



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB0049

Introduced 1/31/2007, by Sen. John J. Cullerton

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Second Chance Act. Creates a Second Chance Commission in each of the 5 judicial districts of the State appointed by the presiding appellate judge of the district. Provides that a Commission shall deliberate petitions for relief filed by defendants after the final disposition of their criminal cases. Provides that a Commission may grant: expungement of criminal records; sealing of criminal records; a waiver of disabilities barring employment, licensing, benefits, or another right or privilege; or certificates of good conduct. Establishes criteria to be used in determining whether or not to grant relief. Establishes procedures by which the State's Attorney, the arresting agency, the Department of State Police, or the chief legal officer of the unit of local government effecting the defendant's arrest may file an objection to the petition. Creates a private right of action against a person for maintaining, revealing, or otherwise using a record in violation of an order granting expungement, sealing of criminal records, or a waiver of disabilities, and sets forth relief that may be awarded in such an action.

LRB095 04113 RLC 24151 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal records.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Second  
5 Chance Act.

6 Section 5. Principle, purpose, and goals. The General  
7 Assembly hereby codifies the promise that Illinois, like the  
8 nation at large, is the land of the second chance and the  
9 principle that every person has the potential to turn his or  
10 her life around after having run afoul of the law and to become  
11 a law abiding member of the community with the full array of  
12 rights and responsibilities of citizenship.

13 The chief goal of this Act is to reduce crime and  
14 recidivism and thereby promote the safety of Illinois  
15 communities. To accomplish this goal, people with criminal  
16 records need to become fully engaged in assuming the  
17 responsibilities of family, community, and citizenship, and to  
18 be able to work. Employment is the first and most critical step  
19 in assuming personal responsibility for one's self and one's  
20 family and for becoming a tax payor contributing to society at  
21 large. Because criminal records impose barriers to assuming and  
22 exercising these responsibilities, rights, and privileges,  
23 this Act aims to provide relief from those criminal records. It

1 also aims to give those with criminal records an incentive to  
2 stay on the straight and narrow because this Act will provide  
3 them with a second chance a chance to be released from the  
4 stigma of a criminal record if they can demonstrate they have  
5 turned from crime to responsibility. This Act is intended to  
6 provide those who have paid their debt to society the  
7 opportunity to return to their communities as productive,  
8 competent, and healthy citizens with all the responsibilities,  
9 rights, and privileges that such citizenship conveys.

10 Section 10. Second Chance Commissions.

11 (a) Creation. Five Second Chance Commissions, one for each  
12 of the 5 Illinois judicial districts, shall be created to  
13 review applications for relief under this Act and to determine  
14 what, if any, relief is to be granted the petitioner.

15 (b) Composition. Each Commission's members shall be  
16 appointed by the presiding appellate judge of the judicial  
17 district and include the following from within that judicial  
18 district: the presiding appellate judge, or his or her  
19 designee; a State's Attorney, or his or her designee; a chief  
20 of police or sheriff, or his or her designee; a public  
21 defender, which may include the State Appellate Defender, or  
22 his or her designee; and an individual working with a faith  
23 based or community based organization that helps former  
24 prisoners make the transition back into the community. The  
25 presiding appellate judge shall also appoint no less than 5

1 alternate Commissioners representing the 5 institutions  
2 described in this subsection (b) to deliberate in instances  
3 where Commissioners are absent or have a conflict of interest.  
4 In judicial districts with a population of more than 2,800,000,  
5 the presiding appellate judge may appoint as many additional  
6 permanent commissioners as the workload warrants, so long as  
7 each commission that deliberates a petition is composed of 5  
8 individuals representing the 5 institutions described in this  
9 subsection (b).

10 (c) Recusal and removal. A Commissioner shall recuse  
11 himself or herself from deliberating on any petition if he or  
12 she has a personal or financial or any other interest in the  
13 matter. The presiding appellate judge shall have the power to  
14 recuse any Commissioner from deliberations on a petition in  
15 which the judge ascertains the individual has an interest. The  
16 presiding appellate judge has the authority to remove  
17 Commissioners for cause, including misconduct or repeated  
18 absences.

19 (d) Duties. Each Commission shall deliberate petitions for  
20 relief as set forth in this Act and decide such petitions by a  
21 majority vote of the 5 Commissioners or their alternates.

