



Sen. Donne E. Trotter

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1 AMENDMENT TO SENATE BILL 1004

2 AMENDMENT NO. _____. Amend Senate Bill 1004 by replacing
3 everything after the enacting clause with the following:

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),

1 (iii) Court (730 ILCS 5/5-1-6),
2 (iv) Defendant (730 ILCS 5/5-1-7),
3 (v) Felony (730 ILCS 5/5-1-9),
4 (vi) Imprisonment (730 ILCS 5/5-1-10),
5 (vii) Judgment (730 ILCS 5/5-1-12),
6 (viii) Misdemeanor (730 ILCS 5/5-1-14),
7 (ix) Offense (730 ILCS 5/5-1-15),
8 (x) Parole (730 ILCS 5/5-1-16),
9 (xi) Petty Offense (730 ILCS 5/5-1-17),
10 (xii) Probation (730 ILCS 5/5-1-18),
11 (xiii) Sentence (730 ILCS 5/5-1-19),
12 (xiv) Supervision (730 ILCS 5/5-1-21), and
13 (xv) Victim (730 ILCS 5/5-1-22).

14 (B) As used in this Section, "charge not initiated
15 by arrest" means a charge (as defined by 730 ILCS
16 5/5-1-3) brought against a defendant where the
17 defendant is not arrested prior to or as a direct
18 result of the charge.

19 (C) "Conviction" means a judgment of conviction or
20 sentence entered upon a plea of guilty or upon a
21 verdict or finding of guilty of an offense, rendered by
22 a legally constituted jury or by a court of competent
23 jurisdiction authorized to try the case without a jury.
24 An order of supervision successfully completed by the
25 petitioner is not a conviction. An order of qualified
26 probation (as defined in subsection (a)(1)(J))

1 successfully completed by the petitioner is not a
2 conviction. An order of supervision or an order of
3 qualified probation that is terminated
4 unsatisfactorily is a conviction, unless the
5 unsatisfactory termination is reversed, vacated, or
6 modified and the judgment of conviction, if any, is
7 reversed or vacated.

8 (D) "Criminal offense" means a petty offense,
9 business offense, misdemeanor, felony, or municipal
10 ordinance violation (as defined in subsection
11 (a)(1)(H)). As used in this Section, a minor traffic
12 offense (as defined in subsection (a)(1)(G)) shall not
13 be considered a criminal offense.

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

23 (F) As used in this Section, "last sentence" means
24 the sentence, order of supervision, or order of
25 qualified probation (as defined by subsection
26 (a)(1)(J)), for a criminal offense (as defined by

1 subsection (a)(1)(D)) that terminates last in time in
2 any jurisdiction, regardless of whether the petitioner
3 has included the criminal offense for which the
4 sentence or order of supervision or qualified
5 probation was imposed in his or her petition. If
6 multiple sentences, orders of supervision, or orders
7 of qualified probation terminate on the same day and
8 are last in time, they shall be collectively considered
9 the "last sentence" regardless of whether they were
10 ordered to run concurrently.

11 (G) "Minor traffic offense" means a petty offense,
12 business offense, or Class C misdemeanor under the
13 Illinois Vehicle Code or a similar provision of a
14 municipal or local ordinance.

15 (H) "Municipal ordinance violation" means an
16 offense defined by a municipal or local ordinance that
17 is criminal in nature and with which the petitioner was
18 charged or for which the petitioner was arrested and
19 released without charging.

20 (I) "Petitioner" means an adult or a minor
21 prosecuted as an adult who has applied for relief under
22 this Section.

