

HB2436



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2436

by Rep. Mary E. Flowers - LaToya Greenwood

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act. Provides that notwithstanding current law, objections to a petition to expunge or seal must be filed within 15 days in cases in which a petitioner has met all of eligibility requirements under the Act and has demonstrated employment. Provides that a hearing on the basis of an objection for such an eligible petitioner shall be held within 15 days. Effective January 1, 2020.

LRB101 05114 SLF 50126 b

A BILL FOR

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Identification Act is amended by
5 changing Section 5.2 as follows:

6 (20 ILCS 2630/5.2)

7 Sec. 5.2. Expungement, sealing, and immediate sealing.

8 (a) General Provisions.

9 (1) Definitions. In this Act, words and phrases have
10 the meanings set forth in this subsection, except when a
11 particular context clearly requires a different meaning.

12 (A) The following terms shall have the meanings
13 ascribed to them in the Unified Code of Corrections,
14 730 ILCS 5/5-1-2 through 5/5-1-22:

15 (i) Business Offense (730 ILCS 5/5-1-2),

16 (ii) Charge (730 ILCS 5/5-1-3),

17 (iii) Court (730 ILCS 5/5-1-6),

18 (iv) Defendant (730 ILCS 5/5-1-7),

19 (v) Felony (730 ILCS 5/5-1-9),

20 (vi) Imprisonment (730 ILCS 5/5-1-10),

21 (vii) Judgment (730 ILCS 5/5-1-12),

22 (viii) Misdemeanor (730 ILCS 5/5-1-14),

23 (ix) Offense (730 ILCS 5/5-1-15),

- 1 (x) Parole (730 ILCS 5/5-1-16),
2 (xi) Petty Offense (730 ILCS 5/5-1-17),
3 (xii) Probation (730 ILCS 5/5-1-18),
4 (xiii) Sentence (730 ILCS 5/5-1-19),
5 (xiv) Supervision (730 ILCS 5/5-1-21), and
6 (xv) Victim (730 ILCS 5/5-1-22).

7 (B) As used in this Section, "charge not initiated
8 by arrest" means a charge (as defined by 730 ILCS
9 5/5-1-3) brought against a defendant where the
10 defendant is not arrested prior to or as a direct
11 result of the charge.

12 (C) "Conviction" means a judgment of conviction or
13 sentence entered upon a plea of guilty or upon a
14 verdict or finding of guilty of an offense, rendered by
15 a legally constituted jury or by a court of competent
16 jurisdiction authorized to try the case without a jury.
17 An order of supervision successfully completed by the
18 petitioner is not a conviction. An order of qualified
19 probation (as defined in subsection (a)(1)(J))
20 successfully completed by the petitioner is not a
21 conviction. An order of supervision or an order of
22 qualified probation that is terminated
23 unsatisfactorily is a conviction, unless the
24 unsatisfactory termination is reversed, vacated, or
25 modified and the judgment of conviction, if any, is
26 reversed or vacated.

1 (D) "Criminal offense" means a petty offense,
2 business offense, misdemeanor, felony, or municipal
3 ordinance violation (as defined in subsection
4 (a)(1)(H)). As used in this Section, a minor traffic
5 offense (as defined in subsection (a)(1)(G)) shall not
6 be considered a criminal offense.

7 (E) "Expunge" means to physically destroy the
8 records or return them to the petitioner and to
9 obliterate the petitioner's name from any official
10 index or public record, or both. Nothing in this Act
11 shall require the physical destruction of the circuit
12 court file, but such records relating to arrests or
13 charges, or both, ordered expunged shall be impounded
14 as required by subsections (d)(9)(A)(ii) and
15 (d)(9)(B)(ii).

16 (F) As used in this Section, "last sentence" means
17 the sentence, order of supervision, or order of
18 qualified probation (as defined by subsection
19 (a)(1)(J)), for a criminal offense (as defined by
20 subsection (a)(1)(D)) that terminates last in time in
21 any jurisdiction, regardless of whether the petitioner
22 has included the criminal offense for which the
23 sentence or order of supervision or qualified
24 probation was imposed in his or her petition. If
25 multiple sentences, orders of supervision, or orders
26 of qualified probation terminate on the same day and

1 are last in time, they shall be collectively considered
2 the "last sentence" regardless of whether they were
3 ordered to run concurrently.

4 (G) "Minor traffic offense" means a petty offense,
5 business offense, or Class C misdemeanor under the
6 Illinois Vehicle Code or a similar provision of a
7 municipal or local ordinance.

8 (H) "Municipal ordinance violation" means an
9 offense defined by a municipal or local ordinance that
10 is criminal in nature and with which the petitioner was
11 charged or for which the petitioner was arrested and
12 released without charging.

13 (I) "Petitioner" means an adult or a minor
14 prosecuted as an adult who has applied for relief under
15 this Section.

16 (J) "Qualified probation" means an order of
17 probation under Section 10 of the Cannabis Control Act,
18 Section 410 of the Illinois Controlled Substances Act,
19 Section 70 of the Methamphetamine Control and
20 Community Protection Act, Section 5-6-3.3 or 5-6-3.4
21 of the Unified Code of Corrections, Section
22 12-4.3(b) (1) and (2) of the Criminal Code of 1961 (as
23 those provisions existed before their deletion by
24 Public Act 89-313), Section 10-102 of the Illinois
25 Alcoholism and Other Drug Dependency Act, Section
26 40-10 of the Substance Use Disorder Act, or Section 10

1 of the Steroid Control Act. For the purpose of this
2 Section, "successful completion" of an order of
3 qualified probation under Section 10-102 of the
4 Illinois Alcoholism and Other Drug Dependency Act and
5 Section 40-10 of the Substance Use Disorder Act means
6 that the probation was terminated satisfactorily and
7 the judgment of conviction was vacated.

8 (K) "Seal" means to physically and electronically
9 maintain the records, unless the records would
10 otherwise be destroyed due to age, but to make the
11 records unavailable without a court order, subject to
12 the exceptions in Sections 12 and 13 of this Act. The
13 petitioner's name shall also be obliterated from the
14 official index required to be kept by the circuit court
15 clerk under Section 16 of the Clerks of Courts Act, but
16 any index issued by the circuit court clerk before the
17 entry of the order to seal shall not be affected.

