



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB2607

Introduced 1/21/2010, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5.2
730 ILCS 5/5-6-3.3 new

Amends the Criminal Identification Act. Includes in the definition of "qualified probation" Offender Initiative Probation. Amends the Unified Code of Corrections. Provides that whenever any person who has not previously been convicted of a felony offense under the laws of the State, the laws of any other State, or the laws of the United States, pleads guilty to, or is found guilty of, a probationable felony offense of theft, retail theft, forgery, prostitution, possession of a stolen motor vehicle, burglary, possession of burglary tools, possession of cannabis, possession of cannabis with intent to deliver, delivery of cannabis, possession of a controlled substance, possession of a controlled substance with intent to deliver, delivery of a controlled substance, possession of methamphetamine, possession of methamphetamine with intent to deliver, or delivery of methamphetamine, the court, with the consent of both the defendant and the State's Attorney, may, without entering a judgment, sentence the defendant to probation. Specifies the conditions of that probation. Excludes violent offenses. Effective immediately.

LRB096 17174 RLC 32506 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 changing Section 5.2 as follows:

6 (20 ILCS 2630/5.2)

7 Sec. 5.2. Expungement and sealing.

8 (a) General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Section.

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

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

9 (A) the sealing or expungement of the records of
10 arrests or charges not initiated by arrest that result
11 in an order of supervision for or conviction of: (i)
12 any sexual offense committed against a minor; (ii)
13 Section 11-501 of the Illinois Vehicle Code or a
14 similar provision of a local ordinance; or (iii)
15 Section 11-503 of the Illinois Vehicle Code or a
16 similar provision of a local ordinance.

17 (B) the sealing or expungement of records of minor
18 traffic offenses (as defined in subsection (a)(1)(G)),
19 unless the petitioner was arrested and released
20 without charging.

21 (C) the sealing of the records of arrests or
22 charges not initiated by arrest which result in an
23 order of supervision, an order of qualified probation
24 (as defined in subsection (a)(1)(J)), or a conviction
25 for the following offenses:

26 (i) offenses included in Article 11 of the

1 Criminal Code of 1961 or a similar provision of a
2 local ordinance, except Section 11-14 of the
3 Criminal Code of 1961 or a similar provision of a
4 local ordinance;

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

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

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

13 (v) any offense or attempted offense that
14 would subject a person to registration under the
15 Sex Offender Registration Act.

16 (D) the sealing of the records of an arrest which
17 results in the petitioner being charged with a felony
18 offense or records of a charge not initiated by arrest
19 for a felony offense, regardless of the disposition,
20 unless:

21 (i) the charge is amended to a misdemeanor and
22 is otherwise eligible to be sealed pursuant to
23 subsection (c);

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

26 (iii) the charge is for a Class 4 felony

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

13 (b) Expungement.

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

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

19 (B) Each arrest or charge not initiated by arrest
20 sought to be expunged resulted in: (i) acquittal,
21 dismissal, or the petitioner's release without
22 charging, unless excluded by subsection (a)(3)(B);
23 (ii) a conviction which was vacated or reversed, unless
24 excluded by subsection (a)(3)(B); (iii) an order of
25 supervision and such supervision was successfully
26 completed by the petitioner, unless excluded by

1 subsection (a) (3) (A) or (a) (3) (B); or (iv) an order of
2 qualified probation (as defined in subsection
3 (a) (1) (J)) and such probation was successfully
4 completed by the petitioner.

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

6 (A) When the arrest or charge not initiated by
7 arrest sought to be expunged resulted in an acquittal,
8 dismissal, the petitioner's release without charging,
9 or the reversal or vacation of a conviction, there is
10 no waiting period to petition for the expungement of
11 such records.

12 (B) When the arrest or charge not initiated by
13 arrest sought to be expunged resulted in an order of
14 supervision, successfully completed by the petitioner,
15 the following time frames will apply:

16 (i) Those arrests or charges that resulted in
17 orders of supervision under Section 3-707, 3-708,
18 3-710, or 5-401.3 of the Illinois Vehicle Code or a
19 similar provision of a local ordinance, or under
20 Section 12-3.2, 12-15 or 16A-3 of the Criminal Code
21 of 1961, shall not be eligible for expungement
22 until 5 years have passed following the
23 satisfactory termination of the supervision.

24 (ii) Those arrests or charges that resulted in
25 orders of supervision for any other offenses shall
26 not be eligible for expungement until 2 years have

1 passed following the satisfactory termination of
2 the supervision.

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

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

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

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

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

1 shall not be sealed. The court, upon good cause shown,
2 shall make the records of the circuit court clerk in
3 connection with the proceedings of the trial court
4 concerning the offense available for public inspection.

