

Calendar No. 98

117TH CONGRESS
1ST SESSION

S. 1014

To reform sentencing laws and correctional institutions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 25, 2021

Mr. DURBIN (for himself, Mr. GRASSLEY, Mr. LEAHY, Mr. WHITEHOUSE, Ms. KLOBUCHAR, Mr. BOOKER, and Mr. OSSOFF) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 12, 2021

Reported by Mr. DURBIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To reform sentencing laws and correctional institutions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “First Step Implementation Act of 2021”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

See. 1. Short title; table of contents.

TITLE I—SENTENCING REFORM

See. 101. Application of First Step Act.

See. 102. Modifying safety valve for drug offenses.

TITLE II—CORRECTIONS REFORM

See. 201. Parole for juveniles.

See. 202. Juvenile sealing and expungement.

See. 203. Ensuring accuracy of Federal criminal records.

3 TITLE I—SENTENCING REFORM

4 SEC. 101. APPLICATION OF FIRST STEP ACT.

5 (a) DEFINITIONS.—In this section—

6 (1) the term “covered offense” means—

7 (A) a violation of a Federal criminal stat-
 8 ute, the statutory penalties for which were
 9 modified by section 401 or 403 of the First
 10 Step Act of 2018 (Public Law 115–391, 132
 11 Stat. 5220), that was committed on or before
 12 December 21, 2018; or

13 (B) a violation of a Federal criminal stat-
 14 ute, the statutory penalties for which are modi-
 15 fied by subsection (b) of this section; and

16 (2) the term “serious violent felony” has the
 17 meaning given that term in section 102 of the Con-
 18 trolled Substances Act (21 U.S.C. 802).

19 (b) AMENDMENTS.—

20 (1) IN GENERAL.—

(A) CONTROLLED SUBSTANCES ACT.—Section 401(b) of the Controlled Substances Act (21 U.S.C. 841) is amended—

(i) in paragraph (1)—

(H) in subparagraph (C), by striking “felony drug offense” and inserting “serious drug felony or serious violent felony”;

(H) in subparagraph (D), by striking “felony drug offense” and inserting “serious drug felony or serious violent felony”, and

(III) in subparagraph (E)(ii), by striking “felony drug offense” and inserting “serious drug felony or serious violent felony”;

(ii) in paragraph (2), by striking “fel-
drug offense” and inserting “serious
felony or serious violent felony”; and

(iii) in paragraph (3), by striking "fel-
drug offense" and inserting "serious
felony or serious violent felony".

(B) CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT.—Section 1010(b)(3) of the Controlled Substances Import and Export Act

(21 U.S.C. 960(b)(3)) is amended by striking “felony drug offense” and inserting “serious drug felony or serious violent felony”.

4 (2) PENDING CASES.—This subsection, and the
5 amendments made by this subsection, shall apply to
6 any sentence imposed on or after the date of enact-
7 ment of this Act, regardless of when the offense was
8 committed.

(e) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 401 and 403 of the First Step Act of 2018 (Publie Law 115–391; 132 Stat. 5220) and the amendments made by subsection (b) of this section were in effect at the time the covered offense was committed if, after considering the factors set forth in section 3553(a) of title 18, United States Code, the nature and seriousness of the danger to any person, the community, or any crime victims, and the post-sentencing conduct of the defendant, the sentencing court finds a reduction is consistent with the amendments made by section 401 or 403 of the First Step Act of 2018 (Publie Law 115–391; 132 Stat. 5220) or with subsection (b) of this section.

1 (d) CRIME VICTIMS.—Any proceeding under this sec-
2 tion shall be subject to section 3771 of title 18, United
3 States Code (commonly known as the “Crime Victims
4 Rights Act”).

5 (e) REQUIREMENT.—For each motion filed under
6 subsection (b), the Government shall conduct a particular-
7 ized inquiry of the facts and circumstances of the original
8 sentencing of the defendant in order to assess whether a
9 reduction in sentence would be consistent with the First
10 Step Act of 2018 (Public Law 115–391, 132 Stat. 5194)
11 and the amendments made by that Act, including a review
12 of any prior criminal conduct or any other relevant infor-
13 mation from Federal, State, and local authorities.

14 **SEC. 102. MODIFYING SAFETY VALVE FOR DRUG OFFENSES.**

15 (a) AMENDMENTS.—Section 3553 of title 18, United
16 States Code, is amended—

17 (1) by redesignating subsection (g) as sub-
18 section (h); and

19 (2) by inserting after subsection (f) the fol-
20 lowing:

21 “(g) INADEQUACY OF CRIMINAL HISTORY.—

22 “(1) IN GENERAL.—If subsection (f) does not
23 apply to a defendant because the defendant does not
24 meet the requirements described in subsection (f)(1)
25 (relating to criminal history), the court may, upon

1 prior notice to the Government, waive subsection
2 (f)(1) if the court specifies in writing the specific
3 reasons why reliable information indicates that ex-
4 cluding the defendant pursuant to subsection (f)(1)
5 substantially overrepresents the seriousness of the
6 defendant's criminal history or the likelihood that
7 the defendant will commit other crimes.

8 “(2) PROHIBITION.—This subsection shall not
9 apply to any defendant who has been convicted of a
10 serious drug felony or a serious violent felony as de-
11 fined in paragraphs (57) and (58), respectively, of
12 section 102 of the Controlled Substances Act (21
13 U.S.C. 802).”.

14 **TITLE II—CORRECTIONS**

15 **REFORM**

16 SEC. 201. PAROLE FOR JUVENILES.

17 (a) IN GENERAL.—Chapter 403 of title 18, United
18 States Code, is amended by inserting after section 5032
19 the following:

20 **“§ 5032A. Modification of an imposed term of impris-**
21 **onment for violations of law committed**
22 **prior to age 18**

23 (a) IN GENERAL.—Notwithstanding any other pro-
24 vision of law, a court may reduce a term of imprisonment
25 imposed upon a defendant convicted as an adult for an

1 offense committed and completed before the defendant at-
2 tained 18 years of age if—

3 “(1) the defendant has served not less than 20
4 years in custody for the offense; and

5 “(2) the court finds, after considering the fac-
6 tors set forth in subsection (e), that the defendant
7 is not a danger to the safety of any person or the
8 community and that the interests of justice warrant
9 a sentence modification.

10 “(b) SUPERVISED RELEASE.—Any defendant whose
11 sentence is reduced pursuant to subsection (a) shall be or-
12 dered to serve a period of supervised release of not less
13 than 5 years following release from imprisonment. The
14 conditions of supervised release and any modification or
15 revocation of the term of supervise release shall be in ac-
16 cordance with section 3583.

17 “(c) FACTORS AND INFORMATION TO BE CONSID-
18 ERED IN DETERMINING WHETHER TO MODIFY A TERM
19 OF IMPRISONMENT.—The court, in determining whether
20 to reduce a term of imprisonment pursuant to subsection
21 (a), shall consider—

22 “(1) the factors described in section 3553(a),
23 including the nature of the offense and the history
24 and characteristics of the defendant;

1 “(2) the age of the defendant at the time of the
2 offense;

3 “(3) a report and recommendation of the Bu-
4 reau of Prisons, including information on whether
5 the defendant has substantially complied with the
6 rules of each institution in which the defendant has
7 been confined and whether the defendant has com-
8 pleted any educational, vocational, or other prison
9 program, where available;

10 “(4) a report and recommendation of the
11 United States attorney for any district in which an
12 offense for which the defendant is imprisoned was
13 prosecuted;

14 “(5) whether the defendant has demonstrated
15 maturity, rehabilitation, and a fitness to reenter so-
16 ciety sufficient to justify a sentence reduction;

17 “(6) any statement, which may be presented
18 orally or otherwise, by any victim of an offense for
19 which the defendant is imprisoned or by a family
20 member of the victim if the victim is deceased;

21 “(7) any report from a physical, mental, or psy-
22 chiatric examination of the defendant conducted by
23 a licensed health care professional;

24 “(8) the family and community circumstances
25 of the defendant at the time of the offense, including

1 any history of abuse, trauma, or involvement in the
2 child welfare system;

3 “(9) the extent of the role of the defendant in
4 the offense and whether, and to what extent, an
5 adult was involved in the offense;

6 “(10) the diminished culpability of juveniles as
7 compared to that of adults, and the hallmark fea-
8 tures of youth, including immaturity, impetuosity,
9 and failure to appreciate risks and consequences,
10 which counsel against sentencing juveniles to the
11 otherwise applicable term of imprisonment; and

12 “(11) any other information the court deter-
13 mines relevant to the decision of the court.

14 **“(d) LIMITATION ON APPLICATIONS PURSUANT TO**
15 **THIS SECTION.—**

16 **“(1) SECOND APPLICATION.**—Not earlier than
17 5 years after the date on which an order entered by
18 a court on an initial application under this section
19 becomes final, a court shall entertain a second appli-
20 cation by the same defendant under this section.

21 **“(2) FINAL APPLICATION.**—Not earlier than 5
22 years after the date on which an order entered by
23 a court on a second application under paragraph (1)
24 becomes final, a court shall entertain a final applica-
25 tion by the same defendant under this section.

1 “(3) PROHIBITION.—A court may not entertain
2 an application filed after an application filed under
3 paragraph (2) by the same defendant.

4 “(e) PROCEDURES.—

5 “(1) NOTICE.—The Bureau of Prisons shall
6 provide written notice of this section to—

7 “(A) any defendant who has served not
8 less than 19 years in prison for an offense com-
9 mitted and completed before the defendant at-
10 tained 18 years of age for which the defendant
11 was convicted as an adult; and

12 “(B) the sentencing court, the United
13 States attorney, and the Federal Public De-
14 fender or Executive Director of the Community
15 Defender Organization for the judicial district
16 in which the sentence described in subpara-
17 graph (A) was imposed.

18 “(2) CRIME VICTIMS RIGHTS.—Upon receiving
19 notice under paragraph (1), the United States attor-
20 ney shall provide any notifications required under
21 section 3771.

22 “(3) APPLICATION.—

23 “(A) IN GENERAL.—An application for a
24 sentence reduction under this section shall be
25 filed as a motion to reduce the sentence of the

1 defendant and may include affidavits or other
2 written material.

3 **“(B) REQUIREMENT.**—A motion to reduce
4 a sentence under this section shall be filed with
5 the sentencing court and a copy shall be served
6 on the United States attorney for the judicial
7 district in which the sentence was imposed.

8 **“(4) EXPANDING THE RECORD; HEARING.**

9 **“(A) EXPANDING THE RECORD.**—After the
10 filing of a motion to reduce a sentence under
11 this section, the court may direct the parties to
12 expand the record by submitting additional
13 written materials relating to the motion.

14 **“(B) HEARING.**

15 **“(i) IN GENERAL.**—The court shall
16 conduct a hearing on the motion, at which
17 the defendant and counsel for the defendant
18 shall be given the opportunity to be
19 heard.

20 **“(ii) EVIDENCE.**—In a hearing under
21 this section, the court may allow parties to
22 present evidence.

23 **“(iii) DEFENDANT’S PRESENCE.**—At
24 a hearing under this section, the defendant
25 shall be present unless the defendant

1 waives the right to be present. The re-
2 quirement under this clause may be satis-
3 fied by the defendant appearing by video
4 teleconference.

5 “(iv) COUNSEL.—A defendant who is
6 unable to obtain counsel is entitled to have
7 counsel appointed to represent the defen-
8 dant for proceedings under this section, in-
9 cluding any appeal, unless the defendant
10 waives the right to counsel.

11 “(v) FINDINGS.—The court shall state
12 in open court, and file in writing, the rea-
13 sons for granting or denying a motion
14 under this section.

15 “(C) APPEAL.—The Government or the
16 defendant may file a notice of appeal in the dis-
17 trict court for review of a final order under this
18 section. The time limit for filing such appeal
19 shall be governed by rule 4(a) of the Federal
20 Rules of Appellate Procedure.

21 “(f) EDUCATIONAL AND REHABILITATIVE PRO-
22 GRAMS.—A defendant who is convicted and sentenced as
23 an adult for an offense committed and completed before
24 the defendant attained 18 years of age may not be de-
25 prived of any educational, training, or rehabilitative pro-

1 gram that is otherwise available to the general prison pop-
2 ulation.”.

3 (b) TABLE OF SECTIONS.—The table of sections for
4 chapter 403 of title 18, United States Code, is amended
5 by inserting after the item relating to section 5032 the
6 following:

“5032A. Modification of an imposed term of imprisonment for violations of law committed prior to age 18.”.

7 (c) APPLICABILITY.—The amendments made by this
8 section shall apply to any conviction entered before, on,
9 or after the date of enactment of this Act.

10 **SEC. 202. JUVENILE SEALING AND EXPUNGEMENT.**

11 (a) PURPOSE.—The purpose of this section is to—
12 (1) protect children and adults against damage
13 stemming from their juvenile acts and subsequent
14 juvenile delinquency records, including law enforce-
15 ment, arrest, and court records; and

16 (2) prevent the unauthorized use or disclosure
17 of confidential juvenile delinquency records and any
18 potential employment, financial, psychological, or
19 other harm that would result from such unauthor-
20 ized use or disclosure.

