

115TH CONGRESS
1ST SESSION

H. R. 61

To provide for the expungement and sealing of youth criminal records, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

Ms. JACKSON LEE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the expungement and sealing of youth 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 “Fair Chance for Youth
5 Act of 2017”.

6 **SEC. 2. YOUTH SEALING AND EXPUNGEMENT.**

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 D—EXPUNGEMENT AND
2 SEALING OF YOUTH CRIMINAL RECORDS

“Sec.

“3631. Youth Offense Expungement and Sealing Review Board.

“3632. Expungement and sealing for youth.

“3633. Definitions.

“3634. Reporting.

3 **“§ 3631. Youth Offense Expungement and Sealing Re-**
4 **view Board**

5 “(a) IN GENERAL.—The Chief Judge for each Fed-
6 eral District shall establish—

7 “(1) a Youth Offense Expungement and Seal-
8 ing Review Board (hereinafter in this section re-
9 ferred to as the ‘Review Board’) to review petitions
10 for discretionary expungement and sealing of youth
11 offenses; and

12 “(2) the rules and procedures governing the op-
13 eration of the Review Board in the exercise of its
14 powers under subsection (c).

15 “(b) COMPOSITION.—The Review Board shall include
16 one representative, selected by the Chief Judge to serve
17 without compensation, from each of the following:

18 “(1) The Department of Justice.

19 “(2) The United States Probation and Pretrial
20 Services System.

21 “(3) The Office of the Federal Defender or a
22 designated Criminal Justice Act panel attorney or
23 private criminal defense attorney.

1 “(c) POWERS.—The Review Board shall—

2 “(1) review petitions under this subchapter to
3 determine whether the youth, and the offense on
4 which the petition is based, meet the eligibility re-
5 quirements for expungement or sealing consider-
6 ation;

7 “(2) for petitions meeting the eligibility require-
8 ments, evaluate those petitions on the merits in
9 order to make a recommendation on the advisability
10 of granting the petition; and

11 “(3) convey its recommendation, with a written
12 explanation, to the Chief Judge in each Federal Dis-
13 trict, or a designee of the Chief Judge, for consider-
14 ation.

15 “(d) RECOMMENDATION.—In making its rec-
16 ommendation, the Review Board—

17 “(1) shall consider all the evidence and testi-
18 mony presented in the petition and any hearings
19 held on the petition;

20 “(2) may not consider any arrest or prosecution
21 that did not result in a conviction and that took
22 place prior to the conviction or arrest the petitioner
23 is seeking to expunge or seal; and

24 “(3) shall balance—

1 “(A) the public safety, the interest of pub-
2 lic knowledge, and any legitimate interest of the
3 Government in maintaining the accessibility of
4 the protected information; against

5 “(B) the interest of the petitioner in hav-
6 ing the petition granted, including the benefit
7 to the petitioner’s ability to positively contribute
8 to the community, and the petitioner’s conduct
9 and demonstrated desire to be rehabilitated.

10 “(e) COURT TO CONSIDER AND DECIDE UPON PETI-
11 TIONS.—The Court shall consider and decide upon each
12 petition for which the court receives a recommendation
13 from the Review Board. The Court’s decision to grant or
14 deny the petition shall give significant weight to the Re-
15 view Board recommendation. The Court shall grant the
16 petition unless the Government shows the interests de-
17 scribed in subsection (d)(3)(A) outweigh the interests of
18 the petitioner described in subsection (d)(3)(B).

19 “(f) ONE OPPORTUNITY.—A youth may only file a
20 petition for expungement or sealing under this subchapter
21 once and the decision of the district court on the petition
22 shall be final and is not appealable.

23 “(g) ONLINE FORMS FOR PETITIONS.—The Director
24 of the Administrative Office of the United States Courts
25 shall create and make available to the public, online and

1 in paper form, a universal form to file a petition under
2 this section, and establish a process under which indigent
3 petitioners may obtain a waiver of any fee for filing a peti-
4 tion under this section.

5 “(h) MAKING AVAILABLE STANDARD FORMS FOR
6 COURT ORDERS.—The Director of the Administrative Of-
7 fice of the United States Courts shall create and make
8 available to the Chief Judge of every Federal district
9 standard expungement and sealing orders that empower
10 the petitioner to seek destruction of records in accordance
11 with the order.

