



Sen. Kwame Raoul

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LRB096 13433 RLC 40238 a

1 AMENDMENT TO HOUSE BILL 4598

2 AMENDMENT NO. _____. Amend House Bill 4598 by replacing
3 everything after the enacting clause with the following:

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

6 (20 ILCS 2630/5.2)

7 Sec. 5.2. Expungement and sealing.

8 (a) General Provisions.

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

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

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

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

1 (iii) Court (730 ILCS 5/5-1-6),
2 (iv) Defendant (730 ILCS 5/5-1-7),
3 (v) Felony (730 ILCS 5/5-1-9),
4 (vi) Imprisonment (730 ILCS 5/5-1-10),
5 (vii) Judgment (730 ILCS 5/5-1-12),
6 (viii) Misdemeanor (730 ILCS 5/5-1-14),
7 (ix) Offense (730 ILCS 5/5-1-15),
8 (x) Parole (730 ILCS 5/5-1-16),
9 (xi) Petty Offense (730 ILCS 5/5-1-17),
10 (xii) Probation (730 ILCS 5/5-1-18),
11 (xiii) Sentence (730 ILCS 5/5-1-19),
12 (xiv) Supervision (730 ILCS 5/5-1-21), and
13 (xv) Victim (730 ILCS 5/5-1-22).

14 (B) As used in this Section, "charge not initiated
15 by arrest" means a charge (as defined by 730 ILCS
16 5/5-1-3) brought against a defendant where the
17 defendant is not arrested prior to or as a direct
18 result of the charge.

19 (C) "Conviction" means a judgment of conviction or
20 sentence entered upon a plea of guilty or upon a
21 verdict or finding of guilty of an offense, rendered by
22 a legally constituted jury or by a court of competent
23 jurisdiction authorized to try the case without a jury.
24 An order of supervision successfully completed by the
25 petitioner is not a conviction. An order of qualified
26 probation (as defined in subsection (a)(1)(J))

1 successfully completed by the petitioner is not a
2 conviction. An order of supervision or an order of
3 qualified probation that is terminated
4 unsatisfactorily is a conviction, unless the
5 unsatisfactory termination is reversed, vacated, or
6 modified and the judgment of conviction, if any, is
7 reversed or vacated.

8 (D) "Criminal offense" means a petty offense,
9 business offense, misdemeanor, felony, or municipal
10 ordinance violation (as defined in subsection
11 (a)(1)(H)). As used in this Section, a minor traffic
12 offense (as defined in subsection (a)(1)(G)) shall not
13 be considered a criminal offense.

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

23 (F) As used in this Section, "last sentence" means
24 the sentence, order of supervision, or order of
25 qualified probation (as defined by subsection
26 (a)(1)(J)), for a criminal offense (as defined by

1 subsection (a)(1)(D)) that terminates last in time in
2 any jurisdiction, regardless of whether the petitioner
3 has included the criminal offense for which the
4 sentence or order of supervision or qualified
5 probation was imposed in his or her petition. If
6 multiple sentences, orders of supervision, or orders
7 of qualified probation terminate on the same day and
8 are last in time, they shall be collectively considered
9 the "last sentence" regardless of whether they were
10 ordered to run concurrently.

11 (G) "Minor traffic offense" means a petty offense,
12 business offense, or Class C misdemeanor under the
13 Illinois Vehicle Code or a similar provision of a
14 municipal or local ordinance.

15 (H) "Municipal ordinance violation" means an
16 offense defined by a municipal or local ordinance that
17 is criminal in nature and with which the petitioner was
18 charged or for which the petitioner was arrested and
19 released without charging.

20 (I) "Petitioner" means an adult or a minor
21 prosecuted as an adult who has applied for relief under
22 this Section.

