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LRB093 21097 RLC 51746 a

1 AMENDMENT TO SENATE BILL 3007

2 AMENDMENT NO. _____. Amend Senate Bill 3007, AS AMENDED,
3 by replacing all of subsections (h), (i), (j), and (k) of Sec.
4 5 of Section 5 with the following:

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

10 (2) Sealable offenses. The following offenses may be
11 sealed:

12 (A) All municipal ordinance violations and
13 misdemeanors, with the exception of the following:

14 (i) violations of Section 11-501 of the Illinois
15 Vehicle Code or a similar provision of a local
16 ordinance;

17 (ii) violations of Article 11 of the Criminal Code
18 of 1961 or a similar provision of a local ordinance,
19 except Section 11-14 of the Criminal Code of 1961 as
20 provided in clause B(i) of this subsection (h);

21 (iii) violations of Section 12-15, 12-30, or 26-5
22 of the Criminal Code of 1961 or a similar provision of
23 a local ordinance;

24 (iv) violations that are a crime of violence as
25 defined in Section 2 of the Crime Victims Compensation
26 Act or a similar provision of a local ordinance;

1 (v) Class A misdemeanor violations of the Humane
2 Care for Animals Act; and

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

6 (B) Misdemeanor and Class 4 felony violations of:

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

8 (ii) Section 4 of the Cannabis Control Act;

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

11 (iv) However, for purposes of this subsection (h),
12 a sentence of first offender probation under Section 10
13 of the Cannabis Control Act and Section 410 of the
14 Illinois Controlled Substances Act shall be treated as
15 a Class 4 felony conviction.

16 (3) Requirements for sealing. Records identified as
17 sealable under clause (h) (2) may be sealed when the individual
18 was:

19 (A) Acquitted of the offense or offenses or released
20 without being convicted.

21 (B) Convicted of the offense or offenses and the
22 conviction or convictions were reversed.

23 (C) Placed on misdemeanor supervision for an offense or
24 offenses; and

25 (i) at least 3 years have elapsed since the
26 completion of the term of supervision, or terms of
27 supervision, if more than one term has been ordered;
28 and

29 (ii) the individual has not been convicted of a
30 felony or misdemeanor or placed on supervision for a
31 misdemeanor or felony during the period specified in
32 clause (i).

33 (D) Convicted of an offense or offenses; and

34 (i) at least 4 years have elapsed since the last

1 such conviction or term of any sentence, probation,
2 parole, or supervision, if any, whichever is last in
3 time; and

4 (ii) the individual has not been convicted of a
5 felony or misdemeanor or placed on supervision for a
6 misdemeanor or felony during the period specified in
7 clause (i).

8 (4) Requirements for sealing of records when more than one
9 charge and disposition have been filed. When multiple offenses
10 are petitioned to be sealed under this subsection (h), the
11 requirements of the relevant provisions of clauses (h)(3)(A)
12 through (D) each apply. In instances in which more than one
13 waiting period is applicable under clauses (h)(C)(i) and (ii)
14 and (h)(D)(i) and (ii), the longer applicable period applies,
15 and the requirements of clause (h)(3) shall be considered met
16 when the petition is filed after the passage of the longer
17 applicable waiting period. That period commences on the date of
18 the completion of the last sentence or the end of supervision,
19 probation, or parole, whichever is last in time.

20 (5) Subsequent convictions. A person may not have
21 subsequent felony conviction records sealed as provided in this
22 subsection (h) if he or she is convicted of any felony offense
23 after the date of the sealing of prior felony records as
24 provided in this subsection (h).

25 (6) Notice of eligibility for sealing. Upon acquittal,
26 release without conviction, or being placed on supervision for
27 a sealable offense, or upon conviction of a sealable offense,
28 the person shall be informed by the court of the right to have
29 the records sealed and the procedures for the sealing of the
30 records.

31 (7) Procedure. Upon becoming eligible for the sealing of
32 records under this subsection (h), the person who seeks the
33 sealing of his or her records shall file a petition requesting
34 the sealing of records with the clerk of the court where the

1 charge or charges were brought. The records may be sealed by
2 the Chief Judge of the circuit wherein the charge was brought,
3 any judge of that circuit designated by the Chief Judge, or in
4 counties of less than 3,000,000 inhabitants, the presiding
5 trial judge at the defendant's trial, if any. If charges were
6 brought in multiple jurisdictions, a petition must be filed in
7 each such jurisdiction. The petitioner shall pay the applicable
8 fee, if not waived.

