

116TH CONGRESS  
1ST SESSION

# H. R. 2348

To require automatic sealing of certain criminal records, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2019

Ms. BLUNT ROCHESTER (for herself and Mr. RESCHENTHALER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To require automatic sealing of certain criminal records, 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.**

4       This Act may be cited as the “Clean Slate Act of  
5       2019”.

6       **SEC. 2. SEALING OF CERTAIN RECORDS.**

7       (a) AMENDMENT.—Subchapter A of chapter 227 of  
8       title 18, United States Code, is amended by adding at the  
9       end the following:

1 **“§ 3560. Automatic sealing of certain records**

2 “(a) DEFINITIONS.—In this section—

3 “(1) the term ‘covered individual’ means an in-  
4 dividual who—

5 “(A) is not a sex offender;

6 “(B)(i) has been arrested for a Federal of-  
7 fense; or

8 “(ii) has been convicted of an offense  
9 under section 404 of the Controlled Substances  
10 Act (21 U.S.C. 844) or any Federal nonviolent  
11 offense involving marijuana;

12 “(C) in the case of a conviction described  
13 in subparagraph (B)(ii), has fulfilled each re-  
14 quirement of the sentence for the offense, in-  
15 cluding—

16 “(i) completing each term of imprison-  
17 ment, probation, or supervised release; and

18 “(ii) satisfying each condition of im-  
19 prisonment, probation, or supervised re-  
20 lease; and

21 “(D) has not been convicted for any of-  
22 fense related to treason, terrorism, access and  
23 transmission of sensitive defense information,  
24 or other national security related convictions;

25 “(2) the term ‘nonviolent offense’ means an of-  
26 fense that is not a crime of violence, as defined in

1 subparagraphs (A) and (C) of section 3156(a)(4);  
2 and

3 “(3) the term ‘sex offender’ has the meaning  
4 given the term in section 111 of the Adam Walsh  
5 Child Protection and Safety Act of 2006 (42 U.S.C.  
6 16911).

7 “(b) AUTOMATIC SEALING FOR CERTAIN ARRESTS  
8 AND NONVIOLENT OFFENSES.—

9 “(1) IN GENERAL.—At the time of sentencing  
10 of a covered individual for a conviction pursuant to  
11 section 404 of the Controlled Substances Act (21  
12 U.S.C. 844) or of any Federal nonviolent offense in-  
13 volving marijuana, the court shall enter an order  
14 that each record and portion thereof that relates to  
15 the offense shall be sealed automatically on the date  
16 that is one year after the covered individual fulfills  
17 each requirement of the sentence, except that such  
18 record shall not be sealed if the individual has been  
19 convicted of a subsequent criminal offense.

20 “(2) ACQUITTAL; DETERMINATION NOT TO FILE  
21 CHARGES.—

22 “(A) ACQUITTAL.—Sixty days after the  
23 date on which a covered individual is acquitted,  
24 exonerated, or otherwise subject to a judgment  
25 which did not result in a conviction for a Fed-

1           eral offense, each record or portion thereof that  
2           relates to the Federal offense shall be sealed  
3           automatically.

4           “(B) DETERMINATION NOT TO FILE  
5           CHARGES.—

6           “(i) IN GENERAL.—If a covered indi-  
7           vidual is arrested for a Federal offense and  
8           the Government does not file charges  
9           against the covered individual in relation  
10          to the Federal offense before the date that  
11          is 180 days after the date on which the ar-  
12          rest was made, each record or portion  
13          thereof that relates to the arrest and Fed-  
14          eral offense shall be sealed automatically  
15          on such date.

16          “(ii) UNSEALING FOR FILING OF  
17          CHARGES.—At the request of the Govern-  
18          ment, a court may unseal a record sealed  
19          under clause (i) in order for the Govern-  
20          ment to file charges against the covered in-  
21          dividual in relation to the Federal offense  
22          described in clause (i).

23          “(iii) LIMITATION.—If a record is un-  
24          sealed under clause (ii), the record may  
25          only be resealed in accordance with sub-

1 paragraph (A), paragraph (1), or para-  
2 graph (2).

3 “(c) NOTICE OF AUTOMATIC SEALING.—Not later  
4 than 60 days after an individual is arrested for a Federal  
5 offense, the Attorney General shall, in writing, inform the  
6 individual of the automatic sealing of records and the ef-  
7 fect of such sealing under this section.

8 “(d) EFFECT OF SEALING ORDER.—

9 “(1) PROTECTION FROM ACCESS.—Except as  
10 provided in paragraph (3), a record that has been  
11 sealed under subsection (b) shall not be accessible to  
12 any person.

