



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB2793

Introduced 2/19/2021, by Rep. Kambium Buckner

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.3 new
20 ILCS 2630/5.4 new
20 ILCS 2630/5.5 new
20 ILCS 2630/5.6 new

Amends the Criminal Identification Act. Provides for the automatic expungement of certain misdemeanor and felony offenses. Provides for the circumstances that trigger automatic expungement. Provides for the reinstatement of the records of expunged offenses under specified circumstances. Details the impact of setting aside convictions. Provides penalties for intentionally disclosing convictions that have been set aside. Provides for the retention of certain records of convictions that have been set aside. Provides limitations on the number of offenses that can be expunged.

LRB102 15223 KMF 20578 b

1 AN ACT concerning criminal law.

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 adding Sections 5.3, 5.4, 5.5, and 5.6 as follows:

6 (20 ILCS 2630/5.3 new)

7 Sec. 5.3. Expungement expansion. Notwithstanding any
8 provision of law to the contrary, and in addition to any
9 procedures provided for under Section 5.2:

10 (1) Beginning 2 years after the effective date of this
11 amendatory Act of the 102nd General Assembly, a Class C
12 misdemeanor conviction is set aside under this Section without
13 the filing of an application if 7 years have passed from the
14 imposition of the sentence. Each court shall notify the
15 arresting law enforcement agency of each conviction on or
16 before the tenth day of each month that is set aside under this
17 subsection for the preceding month. Each law enforcement
18 agency need not retain and shall make nonpublic the
19 notification that the conviction has been set aside, and the
20 record of the arrest, fingerprinting, conviction, and sentence
21 of the person in the case to which the notification applies.

22 (2) Beginning 2 years after the effective date of the
23 amendatory act that added this Section and subject to any

1 necessary appropriation and subsections (5), (6), (7), and
2 (10), a felony conviction that is recorded and maintained in
3 the department of state police database is set aside under
4 this Section without the filing of an application if both of
5 the following apply:

6 (a) Ten years have passed from whichever of the
7 following events occurs last: (i) imposition of the
8 sentence for the conviction, or (ii) completion of any
9 term of imprisonment with the Department of Corrections
10 for the conviction.

11 (b) The conviction or convictions are otherwise
12 eligible to be set aside under Section 5.2.

13 (3) Beginning 2 years after the effective date of this
14 amendatory Act of the 102nd General Assembly and subject
15 subsection (10), a conviction for a Class B misdemeanor
16 offense that is recorded and maintained in the Illinois State
17 Police database is set aside under this Section without the
18 filing of an application if 7 years have passed from the
19 imposition of the sentence.

20 (4) Beginning 2 years after the effective date of this
21 amendatory Act of the 102nd General Assembly and subject to
22 subsections (5), (6), (7), and (10), a conviction for a Class A
23 misdemeanor offense that is recorded and maintained in the
24 Illinois State Police database is set aside under this Section
25 without the filing of an application if 7 years have passed
26 from the imposition of the sentence.

1 (5) Except as otherwise provided in this subsection, not
2 more than 2 felony convictions and 4 misdemeanor convictions
3 total that are recorded and maintained in the Illinois State
4 Police database may be set aside under this Section during the
5 lifetime of an individual. The limit on the number of
6 misdemeanor convictions that may be set aside under this
7 subsection does not apply to the setting aside of convictions
8 described under subsection (1) or (3).

9 (6) A conviction is not set aside under subsection (2) or
10 (4) unless all of the following apply:

11 (a) The applicable time period required under
12 subsection (2) or (4) has elapsed.

13 (b) There are no criminal charges pending in the
14 Illinois State Police database against the applicant.

15 (c) The applicant has not been convicted of any
16 criminal offense that is recorded and maintained in the
17 Illinois State Police database during the applicable time
18 period required under subsection (2) or (4).

19 (7) Subsections (2) and (4) do not apply to an individual
20 who has more than one conviction for an assaultive crime or an
21 attempt to commit an assaultive crime that is recorded and
22 maintained in the Illinois State Police database.