9 (A) Contents of petition. The petition shall contain
10 the petitioner's name, date of birth, current address, each
11 charge, each case number, the date of each charge, the
12 identity of the arresting authority, and such other
13 information as the court may require. During the pendency
14 of the proceeding, the petitioner shall promptly notify the
15 clerk of the court of any change of address.

16 (B) Drug test. A person filing a petition to have his
17 or her records sealed for a Class 4 felony violation of
18 Section 4 of the Cannabis Control Act or for a Class 4
19 felony violation of Section 402 of the Illinois Controlled
20 Substances Act must attach to the petition proof that the
21 petitioner has passed a test taken within the previous 30
22 days before the filing of the petition showing the absence
23 within his or her body of all illegal substances in
24 violation of either the Illinois Controlled Substances Act
25 or the Cannabis Control Act.

26 (C) Service of petition. The clerk shall promptly serve
27 a copy of the petition on the State's Attorney or
28 prosecutor charged with the duty of prosecuting the
29 offense, the Department of State Police, the arresting
30 agency and the chief legal officer of the unit of local
31 government effecting the arrest.

32 (D) Entry of order. Unless the State's Attorney or
33 prosecutor, the Department of State Police, the arresting
34 agency or such chief legal officer objects to sealing of

1 the records within 90 days of notice the court shall enter
2 an order sealing the defendant's records.

3 (E) Hearing upon objection. If an objection is filed,
4 the court shall set a date for a hearing and notify the
5 petitioner and the parties on whom the petition had been
6 served, and shall hear evidence on whether the sealing of
7 the records should or should not be granted, and shall make
8 a determination on whether to issue an order to seal the
9 records based on the evidence presented at the hearing.

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

19 (8) Fees. Notwithstanding any provision of the Clerk of the
20 Courts Act to the contrary, and subject to the approval of the
21 county board, the clerk may charge a fee equivalent to the cost
22 associated with the sealing of records by the clerk and the
23 Department of State Police. The clerk shall forward the
24 Department of State Police portion of the fee to the Department
25 and it shall be deposited into the State Police Services Fund.

26
27 ~~(h) (1) Notwithstanding any other provision of this Act to~~
28 ~~the contrary and cumulative with any rights to expungement of~~
29 ~~criminal records, whenever an adult or minor prosecuted as an~~
30 ~~adult charged with a violation of a municipal ordinance or a~~
31 ~~misdemeanor is acquitted or released without being convicted,~~
32 ~~or if the person is convicted but the conviction is reversed,~~
33 ~~or if the person has been placed on supervision for a~~
34 ~~misdemeanor and has not been convicted of a felony or~~

~~misdemeanor or placed on supervision for a misdemeanor within 3 years after the acquittal or release or reversal of conviction, or the completion of the terms and conditions of the supervision, if the acquittal, release, finding of not guilty, or reversal of conviction occurred on or after the effective date of this amendatory Act of the 93rd General Assembly, the Chief Judge of the circuit in which the charge was brought may have the official records of the arresting authority, the Department, and the clerk of the circuit court sealed 3 years after the dismissal of the charge, the finding of not guilty, the reversal of conviction, or the completion of the terms and conditions of the supervision, except those records are subject to inspection and use by the court for the purposes of subsequent sentencing for misdemeanor and felony violations and inspection and use by law enforcement agencies and State's Attorneys or other prosecutors in carrying out the duties of their offices. This subsection (h) does not apply to persons placed on supervision for: (1) a violation of Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance; (2) a misdemeanor violation of Article 11 of the Criminal Code of 1961 or a similar provision of a local ordinance; (3) a misdemeanor violation of Section 12-15, 12-30, or 26-5 of the Criminal Code of 1961 or a similar provision of a local ordinance; (4) a misdemeanor violation that is a crime of violence as defined in Section 2 of the Crime Victims Compensation Act or a similar provision of a local ordinance; (5) a Class A misdemeanor violation of the Humane Care for Animals Act; or (6) any offense or attempted offense that would subject a person to registration under the Sex Offender Registration Act.~~

~~(2) Upon acquittal, release without conviction, or being placed on supervision, the person charged with the offense shall be informed by the court of the right to have the records sealed and the procedures for the sealing of the records. Three~~

