



Sealing Juvenile Records in the District of Columbia

An Advocate's Guide

Georgetown Law Juvenile Justice Clinic and
the Mid-Atlantic Juvenile Defender Center



JUVENILE JUSTICE CLINIC
at GEORGETOWN LAW



Prepared by the Georgetown Law Juvenile Justice Clinic
Kristin Henning, Liza Rubin, Lauren Dollar, and Shanna Bayer

With special thanks to Laura Hankins and Nancy Glass
from the D.C. Public Defender Service, David Rosenthal from the Office of the Attorney General, and Susanna K. Fix
from Georgetown Law Faculty Support for their reviews.

September 2014

Note:

Juvenile law and practice are constantly evolving in the District of Columbia. When using this resource, please make sure that the statutory and regulatory references have not been revised since the publication of this guide. Please email any corrections or comments to hennink@law.georgetown.edu.

This guide is not intended as legal advice and should not be construed to establish a lawyer-client relationship. This guide presents analysis by the authors; it does not represent Georgetown University, the Mid-Atlantic Juvenile Defender Center, or any federal, state, or local agency.



Table of Contents

JUVENILE RECORDS	1
PRESUMPTIVE CONFIDENTIALITY OF JUVENILE RECORDS	1
LIMITED ACCESS TO JUVENILE RECORDS	2
COLLATERAL CONSEQUENCES OF A JUVENILE RECORD	3
SEALING RECORDS	4
THE LAWYER’S ETHICAL RESPONSIBILITY	5
ELIGIBILITY FOR SEALING JUVENILE RECORDS	6
It has been 2 years since the youth’s <u>petitioned</u> case was closed.	7
Any time after a youth’s “<u>no-papered</u>” case is closed	8
No Paper, Dismissal by Juvenile Rule 48, Dismissal for Want of Prosecution, or Acquittal <u>Plus</u> Actual Innocence	9
Guilty Plea or Delinquency Adjudication + Actual Innocence + New Evidence	11
FILING THE MOTION & OBTAINING A COPY OF THE YOUTH’S JUVENILE AND CRIMINAL RECORD	13
FOLLOWING UP	15
SEALING RECORDS CHART	16
APPENDIX A: Who has access to a youth’s records?	19
APPENDIX B: Which Offenses Expose A Youth to Public Disclosure?	27
APPENDIX C: Sample Motion under D.C. Code § 16-2335	30
APPENDIX D: Sample Order Under D.C. Code § 16-2335	33
APPENDIX E: Sample Motion under Juvenile Rule 118	36
APPENDIX F: Sample Order Under Juvenile Rule 118	39
APPENDIX G: Sample Motion under D.C. Code § 16-2335.01	42
APPENDIX H: Sample Order under D.C. Code § 16-2335.01	49
APPENDIX I: Sample Motion under D. C. Code § 16-2335.02	50
APPENDIX J: Sample Order Under D.C. Code § 16.2335.02	55
APPENDIX K: Sample Notification to Agency under D.C. Code § 16-2335 or Juvenile Rule 118	58
APPENDIX L: Sample Notification to Agency under D.C. Code § 16-2335.02	59
USEFUL CONTACTS	61

Sealing Juvenile Records in the District of Columbia

An Advocate's Guide

A youth's involvement in the juvenile justice system should remain confidential to further the rehabilitative goals of the system. Advocates should help youth seal their records as soon as the youth are eligible.

Juvenile Records

Juvenile records in the District of Columbia comprise three distinct categories, each governed by a separate statute and each accessible by different parties. Juvenile **case records** contain documents pertaining to court proceedings, such as a petition or a legal motion (*see* D.C. Code § 16-2331). Juvenile **social records** contain documents primarily pertaining to a youth's social adjustment, family life, education, and mental health, such as psychological evaluations and school records (*see* D.C. Code § 16-2332). **Police records** contain documents pertaining to law enforcement, such as police reports, warrants, and arrest photos (*see* D.C. Code § 16-2333). Some youth may have a police record but no case record if they were arrested but the police never referred them to court. The term "juvenile records" in this guide refers to records that are the subject of the three statutes noted in this paragraph. Advocates should be aware that records pertaining to fingerprints are governed by D.C. Code § 16-2334.

Presumptive Confidentiality of Juvenile Records

Confidentiality of juvenile court proceedings was a central characteristic of the early juvenile courts. Advocates believed that confidentiality would protect youth from the stigma of criminal proceedings and maximize a youth's chances for successful rehabilitation. Nonetheless, confidentiality protections have faced two major challenges since the first juvenile court was established: the due process revolution and public safety mandates. Due process advocates in the 1960s argued that juvenile courts should be more transparent to ensure the protection of youths' due process rights. Later, in the 1980s and 1990s, politicians spoke out in favor of increased public access to juvenile records to hold youth accountable and allow law enforcement to anticipate crime and protect the community from those most likely to commit crimes in the future. For more information, *see* Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. Rev. 520–611 (2004).

Notwithstanding the District of Columbia's commitment to accountability and public safety, the District has continued to "place a premium on the rehabilitation of [youth]" as articulated in the juvenile court purpose clause. D.C. Code § 16-2301.02. Further, in amending D.C. Code § 16-2335, the D.C. Council specifically recognized that the juvenile justice system should serve in a rehabilitative capacity and

keeping records confidential is central to that purpose. *D.C. Council, Comm. on Pub. Safety and the Judiciary Report on Bill 18-344* at 7 (June 29, 2010). The Council noted that “revealing law enforcement information for every juvenile offender would wrongly penalize youth who . . . become productive members of society.” *Id.* The Council ultimately concluded that when certain conditions have been met, youth should be able to refuse to disclose their juvenile delinquency history in an application for employment, education, or housing.

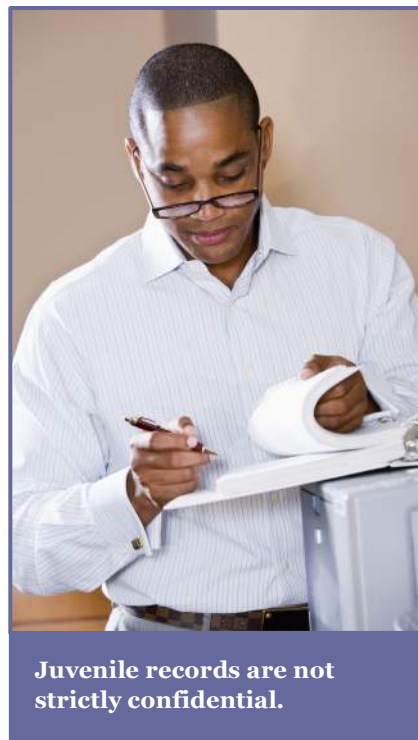
This guide is designed to help youth and advocates understand who may access juvenile justice records and under what circumstances, and how the youth may use court rules and statutes to seal records related to their involvement in the juvenile justice system.

Limited Access to Juvenile Records

Until they are sealed, juvenile records may be available to many in the community. Court rules and statutes give certain individuals and agencies access to juvenile records or to information contained within those records. The table in **Appendix A** includes a more comprehensive list of those who may access a youth’s juvenile records. *See* D.C. Code § 16-2331 (case records), § 16-2332 (social file records), § 16-2333 (law enforcement records), § 16-2333.01 (limited disclosure of information within juvenile records), § 16-2336 (criminal penalties for wrongful use or disclosure of juvenile records), and D.C. Superior Court (Juvenile) Rule 55 for more information.

To understand the extent to which a youth’s records may be exposed, consider the following:

- **Family Court** staff and **probation officers** may access all of the youth’s case records. *See* D.C. Code § 16-2331(c)(1)(A)–(B).
- A youth’s **parents** may access the youth’s case records, regardless of how old the youth is. *See* D.C. Code § 16-2331(c)(2)(C).
- **Prosecutors** in juvenile court may access juvenile records and share the youth’s release status, level of placement, stay-away orders, participation in diversion, charged offenses, terms of plea agreements, findings and verdicts, and commitment or probation status with **victims** and **eyewitnesses**. *See* D.C. Code §§ 16-2331(2)(A); 16-2331(2)(D)–(E).
- If an “official” of the Family Court, the Department of Youth Rehabilitation Services (DYRS), or the Metropolitan Police Department believes that disclosing information about a youth will assist in the protection, welfare, treatment or rehabilitation of the youth, that official (with approval from his/her supervisor) may tell the youth’s **school** and **mental health provider** that the youth has been on probation or in the custody of DYRS, that the youth has violated terms of probation or absconded, that the youth has been arrested and the



charges brought, and the disposition of the charges. This applies to **any** youth with **any** contact with the system. *See* D.C. Code § 16-2333.01.

- **Other agencies with a “professional interest”** in the youth’s case may apply to the court for permission to access the youth’s juvenile records. *See* D.C. Code § 16-2331(c)(5); § 16-2332(c)(5).
- When a youth is convicted of certain crimes (e.g., one or more crimes of violence or two or more dangerous crimes), the **public** may access the youth’s name, the fact that the youth was arrested, the charges at arrest, the charges in the petition, whether the petition resulted in an adjudication, whether the youth was found involved, and the charges for which the youth was found involved, and whether at initial disposition the youth was placed on probation or committed. *See* D.C. 16-2333(e)(2). **See Appendix B** for a list of crimes that expose a youth to public disclosure.

Important Note

Persons who may access a juvenile record may not share those records with anyone else unless they are expressly authorized to do so. However, when an official does share a youth’s information, there is no requirement that the youth or his lawyer be notified. Thus, a youth may not know if his or her school or mental health provider has information about a delinquency case and whether the information they have is correct. Furthermore, there is no requirement that information shared be updated. Thus, if a school is notified that a youth has been charged with a sex offense, the school may not know when the case is concluded or if the youth has been found not guilty. Asking the Court to seal the records may be the only way to purge the youth’s record, restore the youth’s privacy, and begin to clear the youth’s name .

Collateral Consequences of a Juvenile Record

Unsealed juvenile records may affect youth in negative ways. Not only does an unsealed record mean that parties may access the youth’s records on their own, but in some cases it also means the youth may have to disclose information about a prior adjudication in the juvenile justice system on future applications for college, the military, or a job.

For example, a juvenile record could:

- Limit the youth’s ability to obtain employment
- Present difficulties in the youth’s effort to join the military
- Prevent the youth from becoming a U.S. citizen
- Limit the youth’s educational or vocational opportunities in schools and programs that decline to admit an applicant with a record
- Limit the youth’s and the youth’s family’s access to housing in a complex that declines residency to a person with a record



Advocates may help youth limit these collateral consequences by moving to seal their juvenile records as soon as they are eligible.

Sealing Records

Youth may have their records sealed if they meet certain criteria. Generally, youth can ask the court to seal their records either 2 years after their case is closed or any time they can prove they are actually innocent. Pages 6–12 of this guide will help youth and their advocates determine if and when youth are eligible to have their records sealed.

Sealed records “no longer exist” under the law. Once a youth’s record is sealed, the proceedings in the case will be treated as if they never happened. (But please see the important note below.) All of the facts relating to the case (including the arrest, filing of a petition, adjudication, and disposition) **shall no longer exist as a matter of law** if the records have been sealed pursuant to D.C. Code § 16-2335(c), 2 years after the youth’s case was closed. Under § D.C. Code § 16-2335, the youth **has the right to refuse disclosure of his or her juvenile delinquency** record on job, school, and housing applications. D.C. Code §§ 16-2335(h).



If the youth’s records are sealed because the youth was actually innocent, “[the youth shall be restored], in the contemplation of the law, to the status he or she occupied before being arrested or charged.” D.C. Code § 16-2335.02(i). He or she “[**should not be held**] guilty of perjury or giving a false statement by reason of failure to recite or acknowledge his or her arrest, or charge, or trial in response to any inquiry made of him or her for any purpose.” D.C. Code § 16-2335.02(i).