22 Section 15. Forms of relief. Notwithstanding any other  
23 provision of law to the contrary and cumulative with any rights  
24 to pardon, expungement, sealing of criminal records, and  
25 obtaining other forms of relief from disabilities,

1 forfeitures, and bars imposed by law consequent to criminal  
2 convictions, any person who has no charges pending against him  
3 or her and who has a criminal record, whether the person was  
4 convicted or the matter or matters were otherwise disposed of,  
5 may petition for, and may be granted by the Commission, such  
6 relief from the consequences that criminal records impose as  
7 follows:

8 (1) Expungement of records. The expungement of a record  
9 is its complete destruction by government and private  
10 agencies and the erasure of all indicia, including court  
11 indexes, that it ever existed. The entirety of an  
12 individual's criminal record may be expunged or only such  
13 parts as the Commission may determine are consistent with  
14 the principle, purpose, and goals of this Act.

15 (A) Legal effect of expungement. When a criminal  
16 record is expunged, the legal effect is (i) the  
17 complete and permanent extinguishment of all  
18 disabilities, forfeitures, and bars imposed by law or  
19 practice that would otherwise be consequent to the  
20 record, and (ii) that the record does not exist and the  
21 acts giving rise to the conviction did not occur. When  
22 a person has his or her record expunged, he or she may  
23 deny or answer no, even under penalty of perjury, to  
24 any question concerning that existence of the expunged  
25 record and the acts giving rise to it.

26 (B) Penalties. Maintaining, revealing, or

1 otherwise using in any manner, regardless of intent, an  
2 expunged record for any purpose gives an aggrieved  
3 party, including but not limited to the party named in  
4 the expunged records, a private right of action under  
5 this Act, and the court, in its discretion, may impose,  
6 in addition to injunctive relief and actual damages,  
7 statutory damages of no more than \$10,000, and award  
8 attorney's fees to the plaintiff.

9 (2) Sealing of records. The sealing of a record is the  
10 full or partial, temporary or permanent, removal of the  
11 record, including index references to it, from such public  
12 or private views and uses as the Commission determines are  
13 consistent with the principle, purpose, and goals of this  
14 Act. The Commission may seal some or all parts of a record;  
15 it may seal the record on a temporary basis until such  
16 conditions imposed on the applicant are fulfilled; it may  
17 seal the record permanently, but subject it to reopening  
18 upon either subsequent arrest or conviction; it may seal it  
19 and bar its view and use by all parties, or only by named  
20 entities, including but not limited to law enforcement and  
21 entities required to conduct background checks.

22 (A) Legal effect. If a record is fully sealed as to  
23 all parties and uses, the legal effect is the same as  
24 an expungement except that the record may be reopened  
25 and used in such a manner as the Commission shall  
26 direct in its final order on the petition. If a record

1 is partially sealed and closed to all parties and uses,  
2 the legal effect of such offenses as are sealed is the  
3 same as an expungement of those offenses, subject to  
4 any conditions imposed by the Commission. If a record  
5 is fully or partially, but temporarily, sealed subject  
6 to conditions imposed by the Commission being  
7 fulfilled by the petitioner, during the period of the  
8 sealing the legal effect is the same as an expungement.  
9 If the conditions are not fulfilled, the record is  
10 reopened. If a record is sealed only as to certain  
11 parties or certain purposes, the legal effect as to  
12 those parties and purposes is the same as an  
13 expungement.

14 (B) Penalties. Maintaining, revealing, or  
15 otherwise using in any manner, regardless of intent, a  
16 sealed record by any person or entity not authorized by  
17 the terms of the order to view, maintain, or use the  
18 record and for any purpose beyond the scope of the  
19 order gives an aggrieved party, including but not  
20 limited to the party named in the expunged records, a  
21 private right of action under this Act, and the court,  
22 in its discretion, may impose, in addition to  
23 injunctive relief and actual damages, statutory  
24 damages of no more than \$10,000, and award attorney's  
25 fees to the plaintiff.

26 (3) Waiver. A waiver is a determination by the

1 Commission that allows a person, otherwise barred by law  
2 from employment, a license, benefit, or any other right or  
3 privilege, to establish that lifting that bar is consistent  
4 with the principle, purpose, and goals of this Act.  
5 Notwithstanding any law to the contrary, the Commission may  
6 waive any disabilities imposed by law and provide such  
7 relief to fulfill the purposes of this Act. A waiver may  
8 cover as many disabilities as the Commission may determine  
9 are consistent with this Act.

10 (A) Legal effect of waiver. The waiver has the  
11 effect of lifting the disabilities consequent to the  
12 individual's criminal record otherwise imposed by law  
13 that are identified in the Commission's order.

14 (B) Penalties. If a person or entity does an act or  
15 refuses to do an act on the basis of a criminal record  
16 when the disability has been waived, the person with  
17 the waiver has a private right of action under this  
18 Act, and the court, in its discretion, may impose, in  
19 addition to injunctive relief and actual damages,  
20 statutory damages of no more than \$10,000, and award  
21 attorney's fees to the plaintiff. This paragraph  
22 imposes no affirmative obligations on any person or  
23 entity to grant employment, a license, benefit, or any  
24 other right or privilege.

