

AN ACT concerning criminal law.

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

Section 5. The Criminal Identification Act is amended by changing Section 5.2 as follows:

(20 ILCS 2630/5.2)

Sec. 5.2. Expungement and sealing.

(a) General Provisions.

(1) Definitions. In this Act, words and phrases have the meanings set forth in this subsection, except when a particular context clearly requires a different meaning.

(A) The following terms shall have the meanings ascribed to them in the Unified Code of Corrections, 730 ILCS 5/5-1-2 through 5/5-1-22:

- (i) Business Offense (730 ILCS 5/5-1-2),
- (ii) Charge (730 ILCS 5/5-1-3),
- (iii) Court (730 ILCS 5/5-1-6),
- (iv) Defendant (730 ILCS 5/5-1-7),
- (v) Felony (730 ILCS 5/5-1-9),
- (vi) Imprisonment (730 ILCS 5/5-1-10),
- (vii) Judgment (730 ILCS 5/5-1-12),
- (viii) Misdemeanor (730 ILCS 5/5-1-14),
- (ix) Offense (730 ILCS 5/5-1-15),

- (x) Parole (730 ILCS 5/5-1-16),
- (xi) Petty Offense (730 ILCS 5/5-1-17),
- (xii) Probation (730 ILCS 5/5-1-18),
- (xiii) Sentence (730 ILCS 5/5-1-19),
- (xiv) Supervision (730 ILCS 5/5-1-21), and
- (xv) Victim (730 ILCS 5/5-1-22).

(B) As used in this Section, "charge not initiated by arrest" means a charge (as defined by 730 ILCS 5/5-1-3) brought against a defendant where the defendant is not arrested prior to or as a direct result of the charge.

(C) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. An order of supervision successfully completed by the petitioner is not a conviction. An order of qualified probation (as defined in subsection (a)(1)(J)) successfully completed by the petitioner is not a conviction. An order of supervision or an order of qualified probation that is terminated unsatisfactorily is a conviction, unless the unsatisfactory termination is reversed, vacated, or modified and the judgment of conviction, if any, is reversed or vacated.

(D) "Criminal offense" means a petty offense, business offense, misdemeanor, felony, or municipal ordinance violation (as defined in subsection (a)(1)(H)). As used in this Section, a minor traffic offense (as defined in subsection (a)(1)(G)) shall not be considered a criminal offense.

(E) "Expunge" means to physically destroy the records or return them to the petitioner and to obliterate the petitioner's name from any official index or public record, or both. Nothing in this Act shall require the physical destruction of the circuit court file, but such records relating to arrests or charges, or both, ordered expunged shall be impounded as required by subsections (d)(9)(A)(ii) and (d)(9)(B)(ii).

(F) As used in this Section, "last sentence" means the sentence, order of supervision, or order of qualified probation (as defined by subsection (a)(1)(J)), for a criminal offense (as defined by subsection (a)(1)(D)) that terminates last in time in any jurisdiction, regardless of whether the petitioner has included the criminal offense for which the sentence or order of supervision or qualified probation was imposed in his or her petition. If multiple sentences, orders of supervision, or orders of qualified probation terminate on the same day and

are last in time, they shall be collectively considered the "last sentence" regardless of whether they were ordered to run concurrently.

(G) "Minor traffic offense" means a petty offense, business offense, or Class C misdemeanor under the Illinois Vehicle Code or a similar provision of a municipal or local ordinance.

(H) "Municipal ordinance violation" means an offense defined by a municipal or local ordinance that is criminal in nature and with which the petitioner was charged or for which the petitioner was arrested and released without charging.

(I) "Petitioner" means an adult or a minor prosecuted as an adult who has applied for relief under this Section.

(J) "Qualified probation" means an order of probation under Section 10 of the Cannabis Control Act, Section 410 of the Illinois Controlled Substances Act, Section 70 of the Methamphetamine Control and Community Protection Act, Section 5-6-3.3 of the Unified Code of Corrections, Section 12-4.3(b)(1) and (2) of the Criminal Code of 1961 (as those provisions existed before their deletion by Public Act 89-313), Section 10-102 of the Illinois Alcoholism and Other Drug Dependency Act, Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act, or Section 10

of the Steroid Control Act. For the purpose of this Section, "successful completion" of an order of qualified probation under Section 10-102 of the Illinois Alcoholism and Other Drug Dependency Act and Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act means that the probation was terminated satisfactorily and the judgment of conviction was vacated.

