

# HB5394



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

**HB5394**

Introduced 2/5/2010, by Rep. Constance A. Howard

#### SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act. Provides that a person convicted of assault or battery may have his or her arrest and court records sealed. Makes other changes relating to the sealing of records.

LRB096 19331 RLC 34722 b

FISCAL NOTE ACT  
MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning criminal law.

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 and 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 12-4.3(b)(1) and (2)  
21 of the Criminal Code of 1961 (as those provisions  
22 existed before their deletion by Public Act 89-313),  
23 Section 10-102 of the Illinois Alcoholism and Other  
24 Drug Dependency Act, Section 40-10 of the Alcoholism  
25 and Other Drug Abuse and Dependency Act, or Section 10  
26 of the Steroid Control Act. For the purpose of this

1 Section, "successful completion" of an order of  
2 qualified probation under Section 10-102 of the  
3 Illinois Alcoholism and Other Drug Dependency Act and  
4 Section 40-10 of the Alcoholism and Other Drug Abuse  
5 and Dependency Act means that the probation was  
6 terminated satisfactorily and the judgment of  
7 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.

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

5           (3) Exclusions. Except as otherwise provided in  
6           subsections (b)(5), (b)(6), and (e) of this Section, the  
7           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.

16                   (B) the sealing or expungement of records of minor  
17                  traffic offenses (as defined in subsection (a)(1)(G)),  
18                  unless the petitioner was arrested and released  
19                  without charging.

20                   (C) the sealing of the records of arrests or  
21                  charges not initiated by arrest which result in an  
22                  order of supervision, an order of qualified probation  
23                  (as defined in subsection (a)(1)(J)), or a conviction  
24                  for the following offenses:

25                           (i) offenses included in Article 11 of the  
26                           Criminal Code of 1961 or a similar provision of a

1 local ordinance, except Section 11-14 of the  
2 Criminal Code of 1961 or a similar provision of a  
3 local ordinance;

4 (ii) Section 12-15, 12-30, or 26-5 of the  
5 Criminal Code of 1961 or a similar provision of a  
6 local ordinance;

7 (iii) offenses defined as "crimes of violence"  
8 in Section 2 of the Crime Victims Compensation Act  
9 or a similar provision of a local ordinance, except  
10 that misdemeanor violations set out in Sections  
11 12-1 and 12-3 of the Criminal Code of 1961 are  
12 sealable;

13 (iv) offenses which are Class A misdemeanors  
14 under the Humane Care for Animals Act; or

15 (v) any offense or attempted offense that  
16 would subject a person to registration under the  
17 Sex Offender Registration Act.

18 (D) the sealing of the records of an arrest which  
19 results in the petitioner being charged with a felony  
20 offense or records of a charge not initiated by arrest  
21 for a felony offense, regardless of the disposition,  
22 unless:

23 (i) the charge is amended to a misdemeanor and  
24 is otherwise eligible to be sealed pursuant to  
25 subsection (c);

26 (ii) the charge results in first offender



1           probation as set forth in subsection (c)(2)(E); or  
2           (iii) the charge is for a Class 4 felony  
3           offense listed in subsection (c)(2)(F) or the  
4           charge is amended to a Class 4 felony offense  
5           listed in subsection (c)(2)(F). Records of arrests  
6           which result in the petitioner being charged with a  
7           Class 4 felony offense listed in subsection  
8           (c)(2)(F), records of charges not initiated by  
9           arrest for Class 4 felony offenses listed in  
10          subsection (c)(2)(F), and records of charges  
11          amended to a Class 4 felony offense listed in  
12          (c)(2)(F) may be sealed, regardless of the  
13          disposition, subject to any waiting periods set  
14          forth in subsection (c)(3).

15          (b) Expungement.

16           (1) A petitioner may petition the circuit court to  
17          expunge the records of his or her arrests and charges not  
18          initiated by arrest when:

19           (A) He or she has never been convicted of a  
20          criminal offense; and

21           (B) Each arrest or charge not initiated by arrest  
22          sought to be expunged resulted in: (i) acquittal,  
23          dismissal, or the petitioner's release without  
24          charging, unless excluded by subsection (a)(3)(B);  
25          (ii) a conviction which was vacated or reversed, unless  
26          excluded by subsection (a)(3)(B); (iii) an order of

1 supervision and such supervision was successfully  
2 completed by the petitioner, unless excluded by  
3 subsection (a) (3) (A) or (a) (3) (B); or (iv) an order of  
4 qualified probation (as defined in subsection  
5 (a) (1) (J)) and such probation was successfully  
6 completed by the petitioner.

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

8 (A) When the arrest or charge not initiated by  
9 arrest sought to be expunged resulted in an acquittal,  
10 dismissal, the petitioner's release without charging,  
11 or the reversal or vacation of a conviction, there is  
12 no waiting period to petition for the expungement of  
13 such records.

