

SB1640



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1640

Introduced 2/15/2019, by Sen. Laura Fine

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2

Amends the Criminal Identification Act. Provides that a petitioner may petition the circuit court to expunge the records of his or her arrests and charges not initiated by arrest when each arrest or charge not initiated by arrest sought to be expunged resulted in the underlying conduct being later decriminalized.

LRB101 10247 SLF 55351 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; the underlying
15 conduct being later decriminalized.

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

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

23 (A) When the arrest or charge not initiated by
24 arrest sought to be expunged resulted in an acquittal,
25 dismissal, the petitioner's release without charging,
26 or the reversal or vacation of a conviction, there is

1 no waiting period to petition for the expungement of
2 such records.

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

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

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

1 petitioner has reached the age of 25 years.

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

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

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

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

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

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

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

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

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

1 Criminal Code of 2012, Section 10-102 of the Illinois
2 Alcoholism and Other Drug Dependency Act, Section 40-10 of
3 the Substance Use Disorder Act, or Section 10 of the
4 Steroid Control Act.

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

12 (c) Sealing.

13 (1) Applicability. Notwithstanding any other provision
14 of this Act to the contrary, and cumulative with any rights
15 to expungement of criminal records, this subsection
16 authorizes the sealing of criminal records of adults and of
17 minors prosecuted as adults. Subsection (g) of this Section
18 provides for immediate sealing of certain records.

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

21 (A) All arrests resulting in release without
22 charging;

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

1 (C) Arrests or charges not initiated by arrest
2 resulting in orders of supervision, including orders
3 of supervision for municipal ordinance violations,
4 successfully completed by the petitioner, unless
5 excluded by subsection (a) (3);

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

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

17 (F) Arrests or charges not initiated by arrest
18 resulting in felony convictions unless otherwise
19 excluded by subsection (a) paragraph (3) of this
20 Section.

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

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

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

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

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

20 (E) Records identified as eligible under
21 subsections (c)(2)(C), (c)(2)(D), (c)(2)(E), or
22 (c)(2)(F) may be sealed upon termination of the
23 petitioner's last sentence if the petitioner earned a
24 high school diploma, associate's degree, career
25 certificate, vocational technical certification, or
26 bachelor's degree, or passed the high school level Test

1 of General Educational Development, during the period
2 of his or her sentence, aftercare release, or mandatory
3 supervised release. This subparagraph shall apply only
4 to a petitioner who has not completed the same
5 educational goal prior to the period of his or her
6 sentence, aftercare release, or mandatory supervised
7 release. If a petition for sealing eligible records
8 filed under this subparagraph is denied by the court,
9 the time periods under subparagraph (B) or (C) shall
10 apply to any subsequent petition for sealing filed by
11 the petitioner.

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

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

25 (d) Procedure. The following procedures apply to
26 expungement under subsections (b), (e), and (e-6) and sealing

1 under subsections (c) and (e-5):

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

14 (1.5) County fee waiver pilot program. In a county of
15 3,000,000 or more inhabitants, no fee shall be required to
16 be paid by a petitioner if the records sought to be
17 expunged or sealed were arrests resulting in release
18 without charging or arrests or charges not initiated by
19 arrest resulting in acquittal, dismissal, or conviction
20 when the conviction was reversed or vacated, unless
21 excluded by subsection (a)(3)(B). The provisions of this
22 paragraph (1.5), other than this sentence, are inoperative
23 on and after January 1, 2019.

24 (2) Contents of petition. The petition shall be
25 verified and shall contain the petitioner's name, date of
26 birth, current address and, for each arrest or charge not

1 initiated by arrest sought to be sealed or expunged, the
2 case number, the date of arrest (if any), the identity of
3 the arresting authority, and such other information as the
4 court may require. During the pendency of the proceeding,
5 the petitioner shall promptly notify the circuit court
6 clerk of any change of his or her address. If the
7 petitioner has received a certificate of eligibility for
8 sealing from the Prisoner Review Board under paragraph (10)
9 of subsection (a) of Section 3-3-2 of the Unified Code of
10 Corrections, the certificate shall be attached to the
11 petition.

