

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), (b) (8), (e), and (e-5) of this
8 Section, the 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, unless the
17 arrest or charge is for a misdemeanor violation of
18 subsection (a) of Section 11-503 or a similar provision
19 of a local ordinance, that occurred prior to the
20 offender reaching the age of 25 years and the offender
21 has no other conviction for violating Section 11-501 or
22 11-503 of the Illinois Vehicle Code or a similar
23 provision of a local ordinance.

24 (B) the sealing or expungement of records of minor
25 traffic offenses (as defined in subsection (a) (1) (G)),
26 unless the petitioner was arrested and released

1 without charging.

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

7 (i) offenses included in Article 11 of the
8 Criminal Code of 1961 or the Criminal Code of 2012
9 or a similar provision of a local ordinance, except
10 Section 11-14 of the Criminal Code of 1961 or the
11 Criminal Code of 2012, or a similar provision of a
12 local ordinance;

13 (ii) Section 11-1.50, 12-3.4, 12-15, 12-30,
14 26-5, or 48-1 of the Criminal Code of 1961 or the
15 Criminal Code of 2012, or a similar provision of a
16 local ordinance;

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

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

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

25 (D) the sealing of the records of an arrest which
26 results in the petitioner being charged with a felony

1 offense or records of a charge not initiated by arrest
2 for a felony offense 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 is brought along with another
7 charge as a part of one case and the charge results
8 in acquittal, dismissal, or conviction when the
9 conviction was reversed or vacated, and another
10 charge brought in the same case results in a
11 disposition for a misdemeanor offense that is
12 eligible to be sealed pursuant to subsection (c) or
13 a disposition listed in paragraph (i), (iii), or
14 (iv) of this subsection;

15 (iii) the charge results in first offender
16 probation as set forth in subsection (c)(2)(E);

17 (iv) the charge is for a Class 4 felony offense
18 listed in subsection (c)(2)(F) or the charge is
19 amended to a Class 4 felony offense listed in
20 subsection (c)(2)(F). Records of arrests which
21 result in the petitioner being charged with a Class
22 4 felony offense listed in subsection (c)(2)(F),
23 records of charges not initiated by arrest for
24 Class 4 felony offenses listed in subsection
25 (c)(2)(F), and records of charges amended to a
26 Class 4 felony offense listed in (c)(2)(F) may be

1 sealed, regardless of the disposition, subject to
2 any waiting periods set forth in subsection
3 (c) (3);

4 (v) the charge results in acquittal,
5 dismissal, or the petitioner's release without
6 conviction; or

7 (vi) the charge results in a conviction, but
8 the conviction was reversed or vacated.

9 (b) Expungement.

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

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

15 (B) Each arrest or charge not initiated by arrest
16 sought to be expunged resulted in: (i) acquittal,
17 dismissal, or the petitioner's release without
18 charging, unless excluded by subsection (a) (3) (B);
19 (ii) a conviction which was vacated or reversed, unless
20 excluded by subsection (a) (3) (B); (iii) an order of
21 supervision and such supervision was successfully
22 completed by the petitioner, unless excluded by
23 subsection (a) (3) (A) or (a) (3) (B); or (iv) an order of
24 qualified probation (as defined in subsection
25 (a) (1) (J)) and such probation was successfully
26 completed by the petitioner.

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

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

8 (B) When the arrest or charge not initiated by
9 arrest sought to be expunged resulted in an order of
10 supervision, successfully completed by the petitioner,
11 the following time frames will apply:

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

22 (i-5) Those arrests or charges that resulted
23 in orders of supervision for a misdemeanor
24 violation of subsection (a) of Section 11-503 of
25 the Illinois Vehicle Code or a similar provision of
26 a local ordinance, that occurred prior to the

1 offender reaching the age of 25 years and the
2 offender has no other conviction for violating
3 Section 11-501 or 11-503 of the Illinois Vehicle
4 Code or a similar provision of a local ordinance
5 shall not be eligible for expungement until the
6 petitioner has reached the age of 25 years.

