

115TH CONGRESS
2D SESSION

H. R. 5043

To permit expungement of records of certain nonviolent criminal offenses,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2018

Mr. COHEN (for himself, Mr. BLUMENAUER, Mr. CARSON of Indiana, Mr. CUMMINGS, Mr. GRIJALVA, Mr. HASTINGS, Mr. JOHNSON of Georgia, Ms. MOORE, and Ms. NORTON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To permit expungement of records of certain nonviolent
criminal offenses, 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 “Fresh Start Act of
5 2018”.

1 **SEC. 2. EXPUNGEMENT OF CRIMINAL RECORDS FOR CER-**
 2 **TAIN NONVIOLENT OFFENDERS.**

3 (a) IN GENERAL.—Chapter 229 of title 18, United
 4 States Code, is amended by inserting after subchapter C
 5 the following new subchapter:

6 “SUBCHAPTER D—EXPUNGEMENT

“Sec.

“3631. Expungement of certain criminal records in limited circumstances.

“3632. Requirements for expungement.

“3633. Procedure for expungement.

“3634. Effect of expungement.

“3635. Reversal of expunged records.

7 **“§ 3631. Expungement of certain criminal records in**
 8 **limited circumstances**

9 “(a) IN GENERAL.—Any eligible individual convicted
 10 of a nonviolent offense may file a petition under this sub-
 11 chapter for expungement with regard to that nonviolent
 12 offense.

13 “(b) DEFINITION OF NONVIOLENT OFFENSE.—In
 14 this subchapter, the term ‘nonviolent offense’ means any
 15 offense under this title that—

16 “(1) is not a crime of violence (as such term is
 17 defined in section 16 of title 18, United States
 18 Code); or

19 “(2) is not an offense that, by its nature, in-
 20 volves a substantial risk that physical force against
 21 the person or property of another may be used in
 22 the course of committing the offense.

1 **“§ 3632. Requirements for expungement**

2 “An individual is eligible for expungement under this
3 subchapter if that individual—

4 “(1) at the time of filing, had never been con-
5 victed of any criminal offense (including any offense
6 under State law) other than nonviolent offenses com-
7 mitted in a single criminal episode that includes the
8 offense for which expungement is sought; and

9 “(2) has fulfilled all requirements of the sen-
10 tence of the court in which the individual was con-
11 victed of that nonviolent offense, including—

12 “(A) paying all fines, restitutions, or as-
13 sessments;

14 “(B) completion of any term of imprison-
15 ment or period of probation;

16 “(C) meeting all conditions of a supervised
17 release; and

18 “(D) if so required by the terms of the
19 sentence, remaining free from dependency on or
20 abuse of alcohol or a controlled substance for a
21 period of not less than 1 year.

22 **“§ 3633. Procedure for expungement**

23 “(a) PETITION.—A petition for expungement may be
24 filed only in the court in which the petitioner was con-
25 victed of the nonviolent offense for which expungement is
26 sought. The clerk of the court shall serve that petition on

1 the United States Attorney for that district. Except as
2 provided under subsection (d), not later than 60 days after
3 service of such petition, the United States Attorney may
4 submit recommendations to the court and provide a copy
5 of those recommendations to the petitioner.

6 “(b) SUBMISSION OF EVIDENCE.—The petitioner and
7 the Government may file with the court evidence relating
8 to the petition.

9 “(c) BASIS FOR DECISION.—In making a decision on
10 the petition, the court shall consider all evidence and
11 weigh the interests of the petitioner against the best inter-
12 ests of justice and public safety.

13 “(d) SUBSEQUENT PETITION.—If the court denies
14 the petition, the petitioner may not file another such peti-
15 tion until the date that is 2 years after the date of such
16 denial.

17 “(e) MANDATORY GRANT OF PETITION.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), the court shall grant the petition of an
20 eligible petitioner who files the petition on a date
21 that is not earlier than the date that is 7 years after
22 the date on which the petitioner has fulfilled all re-
23 quirements of the sentence. The United States At-
24 torney may not submit recommendations under sub-
25 section (a) with regard to that petition.

