

117TH CONGRESS
2D SESSION

S. 5146

To provide for the sealing of records relating to Federal nonviolent criminal offenses related to substance use disorders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2022

Mr. MANCHIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the sealing of records relating to Federal nonviolent criminal offenses related to substance use disorders, 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 Start Act of
5 2022”.

6 **SEC. 2. SEALING OF CRIMINAL RECORDS.**

7 (a) IN GENERAL.—Chapter 229 of title 18, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 **“Subchapter E—Sealing of Criminal Records**

“Sec.

“3641. Definitions.

“3642. Sealing petition.

“3643. Effect of sealing order.

2 **“§ 3641. Definitions**

3 “In this subchapter—

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

6 “(A) a crime of violence (as that term is
7 defined in section 16);

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

11 “(C) an offense involving a victim under
12 the age of 18 years; or

13 “(D) a serious drug offense (as that term
14 is defined in section 3559(c)(2));

15 “(2) the term ‘covered treatment program’
16 means a substance use disorder treatment program
17 or recovery support program that is licensed, cer-
18 tified, or accredited by a State or national accredita-
19 tion body, including peer-driven and sober-living pro-
20 grams;

21 “(3) the term ‘eligible individual’ means an in-
22 dividual who—

1 “(A) has been arrested for or convicted of
2 a qualifying offense;

3 “(B) in the case of a conviction described
4 in subparagraph (A)—

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

8 “(I) completing each term of im-
9 prisonment, probation, or supervised
10 release; and

11 “(II) satisfying each condition of
12 imprisonment, probation, or super-
13 vised release;

14 “(ii) has satisfactorily completed a
15 covered treatment program; and

16 “(iii) has rendered service for a period
17 of not less than 180 days—

18 “(I) as a peer mentor in a sub-
19 stance use disorder peer mentorship
20 program; or

21 “(II) if service described in sub-
22 clause (I) is not practicable, as a vol-
23 unteer;

24 “(C) has not been convicted of more than
25 2 felonies that are covered nonviolent offenses,

1 including any such convictions that have been
2 sealed; and

3 “(D) has not been convicted of any felony
4 that is not a covered nonviolent offense;

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

7 “(5) the term ‘protected information’, with re-
8 spect to a qualifying offense, means any reference
9 to—

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

12 “(B) the institution of criminal pro-
13 ceedings against an individual for the offense;
14 or

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

17 “(6) the term ‘qualifying offense’ means—

18 “(A) a covered nonviolent offense com-
19 mitted by an individual whose substance use
20 disorder is a substantial contributing factor in
21 the commission of the offense, as determined by
22 a court reviewing a sealing petition with respect
23 to the offense under section 3642(b)(3)(A)(i);
24 or

“(B) in the case of an arrest for an offense that does not result in a conviction, a covered nonviolent offense with respect to which the act that would have constituted the offense is committed by an individual whose substance use disorder is a substantial contributing factor in the commission of the act, as determined by a court reviewing a sealing petition with respect to the offense under section 3642(b)(3)(A)(i);

“(7) the term ‘seal’—

“(A) means—

“(i) to close a record from public viewing so that the record cannot be examined except by court order; and

“(ii) to physically seal the record shut and label the record ‘SEALED’ or, in the case of an electronic record, the substantive equivalent; and

“(B) has the effect described in section 3643, including—

“(i) the right to treat the offense to which a sealed record relates, and any arrest, criminal proceeding, conviction, or sentence relating to the offense, as if it never occurred; and

1 “(ii) protection from civil and criminal
 2 perjury, false swearing, and false state-
 3 ment laws with respect to a sealed record;

4 “(8) the term ‘sealing hearing’ means a hearing
 5 held under section 3642(b)(2);

6 “(9) the term ‘sealing petition’ means a petition
 7 for a sealing order filed under section 3642(a); and

8 “(10) the term ‘substance use disorder peer
 9 mentorship program’ means a peer mentorship pro-
 10 gram at a covered treatment program.