Information in or about the sealed records (even regarding the existence of the records) will not be shared with anyone. Once the youth’s record is sealed, if anyone asks about the juvenile record, the youth can say that no record exists. If anyone asks any agency that was involved with the youth’s case about the record, the agency **must** say that no record exists. D.C. Code §§ 16-2335(c); 16-2335.02(h)(7); 16-2335.02(i).

Important Note

Sealed records may become **unsealed**. If the youth is later adjudicated delinquent or in need of supervision (PINS) or convicted of a felony as an adult, their records will no longer be sealed if they were sealed under D.C. Code § 16-2335. It will be as if their records were never sealed in the first place. D.C. Code § 16-2335(e).

The Lawyer's Ethical Responsibility

Few juvenile defenders have the time and resources to keep in touch with their clients after the close of a delinquency case. However, according to Juvenile Defense Standards issued by the National Juvenile Defender Center, assisting clients to seal their juvenile records is an essential element of the defender's ethical responsibility to provide diligent and zealous advocacy. Sealing records under § 16-2335 requires the defender to keep track of clients 2 years after their cases are closed. At the close of each case, lawyers should inform their clients and their clients' parents of the need to seal juvenile records and of how to contact them as needed. The lawyer should also, to the best of his or her ability, reach out to clients when they are first eligible to have their records sealed. Additional legal resources are available to youth on the **Useful Contacts** page (pg. 61).

National Juvenile Defense Standards

7.6: Sealing and Expunging Records

Counsel must inform the client of available legal processes for sealing and expunging juvenile records. Counsel should assist the client in obtaining these legal remedies.

- a. Counsel must be proficient in state laws governing the process of limiting the client's record from being accessed and distributed, as well as the civil and criminal consequences of wrongful disclosure of the client's records;
- b. Counsel should disclose to the client and the client's parent the entities permitted by statute to access the client's arrest and court records. Counsel should place special emphasis on the collateral impact of arrest and court records; and
- c. Counsel should represent a client seeking to seal or expunge juvenile records, or at the very least, should make a referral to an individual or organization that can do so.

Commentary:

Counsel must be aware of the short- and long-term impact of arrest data and court records resulting from court involvement. This information may affect a variety of issues, such as the client's ability to return to school, gain employment, remain in public housing, or maintain his or her immigrant status. Counsel has three obligations to clients regarding these consequences. First, counsel must be aware of and affirmatively disclose to the client the array of impacts. Second, counsel must minimize the impacts as much as possible by limiting the public exposure of the records. Third, counsel must explain the timing and process by which the client can seek to curtail circulation of the arrest and court record. In cases when counsel may seek to expunge or seal a juvenile record for reasons not covered by available statute or case law, counsel should consider appealing to the court's equitable powers.¹

¹ See, e.g., *St. Louis v. Drolet*, 67 Ill.2d 43 (1977); *In the Matter of Dorothy D. v. New York City Probation Department*, 49 N.Y.2d 212 (1980); but see *Commonwealth v. Gavin G.*, 437 Mass. 470 (2002) (judges do not have the inherent authority to expunge records).

Eligibility for Sealing Juvenile Records

Youth may ask the court to seal their juvenile records under the following circumstances, each of which will be fleshed out in the remainder of the guide:

1. It has been 2 years since the youth's **petitioned case was closed** (e.g., the youth was released from probation or commitment; the youth successfully completed a consent decree; the youth was found not guilty at trial; the youth's charges were dismissed by the government pursuant to Juvenile Rule 48(a) or by the court pursuant to Juvenile Rule 48(b)), **and** the youth has not subsequently been found delinquent, in need of supervision, or convicted of a crime, and no charge is pending against him or her. D.C. Code § 16-2335.
2. Any time after the youth's **arrest was "no papered"** **and** either the government does not oppose the youth's request to seal or the youth can show actual innocence. Sup. Ct. R. (Juv.) 118.
3. Any time after the youth's case was **petitioned** after arrest and (1) the youth's prosecution was terminated without adjudication (DWIP, 48(a), 48(b), acquittal, or consent decree) **and** (2) the youth can prove he or she was **actually innocent**.
4. Any time after the youth was found guilty or pled guilty, but now has **new evidence** and can prove he or she was **actually innocent**.



It has been 2 years since the youth's petitioned case was closed.

Use the following checklist to determine if a youth is eligible to seal juvenile records under D.C. Code § 16-2335(a):

D.C. Code § 16-2335 Checklist:

- Youth's case closed at least 2 years ago. (e.g., 2 years after the youth's probation or commitment ends or 2 years after a case is dismissed)
- Since the date the youth's case closed, the youth has not been convicted of a crime nor is the youth an adjudicated delinquent or in need of supervision (PINS).
- No criminal, delinquency, or PINS case is pending.

If these criteria are satisfied, the youth may file a motion to seal, and the judge **must** grant it. The youth will need a separate motion to seal for each case jacket the youth is seeking to seal.

See Appendix C for a sample motion to seal under D.C. Code § 16-2335.

Any time after a youth’s “no-papered” case is closed

Often youth will be released after arrest with no further action by the government or the court. When the government decides not to charge a youth after arrest, the youth’s case is “**no papered**.” Even a no-papered case has a **law enforcement record** that needs to be sealed.

Unfortunately, the statute permitting the court to seal juvenile records 2 years after the closure of the youth’s case seems to inadvertently leave out “no papered” cases from eligibility. The plain language of the statute indicates that records may be sealed “[o]n motion of a person who has been *the subject of a petition*.” D.C. Code § 16-2335(a) (emphasis added). “No papered” cases are not petitioned.

There are now two provisions that allow youth to seal a record of a “no papered” case: D.C. Superior Court (Juvenile) Rule 118 and D.C. Code § 16-2335.02, as discussed in the following section.

Juvenile Rule 118 allows “[a]ny respondent arrested for the commission of a delinquent act as defined in D.C. Code § 16- 2301(7) *who has not been the subject of a petition*” to move to seal that record. Under Rule 118, a youth who has been arrested can move to have his or her arrest records sealed within 120 days after the charges have been dismissed. For good cause shown, the youth may move within 3 years after the prosecution has been terminated, or at anytime thereafter if the government does not object. Sup. Ct. R. (Juv.) 118.

Under Rule 118, the judge may grant a motion to seal records of a “no papered” arrest if the youth shows by clear and convincing evidence that he or she is actually innocent of the crime for which he or she was arrested. Sup. Ct. R. (Juv.) 118(a)(5). **However, if a youth believes that he or she is actually innocent in a case that was “no papered,” the youth should consider filing a motion to seal under D.C. Code § 16-2335.02.** As discussed below, filing under D.C. Code § 16-2335.02 allows the youth to file a motion to seal on actual innocence at any time and demonstrate actual innocence by **the lesser standard of “preponderance of the evidence.”**

Juvenile Rule 118 is still very important for youth who have a case that was “no papered” but do not have evidence to demonstrate actual innocence. A youth may still have his or her arrest records sealed under Rule 118 if the government does not oppose the request. As of this publication, the government has been fairly amenable to sealing juvenile arrest records in circumstances that mirror those set forth in D.C. Code § 16-2335(a), e.g., 2 years have passed since the arrest, and the youth has not subsequently been found delinquent, in need of supervision, or convicted of a crime, and no charge is pending against him. A judge may order the records sealed with or without a hearing pursuant to Juvenile Rule 118 (a)(4).* **See Appendix E for a sample motion under Juvenile Rule 118.**

*Juvenile Rule 118 arguably provides for equitable relief (even over the government’s objection) for youth who are arrested but do not have the benefit of D.C. Code § 16-2335(a). The D.C. Superior Court adopted Juvenile Rule 118 in 1979 after the D.C. Court of Appeals determined in *District of Columbia v. Hudson*, 404 A.2d 175 (D.C. App. 1979), that there was no potential law enforcement value in maintaining an arrest record for a defendant who was falsely or mistakenly arrested. The court held that such arrestees were entitled to the **equitable relief** of having the court seal their arrest records. Commentary to Juvenile Rule 118 also notes that Rule 118 provides for equitable relief for those cases not covered by D.C. Code § 16-2335 (i.e., cases in which a petition is filed). The same equitable argument would hold true for youth who cannot prove false arrest, but who can show that they have not engaged in criminal or delinquent behavior for 2 years since their last arrest, consistent with § 16-2335(a) that authorizes sealing in cases that have been petitioned. It would be a manifest injustice to allow youth to have their records sealed under § 16-2335(a) when the government decides to *petition* a case, but not to have their records sealed when the government decides *not to petition* a case.

No Paper, Dismissal by Juvenile Rule 48, Dismissal for Want of Prosecution, Acquittal, or Consent Decree + Actual Innocence

There will be juvenile case records, social file records, and law enforcement records even if the youth was found not guilty at trial, the youth's case was dismissed for want of prosecution (DWP) before trial, or the youth's charges were dismissed by the government pursuant to a consent decree or Juvenile Rule 48(a) or by the court pursuant to Juvenile Rule 48(b).

However, if the youth believes he or she is actually innocent of the charges for which he or she was arrested, the youth may ask the court to seal records on the **grounds of actual innocence**. The youth may use the following checklist to determine if he or she is eligible to file a motion to seal the records of the arrest and related court proceedings on grounds of actual innocence under § 16-2335.02:

D.C. Code § 16-2335.02 Checklist:

- The youth believes he or she is innocent.
- The youth's case was "no papered" or petitioned but then closed by dismissal for want of prosecution, 48(a)/(b), acquittal, or consent decree.
- The youth will be able to prove that the offense did not occur or that he or she did not commit the offense.

TIMING

The youth should consider filing a motion to seal based on actual innocence as soon as possible after the prosecution is terminated. Unlike the 2-year delay imposed by § 16-2335, a youth may file a motion to seal based on actual innocence at any time after arrest; however, it is still very important to file these motions as soon as possible since **the youth's burden of proof is lower when the motion is filed early**. D.C. Code § 16-2335.02.

The youth bears the burden of demonstrating actual innocence.

Burden of Proof: If the youth files the motion within 4 years after his or her case is dismissed or acquitted, the youth has the burden of showing either that no crime occurred or that he or she did not commit the crime by a "**preponderance of the evidence**." If the youth waits longer than 4 years after the prosecution has been terminated, the burden to prove innocence is "clear and convincing evidence," which is a higher burden of proof. *See* D.C. Code § 16-2335.02(c)–(d).

Rebuttable Presumption: If the youth waits too long to file the motion to seal on actual innocence, the government may be able to show that it has been "substantially prejudiced in its ability to respond to the motion" due to the youth's delay in filing. If the government makes this showing, the court may employ a

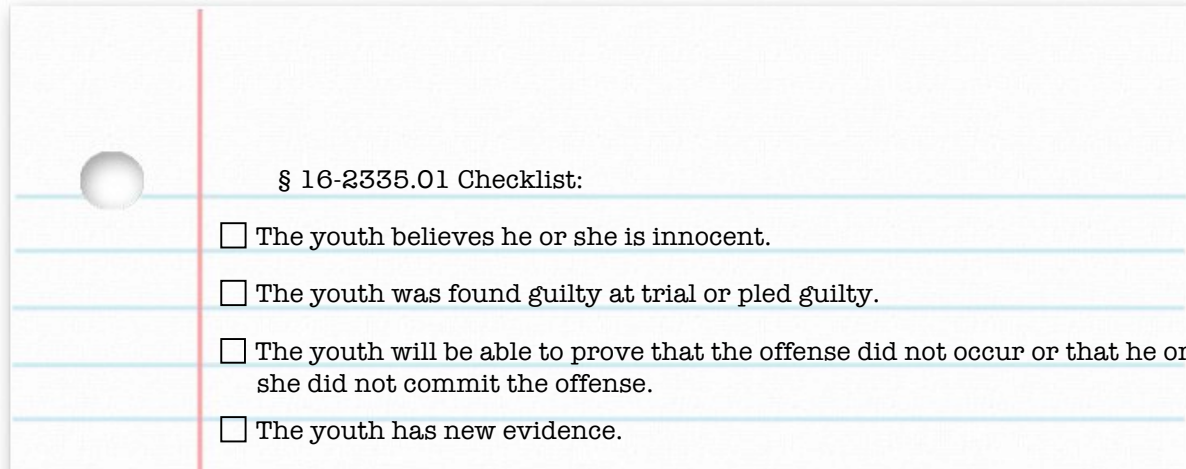
rebuttable presumption that the youth is not entitled to relief unless the youth can explain the delay. *See* D.C. Code § 16-2335.02(e).

