

116TH CONGRESS
1ST SESSION

S. 423

To provide for the sealing of records relating to Federal nonviolent criminal offenses related to substance use disorders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2019

Mr. MANCHIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the sealing of records relating to Federal nonviolent criminal offenses related to substance use disorders, 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 Start Act”.

5 **SEC. 2. SEALING OF CRIMINAL RECORDS.**

6 (a) IN GENERAL.—Chapter 229 of title 18, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 **“Subchapter E—Sealing of Criminal Records**

“Sec.

“3641. Definitions.

“3642. Sealing petition.

“3643. Effect of sealing order.

1 **“§ 3641. Definitions**

2 “In this subchapter—

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

5 “(A) a crime of violence (as that term is
6 defined in section 16);

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

10 “(C) an offense involving a victim under
11 the age of 18 years; or

12 “(D) a serious drug offense (as that term
13 is defined in section 3559(c)(2));

14 “(2) the term ‘covered treatment program’
15 means a substance use disorder treatment program
16 or recovery support program that is licensed, cer-
17 tified, or accredited by a State or national accredita-
18 tion body, including peer-driven and sober-living pro-
19 grams;

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

22 “(A) has been arrested for or convicted of
23 a qualifying offense;

1 “(B) in the case of a conviction described
2 in subparagraph (A)—

3 “(i) has fulfilled each requirement of
4 the sentence for the qualifying offense, in-
5 cluding—

6 “(I) completing each term of im-
7 prisonment, probation, or supervised
8 release; and

9 “(II) satisfying each condition of
10 imprisonment, probation, or super-
11 vised release;

12 “(ii) has satisfactorily completed a
13 covered treatment program; and

14 “(iii) has rendered service for a period
15 of not less than 180 days—

16 “(I) as a peer mentor in a sub-
17 stance use disorder peer mentorship
18 program; or

19 “(II) if service described in sub-
20 clause (I) is not practicable, as a vol-
21 unteer;

22 “(C) has not been convicted of more than
23 2 felonies that are covered nonviolent offenses,
24 including any such convictions that have been
25 sealed; and

1 “(D) has not been convicted of any felony
2 that is not a covered nonviolent offense;

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

5 “(5) the term ‘protected information’, with re-
6 spect to a qualifying offense, means any reference
7 to—

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

10 “(B) the institution of criminal pro-
11 ceedings against an individual for the offense;
12 or

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

15 “(6) the term ‘qualifying offense’ means—

16 “(A) a covered nonviolent offense com-
17 mitted by an individual whose substance use
18 disorder is a substantial contributing factor in
19 the commission of the offense, as determined by
20 a court reviewing a sealing petition with respect
21 to the offense under section 3642(b)(3)(A)(i);
22 or

23 “(B) in the case of an arrest for an offense
24 that does not result in a conviction, a covered
25 nonviolent offense with respect to which the act

1 that would have constituted the offense is com-
2 mitted by an individual whose substance use
3 disorder is a substantial contributing factor in
4 the commission of the act, as determined by a
5 court reviewing a sealing petition with respect
6 to the offense under section 3642(b)(3)(A)(i);

7 “(7) the term ‘seal’—

8 “(A) means—

9 “(i) to close a record from public
10 viewing so that the record cannot be exam-
11 ined except by court order; and

12 “(ii) to physically seal the record shut
13 and label the record ‘SEALED’ or, in the
14 case of an electronic record, the sub-
15 stantive equivalent; and

16 “(B) has the effect described in section
17 3643, including—

18 “(i) the right to treat the offense to
19 which a sealed record relates, and any ar-
20 rest, criminal proceeding, conviction, or
21 sentence relating to the offense, as if it
22 never occurred; and

23 “(ii) protection from civil and criminal
24 perjury, false swearing, and false state-
25 ment laws with respect to a sealed record;

1 “(8) the term ‘sealing hearing’ means a hearing
2 held under section 3642(b)(2);

3 “(9) the term ‘sealing petition’ means a petition
4 for a sealing order filed under section 3642(a); and

5 “(10) the term ‘substance use disorder peer
6 mentorship program’ means a peer mentorship pro-
7 gram at a covered treatment program.