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

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

21 (B) seal felony records for a violation of the
22 Illinois Controlled Substances Act, the
23 Methamphetamine Control and Community Protection Act,
24 or the Cannabis Control Act under clause (c) (2) (F);

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

26 (D) expunge felony records of a qualified

1 probation under clause (b) (1) (iv).

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

9 (5) Objections.

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

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

21 (6) Entry of order.

22 (A) The Chief Judge of the circuit wherein the
23 charge was brought, any judge of that circuit
24 designated by the Chief Judge, or in counties of less
25 than 3,000,000 inhabitants, the presiding trial judge
26 at the petitioner's trial, if any, shall rule on the

1 petition to expunge or seal as set forth in this
2 subsection (d) (6).

3 (B) Unless the State's Attorney or prosecutor, the
4 Department of State Police, the arresting agency, or
5 the chief legal officer files an objection to the
6 petition to expunge or seal within 60 days from the
7 date of service of the petition, the court shall enter
8 an order granting or denying the petition.

9 (C) Notwithstanding any other provision of law,
10 the court shall not deny a petition for sealing under
11 this Section because the petitioner has not satisfied
12 an outstanding legal financial obligation established,
13 imposed, or originated by a court, law enforcement
14 agency, or a municipal, State, county, or other unit of
15 local government, including, but not limited to, any
16 cost, assessment, fine, or fee. An outstanding legal
17 financial obligation does not include any court
18 ordered restitution to a victim under Section 5-5-6 of
19 the Unified Code of Corrections, unless the
20 restitution has been converted to a civil judgment.
21 Nothing in this subparagraph (C) waives, rescinds, or
22 abrogates a legal financial obligation or otherwise
23 eliminates or affects the right of the holder of any
24 financial obligation to pursue collection under
25 applicable federal, State, or local law.

26 (7) Hearings. If an objection is filed, the court shall

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

12 (A) the strength of the evidence supporting the
13 defendant's conviction;

14 (B) the reasons for retention of the conviction
15 records by the State;

16 (C) the petitioner's age, criminal record history,
17 and employment history;

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

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

23 (8) Service of order. After entering an order to
24 expunge or seal records, the court must provide copies of
25 the order to the Department, in a form and manner
26 prescribed by the Department, to the petitioner, to the

1 State's Attorney or prosecutor charged with the duty of
2 prosecuting the offense, to the arresting agency, to the
3 chief legal officer of the unit of local government
4 effecting the arrest, and to such other criminal justice
5 agencies as may be ordered by the court.

6 (9) Implementation of order.

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

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

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

25 (iii) in response to an inquiry for expunged
26 records, the court, the Department, or the agency

1 receiving such inquiry, shall reply as it does in
2 response to inquiries when no records ever
3 existed.

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

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

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

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

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

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

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

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

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

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

26 (C) Upon entry of an order to seal records under

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

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

24 (E) Upon motion, the court may order that a sealed
25 judgment or other court record necessary to
26 demonstrate the amount of any legal financial

1 obligation due and owing be made available for the
2 limited purpose of collecting any legal financial
3 obligations owed by the petitioner that were
4 established, imposed, or originated in the criminal
5 proceeding for which those records have been sealed.
6 The records made available under this subparagraph (E)
7 shall not be entered into the official index required
8 to be kept by the circuit court clerk under Section 16
9 of the Clerks of Courts Act and shall be immediately
10 re-impounded upon the collection of the outstanding
11 financial obligations.

12 (F) Notwithstanding any other provision of this
13 Section, a circuit court clerk may access a sealed
14 record for the limited purpose of collecting payment
15 for any legal financial obligations that were
16 established, imposed, or originated in the criminal
17 proceedings for which those records have been sealed.

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

1 Administrative Fund, to be used to offset the costs
2 incurred by the circuit court clerk in performing the
3 additional duties required to serve the petition to seal or
4 expunge on all parties. The circuit court clerk shall
5 collect and forward the Department of State Police portion
6 of the fee to the Department and it shall be deposited in
7 the State Police Services Fund. If the record brought under
8 an expungement petition was previously sealed under this
9 Section, the fee for the expungement petition for that same
10 record shall be waived.

