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(Original Signature of Member)

116TH CONGRESS  
1ST SESSION

**H. R.**

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

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IN THE HOUSE OF REPRESENTATIVES

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

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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”.

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

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 feit 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 ccessing 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 subparagraph  
21           (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 whether to enter a sealing order with respect to protected information relating to a covered non-violent offense, the court—

5                     “(i) shall consider—

6                         “(I) the petition and any documents in the possession of the court;  
7                         and

9                         “(II) all the evidence and testimony presented at the sealing hearing, if such a hearing is conducted;

12                     “(ii) may not consider any non-Federal nonviolent crimes for which the petitioner has been arrested or proceeded against, or of which the petitioner has been convicted; and

17                     “(iii) shall balance—

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

20                         “(bb) the legitimate interest, if any, of the Government in maintaining the accessibility of the protected information, including any potential 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.”.