



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB0167

by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act. Provides that commencing 180 days after the effective date of the amendatory Act, the Department of State Police and each arresting authority shall automatically expunge, on or before January 1 and July 1 of each year, a person's records of arrests in the Department's or authority's possession or control if the arrests do not result in filing of any charge against the person unless the State's Attorney states, in writing, the case is still under his or her review, and the records have been in the possession or control of the Department or the arresting authority for at least 6 months. Provides that the Department of State Police shall allow a person whose records are eligible for expungement under this provision to use an access and review process, established in the Department of State Police and each arresting authority, for verifying that his or her records eligible for expungement under this provision have been expunged. Provides that the Department of State Police and each arresting authority shall adopt rules to implement this provision. Effective immediately.

LRB099 03686 RLC 23697 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

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 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 (2.5) Commencing 180 days after the effective date of
7 this amendatory Act of the 99th General Assembly, the
8 Department of State Police and each arresting authority
9 shall automatically expunge, on or before January 1 and
10 July 1 of each year, a person's records of arrests in the
11 Department's or arresting authority's possession or
12 control if: (A) the arrests do not result in the filing of
13 any charge against the person unless the State's Attorney
14 states, in writing, the case is still under his or her
15 review, and (B) the records have been in the possession or
16 control of the Department or the arresting authority for at
17 least 6 months. The Department of State Police and each
18 arresting authority shall allow a person whose records are
19 eligible for expungement under this subsection to use an
20 access and review process, established in the Department of
21 State Police and each arresting authority, for verifying
22 that his or her records eligible for expungement under this
23 subsection have been expunged as provided in this
24 subsection. The Department of State Police and each
25 arresting authority shall adopt rules to implement this
26 subsection (2.5).

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

4 (A) the sealing or expungement of the records of
5 arrests or charges not initiated by arrest that result
6 in an order of supervision for or conviction of: (i)
7 any sexual offense committed against a minor; (ii)
8 Section 11-501 of the Illinois Vehicle Code or a
9 similar provision of a local ordinance; or (iii)
10 Section 11-503 of the Illinois Vehicle Code or a
11 similar provision of a local ordinance, unless the
12 arrest or charge is for a misdemeanor violation of
13 subsection (a) of Section 11-503 or a similar provision
14 of a local ordinance, that occurred prior to the
15 offender reaching the age of 25 years and the offender
16 has no other conviction for violating Section 11-501 or
17 11-503 of the Illinois Vehicle Code or a similar
18 provision of a local ordinance.

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

23 (C) the sealing of the records of arrests or
24 charges not initiated by arrest which result in an
25 order of supervision or a conviction for the following
26 offenses:

1 (i) offenses included in Article 11 of the
2 Criminal Code of 1961 or the Criminal Code of 2012
3 or a similar provision of a local ordinance, except
4 Section 11-14 of the Criminal Code of 1961 or the
5 Criminal Code of 2012, or a similar provision of a
6 local ordinance;

7 (ii) Section 11-1.50, 12-3.4, 12-15, 12-30,
8 26-5, or 48-1 of the Criminal Code of 1961 or the
9 Criminal Code of 2012, or a similar provision of a
10 local ordinance;

11 (iii) Sections 12-3.1 or 12-3.2 of the
12 Criminal Code of 1961 or the Criminal Code of 2012,
13 or Section 125 of the Stalking No Contact Order
14 Act, or Section 219 of the Civil No Contact Order
15 Act, or a similar provision of a local ordinance;

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

18 (v) any offense or attempted offense that
19 would subject a person to registration under the
20 Sex Offender Registration Act.

21 (D) the sealing of the records of an arrest which
22 results in the petitioner being charged with a felony
23 offense or records of a charge not initiated by arrest
24 for a felony offense unless:

25 (i) the charge is amended to a misdemeanor and
26 is otherwise eligible to be sealed pursuant to

1 subsection (c);

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

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

13 (iv) the charge is for a felony offense listed
14 in subsection (c) (2) (F) or the charge is amended to
15 a felony offense listed in subsection (c) (2) (F);

16 (v) the charge results in acquittal,
17 dismissal, or the petitioner's release without
18 conviction; or

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

21 (b) Expungement.

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

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

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

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

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

20 (B) When the arrest or charge not initiated by
21 arrest sought to be expunged resulted in an order of
22 supervision, successfully completed by the petitioner,
23 the following time frames will apply:

24 (i) Those arrests or charges that resulted in
25 orders of supervision under Section 3-707, 3-708,
26 3-710, or 5-401.3 of the Illinois Vehicle Code or a

1 similar provision of a local ordinance, or under
2 Section 11-1.50, 12-3.2, or 12-15 of the Criminal
3 Code of 1961 or the Criminal Code of 2012, or a
4 similar provision of a local ordinance, shall not
5 be eligible for expungement until 5 years have
6 passed following the satisfactory termination of
7 the supervision.