23 (J) "Qualified probation" means an order of
24 probation under Section 10 of the Cannabis Control Act,
25 Section 410 of the Illinois Controlled Substances Act,
26 Section 70 of the Methamphetamine Control and

1 Community Protection Act, Section 5-6-3.3 of the
2 Unified Code of Corrections, Section 12-4.3(b)(1) and
3 (2) of the Criminal Code of 1961 (as those provisions
4 existed before their deletion by Public Act 89-313),
5 Section 10-102 of the Illinois Alcoholism and Other
6 Drug Dependency Act, Section 40-10 of the Alcoholism
7 and Other Drug Abuse and Dependency Act, or Section 10
8 of the Steroid Control Act. For the purpose of this
9 Section, "successful completion" of an order of
10 qualified probation under Section 10-102 of the
11 Illinois Alcoholism and Other Drug Dependency Act and
12 Section 40-10 of the Alcoholism and Other Drug Abuse
13 and Dependency Act means that the probation was
14 terminated satisfactorily and the judgment of
15 conviction was vacated.

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

26 (L) "Sexual offense committed against a minor"

1 includes but is not limited to the offenses of indecent
2 solicitation of a child or criminal sexual abuse when
3 the victim of such offense is under 18 years of age.

4 (M) "Terminate" as it relates to a sentence or
5 order of supervision or qualified probation includes
6 either satisfactory or unsatisfactory termination of
7 the sentence, unless otherwise specified in this
8 Section.

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

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

16 (A) the sealing or expungement of the records of
17 arrests or charges not initiated by arrest that result
18 in an order of supervision for or conviction of: (i)
19 any sexual offense committed against a minor; (ii)
20 Section 11-501 of the Illinois Vehicle Code or a
21 similar provision of a local ordinance; or (iii)
22 Section 11-503 of the Illinois Vehicle Code or a
23 similar provision of a local ordinance, unless the
24 arrest or charge is for a misdemeanor violation of
25 subsection (a) of Section 11-503 or a similar provision
26 of a local ordinance, that occurred prior to the

1 offender reaching the age of 25 years and the offender
2 has no other conviction for violating Section 11-501 or
3 11-503 of the Illinois Vehicle Code or a similar
4 provision of a local ordinance.

5 (B) the sealing or expungement of records of minor
6 traffic offenses (as defined in subsection (a)(1)(G)),
7 unless the petitioner was arrested and released
8 without charging.

9 (C) the sealing of the records of arrests or
10 charges not initiated by arrest which result in an
11 order of supervision, an order of qualified probation
12 (as defined in subsection (a)(1)(J)), or a conviction
13 for the following offenses:

14 (i) offenses included in Article 11 of the
15 Criminal Code of 1961 or the Criminal Code of 2012
16 or a similar provision of a local ordinance, except
17 Section 11-14 of the Criminal Code of 1961 or the
18 Criminal Code of 2012, or a similar provision of a
19 local ordinance;

20 (ii) Section 11-1.50, 12-3.4, 12-15, 12-30,
21 26-5, or 48-1 of the Criminal Code of 1961 or the
22 Criminal Code of 2012, or a similar provision of a
23 local ordinance;

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

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

3 (v) any offense or attempted offense that
4 would subject a person to registration under the
5 Sex Offender Registration Act.

6 (D) the sealing of the records of an arrest which
7 results in the petitioner being charged with a felony
8 offense or records of a charge not initiated by arrest
9 for a felony offense unless:

10 (i) the charge is amended to a misdemeanor and
11 is otherwise eligible to be sealed pursuant to
12 subsection (c);

13 (ii) the charge is brought along with another
14 charge as a part of one case and the charge results
15 in acquittal, dismissal, or conviction when the
16 conviction was reversed or vacated, and another
17 charge brought in the same case results in a
18 disposition for a misdemeanor offense that is
19 eligible to be sealed pursuant to subsection (c) or
20 a disposition listed in paragraph (i), (iii), or
21 (iv) of this subsection;

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

24 (iv) the charge is for a Class 4 felony offense
25 listed in subsection (c) (2) (F) or the charge is
26 amended to a Class 4 felony offense listed in

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

11 (v) the charge results in acquittal,
12 dismissal, or the petitioner's release without
13 conviction; or

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

16 (b) Expungement.