8 **“§ 3642. Sealing petition**

9 “(a) RIGHT TO FILE SEALING PETITION.—

10 “(1) DATE OF ELIGIBILITY.—

11 “(A) CONVICTED INDIVIDUALS.—

12 “(i) IN GENERAL.—On and after the
13 date that is 3 years after the applicable
14 date under clause (ii), an eligible individual
15 who was convicted of a qualifying offense
16 and has not been arrested for or convicted
17 of a substance use-related offense since
18 that applicable date may file a petition for
19 a sealing order with respect to the quali-
20 fying offense in a district court of the
21 United States.

22 “(ii) APPLICABLE DATE.—The appli-
23 cable date—

24 “(I) for an eligible individual who
25 was convicted of a qualifying offense

1 and sentenced to a term of imprison-
2 ment, probation, or supervised release
3 is the date on which the eligible indi-
4 vidual has fulfilled each requirement
5 under section 3641(3)(B)(i); and

6 “(II) for an eligible individual
7 who was convicted of a qualifying of-
8 fense and not sentenced to a term of
9 imprisonment, probation, or super-
10 vided release is the date on which the
11 case relating to the qualifying offense
12 is disposed of.

13 “(iii) VIOLATION OF 3-YEAR GOOD BE-
14 HAVIOR REQUIREMENT.—

15 “(I) IN GENERAL.—An eligible
16 individual who is prohibited from fil-
17 ing a petition for a sealing order with
18 respect to a qualifying offense under
19 clause (i) because the individual is ar-
20 rested for or convicted of a substance
21 use-related offense on or after the ap-
22 plicable date under clause (ii) may file
23 such a petition on or after the date as
24 of which not less than 3 years have

1 elapsed since the last such arrest or
2 conviction.

3 “(II) RULE OF CONSTRUC-
4 TION.—Nothing in subclause (I) shall
5 be construed to allow an eligible indi-
6 vidual to file more than 1 petition for
7 a sealing order with respect to a par-
8 ticular qualifying offense.

9 “(B) INDIVIDUALS NOT CONVICTED.—An
10 eligible individual who is arrested for but not
11 convicted of a qualifying offense may file a peti-
12 tion for a sealing order with respect to the
13 qualifying offense in a district court of the
14 United States on and after the date on which
15 the case relating to the offense is disposed of.

16 “(2) NOTICE OF OPPORTUNITY TO FILE PETI-
17 TION.—

18 “(A) CONVICTED INDIVIDUALS.—

19 “(i) IN GENERAL.—If an individual is
20 convicted of a covered nonviolent offense
21 and will potentially be eligible to file a
22 sealing petition with respect to the offense
23 upon fulfilling each requirement under sec-
24 tion 3641(3)(B), the court in which the in-
25 dividual is convicted shall, in writing, in-

form the individual, on each date described
in clause (ii) of this subparagraph, of—

“(I) that potential eligibility;

“(II) the necessary procedures
for filing the sealing petition; and

“(III) the benefits of sealing a
record, including protection from civil
and criminal perjury, false swearing,
and false statement laws with respect
to the record.

“(ii) DATES.—The dates described in
this clause are—

“(I) the date on which the indi-
vidual is convicted; and

“(II) the date on which the indi-
vidual has fulfilled each requirement
under section 3641(3)(B)(i).

“(B) INDIVIDUALS NOT CONVICTED.—

“(i) ARREST ONLY.—If an individual
is arrested for a covered nonviolent of-
fense, criminal proceedings are not insti-
tuted against the individual for the offense,
and the individual is potentially eligible to
file a sealing petition with respect to the
offense, on the date on which the case re-

1 lating to the offense is disposed of, the ar-
2 resting authority shall, in writing, inform
3 the individual of—

4 “(I) that potential eligibility;

5 “(II) the necessary procedures
6 for filing the sealing petition; and

7 “(III) the benefits of sealing a
8 record, including protection from civil
9 and criminal perjury, false swearing,
10 and false statement laws with respect
11 to the record.

12 “(ii) COURT PROCEEDINGS.—If an in-
13 dividual is arrested for a covered non-
14 violent offense, criminal proceedings are in-
15 stituted against the individual for the of-
16 fense, the individual is not convicted of the
17 offense, and the individual is potentially el-
18 igible to file a sealing petition with respect
19 to the offense, on the date on which the
20 case relating to the offense is disposed of,
21 the court in which the criminal proceedings
22 take place shall, in writing, inform the in-
23 dividual of—

24 “(I) that potential eligibility;

1 “(II) the necessary procedures
2 for filing the sealing petition; and

3 “(III) the benefits of sealing a
4 record, including protection from civil
5 and criminal perjury, false swearing,
6 and false statement laws with respect
7 to the record.

