

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2864
OFFERED BY M . _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Clean Slate Act of
3 2022”.

4 SEC. 2. SEALING OF CERTAIN RECORDS.

5 (a) AMENDMENT.—Subchapter A of chapter 227 of
6 title 18, United States Code, is amended by adding at the
7 end the following:

8 “§ 3560. Automatic sealing of certain records

9 “(a) DEFINITIONS.—In this section—

10 “(1) the term ‘covered individual’ means an in-
11 dividual who—

12 “(A) is not a sex offender;

13 “(B) has been—

14 “(i) arrested for a Federal offense for
15 which the individual was not convicted; or

16 “(ii) convicted of an offense under
17 section 404 of the Controlled Substances

1 Act (21 U.S.C. 844) or any Federal non-
2 violent offense involving marijuana;

3 “(C) in the case of a conviction described
4 in subparagraph (B)(ii), has fulfilled each re-
5 quirement of the sentence for the offense, in-
6 cluding—

7 “(i) completing each term of imprison-
8 ment, probation, or supervised release; and

9 “(ii) satisfying each condition of im-
10 prisonment, probation, or supervised re-
11 lease; and

12 “(D) has not been convicted for any of-
13 fense related to treason, terrorism, access and
14 transmission of sensitive defense information,
15 or other national security related convictions;

16 “(2) the term ‘marijuana’ has the meaning
17 given the term ‘marihuana’ in section 102 of the
18 Controlled Substances Act (21 U.S.C. 802);

19 “(3) the term ‘nonviolent offense’ means an of-
20 fense that is not—

21 “(A) murder;

22 “(B) voluntary manslaughter;

23 “(C) kidnapping;

24 “(D) aggravated assault;

25 “(E) a forcible sex offense;

1 “(F) robbery;

2 “(G) arson;

3 “(H) extortion;

4 “(I) the use or unlawful possession of—

5 “(i) a firearm, as defined in section
6 5845(a) of the Internal Revenue Code of
7 1986; or

8 “(ii) explosive materials, as defined in
9 section 841(c);

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

13 “(K) torture, in violation of section 2340A;

14 “(L) interstate domestic violence, in viola-
15 tion of section 2261;

16 “(M) an offense under chapter 77; or

17 “(N) an attempt or conspiracy to commit
18 an offense described in subparagraphs (A)
19 through (M); and

20 “(4) the term ‘sex offender’ has the meaning
21 given the term in section 111 of the Adam Walsh
22 Child Protection and Safety Act of 2006 (34 U.S.C.
23 20911).

24 “(b) AUTOMATIC SEALING FOR CERTAIN ARRESTS
25 AND NONVIOLENT OFFENSES.—

1 “(1) IN GENERAL.—At the time of sentencing
2 of a covered individual for a conviction for an of-
3 fense pursuant to section 404 of the Controlled Sub-
4 stances Act (21 U.S.C. 844) or any Federal non-
5 violent offense involving marijuana, the court shall
6 enter an order that each record and portion thereof
7 that relates to the offense shall be sealed automati-
8 cally on the date that is 1 year after the covered in-
9 dividual fulfills each requirement of the sentence, in-
10 cluding—

11 “(A) completing each term of imprison-
12 ment, probation, or supervised release; and

13 “(B) satisfying each condition of imprison-
14 ment, probation, or supervised release.

15 “(2) ACQUITTAL; DETERMINATION NOT TO FILE
16 CHARGES.—

17 “(A) ACQUITTAL.—Not later than 60 days
18 after the date on which a covered individual is
19 acquitted, exonerated, or otherwise subject to a
20 judgment which did not result in a conviction
21 for a Federal offense, each record or portion
22 thereof that relates to the Federal offense shall
23 be sealed automatically.