18 (L) "Sexual offense committed against a minor"
19 includes but is not limited to the offenses of indecent
20 solicitation of a child or criminal sexual abuse when
21 the victim of such offense is under 18 years of age.

22 (M) "Terminate" as it relates to a sentence or
23 order of supervision or qualified probation includes
24 either satisfactory or unsatisfactory termination of
25 the sentence, unless otherwise specified in this
26 Section. A sentence is terminated notwithstanding any

1 outstanding financial legal obligation.

2 (2) Minor Traffic Offenses. Orders of supervision or
3 convictions for minor traffic offenses shall not affect a
4 petitioner's eligibility to expunge or seal records
5 pursuant to this Section.

6 (2.5) Commencing 180 days after July 29, 2016 (the
7 effective date of Public Act 99-697), the law enforcement
8 agency issuing the citation shall automatically expunge,
9 on or before January 1 and July 1 of each year, the law
10 enforcement records of a person found to have committed a
11 civil law violation of subsection (a) of Section 4 of the
12 Cannabis Control Act or subsection (c) of Section 3.5 of
13 the Drug Paraphernalia Control Act in the law enforcement
14 agency's possession or control and which contains the final
15 satisfactory disposition which pertain to the person
16 issued a citation for that offense. The law enforcement
17 agency shall provide by rule the process for access,
18 review, and to confirm the automatic expungement by the law
19 enforcement agency issuing the citation. Commencing 180
20 days after July 29, 2016 (the effective date of Public Act
21 99-697), the clerk of the circuit court shall expunge, upon
22 order of the court, or in the absence of a court order on
23 or before January 1 and July 1 of each year, the court
24 records of a person found in the circuit court to have
25 committed a civil law violation of subsection (a) of
26 Section 4 of the Cannabis Control Act or subsection (c) of

1 Section 3.5 of the Drug Paraphernalia Control Act in the
2 clerk's possession or control and which contains the final
3 satisfactory disposition which pertain to the person
4 issued a citation for any of those offenses.

5 (3) Exclusions. Except as otherwise provided in
6 subsections (b) (5), (b) (6), (b) (8), (e), (e-5), and (e-6)
7 of this Section, the court shall not order:

8 (A) the sealing or expungement of the records of
9 arrests or charges not initiated by arrest that result
10 in an order of supervision for or conviction of: (i)
11 any sexual offense committed against a minor; (ii)
12 Section 11-501 of the Illinois Vehicle Code or a
13 similar provision of a local ordinance; or (iii)
14 Section 11-503 of the Illinois Vehicle Code or a
15 similar provision of a local ordinance, unless the
16 arrest or charge is for a misdemeanor violation of
17 subsection (a) of Section 11-503 or a similar provision
18 of a local ordinance, that occurred prior to the
19 offender reaching the age of 25 years and the offender
20 has no other conviction for violating Section 11-501 or
21 11-503 of the Illinois Vehicle Code or a similar
22 provision of a local ordinance.

23 (B) the sealing or expungement of records of minor
24 traffic offenses (as defined in subsection (a) (1) (G)),
25 unless the petitioner was arrested and released
26 without charging.

1 (C) the sealing of the records of arrests or
2 charges not initiated by arrest which result in an
3 order of supervision or a conviction for the following
4 offenses:

5 (i) offenses included in Article 11 of the
6 Criminal Code of 1961 or the Criminal Code of 2012
7 or a similar provision of a local ordinance, except
8 Section 11-14 and a misdemeanor violation of
9 Section 11-30 of the Criminal Code of 1961 or the
10 Criminal Code of 2012, or a similar provision of a
11 local ordinance;

12 (ii) Section 11-1.50, 12-3.4, 12-15, 12-30,
13 26-5, or 48-1 of the Criminal Code of 1961 or the
14 Criminal Code of 2012, or a similar provision of a
15 local ordinance;

16 (iii) Sections 12-3.1 or 12-3.2 of the
17 Criminal Code of 1961 or the Criminal Code of 2012,
18 or Section 125 of the Stalking No Contact Order
19 Act, or Section 219 of the Civil No Contact Order
20 Act, or a similar provision of a local ordinance;

21 (iv) Class A misdemeanors or felony offenses
22 under the Humane Care for Animals Act; or

23 (v) any offense or attempted offense that
24 would subject a person to registration under the
25 Sex Offender Registration Act.

26 (D) (blank).

1 (b) Expungement.

2 (1) A petitioner may petition the circuit court to
3 expunge the records of his or her arrests and charges not
4 initiated by arrest when each arrest or charge not
5 initiated by arrest sought to be expunged resulted in: (i)
6 acquittal, dismissal, or the petitioner's release without
7 charging, unless excluded by subsection (a)(3)(B); (ii) a
8 conviction which was vacated or reversed, unless excluded
9 by subsection (a)(3)(B); (iii) an order of supervision and
10 such supervision was successfully completed by the
11 petitioner, unless excluded by subsection (a)(3)(A) or
12 (a)(3)(B); or (iv) an order of qualified probation (as
13 defined in subsection (a)(1)(J)) and such probation was
14 successfully completed by the petitioner.

15 (1.5) When a petitioner seeks to have a record of
16 arrest expunged under this Section, and the offender has
17 been convicted of a criminal offense, the State's Attorney
18 may object to the expungement on the grounds that the
19 records contain specific relevant information aside from
20 the mere fact of the arrest.

21 (2) Time frame for filing a petition to expunge.

22 (A) When the arrest or charge not initiated by
23 arrest sought to be expunged resulted in an acquittal,
24 dismissal, the petitioner's release without charging,
25 or the reversal or vacation of a conviction, there is
26 no waiting period to petition for the expungement of

1 such records.

2 (B) When the arrest or charge not initiated by
3 arrest sought to be expunged resulted in an order of
4 supervision, successfully completed by the petitioner,
5 the following time frames will apply:

6 (i) Those arrests or charges that resulted in
7 orders of supervision under Section 3-707, 3-708,
8 3-710, or 5-401.3 of the Illinois Vehicle Code or a
9 similar provision of a local ordinance, or under
10 Section 11-1.50, 12-3.2, or 12-15 of the Criminal
11 Code of 1961 or the Criminal Code of 2012, or a
12 similar provision of a local ordinance, shall not
13 be eligible for expungement until 5 years have
14 passed following the satisfactory termination of
15 the supervision.

