

HB3849



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3849

by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act. Provides that notwithstanding the eligibility requirements regarding expungement, a petitioner is eligible to petition the circuit court to expunge all records that have been sealed 3 years after the petitioner is granted sealing if the petitioner has not been arrested or has not had one or more criminal convictions between the court granting sealing and the filing of the petition for relief.

LRB101 12783 TAE 61616 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, sealing, and immediate 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 Substance Use Disorder Act, or Section 10

1 of the Steroid Control Act. For the purpose of this
2 Section, "successful completion" of an order of
3 qualified probation under Section 10-102 of the
4 Illinois Alcoholism and Other Drug Dependency Act and
5 Section 40-10 of the Substance Use Disorder Act means
6 that the probation was terminated satisfactorily and
7 the judgment of conviction was vacated.

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

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

22 (M) "Terminate" as it relates to a sentence or
23 order of supervision or qualified probation includes
24 either satisfactory or unsatisfactory termination of
25 the sentence, unless otherwise specified in this
26 Section. A sentence is terminated notwithstanding any

1 outstanding financial legal obligation.

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

6 (2.5) Commencing 180 days after July 29, 2016 (the
7 effective date of Public Act 99-697), the law enforcement
8 agency issuing the citation shall automatically expunge,
9 on or before January 1 and July 1 of each year, the law
10 enforcement records of a person found to have committed a
11 civil law violation of subsection (a) of Section 4 of the
12 Cannabis Control Act or subsection (c) of Section 3.5 of
13 the Drug Paraphernalia Control Act in the law enforcement
14 agency's possession or control and which contains the final
15 satisfactory disposition which pertain to the person
16 issued a citation for that offense. The law enforcement
17 agency shall provide by rule the process for access,
18 review, and to confirm the automatic expungement by the law
19 enforcement agency issuing the citation. Commencing 180
20 days after July 29, 2016 (the effective date of Public Act
21 99-697), the clerk of the circuit court shall expunge, upon
22 order of the court, or in the absence of a court order on
23 or before January 1 and July 1 of each year, the court
24 records of a person found in the circuit court to have
25 committed a civil law violation of subsection (a) of
26 Section 4 of the Cannabis Control Act or subsection (c) of

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

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

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

23 (B) the sealing or expungement of records of minor
24 traffic offenses (as defined in subsection (a) (1) (G)),
25 unless the petitioner was arrested and released
26 without charging.

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

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

12 (ii) Section 11-1.50, 12-3.4, 12-15, 12-30,
13 26-5, or 48-1 of the Criminal Code of 1961 or the
14 Criminal Code of 2012, or a similar provision of a
15 local ordinance;

16 (iii) Sections 12-3.1 or 12-3.2 of the
17 Criminal Code of 1961 or the Criminal Code of 2012,
18 or Section 125 of the Stalking No Contact Order
19 Act, or Section 219 of the Civil No Contact Order
20 Act, or a similar provision of a local ordinance;

21 (iv) Class A misdemeanors or felony offenses
22 under the Humane Care for Animals Act; or

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

26 (D) (blank).

1 (b) Expungement.

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

15 (1.1) Notwithstanding the eligibility requirements of
16 this subsection (b), a petitioner is eligible to petition
17 the circuit court to expunge all records that have been
18 sealed under subsection (c), (g), or (h) of this Section 3
19 years after the petitioner is granted sealing. This
20 paragraph (1.1) shall only apply to a petitioner who has
21 not been arrested or has not had one or more criminal
22 convictions between the court granting sealing and the
23 filing of the petition for relief.

24 (1.5) When a petitioner seeks to have a record of
25 arrest expunged under this Section, and the offender has
26 been convicted of a criminal offense, the State's Attorney

1 may object to the expungement on the grounds that the
2 records contain specific relevant information aside from
3 the mere fact of the arrest.