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

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

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

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

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

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

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

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

22 (7) Nothing in this Section shall prevent the
23 Department of State Police from maintaining all records of
24 any person who is admitted to probation upon terms and
25 conditions and who fulfills those terms and conditions
26 pursuant to Section 10 of the Cannabis Control Act, Section

1 410 of the Illinois Controlled Substances Act, Section 70
2 of the Methamphetamine Control and Community Protection
3 Act, Section 5-6-3.3 of the Unified Code of Corrections,
4 Section 12-4.3 or subdivision (b) (1) of Section 12-3.05 of
5 the Criminal Code of 1961 or the Criminal Code of 2012,
6 Section 10-102 of the Illinois Alcoholism and Other Drug
7 Dependency Act, Section 40-10 of the Alcoholism and Other
8 Drug Abuse and Dependency Act, or Section 10 of the Steroid
9 Control Act.

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

17 (c) Sealing.

18 (1) Applicability. Notwithstanding any other provision
19 of this Act to the contrary, and cumulative with any rights
20 to expungement of criminal records, this subsection
21 authorizes the sealing of criminal records of adults and of
22 minors prosecuted as adults.

23 (2) Eligible Records. The following records may be
24 sealed:

25 (A) All arrests resulting in release without
26 charging;

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

5 (C) Arrests or charges not initiated by arrest
6 resulting in orders of supervision successfully
7 completed by the petitioner, unless excluded by
8 subsection (a) (3);

9 (D) Arrests or charges not initiated by arrest
10 resulting in convictions unless excluded by subsection
11 (a) (3);

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

19 (F) Arrests or charges not initiated by arrest
20 resulting in Class 4 felony convictions for the
21 following offenses:

22 (i) Section 11-14 of the Criminal Code of 1961
23 or the Criminal Code of 2012;

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

25 (iii) Section 402 of the Illinois Controlled
26 Substances Act;

1 (iv) the Methamphetamine Precursor Control
2 Act; and

3 (v) the Steroid Control Act.

4 (3) When Records Are Eligible to Be Sealed. Records
5 identified as eligible under subsection (c)(2) may be
6 sealed as follows:

7 (A) Records identified as eligible under
8 subsection (c)(2)(A) and (c)(2)(B) may be sealed at any
9 time.

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

20 (C) Records identified as eligible under
21 subsections (c)(2)(D), (c)(2)(E), and (c)(2)(F) may be
22 sealed 4 years after the termination of the
23 petitioner's last sentence (as defined in subsection
24 (a)(1)(F)).

25 (D) Records identified in subsection
26 (a)(3)(A)(iii) may be sealed after the petitioner has

1 reached the age of 25 years.

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

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

15 (d) Procedure. The following procedures apply to
16 expungement under subsections (b) and (e), and sealing under
17 subsections (c) and (e-5):

18 (1) Filing the petition. Upon becoming eligible to
19 petition for the expungement or sealing of records under
20 this Section, the petitioner shall file a petition
21 requesting the expungement or sealing of records with the
22 clerk of the court where the arrests occurred or the
23 charges were brought, or both. If arrests occurred or
24 charges were brought in multiple jurisdictions, a petition
25 must be filed in each such jurisdiction. The petitioner
26 shall pay the applicable fee, if not waived.

1 (2) Contents of petition. The petition shall be
2 verified and shall contain the petitioner's name, date of
3 birth, current address and, for each arrest or charge not
4 initiated by arrest sought to be sealed or expunged, the
5 case number, the date of arrest (if any), the identity of
6 the arresting authority, and such other information as the
7 court may require. During the pendency of the proceeding,
8 the petitioner shall promptly notify the circuit court
9 clerk of any change of his or her address. If the
10 petitioner has received a certificate of eligibility for
11 sealing from the Prisoner Review Board under paragraph (10)
12 of subsection (a) of Section 3-3-2 of the Unified Code of
13 Corrections, the certificate shall be attached to the
14 petition.

15 (3) Drug test. The petitioner must attach to the
16 petition proof that the petitioner has passed a test taken
17 within 30 days before the filing of the petition showing
18 the absence within his or her body of all illegal
19 substances as defined by the Illinois Controlled
20 Substances Act, the Methamphetamine Control and Community
21 Protection Act, and the Cannabis Control Act if he or she
22 is petitioning to seal felony records pursuant to clause
23 (c) (2) (E), (c) (2) (F) (ii)-(v), or (e-5) or if he or she is
24 petitioning to expunge felony records of a qualified
25 probation pursuant to clause (b) (1) (B) (iv).