11 **“§ 3642. Sealing petition**

12 “(a) RIGHT TO FILE SEALING PETITION.—

13 “(1) DATE OF ELIGIBILITY.—

14 “(A) CONVICTED INDIVIDUALS.—

15 “(i) IN GENERAL.—On and after the
 16 date that is 3 years after the applicable
 17 date under clause (ii), an eligible individual
 18 who was convicted of a qualifying offense
 19 and has not been arrested for or convicted
 20 of a substance use-related offense since
 21 that applicable date may file a petition for
 22 a sealing order with respect to the quali-
 23 fying offense in a district court of the
 24 United States.

1 “(ii) APPLICABLE DATE.—The appli-
2 cable date—

3 “(I) for an eligible individual who
4 was convicted of a qualifying offense
5 and sentenced to a term of imprison-
6 ment, probation, or supervised release
7 is the date on which the eligible indi-
8 vidual has fulfilled each requirement
9 under section 3641(3)(B)(i); and

10 “(II) for an eligible individual
11 who was convicted of a qualifying of-
12 fense and not sentenced to a term of
13 imprisonment, probation, or super-
14 vised release is the date on which the
15 case relating to the qualifying offense
16 is disposed of.

17 “(iii) VIOLATION OF 3-YEAR GOOD BE-
18 HAVIOR REQUIREMENT.—

19 “(I) IN GENERAL.—An eligible
20 individual who is prohibited from fil-
21 ing a petition for a sealing order with
22 respect to a qualifying offense under
23 clause (i) because the individual is ar-
24 rested for or convicted of a substance
25 use-related offense on or after the ap-

1 plicable date under clause (ii) may file
 2 such a petition on or after the date as
 3 of which 3 years have elapsed since
 4 the last such arrest or conviction.

5 “(II) RULE OF CONSTRU-
 6 TION.—Nothing in subclause (I) shall
 7 be construed to allow an eligible indi-
 8 vidual to file more than 1 petition for
 9 a sealing order with respect to a par-
 10 ticular qualifying offense.

11 “(B) INDIVIDUALS NOT CONVICTED.—An
 12 eligible individual who is arrested for but not
 13 convicted of a qualifying offense may file a peti-
 14 tion for a sealing order with respect to the
 15 qualifying offense in a district court of the
 16 United States on and after the date on which
 17 the case relating to the offense is disposed of.

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

20 “(A) CONVICTED INDIVIDUALS.—

21 “(i) IN GENERAL.—If an individual is
 22 convicted of a covered nonviolent offense
 23 and will potentially be eligible to file a
 24 sealing petition with respect to the offense
 25 upon fulfilling each requirement under sec-

tion 3641(3)(B), the court in which the individual is convicted shall, in writing, inform the individual, on each date described in clause (ii) of this subparagraph, of—

“(I) that potential eligibility;

“(II) the necessary procedures for filing the sealing petition; and

“(III) the benefits of sealing a record, including protection from civil and criminal perjury, false swearing, and false statement laws with respect to the record.

“(ii) DATES.—The dates described in this clause are—

“(I) the date on which the individual is convicted; and

“(II) the date on which the individual has fulfilled each requirement under section 3641(3)(B)(i).

“(B) INDIVIDUALS NOT CONVICTED.—

“(i) ARREST ONLY.—If an individual is arrested for a covered nonviolent offense, criminal proceedings are not instituted against the individual for the offense, and the individual is potentially eligible to

1 file a sealing petition with respect to the
2 offense, on the date on which the case re-
3 lating to the offense is disposed of, the ar-
4 resting authority shall, in writing, inform
5 the individual of—

6 “(I) that potential eligibility;

7 “(II) the necessary procedures
8 for filing the sealing petition; and

9 “(III) the benefits of sealing a
10 record, including protection from civil
11 and criminal perjury, false swearing,
12 and false statement laws with respect
13 to the record.

14 “(ii) COURT PROCEEDINGS.—If an in-
15 dividual is arrested for a covered non-
16 violent offense, criminal proceedings are in-
17 stituted against the individual for the of-
18 fense, the individual is not convicted of the
19 offense, and the individual is potentially el-
20 igible to file a sealing petition with respect
21 to the offense, on the date on which the
22 case relating to the offense is disposed of,
23 the court in which the criminal proceedings
24 take place shall, in writing, inform the in-
25 dividual of—

1 “(I) that potential eligibility;
2 “(II) the necessary procedures
3 for filing the sealing petition; and
4 “(III) the benefits of sealing a
5 record, including protection from civil
6 and criminal perjury, false swearing,
7 and false statement laws with respect
8 to the record.