1 “(2) EXCEPTIONS.—The court may not grant
2 under this subsection the petition of a petitioner who
3 has committed a nonviolent offense that is one of
4 the following:

5 “(A) Any offense under this title that
6 causes the petitioner to be required to register
7 under the Sexual Offender Registration and
8 Notification Act.

9 “(B) Any offense under this title that
10 causes a victim or victims to sustain a loss of
11 not less than \$25,000.

12 **“§ 3634. Effect of expungement**

13 “(a) IN GENERAL.—An order granting expungement
14 under this subchapter shall restore the individual con-
15 cerned, in the contemplation of the law, to the status such
16 individual occupied before the arrest or institution of
17 criminal proceedings for the nonviolent offense that was
18 the subject of the expungement.

19 “(b) NO DISQUALIFICATION; STATEMENTS.—An in-
20 dividual whose petition under this subchapter is granted
21 shall not be required to divulge information pertaining to
22 the nonviolent offense with regard to which expungement
23 is sought, nor shall such individual be held under any pro-
24 vision of law guilty of perjury, false answering, or making
25 a false statement by reason of the failure of the individual

1 to recite or acknowledge such arrest or institution of
2 criminal proceedings, or results thereof, in response to an
3 inquiry made of the individual for any purpose. The fact
4 that such individual has been convicted of the nonviolent
5 offense concerned shall not operate as a disqualification
6 of such individual to pursue or engage in any lawful activ-
7 ity, occupation, or profession.

8 “(c) RECORDS EXPUNGED OR SEALED.—Except as
9 provided under section 3635, on the grant of a petition
10 under this subchapter, the following shall be expunged:

11 “(1) Any official record relating to the arrest of
12 the petitioner, the institution of criminal proceedings
13 against the petitioner, or the results thereof (includ-
14 ing conviction) for the nonviolent offense with regard
15 to which expungement is sought.

16 “(2) Any reference in any official record to the
17 arrest of the petitioner, the institution of criminal
18 proceedings against the petitioner, or the results
19 thereof (including conviction) for the nonviolent of-
20 fense with regard to which expungement is sought.

21 “(d) EXCEPTIONS.—The Attorney General may make
22 rules providing for exceptions to subsection (c) as the At-
23 torney General determines necessary to serve the interests
24 of justice and public safety.

1 “(e) REVERSAL OF EXPUNGEMENT.—The records or
2 references expunged under this subchapter shall be re-
3 stored by operation of law as public records and may be
4 used in all court proceedings if the individual is convicted
5 of any Federal or State offense after the date of
6 expungement.

7 **“§ 3635. Disclosure of expunged records**

8 “(a) RECORD OF DISPOSITION TO BE RETAINED.—
9 The Attorney General shall retain an unaltered nonpublic
10 copy of—

11 “(1) any record that is expunged; and

12 “(2) any record containing a reference that is
13 expunged.

14 “(b) LAW ENFORCEMENT PURPOSES.—The Attorney
15 General shall maintain a nonpublic index of the records
16 described under subsection (a) containing, for each such
17 record, only the name of, and alphanumeric identifiers
18 that relate to, the individual who is the subject of such
19 record, the word ‘expunged’, and the name of the person,
20 agency, office, or department that has custody of the ex-
21 punged record, and shall not name the offense committed.
22 The index shall be made available only to an entity to
23 which records may be made available under subsection (d)
24 or to any Federal or State law enforcement agency that
25 has custody of such records.

1 “(c) AUTHORIZED DISCLOSURES.—

2 “(1) IN GENERAL.—Except as provided in para-
3 graph (2), any record described in subsection (a)
4 pertaining to an individual may be made available
5 only—

6 “(A) to a Federal or State court or Fed-
7 eral, State, or local law enforcement agency, in
8 the case of a criminal investigation or prosecu-
9 tion of an individual or in conducting a back-
10 ground check on an individual who has applied
11 for employment by such court or agency; or

12 “(B) to any State or local agency with re-
13 sponsibility for the issuance of licenses to pos-
14 sess firearms, in the case of an individual ap-
15 plying for such a license.