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

16 (12) Motion to Vacate, Modify, or Reconsider. Under
17 Section 2-1203 of the Code of Civil Procedure, the
18 petitioner or any party entitled to notice may file a
19 motion to vacate, modify, or reconsider the order granting
20 or denying the petition to expunge or seal within 60 days
21 of service of the order. If filed more than 60 days after
22 service of the order, a petition to vacate, modify, or
23 reconsider shall comply with subsection (c) of Section
24 2-1401 of the Code of Civil Procedure. Upon filing of a
25 motion to vacate, modify, or reconsider, notice of the
26 motion shall be served upon the petitioner and all parties

1 entitled to notice of the petition.

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

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

19 (15) Compliance with Order Granting Petition to
20 Expunge Records. While a party is seeking relief from the
21 order granting the petition to expunge through a motion
22 filed under paragraph (12) of this subsection (d) or is
23 appealing the order, and unless a court has entered a stay
24 of that order, the parties entitled to notice of the
25 petition must seal, but need not expunge, the records until
26 there is a final order on the motion for relief or, in the

1 case of an appeal, the issuance of that court's mandate.

2 (16) The changes to this subsection (d) made by Public
3 Act 98-163 apply to all petitions pending on August 5, 2013
4 (the effective date of Public Act 98-163) and to all orders
5 ruling on a petition to expunge or seal on or after August
6 5, 2013 (the effective date of Public Act 98-163).

7 (e) Whenever a person who has been convicted of an offense
8 is granted a pardon by the Governor which specifically
9 authorizes expungement, he or she may, upon verified petition
10 to the Chief Judge of the circuit where the person had been
11 convicted, any judge of the circuit designated by the Chief
12 Judge, or in counties of less than 3,000,000 inhabitants, the
13 presiding trial judge at the defendant's trial, have a court
14 order 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 defendant
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 pardoned but the order
23 shall not affect any index issued by the circuit court clerk
24 before the entry of the order. All records sealed by the
25 Department may be disseminated by the Department only to the
26 arresting authority, the State's Attorney, and the court upon a

1 later arrest for the same or similar offense or for the purpose
2 of sentencing for any subsequent felony. Upon conviction for
3 any subsequent offense, the Department of Corrections shall
4 have access to all sealed records of the Department pertaining
5 to that individual. Upon entry of the order of expungement, the
6 circuit court clerk shall promptly mail a copy of the order to
7 the person who was pardoned.

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

1 Department may be disseminated by the Department only as
2 required by this Act or to the arresting authority, a law
3 enforcement agency, the State's Attorney, and the court upon a
4 later arrest for the same or similar offense or for the purpose
5 of sentencing for any subsequent felony. Upon conviction for
6 any subsequent offense, the Department of Corrections shall
7 have access to all sealed records of the Department pertaining
8 to that individual. Upon entry of the order of sealing, the
9 circuit court clerk shall promptly mail a copy of the order to
10 the person who was granted the certificate of eligibility for
11 sealing.

12 (e-6) Whenever a person who has been convicted of an
13 offense is granted a certificate of eligibility for expungement
14 by the Prisoner Review Board which specifically authorizes
15 expungement, he or she may, upon verified petition to the Chief
16 Judge of the circuit where the person had been convicted, any
17 judge of the circuit designated by the Chief Judge, or in
18 counties of less than 3,000,000 inhabitants, the presiding
19 trial judge at the petitioner's trial, have a court order
20 entered expunging the record of arrest from the official
21 records of the arresting authority and order that the records
22 of the circuit court clerk and the Department be sealed until
23 further order of the court upon good cause shown or as
24 otherwise provided herein, and the name of the petitioner
25 obliterated from the official index requested to be kept by the
26 circuit court clerk under Section 16 of the Clerks of Courts

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

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

1 later than September 1, 2010.

2 (g) Immediate Sealing.

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

8 (2) Eligible Records. Arrests or charges not initiated
9 by arrest resulting in acquittal or dismissal with
10 prejudice, except as excluded by subsection (a)(3)(B),
11 that occur on or after January 1, 2018 (the effective date
12 of Public Act 100-282), may be sealed immediately if the
13 petition is filed with the circuit court clerk on the same
14 day and during the same hearing in which the case is
15 disposed.

16 (3) When Records are Eligible to be Immediately Sealed.
17 Eligible records under paragraph (2) of this subsection (g)
18 may be sealed immediately after entry of the final
19 disposition of a case, notwithstanding the disposition of
20 other charges in the same case.