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

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

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

15 (i) Those arrests or charges that resulted in
16 orders of supervision under Section 3-707, 3-708,
17 3-710, or 5-401.3 of the Illinois Vehicle Code or a
18 similar provision of a local ordinance, or under
19 Section 11-1.50, 12-3.2, or 12-15 of the Criminal
20 Code of 1961 or the Criminal Code of 2012, or a
21 similar provision of a local ordinance, shall not
22 be eligible for expungement until 5 years have
23 passed following the satisfactory termination of
24 the supervision.

25 (i-5) Those arrests or charges that resulted
26 in orders of supervision for a misdemeanor

1 violation of subsection (a) of Section 11-503 of
2 the Illinois Vehicle Code or a similar provision of
3 a local ordinance, that occurred prior to the
4 offender reaching the age of 25 years and the
5 offender has no other conviction for violating
6 Section 11-501 or 11-503 of the Illinois Vehicle
7 Code or a similar provision of a local ordinance
8 shall not be eligible for expungement until the
9 petitioner has reached the age of 25 years.

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

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

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

25 (4) Whenever a person has been arrested for or
26 convicted of any offense, in the name of a person whose

1 identity he or she has stolen or otherwise come into
2 possession of, the aggrieved person from whom the identity
3 was stolen or otherwise obtained without authorization,
4 upon learning of the person having been arrested using his
5 or her identity, may, upon verified petition to the chief
6 judge of the circuit wherein the arrest was made, have a
7 court order entered nunc pro tunc by the Chief Judge to
8 correct the arrest record, conviction record, if any, and
9 all official records of the arresting authority, the
10 Department, other criminal justice agencies, the
11 prosecutor, and the trial court concerning such arrest, if
12 any, by removing his or her name from all such records in
13 connection with the arrest and conviction, if any, and by
14 inserting in the records the name of the offender, if known
15 or ascertainable, in lieu of the aggrieved's name. The
16 records of the circuit court clerk shall be sealed until
17 further order of the court upon good cause shown and the
18 name of the aggrieved person obliterated on the official
19 index required to be kept by the circuit court clerk under
20 Section 16 of the Clerks of Courts Act, but the order shall
21 not affect any index issued by the circuit court clerk
22 before the entry of the order. Nothing in this Section
23 shall limit the Department of State Police or other
24 criminal justice agencies or prosecutors from listing
25 under an offender's name the false names he or she has
26 used.

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

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

25 (7) Nothing in this Section shall prevent the
26 Department of State Police from maintaining all records of

1 any person who is admitted to probation upon terms and
2 conditions and who fulfills those terms and conditions
3 pursuant to Section 10 of the Cannabis Control Act, Section
4 410 of the Illinois Controlled Substances Act, Section 70
5 of the Methamphetamine Control and Community Protection
6 Act, Section 5-6-3.3 or 5-6-3.4 of the Unified Code of
7 Corrections, Section 12-4.3 or subdivision (b)(1) of
8 Section 12-3.05 of the Criminal Code of 1961 or the
9 Criminal Code of 2012, Section 10-102 of the Illinois
10 Alcoholism and Other Drug Dependency Act, Section 40-10 of
11 the Substance Use Disorder Act, or Section 10 of the
12 Steroid Control Act.

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

20 (c) Sealing.

21 (1) Applicability. Notwithstanding any other provision
22 of this Act to the contrary, and cumulative with any rights
23 to expungement of criminal records, this subsection
24 authorizes the sealing of criminal records of adults and of
25 minors prosecuted as adults. Subsection (g) of this Section
26 provides for immediate sealing of certain records.

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

3 (A) All arrests resulting in release without
4 charging;

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

9 (C) Arrests or charges not initiated by arrest
10 resulting in orders of supervision, including orders
11 of supervision for municipal ordinance violations,
12 successfully completed by the petitioner, unless
13 excluded by subsection (a) (3);

14 (D) Arrests or charges not initiated by arrest
15 resulting in convictions, including convictions on
16 municipal ordinance violations, unless excluded by
17 subsection (a) (3);

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

25 (F) Arrests or charges not initiated by arrest
26 resulting in felony convictions unless otherwise

1 excluded by subsection (a) paragraph (3) of this
2 Section.