23 (J) "Qualified probation" means an order of
24 probation under Section 10 of the Cannabis Control Act,
25 Section 410 of the Illinois Controlled Substances Act,
26 Section 70 of the Methamphetamine Control and

1 Community Protection Act, Offender Initiative
2 Probation under Section 5-6-3.3 of the Unified Code of
3 Corrections, Section 12-4.3(b)(1) and (2) of the
4 Criminal Code of 1961 (as those provisions existed
5 before their deletion by Public Act 89-313), Section
6 10-102 of the Illinois Alcoholism and Other Drug
7 Dependency Act, Section 40-10 of the Alcoholism and
8 Other Drug Abuse and Dependency Act, or Section 10 of
9 the Steroid Control Act. For the purpose of this
10 Section, "successful completion" of an order of
11 qualified probation under Section 10-102 of the
12 Illinois Alcoholism and Other Drug Dependency Act and
13 Section 40-10 of the Alcoholism and Other Drug Abuse
14 and Dependency Act means that the probation was
15 terminated satisfactorily and the judgment of
16 conviction was vacated.

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

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

5 (M) "Terminate" as it relates to a sentence or
6 order of supervision or qualified probation includes
7 either satisfactory or unsatisfactory termination of
8 the sentence, unless otherwise specified in this
9 Section.

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

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

17 (A) the sealing or expungement of the records of
18 arrests or charges not initiated by arrest that result
19 in an order of supervision for or conviction of: (i)
20 any sexual offense committed against a minor; (ii)
21 Section 11-501 of the Illinois Vehicle Code or a
22 similar provision of a local ordinance; or (iii)
23 Section 11-503 of the Illinois Vehicle Code or a
24 similar provision of a local ordinance.

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

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

3 (C) the sealing of the records of arrests or
4 charges not initiated by arrest which result in an
5 order of supervision, an order of qualified probation
6 (as defined in subsection (a)(1)(J)), or a conviction
7 for the following offenses:

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

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

16 (iii) offenses defined as "crimes of violence"
17 in Section 2 of the Crime Victims Compensation Act
18 or a similar provision of a local ordinance;

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

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

24 (D) the sealing of the records of an arrest which
25 results in the petitioner being charged with a felony
26 offense or records of a charge not initiated by arrest

1 for a felony offense, regardless of the disposition,
2 unless:

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

6 (ii) the charge results in first offender
7 probation as set forth in subsection (c)(2)(E); or

8 (iii) the charge is for a Class 4 felony
9 offense listed in subsection (c)(2)(F) or the
10 charge is amended to a Class 4 felony offense
11 listed in subsection (c)(2)(F). Records of arrests
12 which result in the petitioner being charged with a
13 Class 4 felony offense listed in subsection
14 (c)(2)(F), records of charges not initiated by
15 arrest for Class 4 felony offenses listed in
16 subsection (c)(2)(F), and records of charges
17 amended to a Class 4 felony offense listed in
18 (c)(2)(F) may be sealed, regardless of the
19 disposition, subject to any waiting periods set
20 forth in subsection (c)(3).

21 (b) Expungement.

22 (1) A petitioner may petition the circuit court to
23 expunge the records of his or her arrests and charges not
24 initiated by arrest when:

25 (A) He or she has never been convicted of a
26 criminal offense; and

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

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

14 (A) When the arrest or charge not initiated by
15 arrest sought to be expunged resulted in an acquittal,
16 dismissal, the petitioner's release without charging,
17 or the reversal or vacation of a conviction, there is
18 no waiting period to petition for the expungement of
19 such records.

20 (B) When the arrest or charge not initiated by
21 arrest sought to be expunged resulted in an order of
22 supervision, successfully completed by the petitioner,
23 the following time frames will apply:

24 (i) Those arrests or charges that resulted in
25 orders of supervision under Section 3-707, 3-708,
26 3-710, or 5-401.3 of the Illinois Vehicle Code or a

1 similar provision of a local ordinance, or under
2 Section 12-3.2, 12-15 or 16A-3 of the Criminal Code
3 of 1961, shall not be eligible for expungement
4 until 5 years have passed following the
5 satisfactory termination of the supervision.