24 “(B) DETERMINATION NOT TO FILE
25 CHARGES.—

1 “(i) IN GENERAL.—If a covered indi-
2 vidual is arrested for a Federal offense and
3 the Government does not file charges
4 against the covered individual in relation
5 to the Federal offense before the date that
6 is 180 days after the date on which the ar-
7 rest was made, each record or portion
8 thereof that relates to the arrest and Fed-
9 eral offense shall be sealed automatically
10 on such date.

11 “(ii) UNSEALING FOR FILING OF
12 CHARGES.—At the request of the Govern-
13 ment, a court may unseal a record sealed
14 under clause (i) in order for the Govern-
15 ment to file charges against the covered in-
16 dividual in relation to the Federal offense
17 described in clause (i).

18 “(iii) LIMITATION.—If a record is un-
19 sealed under clause (ii), the record may
20 only be resealed in accordance with para-
21 graph (1) or subparagraph (A) of this
22 paragraph.

23 “(c) EFFECT OF SEALING ORDER.—

24 “(1) PROTECTION FROM ACCESS.—Except as
25 provided in paragraph (4), a record that has been

1 sealed under this section or section 3560A shall not
2 be accessible to any person.

3 “(2) PROTECTION FROM PERJURY LAWS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), an individual whose record
6 has been sealed pursuant to this section shall
7 not be required to disclose the existence of or
8 any information contained in the individual’s
9 sealed record, and shall not be subject to pros-
10 ecution under any civil or criminal provision of
11 Federal or State law relating to perjury, false
12 swearing, or making a false statement, includ-
13 ing under section 1001, 1621, 1622, or 1623,
14 for failing to recite or acknowledge any infor-
15 mation that has been sealed with respect to the
16 offense, or respond to any inquiry made of the
17 individual, relating to the protected informa-
18 tion.

19 “(B) EXCEPTION.—An individual whose
20 record has been sealed pursuant to this section
21 shall disclose information contained in such
22 record—

23 “(i) when testifying in court;

1 “(ii) in the course of questioning by a
2 law enforcement officer in connection with
3 a subsequent criminal investigation; or

4 “(iii) in connection with employment
5 described in subclauses (I) through (IV) of
6 paragraph (4)(A)(ii) that the individual is
7 seeking.

8 “(3) BACKGROUND CHECKS.—Except as pro-
9 vided in paragraph (4), the existence of a record of
10 an individual which has been sealed pursuant to this
11 section, or the information contained therein, shall
12 not be included in any background check conducted
13 on such individual.

14 “(4) EXCEPTIONS.—

15 “(A) LAW ENFORCEMENT AND COURT AC-
16 CESS.—An officer or employee of a law enforce-
17 ment agency or a court may access a record of
18 an individual which has been sealed pursuant to
19 this section and is in the possession of the
20 agency or court, or another law enforcement
21 agency or court, solely—

22 “(i) for investigatory or prosecutorial
23 purposes; or

24 “(ii) for a background check that re-
25 lates to—

1 “(I) employment with a law en-
2 forcement agency;

3 “(II) any position that a Federal
4 agency designates as a—

5 “(aa) national security posi-
6 tion; or

7 “(bb) high-risk, public trust
8 position;

9 “(III) the manufacture, importa-
10 tion, sale, transfer, possession, or car-
11 rying of firearms, explosives, or am-
12 munition; or

13 “(IV) employment for a position
14 involving the manufacture, importa-
15 tion, handling, sale, or transfer of
16 controlled substances, as that term is
17 defined under the Controlled Sub-
18 stances Act (21 U.S.C. 802), or where
19 the employment would provide access
20 to such substances.

21 “(B) DISCLOSURE.—An officer or em-
22 ployee of a law enforcement agency or a court
23 may disclose information contained in a sealed
24 record only in order to carry out the purposes
25 described in subparagraph (A).

1 “(d) INDIVIDUAL ACCESS.—Any individual whose
2 record has been sealed pursuant to this section or section
3 3560A may access the information contained in the indi-
4 vidual’s sealed record.