13 “(2) PROTECTION FROM PERJURY LAWS.—

14 “(A) IN GENERAL.—Except as provided in  
15 subparagraph (B), a covered individual with re-  
16 spect to whom a record has been sealed under  
17 subsection (b) shall not be required to disclose  
18 such information, and shall not be subject to  
19 prosecution under any civil or criminal provi-  
20 sion of Federal or State law relating to perjury,  
21 false swearing, or making a false statement, in-  
22 cluding under section 1001, 1621, 1622, or  
23 1623, for failing to recite or acknowledge any  
24 information that has been sealed with respect to  
25 the offense, or respond to any inquiry made of

1 the covered individual, relating to the protected  
2 information.

3 “(B) EXCEPTION.—A covered individual  
4 shall disclose information contained in a record  
5 that has been sealed under subsection (b)—

6 “(i) when testifying in court;

7 “(ii) in the course of questioning by a  
8 law enforcement officer in connection with  
9 a subsequent criminal investigation; or

10 “(iii) in connection with employment  
11 described in subclause (I) or (II) of para-  
12 graph (3)(A)(ii) that the individual is seek-  
13 ing.

14 “(3) BACKGROUND CHECKS.—Except as pro-  
15 vided in paragraph (4), a sealed record of a covered  
16 individual shall not be included in any background  
17 check conducted on the covered individual.

18 “(4) LAW ENFORCEMENT AND COURT EXCEP-  
19 TION.—

20 “(A) ACCESS.—An officer or employee of a  
21 law enforcement agency or a court may access  
22 a sealed record of a covered individual in the  
23 possession of the agency or court, or another  
24 law enforcement agency or court, solely—

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

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

5 “(I) employment with a law en-  
6 forcement agency; 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) DISCLOSURE.—An officer or em-  
14 ployee of a law enforcement agency or a court  
15 may disclose information contained in a sealed  
16 record only in order to carry out the purposes  
17 described in subparagraph (A).

18 “(e) PENALTY FOR UNAUTHORIZED DISCLOSURE.—

19 “(1) IN GENERAL.—Whoever knowingly ac-  
20 cesses or discloses information contained in a sealed  
21 record in a manner that is prohibited under this sec-  
22 tion, shall be fined under this title, imprisoned for  
23 not more than 1 year, or both.

24 “(2) RULE OF CONSTRUCTION.—Nothing in  
25 this subsection prevents a covered individual or an

1 individual who was the victim of an offense from ac-  
2 cessing or disclosing information contained in a  
3 sealed record.

4 “(f) RULEMAKING.—The Attorney General shall, by  
5 rule, establish a process to ensure that any record in the  
6 possession of a Federal agency required to be sealed under  
7 this section, is automatically sealed in accordance with this  
8 section.

9 “(g) APPLICABILITY.—This section shall apply to an  
10 arrest or conviction that occurred or was entered before,  
11 on, or after the date of enactment of this section. Not later  
12 than 2 years after the date of the enactment of this sec-  
13 tion, the Attorney General shall ensure that any record  
14 related to an arrest or conviction that occurred or was en-  
15 tered prior to the automatic sealing of such a record,  
16 which record is required to be sealed under this section,  
17 is so sealed.

18 “(h) EMPLOYER IMMUNITY FROM LIABILITY.—An  
19 employer who employs or otherwise engages an individual  
20 whose criminal records were sealed pursuant to this sec-  
21 tion shall be immune from liability for any claim arising  
22 out of the misconduct of the individual, if the misconduct  
23 relates to the portion of the criminal records that were  
24 sealed pursuant to this section.

25 “(i) ESTABLISHMENT OF PARTNERSHIPS.—



1           “(1) IN GENERAL.—The Administrative Office  
2           of the United States Courts may enter into a con-  
3           tract with or make grants to an organization with  
4           expertise in creating digital and technological sys-  
5           tems to develop an efficient and effective process for  
6           automatically sealing records in accordance with this  
7           section.

8           “(2) AUTHORIZATION OF APPROPRIATIONS.—  
9           There is authorized to be appropriated to  
10          \$2,000,000 to carry out this subsection.

11   **“§ 3561. Sealing of certain records upon petition**

12          “(a) DEFINITIONS.—In this section—

13               “(1) the term ‘covered nonviolent offense’  
14               means a Federal criminal offense that is not—

15                       “(A) a crime of violence (as defined in sub-  
16                       paragraphs (A) and (C) of section 3156(a)(4));  
17                       or

18                       “(B) a sex offense (as that term is defined  
19                       in section 111 of the Sex Offender Registration  
20                       and Notification Act (42 U.S.C. 16911));

21               “(2) the term ‘eligible individual’ means an in-  
22               dividual who—

23                       “(A) has been convicted of a covered non-  
24                       violent offense;

1           “(B) has fulfilled each requirement of the  
2 sentence for the covered nonviolent offense, in-  
3 cluding—

4                   “(i) completing each term of imprison-  
5 ment, probation, or supervised release; and