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

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

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

21 (4) Whenever a person has been arrested for or
22 convicted of any offense, in the name of a person whose
23 identity he or she has stolen or otherwise come into
24 possession of, the aggrieved person from whom the identity
25 was stolen or otherwise obtained without authorization,
26 upon learning of the person having been arrested using his

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

23 (5) Whenever a person has been convicted of criminal
24 sexual assault, aggravated criminal sexual assault,
25 predatory criminal sexual assault of a child, criminal
26 sexual abuse, or aggravated criminal sexual abuse, the

1 victim of that offense may request that the State's
2 Attorney of the county in which the conviction occurred
3 file a verified petition with the presiding trial judge at
4 the petitioner's trial to have a court order entered to
5 seal the records of the circuit court clerk in connection
6 with the proceedings of the trial court concerning that
7 offense. However, the records of the arresting authority
8 and the Department of State Police concerning the offense
9 shall not be sealed. The court, upon good cause shown,
10 shall make the records of the circuit court clerk in
11 connection with the proceedings of the trial court
12 concerning the offense available for public inspection.

13 (6) If a conviction has been set aside on direct review
14 or on collateral attack and the court determines by clear
15 and convincing evidence that the petitioner was factually
16 innocent of the charge, the court shall enter an
17 expungement order as provided in subsection (b) of Section
18 5-5-4 of the Unified Code of Corrections.

19 (7) Nothing in this Section shall prevent the
20 Department of State Police from maintaining all records of
21 any person who is admitted to probation upon terms and
22 conditions and who fulfills those terms and conditions
23 pursuant to Section 10 of the Cannabis Control Act, Section
24 410 of the Illinois Controlled Substances Act, Section 70
25 of the Methamphetamine Control and Community Protection
26 Act, Offender Initiative Probation under Section 5-6-3.3

1 of the Unified Code of Corrections, Section 12-4.3 of the
2 Criminal Code of 1961, Section 10-102 of the Illinois
3 Alcoholism and Other Drug Dependency Act, Section 40-10 of
4 the Alcoholism and Other Drug Abuse and Dependency Act, or
5 Section 10 of the Steroid Control Act.

6 (c) Sealing.

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

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

14 (A) All arrests resulting in release without
15 charging;

16 (B) Arrests or charges not initiated by arrest
17 resulting in acquittal, dismissal, or conviction when
18 the conviction was reversed or vacated, except as
19 excluded by subsection (a) (3) (B) or (a) (3) (D);

20 (C) Arrests or charges not initiated by arrest
21 resulting in orders of supervision successfully
22 completed by the petitioner, unless excluded by
23 subsection (a) (3);

24 (D) Arrests or charges not initiated by arrest
25 resulting in convictions unless excluded by subsection
26 (a) (3);

1 (E) Arrests or charges not initiated by arrest
2 resulting in orders of first offender probation under
3 Section 10 of the Cannabis Control Act, Section 410 of
4 the Illinois Controlled Substances Act, or Section 70
5 of the Methamphetamine Control and Community
6 Protection Act; and

7 (F) Arrests or charges not initiated by arrest
8 resulting in Class 4 felony convictions for the
9 following offenses:

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

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

12 (iii) Section 402 of the Illinois Controlled
13 Substances Act;

14 (iv) the Methamphetamine Precursor Control
15 Act; and

16 (v) the Steroid Control Act.

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

20 (A) Records identified as eligible under
21 subsection (c)(2)(A) and (c)(2)(B) may be sealed at any
22 time.

23 (B) Records identified as eligible under
24 subsection (c)(2)(C) may be sealed (i) 3 years after
25 the termination of petitioner's last sentence (as
26 defined in subsection (a)(1)(F)) if the petitioner has

1 never been convicted of a criminal offense (as defined
2 in subsection (a)(1)(D)); or (ii) 4 years after the
3 termination of the petitioner's last sentence (as
4 defined in subsection (a)(1)(F)) if the petitioner has
5 ever been convicted of a criminal offense (as defined
6 in subsection (a)(1)(D)).

7 (C) Records identified as eligible under
8 subsections (c)(2)(D), (c)(2)(E), and (c)(2)(F) may be
9 sealed 4 years after the termination of the
10 petitioner's last sentence (as defined in subsection
11 (a)(1)(F)).

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) and (e), and sealing under

1 subsection (c):

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, if not waived.

11 (2) Contents of petition. The petition shall be
12 verified and shall contain the petitioner's name, date of
13 birth, current address and, for each arrest or charge not
14 initiated by arrest sought to be sealed or expunged, the
15 case number, the date of arrest (if any), the identity of
16 the arresting authority, and such other information as the
17 court may require. During the pendency of the proceeding,
18 the petitioner shall promptly notify the circuit court
19 clerk of any change of his or her address.