(K) "Seal" means to physically and electronically maintain the records, unless the records would otherwise be destroyed due to age, but to make the records unavailable without a court order, subject to the exceptions in Sections 12 and 13 of this Act. The petitioner's name shall also be obliterated from the official index required to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act, but any index issued by the circuit court clerk before the entry of the order to seal shall not be affected.

(L) "Sexual offense committed against a minor" includes but is not limited to the offenses of indecent solicitation of a child or criminal sexual abuse when the victim of such offense is under 18 years of age.

(M) "Terminate" as it relates to a sentence or order of supervision or qualified probation includes either satisfactory or unsatisfactory termination of the sentence, unless otherwise specified in this

Section.

(2) Minor Traffic Offenses. Orders of supervision or convictions for minor traffic offenses shall not affect a petitioner's eligibility to expunge or seal records pursuant to this Section.

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

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

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

without charging.

(C) the sealing of the records of arrests or charges not initiated by arrest which result in an order of supervision, an order of qualified probation (as defined in subsection (a)(1)(J)), or a conviction for the following offenses:

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

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

(iii) offenses defined as "crimes of violence" in Section 2 of the Crime Victims Compensation Act or a similar provision of a local ordinance;

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

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

(D) the sealing of the records of an arrest which results in the petitioner being charged with a felony

offense or records of a charge not initiated by arrest for a felony offense unless:

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

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

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

(iv) the charge is for a Class 4 felony offense listed in subsection (c)(2)(F) or the charge is amended to a Class 4 felony offense listed in subsection (c)(2)(F). Records of arrests which result in the petitioner being charged with a Class 4 felony offense listed in subsection (c)(2)(F), records of charges not initiated by arrest for Class 4 felony offenses listed in subsection (c)(2)(F), and records of charges amended to a Class 4 felony offense listed in (c)(2)(F) may be

sealed, regardless of the disposition, subject to any waiting periods set forth in subsection (c) (3);

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

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

(b) Expungement.

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

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

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

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

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

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

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

(i-5) Those arrests or charges that resulted in orders of supervision for a misdemeanor violation of subsection (a) of Section 11-503 of the Illinois Vehicle Code or a similar provision of a local ordinance, that occurred prior to the

offender reaching the age of 25 years and the offender has no other conviction for violating Section 11-501 or 11-503 of the Illinois Vehicle Code or a similar provision of a local ordinance shall not be eligible for expungement until the petitioner has reached the age of 25 years.

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

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

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

(4) Whenever a person has been arrested for or convicted of any offense, in the name of a person whose identity he or she has stolen or otherwise come into possession of, the aggrieved person from whom the identity was stolen or otherwise obtained without authorization,

upon learning of the person having been arrested using his or her identity, may, upon verified petition to the chief judge of the circuit wherein the arrest was made, have a court order entered nunc pro tunc by the Chief Judge to correct the arrest record, conviction record, if any, and all official records of the arresting authority, the Department, other criminal justice agencies, the prosecutor, and the trial court concerning such arrest, if any, by removing his or her name from all such records in connection with the arrest and conviction, if any, and by inserting in the records the name of the offender, if known or ascertainable, in lieu of the aggrieved's name. The records of the circuit court clerk shall be sealed until further order of the court upon good cause shown and the name of the aggrieved person obliterated on the official index required to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act, but the order shall not affect any index issued by the circuit court clerk before the entry of the order. Nothing in this Section shall limit the Department of State Police or other criminal justice agencies or prosecutors from listing under an offender's name the false names he or she has used.

(5) Whenever a person has been convicted of criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal

sexual abuse, or aggravated criminal sexual abuse, the victim of that offense may request that the State's Attorney of the county in which the conviction occurred file a verified petition with the presiding trial judge at the petitioner's trial to have a court order entered to seal the records of the circuit court clerk in connection with the proceedings of the trial court concerning that offense. However, the records of the arresting authority and the Department of State Police concerning the offense shall not be sealed. The court, upon good cause shown, shall make the records of the circuit court clerk in connection with the proceedings of the trial court concerning the offense available for public inspection.

