

116TH CONGRESS  
1ST SESSION

# S. 423

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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2019

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

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## 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”.

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

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

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

“Sec.

“3641. Definitions.

“3642. Sealing petition.

“3643. Effect of sealing order.

1 **“§ 3641. Definitions**

2 “In this subchapter—

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

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

7 “(B) a sex offense (as that term is defined  
8 in section 111 of the Sex Offender Registration  
9 and Notification Act (42 U.S.C. 16911));

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

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

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

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

22 “(A) has been arrested for or convicted of  
23 a qualifying offense;

1           “(B) in the case of a conviction described  
2           in subparagraph (A)—

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

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

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

12                          “(ii) has satisfactorily completed a  
13                          covered treatment program; and

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

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

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

22                          “(C) has not been convicted of more than  
23                          2 felonies that are covered nonviolent offenses,  
24                          including any such convictions that have been  
25                          sealed; and

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

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

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

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

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

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

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

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

23          “(B) in the case of an arrest for an offense  
24          that does not result in a conviction, a covered  
25          nonviolent offense with respect to which the act

1 that would have constituted the offense is com-  
2 mitted by an individual whose substance use  
3 disorder is a substantial contributing factor in  
4 the commission of the act, as determined by a  
5 court reviewing a sealing petition with respect  
6 to the offense under section 3642(b)(3)(A)(i);

7 “(7) the term ‘seal’—

8 “(A) means—

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

12 “(ii) to physically seal the record shut  
13 and label the record ‘SEALED’ or, in the  
14 case of an electronic record, the sub-  
15 stantive equivalent; and

16 “(B) has the effect described in section  
17 3643, including—

18 “(i) the right to treat the offense to  
19 which a sealed record relates, and any ar-  
20 rest, criminal proceeding, conviction, or  
21 sentence relating to the offense, as if it  
22 never occurred; and

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

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

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

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

8 **“§ 3642. Sealing petition**

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

10           “(1) DATE OF ELIGIBILITY.—

11           “(A) CONVICTED INDIVIDUALS.—

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

22           “(ii) APPLICABLE DATE.—The appli-  
23 cable date—

24           “(I) for an eligible individual who  
25 was convicted of a qualifying offense

1 and sentenced to a term of imprison-  
2 ment, probation, or supervised release  
3 is the date on which the eligible indi-  
4 vidual has fulfilled each requirement  
5 under section 3641(3)(B)(i); and

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

13 “(iii) VIOLATION OF 3-YEAR GOOD BE-  
14 HAVIOR REQUIREMENT.—

15 “(I) IN GENERAL.—An eligible  
16 individual who is prohibited from fil-  
17 ing a petition for a sealing order with  
18 respect to a qualifying offense under  
19 clause (i) because the individual is ar-  
20 rested for or convicted of a substance  
21 use-related offense on or after the ap-  
22 plicable date under clause (ii) may file  
23 such a petition on or after the date as  
24 of which not less than 3 years have

1                    elapsed since the last such arrest or  
2                    conviction.

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

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

16                    “(2) NOTICE OF OPPORTUNITY TO FILE PETI-  
17                    TION.—

18                    “(A) CONVICTED INDIVIDUALS.—

19                    “(i) IN GENERAL.—If an individual is  
20                    convicted of a covered nonviolent offense  
21                    and will potentially be eligible to file a  
22                    sealing petition with respect to the offense  
23                    upon fulfilling each requirement under sec-  
24                    tion 3641(3)(B), the court in which the in-  
25                    dividual is convicted shall, in writing, in-



1 form the individual, on each date described  
2 in clause (ii) of this subparagraph, of—

3 “(I) that potential eligibility;

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

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

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

13 “(I) the date on which the indi-  
14 vidual is convicted; and

15 “(II) the date on which the indi-  
16 vidual has fulfilled each requirement  
17 under section 3641(3)(B)(i).

18 “(B) INDIVIDUALS NOT CONVICTED.—

19 “(i) ARREST ONLY.—If an individual  
20 is arrested for a covered nonviolent of-  
21 fense, criminal proceedings are not insti-  
22 tuted against the individual for the offense,  
23 and the individual is potentially eligible to  
24 file a sealing petition with respect to the  
25 offense, on the date on which the case re-

1 relating to the offense is disposed of, the ar-  
2 resting authority shall, in writing, inform  
3 the individual of—

4 “(I) that potential eligibility;

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

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

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

24 “(I) that potential eligibility;

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

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

8           “(b) PROCEDURES.—

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

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

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

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

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

24                   “(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 the offense;

21 “(ii) consider—

22 “(I) the petition and any docu-  
23 ments in the possession of the court;  
24 and

1           “(II) all the evidence and testi-  
2           mony presented at the sealing hear-  
3           ing, if such a hearing is conducted;  
4           and

5           “(iii) balance—

6           “(I)(aa) the interest of public  
7           knowledge and safety; and

8           “(bb) the legitimate interest, if  
9           any, of the Government in maintain-  
10          ing the accessibility of the protected  
11          information, including any potential  
12          impact of sealing the protected infor-  
13          mation on Federal licensure, permit,  
14          or employment restrictions, against

15          “(II)(aa) the conduct and dem-  
16          onstrated desire of the petitioner to be  
17          rehabilitated and positively contribute  
18          to the community; and

19          “(bb) the interest of the peti-  
20          tioner in having the protected infor-  
21          mation sealed, including the harm of  
22          the protected information to the abil-  
23          ity of the petitioner to secure and  
24          maintain employment.