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

1 is petitioning to seal felony records pursuant to clause
2 (c) (2) (E) or (c) (2) (F) (ii)-(v) or if he or she is
3 petitioning to expunge felony records of a qualified
4 probation pursuant to clause (b) (1) (B) (iv).

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

11 (5) Objections.

12 (A) Any party entitled to notice of the petition
13 may file an objection to the petition. All objections
14 shall be in writing, shall be filed with the circuit
15 court clerk, and shall state with specificity the basis
16 of the objection.

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

20 (6) Entry of order.

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

1 subsection (d) (6).

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

8 (7) Hearings. If an objection is filed, the court shall
9 set a date for a hearing and notify the petitioner and all
10 parties entitled to notice of the petition of the hearing
11 date at least 30 days prior to the hearing, and shall hear
12 evidence on whether the petition should or should not be
13 granted, and shall grant or deny the petition to expunge or
14 seal the records based on the evidence presented at the
15 hearing.

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

25 (9) Effect of order.

26 (A) Upon entry of an order to expunge records

1 pursuant to (b) (2) (A) or (b) (2) (B) (ii), or both:

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

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

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

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

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

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

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

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

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

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

7 (C) Upon entry of an order to seal records under
8 subsection (c), the arresting agency, any other agency
9 as ordered by the court, the Department, and the court
10 shall seal the records (as defined in subsection
11 (a)(1)(K)). In response to an inquiry for such records
12 from anyone not authorized by law to access such
13 records the court, the Department, or the agency
14 receiving such inquiry shall reply as it does in
15 response to inquiries when no records ever existed.

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

1 additional duties required to serve the petition to seal or
2 expunge on all parties. The circuit court clerk shall
3 collect and forward the Department of State Police portion
4 of the fee to the Department and it shall be deposited in
5 the State Police Services Fund.

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

11 (12) Motion to Vacate, Modify, or Reconsider. The
12 petitioner or any party entitled to notice may file a
13 motion to vacate, modify, or reconsider the order granting
14 or denying the petition to expunge or seal within 60 days
15 of service of the order.

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

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

18 (f) Subject to available funding, the Illinois Department
19 of Corrections shall conduct a study of the impact of sealing,
20 especially on employment and recidivism rates, utilizing a
21 random sample of those who apply for the sealing of their
22 criminal records under Public Act 93-211. At the request of the
23 Illinois Department of Corrections, records of the Illinois
24 Department of Employment Security shall be utilized as
25 appropriate to assist in the study. The study shall not
26 disclose any data in a manner that would allow the

1 identification of any particular individual or employing unit.
2 The study shall be made available to the General Assembly no
3 later than September 1, 2010.

4 (Source: P.A. 96-409, eff. 1-1-10.)

5 Section 10. The Unified Code of Corrections is amended by
6 adding Section 5-6-3.3 as follows:

7 (730 ILCS 5/5-6-3.3 new)

8 Sec. 5-6-3.3. Offender Initiative Probation.

9 (a) Whenever any person who has not previously been
10 convicted of, or placed on probation or conditional discharge
11 for, any felony offense under the laws of this State, the laws
12 of any other state, or the laws of the United States, pleads
13 guilty to, or is found guilty of, the probationable felony
14 offense of theft, retail theft, forgery, possession of a stolen
15 motor vehicle, burglary, possession of burglary tools,
16 possession of cannabis, possession of a controlled substance,
17 or possession of methamphetamine, the court, with the consent
18 of both the defendant and the State's Attorney, may, without
19 entering a judgment, sentence the defendant to probation.

20 (a-1) Exemptions. A defendant shall not be eligible for
21 this probation if the offense he or she has pled guilty to, or
22 has been found guilty of, is a violent offense. For purposes of
23 this probation, a "violent offense" is any offense where bodily
24 harm was inflicted or where force was used against any person

1 or threatened against any person, any offense involving sexual
2 conduct, sexual penetration, or sexual exploitation, any
3 offense of domestic violence, domestic battery, violation of an
4 order of protection, stalking, hate crime, driving under the
5 influence of drugs or alcohol, and any offense involving the
6 possession of a firearm or dangerous weapon. A defendant shall
7 not be eligible for this probation if he or she has previously
8 been adjudicated a delinquent minor for the commission of a
9 violent offense as defined in this subsection.