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

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

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

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

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

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

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

19 (i) Those arrests or charges that resulted in
20 orders of supervision under Section 3-707, 3-708,
21 3-710, or 5-401.3 of the Illinois Vehicle Code or a
22 similar provision of a local ordinance, or under
23 Section 11-1.50, 12-3.2, or 12-15 of the Criminal
24 Code of 1961 or the Criminal Code of 2012, or a
25 similar provision of a local ordinance, shall not
26 be eligible for expungement until 5 years have

1 passed following the satisfactory termination of
2 the supervision.

3 (i-5) Those arrests or charges that resulted
4 in orders of supervision for a misdemeanor
5 violation of subsection (a) of Section 11-503 of
6 the Illinois Vehicle Code or a similar provision of
7 a local ordinance, that occurred prior to the
8 offender reaching the age of 25 years and the
9 offender has no other conviction for violating
10 Section 11-501 or 11-503 of the Illinois Vehicle
11 Code or a similar provision of a local ordinance
12 shall not be eligible for expungement until the
13 petitioner has reached the age of 25 years.

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

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

25 (3) Those records maintained by the Department for
26 persons arrested prior to their 17th birthday shall be

1 expunged as provided in Section 5-915 of the Juvenile Court
2 Act of 1987.

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

1 shall limit the Department of State Police or other
2 criminal justice agencies or prosecutors from listing
3 under an offender's name the false names he or she has
4 used.

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

21 (6) If a conviction has been set aside on direct review
22 or on collateral attack and the court determines by clear
23 and convincing evidence that the petitioner was factually
24 innocent of the charge, the court shall enter an
25 expungement order as provided in subsection (b) of Section
26 5-5-4 of the Unified Code of Corrections.

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

15 (8) If a petitioner has been granted a certificate of
16 innocence under Section 2-702 of the Code of Civil
17 Procedure, the court that grants the certificate of
18 innocence shall also enter an order expunging the
19 conviction for which the petitioner has been determined to
20 be innocent, notwithstanding the presence of additional
21 felony charges or criminal convictions present on the
22 petitioner's record. Subsection (b) of Section 5-5-4 of the
23 Unified Code of Corrections does not prevent the court from
24 entering the expungement order for a petitioner who has
25 been granted a certificate of innocence under Section 2-702
26 of the Code of Civil Procedure. The court shall execute the

1 expungement according to the process established in
2 subsection (h) of Section 2-702 of the Code of Civil
3 Procedure. The procedures established in subsection (d) do
4 not govern or control this paragraph (8). The effect of the
5 order shall be to restore the person to the status he or
6 she occupied prior to the arrest, plea, or conviction for
7 which he or she was determined to be innocent. No person as
8 to whom the order has been entered shall be held
9 thereafter, under any provision of law, to be guilty of
10 perjury or otherwise giving a false statement due to his or
11 her failure to recite or acknowledge the arrest, plea,
12 trial, conviction, or expungement in response to any
13 inquiry made of him or her for any purpose whatsoever.

14 (c) Sealing.

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

20 (2) Eligible Records. The following records may be
21 sealed:

22 (A) All arrests resulting in release without
23 charging;

24 (B) Arrests or charges not initiated by arrest
25 resulting in acquittal, dismissal, or conviction when
26 the conviction was reversed or vacated, except as

1 excluded by subsection (a) (3) (B);

2 (C) Arrests or charges not initiated by arrest
3 resulting in orders of supervision successfully
4 completed by the petitioner, unless excluded by
5 subsection (a) (3);

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

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

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

19 (i) Section 11-14 of the Criminal Code of 1961
20 or the Criminal Code of 2012;

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

22 (iii) Section 402 of the Illinois Controlled
23 Substances Act;

24 (iv) the Methamphetamine Precursor Control
25 Act; and

26 (v) the Steroid Control Act.