5 “(e) PENALTY FOR UNAUTHORIZED DISCLOSURE.—

6 “(1) IN GENERAL.—Whoever knowingly ac-
7 cesses or discloses information contained in a record
8 sealed under this section or section 3560A in a man-
9 ner that is prohibited under this section, shall be
10 fined under this title, imprisoned for not more than
11 1 year, or both.

12 “(2) RULE OF CONSTRUCTION.—Nothing in
13 this subsection prevents a covered individual or an
14 individual who was the crime victim (as such term
15 is defined in section 3771(e)) from accessing or dis-
16 closing information contained in record sealed under
17 this section or section 3560A.

18 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion or section 3560A shall abrogate or constrain the au-
20 thority of a judge or judicial body to vacate a judgment
21 or sentence.

22 “(g) RULEMAKING.—The Attorney General shall, by
23 rule, establish a process to ensure that any record in the
24 possession of a Federal agency required to be sealed under

1 this section is automatically sealed in accordance with this
2 section.

3 “(h) APPLICABILITY.—This section shall apply to an
4 arrest that occurred or conviction that was entered before,
5 on, or after the date of enactment of this section. Not later
6 than 2 years after the date of the enactment of this sec-
7 tion, the Attorney General shall ensure that any record
8 related to an arrest or conviction that occurred or was en-
9 tered prior to the automatic sealing of such a record,
10 which record is required to be sealed under this section,
11 is so sealed.

12 “(i) EMPLOYER IMMUNITY FROM LIABILITY.—An
13 employer who employs or otherwise engages an individual
14 whose criminal records were sealed pursuant to this sec-
15 tion shall be immune from liability for any claim arising
16 out of the misconduct of the individual, if the misconduct
17 relates to the portion of the criminal records that were
18 sealed pursuant to this section.

19 “(j) ESTABLISHMENT OF PARTNERSHIPS.—

20 “(1) IN GENERAL.—The Administrative Office
21 of the United States Courts or the Attorney General
22 shall enter into a contract with or make grants to
23 an organization with expertise in creating digital and
24 technological systems to develop an efficient and ef-
25 fective process for sealing records in accordance with

1 this section and section 3560A. This process shall
2 enable access to sealed records by Federal and non-
3 Federal law enforcement agencies for the purposes
4 set forth in subsection (c)(4)(A) of this section.

5 “(2) AUTHORIZATION OF APPROPRIATIONS.—
6 There are authorized to be appropriated to carry out
7 this subsection—

8 “(A) \$2,000,000 to the Administrative Of-
9 fice of the United States Courts; and

10 “(B) \$2,000,000 to the Attorney General.

11 **“§ 3560A. Sealing of certain records upon petition**

12 “(a) DEFINITIONS.—In this section—

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

15 “(A) murder;

16 “(B) voluntary manslaughter;

17 “(C) kidnapping;

18 “(D) aggravated assault;

19 “(E) a forcible sex offense;

20 “(F) robbery;

21 “(G) arson;

22 “(H) extortion; or

23 “(I) the use or unlawful possession of—

1 “(i) a firearm, as defined in section
2 5845(a) of the Internal Revenue Code of
3 1986; or

4 “(ii) explosive materials, as defined in
5 section 841(c);

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

9 “(K) torture, in violation of section 2340A;

10 “(L) interstate domestic violence, in viola-
11 tion of section 2261;

12 “(M) an offense under chapter 77; or

13 “(N) an attempt or conspiracy to commit
14 any of the offenses described in subparagraphs
15 (A) through (M);

16 “(2) the term ‘eligible individual’ means an in-
17 dividual who—

18 “(A) has been convicted of a covered non-
19 violent offense;

20 “(B) has fulfilled each requirement of the
21 sentence for the covered nonviolent offense, in-
22 cluding—

23 “(i) completing each term of imprison-
24 ment, probation, or supervised release; and

1 “(ii) satisfying each condition of im-
2 prisonment, probation, or supervised re-
3 lease;

