

HB2988



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2988

by Rep. Justin Slaughter

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act. Provides that a petitioner may petition the circuit court to expunge the records of his or her arrests and charges not initiated by arrest when each arrest or charge not initiated by arrest sought to be expunged resulted in the underlying conduct being later decriminalized.

LRB100 10998 SLF 21237 b

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 July 29, 2016 (the
7 effective date of Public Act 99-697) ~~this amendatory Act of~~
8 ~~the 99th General Assembly~~, the law enforcement agency
9 issuing the citation shall automatically expunge, on or
10 before January 1 and July 1 of each year, the law
11 enforcement records of a person found to have committed a
12 civil law violation of subsection (a) of Section 4 of the
13 Cannabis Control Act or subsection (c) of Section 3.5 of
14 the Drug Paraphernalia Control Act in the law enforcement
15 agency's possession or control and which contains the final
16 satisfactory disposition which pertain to the person
17 issued a citation for that offense. The law enforcement
18 agency shall provide by rule the process for access,
19 review, and to confirm the automatic expungement by the law
20 enforcement agency issuing the citation. Commencing 180
21 days after July 29, 2016 (the effective date of Public Act
22 99-697) ~~this amendatory Act of the 99th General Assembly~~,
23 the clerk of the circuit court shall expunge, upon order of
24 the court, or in the absence of a court order on or before
25 January 1 and July 1 of each year, the court records of a
26 person found in the circuit court to have committed a civil

1 law violation of subsection (a) of Section 4 of the
2 Cannabis Control Act or subsection (c) of Section 3.5 of
3 the Drug Paraphernalia Control Act in the clerk's
4 possession or control and which contains the final
5 satisfactory disposition which pertain to the person
6 issued a citation for any of those offenses.

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

10 (A) the sealing or expungement of the records of
11 arrests or charges not initiated by arrest that result
12 in an order of supervision for or conviction of: (i)
13 any sexual offense committed against a minor; (ii)
14 Section 11-501 of the Illinois Vehicle Code or a
15 similar provision of a local ordinance; or (iii)
16 Section 11-503 of the Illinois Vehicle Code or a
17 similar provision of a local ordinance, unless the
18 arrest or charge is for a misdemeanor violation of
19 subsection (a) of Section 11-503 or a similar provision
20 of a local ordinance, that occurred prior to the
21 offender reaching the age of 25 years and the offender
22 has no other conviction for violating Section 11-501 or
23 11-503 of the Illinois Vehicle Code or a similar
24 provision of a local ordinance.

25 (B) the sealing or expungement of records of minor
26 traffic offenses (as defined in subsection (a) (1) (G)),

1 unless the petitioner was arrested and released
2 without charging.

3 (C) the sealing of the records of arrests or
4 charges not initiated by arrest which result in an
5 order of supervision or a conviction for the following
6 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) Sections 12-3.1 or 12-3.2 of the
18 Criminal Code of 1961 or the Criminal Code of 2012,
19 or Section 125 of the Stalking No Contact Order
20 Act, or Section 219 of the Civil No Contact Order
21 Act, or a similar provision of a local ordinance;

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

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

1 (D) the sealing of the records of an arrest which
2 results in the petitioner being charged with a felony
3 offense or records of a charge not initiated by arrest
4 for a felony offense unless:

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

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

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

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

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

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

1 (b) Expungement.

2 (1) A petitioner may petition the circuit court to
3 expunge the records of his or her arrests and charges not
4 initiated by arrest when each arrest or charge not
5 initiated by arrest sought to be expunged resulted in: (i)
6 acquittal, dismissal, or the petitioner's release without
7 charging, unless excluded by subsection (a)(3)(B); (ii) a
8 conviction which was vacated or reversed, unless excluded
9 by subsection (a)(3)(B); (iii) an order of supervision and
10 such supervision was successfully completed by the
11 petitioner, unless excluded by subsection (a)(3)(A) or
12 (a)(3)(B); ~~or~~ (iv) an order of qualified probation (as
13 defined in subsection (a)(1)(J)) and such probation was
14 successfully completed by the petitioner; the underlying
15 conduct being later decriminalized.

16 (1.5) When a petitioner seeks to have a record of
17 arrest expunged under this Section, and the offender has
18 been convicted of a criminal offense, the State's Attorney
19 may object to the expungement on the grounds that the
20 records contain specific relevant information aside from
21 the mere fact of the arrest.

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

23 (A) When the arrest or charge not initiated by
24 arrest sought to be expunged resulted in an acquittal,
25 dismissal, the petitioner's release without charging,
26 or the reversal or vacation of a conviction, there is

1 no waiting period to petition for the expungement of
2 such records.

3 (B) When the arrest or charge not initiated by
4 arrest sought to be expunged resulted in an order of
5 supervision, successfully completed by the petitioner,
6 the following time frames will apply:

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

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

1 petitioner has reached the age of 25 years.

