

SB2941



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB2941

Introduced 2/4/2014, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act. Authorizes the court to seal Class 4 felony convictions for possession with intent to manufacture or deliver cannabis without the defendant being required to successfully complete qualified probation under the Act. Authorizes the court to seal Class 3 felony convictions for possession with intent to manufacture or deliver cannabis without the defendant being required to obtain an authorization for sealing from the Prisoner Review Board. Effective immediately.

LRB098 16878 MRW 51951 b

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 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 with intent to manufacture or
19 deliver cannabis under Section 5 of the
20 Cannabis Control Act.

21 Possession of a controlled substance under
22 Section 402 of the Illinois Controlled
23 Substances Act.

24 Offenses under the Methamphetamine
25 Precursor Control Act.

26 Offenses under the Steroid Control Act.

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

3 Retail theft under Section 16A-3 or
4 paragraph (a) of 16-25 of the Criminal Code of
5 1961 or the Criminal Code of 2012.

6 Deceptive practices under Section 17-1 of
7 the Criminal Code of 1961 or the Criminal Code
8 of 2012.

9 Forgery under Section 17-3 of the Criminal
10 Code of 1961 or the Criminal Code of 2012.

11 Possession of burglary tools under Section
12 19-2 of the Criminal Code of 1961 or the
13 Criminal Code of 2012.

14 (ii) Class 3 felony convictions for:

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

17 Retail theft under Section 16A-3 or
18 paragraph (a) of 16-25 of the Criminal Code of
19 1961 or the Criminal Code of 2012.

20 Deceptive practices under Section 17-1 of
21 the Criminal Code of 1961 or the Criminal Code
22 of 2012.

23 Forgery under Section 17-3 of the Criminal
24 Code of 1961 or the Criminal Code of 2012.

25 Possession with intent to manufacture or
26 deliver cannabis under Section 5 of the

1 Cannabis Control Act.

2 Possession with intent to manufacture or
3 deliver a controlled substance under Section
4 401 of the Illinois Controlled Substances Act.

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

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

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

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

26 (D) Records identified in subsection

1 (a) (3) (A) (iii) may be sealed after the petitioner has
2 reached the age of 25 years.

3 (4) Subsequent felony convictions. A person may not
4 have subsequent felony conviction records sealed as
5 provided in this subsection (c) if he or she is convicted
6 of any felony offense after the date of the sealing of
7 prior felony convictions as provided in this subsection
8 (c). The court may, upon conviction for a subsequent felony
9 offense, order the unsealing of prior felony conviction
10 records previously ordered sealed by the court.

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

16 (d) Procedure. The following procedures apply to
17 expungement under subsections (b), (e), and (e-6) and sealing
18 under subsections (c) and (e-5):

19 (1) Filing the petition. Upon becoming eligible to
20 petition for the expungement or sealing of records under
21 this Section, the petitioner shall file a petition
22 requesting the expungement or sealing of records with the
23 clerk of the court where the arrests occurred or the
24 charges were brought, or both. If arrests occurred or
25 charges were brought in multiple jurisdictions, a petition
26 must be filed in each such jurisdiction. The petitioner

1 shall pay the applicable fee, if not waived.

2 (2) Contents of petition. The petition shall be
3 verified and shall contain the petitioner's name, date of
4 birth, current address and, for each arrest or charge not
5 initiated by arrest sought to be sealed or expunged, the
6 case number, the date of arrest (if any), the identity of
7 the arresting authority, and such other information as the
8 court may require. During the pendency of the proceeding,
9 the petitioner shall promptly notify the circuit court
10 clerk of any change of his or her address. If the
11 petitioner has received a certificate of eligibility for
12 sealing from the Prisoner Review Board under paragraph (10)
13 of subsection (a) of Section 3-3-2 of the Unified Code of
14 Corrections, the certificate shall be attached to the
15 petition.

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

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

25 (B) seal felony records for a violation of the
26 Illinois Controlled Substances Act, the

1 Methamphetamine Control and Community Protection Act,
2 or the Cannabis Control Act under clause (c) (2) (F);

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

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

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

13 (5) Objections.

14 (A) Any party entitled to notice of the petition
15 may file an objection to the petition. All objections
16 shall be in writing, shall be filed with the circuit
17 court clerk, and shall state with specificity the basis
18 of the objection.

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

22 (6) Entry of order.

23 (A) The Chief Judge of the circuit wherein the
24 charge was brought, any judge of that circuit
25 designated by the Chief Judge, or in counties of less
26 than 3,000,000 inhabitants, the presiding trial judge

1 at the petitioner's trial, if any, shall rule on the
2 petition to expunge or seal as set forth in this
3 subsection (d) (6).

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

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

22 (A) the strength of the evidence supporting the
23 defendant's conviction;

24 (B) the reasons for retention of the conviction
25 records by the State;

26 (C) the petitioner's age, criminal record history,

1 and employment history;

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

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

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

16 (9) Implementation of order.

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

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

26 (ii) the records of the circuit court clerk

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

9 (iii) in response to an inquiry for expunged
10 records, the court, the Department, or the agency
11 receiving such inquiry, shall reply as it does in
12 response to inquiries when no records ever
13 existed.

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

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

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

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

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

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

19 (v) 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
24 existed.