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

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

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

1 petitioner, such records shall not be eligible for
2 expungement until 5 years have passed following the
3 satisfactory termination of the probation.

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

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

1 name of the aggrieved person obliterated on the official
2 index required to be kept by the circuit court clerk under
3 Section 16 of the Clerks of Courts Act, but the order shall
4 not affect any index issued by the circuit court clerk
5 before the entry of the order. Nothing in this Section
6 shall limit the Department of State Police or other
7 criminal justice agencies or prosecutors from listing
8 under an offender's name the false names he or she has
9 used.

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

26 (6) If a conviction has been set aside on direct review

1 or on collateral attack and the court determines by clear
2 and convincing evidence that the petitioner was factually
3 innocent of the charge, the court that finds the petitioner
4 factually innocent of the charge shall enter an expungement
5 order for the conviction for which the petitioner has been
6 determined to be innocent as provided in subsection (b) of
7 Section 5-5-4 of the Unified Code of Corrections.

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

22 (8) If the petitioner has been granted a certificate of
23 innocence under Section 2-702 of the Code of Civil
24 Procedure, the court that grants the certificate of
25 innocence shall also enter an order expunging the
26 conviction for which the petitioner has been determined to

1 be innocent as provided in subsection (h) of Section 2-702
2 of the Code of Civil Procedure.

3 (c) Sealing.

4 (1) Applicability. Notwithstanding any other provision
5 of this Act to the contrary, and cumulative with any rights
6 to expungement of criminal records, this subsection
7 authorizes the sealing of criminal records of adults and of
8 minors prosecuted as adults.

9 (2) Eligible Records. The following records may be
10 sealed:

11 (A) All arrests resulting in release without
12 charging;

13 (B) Arrests or charges not initiated by arrest
14 resulting in acquittal, dismissal, or conviction when
15 the conviction was reversed or vacated, except as
16 excluded by subsection (a) (3) (B);

17 (C) Arrests or charges not initiated by arrest
18 resulting in orders of supervision, including orders
19 of supervision for municipal ordinance violations,
20 successfully completed by the petitioner, unless
21 excluded by subsection (a) (3);

22 (D) Arrests or charges not initiated by arrest
23 resulting in convictions, including convictions on
24 municipal ordinance violations, unless excluded by
25 subsection (a) (3);

26 (E) Arrests or charges not initiated by arrest

1 resulting in orders of first offender probation under
2 Section 10 of the Cannabis Control Act, Section 410 of
3 the Illinois Controlled Substances Act, Section 70 of
4 the Methamphetamine Control and Community Protection
5 Act, or Section 5-6-3.3 of the Unified Code of
6 Corrections; and

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

10 (i) Class 4 felony convictions for:

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

14 Possession of cannabis under Section 4 of
15 the Cannabis Control Act.

16 Possession of a controlled substance under
17 Section 402 of the Illinois Controlled
18 Substances Act.

19 Offenses under the Methamphetamine
20 Precursor Control Act.

21 Offenses under the Steroid Control Act.

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

24 Retail theft under Section 16A-3 or
25 paragraph (a) of 16-25 of the Criminal Code of
26 1961 or the Criminal Code of 2012.

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

4 Forgery under Section 17-3 of the Criminal
5 Code of 1961 or the Criminal Code of 2012.

6 Possession of burglary tools under Section
7 19-2 of the Criminal Code of 1961 or the
8 Criminal Code of 2012.

9 (ii) Class 3 felony convictions for:

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

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

15 Deceptive practices under Section 17-1 of
16 the Criminal Code of 1961 or the Criminal Code
17 of 2012.

18 Forgery under Section 17-3 of the Criminal
19 Code of 1961 or the Criminal Code of 2012.

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

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

26 (A) Records identified as eligible under

1 subsection (c) (2) (A) and (c) (2) (B) may be sealed at any
2 time.

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

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

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

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

1 offense, order the unsealing of prior felony conviction
2 records previously ordered sealed by the court.

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

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

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

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

1 the petitioner shall promptly notify the circuit court
2 clerk of any change of his or her address. If the
3 petitioner has received a certificate of eligibility for
4 sealing from the Prisoner Review Board under paragraph (10)
5 of subsection (a) of Section 3-3-2 of the Unified Code of
6 Corrections, the certificate shall be attached to the
7 petition.

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

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

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

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

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

24 (4) Service of petition. The circuit court clerk shall
25 promptly serve a copy of the petition and documentation to
26 support the petition under subsection (e-5) or (e-6) on the

1 State's Attorney or prosecutor charged with the duty of
2 prosecuting the offense, the Department of State Police,
3 the arresting agency and the chief legal officer of the
4 unit of local government effecting the arrest.