2 (ii) Those arrests or charges that resulted in
3 orders of supervision for any other offenses shall
4 not be eligible for expungement until 2 years have
5 passed following the satisfactory termination of
6 the supervision.

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

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

17 (4) Whenever a person has been arrested for or
18 convicted of any offense, in the name of a person whose
19 identity he or she has stolen or otherwise come into
20 possession of, the aggrieved person from whom the identity
21 was stolen or otherwise obtained without authorization,
22 upon learning of the person having been arrested using his
23 or her identity, may, upon verified petition to the chief
24 judge of the circuit wherein the arrest was made, have a
25 court order entered nunc pro tunc by the Chief Judge to
26 correct the arrest record, conviction record, if any, and

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

19 (5) Whenever a person has been convicted of criminal
20 sexual assault, aggravated criminal sexual assault,
21 predatory criminal sexual assault of a child, criminal
22 sexual abuse, or aggravated criminal sexual abuse, the
23 victim of that offense may request that the State's
24 Attorney of the county in which the conviction occurred
25 file a verified petition with the presiding trial judge at
26 the petitioner's trial to have a court order entered to

1 seal the records of the circuit court clerk in connection
2 with the proceedings of the trial court concerning that
3 offense. However, the records of the arresting authority
4 and the Department of State Police concerning the offense
5 shall not be sealed. The court, upon good cause shown,
6 shall make the records of the circuit court clerk in
7 connection with the proceedings of the trial court
8 concerning the offense available for public inspection.

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

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

1 Criminal Code of 2012, Section 10-102 of the Illinois
2 Alcoholism and Other Drug Dependency Act, Section 40-10 of
3 the Alcoholism and Other Drug Abuse and Dependency Act, or
4 Section 10 of the Steroid Control Act.

5 (8) If the petitioner has been granted a certificate of
6 innocence under Section 2-702 of the Code of Civil
7 Procedure, the court that grants the certificate of
8 innocence shall also enter an order expunging the
9 conviction for which the petitioner has been determined to
10 be innocent as provided in subsection (h) of Section 2-702
11 of the Code of Civil Procedure.

12 (c) Sealing.

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

18 (2) Eligible Records. The following records may be
19 sealed:

20 (A) All arrests resulting in release without
21 charging;

22 (B) Arrests or charges not initiated by arrest
23 resulting in acquittal, dismissal, or conviction when
24 the conviction was reversed or vacated, except as
25 excluded by subsection (a) (3) (B);

26 (C) Arrests or charges not initiated by arrest

1 resulting in orders of supervision, including orders
2 of supervision for municipal ordinance violations,
3 successfully completed by the petitioner, unless
4 excluded by subsection (a) (3);

5 (D) Arrests or charges not initiated by arrest
6 resulting in convictions, including convictions on
7 municipal ordinance violations, unless excluded by
8 subsection (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 felony convictions for the following
18 offenses:

19 (i) Class 4 felony convictions for:

20 Prostitution under Section 11-14 of the
21 Criminal Code of 1961 or the Criminal Code of
22 2012.

23 Possession of cannabis under Section 4 of
24 the Cannabis Control Act.

25 Possession of a controlled substance under
26 Section 402 of the Illinois Controlled

1 Substances Act.

2 Offenses under the Methamphetamine
3 Precursor Control Act.

4 Offenses under the Steroid Control Act.

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

7 Retail theft under Section 16A-3 or
8 paragraph (a) of 16-25 of the Criminal Code of
9 1961 or the Criminal Code of 2012.

10 Deceptive practices under Section 17-1 of
11 the Criminal Code of 1961 or the Criminal Code
12 of 2012.

13 Forgery under Section 17-3 of the Criminal
14 Code of 1961 or the Criminal Code of 2012.

15 Possession of burglary tools under Section
16 19-2 of the Criminal Code of 1961 or the
17 Criminal Code of 2012.

18 (ii) Class 3 felony convictions for:

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

21 Retail theft under Section 16A-3 or
22 paragraph (a) of 16-25 of the Criminal Code of
23 1961 or the Criminal Code of 2012.

24 Deceptive practices under Section 17-1 of
25 the Criminal Code of 1961 or the Criminal Code
26 of 2012.

1 subsections (c) (2) (C), (c) (2) (D), (c) (2) (E), or
2 (c) (2) (F) may be sealed upon termination of the
3 petitioner's last sentence if the petitioner earned a
4 high school diploma, associate's degree, career
5 certificate, vocational technical certification, or
6 bachelor's degree, or passed the high school level Test
7 of General Educational Development, during the period
8 of his or her sentence, aftercare release, or mandatory
9 supervised release. This subparagraph shall apply only
10 to a petitioner who has not completed the same
11 educational goal prior to the period of his or her
12 sentence, aftercare release, or mandatory supervised
13 release. If a petition for sealing eligible records
14 filed under this subparagraph is denied by the court,
15 the time periods under subparagraph (B) or (C) shall
16 apply to any subsequent petition for sealing filed by
17 the petitioner.