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

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

9 (B) Except as otherwise provided in subparagraph
10 (E) of this paragraph (3), records identified as
11 eligible under subsection (c)(2)(C) may be sealed 2
12 years after the termination of petitioner's last
13 sentence (as defined in subsection (a)(1)(F)).

14 (C) Except as otherwise provided in subparagraph
15 (E) of this paragraph (3), records identified as
16 eligible under subsections (c)(2)(D), (c)(2)(E), and
17 (c)(2)(F) may be sealed 3 years after the termination
18 of the petitioner's last sentence (as defined in
19 subsection (a)(1)(F)). Convictions requiring public
20 registration under the Arsonist Registration Act, the
21 Sex Offender Registration Act, or the Murderer and
22 Violent Offender Against Youth Registration Act may
23 not be sealed until the petitioner is no longer
24 required to register under that relevant Act.

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

1 reached the age of 25 years.

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

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

1 records previously ordered sealed by the court.

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

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

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

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

1 arrest resulting in acquittal, dismissal, or conviction
2 when the conviction was reversed or vacated, unless
3 excluded by subsection (a)(3)(B). The provisions of this
4 paragraph (1.5), other than this sentence, are inoperative
5 on and after January 1, 2019.

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

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

1 is petitioning to:

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

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

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

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

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

17 (5) Objections.

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

26 (B) Objections to a petition to expunge or seal

1 must be filed within 60 days of the date of service of
2 the petition.

3 (6) Entry of order.

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

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

17 (C) Notwithstanding any other provision of law,
18 the court shall not deny a petition for sealing under
19 this Section because the petitioner has not satisfied
20 an outstanding legal financial obligation established,
21 imposed, or originated by a court, law enforcement
22 agency, or a municipal, State, county, or other unit of
23 local government, including, but not limited to, any
24 cost, assessment, fine, or fee. An outstanding legal
25 financial obligation does not include any court
26 ordered restitution to a victim under Section 5-5-6 of

1 the Unified Code of Corrections, unless the
2 restitution has been converted to a civil judgment.
3 Nothing in this subparagraph (C) waives, rescinds, or
4 abrogates a legal financial obligation or otherwise
5 eliminates or affects the right of the holder of any
6 financial obligation to pursue collection under
7 applicable federal, State, or local law.

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

20 (A) the strength of the evidence supporting the
21 defendant's conviction;

22 (B) the reasons for retention of the conviction
23 records by the State;

24 (C) the petitioner's age, criminal record history,
25 and employment history;

26 (D) the period of time between the petitioner's

1 arrest on the charge resulting in the conviction and
2 the filing of the petition under this Section; and

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

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

14 (9) Implementation of order.

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

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

24 (ii) the records of the circuit court clerk
25 shall be impounded until further order of the court
26 upon good cause shown and the name of the

1 petitioner obliterated on the official index
2 required to be kept by the circuit court clerk
3 under Section 16 of the Clerks of Courts Act, but
4 the order shall not affect any index issued by the
5 circuit court clerk before the entry of the order;
6 and

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

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

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

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

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

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

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

17 (v) in response to an inquiry for such records
18 from anyone not authorized by law to access such
19 records, the court, the Department, or the agency
20 receiving such inquiry shall reply as it does in
21 response to inquiries when no records ever
22 existed.

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

25 (i) the records shall be expunged (as defined
26 in subsection (a)(1)(E)) by the arresting agency

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

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

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

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

1 offense; and

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

8 (C) Upon entry of an order to seal records under
9 subsection (c), the arresting agency, any other agency
10 as ordered by the court, the Department, and the court
11 shall seal the records (as defined in subsection
12 (a) (1) (K)). 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 existed.

17 (D) The Department shall send written notice to the
18 petitioner of its compliance with each order to expunge
19 or seal records within 60 days of the date of service
20 of that order or, if a motion to vacate, modify, or
21 reconsider is filed, within 60 days of service of the
22 order resolving the motion, if that order requires the
23 Department to expunge or seal records. In the event of
24 an appeal from the circuit court order, the Department
25 shall send written notice to the petitioner of its
26 compliance with an Appellate Court or Supreme Court

1 judgment to expunge or seal records within 60 days of
2 the issuance of the court's mandate. The notice is not
3 required while any motion to vacate, modify, or
4 reconsider, or any appeal or petition for
5 discretionary appellate review, is pending.

