

Rule 118. Sealing of Arrest Records

(a) Pursuant to *District of Columbia v. Hudson*, 404 A.2d 175 (D.C. App. 1979).

(1) Motion for sealing and declaratory relief. Any 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 may file a motion to seal the records of the respondent's arrest within 120 days after the charges have been dismissed. For good cause shown and to prevent manifest injustice, the respondent may file a motion within three years after the prosecution has been terminated, or at anytime thereafter if the government does not object. As to arrests occurring on or after July 19, 1979, but before the adoption of this Rule, a motion may be filed within 120 days after the adoption of this Rule. The motion shall state facts in support of the movant's claim and shall be accompanied by a statement of points and authorities in support thereof. The movant may also file any appropriate exhibits, affidavits, and supporting documents. A copy of the motion shall be served upon the Office of the Attorney General.

(2) Response by Office of the Attorney General. If the Office of the Attorney General does not intend to oppose the motion, it shall so inform the Court and the movant, in writing, within 30 days after the motion has been filed. Otherwise, the Office of the Attorney General shall not be required to respond to the motion unless ordered to do so by the Court, pursuant to subparagraph (a)(3) of this Rule.

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

(4) Court's determination of whether to hold a hearing. Upon the filing of the Office of the Attorney General's response, the Court shall determine whether an evidentiary hearing is required. If it appears that a hearing is not required, the Court shall enter an appropriate order, pursuant to subparagraph (a)(6) of this Rule. If the Court determines that a hearing is required, one shall be scheduled promptly.

(5) Determination of motion. If a hearing is held, hearsay evidence shall be admissible. If, based upon the pleadings or following a hearing, the Court finds by clear and convincing evidence that the offense for which the movant was arrested did not occur or that the movant did not commit the offense, the Court shall order the movant's arrest records retrieved and sealed pursuant to subparagraph (a)(6).

(6) Findings and order; declaratory relief.

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

(B) Order granting motion. If the Court grants the motion, it shall issue an order, in writing, pursuant to subparagraphs (a)(6)(B)(i), (ii) and (iii) of this Rule.

(i) Retrieval of arrest records and purging of computer records. The Court shall order the Office of the Attorney General to collect from its office, the law enforcement

agency responsible for the movant's arrest and/or the Metropolitan Police Department all records of the movant's arrest in their central files, including without limitation all photographs, fingerprints, and other identification data. The Court shall also direct the Office of the Attorney General's office to arrange for the elimination of any computerized record of the movant's arrest. However, the Court shall expressly allow the Office of the Attorney General's office and the law enforcement agency to maintain a record of the arrest so long as the record is not retrievable by the identification of the movant. The Court shall also order the Office of the Attorney General's office to request that the law enforcement agency responsible for the arrest retrieve any of the aforementioned records which were disseminated to the Court's Social Services Division, the Youth Services Administration, and the Family Services Administration, and to collect these records when retrieved.

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

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

(7) Sanitization of records involving co-respondents. In a case involving co-respondents in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be sealed. The Court may make an in camera inspection of these records in order to make this determination. If practicable, the Court may order those records relating to co-respondents returned to the Office of the Attorney General with all references to the movant sanitized.

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

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

(b) Pursuant to D.C. Code § 16-2335. On motion of a respondent who has been the subject of a petition filed pursuant to D.C. Code § 16-2305, or on the Court's own motion, the Court shall vacate its order and findings and shall order the sealing of the case and social records referred to in D.C. Code §§ 16-2331 and 16-2332 and the law enforcement records and files referred to in D.C. Code § 16-2333, or those of any other agency active in the case if it finds that:

(1) two years have elapsed since the final discharge of the respondent from legal custody or supervision, or since the entry of any other Family Court order not involving custody or supervision, and

(2) the respondent 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. Notice of the right to seal and the procedure for sealing shall be governed by SCR-Family P.

COMMENT

This rule sets forth the two methods for sealing arrest records of respondents in juvenile cases. Paragraph (a) modifies SCR-Criminal 118 by providing for equitable sealing of records pursuant to Hudson for those cases not covered by D.C. Code § 16-2335 (providing for sealing of records when a petition has been filed). See *In Re R.T.*, 345 A.2d 156 (D.C. App. 1975) (statute provides exclusive authority for sealing juvenile records). It requires a showing by clear and convincing evidence that the offense for which the movant was arrested did not occur or that the movant did not commit the offense. Paragraph (b) outlines the basis for sealing pursuant to D.C. Code § 16-2335. The procedure for sealing records pursuant to D.C. Code § 16-2335 is set forth in detail in SCR-Family P.