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

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

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

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

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

25 (4) Subsequent felony convictions. A person may not
26 have subsequent felony conviction records sealed as

1 provided in this subsection (c) if he or she is convicted
2 of any felony offense after the date of the sealing of
3 prior felony convictions as provided in this subsection
4 (c). The court may, upon conviction for a subsequent felony
5 offense, order the unsealing of prior felony conviction
6 records previously ordered sealed by the court.

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

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

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

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

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

12 (3) Drug test. The petitioner must attach to the
13 petition proof that the petitioner has passed a test taken
14 within 30 days before the filing of the petition showing
15 the absence within his or her body of all illegal
16 substances as defined by the Illinois Controlled
17 Substances Act, the Methamphetamine Control and Community
18 Protection Act, and the Cannabis Control Act if he or she
19 is petitioning to seal felony records pursuant to clause
20 (c) (2) (E), (c) (2) (F) (ii)-(v), or (e-5) or if he or she is
21 petitioning to expunge felony records of a qualified
22 probation pursuant to clause (b) (1) (B) (iv).

23 (4) Service of petition. The circuit court clerk shall
24 promptly serve a copy of the petition on the State's
25 Attorney or prosecutor charged with the duty of prosecuting
26 the offense, the Department of State Police, the arresting

1 agency and the chief legal officer of the unit of local
2 government effecting the arrest.

3 (5) Objections.

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

9 (B) Objections to a petition to expunge or seal
10 must be filed within 60 days of the date of service of
11 the petition.

12 (6) Entry of order.

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

20 (B) Unless the State's Attorney or prosecutor, the
21 Department of State Police, the arresting agency, or
22 the chief legal officer files an objection to the
23 petition to expunge or seal within 60 days from the
24 date of service of the petition, the court shall enter
25 an order granting or denying the petition.

26 (7) Hearings. If an objection is filed, the court shall

1 set a date for a hearing and notify the petitioner and all
2 parties entitled to notice of the petition of the hearing
3 date at least 30 days prior to the hearing, and shall hear
4 evidence on whether the petition should or should not be
5 granted, and shall grant or deny the petition to expunge or
6 seal the records based on the evidence presented at the
7 hearing.

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

17 (9) Effect of order.

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

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

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

10 (iii) in response to an inquiry for expunged
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 (B) Upon entry of an order to expunge records
16 pursuant to (b) (2) (B) (i) or (b) (2) (C), or both:

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

24 (ii) the records of the circuit court clerk
25 shall be impounded until further order of the court
26 upon good cause shown and the name of the

1 petitioner obliterated on the official index
2 required to be kept by the circuit court clerk
3 under Section 16 of the Clerks of Courts Act, but
4 the order shall not affect any index issued by the
5 circuit court clerk before the entry of the order;

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

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

20 (v) in response to an inquiry for such records
21 from anyone not authorized by law to access such
22 records the court, the Department, or the agency
23 receiving such inquiry shall reply as it does in
24 response to inquiries when no records ever
25 existed.

26 (C) Upon entry of an order to seal records under

1 subsection (c), the arresting agency, any other agency
2 as ordered by the court, the Department, and the court
3 shall seal the records (as defined in subsection
4 (a)(1)(K)). In response to an inquiry for such records
5 from anyone not authorized by law to access such
6 records the court, the Department, or the agency
7 receiving such inquiry shall reply as it does in
8 response to inquiries when no records ever existed.

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

25 (11) Final Order. No court order issued under the
26 expungement or sealing provisions of this Section shall

1 become final for purposes of appeal until 30 days after
2 service of the order on the petitioner and all parties
3 entitled to notice of the petition.

4 (12) Motion to Vacate, Modify, or Reconsider. The
5 petitioner or any party entitled to notice may file a
6 motion to vacate, modify, or reconsider the order granting
7 or denying the petition to expunge or seal within 60 days
8 of service of the order.