14 (B) When the arrest or charge not initiated by  
15 arrest sought to be expunged resulted in an order of  
16 supervision, successfully completed by the petitioner,  
17 the following time frames will apply:

18 (i) Those arrests or charges that resulted in  
19 orders of supervision under Section 3-707, 3-708,  
20 3-710, or 5-401.3 of the Illinois Vehicle Code or a  
21 similar provision of a local ordinance, or under  
22 Section 12-3.2, 12-15 or 16A-3 of the Criminal Code  
23 of 1961, shall not be eligible for expungement  
24 until 5 years have passed following the  
25 satisfactory termination of the supervision.

26 (ii) Those arrests or charges that resulted in

1 orders of supervision for any other offenses shall  
2 not be eligible for expungement until 2 years have  
3 passed following the satisfactory termination of  
4 the supervision.

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

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

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

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

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

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

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

13 (7) Nothing in this Section shall prevent the  
14 Department of State Police from maintaining all records of  
15 any person who is admitted to probation upon terms and  
16 conditions and who fulfills those terms and conditions  
17 pursuant to Section 10 of the Cannabis Control Act, Section  
18 410 of the Illinois Controlled Substances Act, Section 70  
19 of the Methamphetamine Control and Community Protection  
20 Act, Section 12-4.3 of the Criminal Code of 1961, Section  
21 10-102 of the Illinois Alcoholism and Other Drug Dependency  
22 Act, Section 40-10 of the Alcoholism and Other Drug Abuse  
23 and Dependency Act, or Section 10 of the Steroid Control  
24 Act.

25 (c) Sealing.

26 (1) Applicability. Notwithstanding any other provision

1 of this Act to the contrary, and cumulative with any rights  
2 to expungement of criminal records, this subsection  
3 authorizes the sealing of criminal records of adults and of  
4 minors prosecuted as adults.

5 (2) Eligible Records. The following records may be  
6 sealed:

7 (A) All arrests resulting in release without  
8 charging;

9 (B) (Blank) ~~Arrests or charges not initiated by~~  
10 ~~arrest resulting in acquittal, dismissal, or~~  
11 ~~conviction when the conviction was reversed or~~  
12 ~~vacated, except as excluded by subsection (a) (3) (B) or~~  
13 ~~(a) (3) (D);~~

14 (C) Arrests or charges not initiated by arrest  
15 resulting in orders of supervision successfully  
16 completed by the petitioner, unless excluded by  
17 subsection (a) (3);

18 (D) Arrests or charges not initiated by arrest  
19 resulting in convictions unless excluded by subsection  
20 (a) (3);

21 (E) Arrests or charges not initiated by arrest  
22 resulting in orders of first offender probation under  
23 Section 10 of the Cannabis Control Act, Section 410 of  
24 the Illinois Controlled Substances Act, or Section 70  
25 of the Methamphetamine Control and Community  
26 Protection Act; ~~and~~

1 (F) Arrests or charges not initiated by arrest  
2 resulting in Class 4 felony convictions for the  
3 following offenses:

4 (i) Section 11-14 of the Criminal Code of 1961;

5 (ii) Section 4 of the Cannabis Control Act;

6 (iii) Section 402 of the Illinois Controlled  
7 Substances Act;

8 (iv) the Methamphetamine Precursor Control  
9 Act; and

10 (v) the Steroid Control Act; ~~and~~

11 (G) Arrests or charges not initiated by arrest  
12 resulting in the acquittal of the petitioner or in  
13 which the petitioner was released without being  
14 convicted and without being placed on supervision,  
15 except as excluded by subsection (a) (3) (B) or  
16 (a) (3) (D); and

17 (H) Arrests or charges not initiated by arrest  
18 resulting in conviction, the conviction was reversed,  
19 subsequent to the reversal, the charges resulted in an  
20 acquittal or dismissal of the charges, and the  
21 petitioner was released without being convicted and  
22 without being placed on supervision, except as  
23 excluded by subsection (a) (3) (B) or (a) (3) (D).

24 (3) When Records Are Eligible to Be Sealed. Records  
25 identified as eligible under subsection (c) (2) may be  
26 sealed as follows:

1 (A) Records identified as eligible under  
2 subsection (c) (2) (A), ~~and (c) (2) (G), and (c) (2) (H) (B)~~  
3 may be sealed at any time.

4 (B) Records identified as eligible under  
5 subsection (c) (2) (C) may be sealed (i) 3 years after  
6 the termination of petitioner's last sentence (as  
7 defined in subsection (a) (1) (F)) if the petitioner has  
8 never been convicted of a criminal offense (as defined  
9 in subsection (a) (1) (D)); or (ii) 4 years after the  
10 termination of the petitioner's last sentence (as  
11 defined in subsection (a) (1) (F)) if the petitioner has  
12 ever been convicted of a criminal offense (as defined  
13 in subsection (a) (1) (D)).