1 ~~years after the dismissal of the charge, the finding of not~~
2 ~~guilty, the reversal of conviction, or the completion of the~~
3 ~~terms and conditions of the supervision, the defendant shall~~
4 ~~provide the clerk of the court with a notice of request for~~
5 ~~sealing of records and payment of the applicable fee and a~~
6 ~~current address and shall promptly notify the clerk of the~~
7 ~~court of any change of address. The clerk shall promptly serve~~
8 ~~notice that the person's records are to be sealed on the~~
9 ~~State's Attorney or prosecutor charged with the duty of~~
10 ~~prosecuting the offense, the Department of State Police, the~~
11 ~~arresting agency and the chief legal officer of the unit of~~
12 ~~local government effecting the arrest. Unless the State's~~
13 ~~Attorney or prosecutor, the Department of State Police, the~~
14 ~~arresting agency or such chief legal officer objects to sealing~~
15 ~~of the records within 90 days of notice the court shall enter~~
16 ~~an order sealing the defendant's records 3 years after the~~
17 ~~dismissal of the charge, the finding of not guilty, the~~
18 ~~reversal of conviction, or the completion of the terms and~~
19 ~~conditions of the supervision. The clerk of the court shall~~
20 ~~promptly serve by mail or in person a copy of the order to the~~
21 ~~person, the arresting agency, the prosecutor, the Department of~~
22 ~~State Police and such other criminal justice agencies as may be~~
23 ~~ordered by the judge. If an objection is filed, the court shall~~
24 ~~set a date for hearing. At the hearing the court shall hear~~
25 ~~evidence on whether the sealing of the records should or should~~
26 ~~not be granted.~~

27 ~~(3) The clerk may charge a fee equivalent to the cost~~
28 ~~associated with the sealing of records by the clerk and the~~
29 ~~Department of State Police. The clerk shall forward the~~
30 ~~Department of State Police portion of the fee to the Department~~
31 ~~and it shall be deposited into the State Police Services Fund.~~

32 ~~(4) Whenever sealing of records is required under this~~
33 ~~subsection (h), the notification of the sealing must be given~~
34 ~~by the circuit court where the arrest occurred to the~~

1 ~~Department in a form and manner prescribed by the Department.~~

2 ~~(5) An adult or a minor prosecuted as an adult who was~~
3 ~~charged with a violation of a municipal ordinance or a~~
4 ~~misdemeanor who was acquitted, released without being~~
5 ~~convicted, convicted and the conviction was reversed, or placed~~
6 ~~on supervision for a misdemeanor before the date of this~~
7 ~~amendatory Act of the 93rd General Assembly and was not~~
8 ~~convicted of a felony or misdemeanor or placed on supervision~~
9 ~~for a misdemeanor for 3 years after the acquittal or release or~~
10 ~~reversal of conviction, or completion of the terms and~~
11 ~~conditions of the supervision may petition the Chief Judge of~~
12 ~~the circuit in which the charge was brought, any judge of that~~
13 ~~circuit in which the charge was brought, any judge of the~~
14 ~~circuit designated by the Chief Judge, or, in counties of less~~
15 ~~than 3,000,000 inhabitants, the presiding trial judge at that~~
16 ~~defendant's trial, to seal the official records of the~~
17 ~~arresting authority, the Department, and the clerk of the~~
18 ~~court, except those records are subject to inspection and use~~
19 ~~by the court for the purposes of subsequent sentencing for~~
20 ~~misdemeanor and felony violations and inspection and use by law~~
21 ~~enforcement agencies, the Department of Corrections, and~~
22 ~~State's Attorneys and other prosecutors in carrying out the~~
23 ~~duties of their offices. This subsection (h) does not apply to~~
24 ~~persons placed on supervision for: (1) a violation of Section~~
25 ~~11-501 of the Illinois Vehicle Code or a similar provision of a~~
26 ~~local ordinance; (2) a misdemeanor violation of Article 11 of~~
27 ~~the Criminal Code of 1961 or a similar provision of a local~~
28 ~~ordinance; (3) a misdemeanor violation of Section 12-15, 12-30,~~
29 ~~or 26-5 of the Criminal Code of 1961 or a similar provision of a~~
30 ~~local ordinance; (4) a misdemeanor violation that is a crime of~~
31 ~~violence as defined in Section 2 of the Crime Victims~~
32 ~~Compensation Act or a similar provision of a local ordinance;~~
33 ~~(5) a Class A misdemeanor violation of the Humane Care for~~
34 ~~Animals Act; or (6) any offense or attempted offense that would~~

