

HB0316



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB0316

by Rep. Arthur Turner

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act. Extends the inoperative clause date for a pilot program in Cook County waiving the fee to be paid for a petition to expunge or seal records of arrests resulting in release without charging or arrests or charges not initiated by arrest resulting in acquittal, dismissal, or conviction when the conviction was reversed or vacated. Extends inoperative date to on and after January 1, 2019 (rather than on and after January 1, 2018). Effective immediately.

LRB100 05450 SLF 15461 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning State government.

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

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

6 (20 ILCS 2630/5.2)

7 Sec. 5.2. Expungement and sealing.

8 (a) General Provisions.

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

12 (A) The following terms shall have the meanings
13 ascribed to them in the Unified Code of Corrections,
14 730 ILCS 5/5-1-2 through 5/5-1-22:

15 (i) Business Offense (730 ILCS 5/5-1-2),

16 (ii) Charge (730 ILCS 5/5-1-3),

17 (iii) Court (730 ILCS 5/5-1-6),

18 (iv) Defendant (730 ILCS 5/5-1-7),

19 (v) Felony (730 ILCS 5/5-1-9),

20 (vi) Imprisonment (730 ILCS 5/5-1-10),

21 (vii) Judgment (730 ILCS 5/5-1-12),

22 (viii) Misdemeanor (730 ILCS 5/5-1-14),

23 (ix) Offense (730 ILCS 5/5-1-15),

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

7 (B) As used in this Section, "charge not initiated
8 by arrest" means a charge (as defined by 730 ILCS
9 5/5-1-3) brought against a defendant where the
10 defendant is not arrested prior to or as a direct
11 result of the charge.

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

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

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

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

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

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

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

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

16 (J) "Qualified probation" means an order of
17 probation under Section 10 of the Cannabis Control Act,
18 Section 410 of the Illinois Controlled Substances Act,
19 Section 70 of the Methamphetamine Control and
20 Community Protection Act, Section 5-6-3.3 or 5-6-3.4
21 of the Unified Code of Corrections, Section
22 12-4.3(b)(1) and (2) of the Criminal Code of 1961 (as
23 those provisions existed before their deletion by
24 Public Act 89-313), Section 10-102 of the Illinois
25 Alcoholism and Other Drug Dependency Act, Section
26 40-10 of the Alcoholism and Other Drug Abuse and

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

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

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

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

1 Section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) Expungement.

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

15 (1.5) When a petitioner seeks to have a record of
16 arrest expunged under this Section, and the offender has
17 been convicted of a criminal offense, the State's Attorney
18 may object to the expungement on the grounds that the
19 records contain specific relevant information aside from
20 the mere fact of the arrest.

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

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

1 such records.

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

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

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

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

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

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

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

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

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

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

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

16 (7) Nothing in this Section shall prevent the
17 Department of State Police from maintaining all records of
18 any person who is admitted to probation upon terms and
19 conditions and who fulfills those terms and conditions
20 pursuant to Section 10 of the Cannabis Control Act, Section
21 410 of the Illinois Controlled Substances Act, Section 70
22 of the Methamphetamine Control and Community Protection
23 Act, Section 5-6-3.3 or 5-6-3.4 of the Unified Code of
24 Corrections, Section 12-4.3 or subdivision (b)(1) of
25 Section 12-3.05 of the Criminal Code of 1961 or the
26 Criminal Code of 2012, Section 10-102 of the Illinois

1 Alcoholism and Other Drug Dependency Act, Section 40-10 of
2 the Alcoholism and Other Drug Abuse and Dependency Act, or
3 Section 10 of the Steroid Control Act.

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

11 (c) Sealing.

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

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

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

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

25 (C) Arrests or charges not initiated by arrest
26 resulting in orders of supervision, including orders

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

4 (D) Arrests or charges not initiated by arrest
5 resulting in convictions, including convictions on
6 municipal ordinance violations, unless excluded by
7 subsection (a) (3);

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

15 (F) Arrests or charges not initiated by arrest
16 resulting in felony convictions for the following
17 offenses:

18 (i) Class 4 felony convictions for:

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

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

24 Possession of a controlled substance under
25 Section 402 of the Illinois Controlled
26 Substances Act.

1 Offenses under the Methamphetamine
2 Precursor Control Act.

3 Offenses under the Steroid Control Act.

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

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

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

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

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

17 (ii) Class 3 felony convictions for:

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

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

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

26 Forgery under Section 17-3 of the Criminal

1 Code of 1961 or the Criminal Code of 2012.

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

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

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

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

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

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

25 (E) Records identified as eligible under
26 subsections (c)(2)(C), (c)(2)(D), (c)(2)(E), or

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

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

25 (5) Notice of eligibility for sealing. Upon entry of a
26 disposition for an eligible record under this subsection

1 (c), the petitioner shall be informed by the court of the
2 right to have the records sealed and the procedures for the
3 sealing of the records.

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

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

19 (1.5) County fee waiver pilot program. In a county of
20 3,000,000 or more inhabitants, no fee shall be required to
21 be paid by a petitioner if the records sought to be
22 expunged or sealed were arrests resulting in release
23 without charging or arrests or charges not initiated by
24 arrest resulting in acquittal, dismissal, or conviction
25 when the conviction was reversed or vacated, unless
26 excluded by subsection (a) (3) (B). The provisions of this

1 paragraph (1.5), other than this sentence, are inoperative
2 on and after January 1, 2019 ~~January 1, 2018~~ or one year
3 after January 1, 2017 (the effective date of Public Act
4 99-881) ~~this amendatory Act of the 99th General Assembly,~~
5 whichever is later.

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

1 presented at the hearing. The court may consider the
2 following:

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

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

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

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

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

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

23 (9) Implementation of order.

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

26 (i) the records shall be expunged (as defined

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

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

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

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

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

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

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

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

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

26 (v) in response to an inquiry for such records

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

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

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

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

23 (iii) the records shall be impounded by the
24 Department within 60 days of the date of service of
25 the order as ordered by the court, unless a motion
26 to vacate, modify, or reconsider the order is filed

1 under paragraph (12) of subsection (d) of this
2 Section;

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

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

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

26 (D) The Department shall send written notice to the

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

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

1 expunge on all parties. The circuit court clerk shall
2 collect and forward the Department of State Police portion
3 of the fee to the Department and it shall be deposited in
4 the State Police Services Fund.

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

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

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

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

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

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

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

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

1 the person who was pardoned.

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

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

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

1 enforcement agency, the State's Attorney, and the court upon a
2 later arrest for the same or similar offense or for the purpose
3 of sentencing for any subsequent felony. Upon conviction for
4 any subsequent offense, the Department of Corrections shall
5 have access to all expunged records of the Department
6 pertaining to that individual. Upon entry of the order of
7 expungement, the circuit court clerk shall promptly mail a copy
8 of the order to the person who was granted the certificate of
9 eligibility for expungement.

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

22 (Source: P.A. 98-133, eff. 1-1-14; 98-142, eff. 1-1-14; 98-163,
23 eff. 8-5-13; 98-164, eff. 1-1-14; 98-399, eff. 8-16-13; 98-635,
24 eff. 1-1-15; 98-637, eff. 1-1-15; 98-756, eff. 7-16-14;
25 98-1009, eff. 1-1-15; 99-78, eff. 7-20-15; 99-378, eff. 1-1-16;
26 99-385, eff. 1-1-16; 99-642, eff. 7-28-16; 99-697, eff.

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

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.