12 **“§ 3632. Expungement and sealing for youth**

13 “(a) EXPUNGEMENT PETITION ELIGIBILITY.—A
14 youth may petition a district court of the United States
15 for expungement—

16 “(1) of the record of any misdemeanor or non-
17 violent felony drug conviction 3 years after the youth
18 has completed every term of imprisonment related to
19 that misdemeanor or nonviolent felony drug convic-
20 tion;

21 “(2) of the record of any person who has not
22 attained the age of 18 at the time of committing the
23 conduct resulting in conviction for any misdemeanor
24 or nonviolent offense 3 years after the person has
25 completed every term of imprisonment related to

1 that misdemeanor or nonviolent offense conviction;
2 and

3 “(3) of the record of an arrest or prosecution
4 for any nonviolent offense on the date on which the
5 case related to that arrest or prosecution is disposed
6 of.

7 “(b) SEALING PETITION ELIGIBILITY.—A youth may
8 petition a district court of the United States, for sealing—

9 “(1) of the record of any nonviolent conviction
10 5 years after the youth has completed every term of
11 imprisonment related to that nonviolent conviction;

12 “(2) of the record of any person who has not
13 attained the age of 18 at the time of committing the
14 conduct resulting in conviction for any offense 10
15 years after the person has completed every term of
16 imprisonment related to that offense conviction; and

17 “(3) of the record of an arrest or prosecution
18 for any nonviolent offense on the date on which the
19 case related to that arrest or prosecution is disposed
20 of.

21 “(c) NOTICE OF OPPORTUNITY TO FILE PETI-
22 TION.—A youth shall be informed of the eligibility to, pro-
23 cedures for, and benefits of filing an expungement or seal-
24 ing petition—

1 “(1) by the District Court on the date of con-
2 viction;

3 “(2) by the Office of Probation and Pretrial
4 Services on the date the youth completes every term
5 of imprisonment; or

6 “(3) if the arrest or prosecution does not result
7 in a conviction, then by the Department of Justice
8 on the date the case is disposed of.

9 “(d) GRANT OF PETITION.—If a court grants a peti-
10 tion under this section—

11 “(1) the person to whom the record pertains
12 may choose to, but is not required to, disclose the
13 existence of the record, and the offense conduct and
14 any arrest, juvenile delinquency proceeding, adju-
15 dication, conviction, or other result of such pro-
16 ceeding relating to the offense conduct, shall be
17 treated as if it never occurred;

18 “(2) the court shall destroy each paper and
19 electronic copy of the record in the possession of the
20 court;

21 “(3) the court shall issue an expungement or
22 sealing order requiring the destruction of any paper
23 and electronic copies of the record by any court, law
24 enforcement officer, law enforcement agency, treat-

1 ment or rehabilitation services agency, or employee
2 thereof in possession of those copies;

3 “(4) any entity or person listed in paragraph
4 (3) that receives an inquiry relating to the record
5 shall reply to the inquiry stating that no such record
6 exists; and

7 “(5) except as provided in subsection (f), no
8 person shall not be subject to prosecution under any
9 civil or criminal provision of Federal or State law re-
10 lating to perjury, false swearing, or making a false
11 statement for failing to acknowledge the record or
12 respond to any inquiry made of the petitioner or the
13 parent relating to the record, for any purpose.

14 “(e) CIVIL ACTIONS.—

15 “(1) IN GENERAL.—If an individual who has a
16 record expunged or sealed under this section brings
17 an action that might be defended with the contents
18 of the record, there shall be a rebuttable presump-
19 tion that the defendant has a complete defense to
20 the action.

21 “(2) SHOWING BY PLAINTIFF.—In an action
22 described in paragraph (1), the plaintiff may rebut
23 the presumption of a complete defense by showing
24 that the contents of the record would not prevent
25 the defendant from being liable.

1 “(3) DUTY TO TESTIFY AS TO EXISTENCE OF
2 RECORD.—The court in which an action described in
3 paragraph (1) is filed may require the plaintiff to
4 state under oath whether the plaintiff had a record
5 and whether the record was expunged or sealed.

6 “(4) PROOF OF EXISTENCE OF RECORD.—If the
7 plaintiff in an action described in paragraph (1) de-
8 nied the existence of a record, the defendant may
9 prove the existence of the record in any manner
10 compatible with the applicable laws of evidence.

