



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5815

by Rep. Jeanne M Ives

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act concerning expungement and sealing of criminal records. Eliminates from the definition of "minor traffic offense", a Class C misdemeanor violation under the Illinois Vehicle Code or a similar provision of a municipal or local ordinance.

LRB098 18941 RLC 54088 b

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 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 or ~~7~~ 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 Alcoholism and Other Drug Abuse and

1 Dependency Act, or Section 10 of the Steroid Control
2 Act. For the purpose of this Section, "successful
3 completion" of an order of qualified probation under
4 Section 10-102 of the Illinois Alcoholism and Other
5 Drug Dependency Act and Section 40-10 of the Alcoholism
6 and Other Drug Abuse and Dependency Act means that the
7 probation was terminated satisfactorily and the
8 judgment of 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), (b) (8), (e), (e-5), and (e-6)
8 of this Section, the 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, unless the
17 arrest or charge is for a misdemeanor violation of
18 subsection (a) of Section 11-503 or a similar provision
19 of a local ordinance, that occurred prior to the
20 offender reaching the age of 25 years and the offender
21 has no other conviction for violating Section 11-501 or
22 11-503 of the Illinois Vehicle Code or a similar
23 provision of a local ordinance.

24 (B) the sealing or expungement of records of minor
25 traffic offenses (as defined in subsection (a) (1) (G)),
26 unless the petitioner was arrested and released

1 without charging.

2 (C) the sealing of the records of arrests or
3 charges not initiated by arrest which result in an
4 order of supervision, an order of qualified probation
5 (as defined in subsection (a)(1)(J)), or a conviction
6 for the following offenses:

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

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

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

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

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

25 (D) the sealing of the records of an arrest which
26 results in the petitioner being charged with a felony

1 offense or records of a charge not initiated by arrest
2 for a felony offense unless:

3 (i) the charge is amended to a misdemeanor and
4 is otherwise eligible to be sealed pursuant to
5 subsection (c);

6 (ii) the charge is brought along with another
7 charge as a part of one case and the charge results
8 in acquittal, dismissal, or conviction when the
9 conviction was reversed or vacated, and another
10 charge brought in the same case results in a
11 disposition for a misdemeanor offense that is
12 eligible to be sealed pursuant to subsection (c) or
13 a disposition listed in paragraph (i), (iii), or
14 (iv) of this subsection;

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

17 (iv) the charge is for a felony offense listed
18 in subsection (c) (2) (F) or the charge is amended to
19 a felony offense listed in subsection (c) (2) (F);

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

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

25 (b) Expungement.

26 (1) A petitioner may petition the circuit court to

1 expunge the records of his or her arrests and charges not
2 initiated by arrest when:

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

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

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

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

24 (B) When the arrest or charge not initiated by
25 arrest sought to be expunged resulted in an order of
26 supervision, successfully completed by the petitioner,

1 the following time frames will apply:

2 (i) Those arrests or charges that resulted in
3 orders of supervision under Section 3-707, 3-708,
4 3-710, or 5-401.3 of the Illinois Vehicle Code or a
5 similar provision of a local ordinance, or under
6 Section 11-1.50, 12-3.2, or 12-15 of the Criminal
7 Code of 1961 or the Criminal Code of 2012, or a
8 similar provision of a local ordinance, shall not
9 be eligible for expungement until 5 years have
10 passed following the satisfactory termination of
11 the supervision.

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

23 (ii) Those arrests or charges that resulted in
24 orders of supervision for any other offenses shall
25 not be eligible for expungement until 2 years have
26 passed following the satisfactory termination of

1 the supervision.

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

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

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

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

14 (5) Whenever a person has been convicted of criminal
15 sexual assault, aggravated criminal sexual assault,
16 predatory criminal sexual assault of a child, criminal
17 sexual abuse, or aggravated criminal sexual abuse, the
18 victim of that offense may request that the State's
19 Attorney of the county in which the conviction occurred
20 file a verified petition with the presiding trial judge at
21 the petitioner's trial to have a court order entered to
22 seal the records of the circuit court clerk in connection
23 with the proceedings of the trial court concerning that
24 offense. However, the records of the arresting authority
25 and the Department of State Police concerning the offense
26 shall not be sealed. The court, upon good cause shown,

1 shall make the records of the circuit court clerk in
2 connection with the proceedings of the trial court
3 concerning the offense available for public inspection.