6                   “(ii) satisfying each condition of im-  
7 prisonment, probation, or supervised re-  
8 lease;

9           “(C) has not been convicted of more than  
10 2 felonies that are covered nonviolent offenses,  
11 including any such convictions that have been  
12 sealed (except that for purposes of this sub-  
13 paragraph, two or more felony convictions that  
14 are covered nonviolent offenses arising out of  
15 the same act, or acts committed at the same  
16 time, shall be treated as one felony conviction);

17           “(D) has not been convicted of any felony  
18 that is not a covered nonviolent offense; and

19           “(E) has not been convicted for any of-  
20 fense related to treason, terrorism, access and  
21 transmission of sensitive defense information,  
22 or other national security related convictions;

23           “(3) the term ‘petitioner’ means an individual  
24 who files a sealing petition;

1 “(4) the term ‘protected information’, with re-  
2 spect to a covered nonviolent offense, means any ref-  
3 erence to—

4 “(A) an arrest, conviction, or sentence of  
5 an individual for the offense;

6 “(B) the institution of criminal pro-  
7 ceedings against an individual for the offense;  
8 or

9 “(C) the result of criminal proceedings de-  
10 scribed in subparagraph (B);

11 “(5) the term ‘sealing hearing’ means a hearing  
12 held under subsection (c)(2); and

13 “(6) the term ‘sealing petition’ means a petition  
14 for a sealing order filed under subsection (b).

15 “(b) RIGHT TO FILE SEALING PETITION.—

16 “(1) IN GENERAL.—On and after the date that  
17 is 1 year after the date on which the eligible indi-  
18 vidual has fulfilled each requirement described in  
19 subsection (a)(2)(B), an eligible individual may file  
20 a petition for a sealing order with respect to a cov-  
21 ered nonviolent offense in a district court of the  
22 United States.

23 “(2) NOTICE OF OPPORTUNITY TO FILE PETI-  
24 TION.—

1           “(A) IN GENERAL.—If an individual is  
2 convicted of a covered nonviolent offense and  
3 will potentially be eligible to file a sealing peti-  
4 tion with respect to the offense upon fulfilling  
5 each requirement of the sentence for the offense  
6 as described in subsection (a)(2)(B), the court  
7 in which the individual is convicted shall, in  
8 writing, inform the individual, on each date de-  
9 scribed in subparagraph (B), of—

10                   “(i) that potential eligibility;

11                   “(ii) the necessary procedures for fil-  
12 ing the sealing petition; and

13                   “(iii) the benefits of sealing a record.

14           “(B) DATES.—The dates described in this  
15 subparagraph are—

16                   “(i) the date on which the individual  
17 is convicted; and

18                   “(ii) the date on which the individual  
19 has completed every term of imprisonment,  
20 probation, or supervised release relating to  
21 the offense.

22           “(c) PROCEDURES.—

23           “(1) NOTIFICATION TO PROSECUTOR.—If an in-  
24 dividual files a petition under subsection (b), the dis-

1       trict court in which the petition is filed shall provide  
2       notice of the petition—

3               “(A) to the office of the United States at-  
4       torney that prosecuted the petitioner for the of-  
5       fense; and

6               “(B) upon the request of the petitioner, to  
7       any other individual that the petitioner deter-  
8       mines may testify as to the—

9               “(i) conduct of the petitioner since the  
10      date of the offense; or

11              “(ii) reasons that the sealing order  
12      should be entered.

13      “(2) HEARING.—

14              “(A) IN GENERAL.—Not later than 180  
15      days after the date on which an individual files  
16      a sealing petition, the district court shall—

17              “(i) except as provided in subpara-  
18      graph (D), conduct a hearing in accord-  
19      ance with subparagraph (B); and

20              “(ii) determine whether to enter a  
21      sealing order for the individual in accord-  
22      ance with paragraph (3).

23              “(B) OPPORTUNITY TO TESTIFY AND  
24      OFFER EVIDENCE.—

1                   “(i) PETITIONER.—The petitioner  
2                   may testify or offer evidence at the sealing  
3                   hearing in support of sealing.

4                   “(ii) PROSECUTOR.—The office of a  
5                   United States attorney that receives notice  
6                   under paragraph (1)(A) may send a rep-  
7                   resentative to testify or offer evidence at  
8                   the sealing hearing in support of or  
9                   against sealing.

10                  “(iii) OTHER INDIVIDUALS.—An indi-  
11                  vidual who receives notice under paragraph  
12                  (1)(B) may testify or offer evidence at the  
13                  sealing hearing as to the issues described  
14                  in clauses (i) and (ii) of that paragraph.

15                  “(C) MAGISTRATE JUDGES.—A magistrate  
16                  judge may preside over a hearing under this  
17                  paragraph.

