

HB6329



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB6329

Introduced 2/11/2016, by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act. Provides that records of arrest or convictions for felony offenses, except certain excluded offenses and Class X felonies, may be sealed. Provides that the expungement of records that resulted in a successful completion of the supervision or qualified probation may be expunged after satisfactory termination of the supervision or probation (rather than after 2 or 5 years following satisfactory termination of the supervision or probation).

LRB099 19888 RLC 44287 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 (3) Exclusions. Except as otherwise provided in
7 subsections (b) (5), (b) (6), (b) (8), (e), (e-5), and (e-6)
8 of this Section, the court shall not order:

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

24 (B) the sealing or expungement of records of minor
25 traffic offenses (as defined in subsection (a) (1) (G)),
26 unless the petitioner was arrested and released

1 without charging.

2 (C) the sealing of the records of arrests or
3 charges not initiated by arrest which result in an
4 order of supervision or a conviction for the following
5 offenses:

6 (i) offenses included in Article 11 of the
7 Criminal Code of 1961 or the Criminal Code of 2012
8 or a similar provision of a local ordinance, except
9 Section 11-14 and a misdemeanor violation under
10 Section 11-30 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; or ~~or~~

1 (vi) offenses which are Class X felonies under
2 the Criminal Code of 1961 or the Criminal Code of
3 2012.

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

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

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

20 ~~(iii) the charge results in first offender~~
21 ~~probation as set forth in subsection (c) (2) (E);~~

22 ~~(iv) the charge is for a felony offense listed~~
23 ~~in subsection (c) (2) (F) or the charge is amended to~~
24 ~~a felony offense listed in subsection (c) (2) (F);~~

25 ~~(v) the charge results in acquittal,~~
26 ~~dismissal, or the petitioner's release without~~

1 ~~conviction; or~~
2 ~~(vi) the charge results in a conviction, but~~
3 ~~the conviction was reversed or vacated.~~

4 (b) Expungement.

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

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

10 (B) Each arrest or charge not initiated by arrest
11 sought to be expunged resulted in: (i) acquittal,
12 dismissal, or the petitioner's release without
13 charging, unless excluded by subsection (a) (3) (B);
14 (ii) a conviction which was vacated or reversed, unless
15 excluded by subsection (a) (3) (B); (iii) an order of
16 supervision and such supervision was successfully
17 completed by the petitioner, unless excluded by
18 subsection (a) (3) (A) or (a) (3) (B); or (iv) an order of
19 qualified probation (as defined in subsection
20 (a) (1) (J)) and such probation was successfully
21 completed by the petitioner.

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 unless excluded by
18 subsection (a) (3). ~~for the following 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 ~~Forgery under Section 17-3 of the Criminal~~
2 ~~Code of 1961 or the Criminal Code of 2012.~~

3 ~~Possession with intent to manufacture or~~
4 ~~deliver a controlled substance under Section~~
5 ~~401 of the Illinois Controlled Substances Act.~~

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

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

12 (B) Except as otherwise provided in subparagraph
13 (E) of this paragraph (3), records identified as
14 eligible under subsections ~~subsection~~ (c)(2)(C),
15 (C)(2)(D), (c)(2)(E), and (c)(2)(F) may be sealed ~~2~~
16 ~~years~~ after the termination of petitioner's last
17 sentence (as defined in subsection (a)(1)(F)).

18 (C) (Blank). ~~Except as otherwise provided in~~
19 ~~subparagraph (E) of this paragraph (3), records~~
20 ~~identified as eligible under subsections (c)(2)(D),~~
21 ~~(c)(2)(E), and (c)(2)(F) may be sealed 3 years after~~
22 ~~the termination of the petitioner's last sentence (as~~
23 ~~defined in subsection (a)(1)(F)).~~

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

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

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

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

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

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

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

1 petitioner has received a certificate of eligibility for
2 sealing from the Prisoner Review Board under paragraph (10)
3 of subsection (a) of Section 3-3-2 of the Unified Code of
4 Corrections, the certificate shall be attached to the
5 petition.

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

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

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

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

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

22 (4) Service of petition. The circuit court clerk shall
23 promptly serve a copy of the petition and documentation to
24 support the petition under subsection (e-5) or (e-6) on the
25 State's Attorney or prosecutor charged with the duty of
26 prosecuting the offense, the Department of State Police,

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

3 (5) Objections.

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

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

15 (6) Entry of order.

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

23 (B) Unless the State's Attorney or prosecutor, the
24 Department of State Police, the arresting agency, or
25 the chief legal officer files an objection to the
26 petition to expunge or seal within 60 days from the

1 date of service of the petition, the court shall enter
2 an order granting or denying the petition.

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

15 (A) the strength of the evidence supporting the
16 defendant's conviction;

17 (B) the reasons for retention of the conviction
18 records by the State;

19 (C) the petitioner's age, criminal record history,
20 and employment history;

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

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

26 (8) Service of order. After entering an order to

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

9 (9) Implementation of order.

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

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

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

1 and

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

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 pursuant to 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 pursuant to paragraph (12) of subsection (d) of
3 this 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 such records
13 from anyone not authorized by law to access such
14 records, the court, the Department, or the agency
15 receiving such inquiry shall reply as it does in
16 response to inquiries when no records ever
17 existed.

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

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

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

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

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

23 (v) in response to an inquiry for these records
24 from anyone not authorized by law to access the
25 records, the court, the Department, or the agency
26 receiving the inquiry shall reply as it does in

1 response to inquiries when no records ever
2 existed.

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

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

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

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

22 (12) Motion to Vacate, Modify, or Reconsider. Under
23 Section 2-1203 of the Code of Civil Procedure, the
24 petitioner or any party entitled to notice may file a
25 motion to vacate, modify, or reconsider the order granting
26 or denying the petition to expunge or seal within 60 days

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

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

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

25 (15) Compliance with Order Granting Petition to
26 Expunge Records. While a party is seeking relief from the

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

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

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

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

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

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

18 (e-6) Whenever a person who has been convicted of an
19 offense is granted a certificate of eligibility for expungement
20 by the Prisoner Review Board which specifically authorizes
21 expungement, he or she may, upon verified petition to the Chief
22 Judge of the circuit where the person had been convicted, any
23 judge of the circuit designated by the Chief Judge, or in
24 counties of less than 3,000,000 inhabitants, the presiding
25 trial judge at the petitioner's trial, have a court order
26 entered expunging the record of arrest from the official

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

22 (f) Subject to available funding, the Illinois Department
23 of Corrections shall conduct a study of the impact of sealing,
24 especially on employment and recidivism rates, utilizing a
25 random sample of those who apply for the sealing of their
26 criminal records under Public Act 93-211. At the request of the

1 Illinois Department of Corrections, records of the Illinois
2 Department of Employment Security shall be utilized as
3 appropriate to assist in the study. The study shall not
4 disclose any data in a manner that would allow the
5 identification of any particular individual or employing unit.
6 The study shall be made available to the General Assembly no
7 later than September 1, 2010.

8 (Source: P.A. 98-133, eff. 1-1-14; 98-142, eff. 1-1-14; 98-163,
9 eff. 8-5-13; 98-164, eff. 1-1-14; 98-399, eff. 8-16-13; 98-635,
10 eff. 1-1-15; 98-637, eff. 1-1-15; 98-756, eff. 7-16-14;
11 98-1009, eff. 1-1-15; 99-78, eff. 7-20-15; 99-378, eff. 1-1-16;
12 99-385, eff. 1-1-16; revised 10-15-15.)