In the event of a hearing: Filing the innocence motion as soon as possible also increases the chance that defense witnesses will be available and able to remember the events if the court decides to schedule a hearing. *See* D.C. Code § 16-2335.02(n)–(o). Hearsay evidence is admissible at a hearing on the motion to seal for actual innocence.

See Appendix I for a sample motion to seal under D.C. Code § 16-2335.02.

Guilty Plea or Delinquency Adjudication + Actual Innocence + New Evidence

If the youth pled guilty to a juvenile charge or was found guilty after trial and there is **new evidence** to prove the youth's innocence, the youth can ask the court to vacate the adjudication or grant a new fact-finding hearing on the grounds of actual innocence. The youth may use the following checklist to determine if he or she is eligible to file a motion to vacate the adjudication or grant a new fact-finding hearing under § 16-2335.01:



§ 16-2335.01 Checklist:

- The youth believes he or she is innocent.
- The youth was found guilty at trial or pled guilty.
- The youth will be able to prove that the offense did not occur or that he or she did not commit the offense.
- The youth has new evidence.

First: If the youth pled guilty or was found guilty, the youth must file a motion under § 16-2335.01 to vacate the adjudication or grant a new fact-finding hearing on the ground of actual innocence. The motion must identify **new evidence**. (Remember, if the youth does not have new evidence, he or she may still seek to have his or her record sealed after 2 years. *See* pg. 7) The youth may file this motion at any time, but **timing** is important. The court may dismiss the motion if the government demonstrates it has been “materially prejudiced in its ability to respond to the motion by the delay in its filing” unless the youth is able to show “that the motion is based on grounds which he or she could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.” §16-2335.01(f).

In the motion, the youth must identify the new evidence, establish how that evidence demonstrates the youth is actually innocent (that the crime did not occur or that he or she did not commit the crime), and establish why the new evidence is not cumulative or impeaching. *See* D.C. Code §

Important Note

If the youth pled guilty, and as part of the plea agreement the government dismissed some of the youth's charges, the Court **will** reinstate the dismissed charges unless the youth has proven actual innocence on those charges as well. The youth should consider this before filing a motion. *See* D.C. Code § 16-2335.01(g)(4).

Also, the Court is not required to “entertain second or successive motion[s]” for similar relief for the same client. *See* D.C. Code § 16-2335.01(h).

16-2335.01(c). If the youth pled guilty, the youth should explain why he or she pled guilty despite innocence, as the court may consider that factor in determining whether to grant relief. *See* D.C. Code § 16-2335.01(g)(E). If the youth was found guilty at trial, the youth should also explain any inconsistencies between the defense theory presented at trial and the youth’s current claim of innocence. *See* D.C. Code § 16-2335.01(g)(D). The youth must also attach an affidavit under penalty of perjury stating that he or she is actually innocent of the crime that is the subject of the motion and that the new evidence was not deliberately withheld for strategic advantage. *See* D.C. Code § 16-2335.01(d)(1).

See Appendix G for a sample motion under D.C. Code § 16-2335.01.

If the court concludes after reviewing the youth’s motion that it is **more likely than not that the youth is actually innocent of the crime, the court will grant a new fact-finding hearing.** *See* D.C. Code § 16-2335.01(g)(2).¹ If the court concludes by **clear and convincing evidence that the youth is actually innocent of the crime, the court shall vacate the adjudication and dismiss the count with prejudice.** *See* D.C. Code § 16-2335.01(g)(3).

Second: If the youth’s motion under D.C. Code § 16-2335.01 is successful and the adjudication is vacated (and there is no subsequent prosecution or the youth wins at the new fact-finding hearing), the youth must still file a motion to seal under § 16-2335.02.

If the court has concluded by “clear and convincing evidence” that the youth is actually innocent after a motion to vacate the adjudication under D.C. Code § 16-2335.01(g)(3), the court **must** grant a motion to seal under § 16-2335.02(h). If the court granted the youth a new fact-finding hearing and the subsequent prosecution is terminated without an adjudication, the youth must file a motion under § 16-2335.02(a) as described in the previous section of this guide.

See Appendix I for a sample motion under D.C. Code § 16-2335.02.

¹ The Advocate should be aware that there may be an appellate issue concerning whether a person who is 21 years of age or older at the time that he or she is granted a new trial would be retried as a juvenile or an adult. While D.C. Code § 16-2335.01(g)(2) states that the court shall grant the youth a new fact-finding hearing, the Family Court only has jurisdiction to adjudicate a person who is under the age of 21 (for an act that was committed prior to his or her turning 18). *See* the definition of a “child” in D.C. Code § 16-2301 (3)(C).

Filing the Motion & Obtaining a Copy of the Youth's Juvenile and Criminal Record

Once the motion is written, the youth or the youth's attorney will need to file it in D.C. Family Court as described below.

A **judge's name should be included on the motion to seal**, as seen in the sample motions included in the Appendices. If the youth's case was dismissed by a judge or by the government after the youth was charged, the youth may file the motion to seal with the judge who presided over the youth's case. If the youth does not remember which judge presided over his or her case, the youth may ask the Family Court clerk for the judge's name or file the motion with the "Presiding Judge of the D.C. Family Court." If the youth's judge no longer sits on the juvenile court or the youth's case was "no papered" after arrest (i.e., the youth was never charged by a petition), he or she should file the motion with the "Presiding Judge of the D.C. Family Court."

The **youth should include his or her own contact information on the motion** as well so the clerk can communicate with the youth regarding the motion. The youth should also ensure a "**Certificate of Service**" has been signed indicating that the youth has or will serve the Office of the Attorney General (OAG) with a copy of the motion.

OBTAINING THE JUVENILE AND CRIMINAL RECORD

If the youth is trying to seal a record 2 years after his or her last juvenile case was closed (D.C. Code § 16-2335), the judge and the prosecutor may review the youth's motion more quickly if the youth can **attach a copy of the youth's juvenile record** to prove the youth has not been adjudicated delinquent or in need of supervision (PINS) in the previous 2 years and that no delinquency or PINS case is pending against him or her. The government and the judge will be able to verify that the youth has no adult criminal record. The youth or the youth's parent may obtain a copy of the juvenile record from the Juvenile Clerk's Office, located in Room JM-300 of the D.C. Superior Court, 500 Indiana Avenue, N.W. The person hoping to access a juvenile record should bring their state-issued ID, or a school ID, birth certificate, and social security card to verify their identity.

FILING THE MOTION

Attorneys should file the motion via the D.C. Family Court's e-filing system. For those without access to e-filing, such as **youth and their parents**, the motion must be filed in person. The youth should take two copies to the Family Court clerk at the Central Intake Desk, JM-540. The Family Court clerk's office is located at the end of the Family Court hallway on the JM Level of the D.C. Superior Court (500 Indiana Ave. N.W.). The clerk will stamp both copies, keep one copy, and return one copy to the youth. The time-stamped copy serves as proof that the motion was filed on that day and at that time.

The youth must also take copies of the motion to the Office of the Attorney General (OAG), Public Safety Division. The youth should bring two copies to the OAG, one to leave at the office and one to be time-stamped as proof that the motion was given to them. The OAG is located at 441 4th St N.W., Suite 1060 on the north side of the 10th floor (the youth should use the elevator bank on the left side of the lobby). The

building is located next to the 4th Street exit for the Judiciary Square Metro stop on the Red Line. Youth should bring their IDs, as this is required to enter the building.

Upon arrival at the OAG, the youth should tell the receptionist that he or she has a motion to file. As of this writing, most of the motions to seal are being reviewed by Assistant Attorney General Barbara Chesser. The receptionist will ask the youth to sign in and submit both copies of the motion. The receptionist should time-stamp the Certificate of Service page, keep one copy of the motion, and return the other to the youth for the youth's records.

To follow up on the motion, the youth can call the Juvenile Clerk's Office (202) 879-1558 or the judge's chambers (with whom the motion was filed) to check on the status of the motion.



Following Up

Once the judge has ordered that the youth's records be sealed either under D.C. Code § 16-2335, § 16-2335.02, or Juvenile Rule 118, numerous agencies have the responsibility to seal the youth's records. The youth or the youth's attorney should reach out to these agencies by letter or email to notify them that an order sealing the youth's records has been granted and to advise them of their duties under the statute.

See Appendixes K and L for sample notification letters.

If the youth's records are sealed under § 16-2335 or §16-2335.02, the youth or the youth's attorney should send a notification letter to:

- The Attorney General (OAG)
- Any law enforcement department having police files and records regarding the youth's case (e.g., MPD or Metro Transit Police)
- Any other public and private agencies or institutions that provided supervision or treatment or had custody of the youth (e.g., Court Social Services, the Department of Youth Rehabilitation Services, a youth shelter house, etc.)

The prosecutor (OAG) must arrange for any computerized record of the youth's arrest, prosecution, or adjudication to be eliminated (except for a restricted-access file that would permit the prosecutor and law enforcement agencies to retrieve sealed records if ordered to do so by the court). The prosecutor must communicate with the law enforcement agency to arrange the sealing. *See* D.C. Code § 16-2335.02(h)(4).

Each agency is required to file a certification with the court within 90 days of an order to seal the records indicating that, to the best of its knowledge and belief, all references that identify the youth as having been arrested, prosecuted, or adjudicated have been sealed under D.C. Code § 16-2335.02(h)(5).

If a youth wishes to confirm that the records have actually been sealed, the youth or his or her counsel may request the records from the juvenile court or other relevant agencies to see if the clerk or agency acknowledges a record exists. The clerk should respond that no record exists for the youth. *See* pg. 13 for instructions on how to request a juvenile record.



