



Sen. Kwame Raoul

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1 AMENDMENT TO HOUSE BILL 821

2 AMENDMENT NO. _____. Amend House Bill 821 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, Section 5-6-3.3 of the
2 Unified Code of Corrections, Section 12-4.3(b)(1) and
3 (2) of the Criminal Code of 1961 (as those provisions
4 existed before their deletion by Public Act 89-313),
5 Section 10-102 of the Illinois Alcoholism and Other
6 Drug Dependency Act, Section 40-10 of the Alcoholism
7 and Other Drug Abuse and Dependency Act, or Section 10
8 of the Steroid Control Act. For the purpose of this
9 Section, "successful completion" of an order of
10 qualified probation under Section 10-102 of the
11 Illinois Alcoholism and Other Drug Dependency Act and
12 Section 40-10 of the Alcoholism and Other Drug Abuse
13 and Dependency Act means that the probation was
14 terminated satisfactorily and the judgment of
15 conviction was vacated.

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

26 (L) "Sexual offense committed against a minor"

1 includes but is not limited to the offenses of indecent
2 solicitation of a child or criminal sexual abuse when
3 the victim of such offense is under 18 years of age.

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

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

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

16 (A) the sealing or expungement of the records of
17 arrests or charges not initiated by arrest that result
18 in an order of supervision for or conviction of: (i)
19 any sexual offense committed against a minor; (ii)
20 Section 11-501 of the Illinois Vehicle Code or a
21 similar provision of a local ordinance; or (iii)
22 Section 11-503 of the Illinois Vehicle Code or a
23 similar provision of a local ordinance, unless the
24 arrest or charge is for a misdemeanor violation of
25 subsection (a) of Section 11-503 or a similar provision
26 of a local ordinance, that occurred prior to the

1 offender reaching the age of 25 years and the offender
2 has no other conviction for violating Section 11-501 or
3 11-503 of the Illinois Vehicle Code or a similar
4 provision of a local ordinance.

5 (B) the sealing or expungement of records of minor
6 traffic offenses (as defined in subsection (a)(1)(G)),
7 unless the petitioner was arrested and released
8 without charging.

9 (C) the sealing of the records of arrests or
10 charges not initiated by arrest which result in an
11 order of supervision, an order of qualified probation
12 (as defined in subsection (a)(1)(J)), or a conviction
13 for the following offenses:

14 (i) offenses included in Article 11 of the
15 Criminal Code of 1961 or the Criminal Code of 2012
16 or a similar provision of a local ordinance, except
17 Section 11-14 of the Criminal Code of 1961 or the
18 Criminal Code of 2012, or a similar provision of a
19 local ordinance;

20 (ii) Section 11-1.50, 12-3.4, 12-15, 12-30,
21 26-5, or 48-1 of the Criminal Code of 1961 or the
22 Criminal Code of 2012, or a similar provision of a
23 local ordinance;

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

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

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

6 (D) the sealing of the records of an arrest which
7 results in the petitioner being charged with a felony
8 offense or records of a charge not initiated by arrest
9 for a felony offense unless:

10 (i) the charge is amended to a misdemeanor and
11 is otherwise eligible to be sealed pursuant to
12 subsection (c);

13 (ii) the charge is brought along with another
14 charge as a part of one case and the charge results
15 in acquittal, dismissal, or conviction when the
16 conviction was reversed or vacated, and another
17 charge brought in the same case results in a
18 disposition for a misdemeanor offense that is
19 eligible to be sealed pursuant to subsection (c) or
20 a disposition listed in paragraph (i), (iii), or
21 (iv) of this subsection;

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

24 (iv) the charge is for a Class 4 felony offense
25 listed in subsection (c) (2) (F) or the charge is
26 amended to a Class 4 felony offense listed in

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

11 (v) the charge results in acquittal,
12 dismissal, or the petitioner's release without
13 conviction; or

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

16 (b) Expungement.

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

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

22 (B) Each arrest or charge not initiated by arrest
23 sought to be expunged resulted in: (i) acquittal,
24 dismissal, or the petitioner's release without
25 charging, unless excluded by subsection (a)(3)(B);
26 (ii) a conviction which was vacated or reversed, unless

1 excluded by subsection (a)(3)(B); (iii) an order of
2 supervision and such supervision was successfully
3 completed by the petitioner, unless excluded by
4 subsection (a)(3)(A) or (a)(3)(B); or (iv) an order of
5 qualified probation (as defined in subsection
6 (a)(1)(J)) and such probation was successfully
7 completed by the petitioner.