23 (8) If the Director determines that the process for
24 setting aside a conviction without an application under this
25 Section cannot be implemented by the date required under
26 subsections (1), (2), (3), and (4) because of technological

1 limitations, the Director may issue a directive delaying the
2 implementation of this Section for not more than 180 days.

3 (9) An individual whose conviction is set aside under this
4 Section impliedly consents to the creation of the nonpublic
5 record under Section 5.6.

6 (10) Subsections (2) and (4) do not apply to a conviction
7 recorded and maintained in the Illinois State Police database
8 for the commission of or attempted commission of any of the
9 following:

10 (a) An assaultive crime.

11 (b) A serious misdemeanor.

12 (c) A crime of dishonesty.

13 (d) Any other offense, not otherwise listed under this
14 subsection, that is punishable by 10 or more years'
15 imprisonment.

16 (e) A violation of the Criminal Code of 2012 the
17 elements of which involve a minor, vulnerable adult,
18 injury or serious impairment, or death.

19 (f) Any violation related to human trafficking.

20 (11) The Department of Innovation and Technology shall
21 develop and maintain a computer-based program for the setting
22 aside of convictions under this Section. In fulfilling its
23 duty under this subsection, the Department of Innovation and
24 Technology may contract with a private technical consultant as
25 needed.

26 (12) The setting aside of a conviction without an

1 application under this Section is subject to reinstatement
2 under Section 5.4.

3 (13) The Illinois State Police shall create and maintain
4 an electronically accessible record of each conviction
5 recorded and maintained in the Illinois State Police database
6 that was set aside under this Section that must be provided to
7 or accessible by each court in this State. An electronic
8 record created as required under this Section may only be used
9 as authorized under Section 5.6 and by a court for purposes of
10 updating locally maintained court records.

11 (14) This Section may not be used to expunge the records of
12 any conviction that may not be expunged or sealed under
13 Section 5.2.

14 (15) Except as provided in Section 5.2 and 5.3, a person
15 may have only 1 conviction set aside under this Act.

16 (20 ILCS 2630/5.4 new)

17 Sec. 5.4. Reinstatement. Notwithstanding any provision of
18 law to the contrary:

19 (1) Upon the occurrence of one of the circumstances under
20 subsection (2) or (3), a conviction that was expunged under
21 Section 5.2 or set aside by operation of law under Section 5.3
22 shall be reinstated by the court as provided in this Section.

23 (2) If it is determined that a conviction was improperly
24 or erroneously set aside under Section 5.3 because the
25 conviction was not eligible to be set aside under Section 5.2,

1 Section 5.3, or any other provision of this Act, the court
2 shall, on its own motion, reinstate the conviction.

3 (3) Upon a motion by a person owed restitution, or on its
4 own motion, the court shall reinstate a conviction that was
5 set aside under Section 5.3 for which the individual whose
6 conviction was set aside was ordered to pay restitution if the
7 court determines that the individual has not made a good-faith
8 effort to pay the ordered restitution.

9 (20 ILCS 2630/5.5 new)

10 Sec. 5.5. Effect of setting aside conviction.
11 Notwithstanding any provision of law to the contrary:

12 (1) Upon the entry of an order or upon the automatic
13 setting aside of a conviction under Section 5.3, the
14 applicant, for purposes of the law, is considered not to have
15 been previously convicted, except as provided in this Section
16 and Section 5.6.

17 (2) The applicant is not entitled to the remission of any
18 fine, costs, or other money paid as a consequence of a
19 conviction that is set aside.

20 (3) Setting aside a conviction does not affect the right
21 of the applicant to rely upon the conviction to bar subsequent
22 proceedings for the same offense.

23 (4) Setting aside a conviction does not affect the right
24 of a victim of a crime to prosecute or defend a civil action
25 for damages.