4 “(C) has not been convicted of more than
5 2 felonies that are covered nonviolent offenses,
6 including any such convictions that have been
7 sealed (except that for purposes of this sub-
8 paragraph, 2 or more felony convictions that
9 are covered nonviolent offenses arising out of
10 the same act, or acts committed at the same
11 time, shall be treated as one felony conviction);

12 “(D) has not been convicted of any felony
13 that is not a covered nonviolent offense; and

14 “(E) has not been convicted for any of-
15 fense related to treason, terrorism, access and
16 transmission of sensitive defense information,
17 or other national security related convictions;

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

20 “(4) the term ‘protected information’, with re-
21 spect to a covered nonviolent offense, means any ref-
22 erence to—

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

1 “(B) the institution of criminal pro-
2 ceedings against an individual for the offense;
3 or

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

6 “(5) the term ‘sealing hearing’ means a hearing
7 held under subsection (c)(2); and

8 “(6) the term ‘sealing petition’ means a petition
9 for a sealing order filed under subsection (b).

10 “(b) RIGHT TO FILE SEALING PETITION.—

11 “(1) IN GENERAL.—On and after the date that
12 is 1 year after the date on which the eligible indi-
13 vidual has fulfilled each requirement described in
14 subsection (a)(2)(B), an eligible individual may file
15 a petition for a sealing order with respect to a cov-
16 ered nonviolent offense in a district court of the
17 United States.

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

20 “(A) IN GENERAL.—If an individual is
21 convicted of a covered nonviolent offense and
22 will potentially be eligible to file a sealing peti-
23 tion with respect to the offense upon fulfilling
24 each requirement of the sentence for the offense
25 as described in subsection (a)(2)(B), the court

1 in which the individual is convicted shall, in
2 writing, inform the individual, on each date de-
3 scribed in subparagraph (B), of—

4 “(i) that potential eligibility;

5 “(ii) the necessary procedures for fil-
6 ing the sealing petition; and

7 “(iii) the benefits of sealing a record.

8 “(B) DATES.—The dates described in this
9 subparagraph are—

10 “(i) the date on which the individual
11 is convicted; and

12 “(ii) the date on which the individual
13 has completed every term of imprisonment,
14 probation, or supervised release relating to
15 the offense.

16 “(c) PROCEDURES.—

17 “(1) NOTIFICATION TO PROSECUTOR.—If an in-
18 dividual files a petition under subsection (b), the dis-
19 trict court in which the petition is filed shall provide
20 notice of the petition—

21 “(A) to the office of the United States at-
22 torney that prosecuted the petitioner for the of-
23 fense; and

1 “(B) upon the request of the petitioner, to
2 any other individual that the petitioner deter-
3 mines may testify as to the—

4 “(i) conduct of the petitioner since the
5 date of the offense; or

6 “(ii) reasons that the sealing order
7 should be entered.

8 “(2) NOTIFICATION TO CRIME VICTIMS.—Upon
9 receipt of a notification under paragraph (1)(A) by
10 an office of the United States attorney, the office
11 shall make reasonable efforts to identify any indi-
12 vidual who was a crime victim (as such term is de-
13 fined in section 3771) of the offense and provide no-
14 tice of the petition.

15 “(3) HEARING.—

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

19 “(i) except as provided in subpara-
20 graph (D), conduct a hearing in accord-
21 ance with subparagraph (B); and

22 “(ii) determine whether to enter a
23 sealing order for the individual in accord-
24 ance with paragraph (4).

1 “(B) OPPORTUNITY TO TESTIFY AND
2 OFFER EVIDENCE.—

3 “(i) PETITIONER.—The petitioner
4 may testify or offer evidence at the sealing
5 hearing in support of sealing.

6 “(ii) PROSECUTOR.—The office of a
7 United States attorney that receives notice
8 under paragraph (1)(A) may send a rep-
9 resentative to testify or offer evidence at
10 the sealing hearing in support of or
11 against sealing.