5 (5) Objections.

6 (A) Any party entitled to notice of the petition
7 may file an objection to the petition. All objections
8 shall be in writing, shall be filed with the circuit
9 court clerk, and shall state with specificity the basis
10 of the objection. Whenever a person who has been
11 convicted of an offense is granted a pardon by the
12 Governor which specifically authorizes expungement, an
13 objection to the petition may not be filed.

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

17 (6) Entry of order.

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

25 (B) Unless the State's Attorney or prosecutor, the
26 Department of State Police, the arresting agency, or

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

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

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

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

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

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

26 (E) the specific adverse consequences the

1 petitioner may be subject to if the petition is denied.

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

11 (9) Implementation of order.

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

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

21 (ii) the records of the circuit court clerk
22 shall be impounded until further order of the court
23 upon good cause shown and the name of the
24 petitioner obliterated on the official index
25 required to be kept by the circuit court clerk
26 under Section 16 of the Clerks of Courts Act, but

1 the order shall not affect any index issued by the
2 circuit court clerk before the entry of the order;
3 and

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

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

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

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

26 (iii) the records shall be impounded by the

1 Department within 60 days of the date of service of
2 the order as ordered by the court, unless a motion
3 to vacate, modify, or reconsider the order is filed
4 pursuant to paragraph (12) of subsection (d) of
5 this Section;

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

14 (v) 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
19 existed.

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

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

1 the order is filed under paragraph (12) of
2 subsection (d) of this Section;

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

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

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

25 (v) in response to an inquiry for these records
26 from anyone not authorized by law to access the

1 records, the court, the Department, or the agency
2 receiving the inquiry shall reply as it does in
3 response to inquiries when no records ever
4 existed.

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

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

1 reconsider, or any appeal or petition for
2 discretionary appellate review, is pending.

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

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

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

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

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

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

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

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

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

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

16 (e-5) Whenever a person who has been convicted of an
17 offense is granted a certificate of eligibility for sealing by
18 the Prisoner Review Board which specifically authorizes
19 sealing, he or she may, upon verified petition to the Chief
20 Judge of the circuit where the person had been convicted, any
21 judge of the circuit designated by the Chief Judge, or in
22 counties of less than 3,000,000 inhabitants, the presiding
23 trial judge at the petitioner's trial, have a court order
24 entered sealing the record of arrest from the official records
25 of the arresting authority and order that the records of the
26 circuit court clerk and the Department be sealed until further

1 order of the court upon good cause shown or as otherwise
2 provided herein, and the name of the petitioner obliterated
3 from the official index requested to be kept by the circuit
4 court clerk under Section 16 of the Clerks of Courts Act in
5 connection with the arrest and conviction for the offense for
6 which he or she had been granted the certificate 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 as
10 required by this Act or to the arresting authority, a law
11 enforcement agency, the State's Attorney, and the court upon a
12 later arrest for the same or similar offense or for the purpose
13 of sentencing for any subsequent felony. Upon conviction for
14 any subsequent offense, the Department of Corrections shall
15 have access to all sealed records of the Department pertaining
16 to that individual. Upon entry of the order of sealing, the
17 circuit court clerk shall promptly mail a copy of the order to
18 the person who was granted the certificate of eligibility for
19 sealing.

20 (e-6) Whenever a person who has been convicted of an
21 offense is granted a certificate of eligibility for expungement
22 by the Prisoner Review Board which specifically authorizes
23 expungement, he or she may, upon verified petition to the Chief
24 Judge of the circuit where the person had been convicted, any
25 judge of the circuit designated by the Chief Judge, or in
26 counties of less than 3,000,000 inhabitants, the presiding

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

24 (f) Subject to available funding, the Illinois Department
25 of Corrections shall conduct a study of the impact of sealing,
26 especially on employment and recidivism rates, utilizing a

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

10 (Source: P.A. 97-443, eff. 8-19-11; 97-698, eff. 1-1-13;
11 97-1026, eff. 1-1-13; 97-1108, eff. 1-1-13; 97-1109, eff.
12 1-1-13; 97-1118, eff. 1-1-13; 97-1120, eff. 1-1-13; 97-1150,
13 eff. 1-25-13; 98-133, eff. 1-1-14; 98-142, eff. 1-1-14; 98-163,
14 eff. 8-5-13; 98-164, eff. 1-1-14; 98-399, eff. 8-16-13; 98-635,
15 eff. 1-1-15; 98-637, eff. 1-1-15; 98-756, eff. 7-16-14;
16 98-1009, eff. 1-1-15; revised 9-30-14.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.