Photo by Sam Hollenshead, Georgetown Law

SEALING RECORDS CHART

	D.C. Code § 16-2335 Motion to Seal Records 2 Years after Termination of Case	D.C. Code § 16-2335.01 Motion to Vacate Adjudication or Grant a New Trial on Grounds of Actual Innocence (New Evidence after Trial or Plea)	D.C. Code § 16.2335.02 Motion to Seal Records on Grounds of Actual Innocence after Not Guilty or Dismissal	D.C. Superior Court (Juvenile) Rule 118 Motion to Seal Records
Case Resolution	“Subject of a Petition” Not Guilty Dismissal Completion of Consent Decree Adjudicated or Pled Guilty & Probation/Commitment Ended	Adjudicated Delinquent after Plea or Trial	Arrested, but Case “No Papered” Not Guilty Case Dismissed by Judge or Prosecutor Completion of Consent Decree	Arrested, but Case “No Papered”
Actual Innocence Required?	No	Yes	Yes	Generally Yes BUT No if government does not oppose the motion

<p>When can you file Motion?</p>	<p>2 years after case is closed</p>	<p>Any time</p>	<p>Any time</p>	<p>May file motion at any time, but to file after 120 days, the youth must show good cause for the timing of the filing.</p>
<p>What is required?</p>	<p>Must wait to file motion 2 years after final discharge of the person from legal custody or supervision & No subsequent adjudication, PINS, or conviction & No pending criminal or delinquency matters.</p>	<p>Step 1: Motion must set forth specific facts: (1) Identifying the specific new evidence: (a) Establishing how that evidence demonstrates the youth is actually innocent; and (b) Establishing why the new evidence is not cumulative or impeaching. (2) Must include affidavit by youth stating movant is actually innocent.</p> <p>Step 2: If adjudication vacated or found not guilty, file motion to seal under D.C. Code §16.2335.02.</p>	<p>The burden is on the youth to establish that: (1) The violation for which the youth was arrested or petitioned did not occur; or (2) The youth did not commit the offense.</p> <p>Legal Standard: If filed within 4 years, preponderance of the evidence standard; If after 4 years, clear and convincing evidence.</p> <p>Youth must address the innocence of the youth for all charges brought, even if some were dismissed during a plea deal.</p>	<p>State facts in support of request to seal records and attach any exhibits, affidavits, and supporting documents.</p> <p>Determine whether the government intends to oppose the motion to seal.</p> <p>If the government intends to oppose the motion, the movant would be required to prove the violation did not occur or the movant did not commit the offense by clear and convincing evidence.</p>
<p>Government notification required?</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>



<p>Government entitled to respond?</p>	<p>No (But the youth must give reasonable notice to the government, and the government does routinely respond).</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>
<p>Possible Outcomes</p>	<p>The court must order the sealing of any records relating to: Arrest Filing of petition Adjudication Filing Disposition.</p> <p>All facts relating to the case shall no longer exist as a matter of law.</p>	<p>If the court vacates adjudication or grants a new fact-finding hearing, and youth is found not guilty, then youth must file motion to seal under § 16-2335.02.</p> <p>If § 16-2335.02 motion successful, all agencies involved must seal any evidence that identify the movant of being: Arrested, Prosecuted, or Adjudicated.</p>	<p>All agencies involved must seal any records that identify the movant as being: Arrested, Prosecuted, or Adjudicated.</p>	<p>Seal arrest and other law enforcement records.</p>



APPENDIX A: Who has access to a youth’s records?

	Juvenile Case Records <i>See § 16-2331</i>	Juvenile Social Records <i>See § 16-2332</i>	Police Records <i>See § 16-2333</i>
Access to the Youth’s Complete Record without Court Permission	Judges and professional staff of the Superior Court	Judges and professional staff of the Superior Court	The Superior Court, having the youth currently before it in any proceedings
	Any court in which the respondent is charged or convicted as a respondent in a delinquency matter or status offense or as a defendant in a criminal offense, or the court’s probation staff	Any court or its probation staff, for purposes of sentencing the youth as a defendant in a criminal case	Any court in which the respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court’s probation staff, or by officials of rehabilitation or penal institutions and other rehabilitation or penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him
	The Attorney General and his assistants assigned to the Family Court	The Attorney General and his assistants assigned to the Family Court	The United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys when necessary for the discharge of their official duties
	The respondent and any attorney for the respondent without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case	The respondent and any attorney for the respondent without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case	The respondent and any attorney for the respondent without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case
	The parents or guardians and any attorney for them without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case	(Note: not parents)	The parents or guardians and any attorney for them without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case

<p>Public or private agencies or institutions providing supervision or treatment or having custody of the youth, if supervision, treatment, or custody is under order of the Family Court</p>	<p>Public or private agencies or institutions providing supervision or treatment or having custody of the youth, if supervision, treatment, or custody is under order of the Family Court</p>	<p>The officers of public and private institutions or agencies to which the youth is currently committed, and those professional persons or agencies responsible for the youth’s supervision after release</p>
		<p>The public, if the case is transferred for criminal prosecution, if the record pertains to a civil Notice of Violation, if the interest of national security requires it, or if the court otherwise orders it in the interest of the youth</p>
<p>The Mayor in accordance with the Motor Vehicle Operator’s Permit Revocation Amendment</p>		
<p>Authorized personnel in the Mayor’s Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court or to their families</p>	<p>Authorized personnel in the Mayor’s Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court or to their families</p>	<p>Authorized personnel in the Mayor’s Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court or to their families</p>
<p>The Child and Family Services Agency for the purposes of carrying out its official duties</p>	<p>The Child and Family Services Agency for the purposes of carrying out its official duties</p>	
<p>The Juvenile Abscondence Review Committee for the purposes of examining circumstances and events surrounding any homicide, assault with intent to kill, and assault with a deadly weapon committed in the District by or to a juvenile in abscondence</p>		<p>The Juvenile Abscondence Review Committee for the purposes of examining circumstances and events surrounding any homicide, assault with intent to kill, and assault with a deadly weapon committed in the District by or to a juvenile in abscondence</p>



Access to Records When “necessary for the discharge of their official duties”	The United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys or defense attorneys		The United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys when necessary for the discharge of their official duties
	The Child Fatality Review Committee for the purposes of examining past events and circumstances surrounding deaths of children in the District of Columbia or of the children who are either residents or wards of the District of Columbia, or for the discharge of its official duties	The Child Fatality Review Committee for the purposes of examining past events and circumstances surrounding deaths of children in the District of Columbia or of the children who are either residents or wards of the District of Columbia, or for the discharge of its official duties	The Child Fatality Review Committee when necessary for the official discharge of their duties
		Professional employees of the Department of Youth Rehabilitation Services	Professional employees of the Department of Youth Rehabilitation Services
	Any law enforcement personnel		Law enforcement officers of the United States, the District of Columbia, and other jurisdictions
	The Pretrial Services Agency of the District of Columbia		
	The Court Services and Offender Supervision Agency for the District of Columbia		
Access to Records with Court Permission	Other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of the respondent’s family, or in the work of the Superior Court, if authorized by rule or special order of the court	Other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of the respondent’s family, or in the work of the Family Court, if authorized by rule or special order of the court	Any other person, agency, or institution, by order of the court, having a professional interest in the youth or in the work of the law enforcement department
Partial Access to Records without Court Permission	Each victim or eyewitness, or the immediate family member or custodians of each victim or eyewitness if the victim or eyewitness is a child or is deceased or incapacitated, and their duly authorized attorneys, at the discretion of the Attorney		Each eyewitness, victim, or the immediate family members or caretakers of the eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorneys, when the records relate to the

<p>General and when the information relates to:</p> <ul style="list-style-type: none"> (i) Release status (ii) The level of respondent’s placement (iii) Stay-away orders imposed (iv) Respondent’s participation in diversion or consent decree (v) The offenses charged in the petition (vi) The terms of any plea agreements, findings, or verdicts related to the adjudication of the case (vii) Commitment or probation status 		<p>incident in which they were an eyewitness or a victim</p>
	<p>Law enforcement officers of the United States, the District of Columbia, and other jurisdictions have access to the following information, when a custody order has been issued:</p> <ul style="list-style-type: none"> (1) a photograph of the youth (2) a physical description of the youth (3) any addresses where the youth may be found 	
<p>The Children’s Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for the purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided</p>		<p>The Children’s Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for the purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided</p>



<p>The prosecuting attorney may divulge the contents of a record to the extent required in the prosecution of a criminal case, and the United States Attorney for the District of Columbia and his assistants may inspect a transcript of the testimony of any witness and divulge the contents to the extent required by the prosecution of the witness for perjury, without, wherever possible, naming or otherwise revealing the identity of a youth under the jurisdiction of the Family Court.</p>		<p>Photographs may be displayed to potential witnesses for identification purposes, in accordance with the standards of fairness applicable to adults.</p>
<p>For every respondent against whom the Attorney General has filed a petition for a crime of violence, a weapons offense, UUV, theft in the first degree when the property obtained or used is a motor vehicle, or the OAG has filed 3 or more petitions against the respondent AND the respondent is not detained, the Family Court may provide the following case record information to the Chief of the Metropolitan Police Department:</p> <ul style="list-style-type: none"> (i) Respondent’s name and date of birth (ii) Last known address of the respondent (iii) Last known address of respondent’s parents, guardians, caretakers, and custodians (iv) Address where the respondent will be placed and the name and address of the person into whose custody the respondent will be placed 	<p>For every respondent committed to the Department of Youth Rehabilitation Services who has been adjudicated of a crime of violence, a weapons offense, UUV, theft in the first degree when the property obtained or used is a motor vehicle, or has been adjudicated 3 or more times, the Mayor may direct the Director of the Department to provide notice to the Chief of the Metropolitan Police Department of any assignment or placement of the respondent in a Department facility or residential or other placement, including any facility operated by a contractor or agent, as soon as practicable prior to the assignment or placement.</p>	<p>For juveniles who have been adjudicated delinquent of a crime of violence, any felony offense under Chapter 45 of Title 22 (weapons), or Chapter 23 of Title 6 (Firearms Control), or for juveniles who have been adjudicated delinquent 2 or more times of a dangerous crime, UUV, theft in the first degree where the property obtained or used is a motor vehicle, an assault, or any combination thereof, or for an adult offender (including a juvenile tried as an adult) convicted of a felony or of misdemeanor assault, provided that no more than 3 years have lapsed between the completion of his or her juvenile sentence and the adult conviction, the following information will be made public:</p> <ul style="list-style-type: none"> (A) the youth’s name (B) the fact that the youth was arrested (C) the charges at arrest (D) the charges in the petition filed pursuant to section 16-2305 (E) Whether the petition resulted in an

<p>(v) All terms of the placement or conditions of release</p>		<p>adjudication and the charges for which the youth was found involved (F) If the youth was found involved, whether at initial disposition the youth was placed on probation or committed to the custody of the Department of Youth Rehabilitation Services</p>
<p>In all cases in which the respondent is not detained by the Family Court and in cases in which the respondent is placed on probation, the Family Court may provide the following to the Chief of the Metropolitan Police Department:</p> <ol style="list-style-type: none"> (1) Respondent's name and date of birth (2) All terms or conditions of any stay-away order (3) All terms or conditions of any curfew order 	<p>For any respondent who is detained or committed to the Department of Youth Rehabilitation Services, the Director shall provide notice to the Chief of the Metropolitan Police Department of any respondent who has absconded or escaped from any facility disclosing:</p> <ol style="list-style-type: none"> (1) Respondent's name and date of birth (2) Last known address of the respondent (3) Last known address of the respondent's parents, guardians, caretakers, and custodians (4) Address to which the respondent will be assigned, placed, or released and the name and address of the person into whose custody the respondent will be placed if the respondent is not placed into a Department facility (5) A recent photograph of the respondent, if available 	



An official of the Family Court, the Department of Youth Rehabilitation Services, or the Metropolitan Police Department may disclose information (but not records) about a juvenile otherwise protected from disclosure to a **principal, teacher, or counselor at a school** that the juvenile attends or has attended or a **mental health professional** if:

- (1) In the professional judgment of the official, disclosing the information will assist in the protection, welfare, treatment, or rehabilitation of the juvenile;
- (2) A professional relationship exists between the official and the juvenile; and
- (3) The general nature of the disclosure and the rationale for making the disclosure are approved by the official's supervisor or agency director.