9 “(b) PROCEDURES.—

10 “(1) NOTIFICATION TO PROSECUTOR AND
11 OTHER INDIVIDUALS.—If an individual files a peti-
12 tion under subsection (a) with respect to a quali-
13 fying offense, the district court in which the petition
14 is filed shall provide notice of the petition—

15 “(A) to the office of the United States at-
16 torney that prosecuted or would have pros-
17 ecuted the petitioner for the offense; and

18 “(B) upon the request of the petitioner, to
19 any other individual that the petitioner deter-
20 mines may testify as to the—

21 “(i) conduct of the petitioner since the
22 date of the offense or arrest; or

23 “(ii) reasons that the sealing order
24 should be entered.

25 “(2) HEARING.—

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

4 “(i) except as provided in subpara-
5 graph (D), conduct a hearing in accord-
6 ance with subparagraph (B); and

7 “(ii) determine whether to enter a
8 sealing order for the individual in accord-
9 ance with paragraph (3).

10 “(B) OPPORTUNITY TO TESTIFY AND
11 OFFER EVIDENCE.—

12 “(i) PETITIONER.—The petitioner
13 may testify or offer evidence at the sealing
14 hearing in support of sealing, including
15 evidence of ongoing sobriety.

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

22 “(iii) OTHER INDIVIDUALS.—An indi-
23 vidual who receives notice under paragraph
24 (1)(B) may testify or offer evidence at the

1 sealing hearing as to the issues described
2 in clauses (i) and (ii) of that paragraph.

3 “(C) MAGISTRATE JUDGES.—A magistrate
4 judge may preside over a hearing under this
5 paragraph.

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

11 “(3) BASIS FOR DECISION.—

12 “(A) IN GENERAL.—In determining wheth-
13 er to enter a sealing order with respect to pro-
14 tected information relating to a covered non-
15 violent offense, the court shall—

16 “(i) determine whether the offense is
17 a qualifying offense based on evidence that
18 the petitioner suffered from an active sub-
19 stance use disorder at the time of the com-
20 mission of—

21 “(I) the offense; or

22 “(II) the act that would have
23 constituted the offense, in the case of
24 an arrest for an offense that does not
25 result in a conviction;

1 “(ii) consider—

2 “(I) the petition and any docu-
3 ments in the possession of the court;
4 and

5 “(II) all the evidence and testi-
6 mony presented at the sealing hear-
7 ing, if such a hearing is conducted;
8 and

9 “(iii) 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 of the peti-
20 tioner and the demonstrated desire of
21 the petitioner to be rehabilitated and
22 positively contribute to the commu-
23 nity; and

24 “(bb) the interest of the peti-
25 tioner in having the protected infor-

1 mation sealed, including the harm of
2 the protected information to the abil-
3 ity of the petitioner to secure and
4 maintain employment.

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

11 “(C) REASONING.—The court shall provide
12 the petitioner and the Government with a writ-
13 ten decision explaining the reasons for the de-
14 termination made under subparagraph (A).

15 “(4) APPEAL.—A denial of a sealing petition by
16 a district court under this section shall be subject to
17 review by a court of appeals in accordance with sec-
18 tion 1291 of title 28.

19 “(5) UNIVERSAL FORM.—The Director of the
20 Administrative Office of the United States Courts
21 shall create a universal form, available over the
22 internet and in paper form, that an individual may
23 use to file a sealing petition.

24 “(6) FEE WAIVER.—The Director of the Ad-
25 ministrative Office of the United States Courts shall

1 by regulation establish a minimally burdensome
2 process under which indigent petitioners may obtain
3 a waiver of any fee for filing a sealing petition.

4 “(7) REPORTING.—Not later than 2 years after
5 the date of enactment of this subchapter, and each
6 year thereafter, each district court of the United
7 States shall publish and submit to the Committee on
8 the Judiciary of the Senate and the Committee on
9 the Judiciary of the House of Representatives a re-
10 port that—

11 “(A) describes—

12 “(i) the number of sealing petitions
13 granted and denied under this section;

14 “(ii) the number of instances in which
15 the office of a United States attorney sup-
16 ported or opposed a sealing petition; and

17 “(iii) the number and amount of fees
18 assessed and waived under this section;

19 “(B) includes any supporting data that—

20 “(i) the court determines relevant;
21 and

22 “(ii) does not name any petitioner;
23 and

1 “(C) disaggregates all relevant data by
 2 race, ethnicity, gender, and the nature of the
 3 offense.

