

OFFICE OF CONGRESSMAN ELIJAH E. CUMMINGS



**REDEEM Act of 2019**

*Record Expungement Designed to Enhance Employment Act of 2019*

**Section by Section**

**SECTION 1. SHORT TITLE**

**SECTION 2. SEALING OF CRIMINAL RECORDS**

The bill uses the definition of “crime of violence” recommended by the United States Sentencing Commission in the report entitled “Report to the Congress: Career Offender Sentencing Enhancements,” published in August 2016, for amendments made by this section, explaining that it is clearer and more specific than the definition currently used in title 18 of the U.S. Code.

**Subchapter E**

**Section 3461: Definitions; eligible individuals.**

The bill defines eight terms:

- Covered nonviolent offense
- Crime of violence
- Eligible individual
- Petitioner
- Protected information
- Sealing hearing
- Sealing petition

The bill allows the court to consider multiple convictions (no more than three) as one conviction when sealing criminal records if the convictions arise from the same act or acts committed at the same time; and if they:

- relate to same indictment, guilty plea, or official proceeding;
- if the criminal acts were committed within a three-month period; or
- if the court determines that they are directly related to addiction or a substance use disorder.

A judge reviewing a sealing petition may decide it is not in the public interest to consider multiple convictions as one conviction for sealing purposes.

**Section 3642. Automatic sealing of records of nonviolent drug offenses.** This bill requires the court to order the automatic sealing of each record that relates to a nonviolent drug offense conviction under the Controlled Substances Act, to which the court did not apply a sentencing enhancement. This order would only occur if the individual with the record has not been convicted of a crime or juvenile delinquency since the date of the conviction and is not engaged in active criminal court or juvenile delinquency proceedings.

This sealing will occur five years after the individual completes all prison, probation, and supervised release terms associated with the crime. The sealing is automatic and therefore requires no action by the individual. The individual will be notified of the record sealing.

**Section 3643. Sealing petition.** This bill allows an individual to file a petition for a sealing order in a district court after five years. The court is required, in writing, to inform the individual of the individual's potential eligibility, the necessary procedures for filing a sealing petition, and the benefits of sealing a record.

If an individual is arrested for a nonviolent offense and criminal proceedings are not initiated, the individual is potentially eligible to file a sealing petition on the date on which the case is disposed of. The arresting authority must, in writing, inform the individual of potential eligibility, procedures, and benefits.

If an individual is arrested for a nonviolent offense, criminal proceedings are instituted, the individual is not convicted, and the individual is potentially eligible to file a sealing petition, then the court must, in writing, inform the individual of potential eligibility, procedures, and benefits.

If an individual files a petition, the court must provide notice to the U.S. Attorney's office that prosecuted or would have prosecuted the offense; and upon request of the petitioner, to any other individual that the petitioner determines may testify as to the conduct of the petitioner since the arrest or to reasons the sealing order should be ordered. After an individual files a petition, the court is required to conduct a hearing and determine whether to enter a sealing order within 180 days.

The petitioner may testify or offer evidence at the hearing, and the U.S. Attorney's office may send a representative to testify or offer evidence. The judge must consider the petition and evidence, may not consider other nonviolent crimes, and must balance the interest of the public and the legitimate interest of the government. The government must show its interests outweigh the interests of the petitioner. If a court denies a petition, the petitioner may not file a new petition for two years.

The Director of the Administrative Office the United States Courts must create a universal form, available over internet and in paper form, that an individual may use to

file a petition. The Director must create a process that allows indigent petitioners to waive any filing fee. The court may appoint counsel to represent a petitioner.

**Section 3644. Effect of sealing order.** Under this bill, if a record is sealed, it must be treated as if the offense never occurred. Each entity or person that possesses a record containing information related to the offense will be notified of the sealing order.

A person with a sealed record cannot be prosecuted for perjury, false swearing, making a false statement, or for failing to acknowledge any information with respect to the offense.

The Attorney General must maintain a nonpublic record of all sealed records. A law enforcement agency may access a sealed record only in situations relating to the first-time offender program, federal investigations, or jobs that are in law enforcement or require a security clearance.

A law enforcement agency may release a sealed record for a background check for law enforcement employment or any position designated as a national security position or high-risk, public trust position. Sealed records may also be released to the armed forces for reviewing an enlistment or commission. A prosecutor may release a sealed record if the information is related to a potential witness in a criminal or juvenile delinquency proceeding.

### **SECTION 3. JUVENILE SEALING AND EXPUNGEMENT**

**Section 5044. Sealing.** This bill requires the sealing of records related to a nonviolent juvenile offense three years after a person who is convicted of the offense completes all prison, probation, and supervised release terms associated with the crime. The sealing is automatic and therefore requires no action by the individual. The individual will be notified of the record sealing.

During the three-year period after the person completes all prison, probation, and supervised release associated with the crime, the person may petition the court to seal the records. The court must notify the person of potential eligibility on the date when the person is convicted and on the date when he has completed his prison, probation, and supervised release. A hearing and judgment must be completed within 180 days.

