

109TH CONGRESS  
1ST SESSION

# H. R. 662

To permit expungement of records of certain nonviolent criminal offenses.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 2005

Mr. RANGEL introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To permit expungement of records of certain nonviolent  
criminal offenses.

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.**

4       This Act may be cited as the “Second Chance for Ex-  
5       Offenders Act of 2005”.

6       **SEC. 2. EXPUNGEMENT OF CRIMINAL RECORDS FOR CER-**  
7       **TAIN NONVIOLENT OFFENDERS.**

8       (a) IN GENERAL.—Chapter 229 of title 18, United  
9       States Code, is amended by inserting after subchapter C  
10      the following new subchapter:

1           **“SUBCHAPTER D—EXPUNGEMENT**

“Sec.

“3631. Expungement of certain criminal records in limited circumstances.

“3632. Requirements for expungement.

“3633. Procedure for expungement.

“3634. Effect of expungement.

“3635. Reversal of expunged records.

“3636. Unsealing of records.

2   **“§ 3631. Expungement of certain criminal records in**3           **limited circumstances**

4       “(a) IN GENERAL.—Any individual convicted of an  
5   nonviolent offense who fulfills the requirements of section  
6   3632 may file a petition under this subchapter to expunge  
7   the record of such conviction.

8       “(b) DEFINITION OF NONVIOLENT OFFENSE.—In  
9   this subchapter, the term ‘nonviolent offense’ means a  
10   misdemeanor or felony offense against the United States  
11   that does not have as an element of the offense the use  
12   of a weapon or violence and which did not actually involve  
13   violence in its commission.

14   **“§ 3632. Requirements for expungement**

15       “No individual shall be eligible for expungement  
16   under this subchapter unless, before filing a petition under  
17   this subchapter, such individual—

18           “(1) has never been convicted of a violent of-  
19   fense (including an offense under State law that  
20   would be a violent offense if it were Federal) and  
21   has never been convicted of a nonviolent offense  
22   other than the one for which expungement is sought;

1           “(2) has fulfilled all requirements of the sen-  
2           tence of the court in which conviction was obtained,  
3           including completion of any term of imprisonment or  
4           period of probation, meeting all conditions of a su-  
5           pervised release, and paying all fines;

6           “(3) has remained free from dependency on or  
7           abuse of alcohol or a controlled substance a min-  
8           imum of 1 year and has been rehabilitated, to the  
9           satisfaction of the court referred to in section  
10           3633(b), if so required by the terms of a supervised  
11           release;

12           “(4) has obtained a high school diploma or  
13           completed a high school equivalency program; and

14           “(5) has completed at least one year of commu-  
15           nity service, as determined by the court referred to  
16           in section 3633(b).

17 **“§ 3633. Procedure for expungement**

18           “(a) PETITION.—An individual may file a petition for  
19           expungement in the court in which the conviction was ob-  
20           tained. A copy of the petition shall be served by the court  
21           upon the United States Attorney for the district in which  
22           the conviction sought to be expunged was obtained. Not  
23           later than 60 days after receipt of such petition, the  
24           United States Attorney may submit written recommenda-

1 tions to the court and notify the petitioner of that re-  
2 commendation.

3       “(b) COURT-ORDERED EXPUNGEMENT.—The court,  
4 after consideration of evidence submitted by the petitioner  
5 in support of the petition and any evidence submitted by  
6 the Government in support of objections it may have to  
7 granting the petition, shall rule on the petition. In making  
8 that ruling the court, after determining whether the peti-  
9 tioner meets the eligibility requirements of this sub-  
10 chapter, shall weigh the interests of the petitioner against  
11 the best interests of justice and public safety.

12 **“§ 3634. Effect of expungement**

13       “(a) IN GENERAL.—An order granting expungement  
14 under this subchapter shall restore the individual con-  
15 cerned, in the contemplation of the law, to the status such  
16 individual occupied before the arrest or institution of  
17 criminal proceedings for the crime that was the subject  
18 of the expungement.