9 (e) Whenever a person who has been convicted of an offense
10 is granted a pardon by the Governor which specifically
11 authorizes expungement, he or she may, upon verified petition
12 to the Chief Judge of the circuit where the person had been
13 convicted, any judge of the circuit designated by the Chief
14 Judge, or in counties of less than 3,000,000 inhabitants, the
15 presiding trial judge at the defendant's trial, have a court
16 order entered expunging the record of arrest from the official
17 records of the arresting authority and order that the records
18 of the circuit court clerk and the Department be sealed until
19 further order of the court upon good cause shown or as
20 otherwise provided herein, and the name of the defendant
21 obliterated from the official index requested to be kept by the
22 circuit court clerk under Section 16 of the Clerks of Courts
23 Act in connection with the arrest and conviction for the
24 offense for which he or she had been pardoned but the order
25 shall not affect any index issued by the circuit court clerk
26 before the entry of the order. All records sealed by the

1 Department may be disseminated by the Department only to the
2 arresting authority, the State's Attorney, and the court upon a
3 later arrest for the same or similar offense or for the purpose
4 of sentencing for any subsequent felony. Upon conviction for
5 any subsequent offense, the Department of Corrections shall
6 have access to all sealed records of the Department pertaining
7 to that individual. Upon entry of the order of expungement, the
8 circuit court clerk shall promptly mail a copy of the order to
9 the person who was pardoned.

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

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

14 (f) Subject to available funding, the Illinois Department
15 of Corrections shall conduct a study of the impact of sealing,
16 especially on employment and recidivism rates, utilizing a
17 random sample of those who apply for the sealing of their
18 criminal records under Public Act 93-211. At the request of the
19 Illinois Department of Corrections, records of the Illinois
20 Department of Employment Security shall be utilized as
21 appropriate to assist in the study. The study shall not
22 disclose any data in a manner that would allow the
23 identification of any particular individual or employing unit.
24 The study shall be made available to the General Assembly no
25 later than September 1, 2010.

26 (Source: P.A. 96-409, eff. 1-1-10; 96-1401, eff. 7-29-10;

1 96-1532, eff. 1-1-12; 96-1551, Article 1, Section 905, eff.
2 7-1-11; 96-1551, Article 2, Section 925, eff. 7-1-11; 97-443,
3 eff. 8-19-11; 97-698, eff. 1-1-13; 97-1026, eff. 1-1-13;
4 97-1108, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1118, eff.
5 1-1-13; 97-1120, eff. 1-1-13; 97-1150, eff. 1-25-13.)

6 Section 10. The Unified Code of Corrections is amended by
7 changing Section 5-5-4 as follows:

8 (730 ILCS 5/5-5-4) (from Ch. 38, par. 1005-5-4)
9 Sec. 5-5-4. Resentences.

10 (a) Where a conviction or sentence has been set aside on
11 direct review or on collateral attack, the court shall not
12 impose a new sentence for the same offense or for a different
13 offense based on the same conduct which is more severe than the
14 prior sentence less the portion of the prior sentence
15 previously satisfied unless the more severe sentence is based
16 upon conduct on the part of the defendant occurring after the
17 original sentencing. If a sentence is vacated on appeal or on
18 collateral attack due to the failure of the trier of fact at
19 trial to determine beyond a reasonable doubt the existence of a
20 fact (other than a prior conviction) necessary to increase the
21 punishment for the offense beyond the statutory maximum
22 otherwise applicable, either the defendant may be re-sentenced
23 to a term within the range otherwise provided or, if the State
24 files notice of its intention to again seek the extended

1 sentence, the defendant shall be afforded a new trial.

2 (b) If a conviction or sentence has been set aside on
3 direct review or on collateral attack and the court determines
4 by clear and convincing evidence that the defendant was
5 factually innocent of the charge, excluding where the court has
6 granted the defendant a certificate of innocence and an
7 expungement under Section 2-702 of the Code of Civil Procedure,
8 the court shall enter an order expunging the record of arrest
9 from the official records of the arresting authority and order
10 that the records of the clerk of the circuit court and
11 Department of State Police be sealed until further order of the
12 court upon good cause shown or as otherwise provided herein,
13 and the name of the defendant obliterated from the official
14 index requested to be kept by the circuit court clerk under
15 Section 16 of the Clerks of Courts Act in connection with the
16 arrest and conviction for the offense but the order shall not
17 affect any index issued by the circuit court clerk before the
18 entry of the order.