14 (C) Records identified as eligible under  
15 subsections (c) (2) (D), (c) (2) (E), and (c) (2) (F) may be  
16 sealed 4 years after the termination of the  
17 petitioner's last sentence (as defined in subsection  
18 (a) (1) (F)).

19 (4) Subsequent felony convictions. A person may not  
20 have subsequent felony conviction records sealed as  
21 provided in this subsection (c) if he or she is convicted  
22 of any felony offense after the date of the sealing of  
23 prior felony convictions as provided in this subsection  
24 (c). The court may, upon conviction for a subsequent felony  
25 offense, order the unsealing of prior felony conviction  
26 records previously ordered sealed by the court.



1           (5) Notice of eligibility for sealing. Upon entry of a  
2           disposition for an eligible record under this subsection  
3           (c), the petitioner shall be informed by the court of the  
4           right to have the records sealed and the procedures for the  
5           sealing of the records.

6           (d) Procedure. The following procedures apply to  
7           expungement under subsections (b) and (e), and sealing under  
8           subsection (c):

9           (1) Filing the petition. Upon becoming eligible to  
10          petition for the expungement or sealing of records under  
11          this Section, the petitioner shall file a petition  
12          requesting the expungement or sealing of records with the  
13          clerk of the court where the arrests occurred or the  
14          charges were brought, or both. If arrests occurred or  
15          charges were brought in multiple jurisdictions, a petition  
16          must be filed in each such jurisdiction. The petitioner  
17          shall pay the applicable fee, if not waived.

18          (2) Contents of petition. The petition shall be  
19          verified and shall contain the petitioner's name, date of  
20          birth, current address and, for each arrest or charge not  
21          initiated by arrest sought to be sealed or expunged, the  
22          case number, the date of arrest (if any), the identity of  
23          the arresting authority, and such other information as the  
24          court may require. During the pendency of the proceeding,  
25          the petitioner shall promptly notify the circuit court  
26          clerk of any change of his or her address.

1           (3) Drug test. The petitioner must attach to the  
2 petition proof that the petitioner has passed a test taken  
3 within 30 days before the filing of the petition showing  
4 the absence within his or her body of all illegal  
5 substances as defined by the Illinois Controlled  
6 Substances Act, the Methamphetamine Control and Community  
7 Protection Act, and the Cannabis Control Act if he or she  
8 is petitioning to seal felony records pursuant to clause  
9 (c) (2) (E) or (c) (2) (F) (ii)-(v) or if he or she is  
10 petitioning to expunge felony records of a qualified  
11 probation pursuant to clause (b) (1) (B) (iv).

12           (4) Service of petition. The circuit court clerk shall  
13 promptly serve a copy of the petition on the State's  
14 Attorney or prosecutor charged with the duty of prosecuting  
15 the offense, the Department of State Police, the arresting  
16 agency and the chief legal officer of the unit of local  
17 government effecting the arrest.

18           (5) Objections.

19           (A) Any party entitled to notice of the petition  
20 may file an objection to the petition. All objections  
21 shall be in writing, shall be filed with the circuit  
22 court clerk, and shall state with specificity the basis  
23 of the objection.

24           (B) Objections to a petition to expunge or seal  
25 must be filed within 60 days of the date of service of  
26 the petition.

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 (7) Hearings. If an objection is filed, the court shall  
16 set a date for a hearing and notify the petitioner and all  
17 parties entitled to notice of the petition of the hearing  
18 date at least 30 days prior to the hearing, and shall hear  
19 evidence on whether the petition should or should not be  
20 granted, and shall grant or deny the petition to expunge or  
21 seal the records based on the evidence presented at the  
22 hearing.

23 (8) Service of order. After entering an order to  
24 expunge or seal records, the court must provide copies of  
25 the order to the Department, in a form and manner  
26 prescribed by the Department, to the petitioner, to the

1 State's Attorney or prosecutor charged with the duty of  
2 prosecuting the offense, to the arresting agency, to the  
3 chief legal officer of the unit of local government  
4 effecting the arrest, and to such other criminal justice  
5 agencies as may be ordered by the court.

6 (9) Effect of order.

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

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

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

25 (iii) in response to an inquiry for expunged  
26 records, the court, the Department, or the agency

1 receiving such inquiry, shall reply as it does in  
2 response to inquiries when no records ever  
3 existed.