1 ~~subject a person to registration under the Sex Offender~~
2 ~~Registration Act. The State's Attorney or prosecutor charged~~
3 ~~with the duty of prosecuting the offense, the Department of~~
4 ~~State Police, the arresting agency and the chief legal officer~~
5 ~~of the unit of local government effecting the arrest shall be~~
6 ~~served with a copy of the verified petition and shall have 90~~
7 ~~days to object. If an objection is filed, the court shall set a~~
8 ~~date for hearing. At the hearing the court shall hear evidence~~
9 ~~on whether the sealing of the records should or should not be~~
10 ~~granted. The person whose records are sealed under the~~
11 ~~provisions of this Act shall pay to the clerk of the court and~~
12 ~~the Department of State Police a fee equivalent to the cost~~
13 ~~associated with the sealing of records. The fees shall be paid~~
14 ~~to the clerk of the court who shall forward the appropriate~~
15 ~~portion to the Department at the time the court order to seal~~
16 ~~the defendant's record is forwarded to the Department for~~
17 ~~processing. The Department of State Police portion of the fee~~
18 ~~shall be deposited into the State Police Services Fund.~~

19 ~~(i) (1) Notwithstanding any other provision of this Act to~~
20 ~~the contrary and cumulative with any rights to expungement of~~
21 ~~criminal records, whenever an adult or minor prosecuted as an~~
22 ~~adult charged with a violation of a municipal ordinance or a~~
23 ~~misdemeanor is convicted of a misdemeanor and has not been~~
24 ~~convicted of a felony or misdemeanor or placed on supervision~~
25 ~~for a misdemeanor within 4 years after the completion of the~~
26 ~~sentence, if the conviction occurred on or after the effective~~
27 ~~date of this amendatory Act of the 93rd General Assembly, the~~
28 ~~Chief Judge of the circuit in which the charge was brought may~~
29 ~~have the official records of the arresting authority, the~~
30 ~~Department, and the clerk of the circuit court sealed 4 years~~
31 ~~after the completion of the sentence, except those records are~~
32 ~~subject to inspection and use by the court for the purposes of~~
33 ~~subsequent sentencing for misdemeanor and felony violations~~
34 ~~and inspection and use by law enforcement agencies and State's~~

1 ~~Attorneys or other prosecutors in carrying out the duties of~~
2 ~~their offices. This subsection (i) does not apply to persons~~
3 ~~convicted of: (1) a violation of Section 11-501 of the Illinois~~
4 ~~Vehicle Code or a similar provision of a local ordinance; (2) a~~
5 ~~misdemeanor violation of Article 11 of the Criminal Code of~~
6 ~~1961 or a similar provision of a local ordinance; (3) a~~
7 ~~misdemeanor violation of Section 12-15, 12-30, or 26-5 of the~~
8 ~~Criminal Code of 1961 or a similar provision of a local~~
9 ~~ordinance; (4) a misdemeanor violation that is a crime of~~
10 ~~violence as defined in Section 2 of the Crime Victims~~
11 ~~Compensation Act or a similar provision of a local ordinance;~~
12 ~~(5) a Class A misdemeanor violation of the Humane Care for~~
13 ~~Animals Act; or (6) any offense or attempted offense that would~~
14 ~~subject a person to registration under the Sex Offender~~
15 ~~Registration Act.~~

16 ~~(2) Upon the conviction of such offense, the person charged~~
17 ~~with the offense shall be informed by the court of the right to~~
18 ~~have the records sealed and the procedures for the sealing of~~
19 ~~the records. Four years after the completion of the sentence,~~
20 ~~the defendant shall provide the clerk of the court with a~~
21 ~~notice of request for sealing of records and payment of the~~
22 ~~applicable fee and a current address and shall promptly notify~~
23 ~~the clerk of the court of any change of address. The clerk~~
24 ~~shall promptly serve notice that the person's records are to be~~
25 ~~sealed on the State's Attorney or prosecutor charged with the~~
26 ~~duty of prosecuting the offense, the Department of State~~
27 ~~Police, the arresting agency and the chief legal officer of the~~
28 ~~unit of local government effecting the arrest. Unless the~~
29 ~~State's Attorney or prosecutor, the Department of State Police,~~
30 ~~the arresting agency or such chief legal officer objects to~~
31 ~~sealing of the records within 90 days of notice the court shall~~
32 ~~enter an order sealing the defendant's records 4 years after~~
33 ~~the completion of the sentence. The clerk of the court shall~~
34 ~~promptly serve by mail or in person a copy of the order to the~~