6 (E) Upon motion, the court may order that a sealed
7 judgment or other court record necessary to
8 demonstrate the amount of any legal financial
9 obligation due and owing be made available for the
10 limited purpose of collecting any legal financial
11 obligations owed by the petitioner that were
12 established, imposed, or originated in the criminal
13 proceeding for which those records have been sealed.
14 The records made available under this subparagraph (E)
15 shall not be entered into the official index required
16 to be kept by the circuit court clerk under Section 16
17 of the Clerks of Courts Act and shall be immediately
18 re-impounded upon the collection of the outstanding
19 financial obligations.

20 (F) Notwithstanding any other provision of this
21 Section, a circuit court clerk may access a sealed
22 record for the limited purpose of collecting payment
23 for any legal financial obligations that were
24 established, imposed, or originated in the criminal
25 proceedings for which those records have been sealed.

26 (10) Fees. The Department may charge the petitioner a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (g) Immediate Sealing.

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

16 (2) Eligible Records. Arrests or charges not initiated
17 by arrest resulting in acquittal or dismissal with
18 prejudice, except as excluded by subsection (a)(3)(B),
19 that occur on or after January 1, 2018 (the effective date
20 of Public Act 100-282), may be sealed immediately if the
21 petition is filed with the circuit court clerk on the same
22 day and during the same hearing in which the case is
23 disposed.

24 (3) When Records are Eligible to be Immediately Sealed.
25 Eligible records under paragraph (2) of this subsection (g)
26 may be sealed immediately after entry of the final

1 disposition of a case, notwithstanding the disposition of
2 other charges in the same case.

3 (4) Notice of Eligibility for Immediate Sealing. Upon
4 entry of a disposition for an eligible record under this
5 subsection (g), the defendant shall be informed by the
6 court of his or her right to have eligible records
7 immediately sealed and the procedure for the immediate
8 sealing of these records.

9 (5) Procedure. The following procedures apply to
10 immediate sealing under this subsection (g).

11 (A) Filing the Petition. Upon entry of the final
12 disposition of the case, the defendant's attorney may
13 immediately petition the court, on behalf of the
14 defendant, for immediate sealing of eligible records
15 under paragraph (2) of this subsection (g) that are
16 entered on or after January 1, 2018 (the effective date
17 of Public Act 100-282). The immediate sealing petition
18 may be filed with the circuit court clerk during the
19 hearing in which the final disposition of the case is
20 entered. If the defendant's attorney does not file the
21 petition for immediate sealing during the hearing, the
22 defendant may file a petition for sealing at any time
23 as authorized under subsection (c) (3) (A).

24 (B) Contents of Petition. The immediate sealing
25 petition shall be verified and shall contain the
26 petitioner's name, date of birth, current address, and

1 for each eligible record, the case number, the date of
2 arrest if applicable, the identity of the arresting
3 authority if applicable, and other information as the
4 court may require.

5 (C) Drug Test. The petitioner shall not be required
6 to attach proof that he or she has passed a drug test.

7 (D) Service of Petition. A copy of the petition
8 shall be served on the State's Attorney in open court.
9 The petitioner shall not be required to serve a copy of
10 the petition on any other agency.

11 (E) Entry of Order. The presiding trial judge shall
12 enter an order granting or denying the petition for
13 immediate sealing during the hearing in which it is
14 filed. Petitions for immediate sealing shall be ruled
15 on in the same hearing in which the final disposition
16 of the case is entered.

17 (F) Hearings. The court shall hear the petition for
18 immediate sealing on the same day and during the same
19 hearing in which the disposition is rendered.

20 (G) Service of Order. An order to immediately seal
21 eligible records shall be served in conformance with
22 subsection (d) (8).