16 “(2) AUTHORIZED DISCLOSURE TO INDIVID-
17 UALS.—On application of the individual to whom a
18 record described under subsection (a) pertains, that
19 record may be made available to the individual.

20 “(d) PUNISHMENT FOR IMPROPER DISCLOSURE.—
21 Whoever intentionally makes or attempts to make a disclo-
22 sure, other than a disclosure authorized under subsection
23 (c), of any record or reference that is expunged under this
24 subchapter shall be fined under this title or imprisoned
25 not more than one year, or both.”.

1 (b) CLERICAL AMENDMENT.—The table of sub-
 2 chapters at the beginning of chapter 229 of title 18,
 3 United States Code, is amended by adding at the end the
 4 following item:

“D. Expungement 3631”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this Act shall apply to individuals convicted of an offense
 7 before, on, or after the date of the enactment of this Act.

8 **SEC. 3. INCENTIVE PAYMENTS UNDER THE BYRNE GRANTS**
 9 **PROGRAM FOR STATES TO IMPLEMENT CER-**
 10 **TAIN EXPUNGEMENT PROCEDURES AND RE-**
 11 **QUIREMENTS.**

12 Section 505 of title I of the Omnibus Crime Control
 13 and Safe Streets Act of 1968 (42 U.S.C. 3755) is amend-
 14 ed by adding at the end the following new subsection:

15 “(i) PAYMENT INCENTIVES FOR STATES TO IMPLE-
 16 MENT CERTAIN EXPUNGEMENT PROCEDURES AND RE-
 17 QUIREMENTS.—

18 “(1) PAYMENT INCENTIVES.—

19 “(A) BONUS.—In the case of a State that
 20 receives funds for a fiscal year (beginning with
 21 fiscal year 2018) under this subpart and that
 22 has in effect throughout the State for such fis-
 23 cal year laws to provide for expungement with
 24 respect to certain criminal records that are sub-
 25 stantially similar to the Federal rights, proce-

1 dures, requirements, effects, and penalties set
2 forth in subchapter D of chapter 229 of title
3 18, United States Code, the amount of funds
4 that would otherwise be allocated under this
5 subpart to such State for such fiscal year shall
6 be increased by 5 percent.

7 “(B) PENALTY.—In the case of a State
8 that receives funds for a fiscal year (beginning
9 with fiscal year 2018) under this subpart and
10 that does not have in effect throughout the
11 State for such fiscal year laws to provide for
12 expungement with respect to certain criminal
13 records that are substantially similar to the
14 Federal rights, procedures, requirements, ef-
15 fects, and penalties set forth in subchapter D of
16 chapter 229 of title 18, United States Code, the
17 amount of such funds that would otherwise be
18 allocated under this subpart to such State for
19 such fiscal year shall be decreased by 5 percent.

20 “(2) REPORTS.—The Attorney General shall
21 submit to the Committee of the Judiciary of the
22 House of Representatives and the Committee of the
23 Judiciary of the Senate an annual report (which
24 shall be made publicly available) that, with respect
25 to the year involved—

1 “(A) lists the States that have (and those
2 States which do not have) in effect throughout
3 the State laws to provide for expungement with
4 respect to certain criminal records that are sub-
5 stantially similar to the Federal rights, proce-
6 dures, requirements, effects, and penalties set
7 forth in subchapter D of chapter 229 of title
8 18, United States Code; and

9 “(B) describes the increases granted to
10 States under paragraph (1)(A), the penalties
11 imposed on States under paragraph (1)(B), and
12 the amounts that States being penalized under
13 paragraph (1)(B) would have received if such
14 States had in effect laws described in subpara-
15 graph (A) of this paragraph.

16 “(3) AUTHORIZATION OF APPROPRIATIONS.—
17 There is authorized to be appropriated to carry out
18 this subsection for each of the fiscal years 2019
19 through 2024, in addition to funds made available
20 under section 508, such sums as may be necessary,
21 but not to exceed the amount that is 5 percent of
22 the total amount appropriated pursuant to such sec-
23 tion for such fiscal year.”.

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