21 (b) DEFINITIONS.—Section 5031 of title 18, United
22 States Code, is amended to read as follows:

23 **“§ 5031. Definitions**

24 “In this chapter—

1 “(1) the term ‘adjudication’ means a deter-
2 mination by a judge that a person committed an act
3 of juvenile delinquency;

4 “(2) the term ‘conviction’ means a judgment or
5 disposition in criminal court against a person fol-
6 lowing a finding of guilt by a judge or jury;

7 “(3) the term ‘destroy’ means to render a file
8 unreadable, whether paper, electronic, or otherwise
9 stored, by shredding, pulverizing, pulping, incin-
10 erating, overwriting, reformatting the media, or
11 other means;

12 “(4) the term ‘expunge’ means to destroy a
13 record and obliterate the name of the person to
14 whom the record pertains from each official index or
15 public record;

16 “(5) the term ‘expungement hearing’ means a
17 hearing held under section 5045(b)(2)(B);

18 “(6) the term ‘expungement petition’ means a
19 petition for expungement filed under section
20 5045(b);

21 “(7) the term ‘high-risk, public trust position’
22 means a position designated as a public trust posi-
23 tion under section 731.106(b) of title 5, Code of
24 Federal Regulations, or any successor regulation;

25 “(8) the term ‘juvenile’ means—

1 “(A) except as provided in subparagraph
2 (B), a person who has not attained the age of
3 18 years; and

4 “(B) for the purpose of proceedings and
5 disposition under this chapter for an alleged act
6 of juvenile delinquency, a person who has not
7 attained the age of 21 years;

8 “(9) the term ‘juvenile delinquency’ means the
9 violation of a law of the United States committed by
10 a person before attaining the age of 18 years which
11 would have been a crime if committed by an adult,
12 or a violation by such a person of section 922(x);

13 “(10) the term ‘juvenile nonviolent offense’
14 means—

15 “(A) in the case of an arrest or an adju-
16 dication that is dismissed or finds the juvenile
17 to be not delinquent, an act of juvenile delin-
18 quency that is not—

19 “(i) a criminal homicide, forcible rape
20 or any other sex offense (as defined in sec-
21 tion 111 of the Sex Offender Registration
22 and Notification Act (34 U.S.C. 20911)),
23 kidnapping, aggravated assault, robbery,
24 burglary of an occupied structure, arson,

1 or a drug trafficking crime in which a fire-
2 arm was used; or
3 “(ii) a Federal crime of terrorism (as
4 defined in section 2332b(g)); and
5 “(B) in the case of an adjudication that
6 finds the juvenile to be delinquent, an act of ju-
7 venile delinquency that is not—
8 “(i) described in clause (i) or (ii) of
9 subparagraph (A); or
10 “(ii) a misdemeanor crime of domestic
11 violence (as defined in section 921(a)(33));
12 “(11) the term ‘juvenile record’—
13 “(A) means a record maintained by a
14 court, the probation system, a law enforcement
15 agency, or any other government agency, of the
16 juvenile delinquency proceedings of a person;
17 “(B) includes—
18 “(i) a juvenile legal file, including a
19 formal document such as a petition, notice,
20 motion, legal memorandum, order, or de-
21 ree;—
22 “(ii) a social record, including—
23 “(I) a record of a probation offi-
24 cer;

1 “(H) a record of any government
2 agency that keeps records relating to
3 juvenile delinquency;

4 “(III) a medical record;

5 “(IV) a psychiatric or psycho-
6 logical record;

7 “(V) a birth certificate;

8 “(VI) an education record, in-
9 cluding an individualized education
10 plan;

11 “(VII) a detention record;

12 “(VIII) demographic information
13 that identifies a juvenile or the family
14 of a juvenile; or

15 “(IX) any other record that in-
16 cludes personally identifiable informa-
17 tion that may be associated with a ju-
18 venile delinquency proceeding, an act
19 of juvenile delinquency, or an alleged
20 act of juvenile delinquency; and

21 “(iii) a law enforcement record, in-
22 cluding a photograph or a State criminal
23 justice information system record; and

24 “(C) does not include—

25 “(i) fingerprints; or

1 “(ii) a DNA sample;

2 “(12) the term ‘petitioner’ means a person who
3 files an expungement petition or a sealing petition;

4 “(13) the term ‘seal’ means—

5 “(A) to close a record from public viewing
6 so that the record cannot be examined except
7 by court order; and

8 “(B) to physically seal the record shut and
9 label the record ‘SEALED’ or, in the case of an
10 electronic record, the substantive equivalent;

11 “(14) the term ‘sealing hearing’ means a hearing held under section 5044(b)(2)(B); and

12 “(15) the term ‘sealing petition’ means a petition for a sealing order filed under section
13 5044(b).”.

14 (e) CONFIDENTIALITY.—Section 5038 of title 18,
15 United States Code, is amended—

16 (1) in subsection (a), in the flush text following
17 paragraph (6), by inserting after “bonding,” the following: “participation in an educational system,”;
18 and

19 (2) in subsection (b), by striking “District
20 courts exercising jurisdiction over any juvenile” and
21 inserting the following: “Not later than 7 days after

1 the date on which a district court exercises jurisdiction
2 over a juvenile, the district court".

3 (d) **SEALING; EXPUNGEMENT.**

4 (1) **IN GENERAL.**—Chapter 403 of title 18,
5 United States Code, is amended by adding at the
6 end the following:

7 **“§ 5044. Sealing**

8 “(a) **AUTOMATIC SEALING OF NONVIOLENT OFFENSES.**—

10 “(1) **IN GENERAL.**—Three years after the date
11 on which a person who is adjudicated delinquent
12 under this chapter for a juvenile nonviolent offense
13 completes every term of probation, official detention,
14 or juvenile delinquent supervision ordered by the
15 court with respect to the offense, the court shall
16 order the sealing of each juvenile record or portion
17 thereof that relates to the offense if the person—

18 “(A) has not been convicted of a crime or
19 adjudicated delinquent for an act of juvenile delinquency since the date of the disposition; and

21 “(B) is not engaged in active criminal
22 court proceedings or juvenile delinquency proceedings.

24 “(2) **AUTOMATIC NATURE OF SEALING.**—The
25 order of sealing under paragraph (1) shall require

1 no action by the person whose juvenile records are
2 to be sealed.

3 “(3) NOTICE OF AUTOMATIC SEALING.—A
4 court that orders the sealing of a juvenile record of
5 a person under paragraph (1) shall, in writing, in-
6 form the person of the sealing and the benefits of
7 sealing the record.

8 “(b) PETITIONING FOR EARLY SEALING OF NON-
9 VIOLENT OFFENSES.—

10 “(1) RIGHT TO FILE SEALING PETITION.—

11 “(A) IN GENERAL.—During the 3-year pe-
12 riod beginning on the date on which a person
13 who is adjudicated delinquent under this chap-
14 ter for a juvenile nonviolent offense completes
15 every term of probation, official detention, or
16 juvenile delinquent supervision ordered by the
17 court with respect to the offense, the person
18 may petition the court to seal the juvenile
19 records that relate to the offense, unless the
20 person—

21 “(i) has been convicted of a crime or
22 adjudicated delinquent for an act of juve-
23 nile delinquency since the date of the dis-
24 position; or

1 “(ii) is engaged in active criminal
2 court proceedings or juvenile delinquency
3 proceedings.

4 **“(B) NOTICE OF OPPORTUNITY TO FILE**
5 **PETITION.**—If a person is adjudicated delin-
6 quent for a juvenile nonviolent offense, the
7 court in which the person is adjudicated delin-
8 quent shall, in writing, inform the person of the
9 potential eligibility of the person to file a seal-
10 ing petition with respect to the offense upon
11 completing every term of probation, official de-
12 tention, or juvenile delinquent supervision or-
13 dered by the court with respect to the offense,
14 and the necessary procedures for filing the seal-
15 ing petition—

16 “(i) on the date on which the indi-
17 vidual is adjudicated delinquent; and

18 “(ii) on the date on which the indi-
19 vidual has completed every term of proba-
20 tion, official detention, or juvenile delin-
21 quent supervision ordered by the court
22 with respect to the offense.

23 **“(2) PROCEDURES.**—

24 **“(A) NOTIFICATION TO PROSECUTOR.**—If
25 a person files a sealing petition with respect to

1 a juvenile nonviolent offense, the court in which
2 the petition is filed shall provide notice of the
3 petition—

4 “(i) to the Attorney General; and

5 “(ii) upon the request of the peti-
6 tioner, to any other individual that the pe-
7 titioner determines may testify as to—

8 “(I) the conduct of the petitioner
9 since the date of the offense; or

10 “(II) the reasons that the sealing
11 order should be entered.

12 “(B) HEARING.—

13 “(i) IN GENERAL.—If a person files a
14 sealing petition, the court shall—

15 “(I) except as provided in clause
16 (iii), conduct a hearing in accordance
17 with clause (ii); and

18 “(II) determine whether to enter
19 a sealing order for the person in ac-
20 cordance with subparagraph (C).

21 “(ii) OPPORTUNITY TO TESTIFY AND
22 OFFER EVIDENCE.—

23 “(I) PETITIONER.—The peti-
24 tioner may testify or offer evidence at

1 the sealing hearing in support of seal-
2 ing.

“(III) OTHER INDIVIDUALS.—An individual who receives notice under subparagraph (A)(ii) may testify or offer evidence at the sealing hearing as to the issues described in subclauses (I) and (II) of that subparagraph.

15 “(iii) WAIVER OF HEARING.—If the
16 petitioner and the Attorney General so
17 agree, the court shall make a determina-
18 tion under subparagraph (C) without a
19 hearing.

“(C) BASIS FOR DECISION.—The court shall determine whether to grant the sealing petition after considering—

1 “(ii) all the evidence and testimony
2 presented at the sealing hearing, if such a
3 hearing is conducted;

4 “(iii) the best interests of the peti-
5 tioner;

6 “(iv) the age of the petitioner during
7 his or her contact with the court or any
8 law enforcement agency;

9 “(v) the nature of the juvenile non-
10 violent offense;

11 “(vi) the disposition of the case;

12 “(vii) the manner in which the peti-
13 tioner participated in any court-ordered re-
14 habilitative programming or supervised
15 services;

16 “(viii) the length of the time period
17 during which the petitioner has been with-
18 out contact with any court or law enforce-
19 ment agency;

20 “(ix) whether the petitioner has had
21 any criminal or juvenile delinquency in-
22 volvement since the disposition of the juve-
23 nile delinquency proceeding; and

1 “(x) the adverse consequences the pe-
2 titioner may suffer if the petition is not
3 granted.

4 “(D) WAITING PERIOD AFTER DENIAL.—If
5 the court denies a sealing petition, the peti-
6 tioner may not file a new sealing petition with
7 respect to the same juvenile nonviolent offense
8 until the date that is 2 years after the date of
9 the denial.

10 “(E) UNIVERSAL FORM.—The Director of
11 the Administrative Office of the United States
12 Courts shall create a universal form, available
13 over the internet and in paper form, that an in-
14 dividual may use to file a sealing petition.

15 “(F) NO FEE FOR INDIGENT PETI-
16 TIONERS.—If the court determines that the pe-
17 titioner is indigent, there shall be no cost for
18 filing a sealing petition.

19 “(G) REPORTING.—Not later than 2 years
20 after the date of enactment of this section, and
21 each year thereafter, the Director of the Admin-
22 istrative Office of the United States Courts
23 shall issue a public report that—

24 “(i) describes—

1 “(I) the number of sealing peti-
2 tions granted and denied under this
3 subsection; and

4 “(II) the number of instances in
5 which the Attorney General supported
6 or opposed a sealing petition;

7 “(ii) includes any supporting data
8 that the Director determines relevant and
9 that does not name any petitioner; and

10 “(iii) disaggregates all relevant data
11 by race, ethnicity, gender, and the nature
12 of the offense.

13 **“(H) PUBLIC DEFENDER ELIGIBILITY.—**

14 “(i) PETITIONERS UNDER AGE 18.—

15 The district court shall appoint counsel in
16 accordance with the plan of the district
17 court in operation under section 3006A to
18 represent a petitioner for purposes of this
19 subsection if the petitioner is less than 18
20 years of age.

21 “(ii) PETITIONERS AGE 18 AND
22 OLDER.—

23 “(I) DISCRETION OF COURT.—In
24 the case of a petitioner who is not less
25 than 18 years of age, the district

6 “(H) CONSIDERATIONS.—In de-
7 termining whether to appoint counsel
8 under subclause (I), the court shall
9 consider—

“(aa) the anticipated complexity of the sealing hearing, including the number and type of witnesses called to advocate against the sealing of the records of the petitioner; and

20 "(e) EFFECT OF SEALING ORDER.—

21 “(1) PROTECTION FROM DISCLOSURE.—Except
22 as provided in paragraphs (3) and (4), if a court or-
23 ders the sealing of a juvenile record of a person
24 under subsection (a) or (b) with respect to a juvenile
25 nonviolent offense, the proceedings in the case shall

1 be deemed never to have occurred, and the person
2 may properly reply accordingly to any inquiry about
3 the events the records of which are ordered sealed.

4 **“(2) VERIFICATION OF SEALING.—If a court**
5 orders the sealing of a juvenile record under sub-
6 section (a) or (b) with respect to a juvenile non-
7 violent offense, the court shall—

8 “(A) send a copy of the sealing order to
9 each entity or person known to the court that
10 possesses a record relating to the offense, in-
11 cluding each—

12 “(i) law enforcement agency; and

13 “(ii) public or private correctional or
14 detention facility;

15 “(B) in the sealing order, require each en-
16 tity or person described in subparagraph (A)
17 to—

18 “(i) seal the record; and

19 “(ii) submit a written certification to
20 the court, under penalty of perjury, that
21 the entity or person has sealed each paper
22 and electronic copy of the record;

23 “(C) seal each paper and electronic copy of
24 the record in the possession of the court; and

1 “(D) after receiving a written certification
2 from each entity or person under subparagraph
3 (B)(ii), notify the petitioner that each entity or
4 person described in subparagraph (A) has
5 sealed each paper and electronic copy of the
6 record.

7 “(3) LAW ENFORCEMENT ACCESS TO SEALED
8 RECORDS.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), a law enforcement agency
11 may access a sealed juvenile record in the pos-
12 session of the agency or another law enforce-
13 ment agency solely—

14 “(i) to determine whether the person
15 who is the subject of the record is a non-
16 violent offender eligible for a first-time-of-
17 fender diversion program;

18 “(ii) for investigatory or prosecutorial
19 purposes; or

20 “(iii) for a background check that re-
21 lates to—

22 “(I) law enforcement employ-
23 ment; or

24 “(II) any position that a Federal
25 agency designates as a—

1 “(aa) national security posi-
2 tion; or
3 “(bb) high-risk, public trust
4 position.

5 “(B) TRANSITION PERIOD.—During the 1-
6 year period beginning on the date on which a
7 court orders the sealing of a juvenile record
8 under this section, a law enforcement agency
9 may, for law enforcement purposes, access the
10 record if the record is in the possession of the
11 agency or another law enforcement agency.

12 “(4) PROHIBITION ON DISCLOSURE.—

13 “(A) PROHIBITION.—Except as provided
14 in subparagraph (C), it shall be unlawful to in-
15 tentionally make or attempt to make an unau-
16 thorized disclosure of any information from a
17 sealed juvenile record in violation of this sec-
18 tion.

19 “(B) PENALTY.—Any person who violates
20 subparagraph (A) shall be fined under this title,
21 imprisoned for not more than 1 year, or both.