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

26 (5) Notice of eligibility for sealing. Upon entry of a

1 disposition for an eligible record under this subsection
2 (c), the petitioner shall be informed by the court of the
3 right to have the records sealed and the procedures for the
4 sealing of the records.

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

8 (1) Filing the petition. Upon becoming eligible to
9 petition for the expungement or sealing of records under
10 this Section, the petitioner shall file a petition
11 requesting the expungement or sealing of records with the
12 clerk of the court where the arrests occurred or the
13 charges were brought, or both. If arrests occurred or
14 charges were brought in multiple jurisdictions, a petition
15 must be filed in each such jurisdiction. The petitioner
16 shall pay the applicable fee, except no fee shall be
17 required if the petitioner has obtained a court order
18 waiving fees under Supreme Court Rule 298 or it is
19 otherwise waived.

20 (1.5) County fee waiver pilot program. In a county of
21 3,000,000 or more inhabitants, no fee shall be required to
22 be paid by a petitioner if the records sought to be
23 expunged or sealed were arrests resulting in release
24 without charging or arrests or charges not initiated by
25 arrest resulting in acquittal, dismissal, or conviction
26 when the conviction was reversed or vacated, unless

1 excluded by subsection (a)(3)(B). The provisions of this
2 paragraph (1.5), other than this sentence, are inoperative
3 on and after January 1, 2018 or one year after January 1,
4 2017 (the effective date of Public Act 99-881) ~~this~~
5 ~~amendatory Act of the 99th General Assembly~~, whichever is
6 later.

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

21 (3) Drug test. The petitioner must attach to the
22 petition proof that the petitioner has passed a test taken
23 within 30 days before the filing of the petition showing
24 the absence within his or her body of all illegal
25 substances as defined by the Illinois Controlled
26 Substances Act, the Methamphetamine Control and Community

1 Protection Act, and the Cannabis Control Act if he or she
2 is petitioning to:

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

4 (B) seal felony records for a violation of the
5 Illinois Controlled Substances Act, the
6 Methamphetamine Control and Community Protection Act,
7 or the Cannabis Control Act under clause (c) (2) (F);

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

9 (D) expunge felony records of a qualified
10 probation under clause (b) (1) (iv).

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

18 (5) Objections.

19 (A) Any party entitled to notice of the petition
20 may file an objection to the petition. All objections
21 shall be in writing, shall be filed with the circuit
22 court clerk, and shall state with specificity the basis
23 of the objection. Whenever a person who has been
24 convicted of an offense is granted a pardon by the
25 Governor which specifically authorizes expungement, an
26 objection to the petition may not be filed.

1 (B) Objections to a petition to expunge or seal
2 must be filed within 60 days of the date of service of
3 the petition.

4 (6) Entry of order.

5 (A) The Chief Judge of the circuit wherein the
6 charge was brought, any judge of that circuit
7 designated by the Chief Judge, or in counties of less
8 than 3,000,000 inhabitants, the presiding trial judge
9 at the petitioner's trial, if any, shall rule on the
10 petition to expunge or seal as set forth in this
11 subsection (d) (6).

12 (B) Unless the State's Attorney or prosecutor, the
13 Department of State Police, the arresting agency, or
14 the chief legal officer files an objection to the
15 petition to expunge or seal within 60 days from the
16 date of service of the petition, the court shall enter
17 an order granting or denying the petition.

18 (7) Hearings. If an objection is filed, the court shall
19 set a date for a hearing and notify the petitioner and all
20 parties entitled to notice of the petition of the hearing
21 date at least 30 days prior to the hearing. Prior to the
22 hearing, the State's Attorney shall consult with the
23 Department as to the appropriateness of the relief sought
24 in the petition to expunge or seal. At the hearing, the
25 court shall hear evidence on whether the petition should or
26 should not be granted, and shall grant or deny the petition

1 to expunge or seal the records based on the evidence
2 presented at the hearing. The court may consider the
3 following:

4 (A) the strength of the evidence supporting the
5 defendant's conviction;

6 (B) the reasons for retention of the conviction
7 records by the State;

8 (C) the petitioner's age, criminal record history,
9 and employment history;

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

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

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

24 (9) Implementation of order.

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

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

17 (iii) in response to an inquiry for expunged
18 records, the court, the Department, or the agency
19 receiving such inquiry, shall reply as it does in
20 response to inquiries when no records ever
21 existed.