4 “(8) PUBLIC DEFENDER ELIGIBILITY.—

5 “(A) IN GENERAL.—The district court
 6 may, in its discretion, appoint counsel in ac-
 7 cordance with the plan of the district court in
 8 operation under section 3006A to represent a
 9 petitioner for purposes 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 **“§ 3643. Effect of sealing order**

22 “(a) IN GENERAL.—Except as provided in this sec-
 23 tion, if a district court of the United States enters a seal-
 24 ing order with respect to a qualifying offense, the offense,
 25 and any arrest, criminal proceeding, conviction, or sen-

1 tence relating to the offense, shall be treated as if it never
2 occurred.

3 “(b) VERIFICATION OF SEALING.—If a district court
4 of the United States enters a sealing order with respect
5 to a qualifying offense, the court shall—

6 “(1) send a copy of the sealing order to each
7 entity or person known to the court that possesses
8 a record containing protected information that re-
9 lates to the offense, including each—

10 “(A) law enforcement agency; and

11 “(B) public or private correctional or de-
12 tention facility;

13 “(2) in the sealing order, require each entity or
14 person described in paragraph (1) to—

15 “(A) seal the record in accordance with
16 this section; and

17 “(B) submit a written certification to the
18 court, under penalty of perjury, that the entity
19 or person has sealed each paper and electronic
20 copy of the record;

21 “(3) seal each paper and electronic copy of the
22 record in the possession of the court; and

23 “(4) after receiving a written certification from
24 each entity or person under paragraph (2)(B), notify
25 the petitioner that each entity or person described in

1 paragraph (1) has sealed each paper and electronic
 2 copy of the record.

3 “(c) PROTECTION FROM PERJURY LAWS.—Except as
 4 provided in subsection (f)(3)(A), a petitioner with respect
 5 to whom a sealing order has been entered for a qualifying
 6 offense shall not be subject to prosecution under any civil
 7 or criminal provision of Federal or State law relating to
 8 perjury, false swearing, or making a false statement, in-
 9 cluding section 1001, 1621, 1622, or 1623, for failing to
 10 recite or acknowledge any protected information with re-
 11 spect to the offense or respond to any inquiry made of
 12 the petitioner, relating to the protected information, for
 13 any purpose.

14 “(d) ATTORNEY GENERAL NONPUBLIC RECORDS.—
 15 The Attorney General—

16 “(1) shall maintain a nonpublic record of all
 17 protected information that has been sealed under
 18 this subchapter; and

19 “(2) may access or utilize protected information
 20 only—

21 “(A) for legitimate investigative purposes;

22 “(B) in defense of any civil suit arising out
 23 of the facts of the arrest or subsequent pro-
 24 ceedings; or

1 “(C) if the Attorney General determines
2 that disclosure is necessary to serve the inter-
3 ests of justice, public safety, or national secu-
4 rity.

5 “(e) LAW ENFORCEMENT ACCESS.—A Federal or
6 State law enforcement agency may access a record that
7 is sealed under this subchapter solely—

8 “(1) to determine whether the individual to
9 whom the record relates is eligible for a first-time-
10 offender diversion program;

11 “(2) for investigatory, prosecutorial, or Federal
12 supervision purposes; or

13 “(3) for a background check that relates to law
14 enforcement employment or any employment that re-
15 quires a government security clearance.

16 “(f) PROHIBITION ON DISCLOSURE.—

17 “(1) PROHIBITION.—Except as provided in
18 paragraph (3), it shall be unlawful to intentionally
19 make or attempt to make an unauthorized disclosure
20 of any protected information from a record that has
21 been sealed under this subchapter.

22 “(2) PENALTY.—Any person who violates para-
23 graph (1) shall be fined under this title, imprisoned
24 for not more than 1 year, or both.

