

A RESOLUTION

**Proposed
Resolution
20-336**

To declare the existence of an emergency with respect to the need to amend sections 16-803 and 16-803.01 of the District of Columbia Official Code to establish the burden of proof for certain cases covered by these sections.

See
**Emergency
D.C. Act 20-99
20 DCStat 1805**

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Criminal Record Sealing Emergency Declaration Resolution of 2013”.

**Criminal
Record
Sealing
Emergency
Declaration
Resolution of
2013**

Sec. 2. (a) Since the enactment of the Criminal Record Sealing Act of 2006, effective May 3, 2007 (D.C. Law 16-307; D.C. Official Code § 16-801 *et seq.*), approximately 5,845 motions have been filed with the Superior Court of the District of Columbia to have a record sealed, and of those, the court has granted 3,038 in whole or in part.

(b) On December 18, 2012, the Council adopted the Re-entry Facilitation Amendment Act of 2012, signed by the Mayor on January 29, 2013 (D.C. Act 19-657; 60 DCMR 2333), which made several amendments to D.C. Law 16-307, including allowing an individual to seal his or her record if an arrest was incorrectly attributed to him or her and fingerprints or identification was not presented by the person being arrested. Additionally, D.C. Act 19-657 permits individuals arrested as fugitives from justice (i.e. individuals with outstanding warrants) to seal the record of that arrest once they have appeared before the proper authorities. D.C. Act 19-657, was transmitted to Congress on March 5, 2013, and is currently undergoing the required 60-day Congressional review.

(c) For the cases in which D.C. Act 19-657 expanded the availability of record sealing, although the legislation outlined the factors the court shall consider in determining whether to grant an individual’s petition to seal his or her record, it did not establish who has the burden of proof or what level of proof is required in these cases. In all other criminal record sealing cases, the statute establishes the burden of proof.

(d) To avoid any uncertainty as to the Council’s intent, the accompanying emergency legislation provides that for cases involving the misidentification of an individual, the prosecutor must establish by a preponderance of the evidence that it is not in the interests of justice to grant an individual’s petition to seal his or her record. In cases involving an individual arrested as a fugitive of justice, the petitioner must establish by a preponderance of the evidence that it is in the interest of justice to grant relief.

(e) D.C. Act 19-657 is projected to become law on June 25, 2013. Without this legislation, there is the potential for uncertainty with regard to the burden of proof required for the above-discussed cases. This may not only lead to confusion about the law, but also could cause delay in the determination of these cases.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Criminal Record Sealing Emergency Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.