § 1; 1973 Ed., § 4-135.)

§ 4-140. Arrests — Limitation on period of questioning; advisement of rights; release uncharged; admissibility of confessions.

(a) Any person arrested in the District of Columbia may be questioned with respect to any matter for a period not to exceed 3 hours immediately following his arrest. Such person shall be advised of and accorded his rights under applicable law respecting any such interrogation. In the case of any such arrested person who is released without being charged with a crime, his detention shall not be recorded as an arrest in any official record.

Applicability of confession. — This section must be read in harmony with subsequently enacted 18 U.S.C. § 3501, which provides that, in any criminal prosecution brought by the United States or by the District of Columbia, a confession is admissible in evidence if it is voluntarily given. Bond v. United States, App. D.C., 614 A.2d 892 (1992).

Waiver of rights. — A confession obtained during a period of unnecessary delay is inadmissible in evidence, but a valid waiver of an individual's Miranda rights is also a waiver of his Mallory right to presentment without unnecessary delay. Bond v. United States, App. D.C., 614 A.2d 892 (1992).

1. That no record, copy, extract, compilation or statement concerning any record relating to any juvenile offender or relating to any juvenile with respect to whom the Metropolitan Police Department retains any record or writing, shall be released to any person for any purpose except as may be provided under D.C. Code, Section 11–1586; provided, that the release of such information to members of the Metropolitan Police Department, and the dissemination of such information by the Metropolitan Police Department to the police departments of other jurisdictions wherein juveniles apprehended in the District of Columbia may reside, shall be authorized; provided further, that the release of such information to individuals to whom the information may relate or to the parents or guardians or duly authorized attorneys of such individuals, shall be authorized in those cases in which applicants therefor present documents of apparent authenticity indicating need for such information for reasons other than employment. The term "employment", in the context of this paragraph, shall not include military service.
2. That unexpurgated adult arrest records, as provided under D.C. Code, Section 4–134a,[46] shall be released to law enforcement agents upon request, without cost and without the authorization of the persons to whom such records relate and without any other prerequisite, provided that such law enforcement agents represent that such records are to be used for law enforcement purposes. The term "law enforcement agent" is limited in this context to persons having cognizance of criminal investigations or of criminal proceedings directly involving the individuals to whom the requested records relate. The term includes judges, prosecutors, defense attorneys (with respect to the records of their client defendants), police officers, Federal agents having the power of arrest, clerks of courts, penal and probation officers and the like. It does not include private detectives and investigators; personnel investigators, directors and officers; private security agents or others who do not ordinarily participate in the process involving the detection, apprehension, trial or punishment of criminal offenders.
3. That, subject to the foregoing, adult arrest records, as provided under D.C. Code, Section 4–134a, shall be released in a form which reveals only entries relating to offenses which have resulted in convictions or forfeitures of collateral.
4. That, subject to the foregoing, adult arrest records, as provided under D.C. Code, Section 4–134a, shall be released in a form which reveals only entries relating to offenses committed not more than 10 years prior to the date upon which such records are requested; except that, where an offender has been imprisoned during all or part of

the preceding 10-year period, the record shall include entries relating to such earlier conviction.

5. That, subject to the foregoing, copies or extracts of adult arrest records, as provided under D.C. Code, Section 4–134a, or statements of the non-existence of such records shall be released to applicants therefor upon the payment of fees to be based upon the cost of editing and producing such copies, extracts or statements; provided, that applicants who are not the persons to whom such records may relate must, in addition to the required fees, present releases in appropriate form executed by the persons to whom the records may relate; provided further, that no fee shall be required with respect to any record solicited by any agent of the Federal or District of Columbia Government for a governmental purpose.

6. That Article 47 of the Police Regulations of the District of Columbia be amended to provide that it shall be an offense punishable by a fine not to exceed $50.00, for any person to require as a condition of employment the production of any arrest record or copy, extract or statement thereof at the expense of any employee or applicant for employment to whom such record may relate."

SUPERIOR COURT OF D.C. - CRIMINAL RULES

RULE 118

SEALING OF ARREST RECORDS

(a) MOTION FOR SEALING AND DECLARATORY RELIEF. Any person arrested for the commission of an offense punishable by the District of Columbia Code, whose prosecution has been terminated without conviction and before trial, may file a motion to seal the records of the person's arrest within 120 days after the charges have been dismissed. For good cause shown and to prevent manifest injustice, the person may file a motion within three (3) years after the prosecution has been terminated, or at any time thereafter if the government does not object. As to arrests occurring on or after July 19, 1979, but before the adoption of this rule, a motion may be filed within 120 days after the adoption of this rule. The motion shall state facts in support of the movant's claim and shall be accompanied by a statement of points and authorities in support thereof. The movant may also file any appropriate exhibits, affidavits, and supporting documents. A copy of the motion shall be served upon the prosecutor.