16 (i-5) Those arrests or charges that resulted
17 in orders of supervision for a misdemeanor
18 violation of subsection (a) of Section 11-503 of
19 the Illinois Vehicle Code or a similar provision of
20 a local ordinance, that occurred prior to the
21 offender reaching the age of 25 years and the
22 offender has no other conviction for violating
23 Section 11-501 or 11-503 of the Illinois Vehicle
24 Code or a similar provision of a local ordinance
25 shall not be eligible for expungement until the
26 petitioner has reached the age of 25 years.

1 (ii) Those arrests or charges that resulted in
2 orders of supervision for any other offenses shall
3 not be eligible for expungement until 2 years have
4 passed following the satisfactory termination of
5 the supervision.

6 (C) When the arrest or charge not initiated by
7 arrest sought to be expunged resulted in an order of
8 qualified probation, successfully completed by the
9 petitioner, such records shall not be eligible for
10 expungement until 5 years have passed following the
11 satisfactory termination of the probation.

12 (3) Those records maintained by the Department for
13 persons arrested prior to their 17th birthday shall be
14 expunged as provided in Section 5-915 of the Juvenile Court
15 Act of 1987.

16 (4) Whenever a person has been arrested for or
17 convicted of any offense, in the name of a person whose
18 identity he or she has stolen or otherwise come into
19 possession of, the aggrieved person from whom the identity
20 was stolen or otherwise obtained without authorization,
21 upon learning of the person having been arrested using his
22 or her identity, may, upon verified petition to the chief
23 judge of the circuit wherein the arrest was made, have a
24 court order entered nunc pro tunc by the Chief Judge to
25 correct the arrest record, conviction record, if any, and
26 all official records of the arresting authority, the

1 Department, other criminal justice agencies, the
2 prosecutor, and the trial court concerning such arrest, if
3 any, by removing his or her name from all such records in
4 connection with the arrest and conviction, if any, and by
5 inserting in the records the name of the offender, if known
6 or ascertainable, in lieu of the aggrieved's name. The
7 records of the circuit court clerk shall be sealed until
8 further order of the court upon good cause shown and the
9 name of the aggrieved person obliterated on the official
10 index required to be kept by the circuit court clerk under
11 Section 16 of the Clerks of Courts Act, but the order shall
12 not affect any index issued by the circuit court clerk
13 before the entry of the order. Nothing in this Section
14 shall limit the Department of State Police or other
15 criminal justice agencies or prosecutors from listing
16 under an offender's name the false names he or she has
17 used.

18 (5) Whenever a person has been convicted of criminal
19 sexual assault, aggravated criminal sexual assault,
20 predatory criminal sexual assault of a child, criminal
21 sexual abuse, or aggravated criminal sexual abuse, the
22 victim of that offense may request that the State's
23 Attorney of the county in which the conviction occurred
24 file a verified petition with the presiding trial judge at
25 the petitioner's trial to have a court order entered to
26 seal the records of the circuit court clerk in connection

1 with the proceedings of the trial court concerning that
2 offense. However, the records of the arresting authority
3 and the Department of State Police concerning the offense
4 shall not be sealed. The court, upon good cause shown,
5 shall make the records of the circuit court clerk in
6 connection with the proceedings of the trial court
7 concerning the offense available for public inspection.

8 (6) If a conviction has been set aside on direct review
9 or on collateral attack and the court determines by clear
10 and convincing evidence that the petitioner was factually
11 innocent of the charge, the court that finds the petitioner
12 factually innocent of the charge shall enter an expungement
13 order for the conviction for which the petitioner has been
14 determined to be innocent as provided in subsection (b) of
15 Section 5-5-4 of the Unified Code of Corrections.

16 (7) Nothing in this Section shall prevent the
17 Department of State Police from maintaining all records of
18 any person who is admitted to probation upon terms and
19 conditions and who fulfills those terms and conditions
20 pursuant to Section 10 of the Cannabis Control Act, Section
21 410 of the Illinois Controlled Substances Act, Section 70
22 of the Methamphetamine Control and Community Protection
23 Act, Section 5-6-3.3 or 5-6-3.4 of the Unified Code of
24 Corrections, Section 12-4.3 or subdivision (b)(1) of
25 Section 12-3.05 of the Criminal Code of 1961 or the
26 Criminal Code of 2012, Section 10-102 of the Illinois

1 Alcoholism and Other Drug Dependency Act, Section 40-10 of
2 the Substance Use Disorder Act, or Section 10 of the
3 Steroid Control Act.

4 (8) If the petitioner has been granted a certificate of
5 innocence under Section 2-702 of the Code of Civil
6 Procedure, the court that grants the certificate of
7 innocence shall also enter an order expunging the
8 conviction for which the petitioner has been determined to
9 be innocent as provided in subsection (h) of Section 2-702
10 of the Code of Civil Procedure.

11 (c) Sealing.

12 (1) Applicability. Notwithstanding any other provision
13 of this Act to the contrary, and cumulative with any rights
14 to expungement of criminal records, this subsection
15 authorizes the sealing of criminal records of adults and of
16 minors prosecuted as adults. Subsection (g) of this Section
17 provides for immediate sealing of certain records.

18 (2) Eligible Records. The following records may be
19 sealed:

20 (A) All arrests resulting in release without
21 charging;

22 (B) Arrests or charges not initiated by arrest
23 resulting in acquittal, dismissal, or conviction when
24 the conviction was reversed or vacated, except as
25 excluded by subsection (a) (3) (B);

26 (C) Arrests or charges not initiated by arrest

1 resulting in orders of supervision, including orders
2 of supervision for municipal ordinance violations,
3 successfully completed by the petitioner, unless
4 excluded by subsection (a) (3);

5 (D) Arrests or charges not initiated by arrest
6 resulting in convictions, including convictions on
7 municipal ordinance violations, unless excluded by
8 subsection (a) (3);

9 (E) Arrests or charges not initiated by arrest
10 resulting in orders of first offender probation under
11 Section 10 of the Cannabis Control Act, Section 410 of
12 the Illinois Controlled Substances Act, Section 70 of
13 the Methamphetamine Control and Community Protection
14 Act, or Section 5-6-3.3 of the Unified Code of
15 Corrections; and

16 (F) Arrests or charges not initiated by arrest
17 resulting in felony convictions unless otherwise
18 excluded by subsection (a) paragraph (3) of this
19 Section.

