



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5499

by Rep. Kimberly du Buclet

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2
730 ILCS 5/5-6-3.3 new

Amends the Criminal Identification Act and the Unified Code of Corrections. Creates Offender Initiative Probation. Provides that whenever any person who has not previously been convicted of, or placed on probation or conditional discharge for, any felony offense, other than a violent offense, under the laws of this State, the laws of any other state, or the laws of the United States, pleads guilty to, or is found guilty of, a probationable felony offense of theft, retail theft, forgery, possession of a stolen motor vehicle, burglary, possession of burglary tools, possession of cannabis, possession of a controlled substance, or possession of methamphetamine, the court, with the consent of both the defendant and the State's Attorney, may, without entering a judgment, sentence the defendant to probation. Establishes the terms and conditions of the probation. Provides that upon fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against the person. Provides that upon violation of a term or condition of probation, the court may enter a judgment on its original finding of guilt and proceed as otherwise provided by law.

LRB097 17827 RLC 63044 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 5-6-3.3 of the
21 Unified Code of Corrections, Section 12-4.3(b)(1) and
22 (2) of the Criminal Code of 1961 (as those provisions
23 existed before their deletion by Public Act 89-313),
24 Section 10-102 of the Illinois Alcoholism and Other
25 Drug Dependency Act, Section 40-10 of the Alcoholism
26 and Other Drug Abuse and Dependency 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 Alcoholism and Other Drug Abuse
6 and Dependency Act means that the probation was
7 terminated satisfactorily and the judgment of
8 conviction was vacated.

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

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

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

1 Section.

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

9 (A) the sealing or expungement of the records of
10 arrests or charges not initiated by arrest that result
11 in an order of supervision for or conviction of: (i)
12 any sexual offense committed against a minor; (ii)
13 Section 11-501 of the Illinois Vehicle Code or a
14 similar provision of a local ordinance; or (iii)
15 Section 11-503 of the Illinois Vehicle Code or a
16 similar provision of a local ordinance.

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

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

26 (i) offenses included in Article 11 of the

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

5 (ii) Section 11-1.50, 12-3.4, 12-15, 12-30, or
6 26-5 of the Criminal Code of 1961 or a similar
7 provision of a local ordinance;

8 (iii) offenses defined as "crimes of violence"
9 in Section 2 of the Crime Victims Compensation Act
10 or a similar provision of a local ordinance;

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

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

16 (D) the sealing of the records of an arrest which
17 results in the petitioner being charged with a felony
18 offense or records of a charge not initiated by arrest
19 for a felony offense unless:

20 (i) the charge is amended to a misdemeanor and
21 is otherwise eligible to be sealed pursuant to
22 subsection (c);

23 (ii) the charge is brought along with another
24 charge as a part of one case and the charge results
25 in acquittal, dismissal, or conviction when the
26 conviction was reversed or vacated, and another

1 charge brought in the same case results in a
2 disposition for a misdemeanor offense that is
3 eligible to be sealed pursuant to subsection (c) or
4 a disposition listed in paragraph (i), (iii), or
5 (iv) of this subsection;

6 (iii) the charge results in first offender
7 probation as set forth in subsection (c) (2) (E);

8 (iv) the charge is for a Class 4 felony offense
9 listed in subsection (c) (2) (F) or the charge is
10 amended to a Class 4 felony offense listed in
11 subsection (c) (2) (F). Records of arrests which
12 result in the petitioner being charged with a Class
13 4 felony offense listed in subsection (c) (2) (F),
14 records of charges not initiated by arrest for
15 Class 4 felony offenses listed in subsection
16 (c) (2) (F), and records of charges amended to a
17 Class 4 felony offense listed in (c) (2) (F) may be
18 sealed, regardless of the disposition, subject to
19 any waiting periods set forth in subsection
20 (c) (3);

21 (v) the charge results in acquittal,
22 dismissal, or the petitioner's release without
23 conviction; or

24 (vi) the charge results in a conviction, but
25 the conviction was reversed or vacated.

26 (b) Expungement.

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

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

6 (B) Each arrest or charge not initiated by arrest
7 sought to be expunged resulted in: (i) acquittal,
8 dismissal, or the petitioner's release without
9 charging, unless excluded by subsection (a)(3)(B);
10 (ii) a conviction which was vacated or reversed, unless
11 excluded by subsection (a)(3)(B); (iii) an order of
12 supervision and such supervision was successfully
13 completed by the petitioner, unless excluded by
14 subsection (a)(3)(A) or (a)(3)(B); or (iv) an order of
15 qualified probation (as defined in subsection
16 (a)(1)(J)) and such probation was successfully
17 completed by the petitioner.

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

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

25 (B) When the arrest or charge not initiated by
26 arrest sought to be expunged resulted in an order of

1 supervision, successfully completed by the petitioner,
2 the following time frames will apply:

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

12 (ii) Those arrests or charges that resulted in
13 orders of supervision for any other offenses shall
14 not be eligible for expungement until 2 years have
15 passed following the satisfactory termination of
16 the supervision.