22 “(C) EXCEPTIONS.—

23 “(i) BACKGROUND CHECKS.—In the
24 case of a background check for law en-
25 forcement employment or for any employ-

1 ment that requires a government security
2 clearance—

3 “(I) a person who is the subject
4 of a juvenile record sealed under this
5 section shall disclose the contents of
6 the record; and

7 “(II) a law enforcement agency
8 that possesses a juvenile record sealed
9 under this section—

10 “(aa) may disclose the con-
11 tents of the record; and

12 “(bb) if the agency obtains
13 or is subject to a court order au-
14 thorizing disclosure of the record,
15 may disclose the record.

16 “(ii) DISCLOSURE TO ARMED
17 FORCES.—A person, including a law en-
18 forcement agency that possesses a juvenile
19 record sealed under this section, may dis-
20 close information from a juvenile record
21 sealed under this section to the Secretaries
22 of the military departments (or the Sec-
23 retary of Homeland Security with respect
24 to the Coast Guard when it is not oper-
25 ating as a service in the Navy) for the pur-

1 pose of vetting an enlistment or commis-
2 sion, or with regard to any member of the
3 Armed Forces.

4 “(iii) CRIMINAL AND JUVENILE PRO-
5 CEEDINGS.—A prosecutor or other law en-
6 forcement officer may disclose information
7 from a juvenile record sealed under this
8 section, and a person who is the subject of
9 a juvenile record sealed under this section
10 may be required to testify or otherwise dis-
11 close information about the record, in a
12 criminal or other proceeding if such disclo-
13 sure is required by the Constitution of the
14 United States, the constitution of a State,
15 or a Federal or State statute or rule.

16 “(iv) AUTHORIZATION FOR PERSON
17 TO DISCLOSE OWN RECORD.—A person
18 who is the subject of a juvenile record
19 sealed under this section may choose to
20 disclose the record.

21 “(d) LIMITATION RELATING TO SUBSEQUENT INCI-
22 DENTS.—

23 “(1) AFTER FILING AND BEFORE PETITION
24 GRANTED.—If, after the date on which a person files
25 a sealing petition with respect to a juvenile offense

1 and before the court determines whether to grant
2 the petition, the person is convicted of a crime, adju-
3 dicated delinquent for an act of juvenile delinquency,
4 or engaged in active criminal court proceedings or
5 juvenile delinquency proceedings, the court shall
6 deny the petition.

7 “(2) AFTER PETITION GRANTED.—If, on or
8 after the date on which a court orders the sealing
9 of a juvenile record of a person under subsection (b),
10 the person is convicted of a crime or adjudicated de-
11 linquent for an act of juvenile delinquency—

12 “(A) the court shall—

13 “(i) vacate the order; and

14 “(ii) notify the person who is the sub-
15 ject of the juvenile record, and each entity
16 or person described in subsection
17 (e)(2)(A), that the order has been vacated;
18 and

19 “(B) the record shall no longer be sealed.

20 “(e) INCLUSION OF STATE JUVENILE DELINQUENCY

21 ADJUDICATIONS AND PROCEEDINGS.—For purposes of
22 subparagraphs (A) and (B) of subsection (a)(1), clauses
23 (i) and (ii) of subsection (b)(1)(A), subsection
24 (b)(1)(C)(ix), and paragraphs (1) and (2) of subsection
25 (d), the term ‘juvenile delinquency’ includes the violation

1 of a law of a State committed by a person before attaining
2 the age of 18 years which would have been a crime if com-
3 mitted by an adult.

4 **“§ 5045. Expungement**

5 “(a) AUTOMATIC EXPUNGEMENT OF CERTAIN
6 RECORDS.—

7 “(1) ATTORNEY GENERAL MOTION.—

8 “(A) NONVIOLENT OFFENSES COMMITTED
9 BEFORE A PERSON TURNED 15.—If a person is
10 adjudicated delinquent under this chapter for a
11 juvenile nonviolent offense committed before the
12 person attained 15 years of age and completes
13 every term of probation, official detention, or
14 juvenile delinquent supervision ordered by the
15 court with respect to the offense before attain-
16 ing 18 years of age, on the date on which the
17 person attains 18 years of age, the Attorney
18 General shall file a motion in the district court
19 of the United States in which the person was
20 adjudicated delinquent requesting that each ju-
21 venile record of the person that relates to the
22 offense be expunged.

23 “(B) ARRESTS.—If a juvenile is arrested
24 by a Federal law enforcement agency for a ju-
25 venile nonviolent offense for which a juvenile

1 delinquency proceeding is not instituted under
2 this chapter, and for which the United States
3 does not proceed against the juvenile as an
4 adult in a district court of the United States,
5 the Attorney General shall file a motion in the
6 district court of the United States that would
7 have had jurisdiction of the proceeding request-
8 ing that each juvenile record relating to the ar-
9 rest be expunged.

10 “(C) EXPUNGEMENT ORDER.—Upon the
11 filing of a motion in a district court of the
12 United States with respect to a juvenile non-
13 violent offense under subparagraph (A) or an
14 arrest for a juvenile nonviolent offense under
15 subparagraph (B), the court shall grant the mo-
16 tion and order that each juvenile record relating
17 to the offense or arrest, as applicable, be ex-
18 punged.

19 “(2) DISMISSED CASES.—If a district court of
20 the United States dismisses an information with re-
21 spect to a juvenile under this chapter or finds a ju-
22 venile not to be delinquent in a juvenile delinquency
23 proceeding under this chapter, the court shall con-
24 currently order that each juvenile record relating to
25 the applicable proceeding be expunged.

1 “(3) AUTOMATIC NATURE OF EXPUNGEMENT.—

2 An order of expungement under paragraph (1)(C) or
3 (2) shall not require any action by the person whose
4 records are to be expunged.

5 “(4) NOTICE OF AUTOMATIC EXPUNGEMENT.—

6 A court that orders the expungement of a juvenile
7 record of a person under paragraph (1)(C) or (2)
8 shall, in writing, inform the person of the
9 expungement and the benefits of expunging the
10 record.

11 “(b) PETITIONING FOR EXPUNGEMENT OF NON-
12 VIOLENT OFFENSES.—

13 “(1) IN GENERAL.—A person who is adju-
14 dicated delinquent under this chapter for a juvenile
15 nonviolent offense committed on or after the date on
16 which the person attained 15 years of age may peti-
17 tion the court in which the proceeding took place to
18 order the expungement of the juvenile record that
19 relates to the offense unless the person—

20 “(A) has been convicted of a crime or ad-
21 judicated delinquent for an act of juvenile delin-
22 quency since the date of the disposition;

23 “(B) is engaged in active criminal court
24 proceedings or juvenile delinquency proceedings;
25 or

1 “(C) has had not less than 2 adjudications
2 of delinquency previously expunged under this
3 section.

4 **“(2) PROCEDURES.—**

5 **“(A) NOTIFICATION OF PROSECUTOR AND**
6 **VICTIMS.—**If a person files an expungement pe-
7 tition with respect to a juvenile nonviolent of-
8 fense, the court in which the petition is filed
9 shall provide notice of the petition—

10 “(i) to the Attorney General; and

11 “(ii) upon the request of the peti-
12 tioner, to any other individual that the pe-
13 titioner determines may testify as to—

14 “(I) the conduct of the petitioner
15 since the date of the offense; or

16 “(II) the reasons that the
17 expungement order should be entered.

18 **“(B) HEARING.—**

19 **“(i) IN GENERAL.—**If a person files
20 an expungement petition, the court shall—

21 “(I) except as provided in clause
22 (iii), conduct a hearing in accordance
23 with clause (ii); and

1 “(H) determine whether to enter
2 an expungement order for the person
3 in accordance with subparagraph (C).

4 “(ii) OPPORTUNITY TO TESTIFY AND
5 OFFER EVIDENCE.—

6 “(I) PETITIONER.—The petitioner
7 may testify or offer evidence at
8 the expungement hearing in support
9 of expungement.

10 “(II) PROSECUTOR.—The Attorney
11 General may send a representative
12 to testify or offer evidence at the
13 expungement hearing in support of or
14 against expungement.

15 “(III) OTHER INDIVIDUALS.—An
16 individual who receives notice under
17 subparagraph (A)(ii) may testify or
18 offer evidence at the expungement
19 hearing as to the issues described in
20 subclauses (I) and (II) of that sub-
21 paragraph.

22 “(iii) WAIVER OF HEARING.—If the
23 petitioner and the Attorney General so
24 agree, the court shall make a determina-

1 tion under subparagraph (C) without a
2 hearing.

3 “(C) BASIS FOR DECISION.—The court
4 shall determine whether to grant an
5 expungement petition after considering—

6 “(i) the petition and any documents in
7 the possession of the court;

8 “(ii) all the evidence and testimony
9 presented at the expungement hearing, if
10 such a hearing is conducted;

11 “(iii) the best interests of the peti-
12 tioner;

13 “(iv) the age of the petitioner during
14 his or her contact with the court or any
15 law enforcement agency;

16 “(v) the nature of the juvenile non-
17 violent offense;

18 “(vi) the disposition of the case;

19 “(vii) the manner in which the peti-
20 tioner participated in any court-ordered re-
21 habilitative programming or supervised
22 services;

23 “(viii) the length of the time period
24 during which the petitioner has been with-

1 out contact with any court or any law en-
2 forcement agency;

3 “(ix) whether the petitioner has had
4 any criminal or juvenile delinquency in-
5 volvement since the disposition of the juve-
6 nile delinquency proceeding; and

7 “(x) the adverse consequences the pe-
8 titioner may suffer if the petition is not
9 granted.

10 “(D) WAITING PERIOD AFTER DENIAL.—If
11 the court denies an expungement petition, the
12 petitioner may not file a new expungement peti-
13 tion with respect to the same offense until the
14 date that is 2 years after the date of the denial.

15 “(E) UNIVERSAL FORM.—The Director of
16 the Administrative Office of the United States
17 Courts shall create a universal form, available
18 over the internet and in paper form, that an in-
19 dividual may use to file an expungement peti-
20 tion.

21 “(F) NO FEE FOR INDIGENT PETI-
22 TIONERS.—If the court determines that the pe-
23 titioner is indigent, there shall be no cost for
24 filing an expungement petition.

1 “(G) REPORTING.—Not later than 2 years
2 after the date of enactment of this section, and
3 each year thereafter, the Director of the Admin-
4 istrative Office of the United States Courts
5 shall issue a public report that—

6 “(i) describes—

7 “(I) the number of expungement
8 petitions granted and denied under
9 this subsection; and

10 “(II) the number of instances in
11 which the Attorney General supported
12 or opposed an expungement petition;

13 “(ii) includes any supporting data
14 that the Director determines relevant and
15 that does not name any petitioner; and

16 “(iii) disaggregates all relevant data
17 by race, ethnicity, gender, and the nature
18 of the offense.

19 “(H) PUBLIC DEFENDER ELIGIBILITY.—

20 “(i) PETITIONERS UNDER AGE 18.—

21 The district court shall appoint counsel in
22 accordance with the plan of the district
23 court in operation under section 3006A to
24 represent a petitioner for purposes of this

1 subsection if the petitioner is less than 18
2 years of age.

3 “(ii) PETITIONERS AGE 18 AND
4 OLDER.—

5 “(I) DISCRETION OF COURT.—In
6 the case of a petitioner who is not less
7 than 18 years of age, the district
8 court may, in its discretion, appoint
9 counsel in accordance with the plan of
10 the district court in operation under
11 section 3006A to represent the peti-
12 tioner for purposes of this subsection.

13 “(II) CONSIDERATIONS.—In de-
14 termining whether to appoint counsel
15 under subclause (I), the court shall
16 consider—

17 “(aa) the anticipated com-
18 plexity of the expungement hear-
19 ing, including the number and
20 type of witnesses called to advo-
21 cate against the expungement of
22 the records of the petitioner; and

23 “(bb) the potential for ad-
24 verse testimony by a victim or a

“(c) EFFECT OF EXPUNGED JUVENILE RECORD.—

4 “(1) PROTECTION FROM DISCLOSURE.—Except
5 as provided in paragraphs (4) through (8), if a court
6 orders the expungement of a juvenile record of a
7 person under subsection (a) or (b) with respect to a
8 juvenile nonviolent offense, the proceedings in the
9 case shall be deemed never to have occurred, and the
10 person may properly reply accordingly to any inquiry
11 about the events the records of which are ordered
12 expunged.

13 “(2) VERIFICATION OF EXPUNGEMENT.—If a
14 court orders the expungement of a juvenile record
15 under subsection (a) or (b) with respect to a juvenile
16 nonviolent offense, the court shall—

17 “(A) send a copy of the expungement order
18 to each entity or person known to the court
19 that possesses a record relating to the offense,
20 including each—

24 “(B) in the expungement order—

1 “(i) require each entity or person de-
2 scribed in subparagraph (A) to—

3 “(I) seal the record for 1 year
4 and, during that 1-year period, apply
5 paragraphs (3) and (4) of section
6 5044(e) with respect to the record;

7 “(II) on the date that is 1 year
8 after the date of the order, destroy
9 the record unless a subsequent inci-
10 dent described in subsection (d)(2) oe-
11 eurs; and

12 “(III) submit a written certifi-
13 cation to the court, under penalty of
14 perjury, that the entity or person has
15 destroyed each paper and electronic
16 copy of the record; and

17 “(ii) explain that if a subsequent inci-
18 dent described in subsection (d)(2) oeeurs,
19 the order shall be vacated and the record
20 shall no longer be sealed;

21 “(C) on the date that is 1 year after the
22 date of the order, destroy each paper and elec-
23 tronic copy of the record in the possession of
24 the court unless a subsequent incident described
25 in subsection (d)(2) occurs; and

1 “(D) after receiving a written certification
2 from each entity or person under subparagraph
3 (B)(i)(III), notify the petitioner that each entity
4 or person described in subparagraph (A) has
5 destroyed each paper and electronic copy of the
6 record.

7 “(3) REPLY TO INQUIRIES.—On and after the
8 date that is 1 year after the date on which a court
9 orders the expungement of a juvenile record of a
10 person under this section, in the case of an inquiry
11 relating to the juvenile record, the court, each law
12 enforcement officer, any agency that provided treat-
13 ment or rehabilitation services to the person, and the
14 person (except as provided in paragraphs (4)
15 through (8)) shall reply to the inquiry that no such
16 juvenile record exists.

17 “(4) CIVIL ACTIONS.—

18 “(A) IN GENERAL.—On and after the date
19 on which a court orders the expungement of a
20 juvenile record of a person under this section,
21 if the person brings an action against a law en-
22 forcement agency that arrested, or participated
23 in the arrest of, the person for the offense to
24 which the record relates, or against the State or
25 political subdivision of a State of which the law

1 enforcement agency is an agency, in which the
2 contents of the record are relevant to the reso-
3 lution of the issues presented in the action,
4 there shall be a rebuttable presumption that the
5 defendant has a complete defense to the action.