20 (3) When Records Are Eligible to Be Sealed. Records
21 identified as eligible under subsection (c) (2) may be
22 sealed as follows:

23 (A) Records identified as eligible under
24 subsection (c) (2) (A) and (c) (2) (B) may be sealed at any
25 time.

26 (B) Except as otherwise provided in subparagraph

1 (E) of this paragraph (3), records identified as
2 eligible under subsection (c)(2)(C) may be sealed 2
3 years after the termination of petitioner's last
4 sentence (as defined in subsection (a)(1)(F)).

5 (C) Except as otherwise provided in subparagraph
6 (E) of this paragraph (3), records identified as
7 eligible under subsections (c)(2)(D), (c)(2)(E), and
8 (c)(2)(F) may be sealed 3 years after the termination
9 of the petitioner's last sentence (as defined in
10 subsection (a)(1)(F)). Convictions requiring public
11 registration under the Arsonist Registration Act, the
12 Sex Offender Registration Act, or the Murderer and
13 Violent Offender Against Youth Registration Act may
14 not be sealed until the petitioner is no longer
15 required to register under that relevant Act.

16 (D) Records identified in subsection
17 (a)(3)(A)(iii) may be sealed after the petitioner has
18 reached the age of 25 years.

19 (E) Records identified as eligible under
20 subsections (c)(2)(C), (c)(2)(D), (c)(2)(E), or
21 (c)(2)(F) may be sealed upon termination of the
22 petitioner's last sentence if the petitioner earned a
23 high school diploma, associate's degree, career
24 certificate, vocational technical certification, or
25 bachelor's degree, or passed the high school level Test
26 of General Educational Development, during the period

1 of his or her sentence, aftercare release, or mandatory
2 supervised release. This subparagraph shall apply only
3 to a petitioner who has not completed the same
4 educational goal prior to the period of his or her
5 sentence, aftercare release, or mandatory supervised
6 release. If a petition for sealing eligible records
7 filed under this subparagraph is denied by the court,
8 the time periods under subparagraph (B) or (C) shall
9 apply to any subsequent petition for sealing filed by
10 the petitioner.

11 (4) Subsequent felony convictions. A person may not
12 have subsequent felony conviction records sealed as
13 provided in this subsection (c) if he or she is convicted
14 of any felony offense after the date of the sealing of
15 prior felony convictions as provided in this subsection
16 (c). The court may, upon conviction for a subsequent felony
17 offense, order the unsealing of prior felony conviction
18 records previously ordered sealed by the court.

19 (5) Notice of eligibility for sealing. Upon entry of a
20 disposition for an eligible record under this subsection
21 (c), the petitioner shall be informed by the court of the
22 right to have the records sealed and the procedures for the
23 sealing of the records.

24 (d) Procedure. The following procedures apply to
25 expungement under subsections (b), (e), and (e-6) and sealing
26 under subsections (c) and (e-5):

1 (1) Filing the petition. Upon becoming eligible to
2 petition for the expungement or sealing of records under
3 this Section, the petitioner shall file a petition
4 requesting the expungement or sealing of records with the
5 clerk of the court where the arrests occurred or the
6 charges were brought, or both. If arrests occurred or
7 charges were brought in multiple jurisdictions, a petition
8 must be filed in each such jurisdiction. The petitioner
9 shall pay the applicable fee, except no fee shall be
10 required if the petitioner has obtained a court order
11 waiving fees under Supreme Court Rule 298 or it is
12 otherwise waived.

13 (1.5) County fee waiver pilot program. In a county of
14 3,000,000 or more inhabitants, no fee shall be required to
15 be paid by a petitioner if the records sought to be
16 expunged or sealed were arrests resulting in release
17 without charging or arrests or charges not initiated by
18 arrest resulting in acquittal, dismissal, or conviction
19 when the conviction was reversed or vacated, unless
20 excluded by subsection (a) (3) (B). The provisions of this
21 paragraph (1.5), other than this sentence, are inoperative
22 on and after January 1, 2019.

23 (2) Contents of petition. The petition shall be
24 verified and shall contain the petitioner's name, date of
25 birth, current address and, for each arrest or charge not
26 initiated by arrest sought to be sealed or expunged, the

1 case number, the date of arrest (if any), the identity of
2 the arresting authority, and such other information as the
3 court may require. During the pendency of the proceeding,
4 the petitioner shall promptly notify the circuit court
5 clerk of any change of his or her address. If the
6 petitioner has received a certificate of eligibility for
7 sealing from the Prisoner Review Board under paragraph (10)
8 of subsection (a) of Section 3-3-2 of the Unified Code of
9 Corrections, the certificate shall be attached to the
10 petition.

11 (3) Drug test. The petitioner must attach to the
12 petition proof that the petitioner has passed a test taken
13 within 30 days before the filing of the petition showing
14 the absence within his or her body of all illegal
15 substances as defined by the Illinois Controlled
16 Substances Act, the Methamphetamine Control and Community
17 Protection Act, and the Cannabis Control Act if he or she
18 is petitioning to:

19 (A) seal felony records under clause (c) (2) (E);

20 (B) seal felony records for a violation of the
21 Illinois Controlled Substances Act, the
22 Methamphetamine Control and Community Protection Act,
23 or the Cannabis Control Act under clause (c) (2) (F);

24 (C) seal felony records under subsection (e-5); or

25 (D) expunge felony records of a qualified
26 probation under clause (b) (1) (iv).

1 (4) Service of petition. The circuit court clerk shall
2 promptly serve a copy of the petition and documentation to
3 support the petition under subsection (e-5) or (e-6) on the
4 State's Attorney or prosecutor charged with the duty of
5 prosecuting the offense, the Department of State Police,
6 the arresting agency and the chief legal officer of the
7 unit of local government effecting the arrest.

8 (5) Objections.

9 (A) Any party entitled to notice of the petition
10 may file an objection to the petition. All objections
11 shall be in writing, shall be filed with the circuit
12 court clerk, and shall state with specificity the basis
13 of the objection. Whenever a person who has been
14 convicted of an offense is granted a pardon by the
15 Governor which specifically authorizes expungement, an
16 objection to the petition may not be filed.