17 (C) When the arrest or charge not initiated by
18 arrest sought to be expunged resulted in an order of
19 qualified probation, successfully completed by the
20 petitioner, such records shall not be eligible for
21 expungement until 5 years have passed following the
22 satisfactory termination of the probation.

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

1 (4) Whenever a person has been arrested for or
2 convicted of any offense, in the name of a person whose
3 identity he or she has stolen or otherwise come into
4 possession of, the aggrieved person from whom the identity
5 was stolen or otherwise obtained without authorization,
6 upon learning of the person having been arrested using his
7 or her identity, may, upon verified petition to the chief
8 judge of the circuit wherein the arrest was made, have a
9 court order entered nunc pro tunc by the Chief Judge to
10 correct the arrest record, conviction record, if any, and
11 all official records of the arresting authority, the
12 Department, other criminal justice agencies, the
13 prosecutor, and the trial court concerning such arrest, if
14 any, by removing his or her name from all such records in
15 connection with the arrest and conviction, if any, and by
16 inserting in the records the name of the offender, if known
17 or ascertainable, in lieu of the aggrieved's name. The
18 records of the circuit court clerk shall be sealed until
19 further order of the court upon good cause shown and the
20 name of the aggrieved person obliterated on the official
21 index required to be kept by the circuit court clerk under
22 Section 16 of the Clerks of Courts Act, but the order shall
23 not affect any index issued by the circuit court clerk
24 before the entry of the order. Nothing in this Section
25 shall limit the Department of State Police or other
26 criminal justice agencies or prosecutors from listing

1 under an offender's name the false names he or she has
2 used.

3 (5) Whenever a person has been convicted of criminal
4 sexual assault, aggravated criminal sexual assault,
5 predatory criminal sexual assault of a child, criminal
6 sexual abuse, or aggravated criminal sexual abuse, the
7 victim of that offense may request that the State's
8 Attorney of the county in which the conviction occurred
9 file a verified petition with the presiding trial judge at
10 the petitioner's trial to have a court order entered to
11 seal the records of the circuit court clerk in connection
12 with the proceedings of the trial court concerning that
13 offense. However, the records of the arresting authority
14 and the Department of State Police concerning the offense
15 shall not be sealed. The court, upon good cause shown,
16 shall make the records of the circuit court clerk in
17 connection with the proceedings of the trial court
18 concerning the offense available for public inspection.

19 (6) If a conviction has been set aside on direct review
20 or on collateral attack and the court determines by clear
21 and convincing evidence that the petitioner was factually
22 innocent of the charge, the court shall enter an
23 expungement order as provided in subsection (b) of Section
24 5-5-4 of the Unified Code of Corrections.

25 (7) Nothing in this Section shall prevent the
26 Department of State Police from maintaining all records of

1 any person who is admitted to probation upon terms and
2 conditions and who fulfills those terms and conditions
3 pursuant to Section 10 of the Cannabis Control Act, Section
4 410 of the Illinois Controlled Substances Act, Section 70
5 of the Methamphetamine Control and Community Protection
6 Act, Section 5-6-3.3 of the Unified Code of Corrections,
7 Section 12-4.3 or subdivision (b) (1) of Section 12-3.05 of
8 the Criminal Code of 1961, Section 10-102 of the Illinois
9 Alcoholism and Other Drug Dependency Act, Section 40-10 of
10 the Alcoholism and Other Drug Abuse and Dependency Act, or
11 Section 10 of the Steroid Control Act.

12 (c) Sealing.

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

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 successfully
2 completed by the petitioner, unless excluded by
3 subsection (a) (3);

4 (D) Arrests or charges not initiated by arrest
5 resulting in convictions unless excluded by subsection
6 (a) (3);

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

14 (F) Arrests or charges not initiated by arrest
15 resulting in Class 4 felony convictions for the
16 following offenses:

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

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

19 (iii) Section 402 of the Illinois Controlled
20 Substances Act;

21 (iv) the Methamphetamine Precursor Control
22 Act; and

23 (v) the Steroid Control Act.

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) (B) may be sealed at any
3 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 as required
3 by law or to the arresting authority, the State's
4 Attorney, and the court upon a later arrest for the
5 same or a similar offense or for the purpose of
6 sentencing for any subsequent felony, and to the
7 Department of Corrections upon conviction for any
8 offense; and

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

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

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.

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

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

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

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

26 (f) Subject to available funding, the Illinois Department

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

12 (Source: P.A. 96-409, eff. 1-1-10; 96-1401, eff. 7-29-10;
13 96-1532, eff. 1-1-12; 96-1551, Article 1, Section 905, eff.
14 7-1-11; 96-1551, Article 2, Section 925, eff. 7-1-11; 97-443,
15 eff. 8-19-11; revised 9-6-11.)