6 “(B) SHOWING BY PLAINTIFF.—In an ac-
7 tion described in subparagraph (A), the plaintiff
8 may rebut the presumption of a complete de-
9 fense by showing that the contents of the ex-
10 punged record would not prevent the defendant
11 from being held liable.

12 “(C) DUTY TO TESTIFY AS TO EXISTENCE
13 OF RECORD.—The court in which an action de-
14 scribed in subparagraph (A) is filed may re-
15 quire the plaintiff to state under oath whether
16 the plaintiff had a juvenile record and whether
17 the record was expunged.

18 “(D) PROOF OF EXISTENCE OF JUVENILE
19 RECORD.—If the plaintiff in an action described
20 in subparagraph (A) denies the existence of a
21 juvenile record, the defendant may prove the ex-
22 istence of the record in any manner compatible
23 with the applicable laws of evidence.

24 “(5) CRIMINAL AND JUVENILE PRO-
25 CEEDINGS.—On and after the date that is 1 year

1 after the date on which a court orders the
2 expungement of a juvenile record under this section,
3 a prosecutor or other law enforcement officer may
4 disclose underlying information from the juvenile
5 record, and the person who is the subject of the ju-
6 venile record may be required to testify or otherwise
7 disclose information about the record, in a criminal
8 or other proceeding if such disclosure is required by
9 the Constitution of the United States, the constitu-
10 tion of a State, or a Federal or State statute or rule.

11 “(6) BACKGROUND CHECKS.—On and after the
12 date that is 1 year after the date on which a court
13 orders the expungement of a juvenile record under
14 this section, in the case of a background check for
15 law enforcement employment or for any employment
16 that requires a government security clearance, the
17 person who is the subject of the juvenile record may
18 be required to disclose underlying information from
19 the record.

20 “(7) DISCLOSURE TO ARMED FORCES.—On and
21 after the date that is 1 year after the date on which
22 a court orders the expungement of a juvenile record
23 under this section, a person, including a law enforce-
24 ment agency that possessed such a juvenile record,
25 may be required to disclose underlying information

1 from the record to the Secretaries of the military de-
2 partments (or the Secretary of Homeland Security
3 with respect to the Coast Guard when it is not oper-
4 ating as a service in the Navy) for the purpose of
5 vetting an enlistment or commission, or with regard
6 to any member of the Armed Forces.

7 “(8) AUTHORIZATION FOR PERSON TO DIS-
8 CLOSE OWN RECORD.—A person who is the subject
9 of a juvenile record expunged under this section may
10 choose to disclose the record.

11 “(9) TREATMENT AS SEALED RECORD DURING
12 TRANSITION PERIOD.—During the 1-year period be-
13 ginning on the date on which a court orders the
14 expungement of a juvenile record under this section,
15 paragraphs (3) and (4) of section 5044(e) shall
16 apply with respect to the record as if the record had
17 been sealed under that section.

18 “(d) LIMITATION RELATING TO SUBSEQUENT INCI-
19 DENTS.—

20 “(1) AFTER FILING AND BEFORE PETITION
21 GRANTED.—If, after the date on which a person files
22 an expungement petition with respect to a juvenile
23 offense and before the court determines whether to
24 grant the petition, the person is convicted of a
25 crime, adjudicated delinquent for an act of juvenile

1 delinquency, or engaged in active criminal court pro-
2 ceedings or juvenile delinquency proceedings, the
3 court shall deny the petition.

4 "(2) AFTER PETITION GRANTED.—If, on or
5 after the date on which a court orders the
6 expungement of a juvenile record of a person under
7 subsection (b), the person is convicted of a crime,
8 adjudicated delinquent for an act of juvenile delin-
9 quency, or engaged in active criminal court pro-
10 ceedings or juvenile delinquency proceedings—

11 "(A) the court that ordered the
12 expungement shall—

13 "(i) vacate the order; and

14 "(ii) notify the person who is the sub-
15 ject of the juvenile record, and each entity
16 or person described in subsection
17 (e)(2)(A), that the order has been vacated;
18 and

19 "(B) the record—

20 "(i) shall not be expunged; or

21 "(ii) if the record has been expunged
22 because 1 year has elapsed since the date
23 of the expungement order, shall not be
24 treated as having been expunged.

1 “(e) INCLUSION OF STATE JUVENILE DELINQUENCY
2 ADJUDICATIONS AND PROCEEDINGS.—For purposes of
3 subparagraphs (A), (B), and (C)(ix) of subsection (b)(1)
4 and paragraphs (1) and (2) of subsection (d), the term
5 ‘juvenile delinquency’ includes the violation of a law of a
6 State committed by a person before attaining the age of
7 18 years which would have been a crime if committed by
8 an adult.”.

9 (2) TECHNICAL AND CONFORMING AMEND-
10 MENT.—The table of sections for chapter 403 of
11 title 18, United States Code, is amended by adding
12 at the end the following:

“5044. Sealing.
“5045. Expungement.”.

13 (3) APPLICABILITY.—Sections 5044 and 5045
14 of title 18, United States Code, as added by para-
15 graph (1), shall apply with respect to a juvenile non-
16 violent offense (as defined in section 5031 of such
17 title, as amended by subsection (b)) that is com-
18 mitted or alleged to have been committed before, on,
19 or after the date of enactment of this Act.

20 (e) RULE OF CONSTRUCTION.—Nothing in the
21 amendments made by this section shall be construed to
22 authorize the sealing or expungement of a record of a
23 criminal conviction of a juvenile who was proceeded
24 against as an adult in a district court of the United States.

1 **SEC. 203. ENSURING ACCURACY OF FEDERAL CRIMINAL**
2 **RECORDS.**

3 (a) **IN GENERAL.**—Section 534 of title 28, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 “**(g) ENSURING ACCURACY OF FEDERAL CRIMINAL**
7 **RECORDS.**—

8 **“(1) DEFINITIONS.**—

9 **“(A) IN GENERAL.**—In this subsection—

10 **“(i)** the term ‘applicant’ means the in-
11 dividual to whom a record sought to be ex-
12 changed pertains;

13 **“(ii)** the term ‘high-risk, public trust

14 position’ means a position designated as a

15 public trust position under section

16 731.106(b) of title 5, Code of Federal Reg-
17 ulations, or any successor regulation;

18 **“(iii)** the term ‘incomplete’, with re-
19 spect to a record, means the record—

20 **“(I)** indicates that an individual

21 was arrested but does not describe the

22 offense for which the individual was

23 arrested; or

24 **“(II)** indicates that an individual

25 was arrested or criminal proceedings

26 were instituted against an individual

1 but does not include the final disposition
2 of the arrest or of the pro-
3 ceedings if a final disposition has been
4 reached;

5 “(iv) the term ‘record’ means a record
6 or other information collected under this
7 section that relates to—

8 “(I) an arrest by a Federal law
9 enforcement officer; or

10 “(II) a Federal criminal pro-
11 ceeding;

12 “(v) the term ‘reporting jurisdiction’
13 means any person or entity that provides a
14 record to the Attorney General under this
15 section; and

16 “(vi) the term ‘requesting entity’—

17 “(I) means a person or entity
18 that seeks the exchange of a record
19 for civil purposes that include employ-
20 ment, housing, credit, or any other
21 type of application; and

22 “(II) does not include a law en-
23 forcement or intelligence agency that
24 seeks the exchange of a record for—

1 “(aa) investigative purposes;

2 or

3 “(bb) purposes relating to
4 law enforcement employment.

5 “(B) RULE OF CONSTRUCTION.—The defi-
6 nition of the term ‘requesting entity’ under sub-
7 paragraph (A) shall not be construed to author-
8 ize access to records that is not otherwise au-
9 thorized by law.

10 “(2) INCOMPLETE OR INACCURATE RECORDS.—

11 The Attorney General shall establish and enforce
12 procedures to ensure the prompt release of accurate
13 records exchanged for employment-related purposes
14 through the records system created under this sec-
15 tion.

16 “(3) REQUIRED PROCEDURES.—The procedures
17 established under paragraph (2) shall include the
18 following:

19 “(A) INACCURATE RECORD OR INFORMA-
20 TION.—If the Attorney General determines that
21 a record is inaccurate, the Attorney General
22 shall promptly correct the record, including by
23 making deletions to the record if appropriate.

24 “(B) INCOMPLETE RECORD.—

1 “(i) IN GENERAL.—If the Attorney
2 General determines that a record is incom-
3 plete or cannot be verified, the Attorney
4 General—

5 “(I) shall attempt to complete or
6 verify the record; and

7 “(II) if unable to complete or
8 verify the record, may promptly make
9 any changes or deletions to the
10 record.

11 “(ii) LACK OF DISPOSITION OF AR-
12 REST.—For purposes of this subpara-
13 graph, an incomplete record includes a
14 record that indicates there was an arrest
15 and does not include the disposition of the
16 arrest.

17 “(iii) OBTAINING DISPOSITION OF AR-
18 REST.—If the Attorney General determines
19 that a record is an incomplete record de-
20 scribed in clause (ii), the Attorney General
21 shall, not later than 10 days after the date
22 on which the requesting entity requests the
23 exchange and before the exchange is made,
24 obtain the disposition (if any) of the ar-
25 rest.

1 “(C) NOTIFICATION OF REPORTING JURIS-
2 DICTION.—The Attorney General shall notify
3 each appropriate reporting jurisdiction of any
4 action taken under subparagraph (A) or (B).

5 “(D) OPPORTUNITY TO REVIEW RECORDS
6 BY APPLICANT.—In connection with an ex-
7 change of a record under this section, the At-
8 torney General shall—

9 “(i) notify the applicant that the ap-
10 plicant can obtain a copy of the record as
11 described in clause (ii) if the applicant
12 demonstrates a reasonable basis for the ap-
13 plicant’s review of the record;

14 “(ii) provide to the applicant an op-
15 portunity, upon request and in accordance
16 with clause (i), to—

17 “(I) obtain a copy of the record;
18 and

19 “(II) challenge the accuracy and
20 completeness of the record;

21 “(iii) promptly notify the requesting
22 entity of any such challenge;

23 “(iv) not later than 30 days after the
24 date on which the challenge is made, com-
25 plete an investigation of the challenge;

1 “(v) provide to the applicant the spe-
2 cific findings and results of that investiga-
3 tion;

4 “(vi) promptly make any changes or
5 deletions to the records required as a re-
6 sult of the challenge; and

7 “(vii) report those changes to the re-
8 questing entity.

9 **“(E) CERTAIN EXCHANGES PROHIBITED.—**

10 “(i) IN GENERAL.—An exchange shall
11 not include any record—

12 “(I) except as provided in clause
13 (ii), about an arrest more than 2
14 years old as of the date of the request
15 for the exchange, that does not also
16 include a disposition (if any) of that
17 arrest;

18 “(II) relating to an adult or juve-
19 nile nonserious offense of the sort de-
20 scribed in section 20.32(b) of title 28,
21 Code of Federal Regulations, as in ef-
22 fect on July 1, 2009; or

23 “(III) to the extent the record is
24 not clearly an arrest or a disposition
25 of an arrest.

1 “(ii) APPLICANTS FOR SENSITIVE PO-
2 SITIONS.—The prohibition under clause
3 (i)(I) shall not apply in the case of a back-
4 ground check that relates to—

5 “(I) law enforcement employ-
6 ment; or

7 “(II) any position that a Federal
8 agency designates as a—

9 “(aa) national security posi-
10 tion; or

11 “(bb) high-risk, public trust
12 position.

13 “(4) FEES.—The Attorney General may collect
14 a reasonable fee for an exchange of records for em-
15 ployment-related purposes through the records sys-
16 tem created under this section to defray the costs
17 associated with exchanges for those purposes, includ-
18 ing any costs associated with the investigation of in-
19 accurate or incomplete records.”.

20 (b) REGULATIONS ON REASONABLE PROCEDURES.—

21 Not later than 1 year after the date of enactment of this
22 Act, the Attorney General shall issue regulations to carry
23 out section 534(g) of title 28, United States Code, as
24 added by subsection (a).

25 (c) REPORT.—

1 (1) **DEFINITION.**—In this subsection, the term
2 “record” has the meaning given the term in sub-
3 section (g) of section 534 of title 28, United States
4 Code, as added by subsection (a).

5 (2) **REPORT REQUIRED.**—Not later than 2
6 years after the date of enactment of this Act, the
7 Attorney General shall submit to Congress a report
8 on the implementation of subsection (g) of section
9 534 of title 28, United States Code, as added by
10 subsection (a), that includes—

11 (A) the number of exchanges of records for
12 employment-related purposes made with entities
13 in each State through the records system cre-
14 ated under such section 534;

15 (B) any prolonged failure of a Federal
16 agency to comply with a request by the Attor-
17 ney General for information about dispositions
18 of arrests; and

19 (C) the numbers of successful and unsuc-
20 cessful challenges to the accuracy and complete-
21 ness of records, organized by the Federal agen-
22 cy from which each record originated.

23 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

24 (a) **SHORT TITLE.**—This Act may be cited as the
25 “First Step Implementation Act of 2021”.

1 (b) *TABLE OF CONTENTS.*—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—SENTENCING REFORM

Sec. 101. Application of First Step Act.

Sec. 102. Modifying safety valve for drug offenses.

TITLE II—CORRECTIONS REFORM

Sec. 201. Parole for juveniles.

Sec. 202. Juvenile sealing and expungement.

Sec. 203. Ensuring accuracy of Federal criminal records.

3 TITLE I—SENTENCING REFORM

4 SEC. 101. APPLICATION OF FIRST STEP ACT.

5 (a) *COVERED OFFENSE DEFINED.*—In this section, the
 6 term “covered offense” means—

7 (1) a violation of a Federal criminal statute, the
 8 statutory penalties for which were modified by section
 9 401 or 403 of the First Step Act of 2018 (Public Law
 10 115–391; 132 Stat. 5220), that was committed on or
 11 before December 21, 2018; or

12 (2) a violation of a Federal criminal statute, the
 13 statutory penalties for which are modified by sub-
 14 section (b) of this section.

15 (b) *AMENDMENTS.*—

16 (1) *IN GENERAL.*—

17 (A) *CONTROLLED SUBSTANCES ACT.*—Sec-
 18 tion 401(b) of the Controlled Substances Act (21
 19 U.S.C. 841) is amended—

20 (i) in paragraph (1)—

1 (2) *PENDING CASES.*—This subsection, and the
2 amendments made by this subsection, shall apply to
3 any sentence imposed on or after the date of enact-
4 ment of this Act, regardless of when the offense was
5 committed.