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

24 (i) the records shall be expunged (as defined
25 in subsection (a)(1)(E)) by the arresting agency
26 and any other agency as ordered by the court,

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

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

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

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

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

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

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

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

24 (iii) the records shall be impounded by the
25 Department within 60 days of the date of service of
26 the order as ordered by the court, unless a motion

1 to vacate, modify, or reconsider the order is filed
2 under paragraph (12) of subsection (d) of this
3 Section;

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

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

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

1 (D) The Department shall send written notice to the
2 petitioner of its compliance with each order to expunge
3 or seal records within 60 days of the date of service
4 of that order or, if a motion to vacate, modify, or
5 reconsider is filed, within 60 days of service of the
6 order resolving the motion, if that order requires the
7 Department to expunge or seal records. In the event of
8 an appeal from the circuit court order, the Department
9 shall send written notice to the petitioner of its
10 compliance with an Appellate Court or Supreme Court
11 judgment to expunge or seal records within 60 days of
12 the issuance of the court's mandate. The notice is not
13 required while any motion to vacate, modify, or
14 reconsider, or any appeal or petition for
15 discretionary appellate review, is pending.

16 (10) Fees. The Department may charge the petitioner a
17 fee equivalent to the cost of processing any order to
18 expunge or seal records. Notwithstanding any provision of
19 the Clerks of Courts Act to the contrary, the circuit court
20 clerk may charge a fee equivalent to the cost associated
21 with the sealing or expungement of records by the circuit
22 court clerk. From the total filing fee collected for the
23 petition to seal or expunge, the circuit court clerk shall
24 deposit \$10 into the Circuit Court Clerk Operation and
25 Administrative Fund, to be used to offset the costs
26 incurred by the circuit court clerk in performing the

1 additional duties required to serve the petition to seal or
2 expunge on all parties. The circuit court clerk shall
3 collect and forward the Department of State Police portion
4 of the fee to the Department and it shall be deposited in
5 the State Police Services Fund.

6 (11) Final Order. No court order issued under the
7 expungement or sealing provisions of this Section shall
8 become final for purposes of appeal until 30 days after
9 service of the order on the petitioner and all parties
10 entitled to notice of the petition.

11 (12) Motion to Vacate, Modify, or Reconsider. Under
12 Section 2-1203 of the Code of Civil Procedure, the
13 petitioner or any party entitled to notice may file a
14 motion to vacate, modify, or reconsider the order granting
15 or denying the petition to expunge or seal within 60 days
16 of service of the order. If filed more than 60 days after
17 service of the order, a petition to vacate, modify, or
18 reconsider shall comply with subsection (c) of Section
19 2-1401 of the Code of Civil Procedure. Upon filing of a
20 motion to vacate, modify, or reconsider, notice of the
21 motion shall be served upon the petitioner and all parties
22 entitled to notice of the petition.

23 (13) Effect of Order. An order granting a petition
24 under the expungement or sealing provisions of this Section
25 shall not be considered void because it fails to comply
26 with the provisions of this Section or because of any error

1 asserted in a motion to vacate, modify, or reconsider. The
2 circuit court retains jurisdiction to determine whether
3 the order is voidable and to vacate, modify, or reconsider
4 its terms based on a motion filed under paragraph (12) of
5 this subsection (d).

6 (14) Compliance with Order Granting Petition to Seal
7 Records. Unless a court has entered a stay of an order
8 granting a petition to seal, all parties entitled to notice
9 of the petition must fully comply with the terms of the
10 order within 60 days of service of the order even if a
11 party is seeking relief from the order through a motion
12 filed under paragraph (12) of this subsection (d) or is
13 appealing the order.

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

23 (16) The changes to this subsection (d) made by Public
24 Act 98-163 apply to all petitions pending on August 5, 2013
25 (the effective date of Public Act 98-163) and to all orders
26 ruling on a petition to expunge or seal on or after August

1 5, 2013 (the effective date of Public Act 98-163).

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

1 circuit court clerk shall promptly mail a copy of the order to
2 the person who was pardoned.

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

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

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

1 required by this Act or to the arresting authority, a law
2 enforcement agency, 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 expunged records of the Department
7 pertaining to that individual. Upon entry of the order of
8 expungement, the circuit court clerk shall promptly mail a copy
9 of the order to the person who was granted the certificate of
10 eligibility for expungement.

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

23 (Source: P.A. 98-133, eff. 1-1-14; 98-142, eff. 1-1-14; 98-163,
24 eff. 8-5-13; 98-164, eff. 1-1-14; 98-399, eff. 8-16-13; 98-635,
25 eff. 1-1-15; 98-637, eff. 1-1-15; 98-756, eff. 7-16-14;
26 98-1009, eff. 1-1-15; 99-78, eff. 7-20-15; 99-378, eff. 1-1-16;

1 99-385, eff. 1-1-16; 99-642, eff. 7-28-16; 99-697, eff.
2 7-29-16; 99-881, eff. 1-1-17; revised 9-2-16.)