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

(7) Nothing in this Section shall prevent the Department of State Police from maintaining all records of any person who is admitted to probation upon terms and conditions and who fulfills those terms and conditions pursuant to Section 10 of the Cannabis Control Act, Section

410 of the Illinois Controlled Substances Act, Section 70 of the Methamphetamine Control and Community Protection Act, Section 5-6-3.3 of the Unified Code of Corrections, Section 12-4.3 or subdivision (b) (1) of Section 12-3.05 of the Criminal Code of 1961 or the Criminal Code of 2012, Section 10-102 of the Illinois Alcoholism and Other Drug Dependency Act, Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act, or Section 10 of the Steroid Control Act.

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

(c) Sealing.

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

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

(A) All arrests resulting in release without charging;

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

(C) Arrests or charges not initiated by arrest resulting in orders of supervision successfully completed by the petitioner, unless excluded by subsection (a) (3);

(D) Arrests or charges not initiated by arrest resulting in convictions unless excluded by subsection (a) (3);

(E) Arrests or charges not initiated by arrest resulting in orders of first offender probation under Section 10 of the Cannabis Control Act, Section 410 of the Illinois Controlled Substances Act, Section 70 of the Methamphetamine Control and Community Protection Act, or Section 5-6-3.3 of the Unified Code of Corrections; and

(F) Arrests or charges not initiated by arrest resulting in Class 4 felony convictions for the following offenses:

(i) Section 11-14 of the Criminal Code of 1961 or the Criminal Code of 2012;

(ii) Section 4 of the Cannabis Control Act;

(iii) Section 402 of the Illinois Controlled Substances Act;

(iv) the Methamphetamine Precursor Control Act; and

(v) the Steroid Control Act.

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

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

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

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

(D) Records identified in subsection (a)(3)(A)(iii) may be sealed after the petitioner has

reached the age of 25 years.

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

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

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

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

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

(3) Drug test. The petitioner must attach to the petition proof that the petitioner has passed a test taken within 30 days before the filing of the petition showing the absence within his or her body of all illegal substances as defined by the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, and the Cannabis Control Act if he or she is petitioning to seal felony records pursuant to clause (c) (2) (E), (c) (2) (F) (ii)-(v), or (e-5) or if he or she is petitioning to expunge felony records of a qualified probation pursuant to clause (b) (1) (B) (iv).

(4) Service of petition. The circuit court clerk shall

promptly serve a copy of the petition on the State's Attorney or prosecutor charged with the duty of prosecuting the offense, the Department of State Police, the arresting agency and the chief legal officer of the unit of local government effecting the arrest.

(5) Objections.

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

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

(6) Entry of order.

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

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

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

(7) Hearings. If an objection is filed, the court shall set a date for a hearing and notify the petitioner and all parties entitled to notice of the petition of the hearing date at least 30 days prior to the hearing, and shall hear evidence on whether the petition should or should not be granted, and shall grant or deny the petition to expunge or seal the records based on the evidence presented at the hearing.

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

(9) Effect of order.

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

(i) the records shall be expunged (as defined in subsection (a) (1) (E)) by the arresting agency, the Department, and any other agency as ordered by the court, within 60 days of the date of service of

the order, unless a motion to vacate, modify, or reconsider the order is filed pursuant to paragraph (12) of subsection (d) of this Section;

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

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

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

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

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

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

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

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

response to inquiries when no records ever existed.

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

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

the State Police Services Fund.

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

(12) Motion to Vacate, Modify, or Reconsider. The petitioner or any party entitled to notice may file a motion to vacate, modify, or reconsider the order granting or denying the petition to expunge or seal within 60 days of service of the order.

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

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

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

court clerk under Section 16 of the Clerks of Courts Act in connection with the arrest and conviction for the offense for which he or she had been granted the certificate but the order shall not affect any index issued by the circuit court clerk before the entry of the order. All records sealed by the Department may be disseminated by the Department only as required by this Act or to the arresting authority, a law enforcement agency, the State's Attorney, and the court upon a later arrest for the same or similar offense or for the purpose of sentencing for any subsequent felony. Upon conviction for any subsequent offense, the Department of Corrections shall have access to all sealed records of the Department pertaining to that individual. Upon entry of the order of sealing, the circuit court clerk shall promptly mail a copy of the order to the person who was granted the certificate of eligibility for sealing.