10 (b) When a defendant is placed on probation, the court
11 shall enter an order specifying a period of probation of not
12 less than 24 months and shall defer further proceedings in the
13 case until the conclusion of the period or until the filing of
14 a petition alleging violation of a term or condition of
15 probation.

16 (c) The conditions of probation shall be that the
17 defendant:

18 (1) not violate any criminal statute of this State or
19 any other jurisdiction;

20 (2) refrain from possessing a firearm or other
21 dangerous weapon;

22 (3) make full restitution to the victim or property
23 owner pursuant to Section 5-5-6 of this Code;

24 (4) obtain employment or perform not less than 30 hours
25 of community service, provided community service is
26 available in the county and is funded and approved by the

1 county board;

2 (5) pay fines and costs;

3 (6) attend educational courses designed to prepare the
4 defendant for obtaining a high school diploma or to work
5 toward passing the high school level test of General
6 Educational Development (G.E.D.) or to work toward
7 completing a vocational training program; and

8 (7) submit to periodic drug testing at a time and in a
9 manner as ordered by the court, but no less than 3 times
10 during the period of probation, with the cost of the
11 testing to be paid by the defendant.

12 (d) The court may, in addition to other conditions, require
13 that the defendant:

14 (1) make a report to and appear in person before or
15 participate with the court or such courts, person, or
16 social service agency as directed by the court in the order
17 of probation;

18 (2) undergo medical or psychiatric treatment, or
19 treatment or rehabilitation approved by the Illinois
20 Department of Human Services;

21 (3) attend or reside in a facility established for the
22 instruction or residence of defendants on probation;

23 (4) support his or her dependents;

24 (5) refrain from having in his or her body the presence
25 of any illicit drug prohibited by the Methamphetamine
26 Control and Community Protection Act, the Cannabis Control

1 Act, or the Illinois Controlled Substances Act, unless
2 prescribed by a physician, and submit samples of his or her
3 blood or urine or both for tests to determine the presence
4 of any illicit drug; or

5 (6) if a minor:

6 (i) reside with his or her parents or in a foster
7 home;

8 (ii) attend school;

9 (iii) attend a non-residential program for youth;

10 or

11 (iv) contribute to his or her own support at home
12 or in a foster home.

13 (e) Upon violation of a term or condition of probation, the
14 court may enter a judgment on its original finding of guilt and
15 proceed as otherwise provided.

16 (f) Upon fulfillment of the terms and conditions of
17 probation, the court shall discharge the person and dismiss the
18 proceedings against the person.

19 (g) A disposition of probation is considered to be a
20 conviction for the purposes of imposing the conditions of
21 probation and for appeal; however, a discharge and dismissal
22 under this Section is not a conviction for purposes of this
23 Code or for purposes of disqualifications or disabilities
24 imposed by law upon conviction of a crime.

25 (h) There may be only one discharge and dismissal under
26 this Section, Section 410 of the Illinois Controlled Substances

1 Act, Section 70 of the Methamphetamine Control and Community
2 Protection Act, Section 10 of the Cannabis Control Act, and
3 Section 11-14.2 of the Criminal Code of 1961 with respect to
4 any person.

5 (i) If a person is convicted of any offense which occurred
6 within 5 years subsequent to a discharge and dismissal under
7 this Section, the discharge and dismissal under this Section
8 shall be admissible in the sentencing proceeding for that
9 conviction as evidence in aggravation.

10 (j) Section 410 of the Illinois Controlled Substances Act,
11 Section 70 of the Methamphetamine Control and Community
12 Protection Act, Section 10 of the Cannabis Control Act, and
13 Section 11-14.2 of the Criminal Code of 1961, provide the
14 conditions of probation regarding the offenses specified
15 therein.

16 (k) The probation authorized by this Section may be
17 referred to as Offender Initiative Probation."