19       “(b) NO DISQUALIFICATION; STATEMENTS.—After  
20 an order granting expungement of any individual’s crimi-  
21 nal records under this subchapter, such individual shall  
22 not be required to divulge information pertaining to the  
23 expunged conviction and the fact that such individual has  
24 been convicted of the criminal offense concerned shall  
25 not—

1           “(1) operate as a disqualification of such indi-  
2        vidual to pursue or engage in any lawful activity, oc-  
3        cupation, profession, and

4           “(2) held under any provision of law guilty of  
5        perjury, false answering, or making a false state-  
6        ment by reason of his failure to recite or acknowl-  
7        edge such arrest or institution of criminal pro-  
8        ceedings, or results thereof, in response to an in-  
9        quiry made of him for any purpose.

10          “(c) RECORDS EXPUNGED OR SEALED.—Upon order  
11        of expungement, all official law enforcement and court  
12        records, including all references to such person’s arrest for  
13        the offense, the institution of criminal proceedings against  
14        him, and the results thereof, except publicly available  
15        court opinions or briefs on appeal, shall be expunged (in  
16        the case of nontangible records) or gathered together and  
17        sealed (in the case of tangible records).

18          “(d) RECORD OF DISPOSITION TO BE RETAINED.—  
19        A nonpublic record of a disposition or conviction that is  
20        the subject of an expungement order shall be retained only  
21        by the Department of Justice solely for the purpose of use  
22        by the courts in any subsequent adjudication.

23        **“§ 3635. Disclosure of expunged records**

24          “(a) LAW ENFORCEMENT PURPOSES.—The Depart-  
25        ment of Justice may maintain a nonpublic manual or com-

1 puterized index of expunged records containing only the  
2 name of, and alphanumeric identifiers that relate to, the  
3 persons who are the subject of such expunged records, the  
4 word ‘expunged’, and the name of the person, agency, of-  
5 fice, or department that has custody of the expunged  
6 records, and shall not name the offense committed. The  
7 index shall be made available only to Federal and State  
8 law enforcement personnel who have custody of such ex-  
9 punged records and only for the purposes set forth in sub-  
10 section (b) of this section.

11       “(b) AUTHORIZED DISCLOSURE.—Such records shall  
12 be made available to the person accused or to such per-  
13 son’s designated agent and shall be made available to—

14           “(1) any prosecutor, law enforcement agency,  
15 or court which has responsibility for criminally in-  
16 vestigating, prosecuting, or adjudicating such indi-  
17 vidual;

18           “(2) any State or local office or agency with re-  
19 sponsibility for the issuance of licenses to possess  
20 guns where the accused has made application for  
21 such license; or

22           “(3) any prospective city, State, or Federal em-  
23 ployer or agency, involved in investigating and/or  
24 prosecuting under criminal or civil statutes including  
25 employers of police or peace officers and in relation

1 to an application for employment as an employee of  
2 a city, State, or Federal employer or agency involved  
3 in investigating or prosecuting under criminal or  
4 civil statutes including as a police officer or peace  
5 officer, and every person who is an applicant for the  
6 position of police officer, peace officer, or any other  
7 prospective city, State, or Federal employer or agen-  
8 cy, involved in investigating or prosecuting under  
9 criminal or civil statutes shall be furnished with a  
10 copy of all records obtained under this paragraph  
11 and afforded an opportunity to make an explanation  
12 thereto.

13       “(c) PUNISHMENT FOR IMPROPER DISCLOSURE.—  
14 Any person who knowingly disseminates information relat-  
15 ing to an expunged conviction other than the offender  
16 shall be fined under this title or imprisoned not more than  
17 one year, or both.

18       **“§ 3636. Reversal of expunged records**

19       “The records expunged under this subchapter shall  
20 be restored by operation of law as public records and may  
21 be used in all court proceedings if the individual whose  
22 conviction was expunged is subsequently convicted of any  
23 Federal or State offense.”.

24       (b) CLERICAL AMENDMENT.—The table of sub-  
25 chapters at the beginning of chapter 229 of title 18,

1 United States Code, is amended by adding at the end the  
2 following item:

**“D. Expungement .....** **3631”.**

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this Act shall apply to individuals convicted of an offense  
5 before, on, or after the date of enactment of this Act.

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