The official may share:

- (1) The juvenile's name
- (2) Whether the juvenile is or has been on probation or in the custody of the Department
- (3) Whether the juvenile has violated the terms of probation or absconded while in the custody of the Department
- (4) Whether the juvenile has been arrested by the Metropolitan Police Department, or another law enforcement agency, and the charges brought against the juvenile
- (5) The disposition of the charges brought against the juvenile. D.C. Code § 16-2333.01

An official of the Family Court, the Department of Youth Rehabilitation Services, or the Metropolitan Police Department may disclose information (but not records) about a juvenile otherwise protected from disclosure to a **principal, teacher, or counselor at a school** that the juvenile attends or has attended or a **mental health professional** if:

- (1) In the professional judgment of the official, disclosing the information will assist in the protection, welfare, treatment, or rehabilitation of the juvenile;
- (2) A professional relationship exists between the official and the juvenile; and
- (3) The general nature of the disclosure and the rationale for making the disclosure are approved by the official's supervisor or agency director.

The official may share:

- (1) The juvenile's name
- (2) Whether the juvenile is or has been on probation or in the custody of the Department
- (3) Whether the juvenile has violated the terms of probation or absconded while in the custody of the Department;
- (4) Whether the juvenile has been arrested by the Metropolitan Police Department, or another law enforcement agency, and the charges brought against the juvenile
- (5) Disposition of charges brought against the juvenile. D.C. Code § 16-2333.01

An official of the Family Court, the Department of Youth Rehabilitation Services, or the Metropolitan Police Department may disclose information (but not records) about a juvenile otherwise protected from disclosure to a **principal, teacher, or counselor at a school** that the juvenile attends or has attended or a **mental health professional** if:

- (1) In the professional judgment of the official, disclosing the information will assist in the protection, welfare, treatment, or rehabilitation of the juvenile;
- (2) A professional relationship exists between the official and the juvenile; and
- (3) The general nature of the disclosure and the rationale for making the disclosure are approved by the official's supervisor or agency director.

The official may share:

- (1) The juvenile's name
- (2) Whether the juvenile is or has been on probation or in the custody of the Department
- (3) Whether the juvenile has violated the terms of probation or absconded while in the custody of the Department
- (4) Whether the juvenile has been arrested by the Metropolitan Police Department, or another law enforcement agency, and the charges brought against the juvenile
- ~~(5) Disposition of charges brought against~~ the juvenile. D.C. Code § 16-2333.01

Partial Access with Court Permission

Upon application of the Attorney General, the court may release information contained in the case record if:

- (1) The respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;
- (2) Release of the information is necessary to protect the public safety and welfare; and
- (3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).

The Family Court, upon application of the Attorney General and notice and opportunity for respondent or his counsel to respond to the application, may order the release of certain information contained in the law enforcement records if

- (1) the respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;
- (2) release of such information is necessary to protect the public safety and welfare; and
- (3) the respondent has been charged with a crime of violence.

When a youth is found guilty or pleads guilty to certain serious crimes (e.g., one or more crimes of violence or two or more dangerous crimes), the public may be able to access some limited information about the youth and the youth’s offense. This exception to the confidentiality rule applies only to youth who were adjudicated of an eligible serious crime or crimes **after** January 1, 2011, but allows for the limited disclosure of information regarding **all** the youth’s arrests, charges, and dispositions, even those that took place before January 1, 2011. **See D.C. Code § 16-2333(e).** For youth who are subject to this public disclosure, only limited information from the records may be available to the public: the youth’s name; the fact that the youth was arrested, the charges at arrest; the charges in the petition filed pursuant to section 16-2305; whether the petition resulted in an adjudication, and the charges for which the youth was found involved; and if the youth was found involved, whether at initial disposition the youth was placed on probation or committed to the custody of the Department of Youth Rehabilitation Services.

APPENDIX B: Which Offenses Expose A Youth to Public Disclosure?

<p>If the youth has been adjudicated once of the following:</p>	<p>Crime of violence as defined in § 23-1331(4)</p>	<p>Aggravated assault Act of terrorism Arson Assault on a police officer (felony) Assault with a dangerous weapon Assault with the intent to kill Assault with the intent to commit first degree sexual abuse Assault with the intent to commit second degree sexual abuse Assault with intent to commit child sexual abuse Assault with the intent to commit child sexual abuse Assault with significant bodily injury Assault with the 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</p>	<p>Felony offense under Chapter 45 of Title 22 (weapons) in § 22-4501 et seq.</p>	<p>A “crime of violence” or “dangerous crime” when armed or having readily available any pistol, firearm, imitation firearm, or other dangerous or deadly weapon Carrying a gun without a license in a gun-free zone, such as a school, public library, or another public place Unlawful possession of a firearm Carrying a concealed weapon Possession of weapons during commission of crime of violence or dangerous crime Sale of a firearm Possession of certain dangerous weapons after being convicted twice for possession of certain dangerous weapons or of a felony Second conviction for Manufacture, use, possession or transfer of Molotov cocktails, or other explosives for unlawful purposes</p>	<p>Felony offense under Chapter 25 of Title 7 (Firearms Control) in D.C. Code § 7-2501-7.2603</p>	<p>Examples include: Knowingly or intentionally selling, transferring, or distributing a firearm, destructive device, or ammunition to a person under 18 years of age Second conviction for possessing an unregistered firearm Possessing more than one restricted pistol bullet in violation of § 7-2506.01(a)(3)</p>
---	---	--	---	--	---	---

		<p>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 degree Sexual abuse in the second degree Sexual abuse in the third degree Use, dissemination, or detonation of a weapon of mass destruction An attempt or conspiracy to commit any of the offenses on this list</p>			
<p>If the youth has been adjudicated 2 times of the following:</p>	<p>Dangerous crime as defined in § 23-1331(3)</p>	<p>Any felony offense under Unit A of Chapter 25 of Title 7 (Firearms control) Any felony offense under Chapter 27 of Title 22 (Prostitution, Pandering) Any felony offense under Unit A of Chapter 9 of Title 48 (Controlled substances) Cruelty to children (any degree) Any felony offense established by the Prohibition Against Human Trafficking Amendment Act of 2010 [D.C. Law 18-239], or any conspiracy to commit such an offense Fleeing from an officer in a motor vehicle (felony)</p>	<p>Other Offenses enumerated in § 16-2333(e)(ii) through (iv)</p>	<p>UUV Theft in the first degree where the property obtained or used is a motor vehicle Assault</p>	
<p>As an adult (including a juvenile tried as an adult), if no more than 3 years have lapsed between the completion of a juvenile sentence and the adult conviction:</p>		<p>Any felony Misdemeanor assault</p>			



APPENDIX C: Sample Motion under D.C. Code § 16-2335

FAMILY COURT OF THE DISTRICT OF COLUMBIA JUVENILE BRANCH

IN THE MATTER OF :
 : **Case No. ----DEL----**
[YOUTH’S NAME], : **Social File No. ----JSF----**
 : **Closed Case**
RESPONDENT : **Judge _____**

MOTION TO SEAL JUVENILE RECORDS TWO (2) YEARS AFTER TERMINATION OF JURISDICTION

Pursuant to D.C. Code §16-2335, [YOUTH], through undersigned counsel, respectfully moves this Honorable Court to issue an order sealing the files and records in the above-captioned case.

[YOUTH] asserts that he is eligible to have his records sealed in the cases listed above. In support of this motion, [YOUTH] states the following:

1. On January 1, 2010, [YOUTH] pled guilty to one count of simple assault in [CASE NUMBER].
2. At disposition on February 1, 2010, [YOUTH] received 3 months of supervised probation.
3. [YOUTH] completed his term of probation on May 3, 2010.
4. D.C. Code §16-2335(a) plainly states that “On motion of a person who has been the subject of a petition filed pursuant to § 16-2305, or on the Division’s own motion, the Division *shall* vacate its order and findings and shall order the sealing of the case and social records referred to in §§ 16-2331 and 16-2332 and the law enforcement records and files referred to in § 16-2333, or those of any other agency active in the case if it finds that . . . (1)(B) two (2) years

have elapsed since the final discharge of the person from legal custody or supervision, or since the entry of any other Division order not involving custody or supervision; and (2) he has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication.” (emphasis added).

5. Two (2) years have passed since [YOUTH] completed his probation in [CASE NUMBER], and [YOUTH] has not been subsequently adjudicated delinquent, found in need of supervision, or convicted of a crime. No other proceeding for conviction or adjudication is pending against him. *See* Appendix A. [INCLUDE A COPY OF THE YOUTH’S COMPLETE JUVENILE RECORD IF POSSIBLE IN THE APPENDIX]

6. [OPTIONAL] More important, [YOUTH] is currently an eleventh-grade student at Ballou High School and on track to graduate. [YOUTH] plans to attend college and pursue studies in mathematics. He hopes to attend the University of the District of Columbia. He currently plays basketball at Ballou as a point-guard. His mother reports that he is doing well at home. [INCLUDE COMPELLING PERSONAL FACTS ABOUT THE YOUTH].

7. Given the District’s stated commitment to the rehabilitation of youth in D.C. Code §16-2301.02 and the statutory mandate that all petitioned cases be sealed two (2) years after closure when there are no subsequent or pending adjudications, [YOUTH]’s arrest and related court records in [CASE NUMBER] must be sealed at this time. The D.C. Council recognized in amending D.C. Code §16-2335 that the juvenile justice system should serve in a rehabilitative capacity and that keeping records confidential is central to that purpose. *D.C. Council, Comm. on Pub. Safety and the Judiciary Report on Bill 18- 344* at 7 (June 29, 2010). The Council pointed out that “revealing law enforcement information for every juvenile defender would wrongly

penalize youth who . . . become productive members of society,” and therefore youth should be able to refuse to disclose juvenile delinquency history in an application for employment, education, or housing. *Id.*

WHEREFORE, for the forgoing reasons and any other that may occur to the Court, [YOUTH] respectfully requests that the Court order all records of [YOUTH]’s arrests and related court proceedings in [CASE NUMBER] be sealed in accordance with D.C. Code 16-2335.

Respectfully submitted,

[YOUTH] or Counsel for [YOUTH]

Youth or Counsel’s Contact Information

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served [via e-file/in person] to _____, Assistant Attorney General, at _____@dc.gov on the ____ day of _____, 2013.

[YOUTH] or COUNSEL FOR [YOUTH]

IMPORTANT NOTES

1. Every motion filed with the court should also be served to the Office of the Attorney General (OAG). This Certificate of Service tells the court that the OAG has been served.
2. Youth and parents filing a motion to seal without a lawyer will need to serve the motion and a copy to the OAG in person as they do not have access to the electronic filing system. See **Filing the Motion** on pg. 13–14 for instructions on how to file in person.

APPENDIX D: Sample Order under D.C. Code § 16-2335

FAMILY COURT OF THE DISTRICT OF COLUMBIA
JUVENILE BRANCH

IN THE MATTER OF :
 : Case No. ---- DEL ----
 : Closed Case
 : Social File No. ---- JSF ----
 [YOUTH'S NAME], :
 :
 RESPONDENT :

ORDER

Having considered the Respondent's Motion to Seal Records filed on _____, in [CASE NUMBER] in accordance with the provision of D.C. Code § 16-2335,

this Court finds that the [YOUTH] is:

ELIGIBLE to have his records in the above-captioned matters sealed for the following reasons, pursuant to D.C. Code § 16-2335(a):

Two (2) years have elapsed since the final discharge of [YOUTH] from legal custody or supervision; or since entry of any other Division order not involving custody or supervision; AND

[YOUTH] has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of this motion, and no proceeding is pending seeking such conviction or adjudication.