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

7           “(C) REASONING.—The court shall provide  
8           the petitioner and the Government with a writ-  
9           ten decision explaining the reasons for the de-  
10          termination made under subparagraph (A).

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

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

20          “(6) FEE WAIVER.—The Director of the Ad-  
21          ministrative Office of the United States Courts shall  
22          by regulation establish a minimally burdensome  
23          process under which indigent petitioners may obtain  
24          a waiver of any fee for filing a sealing petition.

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

8           “(A) describes—

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

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

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

16           “(B) includes any supporting data that—

17           “(i) the court determines relevant;  
18 and

19           “(ii) does not name any petitioner;  
20 and

21           “(C) disaggregates all relevant data by  
22 race, ethnicity, gender, and the nature of the  
23 offense.

24           “(8) PUBLIC DEFENDER ELIGIBILITY.—



1           “(A) IN GENERAL.—The district court  
2           may, in its discretion, appoint counsel in ac-  
3           cordance with the plan of the district court in  
4           operation under section 3006A to represent a  
5           petitioner for purposes of this section.

6           “(B) CONSIDERATIONS.—In making a de-  
7           termination whether to appoint counsel under  
8           subparagraph (A), the court shall consider—

9                   “(i) the anticipated complexity of the  
10                  sealing hearing, including the number and  
11                  type of witnesses called to advocate against  
12                  the sealing of the protected information of  
13                  the petitioner; and

14                   “(ii) the potential for adverse testi-  
15                  mony by a victim or a representative of the  
16                  office of the United States attorney.

17   **“§ 3643. Effect of sealing order**

18           “(a) IN GENERAL.—Except as provided in this sec-  
19           tion, if a district court of the United States enters a seal-  
20           ing order with respect to a qualifying offense, the offense  
21           and any arrest, criminal proceeding, conviction, or sen-  
22           tence relating to the offense shall be treated as if it never  
23           occurred.

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

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

8           “(A) law enforcement agency; and

9           “(B) public or private correctional or de-  
10 tention facility;

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

13           “(A) seal the record in accordance with  
14 this section; and

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

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

21          “(4) after receiving a written certification from  
22 each entity or person under paragraph (2)(B), notify  
23 the petitioner that each entity or person described in  
24 paragraph (1) has sealed each paper and electronic  
25 copy of the record.

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

12       “(d) ATTORNEY GENERAL NONPUBLIC RECORDS.—  
13 The Attorney General—

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

17               “(2) may access or utilize protected information  
18 only—

19                       “(A) for legitimate investigative purposes;

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

23                       “(C) if the Attorney General determines  
24 that disclosure is necessary to serve the inter-

1           ests of justice, public safety, or national secu-  
2           rity.

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

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

9           “(2) for investigatory, prosecutorial, or Federal  
10 supervision purposes; or

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

14           “(f) PROHIBITION ON DISCLOSURE.—

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

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

23           “(3) EXCEPTIONS.—

24           “(A) BACKGROUND CHECKS.—An indi-  
25 vidual who is the subject of a record sealed

1 under this subchapter shall, and a Federal or  
2 State law enforcement agency that possesses  
3 such a record may, disclose the record in the  
4 case of a background check for—

5 “(i) law enforcement employment; or

6 “(ii) any position that a Federal agen-  
7 cy designates as a—

8 “(I) national security position; or

9 “(II) high-risk, public trust posi-  
10 tion.

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

20 “(C) CRIMINAL AND JUVENILE PRO-  
21 CEEDINGS.—A prosecutor may disclose pro-  
22 tected information from a record sealed under  
23 this subchapter if the information pertains to a  
24 potential witness in a Federal or State—

25 “(i) criminal proceeding; or

1 “(ii) juvenile delinquency proceeding.

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

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

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

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

“E. Sealing of Criminal Records ..... 3641”.

21 **SEC. 3. STATE INCENTIVES.**

22 (a) COPS GRANTS PRIORITY.—Section 1701 of title  
23 I of the Omnibus Crime Control and Safe Streets Act of  
24 1968 (34 U.S.C. 10381) is amended—

25 (1) in subsection (c)—

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

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

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

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

8 “(A) a law relating to the sealing of adult  
9 records that is substantially similar to, or more  
10 generous to the former offender than, the  
11 amendments made by section 2 of the Clean  
12 Start Act; or

13 “(B) a law that allows an individual who  
14 has successfully sealed a criminal record to be  
15 free from civil and criminal perjury laws.”; and  
16 (2) by adding at the end the following:

17 “(n) DEGREE OF PRIORITY RELATING TO SEALING  
18 LAWS COMMENSURATE WITH DEGREE OF COMPLI-  
19 ANCE.—If the Attorney General, in awarding grants under  
20 this part, gives preferential consideration to any applica-  
21 tion as authorized under subsection (c)(4), the Attorney  
22 General shall base the degree of preferential consideration  
23 given to an application from an applicant in a particular  
24 State on the number of subparagraphs under subsection  
25 (c)(4) that the State has satisfied, relative to the number

1 of such subparagraphs that each other State has satis-  
2 fied.”.

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

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