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

12 (7) Nothing in this Section shall prevent the
13 Department of State Police from maintaining all records of
14 any person who is admitted to probation upon terms and
15 conditions and who fulfills those terms and conditions
16 pursuant to Section 10 of the Cannabis Control Act, Section
17 410 of the Illinois Controlled Substances Act, Section 70
18 of the Methamphetamine Control and Community Protection
19 Act, Section 5-6-3.3 or 5-6-3.4 of the Unified Code of
20 Corrections, Section 12-4.3 or subdivision (b)(1) of
21 Section 12-3.05 of the Criminal Code of 1961 or the
22 Criminal Code of 2012, Section 10-102 of the Illinois
23 Alcoholism and Other Drug Dependency Act, Section 40-10 of
24 the Alcoholism and Other Drug Abuse and Dependency Act, or
25 Section 10 of the Steroid Control Act.

26 (8) If the petitioner has been granted a certificate of

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

7 (c) Sealing.

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

13 (2) Eligible Records. The following records may be
14 sealed:

15 (A) All arrests resulting in release without
16 charging;

17 (B) Arrests or charges not initiated by arrest
18 resulting in acquittal, dismissal, or conviction when
19 the conviction was reversed or vacated, except as
20 excluded by subsection (a) (3) (B);

21 (C) Arrests or charges not initiated by arrest
22 resulting in orders of supervision successfully
23 completed by the petitioner, unless excluded by
24 subsection (a) (3);

25 (D) Arrests or charges not initiated by arrest
26 resulting in convictions unless excluded by subsection

1 (a) (3);

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

9 (F) Arrests or charges not initiated by arrest
10 resulting in felony convictions for the following
11 offenses:

12 (i) Class 4 felony convictions for:

13 Prostitution under Section 11-14 of the
14 Criminal Code of 1961 or the Criminal Code of
15 2012.

16 Possession of cannabis under Section 4 of
17 the Cannabis Control Act.

18 Possession of a controlled substance under
19 Section 402 of the Illinois Controlled
20 Substances Act.

21 Offenses under the Methamphetamine
22 Precursor Control Act.

23 Offenses under the Steroid Control Act.

24 Theft under Section 16-1 of the Criminal
25 Code of 1961 or the Criminal Code of 2012.

26 Retail theft under Section 16A-3 or

1 paragraph (a) of 16-25 of the Criminal Code of
2 1961 or the Criminal Code of 2012.

3 Deceptive practices under Section 17-1 of
4 the Criminal Code of 1961 or the Criminal Code
5 of 2012.

6 Forgery under Section 17-3 of the Criminal
7 Code of 1961 or the Criminal Code of 2012.

8 Possession of burglary tools under Section
9 19-2 of the Criminal Code of 1961 or the
10 Criminal Code of 2012.

11 (ii) Class 3 felony convictions for:

12 Theft under Section 16-1 of the Criminal
13 Code of 1961 or the Criminal Code of 2012.

14 Retail theft under Section 16A-3 or
15 paragraph (a) of 16-25 of the Criminal Code of
16 1961 or the Criminal Code of 2012.

17 Deceptive practices under Section 17-1 of
18 the Criminal Code of 1961 or the Criminal Code
19 of 2012.

20 Forgery under Section 17-3 of the Criminal
21 Code of 1961 or the Criminal Code of 2012.

22 Possession with intent to manufacture or
23 deliver a controlled substance under Section
24 401 of the Illinois Controlled Substances Act.

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

1 sealed as follows:

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

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

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

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

23 (4) Subsequent felony convictions. A person may not
24 have subsequent felony conviction records sealed as
25 provided in this subsection (c) if he or she is convicted
26 of any felony offense after the date of the sealing of

1 prior felony convictions as provided in this subsection
2 (c). The court may, upon conviction for a subsequent felony
3 offense, order the unsealing of prior felony conviction
4 records previously ordered sealed by the court.

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

10 (d) Procedure. The following procedures apply to
11 expungement under subsections (b), (e), and (e-6) and sealing
12 under subsections (c) and (e-5):

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

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

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

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

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

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

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

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

26 (4) Service of petition. The circuit court clerk shall

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

7 (5) Objections.

8 (A) Any party entitled to notice of the petition
9 may file an objection to the petition. All objections
10 shall be in writing, shall be filed with the circuit
11 court clerk, and shall state with specificity the basis
12 of the objection.

13 (B) Objections to a petition to expunge or seal
14 must be filed within 60 days of the date of service of
15 the petition.

16 (6) Entry of order.

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

24 (B) Unless the State's Attorney or prosecutor, the
25 Department of State Police, the arresting agency, or
26 the chief legal officer files an objection to the

1 petition to expunge or seal within 60 days from the
2 date of service of the petition, the court shall enter
3 an order granting or denying the petition.