Therefore, it is this ____ day of _____, _____, hereby:

ORDERED that

Respondent's Motion is **GRANTED**, and it is

FURTHER ORDERED that:

1. The Clerk of the Family Court of the D.C. Superior Court shall seal all case and social records in the possession of the Superior Court of the District of Columbia, as defined by D.C. Code § 16-2331 and 16-2332, concerning the above-captioned matter(s), pursuant to D.C. Code § 16-2335. Furthermore, the Clerk shall prohibit inspection of the files except as provided by D.C. Code § 16-2335(d).
2. All person(s) and agencies listed below shall seal all case and social records concerning the above-captioned matter(s) pursuant to D.C. Code § 16-2335(c).
 - a. Office of the Attorney General, Pursuant to D.C. Code § 16-2335(b)(2);
 - b. Metropolitan Police Department Law enforcement agencies having custody of the files and records specified in D.C. Code § 16-2333, pursuant to D.C. Code § 16-2335(b)(4);
 - c. Department of Youth Rehabilitation Services, pursuant to D.C. Code § 16-2335(b)(3); and
 - d. Court Social services, pursuant to D.C. Code § 16-2335(b)(3).

3. Hereafter, all person(s) and agencies have notice or knowledge of this order and must, as a matter of law, respond to inquiries about the above-captioned matter(s) or related proceedings, including arrest, the filing of petition, adjudication, and disposition as if the incident and related proceedings never occurred. D.C. Code § 16-2335(c).
4. Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child in violation of this order or in violation of D.C. Code §§ 16-2331 through 16-2335 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$250 or imprisoned not more than ninety days or both in accordance with D.C. Code § 16-2336.

IT IS SO ORDERED.

Date: _____

Associate Judge _____

Copies to:

Youth or Counsel's Contact Information

APPENDIX E: Sample Motion under Juvenile Rule 118

FAMILY COURT OF THE DISTRICT OF COLUMBIA JUVENILE BRANCH

IN THE MATTER OF :
 :
[YOUTH], : **Case Nos. ---- DEL ----**
 : **Social File No. ---- JSF ----**
 : **Closed Case**
RESPONDENT : **Judge _____**

**UNOPPOSED* MOTION TO SEAL JUVENILE RECORDS

Pursuant to D.C. Superior Court (Juvenile) Rule 118(a), [YOUTH], through undersigned counsel, respectfully moves this Honorable Court to issue an order sealing the files and records in the two above-captioned cases. [**The Government does not oppose this motion.*]

*** This language should only be included if the OAG expressly agrees not to oppose the motion.** The youth's counsel may contact the OAG before filing the motion to see what the OAG's position will be.

[YOUTH] asserts that he is eligible to have his records sealed in the cases listed above. In support of this motion, [YOUTH] states the following:

1. In [CASE NUMBER], [YOUTH] was arrested for one count of simple assault in a case allegedly involving his sister. No petition was ever filed and [YOUTH] was released from police custody on October 1, 2010. Three (3) years have passed since his arrest in that matter.
2. D.C. Superior Court Rule (Juvenile) 118 permits any respondent arrested for the commission of a delinquent act who has not been the subject of a petition to file a motion to seal the records of his arrest within 120 days after his arrest. For good cause shown, the respondent may file a motion within three (3) years after the prosecution has been terminated, or at anytime

thereafter if the government does not object. In this case, the respondent is a juvenile who was not aware of his right to seal and who did not understand the importance of a clean juvenile record. Moreover, the government does not object to this filing. As a result, [YOUTH'S] records in ---- DEL ---- should be sealed.

3. Two (2) years have passed since [YOUTH'S] arrest in [CASE NUMBER], and [YOUTH] has not been subsequently adjudicated delinquent, found in need of supervision, or convicted of a crime. No other proceeding for conviction or adjudication is pending against him. *See Attached Juvenile Record.*

4. More important, [YOUTH] is currently a twelfth-grade student at Hines Senior High School and on track to graduate in June. [YOUTH] plans to attend college and pursue studies in mechanical engineering. He hopes to attend Florida A&M State University. He attends weekly art classes at the Martin Luther King Library and had an opportunity to display some of his artwork at the Childrens' Art Gallery this summer. [YOUTH] also tutors second-grade students at Garry Elementary School. His mother reports that [YOUTH] is respectful at home and completes chores as instructed.

5. Given [YOUTH'S] continued success since October 1, 2010 and the District of Columbia's stated commitment to the rehabilitation of youth as articulated in the juvenile court purpose clause, D.C. Code §16-2301.02, [YOUTH'S] arrest and other law enforcement records should be sealed at this time. In amending D.C. Code §16-2335, the D.C. Council explicitly recognized that the juvenile justice system should serve in a rehabilitative capacity and keeping records confidential is central to that purpose. *D.C. Council, Comm. on Pub. Safety and the Judiciary Report on Bill 18-344* at 7 (June 29, 2010). The Council noted that "revealing law enforcement information for every juvenile offender would wrongly penalize youth who . . .

become productive members of society.” *Id.* As a result, the Council ultimately concluded youth should be able to refuse to disclose juvenile delinquency history in an application for employment, education, or housing.

WHEREFORE, for the forgoing reasons and any other that may occur to the Court, [YOUTH] respectfully requests that the Court order all records of [YOUTH’S] arrests and related court proceedings in [CASE NUMBER] be sealed in accordance with D.C. Superior Court (Juvenile) Rule 118(a).

Respectfully submitted,

[YOUTH] or Counsel for [YOUTH]

Youth or Counsel’s Contact Information

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above-captioned Motion for Sealing of Records and Proposed Order filed by Respondent has been mailed on this date _____ to Barbara Chesser, the Office of the Attorney General.

[YOUTH] or Counsel for [YOUTH]

APPENDIX F: Sample Order Under Juvenile Rule 118

IN THE MATTER OF :
: **Case No. ---- DEL ----**
[YOUTH] : **Closed Case**
: **Social File No. ---- JSF ----**
RESPONDENT : **Judge _____**

ORDER

Having considered the Respondent’s Motion to Seal Records in [CASE NUMBER] filed on _____, 2013 in accordance with D.C. Superior Court (Juvenile) Rule 118, [**and with no opposition from the Office of the Attorney General*],

This Court finds that the Respondent is ELIGIBLE to have his records in the above-captioned matter sealed for the following reasons:

- Respondent was arrested for the commission of a delinquent act;
- Respondent was not the subject of a petition for that act; and
- Either this motion is filed within 120 days, or for good cause shown the motion is filed within 3 years, or the motion is filed at anytime without objection from the government.

Therefore, it is this ____ day of _____, 2013, hereby:

ORDERED that

Respondent’s Motion is **GRANTED**, and it is

FURTHER ORDERED that:

1. The Office of the Attorney General shall request that the law enforcement agency responsible for the arrest retrieve and collect all records of the respondent’s arrest including without limitation photographs, fingerprints, and other identification or computer records in the above-captioned matter which were

disseminated to the Court's Social Services Division, the Youth Services Administration, and the Family Services Administration. D.C. Superior Court (Juvenile) Rule 118(a)(6)(i).

2. The Office of the Attorney General shall collect from its office, the law enforcement agency responsible for the respondent'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 concerning the above-captioned matter(s), pursuant to Rule 118, including those records collected by the law enforcement agency in accordance with the above instruction. The Corporation Counsel should also arrange for the elimination of any computerized record of the respondent's arrest. D.C. Superior Court (Juvenile) Rule 118(a)(6)(i).

3. The Office of the Attorney General shall file with the Clerk of the Court, within 60 days, all records collected by the law enforcement agency and in the Attorney General's possession, along with a certification that to the best of the Attorney General's knowledge and belief no further records exist in the Attorney General's own possession or in the law enforcement agency's central record files or those of its dissemines, or that, if such records do exist, steps have been taken to retrieve them. D.C. Superior Court (Juvenile) Rule 118(a)(6)(ii).

4. The Clerk of the Court shall collect all Superior Court records pertaining to the above captioned arrest and purge any computerized record of such arrest such that any record relating the arrest is not retrievable by the identification of the respondent pursuant to Rule 118. D.C. Superior Court (Juvenile) Rule 118(a)(6)(ii).

5. The Clerk of the Court shall file under seal all Superior Court records so retrieved, together with all the records filed by the Attorney General within seven (7) days after the receipt of records pursuant to D.C. Superior Court (Juvenile)

Rule 118(a)(6)(ii). The Clerk shall place the records 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. D.C. Superior Court (Juvenile) Rule 118(a)(8).

6. The Clerk shall respond to inquiries concerning the existence of arrest records that have been sealed pursuant to this Order that no such records exist. D.C. Superior Court (Juvenile) Rule 118(a)(8).

IT IS SO ORDERED.

Date: _____ Associate Judge _____

Copies to:

Youth or Counsel's Contact Information

APPENDIX G: Sample Motion under D.C. Code § 16-2335.01

**FAMILY COURT OF THE DISTRICT OF COLUMBIA
Juvenile Branch**

IN THE MATTER OF : **Docket No. ---- DEL----**
[**YOUTH'S NAME**], : **Social File No. ---- JSF----**
: **Judge _____**
RESPONDENT : **Closed Date: _____**

MOTION TO VACATE ADJUDICATION OR GRANT A NEW FACT-FINDING HEARING
ON GROUNDS OF ACTUAL INNOCENCE

Pursuant to D.C. Code § 16-2335.01, [YOUTH], through undersigned counsel, respectfully moves this Honorable Court for an order to vacate the adjudication in the case listed above and related court proceedings or, in the alternative, to grant a new fact-finding hearing on the grounds that the movant, [YOUTH], is actually innocent based on new evidence.

[YOUTH] asserts that [the offenses for which he was arrested did not occur] OR [that he did not commit the offenses for which he was arrested].

In support of this motion, [YOUTH] states the following:

1. On May 10, 2013, [YOUTH] was arrested by District of Columbia Metropolitan Police Department (MPD) officers and charged with robbery.
2. [YOUTH] was adjudicated delinquent on June 20, 2013.
3. If this Court finds by clear and convincing evidence that the offense for which [YOUTH] was arrested did not occur or that [YOUTH] did not commit the offense for which he was arrested, this Court must vacate the adjudication and

dismiss the relevant counts with prejudice. *See* D.C. Code § 16-2335.01

(g)(3).

4. [YOUTH] has discovered new evidence that was not obtainable at the time he was adjudicated delinquent. While investigating the above-captioned case, defense counsel requested surveillance footage from a retail establishment that directly faces the location of the alleged incident. Before trial, the store manager and a technician told counsel that the surveillance cameras had been inoperable at the time of the alleged offense due to a malfunction that occurred during installation of new security software. As such, [YOUTH] was forced to go to trial without an important piece of evidence.
5. Approximately three weeks after the trial at which [YOUTH] was adjudicated delinquent, the same manager contacted counsel and advised that his technician fixed the problem and found that the surveillance cameras had been recording the entire time. Counsel viewed this recently discovered footage and discovered that not only does it completely show the events as they played out on the day of the incident, but that it also completely substantiates the defense theory at trial, which was that the complaining witness fabricated the incident.
6. This new evidence is consistent with the requirements under D.C. Code § 16-2335.01(c), which requires that the new evidence not be cumulative or impeaching and that it demonstrates that [YOUTH] is actually innocent.
7. In this case, clear and convincing evidence demonstrates that the movant, [YOUTH], did not commit the offenses for which he was arrested or that no such crime was ever committed. As such, the court must vacate the

adjudication and dismiss the relevant counts with prejudice. *See* D.C. Code § 16-2335.01 (g)(3).

8. Alternatively, if the court concludes that the evidence provides a preponderance of the evidence that [YOUTH] did not commit the offense for which he was arrested or that no such offense occurred, then the court shall grant a new fact-finding hearing. *See* D.C. Code § 16-2335.01 (g)(2).
9. An affidavit by [YOUTH], under penalty of perjury, states that [YOUTH] is actually innocent of the crime that is the subject of the motion, and that the new evidence was not purposefully withheld by the [YOUTH] for purposes of gaining a competitive advantage. *See* D.C. Code 16-2335.01 (d)(1).
10. For the reasons set forth above and in the accompanying Memorandum of Points of Authority in Support Thereof, [YOUTH] requests that this Court issue an order to vacate the adjudication in the case listed above and related court proceedings or, in the alternative, to grant a new fact-finding hearing on the grounds that the movant, [YOUTH], is actually innocent based on new evidence.