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

11 (7) Nothing in this Section shall prevent the
12 Department of State Police from maintaining all records of
13 any person who is admitted to probation upon terms and
14 conditions and who fulfills those terms and conditions
15 pursuant to Section 10 of the Cannabis Control Act, Section
16 410 of the Illinois Controlled Substances Act, Section 70
17 of the Methamphetamine Control and Community Protection
18 Act, Section 5-6-3.3 of the Unified Code of Corrections,
19 Section 12-4.3 of the Criminal Code of 1961, Section 10-102
20 of the Illinois Alcoholism and Other Drug Dependency Act,
21 Section 40-10 of the Alcoholism and Other Drug Abuse and
22 Dependency Act, or Section 10 of the Steroid Control Act.

23 (c) Sealing.

24 (1) Applicability. Notwithstanding any other provision
25 of this Act to the contrary, and cumulative with any rights
26 to expungement of criminal records, this subsection

1 authorizes the sealing of criminal records of adults and of
2 minors prosecuted as adults.

3 (2) Eligible Records. The following records may be
4 sealed:

5 (A) All arrests resulting in release without
6 charging;

7 (B) Arrests or charges not initiated by arrest
8 resulting in acquittal, dismissal, or conviction when
9 the conviction was reversed or vacated, except as
10 excluded by subsection (a) (3) (B) or (a) (3) (D);

11 (C) Arrests or charges not initiated by arrest
12 resulting in orders of supervision successfully
13 completed by the petitioner, unless excluded by
14 subsection (a) (3);

15 (D) Arrests or charges not initiated by arrest
16 resulting in convictions unless excluded by subsection
17 (a) (3);

18 (E) Arrests or charges not initiated by arrest
19 resulting in orders of first offender probation under
20 Section 10 of the Cannabis Control Act, Section 410 of
21 the Illinois Controlled Substances Act, or Section 70
22 of the Methamphetamine Control and Community
23 Protection Act; and

24 (F) Arrests or charges not initiated by arrest
25 resulting in Class 4 felony convictions for the
26 following offenses:

- 1 (i) Section 11-14 of the Criminal Code of 1961;
2 (ii) Section 4 of the Cannabis Control Act;
3 (iii) Section 402 of the Illinois Controlled
4 Substances Act;
5 (iv) the Methamphetamine Precursor Control
6 Act; and
7 (v) the Steroid Control Act.

8 (3) When Records Are Eligible to Be Sealed. Records
9 identified as eligible under subsection (c)(2) may be
10 sealed as follows:

11 (A) Records identified as eligible under
12 subsection (c)(2)(A) and (c)(2)(B) may be sealed at any
13 time.

14 (B) Records identified as eligible under
15 subsection (c)(2)(C) may be sealed (i) 3 years after
16 the termination of petitioner's last sentence (as
17 defined in subsection (a)(1)(F)) if the petitioner has
18 never been convicted of a criminal offense (as defined
19 in subsection (a)(1)(D)); or (ii) 4 years after the
20 termination of the petitioner's last sentence (as
21 defined in subsection (a)(1)(F)) if the petitioner has
22 ever been convicted of a criminal offense (as defined
23 in subsection (a)(1)(D)).

24 (C) Records identified as eligible under
25 subsections (c)(2)(D), (c)(2)(E), and (c)(2)(F) may be
26 sealed 4 years after the termination of the

1 petitioner's last sentence (as defined in subsection
2 (a) (1) (F)).

3 (4) Subsequent felony convictions. A person may not
4 have subsequent felony conviction records sealed as
5 provided in this subsection (c) if he or she is convicted
6 of any felony offense after the date of the sealing of
7 prior felony convictions as provided in this subsection
8 (c). The court may, upon conviction for a subsequent felony
9 offense, order the unsealing of prior felony conviction
10 records previously ordered sealed by the court.

11 (5) Notice of eligibility for sealing. Upon entry of a
12 disposition for an eligible record under this subsection
13 (c), the petitioner shall be informed by the court of the
14 right to have the records sealed and the procedures for the
15 sealing of the records.

16 (d) Procedure. The following procedures apply to
17 expungement under subsections (b) and (e), and sealing under
18 subsection (c):

19 (1) Filing the petition. Upon becoming eligible to
20 petition for the expungement or sealing of records under
21 this Section, the petitioner shall file a petition
22 requesting the expungement or sealing of records with the
23 clerk of the court where the arrests occurred or the
24 charges were brought, or both. If arrests occurred or
25 charges were brought in multiple jurisdictions, a petition
26 must be filed in each such jurisdiction. The petitioner

1 shall pay the applicable fee, if not waived.