11 “(f) ATTORNEY GENERAL NONPUBLIC RECORDS.—
12 The Attorney General shall—

13 “(1) maintain a nonpublic database of all
14 records expunged or sealed under this subchapter;

15 “(2) disclose, access, or utilize records con-
16 tained in the nonpublic database only—

17 “(A) in defense of any civil suit arising out
18 of the facts contained in the record;

19 “(B) to determine whether the individual
20 to whom the record relates is eligible for a first-
21 time-offender diversion program;

22 “(C) for a background check that relates
23 to law enforcement employment or any employ-
24 ment that requires a Government security clear-
25 ance; or

1 “(D) if the Attorney General determines
2 that disclosure is necessary to serve the inter-
3 ests of national security; and

4 “(3) to the extent practicable, notify the indi-
5 vidual to whom the record pertains of the disclosure
6 unless it is made pursuant to paragraph (2)(D).

7 **“§ 3633. Definitions**

8 “In this subchapter—

9 “(1) the term ‘youth’ means an individual who
10 was 21 years of age or younger at the time of the
11 criminal offense for which the individual was ar-
12 rested, prosecuted, or sentenced;

13 “(2) the term ‘nonviolent felony’ means a Fed-
14 eral criminal felony offense that is not—

15 “(A) a crime of violence; or

16 “(B) a sex offense (as that term is defined
17 in section 111 of the Sex Offender Registration
18 and Notification Act);

19 “(3) the term ‘record’ means information,
20 whether in paper or electronic form, containing any
21 reference to—

22 “(A) an arrest, conviction, or sentence of
23 an individual for an offense;

1 “(B) the institution of juvenile delinquency
2 or criminal proceedings against an individual
3 for the offense; or

4 “(C) adjudication, conviction, or any other
5 result of juvenile delinquency or criminal pro-
6 ceedings;

7 “(4) the term ‘expunge’—

8 “(A) means to destroy a record and oblit-
9 erate the name of the person to whom the
10 record pertains from each official index or pub-
11 lic record; and

12 “(B) has the effect described in section
13 3631(g), including—

14 “(i) the right to treat an offense to
15 which an expunged record relates, and any
16 arrest, juvenile delinquency proceeding, ad-
17 judication, conviction, or other result of
18 such proceeding relating to the offense, as
19 if it never occurred; and

20 “(ii) protection from civil and criminal
21 perjury, false swearing, and false state-
22 ment laws with respect to an expunged
23 record;

24 “(5) the term ‘seal’—

25 “(A) means—

1 “(i) to close a record from public
2 viewing so that the record cannot be exam-
3 ined except by court order; and

4 “(ii) to physically seal the record shut
5 and label the record ‘SEALED’ or, in the
6 case of an electronic record, the sub-
7 stantive equivalent; and

8 “(B) has the effect described in section
9 3631(g), including—

10 “(i) the right to treat an offense to
11 which an expunged record relates, and any
12 arrest, juvenile delinquency proceeding, ad-
13 judication, conviction, or other result of
14 such proceeding relating to the offense, as
15 if it never occurred; and

16 “(ii) protection from civil and criminal
17 perjury, false swearing, and false state-
18 ment laws with respect to an expunged
19 record;

20 “(6) the term ‘conviction’—

21 “(A) means a judgment or disposition in
22 criminal court against a person following a find-
23 ing of guilt by a judge or jury; and

24 “(B) for the purposes of this section—

1 “(i) multiple convictions shall be
2 deemed to be one conviction if the convic-
3 tions result from or relate to the same act
4 or acts committed at the same time; and

5 “(ii) multiple convictions, not to ex-
6 ceed 3, that do not result from or relate to
7 the same act or acts committed at the
8 same time shall be deemed to be one con-
9 viction if the convictions result from or re-
10 late to the same indictment, information,
11 or complaint, or plea of guilty; and

12 “(7) the term ‘destroy’ means to render a file
13 unreadable, whether paper, electronic, or otherwise
14 stored, by shredding, pulverizing, pulping, incin-
15 erating, overwriting, reformatting the media, or
16 other means.

17 **“§ 3634. Reporting**

18 “Not later than 2 years after the date of enactment
19 of this subchapter, and each year thereafter, the Attorney
20 General shall issue a public report that—

21 “(1) describes—

22 “(A) the number of expungement and seal-
23 ing petitions granted and denied; and

24 “(B) the number of instances in which the
25 office of a United States attorney supported or

1 opposed an expungement or sealing petition;
2 and

3 “(2) includes any supporting data that the
4 court determines relevant but does not name any pe-
5 titioner.”.

6 **SEC. 3. RETROACTIVE EFFECT.**

7 This Act and the amendments made by this Act apply
8 with respect to youth without regard to whether they be-
9 come involved in the Federal criminal justice system be-
10 fore, on, or after the date of the enactment of this Act.

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