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

6 (i) the records shall be expunged (as defined  
7 in subsection (a) (1) (E)) by the arresting agency  
8 and any other agency as ordered by the court,  
9 within 60 days of the date of service of the order,  
10 unless a motion to vacate, modify, or reconsider  
11 the order is filed pursuant to paragraph (12) of  
12 subsection (d) of this Section;

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

21 (iii) the records shall be impounded by the  
22 Department within 60 days of the date of service of  
23 the order as ordered by the court, unless a motion  
24 to vacate, modify, or reconsider the order is filed  
25 pursuant to paragraph (12) of subsection (d) of  
26 this Section;

1 (iv) records impounded by the Department may  
2 be disseminated by the Department only to the  
3 arresting authority, the State's Attorney, and the  
4 court upon a later arrest for the same or a similar  
5 offense or for the purpose of sentencing for any  
6 subsequent felony, and to the Department of  
7 Corrections upon conviction for any offense; and

8 (v) in response to an inquiry for such records  
9 from anyone not authorized by law to access such  
10 records the court, the Department, or the agency  
11 receiving such inquiry shall reply as it does in  
12 response to inquiries when no records ever  
13 existed.

14 (C) Upon entry of an order to seal records under  
15 subsection (c), the arresting agency, any other agency  
16 as ordered by the court, the Department, and the court  
17 shall seal the records (as defined in subsection  
18 (a)(1)(K)). In response to an inquiry for such records  
19 from anyone not authorized by law to access such  
20 records the court, the Department, or the agency  
21 receiving such inquiry shall reply as it does in  
22 response to inquiries when no records ever existed.

23 (10) Fees. The Department may charge the petitioner a  
24 fee equivalent to the cost of processing any order to  
25 expunge or seal records. Notwithstanding any provision of  
26 the Clerks of Courts Act to the contrary, the circuit court

1 clerk may charge a fee equivalent to the cost associated  
2 with the sealing or expungement of records by the circuit  
3 court clerk. From the total filing fee collected for the  
4 petition to seal or expunge, the circuit court clerk shall  
5 deposit \$10 into the Circuit Court Clerk Operation and  
6 Administrative Fund, to be used to offset the costs  
7 incurred by the circuit court clerk in performing the  
8 additional duties required to serve the petition to seal or  
9 expunge on all parties. The circuit court clerk shall  
10 collect and forward the Department of State Police portion  
11 of the fee to the Department and it shall be deposited in  
12 the State Police Services Fund.

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

18 (12) Motion to Vacate, Modify, or Reconsider. The  
19 petitioner or any party entitled to notice may file a  
20 motion to vacate, modify, or reconsider the order granting  
21 or denying the petition to expunge or seal within 60 days  
22 of service of the order.

23 (e) Whenever a person who has been convicted of an offense  
24 is granted a pardon by the Governor which specifically  
25 authorizes expungement, he or she may, upon verified petition  
26 to the Chief Judge of the circuit where the person had been

1 convicted, any judge of the circuit designated by the Chief  
2 Judge, or in counties of less than 3,000,000 inhabitants, the  
3 presiding trial judge at the defendant's trial, have a court  
4 order entered expunging the record of arrest from the official  
5 records of the arresting authority and order that the records  
6 of the circuit court clerk and the Department be sealed until  
7 further order of the court upon good cause shown or as  
8 otherwise provided herein, and the name of the defendant  
9 obliterated from the official index requested to be kept by the  
10 circuit court clerk under Section 16 of the Clerks of Courts  
11 Act in connection with the arrest and conviction for the  
12 offense for which he or she had been pardoned but the order  
13 shall not affect any index issued by the circuit court clerk  
14 before the entry of the order. All records sealed by the  
15 Department may be disseminated by the Department only as  
16 required by law or to the arresting authority, the State's  
17 Attorney, and the court upon a later arrest for the same or  
18 similar offense or for the purpose of sentencing for any  
19 subsequent felony. Upon conviction for any subsequent offense,  
20 the Department of Corrections shall have access to all sealed  
21 records of the Department pertaining to that individual. Upon  
22 entry of the order of expungement, the circuit court clerk  
23 shall promptly mail a copy of the order to the person who was  
24 pardoned.

25 (f) Subject to available funding, the Illinois Department  
26 of Corrections shall conduct a study of the impact of sealing,



1 especially on employment and recidivism rates, utilizing a  
2 random sample of those who apply for the sealing of their  
3 criminal records under Public Act 93-211. At the request of the  
4 Illinois Department of Corrections, records of the Illinois  
5 Department of Employment Security shall be utilized as  
6 appropriate to assist in the study. The study shall not  
7 disclose any data in a manner that would allow the  
8 identification of any particular individual or employing unit.  
9 The study shall be made available to the General Assembly no  
10 later than September 1, 2010.

11 (Source: P.A. 96-409, eff. 1-1-10.)