12 “(iii) OTHER INDIVIDUALS.—At the
13 request of a petitioner, the district court in
14 which the petition is filed shall issue a sub-
15 poena requiring an individual who receives
16 notice under paragraph (1)(B) to testify or
17 offer evidence at the sealing hearing as to
18 the issues described in clauses (i) and (ii)
19 of that paragraph.

20 “(C) MAGISTRATE JUDGES.—

21 “(i) IN GENERAL.—A magistrate
22 judge may preside over a hearing under
23 this paragraph, and submit to a judge of
24 the court proposed findings of fact and
25 recommendations for the disposition, by a

1 judge of the court, of any sealing petition
2 filed under this subsection.

3 “(ii) RECOMMENDATIONS.—Not later
4 than 14 days after being served with a
5 copy, any party may serve and file written
6 objections to the proposed findings and
7 recommendations of the magistrate judge
8 as provided by rules of court. A judge of
9 the court shall make a de novo determina-
10 tion of those portions of the report or spec-
11 ified proposed findings or recommenda-
12 tions to which objection is made. A judge
13 of the court may accept, reject, or modify,
14 in whole or in part, the findings or rec-
15 ommendations made by the magistrate
16 judge. The judge may also receive further
17 evidence or recommit the matter to the
18 magistrate judge with instructions.

19 “(D) WAIVER OF HEARING.—If the peti-
20 tioner and the United States attorney that re-
21 ceives notice under paragraph (1)(A) so agree,
22 the court shall make a determination under
23 paragraph (4) without a hearing.

24 “(4) BASIS FOR DECISION.—

1 “(A) IN GENERAL.—In determining wheth-
2 er to enter a sealing order with respect to pro-
3 tected information relating to a covered non-
4 violent offense, the court—

5 “(i) shall consider—

6 “(I) the petition and any docu-
7 ments in the possession of the court;
8 and

9 “(II) all evidence and testimony
10 presented at the sealing hearing, if
11 such a hearing is conducted;

12 “(ii) may not consider any non-Fed-
13 eral crimes for which the petitioner has not
14 been convicted; and

15 “(iii) shall balance—

16 “(I)(aa) the interest of public
17 knowledge and safety; and

18 “(bb) the legitimate interest,
19 if any, of the Government in
20 maintaining the accessibility of
21 the protected information, includ-
22 ing any potential impact of seal-
23 ing the protected information on
24 Federal licensure, permit, or em-
25 ployment restrictions; against

1 “(II)(aa) the conduct and dem-
2 onstrated desire of the petitioner to be
3 rehabilitated and positively contribute
4 to the community; and

5 “(bb) the interest of the pe-
6 titioner in having the protected
7 information sealed, including the
8 harm of the protected informa-
9 tion to the ability of the peti-
10 tioner to secure and maintain
11 employment.

12 “(B) BURDEN ON GOVERNMENT.—The
13 burden shall be on the Government to show
14 that the interests under subclause (I) of sub-
15 paragraph (A)(iii) outweigh the interests of the
16 petitioner under subclause (II) of that subpara-
17 graph.

18 “(5) WAITING PERIOD AFTER DENIAL.—If the
19 district court denies a sealing petition, the petitioner
20 may not file a new sealing petition with respect to
21 the same offense until the date that is 2 years after
22 the date of the denial.

23 “(6) UNIVERSAL FORM.—The Director of the
24 Administrative Office of the United States Courts
25 shall create a universal form, available over the

1 Internet and in paper form, that an individual may
2 use to file a sealing petition.

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

8 “(8) EFFECT OF SEALING.—Subsections (c)
9 through (e) of section 3560 shall apply to any record
10 that is sealed under this section.

11 “(9) PUBLIC DEFENDER ELIGIBILITY.—The
12 district court shall appoint counsel in accordance
13 with the plan of the district court in operation under
14 section 3006A to represent a petitioner for purposes
15 of this section.

16 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion may be construed to require a covered individual (as
18 such term is defined in section 3560) to submit a sealing
19 petition with respect to records required to be automati-
20 cally sealed under section 3560.