8 “(b) PROCEDURES.—

9 “(1) NOTIFICATION TO PROSECUTOR AND
10 OTHER INDIVIDUALS.—If an individual files a peti-
11 tion under subsection (a) with respect to a quali-
12 fying offense, the district court in which the petition
13 is filed shall provide notice of the petition—

14 “(A) to the office of the United States at-
15 torney that prosecuted or would have pros-
16 ecuted the petitioner for the offense; and

17 “(B) upon the request of the petitioner, to
18 any other individual that the petitioner deter-
19 mines may testify as to the—

20 “(i) conduct of the petitioner since the
21 date of the offense or arrest; or

22 “(ii) reasons that the sealing order
23 should be entered.

24 “(2) HEARING.—

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

4 “(i) except as provided in subpara-
 5 graph (D), conduct a hearing in accord-
 6 ance with subparagraph (B); and

7 “(ii) determine whether to enter a
 8 sealing order for the individual in accord-
 9 ance with paragraph (3).

10 “(B) OPPORTUNITY TO TESTIFY AND
 11 OFFER EVIDENCE.—

12 “(i) PETITIONER.—The petitioner
 13 may testify or offer evidence at the sealing
 14 hearing in support of sealing, including
 15 evidence of ongoing sobriety.

16 “(ii) PROSECUTOR.—The office of a
 17 United States attorney that receives notice
 18 under paragraph (1)(A) may send a rep-
 19 resentative to testify or offer evidence at
 20 the sealing hearing in support of or
 21 against sealing.

22 “(iii) OTHER INDIVIDUALS.—An indi-
 23 vidual who receives notice under paragraph
 24 (1)(B) may testify or offer evidence at the

1 sealing hearing as to the issues described
2 in clauses (i) and (ii) of that paragraph.

3 “(C) MAGISTRATE JUDGES.—A magistrate
4 judge may preside over a hearing under this
5 paragraph.

6 “(D) WAIVER OF HEARING.—If the peti-
7 tioner and the United States attorney that re-
8 ceives notice under paragraph (1)(A) so agree,
9 the court shall make a determination under
10 paragraph (3) without a hearing.

11 “(3) BASIS FOR DECISION.—

12 “(A) IN GENERAL.—In determining wheth-
13 er to enter a sealing order with respect to pro-
14 tected information relating to a covered non-
15 violent offense, the court shall—

16 “(i) determine whether the offense is
17 a qualifying offense based on evidence that
18 the petitioner suffered from an active sub-
19 stance use disorder at the time of the com-
20 mission of the offense;

21 “(ii) consider—

22 “(I) the petition and any docu-
23 ments in the possession of the court;
24 and

1 “(II) all the evidence and testi-
2 mony presented at the sealing hear-
3 ing, if such a hearing is conducted;
4 and

5 “(iii) balance—

6 “(I)(aa) the interest of public
7 knowledge and safety; and

8 “(bb) the legitimate interest, if
9 any, of the Government in maintain-
10 ing the accessibility of the protected
11 information, including any potential
12 impact of sealing the protected infor-
13 mation on Federal licensure, permit,
14 or employment restrictions, against

15 “(II)(aa) the conduct and dem-
16 onstrated desire of the petitioner to be
17 rehabilitated and positively contribute
18 to the community; and

19 “(bb) the interest of the peti-
20 tioner in having the protected infor-
21 mation sealed, including the harm of
22 the protected information to the abil-
23 ity of the petitioner to secure and
24 maintain employment.

1 “(B) BURDEN ON GOVERNMENT.—The
2 burden shall be on the Government to show
3 that the interests under subclause (I) of sub-
4 paragraph (A)(iii) outweigh the interests of the
5 petitioner under subclause (II) of that subpara-
6 graph.

7 “(C) REASONING.—The court shall provide
8 the petitioner and the Government with a writ-
9 ten decision explaining the reasons for the de-
10 termination made under subparagraph (A).

11 “(4) APPEAL.—A denial of a sealing petition by
12 a district court under this section shall be subject to
13 review by a court of appeals in accordance with sec-
14 tion 1291 of title 28.

15 “(5) UNIVERSAL FORM.—The Director of the
16 Administrative Office of the United States Courts
17 shall create a universal form, available over the
18 internet and in paper form, that an individual may
19 use to file a sealing petition.