1 ~~person, the arresting agency, the prosecutor, the Department of~~
2 ~~State Police and such other criminal justice agencies as may be~~
3 ~~ordered by the judge. If an objection is filed, the court shall~~
4 ~~set a date for hearing. At the hearing the court shall hear~~
5 ~~evidence on whether the sealing of the records should or should~~
6 ~~not be granted.~~

7 ~~(3) The clerk may charge a fee equivalent to the cost~~
8 ~~associated with the sealing of records by the clerk and the~~
9 ~~Department of State Police. The clerk shall forward the~~
10 ~~Department of State Police portion of the fee to the Department~~
11 ~~and it shall be deposited into the State Police Services Fund.~~

12 ~~(4) Whenever sealing of records is required under this~~
13 ~~subsection (i), the notification of the sealing must be given~~
14 ~~by the circuit court where the arrest occurred to the~~
15 ~~Department in a form and manner prescribed by the Department.~~

16 ~~(5) An adult or a minor prosecuted as an adult who was~~
17 ~~charged with a violation of a municipal ordinance or a~~
18 ~~misdemeanor who was convicted of a misdemeanor before the date~~
19 ~~of this amendatory Act of the 93rd General Assembly and was not~~
20 ~~convicted of a felony or misdemeanor or placed on supervision~~
21 ~~for a misdemeanor for 4 years after the completion of the~~
22 ~~sentence may petition the Chief Judge of the circuit in which~~
23 ~~the charge was brought, any judge of that circuit in which the~~
24 ~~charge was brought, any judge of the circuit designated by the~~
25 ~~Chief Judge, or, in counties of less than 3,000,000~~
26 ~~inhabitants, the presiding trial judge at that defendant's~~
27 ~~trial, to seal the official records of the arresting authority,~~
28 ~~the Department, and the clerk of the court, except those~~
29 ~~records are subject to inspection and use by the court for the~~
30 ~~purposes of subsequent sentencing for misdemeanor and felony~~
31 ~~violations and inspection and use by law enforcement agencies,~~
32 ~~the Department of Corrections, and State's Attorneys and other~~
33 ~~prosecutors in carrying out the duties of their offices. This~~
34 ~~subsection (i) does not apply to persons convicted of: (1) a~~

~~violation of Section 11 501 of the Illinois Vehicle Code or a similar provision of a local ordinance; (2) a misdemeanor violation of Article 11 of the Criminal Code of 1961 or a similar provision of a local ordinance; (3) a misdemeanor violation of Section 12 15, 12 30, or 26 5 of the Criminal Code of 1961 or a similar provision of a local ordinance; (4) a misdemeanor violation that is a crime of violence as defined in Section 2 of the Crime Victims Compensation Act or a similar provision of a local ordinance; (5) a Class A misdemeanor violation of the Humane Care for Animals Act; or (6) any offense or attempted offense that would subject a person to registration under the Sex Offender Registration Act. The State's Attorney or prosecutor charged with the duty of prosecuting the offense, the Department of State Police, the arresting agency and the chief legal officer of the unit of local government effecting the arrest shall be served with a copy of the verified petition and shall have 90 days to object. If an objection is filed, the court shall set a date for hearing. At the hearing the court shall hear evidence on whether the sealing of the records should or should not be granted. The person whose records are sealed under the provisions of this Act shall pay to the clerk of the court and the Department of State Police a fee equivalent to the cost associated with the sealing of records. The fees shall be paid to the clerk of the court who shall forward the appropriate portion to the Department at the time the court order to seal the defendant's record is forwarded to the Department for processing. The Department of State Police portion of the fee shall be deposited into the State Police Services Fund.";~~ and

in Sec. 5 of Section 5 by relettering subsection "(1)" as subsection "(i)"; and

in subsection (a) of Sec. 13 of Section 5 by changing

1 "subsections (h), ~~and~~ (i), and (j)" to "subsection ~~subsections~~
2 (h) ~~and (i)~~"; and

3 in subsection (a) of Sec. 13 of Section 5 by replacing
4 "subsection (j)" with "subsection (h)"; and

5 by inserting after the last line of subsection (a) of Sec.
6 13 of Section 5 the following:

7 "(b) Notwithstanding the foregoing, all sealed records are
8 subject to inspection and use by the court and inspection and
9 use by law enforcement agencies and State's Attorneys or other
10 prosecutors in carrying out the duties of their offices."; and

11 in Sec. 13 of Section 5, by changing "(b)" to "(c) ~~(b)~~";
12 and

13 in Sec. 13 of Section 5, by changing "(c)" to "(d)"; and

14 in the relettered subsection (d), by changing "subsection
15 (j)" to "subsection (h)".