17 (B) Objections to a petition to expunge or seal
18 must be filed within 60 days of the date of service of
19 the petition.

20 (C) Notwithstanding subdivision (B) of this
21 subsection (d), objections to a petition to expunge or
22 seal must be filed within 15 days in cases in which a
23 petitioner has met all of eligibility requirements
24 under this Section and has demonstrated employment. A
25 hearing on the basis of an objection for such an
26 eligible petitioner shall be held within 15 days.

1 (6) Entry of order.

2 (A) The Chief Judge of the circuit wherein the
3 charge was brought, any judge of that circuit
4 designated by the Chief Judge, or in counties of less
5 than 3,000,000 inhabitants, the presiding trial judge
6 at the petitioner's trial, if any, shall rule on the
7 petition to expunge or seal as set forth in this
8 subsection (d) (6).

9 (B) Unless the State's Attorney or prosecutor, the
10 Department of State Police, the arresting agency, or
11 the chief legal officer files an objection to the
12 petition to expunge or seal within 60 days from the
13 date of service of the petition, the court shall enter
14 an order granting or denying the petition.

15 (C) Notwithstanding any other provision of law,
16 the court shall not deny a petition for sealing under
17 this Section because the petitioner has not satisfied
18 an outstanding legal financial obligation established,
19 imposed, or originated by a court, law enforcement
20 agency, or a municipal, State, county, or other unit of
21 local government, including, but not limited to, any
22 cost, assessment, fine, or fee. An outstanding legal
23 financial obligation does not include any court
24 ordered restitution to a victim under Section 5-5-6 of
25 the Unified Code of Corrections, unless the
26 restitution has been converted to a civil judgment.

1 Nothing in this subparagraph (C) waives, rescinds, or
2 abrogates a legal financial obligation or otherwise
3 eliminates or affects the right of the holder of any
4 financial obligation to pursue collection under
5 applicable federal, State, or local law.

6 (7) Hearings. If an objection is filed, the court shall
7 set a date for a hearing and notify the petitioner and all
8 parties entitled to notice of the petition of the hearing
9 date at least 30 days prior to the hearing. Prior to the
10 hearing, the State's Attorney shall consult with the
11 Department as to the appropriateness of the relief sought
12 in the petition to expunge or seal. At the hearing, the
13 court shall hear evidence on whether the petition should or
14 should not be granted, and shall grant or deny the petition
15 to expunge or seal the records based on the evidence
16 presented at the hearing. The court may consider the
17 following:

18 (A) the strength of the evidence supporting the
19 defendant's conviction;

20 (B) the reasons for retention of the conviction
21 records by the State;

22 (C) the petitioner's age, criminal record history,
23 and employment history;

24 (D) the period of time between the petitioner's
25 arrest on the charge resulting in the conviction and
26 the filing of the petition under this Section; and

1 (E) the specific adverse consequences the
2 petitioner may be subject to if the petition is denied.

3 (8) Service of order. After entering an order to
4 expunge or seal records, the court must provide copies of
5 the order to the Department, in a form and manner
6 prescribed by the Department, to the petitioner, to the
7 State's Attorney or prosecutor charged with the duty of
8 prosecuting the offense, to the arresting agency, to the
9 chief legal officer of the unit of local government
10 effecting the arrest, and to such other criminal justice
11 agencies as may be ordered by the court.

12 (9) Implementation of order.

13 (A) Upon entry of an order to expunge records
14 pursuant to (b) (2) (A) or (b) (2) (B) (ii), or both:

15 (i) the records shall be expunged (as defined
16 in subsection (a) (1) (E)) by the arresting agency,
17 the Department, and any other agency as ordered by
18 the court, within 60 days of the date of service of
19 the order, unless a motion to vacate, modify, or
20 reconsider the order is filed pursuant to
21 paragraph (12) of subsection (d) of this Section;

22 (ii) the records of the circuit court clerk
23 shall be impounded until further order of the court
24 upon good cause shown and the name of the
25 petitioner obliterated on the official index
26 required to be kept by the circuit court clerk

1 under Section 16 of the Clerks of Courts Act, but
2 the order shall not affect any index issued by the
3 circuit court clerk before the entry of the order;
4 and

5 (iii) in response to an inquiry for expunged
6 records, the court, the Department, or the agency
7 receiving such inquiry, shall reply as it does in
8 response to inquiries when no records ever
9 existed.

10 (B) Upon entry of an order to expunge records
11 pursuant to (b) (2) (B) (i) or (b) (2) (C), or both:

12 (i) the records shall be expunged (as defined
13 in subsection (a) (1) (E)) by the arresting agency
14 and any other agency as ordered by the court,
15 within 60 days of the date of service of the order,
16 unless a motion to vacate, modify, or reconsider
17 the order is filed pursuant to paragraph (12) of
18 subsection (d) of this Section;

19 (ii) the records of the circuit court clerk
20 shall be impounded until further order of the court
21 upon good cause shown and the name of the
22 petitioner obliterated on the official index
23 required to be kept by the circuit court clerk
24 under Section 16 of the Clerks of Courts Act, but
25 the order shall not affect any index issued by the
26 circuit court clerk before the entry of the order;

1 (iii) the records shall be impounded by the
2 Department within 60 days of the date of service of
3 the order as ordered by the court, unless a motion
4 to vacate, modify, or reconsider the order is filed
5 pursuant to paragraph (12) of subsection (d) of
6 this Section;

7 (iv) records impounded by the Department may
8 be disseminated by the Department only as required
9 by law or to the arresting authority, the State's
10 Attorney, and the court upon a later arrest for the
11 same or a similar offense or for the purpose of
12 sentencing for any subsequent felony, and to the
13 Department of Corrections upon conviction for any
14 offense; and

15 (v) in response to an inquiry for such records
16 from anyone not authorized by law to access such
17 records, the court, the Department, or the agency
18 receiving such inquiry shall reply as it does in
19 response to inquiries when no records ever
20 existed.