21 (4) Notice of Eligibility for Immediate Sealing. Upon
22 entry of a disposition for an eligible record under this
23 subsection (g), the defendant shall be informed by the
24 court of his or her right to have eligible records
25 immediately sealed and the procedure for the immediate
26 sealing of these records.

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

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

16 (B) Contents of Petition. The immediate sealing
17 petition shall be verified and shall contain the
18 petitioner's name, date of birth, current address, and
19 for each eligible record, the case number, the date of
20 arrest if applicable, the identity of the arresting
21 authority if applicable, and other information as the
22 court may require.

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

25 (D) Service of Petition. A copy of the petition
26 shall be served on the State's Attorney in open court.

1 The petitioner shall not be required to serve a copy of
2 the petition on any other agency.

3 (E) Entry of Order. The presiding trial judge shall
4 enter an order granting or denying the petition for
5 immediate sealing during the hearing in which it is
6 filed. Petitions for immediate sealing shall be ruled
7 on in the same hearing in which the final disposition
8 of the case is entered.

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

12 (G) Service of Order. An order to immediately seal
13 eligible records shall be served in conformance with
14 subsection (d) (8).

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

18 (I) Fees. The fee imposed by the circuit court
19 clerk and the Department of State Police shall comply
20 with paragraph (1) of subsection (d) of this Section.

21 (J) Final Order. No court order issued under this
22 subsection (g) shall become final for purposes of
23 appeal until 30 days after service of the order on the
24 petitioner and all parties entitled to service of the
25 order in conformance with subsection (d) (8).

26 (K) Motion to Vacate, Modify, or Reconsider. Under

1 Section 2-1203 of the Code of Civil Procedure, the
2 petitioner, State's Attorney, or the Department of
3 State Police may file a motion to vacate, modify, or
4 reconsider the order denying the petition to
5 immediately seal within 60 days of service of the
6 order. If filed more than 60 days after service of the
7 order, a petition to vacate, modify, or reconsider
8 shall comply with subsection (c) of Section 2-1401 of
9 the Code of Civil Procedure.

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

19 (M) Compliance with Order Granting Petition to
20 Seal Records. Unless a court has entered a stay of an
21 order granting a petition to immediately seal, all
22 parties entitled to service of the order must fully
23 comply with the terms of the order within 60 days of
24 service of the order.

25 (h) Sealing; trafficking victims.

26 (1) A trafficking victim as defined by paragraph (10)

1 of subsection (a) of Section 10-9 of the Criminal Code of
2 2012 shall be eligible to petition for immediate sealing of
3 his or her criminal record upon the completion of his or
4 her last sentence if his or her participation in the
5 underlying offense was a direct result of human trafficking
6 under Section 10-9 of the Criminal Code of 2012 or a severe
7 form of trafficking under the federal Trafficking Victims
8 Protection Act.

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

19 (3) If an objection is filed alleging that the
20 petitioner is not entitled to immediate sealing under this
21 subsection (h), the court shall conduct a hearing under
22 paragraph (7) of subsection (d) of this Section and the
23 court shall determine whether the petitioner is entitled to
24 immediate sealing under this subsection (h). A petitioner
25 is eligible for immediate relief under this subsection (h)
26 if he or she shows, by a preponderance of the evidence,

1 that: (A) he or she was a victim of human trafficking at
2 the time of the offense; and (B) that his or her
3 participation in the offense was a direct result of human
4 trafficking under Section 10-9 of the Criminal Code of 2012
5 or a severe form of trafficking under the federal
6 Trafficking Victims Protection Act.

7 (Source: P.A. 99-78, eff. 7-20-15; 99-378, eff. 1-1-16; 99-385,
8 eff. 1-1-16; 99-642, eff. 7-28-16; 99-697, eff. 7-29-16;
9 99-881, eff. 1-1-17; 100-201, eff. 8-18-17; 100-282, eff.
10 1-1-18; 100-284, eff. 8-24-17; 100-287, eff. 8-24-17; 100-692,
11 eff. 8-3-18; 100-759, eff. 1-1-19; 100-776, eff. 8-10-18;
12 100-863, eff. 8-14-18; revised 8-30-18.)