6 (c) *DEFENDANTS PREVIOUSLY SENTENCED.*—A court
7 that imposed a sentence for a covered offense may, on mo-
8 tion of the defendant, the Director of the Bureau of Prisons,
9 the attorney for the Government, or the court, impose a re-
10 duced sentence as if sections 401 and 403 of the First Step
11 Act of 2018 (Public Law 115–391; 132 Stat. 5220) and the
12 amendments made by subsection (b) of this section were in
13 effect at the time the covered offense was committed if, after
14 considering the factors set forth in section 3553(a) of title
15 18, United States Code, the nature and seriousness of the
16 danger to any person, the community, or any crime vic-
17 tims, and the post-sentencing conduct of the defendant, the
18 sentencing court finds a reduction is consistent with the
19 amendments made by section 401 or 403 of the First Step
20 Act of 2018 (Public Law 115–391; 132 Stat. 5220) or with
21 subsection (b) of this section.

22 (d) *CRIME VICTIMS.*—Any public proceeding under
23 this section shall be subject to section 3771 of title 18,
24 United States Code (commonly known as the “Crime Vic-
25 tims Rights Act”).

1 (e) *RIGHT TO COUNSEL.*—A defendant sentenced for
2 a covered offense who is unable to obtain counsel is entitled
3 to have counsel appointed to represent the defendant for
4 proceedings under this section, including any appeal, unless
5 the defendant waives the right to counsel.

6 (f) *REQUIREMENT.*—For each motion filed under sub-
7 section (c), the Government shall conduct a particularized
8 inquiry of the facts and circumstances of the original sen-
9 tencing of the defendant in order to assess whether a reduc-
10 tion in sentence would be consistent with the First Step
11 Act of 2018 (Public Law 115–391; 132 Stat. 5194) and the
12 amendments made by that Act or with subsection (b) of this
13 section, including a review of any prior criminal conduct
14 or any other relevant information from Federal, State, and
15 local authorities.

16 **SEC. 102. MODIFYING SAFETY VALVE FOR DRUG OFFENSES.**

17 (a) *AMENDMENTS.*—Section 3553 of title 18, United
18 States Code, is amended—

19 (1) by redesignating subsection (g) as subsection
20 (h); and

21 (2) by inserting after subsection (f) the following:

22 “(g) *INADEQUACY OF CRIMINAL HISTORY.*—

23 “(1) *IN GENERAL.*—If subsection (f) does not
24 apply to a defendant because the defendant does not
25 meet the requirements described in subsection (f)(1)

1 *(relating to criminal history), the court may, upon*
2 *prior notice to the Government, waive subsection*
3 *(f)(1) if the court specifies in writing the specific rea-*
4 *sons why reliable information indicates that exclud-*
5 *ing the defendant pursuant to subsection (f)(1) sub-*
6 *stantially overrepresents the seriousness of the defend-*
7 *ant's criminal history or the likelihood that the de-*
8 *fendant will commit other crimes.*

9 “(2) *PROHIBITION.*—This subsection shall not
10 *apply to any defendant who has been convicted of a*
11 *serious drug felony or a serious violent felony as de-*
12 *fined in paragraphs (57) and (58), respectively, of*
13 *section 102 of the Controlled Substances Act (21*
14 *U.S.C. 802).*”.

15 **TITLE II—CORRECTIONS**

16 **REFORM**

17 **SEC. 201. PAROLE FOR JUVENILES.**

18 (a) *IN GENERAL.*—Chapter 403 of title 18, United
19 States Code, is amended by inserting after section 5032 the
20 following:

21 **“§ 5032A. Modification of an imposed term of impris-**
22 **onment for violations of law committed**
23 **prior to age 18**

24 “(a) *IN GENERAL.*—Notwithstanding any other provi-

25 sion of law, a court may reduce a term of imprisonment

1 imposed upon a defendant convicted as an adult for an of-
2 fense committed and completed before the defendant at-
3 tained 18 years of age if—

4 “(1) the defendant has served not less than 20
5 years in custody for the offense; and

6 “(2) the court finds, after considering the factors
7 set forth in subsection (c), that the defendant is not
8 a danger to the safety of any person or the commu-
9 nity and that the interests of justice warrant a sen-
10 tence modification.

11 “(b) *SUPERVISED RELEASE*.—Any defendant whose
12 sentence is reduced pursuant to subsection (a) shall be or-
13 dered to serve a period of supervised release of not less than
14 5 years following release from imprisonment. The condi-
15 tions of supervised release and any modification or revoca-
16 tion of the term of supervise release shall be in accordance
17 with section 3583.

18 “(c) *FACTORS AND INFORMATION TO BE CONSIDERED*
19 *IN DETERMINING WHETHER TO MODIFY A TERM OF IM-*
20 *PRISONMENT*.—The court, in determining whether to reduce
21 a term of imprisonment pursuant to subsection (a), shall
22 consider—

23 “(1) the factors described in section 3553(a), in-
24 cluding the nature of the offense and the history and
25 characteristics of the defendant;

1 “(2) the age of the defendant at the time of the
2 offense;

3 “(3) a report and recommendation of the Bureau
4 of Prisons, including information on whether the de-
5 fendant has substantially complied with the rules of
6 each institution in which the defendant has been con-
7 fined and whether the defendant has completed any
8 educational, vocational, or other prison program,
9 where available;

10 “(4) a report and recommendation of the United
11 States attorney for any district in which an offense
12 for which the defendant is imprisoned was prosecuted;

13 “(5) whether the defendant has demonstrated
14 maturity, rehabilitation, and a fitness to reenter soci-
15 ety sufficient to justify a sentence reduction;

16 “(6) any statement, which may be presented
17 orally or otherwise, by any victim of an offense for
18 which the defendant is imprisoned or by a family
19 member of the victim if the victim is deceased;

20 “(7) any report from a physical, mental, or psy-
21 chiatric examination of the defendant conducted by a
22 licensed health care professional;

23 “(8) the family and community circumstances of
24 the defendant at the time of the offense, including any

1 *history of abuse, trauma, or involvement in the child
2 welfare system;*

3 “*(9) the extent of the role of the defendant in the
4 offense and whether, and to what extent, an adult was
5 involved in the offense;*

6 “*(10) the diminished culpability of juveniles as
7 compared to that of adults, and the hallmark features
8 of youth, including immaturity, impetuosity, and
9 failure to appreciate risks and consequences, which
10 counsel against sentencing juveniles to the otherwise
11 applicable term of imprisonment; and*

12 “*(11) any other information the court determines
13 relevant to the decision of the court.*

14 “(d) *LIMITATION ON APPLICATIONS PURSUANT TO
15 THIS SECTION.—*

16 “(1) *SECOND APPLICATION.—Not earlier than 5
17 years after the date on which an order entered by a
18 court on an initial application under this section be-
19 comes final, a court shall entertain a second applica-
20 tion by the same defendant under this section.*

21 “(2) *FINAL APPLICATION.—Not earlier than 5
22 years after the date on which an order entered by a
23 court on a second application under paragraph (1)
24 becomes final, a court shall entertain a final applica-
25 tion by the same defendant under this section.*

1 “(3) *PROHIBITION.*—A court may not entertain
2 an application filed after an application filed under
3 paragraph (2) by the same defendant.

4 “(e) *PROCEDURES.*—

5 “(1) *NOTICE.*—The Bureau of Prisons shall pro-
6 vide written notice of this section to—

7 “(A) any defendant who has served not less
8 than 19 years in prison for an offense committed
9 and completed before the defendant attained 18
10 years of age for which the defendant was con-
11 victed as an adult; and

12 “(B) the sentencing court, the United States
13 attorney, and the Federal Public Defender or Ex-
14 ecutive Director of the Community Defender Or-
15 ganization for the judicial district in which the
16 sentence described in subparagraph (A) was im-
17 posed.

18 “(2) *CRIME VICTIMS RIGHTS.*—Upon receiving
19 notice under paragraph (1), the United States attor-
20 ney shall provide any notifications required under
21 section 3771.

22 “(3) *APPLICATION.*—

23 “(A) *IN GENERAL.*—An application for a
24 sentence reduction under this section shall be
25 filed as a motion to reduce the sentence of the de-

1 *fendant and may include affidavits or other*
2 *written material.*

3 “*(B) REQUIREMENT.*—*A motion to reduce a*
4 *sentence under this section shall be filed with the*
5 *sentencing court and a copy shall be served on*
6 *the United States attorney for the judicial dis-*
7 *trict in which the sentence was imposed.*

8 “*(4) EXPANDING THE RECORD; HEARING.*—

9 “*(A) EXPANDING THE RECORD.*—*After the*
10 *filng of a motion to reduce a sentence under this*
11 *section, the court may direct the parties to ex-*
12 *pand the record by submitting additional writ-*
13 *ten materials relating to the motion.*

14 “*(B) HEARING.*—

15 “(i) *IN GENERAL.*—*The court shall*
16 *conduct a public hearing on the motion, at*
17 *which the defendant and counsel for the de-*
18 *fendant shall be given the opportunity to be*
19 *heard.*

20 “(ii) *EVIDENCE.*—*In a hearing under*
21 *this section, the court may allow parties to*
22 *present evidence.*

23 “(iii) *DEFENDANT’S PRESENCE.*—*At a*
24 *hearing under this section, the defendant*
25 *shall be present unless the defendant waives*

1 *the right to be present. The requirement*
2 *under this clause may be satisfied by the de-*
3 *fendant appearing by video teleconference.*

4 “(iv) *COUNSEL*.—A defendant who is
5 *unable to obtain counsel is entitled to have*
6 *counsel appointed to represent the defendant*
7 *for proceedings under this section, including*
8 *any appeal, unless the defendant waives the*
9 *right to counsel.*

10 “(v) *FINDINGS*.—The court shall state
11 *in open court, and file in writing, the rea-*
12 *sons for granting or denying a motion*
13 *under this section.*

14 “(C) *APPEAL*.—The Government or the de-
15 *fendant may file a notice of appeal in the dis-*
16 *trict court for review of a final order under this*
17 *section. The time limit for filing such appeal*
18 *shall be governed by rule 4(a) of the Federal*
19 *Rules of Appellate Procedure.*

20 “(f) *EDUCATIONAL AND REHABILITATIVE PRO-*
21 *GRAMS*.—A defendant who is convicted and sentenced as an
22 *adult for an offense committed and completed before the de-*
23 *fendant attained 18 years of age may not be deprived of*
24 *any educational, training, or rehabilitative program that*

1 *is otherwise available to youth in juvenile facilities or the*
 2 *general prison population.”.*

3 (b) *TABLE OF SECTIONS.—The table of sections for*
 4 *chapter 403 of title 18, United States Code, is amended by*
 5 *inserting after the item relating to section 5032 the fol-*
 6 *lowing:*

“5032A. *Modification of an imposed term of imprisonment for violations of law committed prior to age 18.”.*

7 (c) *APPLICABILITY.—The amendments made by this*
 8 *section shall apply to any conviction entered before, on, or*
 9 *after the date of enactment of this Act.*

10 **SEC. 202. JUVENILE SEALING AND EXPUNGEMENT.**

11 (a) *PURPOSE.—The purpose of this section is to—*

12 (1) *protect children and adults against damage*
 13 *stemming from their juvenile acts and subsequent ju-*
 14 *venile delinquency records, including law enforce-*
 15 *ment, arrest, and court records; and*

16 (2) *prevent the unauthorized use or disclosure of*
 17 *confidential juvenile delinquency records and any po-*
 18 *tential employment, financial, psychological, or other*
 19 *harm that would result from such unauthorized use or*
 20 *disclosure.*

21 (b) *DEFINITIONS.—Section 5031 of title 18, United*
 22 *States Code, is amended to read as follows:*

23 **“§ 5031. Definitions**

24 *“In this chapter—*

1 “(1) the term ‘adjudication’ means a determina-
2 tion by a judge that a person committed an act of ju-
3 venile delinquency;

4 “(2) the term ‘conviction’ means a judgment or
5 disposition in criminal court against a person fol-
6 lowing a finding of guilt by a judge or jury;

7 “(3) the term ‘destroy’ means to render a file
8 unreadable, whether paper, electronic, or otherwise
9 stored, by shredding, pulverizing, pulping, incin-
10 erating, overwriting, reformatting the media, or other
11 means;

12 “(4) the term ‘expunge’ means to destroy a
13 record and obliterate the name of the person to whom
14 the record pertains from each official index or public
15 record;

16 “(5) the term ‘expungement hearing’ means a
17 hearing held under section 5045(b)(2)(B);

18 “(6) the term ‘expungement petition’ means a
19 petition for expungement filed under section 5045(b);

20 “(7) the term ‘high-risk, public trust position’
21 means a position designated as a public trust posi-
22 tion under section 731.106(b) of title 5, Code of Fed-
23 eral Regulations, or any successor regulation;

24 “(8) the term ‘juvenile’ means—

1 “(A) except as provided in subparagraph
2 (B), a person who has not attained the age of 18
3 years; and

4 “(B) for the purpose of proceedings and dis-
5 position under this chapter for an alleged act of
6 juvenile delinquency, a person who has not at-
7 tained the age of 21 years;

8 “(9) the term ‘juvenile delinquency’ means the
9 violation of a law of the United States committed by
10 a person before attaining the age of 18 years which
11 would have been a crime if committed by an adult,
12 or a violation by such a person of section 922(x);

13 “(10) the term ‘juvenile nonviolent offense’
14 means—

15 “(A) in the case of an arrest or an adju-
16 dication that is dismissed or finds the juvenile to
17 be not delinquent, an act of juvenile delinquency
18 that is not—

19 “(i) a criminal homicide, forcible rape
20 or any other sex offense (as defined in sec-
21 tion 111 of the Sex Offender Registration
22 and Notification Act (34 U.S.C. 20911)),
23 kidnapping, aggravated assault, robbery,
24 burglary of an occupied structure, arson, or

1 *a drug trafficking crime in which a firearm*
2 *was used; or*

3 “(ii) a Federal crime of terrorism (as
4 defined in section 2332b(g)); and

5 “(B) in the case of an adjudication that
6 finds the juvenile to be delinquent, an act of ju-
7 venile delinquency that is not—

8 “(i) described in clause (i) or (ii) of
9 subparagraph (A); or

10 “(ii) a misdemeanor crime of domestic
11 violence (as defined in section 921(a)(33));

12 “(11) the term ‘juvenile record’—

13 “(A) means a record maintained by a court,
14 the probation system, a law enforcement agency,
15 or any other government agency, of the juvenile
16 delinquency proceedings of a person;

17 “(B) includes—

18 “(i) a juvenile legal file, including a
19 formal document such as a petition, notice,
20 motion, legal memorandum, order, or de-
21 cree;

22 “(ii) a social record, including—

23 “(I) a record of a probation offi-
24 cer;

1 “(II) a record of any government
2 agency that keeps records relating to
3 juvenile delinquency;

4 “(III) a medical record;

5 “(IV) a psychiatric or psycho-
6 logical record;

7 “(V) a birth certificate;

8 “(VI) an education record, includ-
9 ing an individualized education plan;

10 “(VII) a detention record;

11 “(VIII) demographic information
12 that identifies a juvenile or the family
13 of a juvenile; or

14 “(IX) any other record that in-
15 cludes personally identifiable informa-
16 tion that may be associated with a ju-
17 venile delinquency proceeding, an act
18 of juvenile delinquency, or an alleged
19 act of juvenile delinquency; and

20 “(iii) a law enforcement record, in-
21 cluding a photograph or a State criminal
22 justice information system record; and

23 “(C) does not include—

24 “(i) fingerprints; or

25 “(ii) a DNA sample;

1 “(12) the term ‘petitioner’ means a person who
2 files an expungement petition or a sealing petition;

3 “(13) the term ‘seal’ means—

4 “(A) to close a record from public viewing
5 so that the record cannot be examined except by
6 court order; and

7 “(B) to physically seal the record shut and
8 label the record ‘SEALED’ or, in the case of an
9 electronic record, the substantive equivalent;

10 “(14) the term ‘sealing hearing’ means a hearing
11 held under section 5044(b)(2)(B); and

12 “(15) the term ‘sealing petition’ means a peti-
13 tion for a sealing order filed under section 5044(b).”.