21 (B-5) Upon entry of an order to expunge records
22 under subsection (e-6):

23 (i) the records shall be expunged (as defined
24 in subsection (a)(1)(E)) by the arresting agency
25 and any other agency as ordered by the court,
26 within 60 days of the date of service of the order,

1 unless a motion to vacate, modify, or reconsider
2 the order is filed under paragraph (12) of
3 subsection (d) of this Section;

4 (ii) the records of the circuit court clerk
5 shall be impounded until further order of the court
6 upon good cause shown and the name of the
7 petitioner obliterated on the official index
8 required to be kept by the circuit court clerk
9 under Section 16 of the Clerks of Courts Act, but
10 the order shall not affect any index issued by the
11 circuit court clerk before the entry of the order;

12 (iii) the records shall be impounded by the
13 Department within 60 days of the date of service of
14 the order as ordered by the court, unless a motion
15 to vacate, modify, or reconsider the order is filed
16 under paragraph (12) of subsection (d) of this
17 Section;

18 (iv) records impounded by the Department may
19 be disseminated by the Department only as required
20 by law or to the arresting authority, the State's
21 Attorney, and the court upon a later arrest for the
22 same or a similar offense or for the purpose of
23 sentencing for any subsequent felony, and to the
24 Department of Corrections upon conviction for any
25 offense; and

26 (v) in response to an inquiry for these records

1 from anyone not authorized by law to access the
2 records, the court, the Department, or the agency
3 receiving the inquiry shall reply as it does in
4 response to inquiries when no records ever
5 existed.

6 (C) Upon entry of an order to seal records under
7 subsection (c), the arresting agency, any other agency
8 as ordered by the court, the Department, and the court
9 shall seal the records (as defined in subsection
10 (a) (1) (K)). In response to an inquiry for such records,
11 from anyone not authorized by law to access such
12 records, the court, the Department, or the agency
13 receiving such inquiry shall reply as it does in
14 response to inquiries when no records ever existed.

15 (D) The Department shall send written notice to the
16 petitioner of its compliance with each order to expunge
17 or seal records within 60 days of the date of service
18 of that order or, if a motion to vacate, modify, or
19 reconsider is filed, within 60 days of service of the
20 order resolving the motion, if that order requires the
21 Department to expunge or seal records. In the event of
22 an appeal from the circuit court order, the Department
23 shall send written notice to the petitioner of its
24 compliance with an Appellate Court or Supreme Court
25 judgment to expunge or seal records within 60 days of
26 the issuance of the court's mandate. The notice is not

1 required while any motion to vacate, modify, or
2 reconsider, or any appeal or petition for
3 discretionary appellate review, is pending.

4 (E) Upon motion, the court may order that a sealed
5 judgment or other court record necessary to
6 demonstrate the amount of any legal financial
7 obligation due and owing be made available for the
8 limited purpose of collecting any legal financial
9 obligations owed by the petitioner that were
10 established, imposed, or originated in the criminal
11 proceeding for which those records have been sealed.
12 The records made available under this subparagraph (E)
13 shall not be entered into the official index required
14 to be kept by the circuit court clerk under Section 16
15 of the Clerks of Courts Act and shall be immediately
16 re-impounded upon the collection of the outstanding
17 financial obligations.

18 (F) Notwithstanding any other provision of this
19 Section, a circuit court clerk may access a sealed
20 record for the limited purpose of collecting payment
21 for any legal financial obligations that were
22 established, imposed, or originated in the criminal
23 proceedings for which those records have been sealed.

24 (10) Fees. The Department may charge the petitioner a
25 fee equivalent to the cost of processing any order to
26 expunge or seal records. Notwithstanding any provision of

1 the Clerks of Courts Act to the contrary, the circuit court
2 clerk may charge a fee equivalent to the cost associated
3 with the sealing or expungement of records by the circuit
4 court clerk. From the total filing fee collected for the
5 petition to seal or expunge, the circuit court clerk shall
6 deposit \$10 into the Circuit Court Clerk Operation and
7 Administrative Fund, to be used to offset the costs
8 incurred by the circuit court clerk in performing the
9 additional duties required to serve the petition to seal or
10 expunge on all parties. The circuit court clerk shall
11 collect and forward the Department of State Police portion
12 of the fee to the Department and it shall be deposited in
13 the State Police Services Fund. If the record brought under
14 an expungement petition was previously sealed under this
15 Section, the fee for the expungement petition for that same
16 record shall be waived.

17 (11) Final Order. No court order issued under the
18 expungement or sealing provisions of this Section shall
19 become final for purposes of appeal until 30 days after
20 service of the order on the petitioner and all parties
21 entitled to notice of the petition.

22 (12) Motion to Vacate, Modify, or Reconsider. Under
23 Section 2-1203 of the Code of Civil Procedure, the
24 petitioner or any party entitled to notice may file a
25 motion to vacate, modify, or reconsider the order granting
26 or denying the petition to expunge or seal within 60 days

1 of service of the order. If filed more than 60 days after
2 service of the order, a petition to vacate, modify, or
3 reconsider shall comply with subsection (c) of Section
4 2-1401 of the Code of Civil Procedure. Upon filing of a
5 motion to vacate, modify, or reconsider, notice of the
6 motion shall be served upon the petitioner and all parties
7 entitled to notice of the petition.

8 (13) Effect of Order. An order granting a petition
9 under the expungement or sealing provisions of this Section
10 shall not be considered void because it fails to comply
11 with the provisions of this Section or because of any error
12 asserted in a motion to vacate, modify, or reconsider. The
13 circuit court retains jurisdiction to determine whether
14 the order is voidable and to vacate, modify, or reconsider
15 its terms based on a motion filed under paragraph (12) of
16 this subsection (d).

17 (14) Compliance with Order Granting Petition to Seal
18 Records. Unless a court has entered a stay of an order
19 granting a petition to seal, all parties entitled to notice
20 of the petition must fully comply with the terms of the
21 order within 60 days of service of the order even if a
22 party is seeking relief from the order through a motion
23 filed under paragraph (12) of this subsection (d) or is
24 appealing the order.

25 (15) Compliance with Order Granting Petition to
26 Expunge Records. While a party is seeking relief from the

1 order granting the petition to expunge through a motion
2 filed under paragraph (12) of this subsection (d) or is
3 appealing the order, and unless a court has entered a stay
4 of that order, the parties entitled to notice of the
5 petition must seal, but need not expunge, the records until
6 there is a final order on the motion for relief or, in the
7 case of an appeal, the issuance of that court's mandate.