2 (2) Contents of petition. The petition shall be
3 verified and shall contain the petitioner's name, date of
4 birth, current address and, for each arrest or charge not
5 initiated by arrest sought to be sealed or expunged, the
6 case number, the date of arrest (if any), the identity of
7 the arresting authority, and such other information as the
8 court may require. During the pendency of the proceeding,
9 the petitioner shall promptly notify the circuit court
10 clerk of any change of his or her address.

11 (3) Drug test. The petitioner must attach to the
12 petition proof that the petitioner has passed a test taken
13 within 30 days before the filing of the petition showing
14 the absence within his or her body of all illegal
15 substances as defined by the Illinois Controlled
16 Substances Act, the Methamphetamine Control and Community
17 Protection Act, and the Cannabis Control Act if he or she
18 is petitioning to seal felony records pursuant to clause
19 (c)(2)(E) or (c)(2)(F)(ii)-(v) or if he or she is
20 petitioning to expunge felony records of a qualified
21 probation pursuant to clause (b)(1)(B)(iv).

22 (4) Service of petition. The circuit court clerk shall
23 promptly serve a copy of the petition on the State's
24 Attorney or prosecutor charged with the duty of prosecuting
25 the offense, the Department of State Police, the arresting
26 agency and the chief legal officer of the unit of local

1 government effecting the arrest.

2 (5) Objections.

3 (A) Any party entitled to notice of the petition
4 may file an objection to the petition. All objections
5 shall be in writing, shall be filed with the circuit
6 court clerk, and shall state with specificity the basis
7 of the objection.

8 (B) Objections to a petition to expunge or seal
9 must be filed within 60 days of the date of service of
10 the petition.

11 (6) Entry of order.

12 (A) The Chief Judge of the circuit wherein the
13 charge was brought, any judge of that circuit
14 designated by the Chief Judge, or in counties of less
15 than 3,000,000 inhabitants, the presiding trial judge
16 at the petitioner's trial, if any, shall rule on the
17 petition to expunge or seal as set forth in this
18 subsection (d) (6).

19 (B) Unless the State's Attorney or prosecutor, the
20 Department of State Police, the arresting agency, or
21 the chief legal officer files an objection to the
22 petition to expunge or seal within 60 days from the
23 date of service of the petition, the court shall enter
24 an order granting or denying the petition.

25 (7) Hearings. If an objection is filed, the court shall
26 set a date for a hearing and notify the petitioner and all

1 parties entitled to notice of the petition of the hearing
2 date at least 30 days prior to the hearing, and shall hear
3 evidence on whether the petition should or should not be
4 granted, and shall grant or deny the petition to expunge or
5 seal the records based on the evidence presented at the
6 hearing.

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

16 (9) Effect of order.

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

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

26 (ii) the records of the circuit court clerk

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

9 (iii) in response to an inquiry for expunged
10 records, the court, the Department, or the agency
11 receiving such inquiry, shall reply as it does in
12 response to inquiries when no records ever
13 existed.

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

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

23 (ii) the records of the circuit court clerk
24 shall be impounded until further order of the court
25 upon good cause shown and the name of the
26 petitioner obliterated on the official index

1 required to be kept by the circuit court clerk
2 under Section 16 of the Clerks of Courts Act, but
3 the order shall not affect any index issued by the
4 circuit court clerk before the entry of the order;

5 (iii) the records shall be impounded by the
6 Department within 60 days of the date of service of
7 the order as ordered by the court, unless a motion
8 to vacate, modify, or reconsider the order is filed
9 pursuant to paragraph (12) of subsection (d) of
10 this Section;

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

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

24 (C) Upon entry of an order to seal records under
25 subsection (c), the arresting agency, any other agency
26 as ordered by the court, the Department, and the court

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

7 (10) Fees. The Department may charge the petitioner a
8 fee equivalent to the cost of processing any order to
9 expunge or seal records. Notwithstanding any provision of
10 the Clerks of Courts Act to the contrary, the circuit court
11 clerk may charge a fee equivalent to the cost associated
12 with the sealing or expungement of records by the circuit
13 court clerk. From the total filing fee collected for the
14 petition to seal or expunge, the circuit court clerk shall
15 deposit \$10 into the Circuit Court Clerk Operation and
16 Administrative Fund, to be used to offset the costs
17 incurred by the circuit court clerk in performing the
18 additional duties required to serve the petition to seal or
19 expunge on all parties. The circuit court clerk shall
20 collect and forward the Department of State Police portion
21 of the fee to the Department and it shall be deposited in
22 the State Police Services Fund.

23 (11) Final Order. No court order issued under the
24 expungement or sealing provisions of this Section shall
25 become final for purposes of appeal until 30 days after
26 service of the order on the petitioner and all parties

1 entitled to notice of the petition.