25 (4) Certificate of good conduct. A certificate of good  
26 conduct is a statement provided by the Commission that the

1           petitioner has proven such good conduct as set forth in the  
2           certificate to the satisfaction of the Commission. A  
3           certificate of good conduct has no legal effect and imposes  
4           no duties on third parties. The Commission shall issue  
5           certificates of good conduct such as are consistent with  
6           the principle, purpose, and goals of this Act and set forth  
7           its findings as to the good conduct of the applicant on the  
8           certificate.

9           Section 20. Criteria for relief. The petitioner shall  
10          address and, on the deliberations and determinations on each  
11          petition before the Commission, the Commission shall consider  
12          the following criteria for relief:

13                 (1) the principle, purpose, and goals of this Act as  
14                 applied to the petitioner;

15                 (2) public safety, based on the nature and seriousness  
16                 of the crime or crimes in the record and the evidence of  
17                 rehabilitation of the petitioner;

18                 (3) the number of offenses in the record and the  
19                 disposition and penalties imposed for each;

20                 (4) the age of the individual when the crime or crimes  
21                 were committed;

22                 (5) the circumstances surrounding the crime or crimes;

23                 (6) the nature and severity of the harm to others as a  
24                 consequence of the crime or crimes, and the extent to which  
25                 the petitioner has acknowledged that harm by making efforts

1 at restitution and shown contrition toward the victims, if  
2 any, of the crime or crimes;

3 (7) the length of time since the last conviction;

4 (8) the nature of the conditions of probation and  
5 parole and whether they were fulfilled;

6 (9) rehabilitative efforts relevant to the offenses  
7 and circumstances of the petitioner's life such as alcohol  
8 or substance abuse treatment; mental health treatment;  
9 anger management; education; job readiness and skills  
10 training; parenting training; and participation in  
11 community or faith based services or programs, the results  
12 of such efforts, and the references of program staff;

13 (10) the facts and circumstances, if any, that led the  
14 petitioner to make a choice to engage in no further  
15 criminal conduct;

16 (11) the petitioner's work history, both paid and  
17 voluntary, and references of employers;

18 (12) character references; and

19 (13) any other evidence the petitioner may present  
20 concerning his or her rehabilitation and commitment to  
21 refrain from criminal activity.

22 Section 25. Notice of eligibility for relief. Upon the  
23 final disposition of a criminal case, such as acquittal,  
24 release without conviction, being placed on supervision, or  
25 conviction of a sealable offense, the defendant shall be

1 informed by the court of the right to petition for any of the 4  
2 forms of relief under this Act. Upon release from a  
3 correctional facility, State or local, the individual shall  
4 again be informed of the right to petition for any of the 4  
5 forms of relief under this Act. The notice shall be in writing  
6 and shall include the address of the Commission in the district  
7 where the incident arose.

8 Section 30. Guidelines. A Commission may establish  
9 guidelines for the 4 kinds of relief for purposes of putting  
10 petitioners on notice of what kind of relief, under what  
11 circumstances, is likely to be granted. The guidelines may not,  
12 however, be used to bar from full consideration petitions that  
13 ask for relief that is inconsistent with the guidelines. Every  
14 petition must be considered under the principle, purpose, and  
15 goals of this Act on its own merits.

16 Section 35. Contents of petition. The petition seeking  
17 relief may be submitted to the Commission in such a form and  
18 manner as the petitioner chooses, or the Commission may  
19 prescribe the use of a form it has prepared for these purposes,  
20 in which case the petitioner shall use that form. In either  
21 case, the petition shall be verified and contain the  
22 petitioner's name, all aliases, date of birth, current address,  
23 each charge, and for each charge: the case number, the date of  
24 the charge, the identity of the arresting authority, the

1 disposition and sentence, if any, and such other and further  
2 information as the Commission may require. It shall also  
3 provide evidence of entitlement to relief based on the criteria  
4 for relief set forth in Section 20 of this Act. The petitioner  
5 may include references, statements of third parties, copies of  
6 certificates, diplomas, academic transcripts, and such other  
7 documents as may be relevant to the Commissioner's  
8 deliberations. The petitioner may request a particular kind of  
9 relief, and state why that form of relief is sought, but the  
10 Commission is not bound by the scope of relief requested in the  
11 petition and may narrow or enlarge it in a manner consistent  
12 with the principle, purpose, and goals of this Act. During the  
13 pendency of the petition, the petitioner shall promptly notify  
14 the clerk of the court of any change of address. The petitioner  
15 may also request to appear before the Commission for an  
16 interview; however, the Commission is not required to grant the  
17 request before acting on the petition.