16 Section 10. The Unified Code of Corrections is amended by
17 adding Section 5-6-3.3 as follows:

18 (730 ILCS 5/5-6-3.3 new)

19 Sec. 5-6-3.3. Offender Initiative Probation.

20 (a) Whenever any person who has not previously been
21 convicted of, or placed on probation or conditional discharge
22 for, any felony offense under the laws of this State, the laws
23 of any other state, or the laws of the United States, pleads
24 guilty to, or is found guilty of, a probationable felony

1 offense of theft, retail theft, forgery, possession of a stolen
2 motor vehicle, burglary, possession of burglary tools,
3 possession of cannabis, possession of a controlled substance,
4 or possession of methamphetamine, the court, with the consent
5 of both the defendant and the State's Attorney, may, without
6 entering a judgment, sentence the defendant to probation.

7 (a-1) Exemptions. A defendant shall not be eligible for
8 this probation if the offense he or she has pled guilty to, or
9 has been found guilty of, is a violent offense. For purposes of
10 this probation, a "violent offense" is any offense where bodily
11 harm was inflicted or where force was used against any person
12 or threatened against any person, any offense involving sexual
13 conduct, sexual penetration, or sexual exploitation, any
14 offense of domestic violence, domestic battery, violation of an
15 order of protection, stalking, hate crime, driving under the
16 influence of drugs or alcohol, and any offense involving the
17 possession of a firearm or dangerous weapon. A defendant shall
18 not be eligible for this probation if he or she has previously
19 been adjudicated a delinquent minor for the commission of a
20 violent offense as defined in this subsection.

21 (b) When a defendant is placed on probation, the court
22 shall enter an order specifying a period of probation of not
23 less than 24 months and shall defer further proceedings in the
24 case until the conclusion of the period or until the filing of
25 a petition alleging violation of a term or condition of
26 probation.

1 (c) The conditions of probation shall be that the
2 defendant:

3 (1) not violate any criminal statute of this State or
4 any other jurisdiction;

5 (2) refrain from possessing a firearm or other
6 dangerous weapon;

7 (3) make full restitution to the victim or property
8 owner pursuant to Section 5-5-6 of this Code;

9 (4) obtain employment or perform not less than 30 hours
10 of community service, provided community service is
11 available in the county and is funded and approved by the
12 county board;

13 (5) pay fines and costs;

14 (6) attend educational courses designed to prepare the
15 defendant for obtaining a high school diploma or to work
16 toward passing the high school level test of General
17 Educational Development (G.E.D.) or to work toward
18 completing a vocational training program; and

19 (7) submit to periodic drug testing at a time and in a
20 manner as ordered by the court, but no less than 3 times
21 during the period of probation, with the cost of the
22 testing to be paid by the defendant.

23 (d) The court may, in addition to other conditions, require
24 that the defendant:

25 (1) make a report to and appear in person before or
26 participate with the court or such courts, person, or

1 social service agency as directed by the court in the order
2 of probation;

3 (2) undergo medical or psychiatric treatment, or
4 treatment or rehabilitation approved by the Illinois
5 Department of Human Services;

6 (3) attend or reside in a facility established for the
7 instruction or residence of defendants on probation;

8 (4) support his or her dependents;

9 (5) refrain from having in his or her body the presence
10 of any illicit drug prohibited by the Methamphetamine
11 Control and Community Protection Act, the Cannabis Control
12 Act or the Illinois Controlled Substances Act, unless
13 prescribed by a physician, and submit samples of his or her
14 blood or urine or both for tests to determine the presence
15 of any illicit drug; or

16 (6) if a minor:

17 (i) reside with his or her parents or in a foster
18 home;

19 (ii) attend school;

20 (iii) attend a non-residential program for youth;

21 or

22 (iv) contribute to his or her own support at home
23 or in a foster home.

24 (e) Upon violation of a term or condition of probation, the
25 court may enter a judgment on its original finding of guilt and
26 proceed as otherwise provided by law.

1 (f) Upon fulfillment of the terms and conditions of
2 probation, the court shall discharge the person and dismiss the
3 proceedings against the person.

4 (g) A disposition of probation is considered to be a
5 conviction for the purposes of imposing the conditions of
6 probation and for appeal; however, a discharge and dismissal
7 under this Section is not a conviction for purposes of this
8 Code or for purposes of disqualifications or disabilities
9 imposed by law upon conviction of a crime.

10 (h) There may be only one discharge and dismissal under
11 this Section, Section 410 of the Illinois Controlled Substances
12 Act, Section 70 of the Methamphetamine Control and Community
13 Protection Act, Section 10 of the Cannabis Control Act, and
14 subsection (c) of Section 11-14 of the Criminal Code of 1961
15 with respect to any person.

16 (i) If a person is convicted of any offense which occurred
17 within 5 years subsequent to a discharge and dismissal under
18 this Section, the discharge and dismissal under this Section
19 shall be admissible in the sentencing proceeding for that
20 conviction as evidence in aggravation.

21 (j) Section 410 of the Illinois Controlled Substances Act,
22 Section 70 of the Methamphetamine Control and Community
23 Protection Act, Section 10 of the Cannabis Control Act, and
24 subsection (c) of Section 11-14 of the Criminal Code of 1961
25 provide the conditions of probation regarding the offenses
26 specified therein.