

117TH CONGRESS
1ST SESSION

S. 1380

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

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2021

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 2021”.

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) or any Federal non-
12 violent offense involving marijuana;

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

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

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

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

1 “(2) the term ‘marijuana’ has the meaning
2 given the term ‘marihuana’ in section 102 of the
3 Controlled Substances Act (21 U.S.C. 802);

4 “(3) the term ‘nonviolent offense’ means an of-
5 fense that is not a crime of violence, as defined in
6 subparagraphs (A) and (C) of section 3156(a)(4);
7 and

8 “(4) the term ‘sex offender’ has the meaning
9 given the term in section 111 of the Adam Walsh
10 Child Protection and Safety Act of 2006 (34 U.S.C.
11 20911).

12 “(b) AUTOMATIC SEALING FOR CERTAIN ARRESTS
13 AND NONVIOLENT OFFENSES.—

14 “(1) IN GENERAL.—At the time of sentencing
15 of a covered individual for a conviction for an of-
16 fense pursuant to section 404 of the Controlled Sub-
17 stances Act (21 U.S.C. 844) or any Federal non-
18 violent offense involving marijuana, the court shall
19 enter an order that each record and portion thereof
20 that relates to the offense shall be sealed automati-
21 cally on the date that is 1 year after the covered in-
22 dividual fulfills each requirement of the sentence, in-
23 cluding—

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

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

3 “(2) ACQUITTAL; DETERMINATION NOT TO FILE
4 CHARGES.—

5 “(A) ACQUITTAL.—Not later than 60 days
6 after the date on which a covered individual is
7 acquitted, exonerated, or otherwise subject to a
8 judgment which did not result in a conviction
9 for a Federal offense, each record or portion
10 thereof that relates to the Federal offense shall
11 be sealed automatically.

12 “(B) DETERMINATION NOT TO FILE
13 CHARGES.—

14 “(i) IN GENERAL.—If a covered indi-
15 vidual is arrested for a Federal offense and
16 the Government does not file charges
17 against the covered individual in relation
18 to the Federal offense before the date that
19 is 180 days after the date on which the ar-
20 rest was made, each record or portion
21 thereof that relates to the arrest and Fed-
22 eral offense shall be sealed automatically
23 on such date.

24 “(ii) UNSEALING FOR FILING OF
25 CHARGES.—At the request of the Govern-

1 ment, a court may unseal a record sealed
2 under clause (i) in order for the Govern-
3 ment to file charges against the covered in-
4 dividual in relation to the Federal offense
5 described in clause (i).

6 “(iii) LIMITATION.—If a record is un-
7 sealed under clause (ii), the record may
8 only be resealed in accordance with para-
9 graph (1) or subparagraph (A) of this
10 paragraph.

11 “(c) EFFECT OF SEALING ORDER.—

12 “(1) PROTECTION FROM ACCESS.—Except as
13 provided in paragraph (4), a record that has been
14 sealed under this section or section 3560A shall not
15 be accessible to any person.

16 “(2) PROTECTION FROM PERJURY LAWS.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), an individual whose record
19 has been sealed pursuant to this section shall
20 not be required to disclose the existence of or
21 any information contained in the individual’s
22 sealed record, and shall not be subject to pros-
23 ecution under any civil or criminal provision of
24 Federal or State law relating to perjury, false
25 swearing, or making a false statement, includ-

1 ing under section 1001, 1621, 1622, or 1623,
2 for failing to recite or acknowledge any infor-
3 mation that has been sealed with respect to the
4 offense, or respond to any inquiry made of the
5 individual, relating to the protected informa-
6 tion.

7 “(B) EXCEPTION.—An individual whose
8 record has been sealed pursuant to this section
9 shall disclose information contained in such
10 record—

11 “(i) when testifying in court;

12 “(ii) in the course of questioning by a
13 law enforcement officer in connection with
14 a subsequent criminal investigation; or

15 “(iii) in connection with employment
16 described in subclause (I) or (II) of para-
17 graph (4)(A)(ii) that the individual is seek-
18 ing.