If the petitioner is under 18 years old, the court must appoint an attorney. If the petitioner is over 18 years old, the court may decide whether or not to appoint an attorney. The same rules apply to access and disclosure as in Section 3644.

**Section 5045. Expungement.** This bill requires the Attorney General to file a motion requesting that a record be expunged on the date a person turns 18 years old, if the person committed a juvenile nonviolent offense before 15 years old. A person may also file a petition for expungement. The same procedures apply as for filing a sealing petition.

Each entity or person possessing the expunged record is required to destroy the record and submit certification to the court. In the case of an inquiry relating to an expunged juvenile record, the court, each law enforcement agency, any agency that provided treatment or rehabilitation, and any person who previously possessed such record must reply that no such juvenile record exists.

If a person with an expunged juvenile record files a civil action that might be defended with the contents of the expunged record, there will be a presumption that the defendant has a complete defense to the action. The person with the expunged record may disprove the presumption by showing that the contents of the expunged record would not prevent the defendant from being liable. In such a case, the court may require the person with the expunged record to state under oath whether or not the person has an expunged juvenile record.

A prosecutor may release information from an expunged juvenile record if the information pertains to a potential witness in a criminal or juvenile delinquency proceeding.

A person who has had their juvenile record expunged may choose to disclose this record.

**Section 5043. Juvenile solitary confinement.** This bill prohibits the use of room confinement at a juvenile facility for discipline, punishment, retaliation, or any reason other than a temporary response to a juvenile's behavior that poses a serious and immediate risk of physical harm to himself or others. Before placing a juvenile in room confinement, a staff member must attempt to use less restrictive techniques. If these techniques do not work, the staff member must explain to the juvenile the reasons for confinement and when the juvenile will be released.

A juvenile will be released from room confinement immediately after the juvenile is no longer a serious threat. If the juvenile remains a serious threat to others, the juvenile must be released within three hours. If the juvenile is only a threat to himself, he must be released within 30 minutes. If after release, the juvenile still poses a serious risk, the juvenile will immediately be transferred to another juvenile facility or, if an appropriate facility is not available, then to an emergency medical facility or the equivalent.

A room used for room confinement must:

- have at least 80 square feet of floor space;
- have adequate lighting, heating or cooling, and ventilation;
- be suicide-resistant and protrusion-free; and
- have access to clean water, toilet facilities, and hygiene supplies.

The juvenile's attorney must be notified of room confinement within one business day. If a juvenile is transferred, the juvenile's parent or guardian must be notified within 24 hours.

#### **SECTION 4. STUDY AND REPORT ON COST SAVINGS FROM SEALING AND EXPUNGEMENT PROVISIONS**

This bill requires the Attorney General, with the assistance of the Secretary of Labor and the Director of the Office of Management and Budget, to conduct a study on the cost savings and broader economic impact of the sealing and expungement provisions of the bill.

#### **SECTION 5. TANF ASSISTANCE AND SNAP BENEFITS**

This bill prohibits the denial of TANF assistance or SNAP benefits to any person convicted of a felony involving the possession, use, or distribution of a controlled substance.

#### **SECTION 6. STATE INCENTIVES**

Under this bill, the Attorney General can give preferential consideration to states who apply for Community Oriented Policing Services (COPS) if they have laws that are substantially similar to the provisions of the bill relating to the confidentiality, sealing and expungement of juvenile records, prohibition of juvenile solitary confinement, the sealing of adult records, the raising of adult criminal responsibility to 18 years old, and the equal access to services, assistance and guidance without regard to gender.

If the Attorney General gives preferential consideration to any COPS grant application submitted by a state, Attorney General must base the degree of preferential consideration on the number of substantially similar laws the State has that are related to the provisions of this bill.

#### **SECTION 7. GENDER EQUALITY IN FEDERAL JUVENILE DELINQUENCY PROCEEDINGS**

This bill specifies that there should be no gender inequalities in the outcomes of juvenile cases. The Attorney General is required to create rules that ensure equal access, without regard to gender, to services, assistance, or benefits provided to juveniles who have been arrested by Federal authorities or convicted of juvenile crimes.

#### **SECTION 8. ENSURING ACCURACY IN THE FBI BACKGROUND CHECK SYSTEM**

This bill requires the Attorney General to establish and enforce procedures to ensure records are exchanged quickly. The Attorney General may collect a reasonable fee to pay for costs.

#### **SECTION 9. REPORT ON STATUTORY AND REGULATORY RESTRICTIONS AND DISQUALIFICATION BASED ON CRIMINAL RECORDS**

The Attorney General is required to submit a report to Congress on each Federal statute, regulation, or policy that authorizes a restriction on, or disqualification of, an applicant for employment or for a Federal license or permit based on the criminal record of the applicant within two years of the bill's enactment.