14 (c) CONFIDENTIALITY.—Section 5038 of title 18,
15 United States Code, is amended—

16 (1) in subsection (a), in the flush text following
17 paragraph (6), by inserting after “bonding,” the fol-
18 lowing: “participation in an educational system,”;
19 and

20 (2) in subsection (b), by striking “District courts
21 exercising jurisdiction over any juvenile” and insert-
22 ing the following: “Not later than 7 days after the
23 date on which a district court exercises jurisdiction
24 over a juvenile, the district court”.

25 (d) SEALING; EXPUNGEMENT.—

1 (1) *IN GENERAL.*—*Chapter 403 of title 18,*
2 *United States Code, is amended by adding at the end*
3 *the following:*

4 **“§ 5044. Sealing**

5 “(a) *AUTOMATIC SEALING OF NONVIOLENT OFF-*
6 *FENSES.*—

7 “(1) *IN GENERAL.*—*Three years after the date on*
8 *which a person who is adjudicated delinquent under*
9 *this chapter for a juvenile nonviolent offense completes*
10 *every term of probation, official detention, or juvenile*
11 *delinquent supervision ordered by the court with re-*
12 *spect to the offense, the court shall order the sealing*
13 *of each juvenile record or portion thereof that relates*
14 *to the offense if the person—*

15 “(A) *has not been convicted of a crime or*
16 *adjudicated delinquent for an act of juvenile de-*
17 *linquency since the date of the disposition; and*
18 “(B) *is not engaged in active criminal court*
19 *proceedings or juvenile delinquency proceedings.*

20 “(2) *AUTOMATIC NATURE OF SEALING.*—*The*
21 *order of sealing under paragraph (1) shall require no*
22 *action by the person whose juvenile records are to be*
23 *sealed.*

24 “(3) *NOTICE OF AUTOMATIC SEALING.*—*A court*
25 *that orders the sealing of a juvenile record of a person*

1 under paragraph (1) shall, in writing, inform the
2 person of the sealing and the benefits of sealing the
3 record.

4 “(b) *PETITIONING FOR EARLY SEALING OF NON-*
5 *VIOLENT OFFENSES.*—

6 “(1) *RIGHT TO FILE SEALING PETITION.*—

7 “(A) *IN GENERAL.*—During the 3-year pe-
8 riod beginning on the date on which a person
9 who is adjudicated delinquent under this chapter
10 for a juvenile nonviolent offense completes every
11 term of probation, official detention, or juvenile
12 delinquent supervision ordered by the court with
13 respect to the offense, the person may petition the
14 court to seal the juvenile records that relate to
15 the offense, unless the person—

16 “(i) has been convicted of a crime or
17 adjudicated delinquent for an act of juvenile
18 delinquency since the date of the disposi-
19 tion; or

20 “(ii) is engaged in active criminal
21 court proceedings or juvenile delinquency
22 proceedings.

23 “(B) *NOTICE OF OPPORTUNITY TO FILE PE-*
24 *TITION.*—If a person is adjudicated delinquent
25 for a juvenile nonviolent offense, the court in

1 *which the person is adjudicated delinquent shall,*
2 *in writing, inform the person of the potential eli-*
3 *gibility of the person to file a sealing petition*
4 *with respect to the offense upon completing every*
5 *term of probation, official detention, or juvenile*
6 *delinquent supervision ordered by the court with*
7 *respect to the offense, and the necessary proce-*
8 *dures for filing the sealing petition—*

9 “(i) on the date on which the indi-
10 *vidual is adjudicated delinquent; and*

11 “(ii) on the date on which the indi-
12 *vidual has completed every term of proba-*
13 *bation, official detention, or juvenile delin-*
14 *quent supervision ordered by the court with*
15 *respect to the offense.*

16 “(2) *PROCEDURES.*—

17 “(A) *NOTIFICATION TO PROSECUTOR.*—If a
18 *person files a sealing petition with respect to a*
19 *juvenile nonviolent offense, the court in which*
20 *the petition is filed shall provide notice of the pe-*
21 *tion—*

22 “(i) to the Attorney General; and

23 “(ii) upon the request of the petitioner,
24 *to any other individual that the petitioner*
25 *determines may testify as to—*

1 “(I) the conduct of the petitioner
2 since the date of the offense; or

3 “(II) the reasons that the sealing
4 order should be entered.

5 “(B) HEARING.—

6 “(i) IN GENERAL.—If a person files a
7 sealing petition, the court shall—

8 “(I) except as provided in clause
9 (iii), conduct a public hearing in ac-
10 cordance with clause (ii); and

11 “(II) determine whether to enter a
12 sealing order for the person in accord-
13 ance with subparagraph (C).

14 “(ii) OPPORTUNITY TO TESTIFY AND
15 OFFER EVIDENCE.—

16 “(I) PETITIONER.—The petitioner
17 may testify or offer evidence at the
18 sealing hearing in support of sealing.

19 “(II) PROSECUTOR.—The Attorney
20 General may send a representative
21 to testify or offer evidence at the seal-
22 ing hearing in support of or against
23 sealing.

24 “(III) OTHER INDIVIDUALS.—An
25 individual who receives notice under

1 *subparagraph (A)(ii) may testify or*
2 *offer evidence at the sealing hearing as*
3 *to the issues described in subclauses (I)*
4 *and (II) of that subparagraph.*

5 “*(iii) WAIVER OF HEARING.—If the pe-*
6 *petitioner and the Attorney General so agree,*
7 *the court shall make a determination under*
8 *subparagraph (C) without a hearing.*

9 “*(C) BASIS FOR DECISION.—The court shall*
10 *determine whether to grant the sealing petition*
11 *after considering—*

12 “*(i) the sealing petition and any docu-*
13 *ments in the possession of the court;*

14 “*(ii) all the evidence and testimony*
15 *presented at the sealing hearing, if such a*
16 *hearing is conducted;*

17 “*(iii) the best interests of the peti-*
18 *tioner;*

19 “*(iv) the age of the petitioner during*
20 *his or her contact with the court or any law*
21 *enforcement agency;*

22 “*(v) the nature of the juvenile non-*
23 *violent offense;*

24 “*(vi) the disposition of the case;*

1 “(vii) the manner in which the petitioner
2 participated in any court-ordered re-
3 habilitative programming or supervised
4 services;

5 “(viii) the length of the time period
6 during which the petitioner has been with-
7 out contact with any court or law enforce-
8 ment agency;

9 “(ix) whether the petitioner has had
10 any criminal or juvenile delinquency in-
11 volvement since the disposition of the juve-
12 nile delinquency proceeding; and

13 “(x) the adverse consequences the peti-
14 tioner may suffer if the petition is not
15 granted.

16 “(D) WAITING PERIOD AFTER DENIAL.—If
17 the court denies a sealing petition, the petitioner
18 may not file a new sealing petition with respect
19 to the same juvenile nonviolent offense until the
20 date that is 2 years after the date of the denial.

21 “(E) UNIVERSAL FORM.—The Director of
22 the Administrative Office of the United States
23 Courts shall create a universal form, available
24 over the internet and in paper form, that an in-
25 dividual may use to file a sealing petition.

1 “(F) NO FEE FOR INDIGENT PETI-
2 TIONERS.—*If the court determines that the peti-*
3 *tioner is indigent, there shall be no cost for filing*
4 *a sealing petition.*

5 “(G) REPORTING.—*Not later than 2 years*
6 *after the date of enactment of this section, and*
7 *each year thereafter, the Director of the Adminis-*
8 *trative Office of the United States Courts shall*
9 *issue a public report that—*

10 “(i) describes—

11 “(I) *the number of sealing peti-*
12 *tions granted and denied under this*
13 *subsection; and*

14 “(II) *the number of instances in*
15 *which the Attorney General supported*
16 *or opposed a sealing petition;*

17 “(ii) *includes any supporting data*
18 *that the Director determines relevant and*
19 *that does not name any petitioner; and*

20 “(iii) *disaggregates all relevant data*
21 *by race, ethnicity, gender, and the nature of*
22 *the offense.*

23 “(H) PUBLIC DEFENDER ELIGIBILITY.—

24 “(i) PETITIONERS UNDER AGE 18.—
25 *The district court shall appoint counsel in*

1 *accordance with the plan of the district*
2 *court in operation under section 3006A to*
3 *represent a petitioner for purposes of this*
4 *subsection if the petitioner is less than 18*
5 *years of age.*

6 “(ii) PETITIONERS AGE 18 AND
7 ~~OLDER.—~~

8 “(I) DISCRETION OF COURT.—*In*
9 *the case of a petitioner who is not less*
10 *than 18 years of age, the district court*
11 *may, in its discretion, appoint counsel*
12 *in accordance with the plan of the dis-*
13 *trict court in operation under section*
14 *3006A to represent the petitioner for*
15 *purposes of this subsection.*

16 “(II) CONSIDERATIONS.—*In de-*
17 *termining whether to appoint counsel*
18 *under subclause (I), the court shall*
19 *consider—*

20 “(aa) *the anticipated com-*
21 *plexity of the sealing hearing, in-*
22 *cluding the number and type of*
23 *witnesses called to advocate*
24 *against the sealing of the records*
25 *of the petitioner; and*

1 “(bb) the potential for ad-
2 verse testimony by a victim or a
3 representative of the Attorney
4 General.

5 “(c) *EFFECT OF SEALING ORDER.*—

6 “(1) *PROTECTION FROM DISCLOSURE.*—Except
7 as provided in paragraphs (3) and (4), if a court or-
8 ders the sealing of a juvenile record of a person under
9 subsection (a) or (b) with respect to a juvenile non-
10 violent offense, the proceedings in the case shall be
11 deemed never to have occurred, and the person may
12 properly reply accordingly to any inquiry about the
13 events the records of which are ordered sealed.

14 “(2) *VERIFICATION OF SEALING.*—If a court or-
15 ders the sealing of a juvenile record under subsection
16 (a) or (b) with respect to a juvenile nonviolent offense,
17 the court shall—

18 “(A) send a copy of the sealing order to
19 each entity or person known to the court that
20 possesses a record relating to the offense, includ-
21 ing each—

22 “(i) law enforcement agency; and
23 “(ii) public or private correctional or
24 detention facility;

1 “(B) in the sealing order, require each entity
2 or person described in subparagraph (A) to—
3 “(i) seal the record; and
4 “(ii) submit a written certification to
5 the court, under penalty of perjury, that the
6 entity or person has sealed each paper and
7 electronic copy of the record;
8 “(C) seal each paper and electronic copy of
9 the record in the possession of the court; and
10 “(D) after receiving a written certification
11 from each entity or person under subparagraph
12 (B)(ii), notify the petitioner that each entity or
13 person described in subparagraph (A) has sealed
14 each paper and electronic copy of the record.

15 “(3) LAW ENFORCEMENT ACCESS TO SEALED
16 RECORDS.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), a law enforcement agency
19 may access a sealed juvenile record in the posses-
20 sion of the agency or another law enforcement
21 agency solely—

22 “(i) to determine whether the person
23 who is the subject of the record is a non-
24 violent offender eligible for a first-time-of-
25 fender diversion program;

1 “(ii) for investigatory or prosecutorial
2 purposes; or

3 “(iii) for a background check that re-
4 lates to—

5 “(I) law enforcement employment;
6 or

7 “(II) any position that a Federal
8 agency designates as a—

9 “(aa) national security posi-
10 tion; or

11 “(bb) high-risk, public trust
12 position.

13 “(B) TRANSITION PERIOD.—During the 1-
14 year period beginning on the date on which a
15 court orders the sealing of a juvenile record
16 under this section, a law enforcement agency
17 may, for law enforcement purposes, access the
18 record if the record is in the possession of the
19 agency or another law enforcement agency.

20 “(4) PROHIBITION ON DISCLOSURE.—

21 “(A) PROHIBITION.—Except as provided in
22 subparagraph (C), it shall be unlawful to inten-
23 tionally make or attempt to make an unauthor-
24 ized disclosure of any information from a sealed
25 juvenile record in violation of this section.

1 “(B) *PENALTY.*—Any person who violates
2 subparagraph (A) shall be fined under this title,
3 imprisoned for not more than 1 year, or both.

4 “(C) *EXCEPTIONS.*—

5 “(i) *BACKGROUND CHECKS.*—In the
6 case of a background check for law enforce-
7 ment employment or for any employment
8 that requires a government security clear-
9 ance—

10 “(I) a person who is the subject of
11 a juvenile record sealed under this sec-
12 tion shall disclose the contents of the
13 record; and

14 “(II) a law enforcement agency
15 that possesses a juvenile record sealed
16 under this section—

17 “(aa) may disclose the con-
18 tents of the record; and

19 “(bb) if the agency obtains or
20 is subject to a court order author-
21 izing disclosure of the record, may
22 disclose the record.