(b) RESPONSE BY PROSECUTOR. If the prosecutor does not intend to oppose the motion, the prosecutor shall so inform the Court and the movant, in writing, within thirty (30) days after the motion has been filed. Otherwise, the prosecutor shall not be required to respond to the motion unless ordered to do so by the Court, pursuant to paragraph (c) of this rule.

(c) INITIAL REVIEW BY COURT; SUMMARY DENIAL; RESPONSE BY PROSECUTOR. If it plainly appears from the face of the motion, any accompanying exhibits and documents, the record of any prior proceedings in the case, and any response which the prosecutor may have filed, that the movant is not entitled to relief, the Court, stating reasons therefore on the record or in writing, shall deny the motion and send notice thereof to all parties. In the event the motion is not denied, the Court shall order the prosecutor to file a response to the motion, if the prosecutor has not already done so. Such response shall be filed and served within sixty (60) days after entry of the Court's order. The response shall be accompanied by a statement of points and authorities in opposition, and any appropriate exhibits and supporting documents.

(d) COURT'S DETERMINATION OF WHETHER TO HOLD A HEARING. Upon the filing of the prosecutor's response, the Court shall determine whether an evidentiary hearing is required. If it appears that a hearing is not required, the Court shall enter an appropriate order, pursuant to paragraph (f) of this rule. If the Court determines that a hearing is required, one shall be scheduled promptly.

SUPERIOR COURT OF D.C. - CRIMINAL RULES

(e) DETERMINATION OF MOTION. If a hearing is held, hearsay evidence shall be admissible. If, based upon the pleadings or following a hearing, the Court finds by clear and convincing evidence that the offense for which the movant was arrested did not occur or that the movant did not commit the offense, the Court shall order the movant's arrest records retrieved and sealed pursuant to paragraph (f).

(f) FINDINGS AND ORDER; DECLARATORY RELIEF.

(1) *Order Denying Motion.* If the Court denies the motion, it shall issue an order and shall set forth its reasons on the record or in writing.

(2) *Order Granting Motion.* If the Court grants the motion, it shall issue an order, in writing, pursuant to subparagraphs (f)(2)(A), (B), and (C) of this rule.

(A) *Retrieval of Arrest Records and Purging of Computer Records.* The Court shall order the prosecutor to collect from the prosecutor's office, the law enforcement agency responsible for the movant's arrest and/or the Metropolitan Police Department all records of the movant's arrest in their central files, including without limitation all photographs, fingerprints, and other identification data. The Court shall also direct the prosecutor to arrange for the elimination of any computerized record of the movant's arrest. However, the Court shall expressly allow the prosecutor and the law enforcement agency to maintain a record of the arrest so long as the record is not retrievable by the identification of the movant. The Court shall also order the prosecutor to request that the law enforcement agency responsible for the arrest retrieve any of the aforementioned records which were disseminated to pretrial services, corrections, and other law enforcement agencies, and to collect these records when retrieved.

(B) *Requirement that Arrest Records be Sealed.* The Court shall order the prosecutor to file with the Clerk of the Court, within sixty (60) days, all records collected by the law enforcement agency and in the prosecutor's own possession. These records shall be accompanied by a certification that to the best of the prosecutor's knowledge and belief no further records exist in the prosecutor's own possession and in the possession of the law enforcement agency's central records files or those of its disseminees, or that, if such records do exist, steps have been taken to retrieve them. The Court shall order the Clerk to collect all Superior Court records pertaining to the movant's arrest and cause to be purged any computerized record of such arrest. However, the Court shall expressly allow the Clerk to maintain a record of the arrest so long as the record is not retrievable by the identification of the movant. The Court shall also order the Clerk to file under seal all Superior Court records so retrieved, together with all records filed by the prosecutor pursuant to this paragraph, within seven (7) days after receipt of such records.

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(C) *Declaratory Relief.* The Court shall summarize in the order the factual circumstances of the challenged arrest and any post-arrest occurrences it deems relevant, and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant had been arrested or that no offense had been committed. A copy of the order shall be provided to the movant or his or her counsel. The movant may obtain a copy of the order at any time from the Clerk of the Court, upon proper identification, without a showing of need.

(g) SANITIZATION OF RECORDS INVOLVING CO-DEFENDANTS. In a case involving co-defendants in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be sealed. The Court may make an *in camera* inspection of these records in order to make this determination. If practicable, the Court may order those records relating to co-defendants returned to the prosecutor, with all references to the movant sanitized.