19 All records sealed by the Department of State Police may be
20 disseminated by the Department only as required by law or to
21 the arresting authority, the State's Attorney, the court upon a
22 later arrest for the same or similar offense, or for the
23 purpose of sentencing for any subsequent felony. Upon
24 conviction for any subsequent offense, the Department of
25 Corrections shall have access to all sealed records of the
26 Department pertaining to that individual.

1 Upon entry of the order of expungement, the clerk of the
2 circuit court shall promptly mail a copy of the order to the
3 person whose records were expunged and sealed.

4 (Source: P.A. 93-210, eff. 7-18-03.)

5 Section 15. The Code of Civil Procedure is amended by
6 changing Section 2-702 as follows:

7 (735 ILCS 5/2-702)

8 Sec. 2-702. Petition for a certificate of innocence that
9 the petitioner was innocent of all offenses for which he or she
10 was incarcerated.

11 (a) The General Assembly finds and declares that innocent
12 persons who have been wrongly convicted of crimes in Illinois
13 and subsequently imprisoned have been frustrated in seeking
14 legal redress due to a variety of substantive and technical
15 obstacles in the law and that such persons should have an
16 available avenue to obtain a finding of innocence so that they
17 may obtain relief through a petition in the Court of Claims.
18 The General Assembly further finds misleading the current legal
19 nomenclature which compels an innocent person to seek a pardon
20 for being wrongfully incarcerated. It is the intent of the
21 General Assembly that the court, in exercising its discretion
22 as permitted by law regarding the weight and admissibility of
23 evidence submitted pursuant to this Section, shall, in the
24 interest of justice, give due consideration to difficulties of

1 proof caused by the passage of time, the death or
2 unavailability of witnesses, the destruction of evidence or
3 other factors not caused by such persons or those acting on
4 their behalf.

5 (b) Any person convicted and subsequently imprisoned for
6 one or more felonies by the State of Illinois which he or she
7 did not commit may, under the conditions hereinafter provided,
8 file a petition for certificate of innocence in the circuit
9 court of the county in which the person was convicted. The
10 petition shall request a certificate of innocence finding that
11 the petitioner was innocent of all offenses for which he or she
12 was incarcerated.

13 (c) In order to present the claim for certificate of
14 innocence of an unjust conviction and imprisonment, the
15 petitioner must attach to his or her petition documentation
16 demonstrating that:

17 (1) he or she has been convicted of one or more
18 felonies by the State of Illinois and subsequently
19 sentenced to a term of imprisonment, and has served all or
20 any part of the sentence; and

21 (2) his or her judgment of conviction was reversed or
22 vacated, and the indictment or information dismissed or, if
23 a new trial was ordered, either he or she was found not
24 guilty at the new trial or he or she was not retried and
25 the indictment or information dismissed; or the statute, or
26 application thereof, on which the indictment or

1 information was based violated the Constitution of the
2 United States or the State of Illinois; and

3 (3) his or her claim is not time barred by the
4 provisions of subsection (i) of this Section.

5 (d) The petition shall state facts in sufficient detail to
6 permit the court to find that the petitioner is likely to
7 succeed at trial in proving that the petitioner is innocent of
8 the offenses charged in the indictment or information or his or
9 her acts or omissions charged in the indictment or information
10 did not constitute a felony or misdemeanor against the State of
11 Illinois, and the petitioner did not by his or her own conduct
12 voluntarily cause or bring about his or her conviction. The
13 petition shall be verified by the petitioner.

14 (e) A copy of the petition shall be served on the Attorney
15 General and the State's Attorney of the county where the
16 conviction was had. The Attorney General and the State's
17 Attorney of the county where the conviction was had shall have
18 the right to intervene as parties.