23 “(ii) *DISCLOSURE TO ARMED*
24 *FORCES.*—A person, including a law en-
25 forcement agency that possesses a juvenile

1 *record sealed under this section, may dis-*
2 *close information from a juvenile record*
3 *sealed under this section to the Secretaries*
4 *of the military departments (or the Sec-*
5 *retary of Homeland Security with respect to*
6 *the Coast Guard when it is not operating as*
7 *a service in the Navy) for the purpose of*
8 *vetting an enlistment or commission, or*
9 *with regard to any member of the Armed*
10 *Forces.*

11 “*(iii) CRIMINAL AND JUVENILE PRO-*
12 *CEEDINGS.—A prosecutor or other law en-*
13 *forcement officer may disclose information*
14 *from a juvenile record sealed under this sec-*
15 *tion, and a person who is the subject of a*
16 *juvenile record sealed under this section*
17 *may be required to testify or otherwise dis-*
18 *close information about the record, in a*
19 *criminal or other proceeding if such disclo-*
20 *sure is required by the Constitution of the*
21 *United States, the constitution of a State,*
22 *or a Federal or State statute or rule.*

23 “*(iv) AUTHORIZATION FOR PERSON TO*
24 *DISCLOSE OWN RECORD.—A person who is*
25 *the subject of a juvenile record sealed under*

1 this section may choose to disclose the
2 record.

3 “(d) *LIMITATION RELATING TO SUBSEQUENT INCI-*
4 *DENTS.*—

5 “(1) *AFTER FILING AND BEFORE PETITION*
6 *GRANTED.*—*If, after the date on which a person files*
7 *a sealing petition with respect to a juvenile offense*
8 *and before the court determines whether to grant the*
9 *petition, the person is convicted of a crime, adju-*
10 *dicated delinquent for an act of juvenile delinquency,*
11 *or engaged in active criminal court proceedings or juve-*
12 *nile delinquency proceedings, the court shall deny*
13 *the petition.*

14 “(2) *AFTER PETITION GRANTED.*—*If, on or after*
15 *the date on which a court orders the sealing of a juve-*
16 *nile record of a person under subsection (b), the per-*
17 *son is convicted of a crime or adjudicated delinquent*
18 *for an act of juvenile delinquency—*

19 “(A) *the court shall—*

20 “(i) *vacate the order; and*

21 “(ii) *notify the person who is the sub-*
22 *ject of the juvenile record, and each entity*
23 *or person described in subsection (c)(2)(A),*
24 *that the order has been vacated; and*

25 “(B) *the record shall no longer be sealed.*

1 “(e) *INCLUSION OF STATE JUVENILE DELINQUENCY*
2 *ADJUDICATIONS AND PROCEEDINGS.*—For purposes of sub-
3 paragraphs (A) and (B) of subsection (a)(1), clauses (i) and
4 (ii) of subsection (b)(1)(A), subsection (b)(1)(C)(ix), and
5 paragraphs (1) and (2) of subsection (d), the term ‘juvenile
6 delinquency’ includes the violation of a law of a State com-
7 mitted by a person before attaining the age of 18 years
8 which would have been a crime if committed by an adult.

9 **“§ 5045. Expungement**

10 “(a) *AUTOMATIC EXPUNGEMENT OF CERTAIN*
11 *RECORDS.*—

12 “(1) *ATTORNEY GENERAL MOTION.*—

13 “(A) *NONVIOLENT OFFENSES COMMITTED*
14 *BEFORE A PERSON TURNED 15.*—If a person is
15 adjudicated delinquent under this chapter for a
16 juvenile nonviolent offense committed before the
17 person attained 15 years of age and completes
18 every term of probation, official detention, or ju-
19 venile delinquent supervision ordered by the
20 court with respect to the offense before attaining
21 18 years of age, on the date on which the person
22 attains 18 years of age, the Attorney General
23 shall file a motion in the district court of the
24 United States in which the person was adju-
25 dicated delinquent requesting that each juvenile

1 *record of the person that relates to the offense be*
2 *expunged.*

3 “*(B) ARRESTS.—If a juvenile is arrested by*
4 *a Federal law enforcement agency for a juvenile*
5 *nonviolent offense for which a juvenile delin-*
6 *quency proceeding is not instituted under this*
7 *chapter, and for which the United States does*
8 *not proceed against the juvenile as an adult in*
9 *a district court of the United States, the Attor-*
10 *ney General shall file a motion in the district*
11 *court of the United States that would have had*
12 *jurisdiction of the proceeding requesting that*
13 *each juvenile record relating to the arrest be ex-*
14 *punged.*

15 “*(C) EXPUNGEMENT ORDER.—Upon the fil-*
16 *ing of a motion in a district court of the United*
17 *States with respect to a juvenile nonviolent of-*
18 *fense under subparagraph (A) or an arrest for a*
19 *juvenile nonviolent offense under subparagraph*
20 *(B), the court shall grant the motion and order*
21 *that each juvenile record relating to the offense*
22 *or arrest, as applicable, be expunged.*

23 “*(2) DISMISSED CASES.—If a district court of*
24 *the United States dismisses an information with re-*
25 *spect to a juvenile under this chapter or finds a juve-*

1 *nile not to be delinquent in a juvenile delinquency*
2 *proceeding under this chapter, the court shall concur-*
3 *rently order that each juvenile record relating to the*
4 *applicable proceeding be expunged.*

5 “(3) *AUTOMATIC NATURE OF EXPUNGEMENT.*—
6 *An order of expungement under paragraph (1)(C) or*
7 *(2) shall not require any action by the person whose*
8 *records are to be expunged.*

9 “(4) *NOTICE OF AUTOMATIC EXPUNGEMENT.*—*A*
10 *court that orders the expungement of a juvenile record*
11 *of a person under paragraph (1)(C) or (2) shall, in*
12 *writing, inform the person of the expungement and*
13 *the benefits of expunging the record.*

14 “(b) *PETITIONING FOR EXPUNGEMENT OF NON-*
15 *VIOLENT OFFENSES.*—

16 “(1) *IN GENERAL.*—*A person who is adjudicated*
17 *delinquent under this chapter for a juvenile non-*
18 *violent offense committed on or after the date on*
19 *which the person attained 15 years of age may peti-*
20 *tion the court in which the proceeding took place to*
21 *order the expungement of the juvenile record that re-*
22 *lates to the offense unless the person—*

23 “(A) *has been convicted of a crime or adju-*
24 *dicated delinquent for an act of juvenile delin-*
25 *quency since the date of the disposition;*

1 “(B) is engaged in active criminal court
2 proceedings or juvenile delinquency proceedings;
3 or

4 “(C) has had not less than 2 adjudications
5 of delinquency previously expunged under this
6 section.

7 “(2) *PROCEDURES.*—

8 “(A) *NOTIFICATION OF PROSECUTOR AND*
9 *VICTIMS.*—*If a person files an expungement peti-*
10 *tion with respect to a juvenile nonviolent offense,*
11 *the court in which the petition is filed shall pro-*
12 *vide notice of the petition—*

13 “(i) *to the Attorney General; and*
14 “(ii) *upon the request of the petitioner,*
15 *to any other individual that the petitioner*
16 *determines may testify as to—*

17 “(I) *the conduct of the petitioner*
18 *since the date of the offense; or*
19 “(II) *the reasons that the*
20 *expungement order should be entered.*

21 “(B) *HEARING.*—

22 “(i) *IN GENERAL.*—*If a person files an*
23 *expungement petition, the court shall—*

1 “(I) except as provided in clause
2 (iii), conduct a hearing in accordance
3 with clause (ii); and

4 “(II) determine whether to enter
5 an expungement order for the person
6 in accordance with subparagraph (C).

7 “(ii) **OPPORTUNITY TO TESTIFY AND**
8 **OFFER EVIDENCE.**—

9 “(I) **PETITIONER.**—The petitioner
10 may testify or offer evidence at the
11 expungement hearing in support of
12 expungement.

13 “(II) **PROSECUTOR.**—The Attorney
14 General may send a representative
15 to testify or offer evidence at the
16 expungement hearing in support of or
17 against expungement.

18 “(III) **OTHER INDIVIDUALS.**—An
19 individual who receives notice under
20 subparagraph (A)(ii) may testify or
21 offer evidence at the expungement hearing
22 as to the issues described in sub-
23 clauses (I) and (II) of that subpara-
24 graph.

1 “(iii) *WAIVER OF HEARING.*—*If the pe-*
2 *titioner and the Attorney General so agree,*
3 *the court shall make a determination under*
4 *subparagraph (C) without a hearing.*

5 “(C) *BASIS FOR DECISION.*—*The court shall*
6 *determine whether to grant an expungement pe-*
7 *tion after considering—*

8 “(i) *the petition and any documents in*
9 *the possession of the court;*

10 “(ii) *all the evidence and testimony*
11 *presented at the expungement hearing, if*
12 *such a hearing is conducted;*

13 “(iii) *the best interests of the peti-*
14 *tioner;*

15 “(iv) *the age of the petitioner during*
16 *his or her contact with the court or any law*
17 *enforcement agency;*

18 “(v) *the nature of the juvenile non-*
19 *violent offense;*

20 “(vi) *the disposition of the case;*

21 “(vii) *the manner in which the peti-*
22 *tioner participated in any court-ordered re-*
23 *habilitative programming or supervised*
24 *services;*

1 “(viii) the length of the time period
2 during which the petitioner has been with-
3 out contact with any court or any law en-
4 forcement agency;

5 “(ix) whether the petitioner has had
6 any criminal or juvenile delinquency in-
7 volvement since the disposition of the juve-
8 nile delinquency proceeding; and

9 “(x) the adverse consequences the peti-
10 tioner may suffer if the petition is not
11 granted.

12 “(D) WAITING PERIOD AFTER DENIAL.—If
13 the court denies an expungement petition, the pe-
14 titioner may not file a new expungement peti-
15 tion with respect to the same offense until the
16 date that is 2 years after the date of the denial.

17 “(E) UNIVERSAL FORM.—The Director of
18 the Administrative Office of the United States
19 Courts shall create a universal form, available
20 over the internet and in paper form, that an in-
21 dividual may use to file an expungement peti-
22 tion.

23 “(F) NO FEE FOR INDIGENT PETI-
24 TIONERS.—If the court determines that the peti-

1 *tioner is indigent, there shall be no cost for filing*
2 *an expungement petition.*

3 “*(G) REPORTING.*—Not later than 2 years
4 after the date of enactment of this section, and
5 each year thereafter, the Director of the Adminis-
6 trative Office of the United States Courts shall
7 issue a public report that—

8 “(i) describes—

9 “(I) the number of expungement
10 petitions granted and denied under
11 this subsection; and

12 “(II) the number of instances in
13 which the Attorney General supported
14 or opposed an expungement petition;

15 “(ii) includes any supporting data
16 that the Director determines relevant and
17 that does not name any petitioner; and

18 “(iii) disaggregates all relevant data
19 by race, ethnicity, gender, and the nature of
20 the offense.

21 “(H) PUBLIC DEFENDER ELIGIBILITY.—

22 “(i) PETITIONERS UNDER AGE 18.—
23 The district court shall appoint counsel in
24 accordance with the plan of the district
25 court in operation under section 3006A to

1 *represent a petitioner for purposes of this*
2 *subsection if the petitioner is less than 18*
3 *years of age.*

4 “(ii) *PETITIONERS AGE 18 AND*
5 *OLDER.—*

6 “(I) *DISCRETION OF COURT.—In*
7 *the case of a petitioner who is not less*
8 *than 18 years of age, the district court*
9 *may, in its discretion, appoint counsel*
10 *in accordance with the plan of the dis-*
11 *trict court in operation under section*
12 *3006A to represent the petitioner for*
13 *purposes of this subsection.*

14 “(II) *CONSIDERATIONS.—In de-*
15 *termining whether to appoint counsel*
16 *under subclause (I), the court shall*
17 *consider—*

18 “(aa) *the anticipated com-*
19 *plexity of the expungement hear-*
20 *ing, including the number and*
21 *type of witnesses called to advo-*
22 *cate against the expungement of*
23 *the records of the petitioner; and*

24 “(bb) *the potential for ad-*
25 *verse testimony by a victim or a*

3 “(c) EFFECT OF EXPUNGED JUVENILE RECORD.—

“(1) *PROTECTION FROM DISCLOSURE.*—Except as provided in paragraphs (4) through (8), if a court orders the expungement of a juvenile record of a person under subsection (a) or (b) with respect to a juvenile nonviolent offense, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events the records of which are ordered expunged.

13 “(2) *VERIFICATION OF EXPUNGEMENT.*—If a
14 court orders the expungement of a juvenile record
15 under subsection (a) or (b) with respect to a juvenile
16 nonviolent offense, the court shall—

17 “(A) send a copy of the expungement order
18 to each entity or person known to the court that
19 possesses a record relating to the offense, includ-
20 ing each—

“(ii) public or private correctional or
detention facility;

24 “(B) in the expungement order—

1 “(i) require each entity or person de-
2 scribed in subparagraph (A) to—
3 “(I) seal the record for 1 year
4 and, during that 1-year period, apply
5 paragraphs (3) and (4) of section
6 5044(c) with respect to the record;
7 “(II) on the date that is 1 year
8 after the date of the order, destroy the
9 record unless a subsequent incident de-
10 scribed in subsection (d)(2) occurs; and
11 “(III) submit a written certifi-
12 cation to the court, under penalty of
13 perjury, that the entity or person has
14 destroyed each paper and electronic
15 copy of the record; and
16 “(ii) explain that if a subsequent inci-
17 dent described in subsection (d)(2) occurs,
18 the order shall be vacated and the record
19 shall no longer be sealed;
20 “(C) on the date that is 1 year after the
21 date of the order, destroy each paper and elec-
22 tronic copy of the record in the possession of the
23 court unless a subsequent incident described in
24 subsection (d)(2) occurs; and

1 “(D) after receiving a written certification
2 from each entity or person under subparagraph
3 (B)(i)(III), notify the petitioner that each entity
4 or person described in subparagraph (A) has de-
5 stroyed each paper and electronic copy of the
6 record.

