

A RESOLUTION

**Proposed
Resolution
20-419**

**See Emergency
D.C. Act 20- 168
20 DCStat 2412**

To declare the existence of an emergency, due to Congressional review, 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.

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

**Criminal
Record
Sealing
Congressional
Review
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 6,000 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 approximately half in whole or in part.

(b) On December 18, 2012, the Council adopted the Re-entry Facilitation Amendment Act of 2012, effective June 15, 2013 (D.C. Law 19-319; codified in scattered cites throughout the D.C. Official Code), 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. Law 19-319 permits individuals arrested as fugitive from justices (i.e. individuals with outstanding warrants) to seal the record of that arrest once they have appeared before the proper authorities.

(c) For the cases in which D.C. Law 19-319 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 Council passed emergency legislation on June 18, 2013, the Criminal Record Sealing Emergency Act of 2013, effective July 1, 2013 (D.C. Act 20-099; 60 DCR 10009). This 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 the interest of justice to grant relief.

(e) D.C. Act 20-099 expires on September 29, 2013. Temporary legislation, signed by the Mayor on August 9, 2013 (D.C. Act 20-154; 60 DCR 12149), which is identical to the emergency legislation, received 2nd reading at the July 10, 2013, Legislative Meeting, but the 30-day Congressional review period for that legislation has yet to expire. A permanent version of the legislation is included in the Personal Property Robbery Prevention Amendment Act of 2013, passed on 1st reading on July 10, 2013 (Engrossed Version of Bill 20-143) at the July 10, 2013, Legislative Meeting.

(f) This Congressional review emergency is necessary to prevent a gap in the law.

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 Congressional Review Emergency Act of 2013 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.