

111TH CONGRESS  
2D SESSION

# H. R. 5492

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

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2010

Mr. COHEN (for himself, Mr. CONYERS, Mr. DAVIS of Illinois, Mr. CLEAVER, Mr. JACKSON of Illinois, Ms. FUDGE, Mr. GUTIERREZ, Ms. MOORE of Wisconsin, Mr. PAYNE, Mr. RANGEL, Mr. WATT, Mr. JOHNSON of Georgia, Ms. LEE of California, Mr. DELAHUNT, and Mr. HASTINGS of Florida) 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 2010”.

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

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

6 “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.

7 “§ 3631. **Expungement of certain criminal records in**  
8 **limited circumstances**

9 “(a) IN GENERAL.—Any eligible individual convicted  
10 of a nonviolent offense may file a petition under this sub-  
11 chapter for expungement with regard to that nonviolent  
12 offense.

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

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

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

1 **“§ 3632. Requirements for expungement**

2 “An individual is eligible for expungement under this  
3 subchapter if that individual—

4 “(1) at the time of filing, had never been con-  
5 victed of any criminal offense (including any offense  
6 under State law) other than the nonviolent offense  
7 for which expungement is sought; and

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

11 “(A) paying all fines, restitutions, or as-  
12 sessments;

13 “(B) completion of any term of imprison-  
14 ment or period of probation;

15 “(C) meeting all conditions of a supervised  
16 release; and

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

21 **“§ 3633. Procedure for expungement**

22 “(a) PETITION.—A petition for expungement may be  
23 filed only in the court in which the petitioner was con-  
24 victed of the nonviolent offense for which expungement is  
25 sought. The clerk of the court shall serve that petition on  
26 the United States Attorney for that district. Except as

1 provided under subsection (d), not later than 60 days after  
2 service of such petition, the United States Attorney may  
3 submit recommendations to the court and provide a copy  
4 of those recommendations to the petitioner.

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

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

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

16 “(e) MANDATORY GRANT OF PETITION.—

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

1           “(2) EXCEPTIONS.—The court may not grant  
2           under this subsection the petition of a petitioner who  
3           has committed a nonviolent offense that is one of  
4           the following:

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

9                   “(B) Any offense under this title that  
10                  causes a victim or victims to sustain a loss of  
11                  not less than \$10,000.

12   **“§ 3634. Effect of expungement**

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

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

1 to recite or acknowledge such arrest or institution of  
2 criminal proceedings, or results thereof, in response to an  
3 inquiry made of the individual for any purpose. The fact  
4 that such individual has been convicted of the nonviolent  
5 offense concerned shall not operate as a disqualification  
6 of such individual to pursue or engage in any lawful activ-  
7 ity, occupation, or profession.

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

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

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

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

1           “(e) REVERSAL OF EXPUNGEMENT.—The records or  
2 references expunged under this subchapter shall be re-  
3 stored by operation of law as public records and may be  
4 used in all court proceedings if the individual is convicted  
5 of any Federal or State offense after the date of  
6 expungement.

7           **“§ 3635. Disclosure of expunged records**

8           “(a) RECORD OF DISPOSITION TO BE RETAINED.—  
9 The Attorney General shall retain an unaltered nonpublic  
10 copy of—

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

12                   “(2) any record containing a reference that is  
13 expunged.

14           “(b) LAW ENFORCEMENT PURPOSES.—The Attorney  
15 General shall maintain a nonpublic index of the records  
16 described under subsection (a) containing, for each such  
17 record, only the name of, and alphanumeric identifiers  
18 that relate to, the individual who is the subject of such  
19 record, the word ‘expunged’, and the name of the person,  
20 agency, office, or department that has custody of the ex-  
21 punged record, and shall not name the offense committed.  
22 The index shall be made available only to an entity to  
23 which records may be made available under subsection (d)  
24 or to any Federal or State law enforcement agency that  
25 has custody of such records.

1 “(c) AUTHORIZED DISCLOSURES.—

2 “(1) IN GENERAL.—Except as provided in para-  
3 graph (2), any record described in subsection (a)  
4 pertaining to an individual may be made available  
5 only—

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

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

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

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

1 (b) CLERICAL AMENDMENT.—The table of sub-  
 2 chapters at the beginning of chapter 229 of title 18,  
 3 United States Code, is amended by adding at the end the  
 4 following item:

“D. Expungement ..... 3631”.

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

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

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

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

18 “(1) PAYMENT INCENTIVES.—

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

1           dures, requirements, effects, and penalties set  
2           forth in subchapter D of Chapter 229 of title  
3           18, United States Code, the amount of funds  
4           that would otherwise be allocated under this  
5           subpart to such State for such fiscal year shall  
6           be increased by 5 percent.

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

21          “(2) REPORTS.—The Attorney General shall  
22          submit to the Committee of the Judiciary of the  
23          House of Representatives and the Committee of the  
24          Judiciary of the Senate an annual report (which

1 shall be made publicly available) that, with respect  
2 to the year involved—

3 “(A) lists the States that have (and those  
4 States which do not have) in effect throughout  
5 the State laws to provide for expungement with  
6 respect to certain criminal records that are sub-  
7 stantially similar to the Federal rights, proce-  
8 dures, requirements, effects, and penalties set  
9 forth in subchapter D of Chapter 229 of title  
10 18, United States Code; and

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

18 “(3) AUTHORIZATION OF APPROPRIATIONS.—

19 There is authorized to be appropriated to carry out  
20 this subsection for each of the fiscal years 2011  
21 through 2015, in addition to funds made available  
22 under section 508, such sums as may be necessary,  
23 but not to exceed the amount that is 5 percent of

1 the total amount appropriated pursuant to such sec-  
2 tion for such fiscal year.”.

○