7 “(3) REPLY TO INQUIRIES.—On and after the
8 date that is 1 year after the date on which a court
9 orders the expungement of a juvenile record of a per-
10 son under this section, in the case of an inquiry relat-
11 ing to the juvenile record, the court, each law enforce-
12 ment officer, any agency that provided treatment or
13 rehabilitation services to the person, and the person
14 (except as provided in paragraphs (4) through (8))
15 shall reply to the inquiry that no such juvenile record
16 exists.

17 “(4) CIVIL ACTIONS.—

18 “(A) IN GENERAL.—On and after the date
19 on which a court orders the expungement of a ju-
20 venile record of a person under this section, if
21 the person brings an action against a law en-
22 forcement agency that arrested, or participated
23 in the arrest of, the person for the offense to
24 which the record relates, or against the State or
25 political subdivision of a State of which the law

1 *enforcement agency is an agency, in which the*
2 *contents of the record are relevant to the resolu-*
3 *tion of the issues presented in the action, there*
4 *shall be a rebuttable presumption that the de-*
5 *fendant has a complete defense to the action.*

6 “(B) *SHOWING BY PLAINTIFF.*—*In an ac-*
7 *tion described in subparagraph (A), the plaintiff*
8 *may rebut the presumption of a complete defense*
9 *by showing that the contents of the expunged*
10 *record would not prevent the defendant from*
11 *being held liable.*

12 “(C) *DUTY TO TESTIFY AS TO EXISTENCE*
13 *OF RECORD.*—*The court in which an action de-*
14 *scribed in subparagraph (A) is filed may require*
15 *the plaintiff to state under oath whether the*
16 *plaintiff had a juvenile record and whether the*
17 *record was expunged.*

18 “(D) *PROOF OF EXISTENCE OF JUVENILE*
19 *RECORD.*—*If the plaintiff in an action described*
20 *in subparagraph (A) denies the existence of a ju-*
21 *venile record, the defendant may prove the exist-*
22 *ence of the record in any manner compatible*
23 *with the applicable laws of evidence.*

24 “(5) *CRIMINAL AND JUVENILE PROCEEDINGS.*—
25 *On and after the date that is 1 year after the date*

1 *on which a court orders the expungement of a juvenile*
2 *record under this section, a prosecutor or other law*
3 *enforcement officer may disclose underlying informa-*
4 *tion from the juvenile record, and the person who is*
5 *the subject of the juvenile record may be required to*
6 *testify or otherwise disclose information about the*
7 *record, in a criminal or other proceeding if such dis-*
8 *closure is required by the Constitution of the United*
9 *States, the constitution of a State, or a Federal or*
10 *State statute or rule.*

11 “(6) *BACKGROUND CHECKS.*—*On and after the*
12 *date that is 1 year after the date on which a court*
13 *orders the expungement of a juvenile record under this*
14 *section, in the case of a background check for law en-*
15 *forcement employment or for any employment that re-*
16 *quires a government security clearance, the person*
17 *who is the subject of the juvenile record may be re-*
18 *quired to disclose underlying information from the*
19 *record.*

20 “(7) *DISCLOSURE TO ARMED FORCES.*—*On and*
21 *after the date that is 1 year after the date on which*
22 *a court orders the expungement of a juvenile record*
23 *under this section, a person, including a law enforce-*
24 *ment agency that possessed such a juvenile record,*
25 *may be required to disclose underlying information*

1 *from the record to the Secretaries of the military de-*
2 *partments (or the Secretary of Homeland Security*
3 *with respect to the Coast Guard when it is not oper-*
4 *ating as a service in the Navy) for the purpose of vet-*
5 *ting an enlistment or commission, or with regard to*
6 *any member of the Armed Forces.*

7 “(8) *AUTHORIZATION FOR PERSON TO DISCLOSE*
8 *OWN RECORD.*—*A person who is the subject of a juve-*
9 *nile record expunged under this section may choose to*
10 *disclose the record.*

11 “(9) *TREATMENT AS SEALED RECORD DURING*
12 *TRANSITION PERIOD.*—*During the 1-year period be-*
13 *ginning on the date on which a court orders the*
14 *expungement of a juvenile record under this section,*
15 *paragraphs (3) and (4) of section 5044(c) shall apply*
16 *with respect to the record as if the record had been*
17 *sealed under that section.*

18 “(d) *LIMITATION RELATING TO SUBSEQUENT INCI-*
19 *DENTS.*—

20 “(1) *AFTER FILING AND BEFORE PETITION*
21 *GRANTED.*—*If, after the date on which a person files*
22 *an expungement petition with respect to a juvenile of-*
23 *fense and before the court determines whether to grant*
24 *the petition, the person is convicted of a crime, adju-*
25 *dicated delinquent for an act of juvenile delinquency,*

1 *or engaged in active criminal court proceedings or juvenile delinquency proceedings, the court shall deny the petition.*

4 “(2) *AFTER PETITION GRANTED.*—*If, on or after the date on which a court orders the expungement of a juvenile record of a person under subsection (b), the person is convicted of a crime, adjudicated delinquent for an act of juvenile delinquency, or engaged in active criminal court proceedings or juvenile delinquency proceedings—*

11 “(A) *the court that ordered the expungement shall—*

13 “(i) *vacate the order; and*

14 “(ii) *notify the person who is the subject of the juvenile record, and each entity or person described in subsection (c)(2)(A), that the order has been vacated; and*

18 “(B) *the record—*

19 “(i) *shall not be expunged; or*

20 “(ii) *if the record has been expunged because 1 year has elapsed since the date of the expungement order, shall not be treated as having been expunged.*

24 “(e) *INCLUSION OF STATE JUVENILE DELINQUENCY ADJUDICATIONS AND PROCEEDINGS.*—*For purposes of sub-*

1 paragraphs (A) and (B) of subsection (b)(1), subsection
 2 (b)(2)(C)(ix), and paragraphs (1) and (2) of subsection (d),
 3 the term ‘juvenile delinquency’ includes the violation of a
 4 law of a State committed by a person before attaining the
 5 age of 18 years which would have been a crime if committed
 6 by an adult.”.

7 (2) TECHNICAL AND CONFORMING AMEND-
 8 MENT.—The table of sections for chapter 403 of title
 9 18, United States Code, is amended by adding at the
 10 end the following:

“5044. Sealing.
 “5045. Expungement.”.

11 (3) APPLICABILITY.—Sections 5044 and 5045 of
 12 title 18, United States Code, as added by paragraph
 13 (1), shall apply with respect to a juvenile nonviolent
 14 offense (as defined in section 5031 of such title, as
 15 amended by subsection (b)) that is committed or al-
 16 leged to have been committed before, on, or after the
 17 date of enactment of this Act.

18 (e) RULE OF CONSTRUCTION.—Nothing in the amend-
 19 ments made by this section shall be construed to authorize
 20 the sealing or expungement of a record of a criminal convic-
 21 tion of a juvenile who was proceeded against as an adult
 22 in a district court of the United States.

1 SEC. 203. ENSURING ACCURACY OF FEDERAL CRIMINAL

2 RECORDS.

3 (a) IN GENERAL.—Section 534 of title 28, United
4 States Code, is amended by adding at the end the following:

5 “(g) ENSURING ACCURACY OF FEDERAL CRIMINAL

6 RECORDS.—

7 “(1) DEFINITIONS.—

8 “(A) IN GENERAL.—In this subsection—

9 “(i) the term ‘applicant’ means the in-
10 dividual to whom a record sought to be ex-
11 changed pertains;12 “(ii) the term ‘high-risk, public trust
13 position’ means a position designated as a
14 public trust position under section
15 731.106(b) of title 5, Code of Federal Regu-
16 lations, or any successor regulation;17 “(iii) the term ‘incomplete’, with re-
18 spect to a record, means the record—19 “(I) indicates that an individual
20 was arrested but does not describe the
21 offense for which the individual was
22 arrested; or23 “(II) indicates that an individual
24 was arrested or criminal proceedings
25 were instituted against an individual
26 but does not include the final disposi-

1 *tion of the arrest or of the proceedings*
2 *if a final disposition has been reached;*

3 *“(iv) the term ‘record’ means a record*
4 *or other information collected under this*
5 *section that relates to—*

6 *“(I) an arrest by a Federal law*
7 *enforcement officer; or*

8 *“(II) a Federal criminal pro-*
9 *ceeding;*

10 *“(v) the term ‘reporting jurisdiction’*
11 *means any person or entity that provides a*
12 *record to the Attorney General under this*
13 *section; and*

14 *“(vi) the term ‘requesting entity’—*

15 *“(I) means a person or entity that*
16 *seeks the exchange of a record for civil*
17 *purposes that include employment,*
18 *housing, credit, or any other type of*
19 *application; and*

20 *“(II) does not include a law en-*
21 *forcement or intelligence agency that*
22 *seeks the exchange of a record for—*

23 *“(aa) investigative purposes;*
24 *or*

1 “(bb) purposes relating to
2 law enforcement employment.

3 “(B) RULE OF CONSTRUCTION.—The definition
4 of the term ‘requesting entity’ under sub-
5 paragraph (A) shall not be construed to author-
6 ize access to records that is not otherwise author-
7 ized by law.

8 “(2) INCOMPLETE OR INACCURATE RECORDS.—
9 The Attorney General shall establish and enforce pro-
10 cedures to ensure the prompt release of accurate
11 records exchanged for employment-related purposes
12 through the records system created under this section.

13 “(3) REQUIRED PROCEDURES.—The procedures
14 established under paragraph (2) shall include the fol-
15 lowing:

16 “(A) INACCURATE RECORD OR INFORMA-
17 TION.—If the Attorney General determines that a
18 record is inaccurate, the Attorney General shall
19 promptly correct the record, including by mak-
20 ing deletions to the record if appropriate.

21 “(B) INCOMPLETE RECORD.—

22 “(i) IN GENERAL.—If the Attorney
23 General determines that a record is incom-
24 plete or cannot be verified, the Attorney
25 General—

1 “(I) shall attempt to complete or
2 verify the record; and

3 “(II) if unable to complete or
4 verify the record, may promptly make
5 any changes or deletions to the record.

6 “(ii) **LACK OF DISPOSITION OF AR-**
7 **REST.**—For purposes of this subparagraph,
8 an incomplete record includes a record that
9 indicates there was an arrest and does not
10 include the disposition of the arrest.

11 “(iii) **OBTAINING DISPOSITION OF AR-**
12 **REST.**—If the Attorney General determines
13 that a record is an incomplete record de-
14 scribed in clause (ii), the Attorney General
15 shall, not later than 10 days after the date
16 on which the requesting entity requests the
17 exchange and before the exchange is made,
18 obtain the disposition (if any) of the arrest.

19 “(C) **NOTIFICATION OF REPORTING JURIS-**
20 **DICTION.**—The Attorney General shall notify
21 each appropriate reporting jurisdiction of any
22 action taken under subparagraph (A) or (B).

23 “(D) **OPPORTUNITY TO REVIEW RECORDS BY**
24 **APPLICANT.**—In connection with an exchange of

1 *a record under this section, the Attorney General*
2 *shall—*

3 “(i) *notify the applicant that the ap-*
4 *plicant can obtain a copy of the record as*
5 *described in clause (ii) if the applicant*
6 *demonstrates a reasonable basis for the ap-*
7 *plicant’s review of the record;*

8 “(ii) *provide to the applicant an op-*
9 *portunity, upon request and in accordance*
10 *with clause (i), to—*

11 “(I) *obtain a copy of the record;*
12 *and*

13 “(II) *challenge the accuracy and*
14 *completeness of the record;*

15 “(iii) *promptly notify the requesting*
16 *entity of any such challenge;*

17 “(iv) *not later than 30 days after the*
18 *date on which the challenge is made, com-*
19 *plete an investigation of the challenge;*

20 “(v) *provide to the applicant the spe-*
21 *cific findings and results of that investiga-*
22 *tion;*

23 “(vi) *promptly make any changes or*
24 *deletions to the records required as a result*
25 *of the challenge; and*

1 “(vii) report those changes to the re-
2 questing entity.

3 “(E) CERTAIN EXCHANGES PROHIBITED.—

4 “(i) IN GENERAL.—An exchange shall
5 not include any record—

6 “(I) except as provided in clause
7 (ii), about an arrest that occurred
8 more than 2 years before the date of the
9 request for the exchange, that does not
10 also include a disposition (if any) of
11 that arrest;

12 “(II) relating to an adult or juvenile
13 nonserious offense of the sort de-
14 scribed in section 20.32(b) of title 28,
15 Code of Federal Regulations, as in ef-
16 fect on July 1, 2009; or

17 “(III) to the extent the record is
18 not clearly an arrest or a disposition
19 of an arrest.

20 “(ii) APPLICANTS FOR SENSITIVE POSI-
21 TIONS.—The prohibition under clause (i)(I)
22 shall not apply in the case of a background
23 check that relates to—

24 “(I) law enforcement employment;
25 or

1 “(II) any position that a Federal
2 agency designates as a—
3 “(aa) national security posi-
4 tion; or
5 “(bb) high-risk, public trust
6 position.

7 “(4) FEES.—The Attorney General may collect a
8 reasonable fee for an exchange of records for employ-
9 ment-related purposes through the records system cre-
10 ated under this section to defray the costs associated
11 with exchanges for those purposes, including any costs
12 associated with the investigation of inaccurate or in-
13 complete records.”.

14 (b) REGULATIONS ON REASONABLE PROCEDURES.—
15 Not later than 1 year after the date of enactment of this
16 Act, the Attorney General shall issue regulations to carry
17 out section 534(g) of title 28, United States Code, as added
18 by subsection (a).

19 (c) REPORT.—

20 (1) DEFINITION.—In this subsection, the term
21 “record” has the meaning given the term in sub-
22 section (g) of section 534 of title 28, United States
23 Code, as added by subsection (a).

24 (2) REPORT REQUIRED.—Not later than 2 years
25 after the date of enactment of this Act, the Attorney

1 General shall submit to Congress a report on the im-
2 plementation of subsection (g) of section 534 of title
3 28, United States Code, as added by subsection (a),
4 that includes—

5 (A) the number of exchanges of records for
6 employment-related purposes made with entities
7 in each State through the records system created
8 under such section 534;

9 (B) any prolonged failure of a Federal
10 agency to comply with a request by the Attorney
11 General for information about dispositions of ar-
12 rests; and

13 (C) the numbers of successful and unsuccess-
14 ful challenges to the accuracy and completeness
15 of records, organized by the Federal agency from
16 which the record originated.

Calendar No. 98

117TH CONGRESS
1ST SESSION
S. 1014

A BILL

To reform sentencing laws and correctional institutions, and for other purposes.

JULY 12, 2021

Reported with an amendment