

116TH CONGRESS
2D SESSION

S. 5047

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2020

Mr. CASEY (for himself and Ms. ERNST) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 2020”.

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) has been—

7 “(i) arrested for a Federal offense for
8 which the individual was not convicted; or

9 “(ii) convicted of an offense under
10 section 404 of the Controlled Substances
11 Act (21 U.S.C. 844);

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 and

1 “(2) the term ‘sex offender’ has the meaning
2 given the term in section 111 of the Adam Walsh
3 Child Protection and Safety Act of 2006 (34 U.S.C.
4 20911).

5 “(b) AUTOMATIC SEALING FOR CERTAIN ARRESTS
6 AND OTHER OFFENSES.—

7 “(1) IN GENERAL.—At the time of sentencing
8 of a covered individual for a conviction pursuant to
9 section 404 of the Controlled Substances Act (21
10 U.S.C. 844), the court shall enter an order that each
11 record and portion thereof that relates to the offense
12 shall be sealed automatically on the date that is 1
13 year after the covered individual fulfills each require-
14 ment of the sentence, including—

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

17 “(B) satisfying each condition of imprison-
18 ment, probation, or supervised release.

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

21 “(A) ACQUITTAL.—Not later than 60 days
22 after the date on which a covered individual is
23 acquitted, exonerated, or otherwise subject to a
24 judgment which did not result in a conviction
25 for a Federal offense, each record or portion

1 thereof that relates to the Federal offense shall
2 be sealed automatically.

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

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

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

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

1 graph (1) or subparagraph (A) of this
2 paragraph.

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

8 “(d) EFFECT OF SEALING ORDER.—

9 “(1) PROTECTION FROM ACCESS.—Except as
10 provided in paragraph (4), 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; or

7 “(ii) in connection with employment
8 described in subclause (I) or (II) of para-
9 graph (4)(A)(ii) that the individual is seek-
10 ing.

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

15 “(4) LAW ENFORCEMENT AND COURT EXCEP-
16 TION.—

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

22 “(i) for investigatory or prosecutorial
23 purposes; or

24 “(ii) for a background check that re-
25 lates to—

1 “(I) employment with a law en-
2 forcement agency;

3 “(II) any position that a Federal
4 agency designates as a national secu-
5 rity position; or

6 “(III) the manufacture, importa-
7 tion, sale, transfer, possession, or car-
8 rying of firearms, explosives, or am-
9 munition.

10 “(B) DISCLOSURE.—An officer or em-
11 ployee of a law enforcement agency or a court
12 may disclose information contained in a sealed
13 record only in order to carry out the purposes
14 described in subparagraph (A).

15 “(e) PENALTY FOR UNAUTHORIZED DISCLOSURE.—

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

21 “(2) RULE OF CONSTRUCTION.—Nothing in
22 this subsection prevents a covered individual or an
23 individual who was the crime victim (as such term
24 is defined in section 3771(e)) from accessing or dis-
25 closing information contained in a sealed record.

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

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

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

22 “(i) ESTABLISHMENT OF PARTNERSHIPS.—

23 “(1) IN GENERAL.—The Administrative Office
24 of the United States Courts may enter into a con-
25 tract with or make grants to an organization with

1 expertise in creating digital and technological sys-
 2 tems to develop an efficient and effective process for
 3 automatically sealing records in accordance with this
 4 section.

5 “(2) AUTHORIZATION OF APPROPRIATIONS.—

6 There are authorized to be appropriated \$2,000,000
 7 to carry out this subsection.

8 **“§ 3560A. Sealing of certain records upon petition**

9 “(a) DEFINITIONS.—In this section—

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

12 “(A) a crime of violence (as defined in sub-
 13 section (a) of section 16); or

14 “(B) a sex offense (as that term is defined
 15 in section 111 of the Sex Offender Registration
 16 and Notification Act (34 U.S.C. 20911));

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

19 “(A) has been convicted of a covered non-
 20 violent offense;

21 “(B) has fulfilled each requirement of the
 22 sentence for the covered nonviolent offense, in-
 23 cluding—

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

1 “(ii) satisfying each condition of im-
2 prisonment, probation, or supervised re-
3 lease;

4 “(C) has not been convicted of more than
5 2 felonies that are covered nonviolent offenses,
6 including any such convictions that have been
7 sealed (except that for purposes of this sub-
8 paragraph, two or more felony convictions that
9 are covered nonviolent offenses arising out of
10 the same act, or acts committed at the same
11 time, shall be treated as one felony conviction);

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

14 “(E) has not been convicted for any of-
15 fense related to treason, terrorism, access and
16 transmission of sensitive defense information,
17 or other national security related convictions;

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

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

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

1 “(B) the institution of criminal pro-
2 ceedings against an individual for the offense;
3 or