Respectfully submitted,

[YOUTH] or Counsel for [YOUTH]

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO VACATE ADJUDICATION OR GRANT A NEW FACT-FINDING
HEARING ON GROUNDS OF ACTUAL INNOCENCE**

Pursuant to D.C. Code § 16-2335.01, [YOUTH], through undersigned counsel, respectfully moves this Honorable Court for an order to vacate the adjudication in the case listed above and related court proceedings or, in the alternative, to grant a new fact-finding hearing on the grounds that the movant, [YOUTH], is actually innocent based on new evidence.

The statute requires [YOUTH] to set forth specific facts that (1) identify the specific new evidence; (2) establish how the evidence demonstrates that [YOUTH] is actually innocent; and (3) establish why the new evidence is not cumulative or impeaching. *See* D.C. Code § 16-2335.01 (c)(1)-(3).

The court shall consider the following in its determination of whether to grant relief: (1) new evidence; (2) how the new evidence demonstrates that [YOUTH] is actually innocent; (3) why the new evidence is or is not cumulative or impeaching; (4) whether [YOUTH] asserted a theory of defense inconsistent with the current claim of innocence and why; and (5) whether the adjudication resulted from a plea and the specific reason the movant pled guilty despite being actually innocent of the crime. *See* D.C. Code § 16-2335.01(g)(1).

I. The Court Should Vacate the Adjudication because the New Evidence Shows by Clear and Convincing Evidence That the Movant Is Actually Innocent of the Crime.

A. The New Evidence Is Crucial Surveillance Footage.

[YOUTH] has discovered new evidence that was not obtainable at the time of trial. The P.D. 379 and P.D. 251 both state that the offense for which [YOUTH] was arrested occurred at 5:05 p.m. at the Columbia Heights metro station on May 10, 2013. *See* attached. During investigation for this case, counsel requested surveillance footage from a retail establishment that directly faces the location of the alleged incident. Unfortunately, before trial, the store manager and technician both told counsel that the surveillance cameras had been inoperable due to a malfunction that occurred during installation of new security software. As such, [YOUTH] went to trial without a material piece of evidence.

However, the same manager contacted counsel three weeks after the trial at which [YOUTH] was adjudicated delinquent. This manager told counsel that his technician fixed the problem and discovered that the surveillance cameras had been recording the entire time. Counsel has only recently had the opportunity to view this footage and has found that the footage completely portrays the events as they actually happened on the day of the incident.

B. The Surveillance Footage Proves that [YOUTH] Is Actually Innocent.

The surveillance footage that was discovered by the store's manager and technician three weeks after the trial wholly proves the accuracy of the defense theory at trial, which centered on fabrication of the complaining witness's testimony. This surveillance footage is of superior quality and clearly shows [YOUTH], his co-respondent, and two other boys walking past the Columbia Heights metro station while the complaining witness, wearing a black and yellow jacket, is holding the phone near his ear and walking behind the four boys. At 4:55 p.m. on May 10, 2013, the complaining witness is shown walking twenty feet *behind* the boys, and he suddenly starts running after them. A stranger, a man twice their size, charged after the boys. Naturally, the boys start to run away. There is no robbery and the boys never assaulted the complainant.

C. The Surveillance Footage Is Neither Cumulative Nor Impeaching.

The surveillance footage is not cumulative because it is not repetitive of any evidence introduced into the case. It is not merely corroborative of the case. This is an actual recording of what happened that day, which counsel only recently had the opportunity to see. It is also not impeaching evidence because this is not merely going to the lack of credibility of the complaining witness. It is direct evidence that shows the events as they factually happened, which is in direct contradiction to the complaining witness' testimony.

D. [YOUTH] Has Exercised His Right To Go to Trial and Asserted the Same Theory of Defense at the Fact-Finding Hearing.

[YOUTH] has remained consistent in his defense throughout this case. [YOUTH] exercised his right to go to trial and has asserted this entire time that the complaining witness fabricated this story. Now he has the evidence to prove that the complainant did in fact

completely fabricate the incident. Therefore, after considering all factors pursuant to D.C. Code § 16-2335.01, the Court should find that the new evidence proves that [YOUTH] is innocent by clear and convincing evidence. As such, the Court must vacate the adjudication and dismiss the relevant counts against [YOUTH] with prejudice. *See* D.C. Code § 16-2335.01(g)(3).

II. Alternatively, the Court Must Grant a New Fact-Finding Hearing If the Court Concludes That the Evidence Proves by the Preponderance of the Evidence That [YOUTH] Is Actually Innocent.

Even if the court is not convinced that the surveillance footage provides clear and convincing evidence that [YOUTH] did not commit an offense, the surveillance certainly demonstrates [YOUTH]’s innocence by a preponderance of the evidence. Counsel asserted at trial that there was reasonable doubt that the robbery ever occurred. Even at trial, the complainant’s testimony was inconsistent with his 911 call, during which he never says anyone came up to him or put their arms around his neck. Now this newly discovered surveillance footage shows that the alleged incident simply did not occur as the complainant says they did. The surveillance shows—just as [YOUTH] alleged at trial—that the complainant did in fact fabricate the story and the boys never touched him on the date and time of the alleged incident. Therefore, after considering all factors pursuant to D.C. Code § 16-2335.01, the Court should find that the new evidence proves that [YOUTH] is innocent at least by a preponderance of the evidence. As such, the Court must at the very least grant a new fact-finding hearing. *See* D.C. Code § 16-2335.01(g)(2).

For these reasons, [YOUTH] is entitled to relief under § 16-2335.01.

WHEREFORE, for these and such other reasons as may appear to the Court, [YOUTH] respectfully requests that the motion be granted and the Court vacate the adjudication in the case listed above and related court proceedings or, in the alternative, grant a new fact-finding hearing on the grounds that the movant, [YOUTH], is actually innocent based on new evidence.

Respectfully submitted,

[YOUTH] or Counsel for [YOUTH]

Youth or Counsel’s Contact Information

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served [via e-file/in person] to _____, Assistant Attorney General, [at _____@dc.gov or at the Office of the Attorney General Public Safety Division] on the ____ day of _____, 20__.

[YOUTH OR COUNSEL]

Youth or Counsel's Contact Information

APPENDIX H: Sample Order under D.C. Code § 16-2335.01

FAMILY COURT OF THE DISTRICT OF COLUMBIA

Juvenile Branch

IN THE MATTER OF : **Docket No. ---- DEL ----**
 : **Social File No. ---- JSF ----**
[YOUTH] :
 : **Judge _____**
RESPONDENT : **Closed Date: _____**

ORDER TO VACATE ADJUDICATION

Upon consideration of [YOUTH]'s motion filed pursuant to D.C. Code § 16-2335.01, and the government's response thereto, the Court finds that the movant has met the required burden of proof.

Accordingly, it is this ____ day of _____, 20__, ORDERED that

1. Movant's motion to vacate the adjudication is hereby GRANTED; and
2. That the charges in the docket numbers listed above are dismissed with prejudice.

Hon.

Associate Judge

Copies To:

Youth or Counsel's Contact Information

APPENDIX I: Sample Motion under D. C. Code § 16-2335.02

FAMILY COURT OF THE DISTRICT OF COLUMBIA Juvenile Branch

IN THE MATTER OF : **Docket No. ---- DEL ----**
 : **Social File No. ---- JSF ----**
[YOUTH'S NAME] :
 : **Judge _____**
RESPONDENT : **Closed Date: _____**

MOTION TO SEAL JUVENILE RECORDS ON GROUNDS OF ACTUAL INNOCENCE

Pursuant to D.C. Code § 16-2335.02, [YOUTH], through undersigned counsel, respectfully moves this Honorable Court for an order to seal all records of the arrest and related court proceedings in the case listed above on the grounds that the movant, [YOUTH], is actually innocent. [YOUTH] asserts that the offense for which he was arrested did not occur.

In support of this motion, [YOUTH] states the following:

1. On February 15, 2013, [YOUTH] was arrested by District of Columbia Metropolitan Police Department (MPD) officers and charged with assault with a dangerous weapon and related offenses.

2. [YOUTH]'s case was dismissed by the Office of Attorney General on February 25, 2013.

3. This motion is filed within four (4) years of the prosecution being terminated. As such, [YOUTH] must prove his innocence by a preponderance of the evidence. *See* D.C. Code § 16-2335.02 (c).

4. If this Court finds by a preponderance of the evidence that the offenses for which [YOUTH] was arrested did not occur or that [YOUTH] did not commit the offenses, this Court must seal the records of [YOUTH]'s arrest and related court proceedings. *See* D.C. Code § 16-2335.02(b).

5. In this case, a preponderance of the evidence demonstrates that the movant,

[YOUTH], did not commit the offenses for which he was arrested and that no such crime was ever committed.

6. The existence of [YOUTH]'s arrest records in this matter serves no valid law enforcement purpose. Records of the arrest of a person for a crime that did not occur or a crime that person did not commit could have no potential usefulness in assisting in the prevention of crime or in the apprehension of offenders in the District of Columbia. *See District of Columbia v. Hudson*, 404 A.2d 175, 179 (D.C. 1979) (en banc). It would simply be wrong to draw any inference that [YOUTH] was connected with the commission of an offense only because he was arrested in the present case. *Id.*

7. For the reasons set forth above and in the accompanying Memorandum of Points of Authority in Support Thereof, [YOUTH] requests that this Court order all records of [YOUTH]'s arrest and related court proceedings be sealed. *See* D.C. Code 16-2335.02 (h).

Respectfully submitted,

[YOUTH] or Counsel for [YOUTH]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO SEAL JUVENILE RECORDS
ON GROUNDS OF ACTUAL INNOCENCE

[YOUTH], through undersigned counsel, respectfully moves as set forth in the accompanying Motion to Seal Juvenile Records on Grounds of Actual Innocence. *See* D.C. Code § 16-2335.02.

In order to qualify for the sealing of arrest and related court records under D.C. Code § 16-2335.02, the movant must show that he was arrested for an offense under the District of Columbia Code and that the prosecution of such offense was terminated without adjudication. *See* D.C. Code § 16-2335.02 (a). A movant may file a Motion to Seal Records on grounds of actual innocence at any time after the dismissal of the charge. *See id.* If a motion is filed within four (4) years after the prosecution has been terminated, the movant must satisfy the burden by a preponderance of the evidence. *See* D.C. Code § 16-2335.02 (b)-(c). The movant must show that

the offense for which he was arrested did not occur or that the movant did not commit the offense. *See* D.C. Code § 16-2335.02 (b). As set forth below, [YOUTH] has satisfied all of these requirements and is entitled to an order sealing his arrest record.

[YOUTH] was arrested on February 15, 2013. [YOUTH] was subsequently charged with the crimes of assault with a dangerous weapon, felony assault, felony threats to injure a person, and carrying a dangerous weapon. Specifically, a 15-year-old complainant alleged that [YOUTH] assaulted him at the Anacostia Recreation Center on February 10, 2013.

The MPD officers who investigated this case had doubts about the complainant's credibility from the very beginning. The officers' own investigation in this case indicates that the complaining witness did not behave consistently with having been the victim of an assault and threats. Indeed, despite the fact that both the complainant and [YOUTH] were regular visitors at the recreation center where the incident was alleged to have occurred and that several staff were working at the time of the alleged assault, no staff observed the alleged incident, and the complainant did not report any unusual behavior to anyone until many hours after the alleged event. The P.D. 251 provided to defense counsel in discovery further indicates that the complainant did not report the incident for nearly four hours. These factors should lead this court to find by a preponderance of the evidence that no crime occurred.