19 “(3) BACKGROUND CHECKS.—Except as pro-
20 vided in paragraph (4), the existence of a record of
21 an individual which has been sealed pursuant to this
22 section, or the information contained therein, shall
23 not be included in any background check conducted
24 on such individual.

25 “(4) EXCEPTIONS.—

1 “(A) LAW ENFORCEMENT AND COURT AC-
2 CESS.—An officer or employee of a law enforce-
3 ment agency or a court may access a record of
4 an individual which has been sealed pursuant to
5 this section and is in the possession of the
6 agency or court, or another law enforcement
7 agency or court, solely—

8 “(i) for investigatory or prosecutorial
9 purposes; or

10 “(ii) for a background check that re-
11 lates to—

12 “(I) employment with a law en-
13 forcement agency;

14 “(II) any position that a Federal
15 agency designates as a—

16 “(aa) national security posi-
17 tion; or

18 “(bb) high-risk, public trust
19 position; or

20 “(III) the manufacture, importa-
21 tion, sale, transfer, possession, or car-
22 rying of firearms, explosives, or am-
23 munition.

24 “(B) DISCLOSURE.—An officer or em-
25 ployee of a law enforcement agency or a court

1 may disclose information contained in a sealed
2 record only in order to carry out the purposes
3 described in subparagraph (A).

4 “(d) INDIVIDUAL ACCESS.—Any individual whose
5 record has been sealed pursuant to this section or section
6 3560A may access the information contained in the indi-
7 vidual’s sealed record.

8 “(e) PENALTY FOR UNAUTHORIZED DISCLOSURE.—

9 “(1) IN GENERAL.—Whoever knowingly ac-
10 cesses or discloses information contained in a record
11 sealed under this section or section 3560A in a man-
12 ner that is prohibited under this section, shall be
13 fined under this title, imprisoned for not more than
14 1 year, or both.

15 “(2) RULE OF CONSTRUCTION.—Nothing in
16 this subsection prevents a covered individual or an
17 individual who was the crime victim (as such term
18 is defined in section 3771(e)) from accessing or dis-
19 closing information contained in record sealed under
20 this section or section 3560A.

21 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
22 tion or section 3560A shall abrogate or constrain the au-
23 thority of a judge or judicial body to vacate a judgment
24 or sentence.

1 “(g) 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 “(h) 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 or conviction that occurred or was en-
12 tered 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 “(i) 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 “(j) ESTABLISHMENT OF PARTNERSHIPS.—

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

1 organization with expertise in creating digital and
2 technological systems to develop an efficient and ef-
3 fective process for automatically sealing records in
4 accordance with this section.

5 “(2) AUTHORIZATION OF APPROPRIATIONS.—

6 There are authorized to be appropriated to carry out
7 this subsection—

8 “(A) \$2,000,000 to the Administrative Of-
9 fice of the United States Courts; and

10 “(B) \$2,000,000 to the Attorney General.

11 **“§ 3560A. 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 (34 U.S.C. 20911));

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, 2 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) NOTIFICATION TO CRIME VICTIMS.—Upon
14 receipt of a notification under paragraph (1)(A) by
15 an office of the United States attorney, the office
16 shall make reasonable efforts to identify any indi-
17 vidual who was a crime victim (as such term is de-
18 fined in section 3771) of the offense and provide no-
19 tice of the petition.

20 “(3) HEARING.—

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

1 “(i) except as provided in subpara-
2 graph (D), conduct a hearing in accord-
3 ance with subparagraph (B); and

4 “(ii) determine whether to enter a
5 sealing order for the individual in accord-
6 ance with paragraph (4).

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

9 “(i) PETITIONER.—The petitioner
10 may testify or offer evidence at the sealing
11 hearing in support of sealing.