(f) Subject to available funding, the Illinois Department of Corrections shall conduct a study of the impact of sealing, especially on employment and recidivism rates, utilizing a random sample of those who apply for the sealing of their criminal records under Public Act 93-211. At the request of the Illinois Department of Corrections, records of the Illinois Department of Employment Security shall be utilized as appropriate to assist in the study. The study shall not disclose any data in a manner that would allow the identification of any particular individual or employing unit.

The study shall be made available to the General Assembly no later than September 1, 2010.

(Source: P.A. 96-409, eff. 1-1-10; 96-1401, eff. 7-29-10; 96-1532, eff. 1-1-12; 96-1551, Article 1, Section 905, eff. 7-1-11; 96-1551, Article 2, Section 925, eff. 7-1-11; 97-443, eff. 8-19-11; 97-698, eff. 1-1-13; 97-1026, eff. 1-1-13; 97-1108, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1118, eff. 1-1-13; 97-1120, eff. 1-1-13; 97-1150, eff. 1-25-13.)

Section 10. The Unified Code of Corrections is amended by changing Section 5-5-4 as follows:

(730 ILCS 5/5-5-4) (from Ch. 38, par. 1005-5-4)

Sec. 5-5-4. Resentences.

(a) Where a conviction or sentence has been set aside on direct review or on collateral attack, the court shall not impose a new sentence for the same offense or for a different offense based on the same conduct which is more severe than the prior sentence less the portion of the prior sentence previously satisfied unless the more severe sentence is based upon conduct on the part of the defendant occurring after the original sentencing. If a sentence is vacated on appeal or on collateral attack due to the failure of the trier of fact at trial to determine beyond a reasonable doubt the existence of a fact (other than a prior conviction) necessary to increase the punishment for the offense beyond the statutory maximum

otherwise applicable, either the defendant may be re-sentenced to a term within the range otherwise provided or, if the State files notice of its intention to again seek the extended sentence, the defendant shall be afforded a new trial.

(b) If a conviction or sentence has been set aside on direct review or on collateral attack and the court determines by clear and convincing evidence that the defendant was factually innocent of the charge, the court shall enter an order expunging the record of arrest from the official records of the arresting authority and order that the records of the clerk of the circuit court and Department of State Police be sealed until further order of the court upon good cause shown or as otherwise provided herein, and the name of the defendant obliterated from the official index requested to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act in connection with the arrest and conviction for the offense but the order shall not affect any index issued by the circuit court clerk before the entry of the order. The court shall enter the expungement order regardless of whether the defendant has prior criminal convictions.

All records sealed by the Department of State Police may be disseminated by the Department only as required by law or to the arresting authority, the State's Attorney, the court upon a later arrest for the same or similar offense, or for the purpose of sentencing for any subsequent felony. Upon conviction for any subsequent offense, the Department of

Corrections shall have access to all sealed records of the Department pertaining to that individual.

Upon entry of the order of expungement, the clerk of the circuit court shall promptly mail a copy of the order to the person whose records were expunged and sealed.

(c) If a conviction has been vacated as a result of a claim of actual innocence based on newly discovered evidence made under Section 122-1 of the Code of Criminal Procedure of 1963 or Section 2-1401 of the Code of Civil Procedure, and the provisions of paragraphs (1) and (2) of subsection (g) of Section 2-702 of the Code of Civil Procedure are otherwise satisfied, the court shall enter an order for a certificate of innocence and an order expunging the conviction for which the petitioner has been determined to be innocent as provided in subsection (h) of Section 2-702 of the Code of Civil Procedure.

(Source: P.A. 93-210, eff. 7-18-03.)

Section 15. The Code of Civil Procedure is amended by changing Section 2-702 as follows:

(735 ILCS 5/2-702)

Sec. 2-702. Petition for a certificate of innocence that the petitioner was innocent of all offenses for which he or she was incarcerated.

