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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

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

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”.

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

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

5 **“§ 3560. Automatic sealing of certain records**

6 “(a) DEFINITIONS.—In this section—

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

9 “(A) is not a sex offender;

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

12 “(ii) has been convicted of an offense
13 under section 404 of the Controlled Substances
14 Act (21 U.S.C. 844) or any Federal nonviolent
15 offense involving marijuana;

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

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

22 “(ii) satisfying each condition of im-
23 prisonment, probation, or supervised re-
24 lease; and

25 “(D) has not been convicted for any of-
26 fense related to treason, terrorism, access and

1 transmission of sensitive defense information,
2 or other national security related convictions;

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

7 “(3) the term ‘sex offender’ has the meaning
8 given the term in section 111 of the Adam Walsh
9 Child Protection and Safety Act of 2006 (42 U.S.C.
10 16911).

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

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

24 “(2) ACQUITTAL; DETERMINATION NOT TO FILE
25 CHARGES.—

1 “(A) ACQUITTAL.—Sixty days after the
2 date on which a covered individual is acquitted,
3 exonerated, or otherwise subject to a judgment
4 which did not result in a conviction for a Fed-
5 eral offense, each record or portion thereof that
6 relates to the Federal offense shall be sealed
7 automatically.

8 “(B) DETERMINATION NOT TO FILE
9 CHARGES.—

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

20 “(ii) UNSEALING FOR FILING OF
21 CHARGES.—At the request of the Govern-
22 ment, a court may unseal a record sealed
23 under clause (i) in order for the Govern-
24 ment to file charges against the covered in-

1 dividual in relation to the Federal offense
2 described in clause (i).

3 “(iii) LIMITATION.—If a record is un-
4 sealed under clause (ii), the record may
5 only be resealed in accordance with sub-
6 paragraph (A), paragraph (1), or para-
7 graph (2).

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

13 “(d) EFFECT OF SEALING ORDER.—

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

18 “(2) PROTECTION FROM PERJURY LAWS.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), a covered individual with re-
21 spect to whom a record has been sealed under
22 subsection (b) shall not be required to disclose
23 such information, and shall not be subject to
24 prosecution under any civil or criminal provi-
25 sion of Federal or State law relating to perjury,

1 false swearing, or making a false statement, in-
2 cluding under section 1001, 1621, 1622, or
3 1623, for failing to recite or acknowledge any
4 information that has been sealed with respect to
5 the offense, or respond to any inquiry made of
6 the covered individual, relating to the protected
7 information.

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

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 (3)(A)(ii) that the individual is seek-
18 ing.

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

23 “(4) LAW ENFORCEMENT AND COURT EXCEP-
24 TION.—

1 “(A) ACCESS.—An officer or employee of a
2 law enforcement agency or a court may access
3 a sealed record of a covered individual in the
4 possession of the agency or court, or another
5 law enforcement agency or court, solely—

6 “(i) for investigatory or prosecutorial
7 purposes; or

8 “(ii) for a background check that re-
9 lates to—

10 “(I) employment with a law en-
11 forcement agency; or

12 “(II) any position that a Federal
13 agency designates as a—

14 “(aa) national security posi-
15 tion; or

16 “(bb) high-risk, public trust
17 position.

18 “(B) DISCLOSURE.—An officer or em-
19 ployee of a law enforcement agency or a court
20 may disclose information contained in a sealed
21 record only in order to carry out the purposes
22 described in subparagraph (A).

23 “(e) PENALTY FOR UNAUTHORIZED DISCLOSURE.—

24 “(1) IN GENERAL.—Whoever knowingly ac-
25 cesses or discloses information contained in a sealed

1 record in a manner that is prohibited under this sec-
2 tion, shall be fined under this title, imprisoned for
3 not more than 1 year, or both.

4 “(2) RULE OF CONSTRUCTION.—Nothing in
5 this subsection prevents a covered individual or an
6 individual who was the victim of an offense from ac-
7 cessing or disclosing information contained in a
8 sealed record.

9 “(f) RULEMAKING.—The Attorney General shall, by
10 rule, establish a process to ensure that any record in the
11 possession of a Federal agency required to be sealed under
12 this section, is automatically sealed in accordance with this
13 section.