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

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

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

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

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

18 “(2) NOTICE OF OPPORTUNITY TO FILE PETI-
19 TION.—

20 “(A) IN GENERAL.—If an individual is
21 convicted of a covered nonviolent offense and
22 will potentially be eligible to file a sealing peti-
23 tion with respect to the offense upon fulfilling
24 each requirement of the sentence for the offense
25 as described in subsection (a)(2)(B), the court

1 in which the individual is convicted shall, in
2 writing, inform the individual, on each date de-
3 scribed in subparagraph (B), of—

4 “(i) that potential eligibility;

5 “(ii) the necessary procedures for fil-
6 ing the sealing petition; and

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

8 “(B) DATES.—The dates described in this
9 subparagraph are—

10 “(i) the date on which the individual
11 is convicted; and

12 “(ii) the date on which the individual
13 has completed every term of imprisonment,
14 probation, or supervised release relating to
15 the offense.

16 “(c) PROCEDURES.—

17 “(1) NOTIFICATION TO PROSECUTOR.—If an in-
18 dividual files a petition under subsection (b), the dis-
19 trict court in which the petition is filed shall provide
20 notice of the petition—

21 “(A) to the office of the United States at-
22 torney that prosecuted the petitioner for the of-
23 fense; and

1 “(B) upon the request of the petitioner, to
2 any other individual that the petitioner deter-
3 mines may testify as to the—

4 “(i) conduct of the petitioner since the
5 date of the offense; or

6 “(ii) reasons that the sealing order
7 should be entered.

8 “(2) HEARING.—

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

12 “(i) except as provided in subpara-
13 graph (D), conduct a hearing in accord-
14 ance with subparagraph (B); and

15 “(ii) determine whether to enter a
16 sealing order for the individual in accord-
17 ance with paragraph (3).

18 “(B) OPPORTUNITY TO TESTIFY AND
19 OFFER EVIDENCE.—

20 “(i) PETITIONER.—The petitioner
21 may testify or offer evidence at the sealing
22 hearing in support of sealing.

23 “(ii) PROSECUTOR.—The office of a
24 United States attorney that receives notice
25 under paragraph (1)(A) may send a rep-

1 representative to testify or offer evidence at
2 the sealing hearing in support of or
3 against sealing.

4 “(iii) OTHER INDIVIDUALS.—An indi-
5 vidual who receives notice under paragraph
6 (1)(B) may testify or offer evidence at the
7 sealing hearing as to the issues described
8 in clauses (i) and (ii) of that paragraph.

9 “(C) MAGISTRATE JUDGES.—A magistrate
10 judge may preside over a hearing under this
11 paragraph.

12 “(D) WAIVER OF HEARING.—If the peti-
13 tioner and the United States attorney that re-
14 ceives notice under paragraph (1)(A) so agree,
15 the court shall make a determination under
16 paragraph (3) without a hearing.

17 “(3) BASIS FOR DECISION.—

18 “(A) IN GENERAL.—In determining wheth-
19 er to enter a sealing order with respect to pro-
20 tected information relating to a covered non-
21 violent offense, the court—

22 “(i) shall consider—

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

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

4 “(ii) may not consider any non-Fed-
5 eral nonviolent crimes for which the peti-
6 tioner has been arrested or proceeded
7 against, or of which the petitioner has been
8 convicted; and

9 “(iii) shall balance—

10 “(I)(aa) the interest of public
11 knowledge and safety; and

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

19 “(II)(aa) the conduct and dem-
20 onstrated desire of the petitioner to be
21 rehabilitated and positively contribute
22 to the community; and

23 “(bb) the interest of the peti-
24 tioner in having the protected infor-
25 mation sealed, including the harm of

1 the protected information to the abil-
2 ity of the petitioner to secure and
3 maintain employment.

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

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

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) EFFECT OF SEALING.—Subsections (d)
2 and (e) of section 3560 shall apply to any record
3 that is sealed under this section.

4 “(8) PUBLIC DEFENDER ELIGIBILITY.—

5 “(A) IN GENERAL.—The district court
6 shall appoint counsel in accordance with the
7 plan of the district court in operation under
8 section 3006A to represent a petitioner for pur-
9 poses of this section.

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

13 “(i) the anticipated complexity of the
14 sealing hearing, including the number and
15 type of witnesses called to advocate against
16 the sealing of the protected information of
17 the petitioner; and

18 “(ii) the potential for adverse testi-
19 mony by a victim or a representative of the
20 office of the United States attorney.

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

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

5 “(1) describes—

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

8 “(B) the number of instances in which the
 9 office of a United States attorney supported or
 10 opposed a sealing petition;

11 “(2) includes any supporting data that the
 12 court determines relevant and that does not name
 13 any petitioner; and

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

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

23 (b) TABLE OF SECTIONS.—The table of sections for
 24 subchapter A of chapter 227 of title 18, United States

- 1 Code, is amended by inserting after the item relating to
- 2 section 3559 the following:

“3560. Automatic sealing of certain records.

“3560A. Sealing of certain records upon petition.”.