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

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

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

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

22 (iv) records impounded by the Department may
23 be disseminated by the Department only as required
24 by law or to the arresting authority, the State's
25 Attorney, and the court upon a later arrest for the
26 same or a similar offense or for the purpose of

1 sentencing for any subsequent felony, and to the
2 Department of Corrections upon conviction for any
3 offense; and

4 (v) in response to an inquiry for these records
5 from anyone not authorized by law to access the
6 records, the court, the Department, or the agency
7 receiving the inquiry shall reply as it does in
8 response to inquiries when no records ever
9 existed.

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

19 (D) The Department shall send written notice to the
20 petitioner of its compliance with each order to expunge
21 or seal records within 60 days of the date of service
22 of that order or, if a motion to vacate, modify, or
23 reconsider is filed, within 60 days of service of the
24 order resolving the motion, if that order requires the
25 Department to expunge or seal records. In the event of
26 an appeal from the circuit court order, the Department

1 shall send written notice to the petitioner of its
2 compliance with an Appellate Court or Supreme Court
3 judgment to expunge or seal records within 60 days of
4 the issuance of the court's mandate. The notice is not
5 required while any motion to vacate, modify, or
6 reconsider, or any appeal or petition for
7 discretionary appellate review, is pending.

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

24 (11) Final Order. No court order issued under the
25 expungement or sealing provisions of this Section shall
26 become final for purposes of appeal until 30 days after

1 service of the order on the petitioner and all parties
2 entitled to notice of the petition.

3 (12) Motion to Vacate, Modify, or Reconsider. Under
4 Section 2-1203 of the Code of Civil Procedure, 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. If filed more than 60 days after
9 service of the order, a petition to vacate, modify, or
10 reconsider shall comply with subsection (c) of Section
11 2-1401 of the Code of Civil Procedure. Upon filing of a
12 motion to vacate, modify, or reconsider, notice of the
13 motion shall be served upon the petitioner and all parties
14 entitled to notice of the petition.

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

24 (14) Compliance with Order Granting Petition to Seal
25 Records. Unless a court has entered a stay of an order
26 granting a petition to seal, all parties entitled to notice

1 of the petition must fully comply with the terms of the
2 order within 60 days of service of the order even if a
3 party is seeking relief from the order through a motion
4 filed under paragraph (12) of this subsection (d) or is
5 appealing the order.

6 (15) Compliance with Order Granting Petition to
7 Expunge Records. While a party is seeking relief from the
8 order granting the petition to expunge through a motion
9 filed under paragraph (12) of this subsection (d) or is
10 appealing the order, and unless a court has entered a stay
11 of that order, the parties entitled to notice of the
12 petition must seal, but need not expunge, the records until
13 there is a final order on the motion for relief or, in the
14 case of an appeal, the issuance of that court's mandate.

15 (16) The changes to this subsection (d) made by Public
16 Act 98-163 ~~this amendatory Act of the 98th General Assembly~~
17 apply to all petitions pending on August 5, 2013 (the
18 effective date of Public Act 98-163) ~~this amendatory Act of~~
19 ~~the 98th General Assembly~~ and to all orders ruling on a
20 petition to expunge or seal on or after August 5, 2013 (the
21 effective date of Public Act 98-163) ~~this amendatory Act of~~
22 ~~the 98th General Assembly~~.

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

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

24 (e-5) Whenever a person who has been convicted of an
25 offense is granted a certificate of eligibility for sealing by
26 the Prisoner Review Board which specifically authorizes

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

1 sealing.

2 (e-6) Whenever a person who has been convicted of an
3 offense is granted a certificate of eligibility for expungement
4 by the Prisoner Review Board which specifically authorizes
5 expungement, he or she may, upon verified petition to the Chief
6 Judge of the circuit where the person had been convicted, any
7 judge of the circuit designated by the Chief Judge, or in
8 counties of less than 3,000,000 inhabitants, the presiding
9 trial judge at the petitioner's trial, have a court order
10 entered expunging the record of arrest from the official
11 records of the arresting authority and order that the records
12 of the circuit court clerk and the Department be sealed until
13 further order of the court upon good cause shown or as
14 otherwise provided herein, and the name of the petitioner
15 obliterated from the official index requested to be kept by the
16 circuit court clerk under Section 16 of the Clerks of Courts
17 Act in connection with the arrest and conviction for the
18 offense for which he or she had been granted the certificate
19 but the order shall not affect any index issued by the circuit
20 court clerk before the entry of the order. All records sealed
21 by the Department may be disseminated by the Department only as
22 required by this Act or to the arresting authority, a law
23 enforcement agency, the State's Attorney, and the court upon a
24 later arrest for the same or similar offense or for the purpose
25 of sentencing for any subsequent felony. Upon conviction for
26 any subsequent offense, the Department of Corrections shall

1 have access to all expunged records of the Department
2 pertaining to that individual. Upon entry of the order of
3 expungement, the circuit court clerk shall promptly mail a copy
4 of the order to the person who was granted the certificate of
5 eligibility for expungement.

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

18 (Source: P.A. 97-443, eff. 8-19-11; 97-698, eff. 1-1-13;
19 97-1026, eff. 1-1-13; 97-1108, eff. 1-1-13; 97-1109, eff.
20 1-1-13; 97-1118, eff. 1-1-13; 97-1120, eff. 1-1-13; 97-1150,
21 eff. 1-25-13; 98-133, eff. 1-1-14; 98-142, eff. 1-1-14; 98-163,
22 eff. 8-5-13; 98-164, eff. 1-1-14; 98-399, eff. 8-16-13; revised
23 9-4-13.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.