23 (H) Implementation of Order. An order to
24 immediately seal records shall be implemented in
25 conformance with subsections (d) (9) (C) and (d) (9) (D).

26 (I) Fees. The fee imposed by the circuit court

1 clerk and the Department of State Police shall comply
2 with paragraph (1) of subsection (d) of this Section.

3 (J) Final Order. No court order issued under this
4 subsection (g) shall become final for purposes of
5 appeal until 30 days after service of the order on the
6 petitioner and all parties entitled to service of the
7 order in conformance with subsection (d) (8).

8 (K) Motion to Vacate, Modify, or Reconsider. Under
9 Section 2-1203 of the Code of Civil Procedure, the
10 petitioner, State's Attorney, or the Department of
11 State Police may file a motion to vacate, modify, or
12 reconsider the order denying the petition to
13 immediately seal within 60 days of service of the
14 order. If filed more than 60 days after service of the
15 order, a petition to vacate, modify, or reconsider
16 shall comply with subsection (c) of Section 2-1401 of
17 the Code of Civil Procedure.

18 (L) Effect of Order. An order granting an immediate
19 sealing petition shall not be considered void because
20 it fails to comply with the provisions of this Section
21 or because of an error asserted in a motion to vacate,
22 modify, or reconsider. The circuit court retains
23 jurisdiction to determine whether the order is
24 voidable, and to vacate, modify, or reconsider its
25 terms based on a motion filed under subparagraph (L) of
26 this subsection (g).

1 (M) Compliance with Order Granting Petition to
2 Seal Records. Unless a court has entered a stay of an
3 order granting a petition to immediately seal, all
4 parties entitled to service of the order must fully
5 comply with the terms of the order within 60 days of
6 service of the order.

7 (h) Sealing; trafficking victims.

8 (1) A trafficking victim as defined by paragraph (10)
9 of subsection (a) of Section 10-9 of the Criminal Code of
10 2012 shall be eligible to petition for immediate sealing of
11 his or her criminal record upon the completion of his or
12 her last sentence if his or her participation in the
13 underlying offense was a direct result of human trafficking
14 under Section 10-9 of the Criminal Code of 2012 or a severe
15 form of trafficking under the federal Trafficking Victims
16 Protection Act.

17 (2) A petitioner under this subsection (h), in addition
18 to the requirements provided under paragraph (4) of
19 subsection (d) of this Section, shall include in his or her
20 petition a clear and concise statement that: (A) he or she
21 was a victim of human trafficking at the time of the
22 offense; and (B) that his or her participation in the
23 offense was a direct result of human trafficking under
24 Section 10-9 of the Criminal Code of 2012 or a severe form
25 of trafficking under the federal Trafficking Victims
26 Protection Act.

1 (3) If an objection is filed alleging that the
2 petitioner is not entitled to immediate sealing under this
3 subsection (h), the court shall conduct a hearing under
4 paragraph (7) of subsection (d) of this Section and the
5 court shall determine whether the petitioner is entitled to
6 immediate sealing under this subsection (h). A petitioner
7 is eligible for immediate relief under this subsection (h)
8 if he or she shows, by a preponderance of the evidence,
9 that: (A) he or she was a victim of human trafficking at
10 the time of the offense; and (B) that his or her
11 participation in the offense was a direct result of human
12 trafficking under Section 10-9 of the Criminal Code of 2012
13 or a severe form of trafficking under the federal
14 Trafficking Victims Protection Act.

15 (Source: P.A. 99-78, eff. 7-20-15; 99-378, eff. 1-1-16; 99-385,
16 eff. 1-1-16; 99-642, eff. 7-28-16; 99-697, eff. 7-29-16;
17 99-881, eff. 1-1-17; 100-201, eff. 8-18-17; 100-282, eff.
18 1-1-18; 100-284, eff. 8-24-17; 100-287, eff. 8-24-17; 100-692,
19 eff. 8-3-18; 100-759, eff. 1-1-19; 100-776, eff. 8-10-18;
20 100-863, eff. 8-14-18; revised 8-30-18.)