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

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 as
26 required by law or to the arresting authority, the State's

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

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

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

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

24 (730 ILCS 5/5-6-3.3 new)

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

2 (a) Whenever any person who has not previously been
3 convicted of a felony offense under the laws of this State, the
4 laws of any other State, or the laws of the United States,
5 pleads guilty to, or is found guilty of, a probationable felony
6 offense of theft, retail theft, forgery, prostitution,
7 possession of a stolen motor vehicle, burglary, possession of
8 burglary tools, possession of cannabis, possession of cannabis
9 with intent to deliver, delivery of cannabis, possession of a
10 controlled substance, possession of a controlled substance
11 with intent to deliver, delivery of a controlled substance,
12 possession of methamphetamine, possession of methamphetamine
13 with intent to deliver, or delivery of methamphetamine, the
14 court, with the consent of both the defendant and the State's
15 Attorney, may, without entering a judgment, sentence the
16 defendant to probation.

17 (b) A defendant is not eligible for probation under this
18 Section if he or she has pled guilty to, or has been found
19 guilty of, a violent offense. For purposes of this Section,
20 "violent offense" is any offense where bodily harm was
21 inflicted or where force was used against any person or
22 threatened against any person, any offense involving sexual
23 conduct, sexual penetration, or sexual exploitation, any
24 offense of domestic violence, domestic battery, violation of an
25 order of protection, stalking, hate crime, driving under the
26 influence of drugs or alcohol, and any offense involving the

1 possession of a firearm or dangerous weapon.

2 (c) When a defendant is placed on probation, the court
3 shall enter an order specifying a period of probation of not
4 less than 24 months and shall defer further proceedings in the
5 case until the conclusion of the period or until the filing of
6 a petition alleging violation of a term or condition of
7 probation. The terms and conditions of probation shall be that
8 the defendant:

9 (1) not violate any criminal statute of this State or
10 any other jurisdiction;

11 (2) refrain from possessing a firearm or other
12 dangerous weapon;

13 (3) make full restitution to the property owner
14 pursuant to Section 5-5-6;

15 (4) obtain employment or perform not less than 30 hours
16 of community service, provided community service is
17 available in the county and is funded and approved by the
18 county board;

19 (5) pay a fine and costs;

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

25 (7) submit to periodic drug testing at a time and in a
26 manner as ordered by the court, but no less than 3 times

1 during the period of probation, with the cost of the
2 testing to be paid by the defendant.

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

5 (1) make a report to and appear in person before or
6 participate with the court or such courts, person, or
7 social service agency as directed by the court in the order
8 of probation; reside with his or her parents or in a foster
9 home; attend school; attend a non-residential program for
10 youth; or contribute to his or her own support at home or
11 in a foster home.

12 (2) undergo medical or psychiatric treatment, or
13 treatment of rehabilitation approved by the Illinois
14 Department of Human Services;

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

17 (4) support his or her dependents;

18 (5) refrain from having in his or her body the presence
19 of any illicit drug prohibited by the Methamphetamine
20 Control and Community Protection Act, the Cannabis Control
21 Act, or the Illinois Controlled Substances Act, unless
22 prescribed by a physician and submit samples of his or her
23 blood or urine or both for tests to determine the presence
24 of any illicit drug; or

25 (6) if a minor comply with the requirements of clauses
26 (1), (2), (3), or (4) of this subsection (d).

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

4 (f) Upon fulfillment of the terms and conditions of
5 probation, the court shall discharge the person and dismiss the
6 proceedings against the person.

7 (g) A disposition of probation is considered to be a
8 conviction for the purposes of imposing the conditions of
9 probation and for appeal; however, discharge and dismissal
10 under this Section is not a conviction for purposes of this
11 Code or for purposes of disqualifications or disabilities
12 imposed by law upon conviction of a crime.

13 (h) There may be only one discharge and dismissal under
14 this Section, Section 410 of the Illinois Controlled Substances
15 Act, Section 70 of the Methamphetamine Control and Community
16 Protection Act, or Section 10 of the Cannabis Control Act with
17 respect to any person.

18 (i) If a person is convicted of any offense within 5 years
19 subsequent to a discharge and dismissal under this Section, the
20 discharge and dismissal under this Section shall be admissible
21 in the sentencing proceeding for that conviction as evidence in
22 aggravation.

23 (j) Section 410 of the Illinois Controlled Substances Act,
24 Section 70 of the Methamphetamine Control and Community
25 Protection Act, and Section 10 of the Cannabis Control Act
26 provide the conditions of probation regarding the offenses

1 specified therein.

2 (k) The probation authorized by this Section may be
3 referred to as Offender Initiative Probation.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.