26 (4) Service of petition. The circuit court clerk shall

1 promptly serve a copy of the petition on the State's
2 Attorney or prosecutor charged with the duty of prosecuting
3 the offense, the Department of State Police, the arresting
4 agency and the chief legal officer of the unit of local
5 government effecting the arrest.

6 (5) Objections.

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

12 (B) Objections to a petition to expunge or seal
13 must be filed within 60 days of the date of service of
14 the petition.

15 (6) Entry of order.

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

23 (B) Unless the State's Attorney or prosecutor, the
24 Department of State Police, the arresting agency, or
25 the chief legal officer files an objection to the
26 petition to expunge or seal within 60 days from the

1 date of service of the petition, the court shall enter
2 an order granting or denying the petition.

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

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

20 (9) Effect of order.

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

23 (i) the records shall be expunged (as defined
24 in subsection (a) (1) (E)) by the arresting agency,
25 the Department, and any other agency as ordered by
26 the court, within 60 days of the date of service of

1 the order, unless a motion to vacate, modify, or
2 reconsider the order is filed pursuant to
3 paragraph (12) of subsection (d) of this Section;

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

13 (iii) in response to an inquiry for expunged
14 records, the court, the Department, or the agency
15 receiving such inquiry, shall reply as it does in
16 response to inquiries when no records ever
17 existed.

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

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

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

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

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

23 (v) in response to an inquiry for such records
24 from anyone not authorized by law to access such
25 records the court, the Department, or the agency
26 receiving such inquiry shall reply as it does in

1 response to inquiries when no records ever
2 existed.

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

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

1 the State Police Services Fund.

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

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

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

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

13 (e-5) Whenever a person who has been convicted of an
14 offense is granted a certificate of eligibility for sealing by
15 the Prisoner Review Board which specifically authorizes
16 sealing, he or she may, upon verified petition to the Chief
17 Judge of the circuit where the person had been convicted, any
18 judge of the circuit designated by the Chief Judge, or in
19 counties of less than 3,000,000 inhabitants, the presiding
20 trial judge at the petitioner's trial, have a court order
21 entered sealing the record of arrest from the official records
22 of the arresting authority and order that the records of the
23 circuit court clerk and the Department be sealed until further
24 order of the court upon good cause shown or as otherwise
25 provided herein, and the name of the petitioner obliterated
26 from the official index requested to be kept by the circuit

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

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

1 The study shall be made available to the General Assembly no
2 later than September 1, 2010.

3 (Source: P.A. 96-409, eff. 1-1-10; 96-1401, eff. 7-29-10;
4 96-1532, eff. 1-1-12; 96-1551, Article 1, Section 905, eff.
5 7-1-11; 96-1551, Article 2, Section 925, eff. 7-1-11; 97-443,
6 eff. 8-19-11; 97-698, eff. 1-1-13; 97-1026, eff. 1-1-13;
7 97-1108, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1118, eff.
8 1-1-13; 97-1120, eff. 1-1-13; 97-1150, eff. 1-25-13.)

9 Section 10. The Unified Code of Corrections is amended by
10 changing Section 5-5-4 as follows:

11 (730 ILCS 5/5-5-4) (from Ch. 38, par. 1005-5-4)

12 Sec. 5-5-4. Resentences.

13 (a) Where a conviction or sentence has been set aside on
14 direct review or on collateral attack, the court shall not
15 impose a new sentence for the same offense or for a different
16 offense based on the same conduct which is more severe than the
17 prior sentence less the portion of the prior sentence
18 previously satisfied unless the more severe sentence is based
19 upon conduct on the part of the defendant occurring after the
20 original sentencing. If a sentence is vacated on appeal or on
21 collateral attack due to the failure of the trier of fact at
22 trial to determine beyond a reasonable doubt the existence of a
23 fact (other than a prior conviction) necessary to increase the
24 punishment for the offense beyond the statutory maximum

1 otherwise applicable, either the defendant may be re-sentenced
2 to a term within the range otherwise provided or, if the State
3 files notice of its intention to again seek the extended
4 sentence, the defendant shall be afforded a new trial.