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

23 “(h) EMPLOYER IMMUNITY FROM LIABILITY.—An
24 employer who employs or otherwise engages an individual
25 whose criminal records were sealed pursuant to this sec-

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

5 “(i) ESTABLISHMENT OF PARTNERSHIPS.—

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

13 “(2) AUTHORIZATION OF APPROPRIATIONS.—

14 There is authorized to be appropriated to
15 \$2,000,000 to carry out this subsection.

16 **“§ 3561. Sealing of certain records upon petition**

17 “(a) DEFINITIONS.—In this section—

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

20 “(A) a crime of violence (as defined in sub-
21 paragraphs (A) and (C) of section 3156(a)(4));

22 or

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

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

3 “(A) has been convicted of a covered non-
4 violent offense;

5 “(B) has fulfilled each requirement of the
6 sentence for the covered nonviolent offense, in-
7 cluding—

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

10 “(ii) satisfying each condition of im-
11 prisonment, probation, or supervised re-
12 lease;

13 “(C) has not been convicted of more than
14 2 felonies that are covered nonviolent offenses,
15 including any such convictions that have been
16 sealed (except that for purposes of this sub-
17 paragraph, two or more felony convictions that
18 are covered nonviolent offenses arising out of
19 the same act, or acts committed at the same
20 time, shall be treated as 1 felony conviction);

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

23 “(E) has not been convicted for any of-
24 fense related to treason, terrorism, access and

1 transmission of sensitive defense information,
2 or other national security related convictions.

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

5 “(4) the term ‘protected information’, with re-
6 spect to a covered nonviolent offense, means any ref-
7 erence 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 “(5) the term ‘sealing hearing’ means a hearing
16 held under subsection (c)(2); and

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

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

20 “(1) IN GENERAL.—On and after the date that
21 is 1 year after the date on which the eligible indi-
22 vidual has fulfilled each requirement described in
23 subsection (a)(2)(B), an eligible individual may file
24 a petition for a sealing order with respect to a cov-

1 ered nonviolent offense in a district court of the
2 United States.

3 “(2) NOTICE OF OPPORTUNITY TO FILE PETI-
4 TION.—

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

14 “(i) that potential eligibility;

15 “(ii) the necessary procedures for fil-
16 ing the sealing petition; and

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

18 “(B) DATES.—The dates described in this
19 subparagraph are—

20 “(i) the date on which the individual
21 is convicted; and

22 “(ii) the date on which the individual
23 has completed every term of imprisonment,
24 probation, or supervised release relating to
25 the offense.

1 “(c) PROCEDURES.—

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

6 “(A) to the office of the United States at-
7 torney that prosecuted the petitioner for the of-
8 fense; and

9 “(B) upon the request of the petitioner, to
10 any other individual that the petitioner deter-
11 mines may testify as to the—

12 “(i) conduct of the petitioner since the
13 date of the offense; or

14 “(ii) reasons that the sealing order
15 should be entered.

16 “(2) HEARING.—

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

20 “(i) except as provided in subpara-
21 graph (D), conduct a hearing in accord-
22 ance with subparagraph (B); and

23 “(ii) determine whether to enter a
24 sealing order for the individual in accord-
25 ance with paragraph (3).

1 “(B) OPPORTUNITY TO TESTIFY AND
2 OFFER EVIDENCE.—

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

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

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

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

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

25 “(3) BASIS FOR DECISION.—

1 “(A) IN GENERAL.—In determining wheth-
2 er to enter a sealing order with respect to pro-
3 tected information relating to a covered non-
4 violent offense, the court—

5 “(i) shall consider—

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

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

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

17 “(iii) shall balance—

18 “(I)(aa) the interest of public
19 knowledge and safety; and

20 “(bb) the legitimate interest, if
21 any, of the Government in maintain-
22 ing the accessibility of the protected
23 information, including any potential
24 impact of sealing the protected infor-

1 mation on Federal licensure, permit,
2 or employment restrictions; against

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

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

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

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

24 “(5) UNIVERSAL FORM.—The Director of the
25 Administrative Office of the United States Courts

1 shall create a universal form, available over the
2 Internet and in paper form, that an individual may
3 use to file a sealing petition.

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

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

12 “(8) PUBLIC DEFENDER ELIGIBILITY.—

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

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

21 “(i) the anticipated complexity of the
22 sealing hearing, including the number and
23 type of witnesses called to advocate against
24 the sealing of the protected information of
25 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.”.