19 (f) In any hearing seeking a certificate of innocence, the
20 court may take judicial notice of prior sworn testimony or
21 evidence admitted in the criminal proceedings related to the
22 convictions which resulted in the alleged wrongful
23 incarceration, if the petitioner was either represented by
24 counsel at such prior proceedings or the right to counsel was
25 knowingly waived.

26 (g) In order to obtain a certificate of innocence the

1 petitioner must prove by a preponderance of evidence that:

2 (1) the petitioner was convicted of one or more
3 felonies by the State of Illinois and subsequently
4 sentenced to a term of imprisonment, and has served all or
5 any part of the sentence;

6 (2) (A) the judgment of conviction was reversed or
7 vacated, and the indictment or information dismissed or, if
8 a new trial was ordered, either the petitioner was found
9 not guilty at the new trial or the petitioner was not
10 retried and the indictment or information dismissed; or (B)
11 the statute, or application thereof, on which the
12 indictment or information was based violated the
13 Constitution of the United States or the State of Illinois;

14 (3) the petitioner is innocent of the offenses charged
15 in the indictment or information or his or her acts or
16 omissions charged in the indictment or information did not
17 constitute a felony or misdemeanor against the State; and

18 (4) the petitioner did not by his or her own conduct
19 voluntarily cause or bring about his or her conviction.

20 (h) If the court finds that the petitioner is entitled to a
21 judgment, it shall enter a certificate of innocence finding
22 that the petitioner was innocent of all offenses for which he
23 or she was incarcerated. Upon entry of the certificate of
24 innocence or pardon from the Governor stating that such pardon
25 was issued on the ground of innocence of the crime for which he
26 or she was imprisoned, ~~(1)~~ the clerk of the court shall

1 transmit a copy of the certificate of innocence to the clerk of
2 the Court of Claims, together with the claimant's current
3 address. Upon entry of the certificate of innocence, ; and (2)
4 the court shall enter an order requiring the arresting agency,
5 the Department of State Police, and any other agency as ordered
6 by the court to expunge, as defined by subsection (a) (1) (E) of
7 Section 5.2 of the Criminal Identification Act, the records of
8 arrest and conviction for the offense that the petitioner was
9 found to be innocent, within 60 days of the date of service.
10 The order shall also expunging or sealing the record of arrest
11 from the official records of the arresting authority and order
12 that the records of the clerk of the circuit court regarding
13 the arrest and conviction for the offense be impounded and
14 Department of State Police be sealed until further order of the
15 court upon good cause shown or as otherwise provided herein,
16 and the name of the defendant obliterated from the official
17 index requested to be kept by the circuit court clerk under
18 Section 16 of the Clerks of Courts Act in connection with the
19 arrest and conviction for the offense but the order shall not
20 affect any index issued by the circuit court clerk before the
21 entry of the order. If a person is pardoned by the Governor
22 based on the grounds of innocence for the crime for which he or
23 she was imprisoned, the individual must file for an expungement
24 as provided in Section 5.2 of the Criminal Identification Act.

25 (i) Any person seeking a certificate of innocence under
26 this Section based on the dismissal of an indictment or

1 information or acquittal that occurred before the effective
2 date of this amendatory Act of the 95th General Assembly shall
3 file his or her petition within 2 years after the effective
4 date of this amendatory Act of the 95th General Assembly. Any
5 person seeking a certificate of innocence under this Section
6 based on the dismissal of an indictment or information or
7 acquittal that occurred on or after the effective date of this
8 amendatory Act of the 95th General Assembly shall file his or
9 her petition within 2 years after the dismissal.

10 (j) The decision to grant or deny a certificate of
11 innocence shall be binding only with respect to claims filed in
12 the Court of Claims and shall not have a res judicata effect on
13 any other proceedings.

14 (Source: P.A. 95-970, eff. 9-22-08; 96-1550, eff. 7-1-11.)".