8 (16) The changes to this subsection (d) made by Public
9 Act 98-163 apply to all petitions pending on August 5, 2013
10 (the effective date of Public Act 98-163) and to all orders
11 ruling on a petition to expunge or seal on or after August
12 5, 2013 (the effective date of Public Act 98-163).

13 (e) Whenever a person who has been convicted of an offense
14 is granted a pardon by the Governor which specifically
15 authorizes expungement, he or she may, upon verified petition
16 to the Chief Judge of the circuit where the person had been
17 convicted, any judge of the circuit designated by the Chief
18 Judge, or in counties of less than 3,000,000 inhabitants, the
19 presiding trial judge at the defendant's trial, have a court
20 order entered expunging the record of arrest from the official
21 records of the arresting authority and order that the records
22 of the circuit court clerk and the Department be sealed until
23 further order of the court upon good cause shown or as
24 otherwise provided herein, and the name of the defendant
25 obliterated from the official index requested to be kept by the
26 circuit court clerk under Section 16 of the Clerks of Courts

1 Act in connection with the arrest and conviction for the
2 offense for which he or she had been pardoned but the order
3 shall not affect any index issued by the circuit court clerk
4 before the entry of the order. All records sealed by the
5 Department may be disseminated by the Department only to the
6 arresting authority, the State's Attorney, and the court upon a
7 later arrest for the same or similar offense or for the purpose
8 of sentencing for any subsequent felony. Upon conviction for
9 any subsequent offense, the Department of Corrections shall
10 have access to all sealed records of the Department pertaining
11 to that individual. Upon entry of the order of expungement, the
12 circuit court clerk shall promptly mail a copy of the order to
13 the person who was pardoned.

14 (e-5) Whenever a person who has been convicted of an
15 offense is granted a certificate of eligibility for sealing by
16 the Prisoner Review Board which specifically authorizes
17 sealing, he or she may, upon verified petition to the Chief
18 Judge of the circuit where the person had been convicted, any
19 judge of the circuit designated by the Chief Judge, or in
20 counties of less than 3,000,000 inhabitants, the presiding
21 trial judge at the petitioner's trial, have a court order
22 entered sealing the record of arrest from the official records
23 of the arresting authority and order that the records of the
24 circuit court clerk and the Department be sealed until further
25 order of the court upon good cause shown or as otherwise
26 provided herein, and the name of the petitioner obliterated

1 from the official index requested to be kept by the circuit
2 court clerk under Section 16 of the Clerks of Courts Act in
3 connection with the arrest and conviction for the offense for
4 which he or she had been granted the certificate but the order
5 shall not affect any index issued by the circuit court clerk
6 before the entry of the order. All records sealed by the
7 Department may be disseminated by the Department only as
8 required by this Act or to the arresting authority, a law
9 enforcement agency, the State's Attorney, and the court upon a
10 later arrest for the same or similar offense or for the purpose
11 of sentencing for any subsequent felony. Upon conviction for
12 any subsequent offense, the Department of Corrections shall
13 have access to all sealed records of the Department pertaining
14 to that individual. Upon entry of the order of sealing, the
15 circuit court clerk shall promptly mail a copy of the order to
16 the person who was granted the certificate of eligibility for
17 sealing.

18 (e-6) Whenever a person who has been convicted of an
19 offense is granted a certificate of eligibility for expungement
20 by the Prisoner Review Board which specifically authorizes
21 expungement, he or she may, upon verified petition to the Chief
22 Judge of the circuit where the person had been convicted, any
23 judge of the circuit designated by the Chief Judge, or in
24 counties of less than 3,000,000 inhabitants, the presiding
25 trial judge at the petitioner's trial, have a court order
26 entered expunging the record of arrest from the official

1 records of the arresting authority and order that the records
2 of the circuit court clerk and the Department be sealed until
3 further order of the court upon good cause shown or as
4 otherwise provided herein, and the name of the petitioner
5 obliterated from the official index requested to be kept by the
6 circuit court clerk under Section 16 of the Clerks of Courts
7 Act in connection with the arrest and conviction for the
8 offense for which he or she had been granted the certificate
9 but the order shall not affect any index issued by the circuit
10 court clerk before the entry of the order. All records sealed
11 by the Department may be disseminated by the Department only as
12 required by this Act or to the arresting authority, a law
13 enforcement agency, the State's Attorney, and the court upon a
14 later arrest for the same or similar offense or for the purpose
15 of sentencing for any subsequent felony. Upon conviction for
16 any subsequent offense, the Department of Corrections shall
17 have access to all expunged records of the Department
18 pertaining to that individual. Upon entry of the order of
19 expungement, the circuit court clerk shall promptly mail a copy
20 of the order to the person who was granted the certificate of
21 eligibility for expungement.

22 (f) Subject to available funding, the Illinois Department
23 of Corrections shall conduct a study of the impact of sealing,
24 especially on employment and recidivism rates, utilizing a
25 random sample of those who apply for the sealing of their
26 criminal records under Public Act 93-211. At the request of the

1 Illinois Department of Corrections, records of the Illinois
2 Department of Employment Security shall be utilized as
3 appropriate to assist in the study. The study shall not
4 disclose any data in a manner that would allow the
5 identification of any particular individual or employing unit.
6 The study shall be made available to the General Assembly no
7 later than September 1, 2010.

8 (g) Immediate Sealing.

9 (1) Applicability. Notwithstanding any other provision
10 of this Act to the contrary, and cumulative with any rights
11 to expungement or sealing of criminal records, this
12 subsection authorizes the immediate sealing of criminal
13 records of adults and of minors prosecuted as adults.

14 (2) Eligible Records. Arrests or charges not initiated
15 by arrest resulting in acquittal or dismissal with
16 prejudice, except as excluded by subsection (a)(3)(B),
17 that occur on or after January 1, 2018 (the effective date
18 of Public Act 100-282), may be sealed immediately if the
19 petition is filed with the circuit court clerk on the same
20 day and during the same hearing in which the case is
21 disposed.

22 (3) When Records are Eligible to be Immediately Sealed.
23 Eligible records under paragraph (2) of this subsection (g)
24 may be sealed immediately after entry of the final
25 disposition of a case, notwithstanding the disposition of
26 other charges in the same case.