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

18 “(iii) OTHER INDIVIDUALS.—At the
19 request of a petitioner, the district court in
20 which the petition is filed shall issue a sub-
21 poena requiring an individual who receives
22 notice under paragraph (1)(B) to testify or
23 offer evidence at the sealing hearing as to
24 the issues described in clauses (i) and (ii)
25 of that paragraph.

1 “(C) MAGISTRATE JUDGES.—

2 “(i) IN GENERAL.—A magistrate
3 judge may preside over a hearing under
4 this paragraph, and submit to a judge of
5 the court proposed findings of fact and
6 recommendations for the disposition, by a
7 judge of the court, of any sealing petition
8 filed under this subsection.

9 “(ii) RECOMMENDATIONS.—Not later
10 than 14 days after being served with a
11 copy, any party may serve and file written
12 objections to the proposed findings and
13 recommendations of the magistrate judge
14 as provided by rules of court. A judge of
15 the court shall make a de novo determina-
16 tion of those portions of the report or spec-
17 ified proposed findings or recommenda-
18 tions to which objection is made. A judge
19 of the court may accept, reject, or modify,
20 in whole or in part, the findings or rec-
21 ommendations made by the magistrate
22 judge. The judge may also receive further
23 evidence or recommit the matter to the
24 magistrate judge with instructions.

1 “(D) WAIVER OF HEARING.—If the peti-
2 tioner and the United States attorney that re-
3 ceives notice under paragraph (1)(A) so agree,
4 the court shall make a determination under
5 paragraph (4) without a hearing.

6 “(4) BASIS FOR DECISION.—

7 “(A) IN GENERAL.—In determining wheth-
8 er to enter a sealing order with respect to pro-
9 tected information relating to a covered non-
10 violent offense, the court—

11 “(i) shall consider—

12 “(I) the petition and any docu-
13 ments in the possession of the court;
14 and

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

18 “(ii) may not consider any non-Fed-
19 eral nonviolent crimes for which the peti-
20 tioner has been arrested or proceeded
21 against, or of which the petitioner has been
22 convicted; and

23 “(iii) shall balance—

24 “(I)(aa) the interest of public
25 knowledge and safety; and

1 “(bb) the legitimate interest, if
2 any, of the Government in maintain-
3 ing the accessibility of the protected
4 information, including any potential
5 impact of sealing the protected infor-
6 mation on Federal licensure, permit,
7 or employment restrictions; against

8 “(II)(aa) the conduct and dem-
9 onstrated desire of the petitioner to be
10 rehabilitated and positively contribute
11 to the community; and

12 “(bb) the interest of the peti-
13 tioner in having the protected infor-
14 mation sealed, including the harm of
15 the protected information to the abil-
16 ity of the petitioner to secure and
17 maintain employment.

18 “(B) BURDEN ON GOVERNMENT.—The
19 burden shall be on the Government to show
20 that the interests under subclause (I) of sub-
21 paragraph (A)(iii) outweigh the interests of the
22 petitioner under subclause (II) of that subpara-
23 graph.

24 “(5) WAITING PERIOD AFTER DENIAL.—If the
25 district court denies a sealing petition, the petitioner

1 may not file a new sealing petition with respect to
2 the same offense until the date that is 2 years after
3 the date of the denial.

4 “(6) UNIVERSAL FORM.—The Director of the
5 Administrative Office of the United States Courts
6 shall create a universal form, available over the
7 Internet and in paper form, that an individual may
8 use to file a sealing petition.

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

14 “(8) EFFECT OF SEALING.—Subsections (c)
15 through (e) of section 3560 shall apply to any record
16 that is sealed under this section.

17 “(9) PUBLIC DEFENDER ELIGIBILITY.—The
18 district court shall appoint counsel in accordance
19 with the plan of the district court in operation under
20 section 3006A to represent a petitioner for purposes
21 of this section.

22 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
23 tion may be construed to require a covered individual (as
24 such term is defined in section 3560) to submit a sealing

1 petition with respect to records required to be automati-
2 cally sealed under section 3560.

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

7 “(1) describes—

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

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

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

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

18 “(f) 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.”.

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

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

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