(h) INDEXING AND ACCESS TO SEALED RECORDS. The Clerk shall place the records ordered sealed by the Court in a special file, appropriately and securely indexed in order to protect its confidentiality, subject to being opened on further order of the Court only upon the showing of compelling need. A request for access to such sealed records may be made *ex parte*. However, unless otherwise ordered by the Court, the Clerk shall reply in response to inquiries concerning the existence of arrest records which may have been sealed pursuant to this rule that no records are available.

(i) APPEAL. An aggrieved party may note an appeal from a final order entered pursuant to this rule in accordance with Rule 4(II)(b)(1) of the General Rules of the District of Columbia Court of Appeals.

COMMENT: This rule implements a procedure providing in certain cases for the sealing of arrest records when a citizen has been arrested but not subsequently prosecuted. See District of Columbia v. Hudson, et al., *404 A.2d 175 (D.C. App. 1979) and* District of Columbia v. Hudson, et al., *449 A.2d 294 (D.C.App. 1982).*

If the Court determines to hold an evidentiary hearing before deciding whether to order sealing, paragraph (d) requires that the hearing be held "promptly". While no specific time period is set out in the rule, it is contemplated that the Court will consider the movant's interest in obtaining a speedy determination of his or her right to the equitable relief under this rule with the various other demands on the Court's schedule.

RULE 118 COMMENT November 1, 1983

SUPERIOR COURT OF D.C. - CRIMINAL RULES

Notations of arrests in precinct books and records compiled for statistical purposes only which are not practically retrievable to the public by name only, are not within the purview of this rule. See D.C. v. Hudson, et al., *404 A.2d 175, 180 n. 9 (D.C.App. 1979).*

In connection with paragraph (f), it is the intent of this rule that considerations surrounding the eligibility of certain documents and records should be viewed in a light favoring retrieval and sealing.

CHAPTER 10 ARREST RECORDS: THE DUNCAN ORDINANCE

1000 JUVENILE RECORDS

1000.1 No record, copy, extract, compilation, or statement concerning any record relating to any juvenile offender or relating to any juvenile with respect to whom the Metropolitan Police Department retains any record or writing, shall be released to any person for any purpose except as may be provided under D.C. Code, Section 11-1586 [§§16-2331 - 16-2335, D.C. Code, 1981 ed.].

1000.2 The release of the information specified in §1000.1 to members of the Metropolitan Police Department, and the dissemination of that information by the Metropolitan Police Department, to the police departments of other jurisdictions wherein juveniles apprehended in the District of Columbia may reside, shall be authorized.

1000.3 The release of any information specified in §1000.1 to individuals to whom the information may relate or to the parents or guardians or duly authorized attorneys of such individuals, shall be authorized in those cases in which applicants therefor present documents of apparent authenticity indicating need for that information for reasons other than employment. The term "employment", in the context of this paragraph, shall not include military service.

1001 - 1003 RESERVED

1004 ADULT RECORDS

1004.1 Unexpurgated adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981 ed.], shall be released to law enforcement agents upon request, without cost and without the authorization of the persons to whom those records relate and without any other prerequisite, provided that the law enforcement agents represent that those records are to be used for law enforcement purposes.

1004 ADULT RECORDS (Continued)

1004.2 The term "law enforcement agent" shall be limited in this context to persons having cognizance of criminal investigations or of criminal proceedings directly involving the individuals to whom the requested records relate. The term includes judges, prosecutors, defense attorneys (with respect to the records of their client defendants), police officers, federal agents having the power of arrest, clerks of courts, penal and probation officers and the like.

1004.3 The term "law enforcement agent" does not include private detectives and investigators; personnel investigators, directors and officers; private security agents or others who do not ordinarily participate in the process involving the detection, apprehension, trial or punishment of criminal offenders.

1004.4 Subject to the provisions of §§1004.1 - 1004.3, adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981 ed.], shall be released in a form which reveals only entries relating to offenses which have resulted in convictions or forfeitures of collateral.

1004.5 Subject to the provisions of §§1004.1 - 1004.3, adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981 ed.], shall be released in a form which reveals only entries relating to offenses committed not more than 10 years prior to the date upon which those records are requested; except that, where an offender has been imprisoned during all or part of the preceding 10-year period, the record shall include entries relating to the earlier conviction.

1004.6 Subject to the provisions of §§1004.1 - 1004.3, copies or extracts of adult arrest records, as provided under D.C. Code, Section 4-134a [§4-132, D.C. Code, 1981 ed.], or statements of the non-existence of thoserecords shall be released to applicants therefor upon the payment of fees to be based upon the cost of editing and producing such copies, extracts or statements.

1004.7 Applicants who are not the persons to whom those records may relate shall, in addition to the required fees, present releases in appropriate form executed by the persons to whom the records may relate.

1004.8 No fee shall be required with respect to any record solicited by any agent of the federal or District of Columbia Government for a governmental purpose.