5 (b) If a conviction or sentence has been set aside on
6 direct review or on collateral attack and the court determines
7 by clear and convincing evidence that the defendant was
8 factually innocent of the charge, the court shall enter an
9 order expunging the record of arrest from the official records
10 of the arresting authority and order that the records of the
11 clerk of the circuit court and Department of State Police be
12 sealed until further order of the court upon good cause shown
13 or as otherwise provided herein, and the name of the defendant
14 obliterated from the official index requested to be kept by the
15 circuit court clerk under Section 16 of the Clerks of Courts
16 Act in connection with the arrest and conviction for the
17 offense but the order shall not affect any index issued by the
18 circuit court clerk before the entry of the order. The court
19 shall enter the expungement order regardless of whether the
20 defendant has prior criminal convictions.

21 All records sealed by the Department of State Police may be
22 disseminated by the Department only as required by law or to
23 the arresting authority, the State's Attorney, the court upon a
24 later arrest for the same or similar offense, or for the
25 purpose of sentencing for any subsequent felony. Upon
26 conviction for any subsequent offense, the Department of

1 Corrections shall have access to all sealed records of the
2 Department pertaining to that individual.

3 Upon entry of the order of expungement, the clerk of the
4 circuit court shall promptly mail a copy of the order to the
5 person whose records were expunged and sealed.

6 (c) If a conviction has been vacated as a result of a claim
7 of actual innocence based on newly discovered evidence made
8 under Section 122-1 of the Code of Criminal Procedure of 1963
9 or Section 2-1401 of the Code of Civil Procedure, and the
10 provisions of paragraphs (1) and (2) of subsection (g) of
11 Section 2-702 of the Code of Civil Procedure are otherwise
12 satisfied, the court shall enter an order for a certificate of
13 innocence and an order expunging the conviction for which the
14 petitioner has been determined to be innocent as provided in
15 subsection (h) of Section 2-702 of the Code of Civil Procedure.

16 (Source: P.A. 93-210, eff. 7-18-03.)

17 Section 15. The Code of Civil Procedure is amended by
18 changing Section 2-702 as follows:

19 (735 ILCS 5/2-702)

20 Sec. 2-702. Petition for a certificate of innocence that
21 the petitioner was innocent of all offenses for which he or she
22 was incarcerated.

23 (a) The General Assembly finds and declares that innocent
24 persons who have been wrongly convicted of crimes in Illinois

1 and subsequently imprisoned have been frustrated in seeking
2 legal redress due to a variety of substantive and technical
3 obstacles in the law and that such persons should have an
4 available avenue to obtain a finding of innocence so that they
5 may obtain relief through a petition in the Court of Claims.
6 The General Assembly further finds misleading the current legal
7 nomenclature which compels an innocent person to seek a pardon
8 for being wrongfully incarcerated. It is the intent of the
9 General Assembly that the court, in exercising its discretion
10 as permitted by law regarding the weight and admissibility of
11 evidence submitted pursuant to this Section, shall, in the
12 interest of justice, give due consideration to difficulties of
13 proof caused by the passage of time, the death or
14 unavailability of witnesses, the destruction of evidence or
15 other factors not caused by such persons or those acting on
16 their behalf.

17 (b) Any person convicted and subsequently imprisoned for
18 one or more felonies by the State of Illinois which he or she
19 did not commit may, under the conditions hereinafter provided,
20 file a petition for certificate of innocence in the circuit
21 court of the county in which the person was convicted. The
22 petition shall request a certificate of innocence finding that
23 the petitioner was innocent of all offenses for which he or she
24 was incarcerated.

25 (c) In order to present the claim for certificate of
26 innocence of an unjust conviction and imprisonment, the

1 petitioner must attach to his or her petition documentation
2 demonstrating that:

3 (1) he or she has been convicted of one or more
4 felonies by the State of Illinois and subsequently
5 sentenced to a term of imprisonment, and has served all or
6 any part of the sentence; and

7 (2) his or her judgment of conviction was reversed or
8 vacated, and the indictment or information dismissed or, if
9 a new trial was ordered, either he or she was found not
10 guilty at the new trial or he or she was not retried and
11 the indictment or information dismissed; or the statute, or
12 application thereof, on which the indictment or
13 information was based violated the Constitution of the
14 United States or the State of Illinois; and

15 (3) his or her claim is not time barred by the
16 provisions of subsection (i) of this Section.

17 (d) The petition shall state facts in sufficient detail to
18 permit the court to find that the petitioner is likely to
19 succeed at trial in proving that the petitioner is innocent of
20 the offenses charged in the indictment or information or his or
21 her acts or omissions charged in the indictment or information
22 did not constitute a felony or misdemeanor against the State of
23 Illinois, and the petitioner did not by his or her own conduct
24 voluntarily cause or bring about his or her conviction. The
25 petition shall be verified by the petitioner.

