



DUE PROCESS

INSTITUTE

September 20, 2022

The Honorable Jerrold Nadler
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Jim Jordan
2142 Rayburn House Office Building
Washington, DC 20515

RE: Clean Slate Act, H.R. 2864 / Fresh Start Act, H.R. 5651

Chairman Nadler and Ranking Member Jordan,

Due Process Institute— a bipartisan nonprofit that works to honor, preserve, and restore principles of fairness in the criminal legal system—strongly encourages Members of the House Committee on the Judiciary to support the Clean Slate Act, H.R. 2864, and the Fresh Start Act, H.R. 5651, which are supported by bipartisan groups of House members across the ideological spectrum.

Even the most minor of offenses—including those that don't result in prison time—can impact an individual for many years. A criminal record can significantly hinder job, education, and housing opportunities, which not only continues the punishment for the individual long after his or her sentence, but also likely has an adverse impact on public safety because it increases the likelihood of that person's recidivism.

It is estimated that some 70 million Americans have a criminal record. Policies that continue to burden a person long after their matter has resolved with the legal system set people up to fail when instead we should be providing opportunities and support to help them succeed. Their success does not just affect themselves, but impacts their families, their communities, and our society at large.

Most states across the nation have already acknowledged that more needs to be done. Today, more than 40 states have expungement or record-sealing statutes on the books.¹ Expungement erases the offense while record-sealing hides the offense from non-law enforcement entities, such as employers. These laws vary from state to state. Some allow for the expungement or sealing of certain felonies while others provide for the expungement or sealing of misdemeanors.

¹ <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>.

The evidence strongly shows that these laws have their intended effect, which is to reduce recidivism. A 2020 study conducted by the University of Michigan Law School found that the five-year recidivism rate (defined by rearrest) for individuals whose records were expunged was 7.1 percent.² Only 2.6 percent were rearrested for a violent crime. Recidivism as measured by reconviction was 4.2 percent for all individuals who benefitted from the law. Less than 1 percent were reconvicted of a violent crime. Only 1 percent were convicted of a felony. Importantly, the University of Michigan Law School study also looked at economic outcomes. Beneficiaries of the law saw annualized wage gains of \$4,295 for men and \$4,594 for women.

When I was the Vice President of Legislative Affairs for FreedomWorks, I had the privilege of assisting with the passage of the Clean Slate law in Pennsylvania in 2018,³ which, like the bill before the Committee, had bipartisan support in the Pennsylvania General Assembly and from a diverse coalition of conservative and progressive organizations. Since its passage, six other states—Utah, Michigan, Connecticut, Delaware, Oklahoma, and Colorado—have passed Clean Slate laws.⁴

As introduced, the Clean Slate Act would provide for the automatic sealing of records for simple possession of a controlled substance under 21 U.S.C. § 844 or records for any federal nonviolent marijuana offense—one year after someone has completed any potential prison sentence. The Clean Slate Act also provides a petition process for the sealing of records for certain nonviolent offenses. Specifically, a person who has been convicted of two or fewer nonviolent offenses can petition a court to seal the record after completing the terms of any sentence.

Individuals who have been convicted for treason, terrorism, access and transmission of sensitive information, national security related offenses, and sex offenses would not be eligible for record-sealing. Eligible individuals would be notified of their right to file a petition to seal their record; notification would also be sent to the prosecutor and any victim of the individual's actions; and a hearing would be required unless the prosecutor waived it. If the prosecutor challenges the petition, the petitioner would be allowed access to a public defender and the burden falls to the government to prove that the sealing of the record is not warranted. Although a record would be sealed and not visible to the public or to prospective employers, law enforcement would still have access to the sealed record. In addition, prospective employers would be given immunity from civil liability under the Clean Slate Act.

As introduced, the Fresh Start Act would authorize \$50 million annually in state grants for each of the next five fiscal years to help improve existing automatic record-sealing and

² <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3167&context=articles>.

³ <https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2017&kind=0&body=H&type=B&bn=1419>.

⁴ <https://www.cleanslateinitiative.org/states>.

expungement laws. States may receive up to \$5 million, of which as much as 10 percent may be used for research and planning. The remaining funds may be used to cover the costs of implementation of an automatic record-sealing or expungement law. There are important reporting requirements on the number of records sealed or expunged, broken down by race, ethnicity, and gender. States that delay record-sealing or expungement based on fines and/or fees are not eligible for grants.

Even in these hyper-partisan times, Members—no matter to which party they belong—should be able to agree that the best way to reduce recidivism is to provide a path forward for individuals with a criminal record who seek to improve their lives through education, employment, and housing opportunities. Considering the labor shortage that we are currently experiencing,⁵ and the struggles that so many with a criminal record face finding employment,⁶ this is of paramount national interest.

Due Process Institute strongly urges the Committee to successfully markup the Clean Slate Act, H.R. 2864, and the Fresh Start Act, H.R. 5651. If your staff has any questions about our support of these bills, please email me at jason@idueprocess.org.

Sincerely,

Jason Pye
Director, Rule of Law Initiatives
Due Process Institute

Due Process Institute is a bipartisan nonprofit that works to honor, preserve, and restore principles of fairness in the criminal legal system.

⁵ <https://www.cbsnews.com/news/jolts-job-openings-decline-may-2022/>.

⁶ <https://www.cnbc.com/2022/02/22/64percent-of-unemployed-men-in-their-30s-have-criminal-records-a-barrier-to-landing-a-job.html>.