

112TH CONGRESS
1ST SESSION

H. R. 2449

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

IN THE HOUSE OF REPRESENTATIVES

JULY 7, 2011

Mr. COHEN (for himself, Mr. GRIJALVA, Mr. PAYNE, Mr. JACKSON of Illinois,
Mr. JOHNSON of Georgia, Mr. FILNER, and Mr. PIERLUISI) 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 2011”.

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

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

1 “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.

2 **“§ 3631. Expungement of certain criminal records in**
3 **limited circumstances**

4 “(a) IN GENERAL.—Any eligible individual convicted
5 of a nonviolent offense may file a petition under this sub-
6 chapter for expungement with regard to that nonviolent
7 offense.

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

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

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

18 **“§ 3632. Requirements for expungement**

19 “An individual is eligible for expungement under this
20 subchapter if that individual—

21 “(1) at the time of filing, had never been con-
22 victed of any criminal offense (including any offense

1 under State law) other than nonviolent offenses com-
2 mitted in a single criminal episode that includes the
3 offense for which expungement is sought; and

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

7 “(A) paying all fines, restitutions, or as-
8 sessments;

9 “(B) completion of any term of imprison-
10 ment or period of probation;

11 “(C) meeting all conditions of a supervised
12 release; and

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

17 **“§ 3633. Procedure for expungement**

18 “(a) PETITION.—A petition for expungement may be
19 filed only in the court in which the petitioner was con-
20 victed of the nonviolent offense for which expungement is
21 sought. The clerk of the court shall serve that petition on
22 the United States Attorney for that district. Except as
23 provided under subsection (d), not later than 60 days after
24 service of such petition, the United States Attorney may

1 submit recommendations to the court and provide a copy
2 of those recommendations to the petitioner.

3 “(b) SUBMISSION OF EVIDENCE.—The petitioner and
4 the Government may file with the court evidence relating
5 to the petition.

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

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

14 “(e) MANDATORY GRANT OF PETITION.—

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

23 “(2) EXCEPTIONS.—The court may not grant
24 under this subsection the petition of a petitioner who

1 has committed a nonviolent offense that is one of
2 the following:

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

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

10 **“§ 3634. Effect of expungement**

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

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

1 inquiry made of the individual for any purpose. The fact
2 that such individual has been convicted of the nonviolent
3 offense concerned shall not operate as a disqualification
4 of such individual to pursue or engage in any lawful activ-
5 ity, occupation, or profession.

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

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

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

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

23 “(e) REVERSAL OF EXPUNGEMENT.—The records or
24 references expunged under this subchapter shall be re-
25 stored by operation of law as public records and may be

1 used in all court proceedings if the individual is convicted
2 of any Federal or State offense after the date of
3 expungement.

4 **“§ 3635. Disclosure of expunged records**

5 “(a) RECORD OF DISPOSITION TO BE RETAINED.—

6 The Attorney General shall retain an unaltered nonpublic
7 copy of—

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

9 “(2) any record containing a reference that is
10 expunged.

11 “(b) LAW ENFORCEMENT PURPOSES.—The Attorney

12 General shall maintain a nonpublic index of the records

13 described under subsection (a) containing, for each such

14 record, only the name of, and alphanumeric identifiers

15 that relate to, the individual who is the subject of such

16 record, the word ‘expunged’, and the name of the person,

17 agency, office, or department that has custody of the ex-

18 punged record, and shall not name the offense committed.

19 The index shall be made available only to an entity to

20 which records may be made available under subsection (d)

21 or to any Federal or State law enforcement agency that

22 has custody of such records.

23 “(c) AUTHORIZED DISCLOSURES.—

24 “(1) IN GENERAL.—Except as provided in para-

25 graph (2), any record described in subsection (a)

1 pertaining to an individual may be made available
2 only—

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

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

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

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

23 (b) CLERICAL AMENDMENT.—The table of sub-
24 chapters at the beginning of chapter 229 of title 18,

1 United States Code, is amended by adding at the end the
 2 following item:

“D. Expungement 3631”.

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

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

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

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

16 “(1) PAYMENT INCENTIVES.—

17 “(A) BONUS.—In the case of a State that
 18 receives funds for a fiscal year (beginning with
 19 fiscal year 2011) under this subpart and that
 20 has in effect throughout the State for such fis-
 21 cal year laws to provide for expungement with
 22 respect to certain criminal records that are sub-
 23 stantially similar to the Federal rights, proce-
 24 dures, requirements, effects, and penalties set
 25 forth in subchapter D of chapter 229 of title

1 18, United States Code, the amount of funds
2 that would otherwise be allocated under this
3 subpart to such State for such fiscal year shall
4 be increased by 5 percent.

5 “(B) PENALTY.—In the case of a State
6 that receives funds for a fiscal year (beginning
7 with fiscal year 2011) under this subpart and
8 that does not have in effect throughout the
9 State for such fiscal year laws to provide for
10 expungement with respect to certain criminal
11 records that are substantially similar to the
12 Federal rights, procedures, requirements, ef-
13 fects, and penalties set forth in subchapter D of
14 chapter 229 of title 18, United States Code, the
15 amount of such funds that would otherwise be
16 allocated under this subpart to such State for
17 such fiscal year shall be decreased by 5 percent.

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

24 “(A) lists the States that have (and those
25 States which do not have) in effect throughout

1 the State laws to provide for expungement with
2 respect to certain criminal records that are sub-
3 stantially similar to the Federal rights, proce-
4 dures, requirements, effects, and penalties set
5 forth in subchapter D of chapter 229 of title
6 18, United States Code; and

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

14 “(3) AUTHORIZATION OF APPROPRIATIONS.—
15 There is authorized to be appropriated to carry out
16 this subsection for each of the fiscal years 2011
17 through 2015, in addition to funds made available
18 under section 508, such sums as may be necessary,
19 but not to exceed the amount that is 5 percent of
20 the total amount appropriated pursuant to such sec-
21 tion for such fiscal year.”.

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