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

16 (A) the strength of the evidence supporting the
17 defendant's conviction;

18 (B) the reasons for retention of the conviction
19 records by the State;

20 (C) the petitioner's age, criminal record history,
21 and employment history;

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

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

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

10 (9) Implementation of order.

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

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

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

1 circuit court clerk before the entry of the order;
2 and

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

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

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

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

25 (iii) the records shall be impounded by the
26 Department within 60 days of the date of service of

1 the order as ordered by the court, unless a motion
2 to vacate, modify, or reconsider the order is filed
3 pursuant to paragraph (12) of subsection (d) of
4 this Section;

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

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

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

21 (i) the records shall be expunged (as defined
22 in subsection (a)(1)(E)) by the arresting agency
23 and any other agency as ordered by the court,
24 within 60 days of the date of service of the order,
25 unless a motion to vacate, modify, or reconsider
26 the order is filed under paragraph (12) of

1 subsection (d) of this Section;

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

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

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

24 (v) in response to an inquiry for these records
25 from anyone not authorized by law to access the
26 records, the court, the Department, or the agency

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

4 (C) Upon entry of an order to seal records under
5 subsection (c), the arresting agency, any other agency
6 as ordered by the court, the Department, and the court
7 shall seal the records (as defined in subsection
8 (a)(1)(K)). 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 existed.

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

1 discretionary appellate review, is pending.

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

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

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

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

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

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

26 (15) Compliance with Order Granting Petition to

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

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

17 (e) Whenever a person who has been convicted of an offense
18 is granted a pardon by the Governor which specifically
19 authorizes expungement, he or she may, upon verified petition
20 to the Chief Judge of the circuit where the person had been
21 convicted, any judge of the circuit designated by the Chief
22 Judge, or in counties of less than 3,000,000 inhabitants, the
23 presiding trial judge at the defendant's trial, have a court
24 order entered expunging the record of arrest from the official
25 records of the arresting authority and order that the records
26 of the circuit court clerk and the Department be sealed until

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

18 (e-5) Whenever a person who has been convicted of an
19 offense is granted a certificate of eligibility for sealing by
20 the Prisoner Review Board which specifically authorizes
21 sealing, 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 sealing the record of arrest from the official records

1 of the arresting authority and order that the records of the
2 circuit court clerk and the Department be sealed until further
3 order of the court upon good cause shown or as otherwise
4 provided herein, and the name of the petitioner obliterated
5 from the official index requested to be kept by the circuit
6 court clerk under Section 16 of the Clerks of Courts Act in
7 connection with the arrest and conviction for the offense for
8 which he or she had been granted the certificate but the order
9 shall not affect any index issued by the circuit court clerk
10 before the entry of the order. All records sealed by the
11 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 sealed records of the Department pertaining
18 to that individual. Upon entry of the order of sealing, the
19 circuit court clerk shall promptly mail a copy of the order to
20 the person who was granted the certificate of eligibility for
21 sealing.

22 (e-6) Whenever a person who has been convicted of an
23 offense is granted a certificate of eligibility for expungement
24 by the Prisoner Review Board which specifically authorizes
25 expungement, he or she may, upon verified petition to the Chief
26 Judge of the circuit where the person had been convicted, any

1 judge of the circuit designated by the Chief Judge, or in
2 counties of less than 3,000,000 inhabitants, the presiding
3 trial judge at the petitioner's trial, have a court order
4 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 petitioner
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 granted the certificate
13 but the order shall not affect any index issued by the circuit
14 court clerk before the entry of the order. All records sealed
15 by the Department may be disseminated by the Department only as
16 required by this Act or to the arresting authority, a law
17 enforcement agency, the State's Attorney, and the court upon a
18 later arrest for the same or similar offense or for the purpose
19 of sentencing for any subsequent felony. Upon conviction for
20 any subsequent offense, the Department of Corrections shall
21 have access to all expunged records of the Department
22 pertaining to that individual. Upon entry of the order of
23 expungement, the circuit court clerk shall promptly mail a copy
24 of the order to the person who was granted the certificate of
25 eligibility for expungement.

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. 97-443, eff. 8-19-11; 97-698, eff. 1-1-13;
13 97-1026, eff. 1-1-13; 97-1108, eff. 1-1-13; 97-1109, eff.
14 1-1-13; 97-1118, eff. 1-1-13; 97-1120, eff. 1-1-13; 97-1150,
15 eff. 1-25-13; 98-133, eff. 1-1-14; 98-142, eff. 1-1-14; 98-163,
16 eff. 8-5-13; 98-164, eff. 1-1-14; 98-399, eff. 8-16-13; revised
17 9-4-13.)