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

1 “(7) REPORTING.—Not later than 2 years after
 2 the date of enactment of this subchapter, and each
 3 year thereafter, each district court of the United
 4 States shall publish and submit to the Committee on
 5 the Judiciary of the Senate and the Committee on
 6 the Judiciary of the House of Representatives a re-
 7 port that—

8 “(A) describes—

9 “(i) the number of sealing petitions
 10 granted and denied under this section;

11 “(ii) the number of instances in which
 12 the office of a United States attorney sup-
 13 ported or opposed a sealing petition; and

14 “(iii) the number and amount of fees
 15 assessed and waived under this section;

16 “(B) includes any supporting data that—

17 “(i) the court determines relevant;
 18 and

19 “(ii) does not name any petitioner;
 20 and

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

24 “(8) PUBLIC DEFENDER ELIGIBILITY.—

1 “(A) IN GENERAL.—The district court
 2 may, in its discretion, appoint counsel in ac-
 3 cordance with the plan of the district court in
 4 operation under section 3006A to represent a
 5 petitioner for purposes of this section.

6 “(B) CONSIDERATIONS.—In making a de-
 7 termination whether to appoint counsel under
 8 subparagraph (A), the court shall consider—

9 “(i) the anticipated complexity of the
 10 sealing hearing, including the number and
 11 type of witnesses called to advocate against
 12 the sealing of the protected information of
 13 the petitioner; and

14 “(ii) the potential for adverse testi-
 15 mony by a victim or a representative of the
 16 office of the United States attorney.

17 **“§ 3643. Effect of sealing order**

18 “(a) IN GENERAL.—Except as provided in this sec-
 19 tion, if a district court of the United States enters a seal-
 20 ing order with respect to a qualifying offense, the offense
 21 and any arrest, criminal proceeding, conviction, or sen-
 22 tence relating to the offense shall be treated as if it never
 23 occurred.

1 “(b) VERIFICATION OF SEALING.—If a district court
2 of the United States enters a sealing order with respect
3 to a qualifying offense, the court shall—

4 “(1) send a copy of the sealing order to each
5 entity or person known to the court that possesses
6 a record containing protected information that re-
7 lates to the offense, including each—

8 “(A) law enforcement agency; and

9 “(B) public or private correctional or de-
10 tention facility;

11 “(2) in the sealing order, require each entity or
12 person described in paragraph (1) to—

13 “(A) seal the record in accordance with
14 this section; and

15 “(B) submit a written certification to the
16 court, under penalty of perjury, that the entity
17 or person has sealed each paper and electronic
18 copy of the record;

19 “(3) seal each paper and electronic copy of the
20 record in the possession of the court; and

21 “(4) after receiving a written certification from
22 each entity or person under paragraph (2)(B), notify
23 the petitioner that each entity or person described in
24 paragraph (1) has sealed each paper and electronic
25 copy of the record.

1 “(c) PROTECTION FROM PERJURY LAWS.—Except as
 2 provided in subsection (f)(3)(A), a petitioner with respect
 3 to whom a sealing order has been entered for a qualifying
 4 offense shall not be subject to prosecution under any civil
 5 or criminal provision of Federal or State law relating to
 6 perjury, false swearing, or making a false statement, in-
 7 cluding section 1001, 1621, 1622, or 1623, for failing to
 8 recite or acknowledge any protected information with re-
 9 spect to the offense or respond to any inquiry made of
 10 the petitioner, relating to the protected information, for
 11 any purpose.

12 “(d) ATTORNEY GENERAL NONPUBLIC RECORDS.—
 13 The Attorney General—

14 “(1) shall maintain a nonpublic record of all
 15 protected information that has been sealed under
 16 this subchapter; and

17 “(2) may access or utilize protected information
 18 only—

19 “(A) for legitimate investigative purposes;

20 “(B) in defense of any civil suit arising out
 21 of the facts of the arrest or subsequent pro-
 22 ceedings; or

23 “(C) if the Attorney General determines
 24 that disclosure is necessary to serve the inter-

1 ests of justice, public safety, or national secu-
2 rity.

3 “(e) LAW ENFORCEMENT ACCESS.—A Federal or
4 State law enforcement agency may access a record that
5 is sealed under this subchapter solely—

6 “(1) to determine whether the individual to
7 whom the record relates is eligible for a first-time-
8 offender diversion program;

9 “(2) for investigatory, prosecutorial, or Federal
10 supervision purposes; or

11 “(3) for a background check that relates to law
12 enforcement employment or any employment that re-
13 quires a government security clearance.