21 “(e) REPORTING.—Not later than 2 years after the
22 date of enactment of this section, and each year there-
23 after, each district court of the United States shall issue
24 a public report that—

25 “(1) describes—

1 “(A) the number of sealing petitions grant-
2 ed and denied under this section; and

3 “(B) the number of instances in which the
4 office of a United States attorney supported or
5 opposed a sealing petition;

6 “(2) includes any supporting data that the
7 court determines relevant and that does not name
8 any petitioner; and

9 “(3) disaggregates all relevant data by race,
10 ethnicity, gender, and the nature of the offense.

11 “(f) EMPLOYER IMMUNITY FROM LIABILITY.—An
12 employer who employs or otherwise engages an individual
13 whose criminal records were sealed pursuant to this sec-
14 tion shall be immune from liability for any claim arising
15 out of the misconduct of the individual, if the misconduct
16 relates to the portion of the criminal records that were
17 sealed pursuant to this section.”.

18 (b) TABLE OF SECTIONS.—The table of sections for
19 subchapter A of chapter 227 of title 18, United States
20 Code, is amended by inserting after the item relating to
21 section 3559 the following: “3560. Automatic sealing of
22 certain records. ”3560A. Sealing of certain records upon
23 petition.”.

1 **SEC. 3. PILOT PROGRAM.**

2 (a) IN GENERAL.—Not later than 270 days after the
3 date of enactment of this Act, the Attorney General shall
4 establish a 5-year pilot program to make grants to eligible
5 entities to seal records in the possession of such eligible
6 entities that pertain to the incident or conduct with re-
7 spect to which the Federal records are sealed under the
8 amendments made by this Act.

9 (b) APPLICATION.—To receive a grant under the pilot
10 program established under this section, an eligible entity
11 shall submit to the Attorney General an application at
12 such time, in such manner, and containing such informa-
13 tion as the Attorney General may require.

14 (c) REPORT.—Not later than 1 year after making a
15 grant under the pilot program established under this sec-
16 tion, and annually thereafter until the termination of the
17 pilot program, the Attorney General shall submit to Con-
18 gress a report, which shall include each of the following:

19 (1) The number of eligible entities that sub-
20 mitted an application to participate in the pilot pro-
21 gram established under this section and the number
22 of eligible entities that were selected to participate
23 in such program.

24 (2) The number of individuals whose Federal
25 records are sealed pursuant to the amendments
26 made by this Act with corresponding records in the

1 possession of an eligible entity pertaining to inci-
2 dents or conduct with respect to which the Federal
3 records are sealed, including—

4 (A) a description of whether the record of
5 the eligible entity is an arrest record, a court
6 record, or any other type of record; and

7 (B) the number of records of the eligible
8 entity that involve a conviction or dismissal for
9 the incident or conduct for which the Federal
10 records are sealed.

11 (3) Recommendations for identifying and locat-
12 ing records in the possession of eligible entities per-
13 taining to incidents or conduct with respect to which
14 Federal records are sealed pursuant to the amend-
15 ments made by this Act.

16 (4) The number of eligible entities that have
17 record sealing statutes, the process and procedure
18 for record sealing under such statutes, and the en-
19 forcement mechanisms under such statutes.

20 (5) Recommendations for coordination between
21 eligible entities and the Federal Government to seal
22 records of such eligible entities that correspond to
23 sealed Federal records.

24 (6) Best practices in sealing the records de-
25 scribed in subsection (a).

1 (d) BEST PRACTICES.—After the termination of the
2 pilot program, the Attorney General shall establish best
3 practices for use by eligible entities in sealing the records
4 described in subsection (a).

5 (e) ELIGIBLE ENTITY DEFINED.—The term “eligible
6 entity” means a State, unit of local government, territory,
7 or Indian tribe.

8 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
9 authorized to be appropriated to carry out this section
10 \$35,000,000 for fiscal years 2023 through 2027.