Further, the security officer who learned of the alleged assault discredited the complainant on the basis of inconsistent retellings. *See* Witness Statement C. Specifically, Officer Brown noted that the complainant first recounted a different story to his peers before he spoke with police. *See id.* Because the security officer most closely involved with the children in this case concluded that the inconsistencies in the complainant's story discredited that story, this court should find no assault or threats occurred.

Even MPD Detective Smith doubted the truthfulness of the complainant's statements and specifically recommended that the Office of the Attorney General dismiss this case. *See* Detective Statement D. While investigating a separate incident at the Anacostia Recreation Center, Detective Smith determined that the *complaining witness* in the present case had been the aggressor in several other incidents at the Anacostia Recreation Center and had fabricated his statement in order to avoid being punished for picking on [YOUTH]. *See id.* at 1. Detective Smith spoke to the assigned prosecutor and recommended that the charges be dismissed. *See id.* The prosecutor did dismiss the charges on February 25, 2013. Because a Detective investigating

the case did not credit the complaining witness and believes that the complainant may even have been an aggressor towards [YOUTH], this court should find that [YOUTH] did not commit an assault or make threats.

A preponderance of the evidence also shows that no weapon was involved in this case. The discovery materials provided to the defense in this case do not indicate that a weapon was ever located in this case. Further, the Director of the recreation center was present with the complainant during his initial conversation with police in this case. *See* Witness Statement E. The Director noted that the complainant was unable to provide a clear, consistent description of a weapon in this incident. *Id.* The security officer who first learned of the incident also doubted that there was a weapon involved in this case. Because a preponderance of the evidence shows no weapon was involved in this case, this Court should find that no crime occurred involving a weapon.

Persons involved with this case demonstrate that [YOUTH] is not an aggressor. Officer Brown, the security officer most closely related to this case, noted that while the complaining witness has been in trouble at the Anacostia Recreation Center before, she did not know of any other disciplinary incidents involving [YOUTH]. *See* Witness Statement C. Officer Brown did not believe [YOUTH] should have been charged because of the complaining witness's misconduct. *See id.* The Director of the recreation center also stated that he knew of no other disciplinary incidents involving [YOUTH]. *See* Witness Statement E. Likewise, Detective Smith said he knew [YOUTH] to be a good kid who was not involved in disciplinary incidents. *See* Detective Statement D. As the jury instructions for the District of Columbia courts acknowledge, character evidence alone can provide evidence refuting [YOUTH]'s involvement in this incident. *See Criminal Jury Instructions for the District of Columbia*, No. 2.213 (4th ed. rev. 2008). Because the authority figures having knowledge of this incident stated that [YOUTH] is not generally an aggressor and not generally involved in disciplinary actions, this court should find that the crimes alleged did not occur.

[YOUTH]'s character is also evident in the tremendous success he has had since this case was dismissed. [YOUTH] is a tenth-grade student at Cardozo High School. [YOUTH]'s school disciplinary record has been exemplary, and he attends after school homework help sessions on his own initiative. [YOUTH] eagerly awaits the restarting of the school band program, once

sufficient funding is available. As [YOUTH] will turn 16 next January, he is particularly concerned about the effect his arrest and court records arising from the unsubstantiated charges in this case could have on his future, including his ability to obtain his first part-time job. Given [YOUTH]'s show of character through his successes since this case was dismissed, this court should find that the crimes alleged did not occur.

For these reasons, [YOUTH] is entitled to relief under § 16-2335.02.

WHEREFORE, for these and such other reasons as may appear to the Court, [YOUTH] respectfully requests that the motion be granted.

Respectfully submitted,

[YOUTH] or Counsel for [YOUTH]

Youth or Counsel's Contact Information

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served [via e-file/in person] to _____, Assistant Attorney General, at [_____]@dc.gov or the Office of the Attorney General Public Safety Division] on the ____ day of _____, 20__.

[YOUTH] or Counsel for [YOUTH]

NOTE: ATTACH ANY WITNESS STATEMENTS

APPENDIX J: Sample Order under D.C. Code § 16.2335.02

FAMILY COURT OF THE DISTRICT OF COLUMBIA
Juvenile Branch

In the Matter of : Docket: ---- DEL ----
[YOUTH’S NAME] : Social File: ---- JSF----
Respondent : Judge _____
: Closed Date: _____

**ORDER TO SEAL JUVENILE RECORDS ON GROUNDS OF ACTUAL INNOCENCE
PURSUANT TO D.C. CODE § 16-2335.02**

Upon consideration of [YOUTH]’s motion filed pursuant to D.C. Code § 16-2335.02 and the government’s response thereto, the Court finds that the movant has met the required burden of proof and further finds that, in docket number [CASE NUMBER], the offense for which [YOUTH] was arrested did not occur and [YOUTH] did not commit the offense.

Accordingly, it is this ____ day of _____, 2013, ORDERED that

1. [YOUTH]’s motion to seal records of arrest and related proceedings in this case is hereby GRANTED;

2. The Office of Attorney General, the Metropolitan Police Department, the Federal Bureau of Investigation, Court Social Services, the D.C. Department of Youth Rehabilitation Services, the Youth Services Center, the Clerk of the Family Court, and any other public/private agencies that provided court-ordered supervision or treatment or had custody of [YOUTH] shall seal all records of [YOUTH]’s arrest and related court proceedings in accordance with D.C. Code § 16-2335.02 (h);

3. The Office of the Attorney General shall arrange for any computerized record of

[YOUTH]'s arrest, prosecution, or adjudication to be eliminated except for a restricted-access file that would permit the Office of the Attorney General and law enforcement agencies to retrieve sealed records if ordered to do so by the Court in accordance with D.C. Code § 16-2335.02 (h);

4. The Office of Attorney General, the Metropolitan Police Department, the Federal Bureau of Investigation, Court Social Services, the D.C. Department of Youth Rehabilitation Services, the Youth Services Center, the Clerk of the Family Court, and any other public/private agencies that provided court-ordered supervision or treatment or had custody of [YOUTH] shall file a certification with the Court within 90 days of this Order that, to the best of its knowledge and belief, all references to [YOUTH]'s arrest and any related court proceedings have been sealed in accordance with D.C. Code § 16-2335.02 (h);

5. The Clerk of the Family Court shall file under seal all records retrieved pursuant to this Order, together with all certifications filed pursuant to this Order,

6. The Clerk of the Family Court shall reply in response to any inquiries concerning the existence of any record pertaining to [YOUTH]'s arrest, prosecution, or adjudication in this case that no records exist; and

7. [YOUTH] shall be restored, in the contemplation of the law, to the status she occupied before being arrested in this case, and that [YOUTH] may not be found guilty of perjury or giving a false statement by reason of the failure to recite or acknowledge this arrest or any related proceedings in this case, in response to any inquiry made of her for any purpose; and

8. Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child in violation of this order or in violation of D.C. Code §§ 16-2331 through 16-2335 shall be guilty of a misdemeanor and, upon conviction thereof, shall be

fined not more than \$250 or imprisoned not more than ninety days or both in accordance with
D.C. Code § 16-2336.

Honorable [JUDGE'S NAME]

Associate Judge

Copies to:

Youth or Counsel's Contact Information

APPENDIX K: Sample Notification to Agency under D.C. Code § 16-2335 or Juvenile Rule 118

From: [YOUTH] or Counsel for [YOUTH]
To: [AGENCY MEMBER, e.g., AAG, CSS Director, MPD General Counsel]
Subject: [AGENCY, e.g., OAG] compliance with sealing order under § 16-2335
Attachment: Order Granting Motion to Seal: ---- DEL ----

Dear [AGENCY MEMBER]:

Attached to this e-mail is an order signed by [JUDGE'S NAME] concerning [me/my client YOUTH]. [I/My client] was charged in juvenile case [---- DEL ----]. On [DATE THE ORDER WAS SIGNED], [JUDGE'S NAME] found that my client is entitled to have all of his records sealed. As a result, your office is directed to comply with the following instructions:

Under D.C. Code § 16-2335 (a) or [Juvenile Rule 118], your office is directed to seal *any* and *all* records identifying [me/my client] as having been involved in this case. Upon the issuance of this order, “the proceedings in this case shall be treated as if they never occurred,” and all facts relating to this case “shall no longer exist as a matter of law.” *See* D.C. Code § 16-2335 (c).

We would appreciate it if you could confirm that your office has complied with its obligations to seal these records as directed by [JUDGE'S NAME]. Thank you for your assistance in this matter.

Sincerely,

[YOUTH] or Counsel for [YOUTH]

Youth or Counsel's Contact Information

APPENDIX L: Sample Notification to Agency under D.C. Code § 16-2335.02

From: [YOUTH] or Counsel for [YOUTH]
To: [AGENCY MEMBER, e.g., Director of CSS, MPD General Counsel]
Subject: [AGENCY, e.g., CSS] compliance with sealing order under § 16-2335.02
Attachment: Order Granting Motion to Seal: ---- DEL ----

Dear [AGENCY MEMBER]:

Attached to this e-mail is an order signed by [JUDGE'S NAME] concerning [me/my client YOUTH]. [I/My client] was charged in juvenile case ---- DEL ----. This case has since been dismissed, and [JUDGE'S NAME] has found that [I am/my client is] innocent as a matter of law and has granted [my/my client's] request to seal [my/his or her] records on the basis of actual innocence. As a result, your office is directed to comply with the following instructions:

Under D.C. Code § 16-2335.02 (h)(4), your office [or other designation, e.g., Family Court Clerk] is directed to seal any records identifying [me/my client] as having been arrested or prosecuted.

Under D.C. Code § 16-2335.02 (h)(5), your office is directed to certify to the Court that all records identifying [me/my client] as having been arrested or prosecuted have been sealed. The certification must be submitted to the Court by [DATE *that is 90 days after the order*].

We would appreciate it if you could confirm that your office has complied with its obligations to seal these records as directed by [JUDGE'S NAME]. Thank you for your assistance in this matter.

Sincerely,

[YOUTH] or Counsel for [YOUTH]

Youth or Counsel's Contact Information

USEFUL CONTACTS

DISTRICT OF COLUMBIA FAMILY COURT
500 Indiana Ave. NW, JM Level
Washington, D.C. 20001
Operator Phone: (202) 879-1010

D.C. JUVENILE CLERK'S OFFICE
Phone: (202) 879-4742

D.C. FAMILY COURT CLERK
Phone: (202) 879-1212

GEORGETOWN JUVENILE JUSTICE CLINIC
Phone: (202) 662-9590

D.C. PUBLIC DEFENDER SERVICE (Duty Day)
Phone: (202) 628-1200

POINTS OF CONTACT FOR NOTIFYING AGENCIES OF ORDER TO SEAL

(As of this publication, these are the current points of contact. These points of contact may change.)

METROPOLITAN POLICE DEPARTMENT

Rebecca Jackson- MPD
300 Indiana Ave NW, Room 361
Washington, DC 20001
202-727-9979

METRO TRANSIT POLICE

MTPD Records Department
600 5th St NW
Washington, DC 20001
202-962-2130

COURT SOCIAL SERVICES

Director of the Division
510 4th St NW
Washington, DC 20001
terri.odom@dcsc.gov

DYRS

Lindsey Appiah
Department of Youth Rehabilitation Services
Office of the General Counsel
450 H St NW, 9th Floor
Washington, DC 20001
202-299-5673
lindsey.appiah@dc.gov