1 (4) Notice of Eligibility for Immediate Sealing. Upon
2 entry of a disposition for an eligible record under this
3 subsection (g), the defendant shall be informed by the
4 court of his or her right to have eligible records
5 immediately sealed and the procedure for the immediate
6 sealing of these records.

7 (5) Procedure. The following procedures apply to
8 immediate sealing under this subsection (g).

9 (A) Filing the Petition. Upon entry of the final
10 disposition of the case, the defendant's attorney may
11 immediately petition the court, on behalf of the
12 defendant, for immediate sealing of eligible records
13 under paragraph (2) of this subsection (g) that are
14 entered on or after January 1, 2018 (the effective date
15 of Public Act 100-282). The immediate sealing petition
16 may be filed with the circuit court clerk during the
17 hearing in which the final disposition of the case is
18 entered. If the defendant's attorney does not file the
19 petition for immediate sealing during the hearing, the
20 defendant may file a petition for sealing at any time
21 as authorized under subsection (c) (3) (A).

22 (B) Contents of Petition. The immediate sealing
23 petition shall be verified and shall contain the
24 petitioner's name, date of birth, current address, and
25 for each eligible record, the case number, the date of
26 arrest if applicable, the identity of the arresting

1 authority if applicable, and other information as the
2 court may require.

3 (C) Drug Test. The petitioner shall not be required
4 to attach proof that he or she has passed a drug test.

5 (D) Service of Petition. A copy of the petition
6 shall be served on the State's Attorney in open court.
7 The petitioner shall not be required to serve a copy of
8 the petition on any other agency.

9 (E) Entry of Order. The presiding trial judge shall
10 enter an order granting or denying the petition for
11 immediate sealing during the hearing in which it is
12 filed. Petitions for immediate sealing shall be ruled
13 on in the same hearing in which the final disposition
14 of the case is entered.

15 (F) Hearings. The court shall hear the petition for
16 immediate sealing on the same day and during the same
17 hearing in which the disposition is rendered.

18 (G) Service of Order. An order to immediately seal
19 eligible records shall be served in conformance with
20 subsection (d) (8).

21 (H) Implementation of Order. An order to
22 immediately seal records shall be implemented in
23 conformance with subsections (d) (9) (C) and (d) (9) (D).

24 (I) Fees. The fee imposed by the circuit court
25 clerk and the Department of State Police shall comply
26 with paragraph (1) of subsection (d) of this Section.

1 (J) Final Order. No court order issued under this
2 subsection (g) shall become final for purposes of
3 appeal until 30 days after service of the order on the
4 petitioner and all parties entitled to service of the
5 order in conformance with subsection (d) (8).

6 (K) Motion to Vacate, Modify, or Reconsider. Under
7 Section 2-1203 of the Code of Civil Procedure, the
8 petitioner, State's Attorney, or the Department of
9 State Police may file a motion to vacate, modify, or
10 reconsider the order denying the petition to
11 immediately seal within 60 days of service of the
12 order. If filed more than 60 days after service of the
13 order, a petition to vacate, modify, or reconsider
14 shall comply with subsection (c) of Section 2-1401 of
15 the Code of Civil Procedure.

16 (L) Effect of Order. An order granting an immediate
17 sealing petition shall not be considered void because
18 it fails to comply with the provisions of this Section
19 or because of an error asserted in a motion to vacate,
20 modify, or reconsider. The circuit court retains
21 jurisdiction to determine whether the order is
22 voidable, and to vacate, modify, or reconsider its
23 terms based on a motion filed under subparagraph (L) of
24 this subsection (g).

25 (M) Compliance with Order Granting Petition to
26 Seal Records. Unless a court has entered a stay of an

1 order granting a petition to immediately seal, all
2 parties entitled to service of the order must fully
3 comply with the terms of the order within 60 days of
4 service of the order.

5 (h) Sealing; trafficking victims.

6 (1) A trafficking victim as defined by paragraph (10)
7 of subsection (a) of Section 10-9 of the Criminal Code of
8 2012 shall be eligible to petition for immediate sealing of
9 his or her criminal record upon the completion of his or
10 her last sentence if his or her participation in the
11 underlying offense was a direct result of human trafficking
12 under Section 10-9 of the Criminal Code of 2012 or a severe
13 form of trafficking under the federal Trafficking Victims
14 Protection Act.

15 (2) A petitioner under this subsection (h), in addition
16 to the requirements provided under paragraph (4) of
17 subsection (d) of this Section, shall include in his or her
18 petition a clear and concise statement that: (A) he or she
19 was a victim of human trafficking at the time of the
20 offense; and (B) that his or her participation in the
21 offense was a direct result of human trafficking under
22 Section 10-9 of the Criminal Code of 2012 or a severe form
23 of trafficking under the federal Trafficking Victims
24 Protection Act.

25 (3) If an objection is filed alleging that the
26 petitioner is not entitled to immediate sealing under this

1 subsection (h), the court shall conduct a hearing under
2 paragraph (7) of subsection (d) of this Section and the
3 court shall determine whether the petitioner is entitled to
4 immediate sealing under this subsection (h). A petitioner
5 is eligible for immediate relief under this subsection (h)
6 if he or she shows, by a preponderance of the evidence,
7 that: (A) he or she was a victim of human trafficking at
8 the time of the offense; and (B) that his or her
9 participation in the offense was a direct result of human
10 trafficking under Section 10-9 of the Criminal Code of 2012
11 or a severe form of trafficking under the federal
12 Trafficking Victims Protection Act.

13 (Source: P.A. 99-78, eff. 7-20-15; 99-378, eff. 1-1-16; 99-385,
14 eff. 1-1-16; 99-642, eff. 7-28-16; 99-697, eff. 7-29-16;
15 99-881, eff. 1-1-17; 100-201, eff. 8-18-17; 100-282, eff.
16 1-1-18; 100-284, eff. 8-24-17; 100-287, eff. 8-24-17; 100-692,
17 eff. 8-3-18; 100-759, eff. 1-1-19; 100-776, eff. 8-10-18;
18 100-863, eff. 8-14-18; revised 8-30-18.)

19 Section 99. Effective date. This Act takes effect January
20 1, 2020.