18                  “(D) WAIVER OF HEARING.—If the peti-  
19                  tioner and the United States attorney that re-  
20                  ceives notice under paragraph (1)(A) so agree,  
21                  the court shall make a determination under  
22                  paragraph (3) without a hearing.

23                  “(3) BASIS FOR DECISION.—

24                  “(A) IN GENERAL.—In determining wheth-  
25                  er to enter a sealing order with respect to pro-

1           tected information relating to a covered non-  
2           violent offense, the court—

3                   “(i) shall consider—

4                           “(I) the petition and any docu-  
5                           ments in the possession of the court;  
6                           and

7                           “(II) all the evidence and testi-  
8                           mony presented at the sealing hear-  
9                           ing, if such a hearing is conducted;

10                   “(ii) may not consider any non-Fed-  
11                   eral nonviolent crimes for which the peti-  
12                   tioner has been arrested or proceeded  
13                   against, or of which the petitioner has been  
14                   convicted; and

15                   “(iii) shall balance—

16                           “(I)(aa) the interest of public  
17                           knowledge and safety; and

18                           “(bb) the legitimate interest, if  
19                           any, of the Government in maintain-  
20                           ing the accessibility of the protected  
21                           information, including any potential  
22                           impact of sealing the protected infor-  
23                           mation on Federal licensure, permit,  
24                           or employment restrictions; against

1 “(II)(aa) the conduct and dem-  
2 onstrated desire of the petitioner to be  
3 rehabilitated and positively contribute  
4 to the community; and

5 “(bb) the interest of the peti-  
6 tioner in having the protected infor-  
7 mation sealed, including the harm of  
8 the protected information to the abil-  
9 ity of the petitioner to secure and  
10 maintain employment.

11 “(B) BURDEN ON GOVERNMENT.—The  
12 burden shall be on the Government to show  
13 that the interests under subclause (I) of sub-  
14 paragraph (A)(iii) outweigh the interests of the  
15 petitioner under subclause (II) of that subpara-  
16 graph.

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

22 “(5) UNIVERSAL FORM.—The Director of the  
23 Administrative Office of the United States Courts  
24 shall create a universal form, available over the



1 Internet and in paper form, that an individual may  
2 use to file a sealing petition.

3 “(6) **FEE WAIVER.**—The Director of the Ad-  
4 ministrative Office of the United States Courts shall  
5 by regulation establish a minimally burdensome  
6 process under which indigent petitioners may obtain  
7 a waiver of any fee for filing a sealing petition.

8 “(7) **EFFECT OF SEALING.**—Subsections (d)  
9 and (e) of section 3560 shall apply to any record  
10 that is sealed under this section.

11 “(8) **PUBLIC DEFENDER ELIGIBILITY.**—

12 “(A) **IN GENERAL.**—The district court  
13 may, in its discretion, appoint counsel in ac-  
14 cordance with the plan of the district court in  
15 operation under section 3006A to represent a  
16 petitioner for purposes of this section.

17 “(B) **CONSIDERATIONS.**—In making a de-  
18 termination whether to appoint counsel under  
19 subparagraph (A), the court shall consider—

20 “(i) the anticipated complexity of the  
21 sealing hearing, including the number and  
22 type of witnesses called to advocate against  
23 the sealing of the protected information of  
24 the petitioner; and

1 “(ii) the potential for adverse testi-  
2 mony by a victim or a representative of the  
3 office of the United States attorney.

4 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-  
5 tion may be construed to require a covered individual (as  
6 such term is defined in section 3560) to submit a sealing  
7 petition with respect to records required to be automati-  
8 cally sealed under section 3560.

9 “(e) REPORTING.—Not later than 2 years after the  
10 date of enactment of this section, and each year there-  
11 after, each district court of the United States shall issue  
12 a public report that—

13 “(1) describes—

14 “(A) the number of sealing petitions grant-  
15 ed and denied under this section; and

16 “(B) the number of instances in which the  
17 office of a United States attorney supported or  
18 opposed a sealing petition;

19 “(2) includes any supporting data that the  
20 court determines relevant and that does not name  
21 any petitioner; and

22 “(3) disaggregates all relevant data by race,  
23 ethnicity, gender, and the nature of the offense.

24 “(f) EMPLOYER IMMUNITY FROM LIABILITY.—An  
25 employer who employs or otherwise engages an individual

1 whose criminal records were sealed pursuant to this sec-  
2 tion shall be immune from liability for any claim arising  
3 out of the misconduct of the individual, if the misconduct  
4 relates to the portion of the criminal records that were  
5 sealed pursuant to this section.”.

6 (b) TABLE OF SECTIONS.—The table of sections for  
7 subchapter A of chapter 227 of title 18, United States  
8 Code, is amended by inserting after the item relating to  
9 section 3559 the following:

“3560. Automatic sealing of certain records.

“3561. Sealing of certain records upon petition.”.