26 (e) A copy of the petition shall be served on the Attorney

1 General and the State's Attorney of the county where the
2 conviction was had. The Attorney General and the State's
3 Attorney of the county where the conviction was had shall have
4 the right to intervene as parties.

5 (f) In any hearing seeking a certificate of innocence, the
6 court may take judicial notice of prior sworn testimony or
7 evidence admitted in the criminal proceedings related to the
8 convictions which resulted in the alleged wrongful
9 incarceration, if the petitioner was either represented by
10 counsel at such prior proceedings or the right to counsel was
11 knowingly waived.

12 (g) In order to obtain a certificate of innocence the
13 petitioner must prove by a preponderance of evidence that:

14 (1) the petitioner was convicted of one or more
15 felonies by the State of Illinois and subsequently
16 sentenced to a term of imprisonment, and has served all or
17 any part of the sentence;

18 (2) (A) the judgment of conviction was reversed or
19 vacated, and the indictment or information dismissed or, if
20 a new trial was ordered, either the petitioner was found
21 not guilty at the new trial or the petitioner was not
22 retried and the indictment or information dismissed; or (B)
23 the statute, or application thereof, on which the
24 indictment or information was based violated the
25 Constitution of the United States or the State of Illinois;

26 (3) the petitioner is innocent of the offenses charged

1 in the indictment or information or his or her acts or
2 omissions charged in the indictment or information did not
3 constitute a felony or misdemeanor against the State; and

4 (4) the petitioner did not by his or her own conduct
5 voluntarily cause or bring about his or her conviction.

6 (h) If the court finds that the petitioner is entitled to a
7 judgment, it shall enter a certificate of innocence finding
8 that the petitioner was innocent of all offenses for which he
9 or she was incarcerated. Upon entry of the certificate of
10 innocence or pardon from the Governor stating that such pardon
11 was issued on the ground of innocence of the crime for which he
12 or she was imprisoned, (1) the clerk of the court shall
13 transmit a copy of the certificate of innocence to the clerk of
14 the Court of Claims, together with the claimant's current
15 address; and (2) the court shall enter an order expunging ~~or~~
16 ~~sealing~~ the record of arrest from the official records of the
17 arresting authority and order that the records of the clerk of
18 the circuit court and Department of State Police be sealed
19 until further order of the court upon good cause shown or as
20 otherwise provided herein, and the name of the defendant
21 obliterated from the official index requested to be kept by the
22 circuit court clerk under Section 16 of the Clerks of Courts
23 Act in connection with the arrest and conviction for the
24 offense but the order shall not affect any index issued by the
25 circuit court clerk before the entry of the order. The court
26 shall enter the expungement order regardless of whether the

1 petitioner has prior criminal convictions.

2 All records sealed by the Department of State Police may be
3 disseminated by the Department only as required by law or to
4 the arresting authority, the State's Attorney, the court upon a
5 later arrest for the same or similar offense, or for the
6 purpose of sentencing for any subsequent felony. Upon
7 conviction for any subsequent offense, the Department of
8 Corrections shall have access to all sealed records of the
9 Department pertaining to that individual.

10 Upon entry of the order of expungement, the clerk of the
11 circuit court shall promptly mail a copy of the order to the
12 person whose records were expunged and sealed.

13 (i) Any person seeking a certificate of innocence under
14 this Section based on the dismissal of an indictment or
15 information or acquittal that occurred before the effective
16 date of this amendatory Act of the 95th General Assembly shall
17 file his or her petition within 2 years after the effective
18 date of this amendatory Act of the 95th General Assembly. Any
19 person seeking a certificate of innocence under this Section
20 based on the dismissal of an indictment or information or
21 acquittal that occurred on or after the effective date of this
22 amendatory Act of the 95th General Assembly shall file his or
23 her petition within 2 years after the dismissal.

24 (j) The decision to grant or deny a certificate of
25 innocence shall be binding only with respect to claims filed in
26 the Court of Claims and shall not have a res judicata effect on

1 any other proceedings.

2 (Source: P.A. 95-970, eff. 9-22-08; 96-1550, eff. 7-1-11.)