1 (5) Setting aside a conviction does not create a right to
2 commence an action for damages for incarceration under the
3 sentence that the applicant served before the conviction is
4 set aside under this act.

5 (6) Setting aside a conviction does not relieve any
6 obligation to pay restitution owed to the victim of a crime nor
7 does it affect the jurisdiction of the convicting court or the
8 authority of any court order with regard to enforcing an order
9 for restitution.

10 (7) A conviction, including any records relating to the
11 conviction and any records concerning a collateral action,
12 that has been set aside cannot be used as evidence in an action
13 for negligent hiring, admission, or licensure against any
14 person.

15 (8) A conviction that is set aside may be considered a
16 prior conviction by court, law enforcement agency, State's
17 Attorney, or the Attorney General, as applicable, for purposes
18 of charging a crime as a second or subsequent offense or for
19 sentencing.

20 (9) As used in this Section, "applicant" includes an
21 individual who has applied under this act to have his or her
22 conviction or convictions set aside and an individual whose
23 conviction or convictions have been set aside without an
24 application under Section 5.3.

1 Sec. 5.6. Records of convictions. Notwithstanding any
2 provision of law to the contrary:

3 (1) Upon the entry of an order under Section 5.2, the court
4 shall send a copy of the order to the arresting agency and the
5 Illinois State Police.

6 (2) The Illinois State Police shall retain a nonpublic
7 record of the order setting aside a conviction, or other
8 notification regarding a conviction that was automatically set
9 aside under Section 5.3, and of the record of the arrest,
10 fingerprints, conviction, and sentence of the person in the
11 case to which the order or other notification applies. Except
12 as provided in subsection (3), this nonpublic record shall be
13 made available only to a court of competent jurisdiction, an
14 agency of the judicial branch of state government, the
15 Department of Corrections, a law enforcement agency, a State's
16 Attorney, the Attorney General, or the Governor upon request
17 and only for the following purposes:

18 (a) Consideration in a licensing function conducted by
19 an agency of the judicial branch of state government.

20 (b) To show that a person who has filed an application
21 to set aside a conviction has previously had a conviction
22 set aside under this act.

23 (c) The court's consideration in determining the
24 sentence to be imposed upon conviction for a subsequent
25 offense that is punishable as a felony.

26 (d) Consideration by the Governor if a person whose

1 conviction has been set aside applies for a pardon for
2 another offense.

3 (e) Consideration by the Department of Corrections or
4 a law enforcement agency if a person whose conviction has
5 been set aside applies for employment with the Department
6 of Corrections or law enforcement agency.

7 (f) Consideration by a court, law enforcement agency,
8 State's Attorney, or the Attorney General in determining
9 whether an individual required to be registered under the
10 Sex Offender Registration Act, has violated that Act, or
11 for use in a prosecution for violating that Act.

12 (g) Consideration by a court, law enforcement agency,
13 State's Attorney, or the Attorney General for use in
14 making determinations regarding charging, plea offers, and
15 sentencing, as applicable.

16 (3) A copy of the nonpublic record created under
17 subsection (2) must be provided to the person whose conviction
18 is set aside under this Act by the Illinois State Police under
19 the provisions of the Freedom of Information Act.

20 (4) Except as provided in subsection (3), the nonpublic
21 record maintained under subsection (2) is exempt from
22 disclosure under the Freedom of Information Act.

23 (5) Except as provided in subsection (2), a person, other
24 than the person whose conviction was set aside or a victim, who
25 knows or should have known that a conviction was set aside
26 under this Section and who divulges, uses, or publishes

1 information concerning a conviction set aside under this
2 Section is guilty of a Class C misdemeanor.

3 (6) An entity is not liable for damages or subject to
4 criminal penalties under this Section for reporting a public
5 record of conviction that has been set-aside by court order or
6 operation of law, if that record was available as a public
7 record on the date of the report.

8 (7) As used in this Section, "victim" means any individual
9 who suffers direct or threatened physical, financial, or
10 emotional harm as the result of the offense that was committed
11 by the applicant.