14 “(f) PROHIBITION ON DISCLOSURE.—

15 “(1) PROHIBITION.—Except as provided in
16 paragraph (3), it shall be unlawful to intentionally
17 make or attempt to make an unauthorized disclosure
18 of any protected information from a record that has
19 been sealed under this subchapter.

20 “(2) PENALTY.—Any person who violates para-
21 graph (1) shall be fined under this title, imprisoned
22 for not more than 1 year, or both.

23 “(3) EXCEPTIONS.—

24 “(A) BACKGROUND CHECKS.—An indi-
25 vidual who is the subject of a record sealed

under this subchapter shall, and a Federal or State law enforcement agency that possesses such a record may, disclose the record in the case of a background check for—

“(i) law enforcement employment; or

“(ii) any position that a Federal agency designates as a—

“(I) national security position; or

“(II) high-risk, public trust position.

“(B) DISCLOSURE TO ARMED FORCES.—A person may disclose protected information from a record sealed under this subchapter to the Secretaries of the military departments (or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy) for the purpose of vetting an enlistment or commission, or with regard to any member of the Armed Forces.

“(C) CRIMINAL AND JUVENILE PROCEEDINGS.—A prosecutor may disclose protected information from a record sealed under this subchapter if the information pertains to a potential witness in a Federal or State—

“(i) criminal proceeding; or

1 “(ii) juvenile delinquency proceeding.

2 “(D) AUTHORIZATION FOR INDIVIDUAL TO
3 DISCLOSE OWN RECORD.—An individual who is
4 the subject of a record sealed under this sub-
5 chapter may choose to disclose the record.”.

6 (b) APPLICABILITY.—The right to file a sealing peti-
7 tion under section 3642(a) of title 18, United States Code,
8 as added by subsection (a), shall apply with respect to a
9 qualifying offense (as defined in section 3641(a) of such
10 title) that is committed or alleged to have been committed
11 before, on, or after the date of enactment of this Act.

12 (c) TRANSITION PERIOD FOR HEARINGS DEAD-
13 LINE.—During the 1-year period beginning on the date
14 of enactment of this Act, section 3642(b)(2)(A) of title
15 18, United States Code, as added by subsection (a), shall
16 be applied by substituting “1 year” for “180 days”.

17 (d) TECHNICAL AND CONFORMING AMENDMENT.—
18 The table of subchapters for chapter 229 of title 18,
19 United States Code, is amended by adding at the end the
20 following:

“E. Sealing of Criminal Records 3641”.

21 **SEC. 3. STATE INCENTIVES.**

22 (a) COPS GRANTS PRIORITY.—Section 1701 of title
23 I of the Omnibus Crime Control and Safe Streets Act of
24 1968 (34 U.S.C. 10381) is amended—

25 (1) in subsection (c)—

1 (A) in paragraph (2), by striking “or” at
 2 the end;

3 (B) in paragraph (3), by striking the pe-
 4 riod at the end and inserting “; or”; and

5 (C) by adding at the end the following:

6 “(4) subject to subsection (n), from an appli-
 7 cant in a State that has in effect—

8 “(A) a law relating to the sealing of adult
 9 records that is substantially similar to, or more
 10 generous to the former offender than, the
 11 amendments made by section 2 of the Clean
 12 Start Act; or

13 “(B) a law that allows an individual who
 14 has successfully sealed a criminal record to be
 15 free from civil and criminal perjury laws.”; and
 16 (2) by adding at the end the following:

17 “(n) DEGREE OF PRIORITY RELATING TO SEALING
 18 LAWS COMMENSURATE WITH DEGREE OF COMPLI-
 19 ANCE.—If the Attorney General, in awarding grants under
 20 this part, gives preferential consideration to any applica-
 21 tion as authorized under subsection (c)(4), the Attorney
 22 General shall base the degree of preferential consideration
 23 given to an application from an applicant in a particular
 24 State on the number of subparagraphs under subsection
 25 (c)(4) that the State has satisfied, relative to the number

1 of such subparagraphs that each other State has satis-
2 fied.”.

3 (b) ATTORNEY GENERAL GUIDELINES AND TECH-
4 NICAL ASSISTANCE.—The Attorney General shall issue
5 guidelines and provide technical assistance to assist States
6 in complying with the incentive under section 1701(c)(4)
7 of title I of the Omnibus Crime Control and Safe Streets
8 Act of 1968 (34 U.S.C. 10381(c)(4)), as added by sub-
9 section (a).

○