(a) The General Assembly finds and declares that innocent persons who have been wrongly convicted of crimes in Illinois

and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue to obtain a finding of innocence so that they may obtain relief through a petition in the Court of Claims. The General Assembly further finds misleading the current legal nomenclature which compels an innocent person to seek a pardon for being wrongfully incarcerated. It is the intent of the General Assembly that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this Section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

(b) Any person convicted and subsequently imprisoned for one or more felonies by the State of Illinois which he or she did not commit may, under the conditions hereinafter provided, file a petition for certificate of innocence in the circuit court of the county in which the person was convicted. The petition shall request a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated.

(c) In order to present the claim for certificate of innocence of an unjust conviction and imprisonment, the

petitioner must attach to his or her petition documentation demonstrating that:

(1) he or she has been convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(2) his or her judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either he or she was found not guilty at the new trial or he or she was not retried and the indictment or information dismissed; or the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois; and

(3) his or her claim is not time barred by the provisions of subsection (i) of this Section.

(d) The petition shall state facts in sufficient detail to permit the court to find that the petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State of Illinois, and the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction. The petition shall be verified by the petitioner.

(e) A copy of the petition shall be served on the Attorney

General and the State's Attorney of the county where the conviction was had. The Attorney General and the State's Attorney of the county where the conviction was had shall have the right to intervene as parties.

(f) In any hearing seeking a certificate of innocence, the court may take judicial notice of prior sworn testimony or evidence admitted in the criminal proceedings related to the convictions which resulted in the alleged wrongful incarceration, if the petitioner was either represented by counsel at such prior proceedings or the right to counsel was knowingly waived.

(g) In order to obtain a certificate of innocence the petitioner must prove by a preponderance of evidence that:

(1) the petitioner was convicted of one or more felonies by the State of Illinois and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(2) (A) the judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either the petitioner was found not guilty at the new trial or the petitioner was not retried and the indictment or information dismissed; or (B) the statute, or application thereof, on which the indictment or information was based violated the Constitution of the United States or the State of Illinois;

(3) the petitioner is innocent of the offenses charged

in the indictment or information or his or her acts or omissions charged in the indictment or information did not constitute a felony or misdemeanor against the State; and

(4) the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.

(h) If the court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated. Upon entry of the certificate of innocence or pardon from the Governor stating that such pardon was issued on the ground of innocence of the crime for which he or she was imprisoned, (1) the clerk of the court shall transmit a copy of the certificate of innocence to the clerk of the Court of Claims, together with the claimant's current address; and (2) the court shall enter an order expunging ~~or sealing~~ the record of arrest from the official records of the arresting authority and order that the records of the clerk of the circuit court and Department of State Police be sealed until further order of the court upon good cause shown or as otherwise provided herein, and the name of the defendant obliterated from the official index requested to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act in connection with the arrest and conviction for the offense but the order shall not affect any index issued by the circuit court clerk before the entry of the order. The court shall enter the expungement order regardless of whether the

petitioner has prior criminal convictions.

All records sealed by the Department of State Police may be disseminated by the Department only as required by law or to the arresting authority, the State's Attorney, the court upon a later arrest for the same or similar offense, or for the purpose of sentencing for any subsequent felony. Upon conviction for any subsequent offense, the Department of Corrections shall have access to all sealed records of the Department pertaining to that individual.

Upon entry of the order of expungement, the clerk of the circuit court shall promptly mail a copy of the order to the person whose records were expunged and sealed.

(i) Any person seeking a certificate of innocence under this Section based on the dismissal of an indictment or information or acquittal that occurred before the effective date of this amendatory Act of the 95th General Assembly shall file his or her petition within 2 years after the effective date of this amendatory Act of the 95th General Assembly. Any person seeking a certificate of innocence under this Section based on the dismissal of an indictment or information or acquittal that occurred on or after the effective date of this amendatory Act of the 95th General Assembly shall file his or her petition within 2 years after the dismissal.

(j) The decision to grant or deny a certificate of innocence shall be binding only with respect to claims filed in the Court of Claims and shall not have a res judicata effect on

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any other proceedings.

(Source: P.A. 95-970, eff. 9-22-08; 96-1550, eff. 7-1-11.)