18 Section 40. Fee. The fee for filing a petition shall be \$75  
19 and shall be paid at the time of filing the petition.

20 Section 45. Procedure.

21 (a) Filing. The person seeking relief under this Act shall  
22 file the petition described in Section 35 of this Act along  
23 with the fee with the Commission in the judicial district where  
24 his or her last criminal offense took place. Petitions may be

1 filed in person or by mail.

2 (b) Service on law enforcement agencies. The Commission  
3 shall promptly provide a copy of the petition to each State's  
4 Attorney or prosecutor charged with the duty of prosecuting the  
5 offense or offenses from which the petitioner seeks relief, the  
6 Department of State Police, the arresting agency or agencies,  
7 and the chief legal officers of each unit of local government  
8 effecting the arrest or arrests. Unless an objection is filed  
9 with the Commission from one or more of these agencies within  
10 90 days of notice of the petition, the Commission shall proceed  
11 to act on the petition.

12 (c) Hearing upon objection. If an objection is filed, the  
13 Commission shall set a date for a hearing no more than 30 days  
14 from the date the objection was filed and notify the petitioner  
15 and the party or parties that objected to the relief being  
16 sought, and shall hear evidence on whether the relief requested  
17 or any other relief under this Act should or should not be  
18 granted.

19 (d) Timing of deliberations. The Commission shall take  
20 initial action on the petition within 120 days of its receipt.  
21 Within that 120 day period, whether objections have been filed  
22 or not, the Commission must either (1) make a determination  
23 based on the face of the petition and what materials, if any,  
24 are submitted with it, and upon the facts adduced at the  
25 hearing, if a hearing was held, (2) make a request for further  
26 information from the petitioner, or (3) schedule an interview

1 with the petitioner, and with third parties, with or without a  
2 request for further information. The petitioner shall be given  
3 30 days to submit the additional requested information. If  
4 further information requested of the petitioner cannot be  
5 obtained in 30 days, the petitioner shall request an extension  
6 of time, which shall not be unreasonably withheld. The  
7 Commission, in the case of a hearing, an interview, or its  
8 request for additional information, shall make its  
9 determination on the petition within 30 days of the hearing,  
10 interview or the receipt of additional information, and if more  
11 than one apply, whichever is later in time.

12 Section 50. Order. The deliberations of the Commission  
13 shall be final with the issuance of an order that sets forth  
14 findings of fact and conclusions based on the principle,  
15 purpose, and goals of this Act. The order must address the  
16 community's concern for public safety and demonstrate how the  
17 Commission concluded the individual had been rehabilitated  
18 based on the criteria set forth in Section 20 of this Act. The  
19 Commission may deny all forms of relief, or grant any such  
20 relief as is authorized in Section 15 of this Act, and may set  
21 such terms and conditions on the relief as are consistent with  
22 the principle, purpose, and goals of this Act. Such conditions  
23 may include, but are not limited to, periodic drug testing and  
24 good faith participation in designated programs.

25 The effective date of the order may also be delayed until

1 the required conditions are fulfilled.

2 Section 55. Service of order. The Commission shall provide  
3 copies of the order to such parties as are necessary to  
4 accomplish its purposes, including the petitioner, the clerk of  
5 the court or courts where the records may be found, the  
6 Department of State Police, in a form and manner prescribed by  
7 the Department, the State's Attorney or prosecutor charged with  
8 the duty of prosecuting the offense, the arresting agency, the  
9 chief legal officer of the unit of local government effecting  
10 the arrest, and such other civil and criminal justice agencies  
11 as may be necessary to provide the relief granted. If a record  
12 is ordered sealed or expunged, all references to the case,  
13 including all indexes of the case name, shall be obliterated or  
14 otherwise remove from public view.

15 Section 60. Effect of subsequent acts. Except where a  
16 record has been expunged, subsequent arrests affect the relief  
17 granted under a Commission's order only to the extent  
18 established in the order itself. The conviction of the  
19 petitioner of any crime other than traffic infractions and  
20 municipal violations nullifies and rescinds orders of sealing,  
21 waivers, and certificates of good conduct.

22 Section 65. Reporting. Each Commission shall file an annual  
23 report with the Governor and the General Assembly that sets

1     forth: the number of petitions filed; the number where all  
2     forms of relief are denied; and the number of petitions  
3     granted, specifying the number of petitions granted by the type  
4     of relief granted.