25 “(3) EXCEPTIONS.—

1 “(A) BACKGROUND CHECKS.—An indi-
2 vidual who is the subject of a record sealed
3 under this subchapter shall, and a Federal or
4 State law enforcement agency that possesses
5 such a record may, disclose the record in the
6 case of a background check for—

7 “(i) law enforcement employment; or

8 “(ii) any position that a Federal agen-
9 cy designates as a—

10 “(I) national security position; or

11 “(II) high-risk, public trust posi-
12 tion.

13 “(B) DISCLOSURE TO ARMED FORCES.—A
14 person may disclose protected information from
15 a record sealed under this subchapter to the
16 Secretaries of the military departments (or the
17 Secretary of Homeland Security with respect to
18 the Coast Guard when it is not operating as a
19 service in the Navy) for the purpose of vetting
20 an enlistment or commission, or with regard to
21 any member of the Armed Forces.

22 “(C) CRIMINAL AND JUVENILE PRO-
23 CEEDINGS.—A prosecutor may disclose pro-
24 tected information from a record sealed under

1 this subchapter if the information pertains to a
2 potential witness in a Federal or State—

3 “(i) criminal proceeding; or

4 “(ii) juvenile delinquency proceeding.

5 “(D) AUTHORIZATION FOR INDIVIDUAL TO
6 DISCLOSE OWN RECORD.—An individual who is
7 the subject of a record sealed under this sub-
8 chapter may choose to disclose the record.”.

9 (b) APPLICABILITY.—The right to file a sealing peti-
10 tion under section 3642(a) of title 18, United States Code,
11 as added by subsection (a), shall apply with respect to a
12 qualifying offense (as defined in section 3641(a) of such
13 title) that is committed or alleged to have been committed
14 before, on, or after the date of enactment of this Act.

15 (c) TRANSITION PERIOD FOR HEARINGS DEAD-
16 LINE.—During the 1-year period beginning on the date
17 of enactment of this Act, section 3642(b)(2)(A) of title
18 18, United States Code, as added by subsection (a), shall
19 be applied by substituting “1 year” for “180 days”.

20 (d) TECHNICAL AND CONFORMING AMENDMENT.—
21 The table of subchapters for chapter 229 of title 18,
22 United States Code, is amended by adding at the end the
23 following:

“E. Sealing of Criminal Records 3641”.

1 **SEC. 3. STATE INCENTIVES.**

2 (a) COPS GRANTS PRIORITY.—Section 1701 of title
3 I of the Omnibus Crime Control and Safe Streets Act of
4 1968 (34 U.S.C. 10381) is amended—

5 (1) in subsection (c)—

6 (A) in paragraph (2), by striking “or” at
7 the end;

8 (B) in paragraph (3), by striking the pe-
9 riod at the end and inserting “; or”; and

10 (C) by adding at the end the following:

11 “(4) subject to subsection (n), from an appli-
12 cant in a State that has in effect—

13 “(A) a law relating to the sealing of adult
14 records that is substantially similar to, or more
15 generous to the former offender than, the
16 amendments made by section 2 of the Clean
17 Start Act of 2022; or

18 “(B) a law that allows an individual who
19 has successfully sealed a criminal record to be
20 free from civil and criminal perjury laws.”; and

21 (2) by adding at the end the following:

22 “(n) DEGREE OF PRIORITY RELATING TO SEALING
23 LAWS COMMENSURATE WITH DEGREE OF COMPLI-
24 ANCE.—If the Attorney General, in awarding grants under
25 this part, gives preferential consideration to any applica-
26 tion as authorized under subsection (c)(4), the Attorney

1 General shall base the degree of preferential consideration
2 given to an application from an applicant in a particular
3 State on the number of subparagraphs under subsection
4 (c)(4) that the State has satisfied, relative to the number
5 of such subparagraphs that each other State has satis-
6 fied.”.

7 (b) ATTORNEY GENERAL GUIDELINES AND TECH-
8 NICAL ASSISTANCE.—The Attorney General shall issue
9 guidelines and provide technical assistance to assist States
10 in complying with the incentive under paragraph (4) of
11 section 1701(c) of title I of the Omnibus Crime Control
12 and Safe Streets Act of 1968 (34 U.S.C. 10381(c)), as
13 added by subsection (a).

○