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

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

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

19 (i) Those arrests or charges that resulted in
20 orders of supervision under Section 3-707, 3-708,
21 3-710, or 5-401.3 of the Illinois Vehicle Code or a
22 similar provision of a local ordinance, or under
23 Section 11-1.50, 12-3.2, or 12-15 of the Criminal
24 Code of 1961 or the Criminal Code of 2012, or a
25 similar provision of a local ordinance, shall not
26 be eligible for expungement until 5 years have

1 passed following the satisfactory termination of
2 the supervision.

3 (i-5) Those arrests or charges that resulted
4 in orders of supervision for a misdemeanor
5 violation of subsection (a) of Section 11-503 of
6 the Illinois Vehicle Code or a similar provision of
7 a local ordinance, that occurred prior to the
8 offender reaching the age of 25 years and the
9 offender has no other conviction for violating
10 Section 11-501 or 11-503 of the Illinois Vehicle
11 Code or a similar provision of a local ordinance
12 shall not be eligible for expungement until the
13 petitioner has reached the age of 25 years.

14 (ii) Those arrests or charges that resulted in
15 orders of supervision for any other offenses shall
16 not be eligible for expungement until 2 years have
17 passed following the satisfactory termination of
18 the supervision.

19 (C) When the arrest or charge not initiated by
20 arrest sought to be expunged resulted in an order of
21 qualified probation, successfully completed by the
22 petitioner, such records shall not be eligible for
23 expungement until 5 years have passed following the
24 satisfactory termination of the probation.

25 (3) Those records maintained by the Department for
26 persons arrested prior to their 17th birthday shall be

1 expunged as provided in Section 5-915 of the Juvenile Court
2 Act of 1987.

3 (4) Whenever a person has been arrested for or
4 convicted of any offense, in the name of a person whose
5 identity he or she has stolen or otherwise come into
6 possession of, the aggrieved person from whom the identity
7 was stolen or otherwise obtained without authorization,
8 upon learning of the person having been arrested using his
9 or her identity, may, upon verified petition to the chief
10 judge of the circuit wherein the arrest was made, have a
11 court order entered nunc pro tunc by the Chief Judge to
12 correct the arrest record, conviction record, if any, and
13 all official records of the arresting authority, the
14 Department, other criminal justice agencies, the
15 prosecutor, and the trial court concerning such arrest, if
16 any, by removing his or her name from all such records in
17 connection with the arrest and conviction, if any, and by
18 inserting in the records the name of the offender, if known
19 or ascertainable, in lieu of the aggrieved's name. The
20 records of the circuit court clerk shall be sealed until
21 further order of the court upon good cause shown and the
22 name of the aggrieved person obliterated on the official
23 index required to be kept by the circuit court clerk under
24 Section 16 of the Clerks of Courts Act, but the order shall
25 not affect any index issued by the circuit court clerk
26 before the entry of the order. Nothing in this Section

1 shall limit the Department of State Police or other
2 criminal justice agencies or prosecutors from listing
3 under an offender's name the false names he or she has
4 used.

5 (5) Whenever a person has been convicted of criminal
6 sexual assault, aggravated criminal sexual assault,
7 predatory criminal sexual assault of a child, criminal
8 sexual abuse, or aggravated criminal sexual abuse, the
9 victim of that offense may request that the State's
10 Attorney of the county in which the conviction occurred
11 file a verified petition with the presiding trial judge at
12 the petitioner's trial to have a court order entered to
13 seal the records of the circuit court clerk in connection
14 with the proceedings of the trial court concerning that
15 offense. However, the records of the arresting authority
16 and the Department of State Police concerning the offense
17 shall not be sealed. The court, upon good cause shown,
18 shall make the records of the circuit court clerk in
19 connection with the proceedings of the trial court
20 concerning the offense available for public inspection.

21 (6) If a conviction has been set aside on direct review
22 or on collateral attack and the court determines by clear
23 and convincing evidence that the petitioner was factually
24 innocent of the charge, the court that finds the petitioner
25 factually innocent of the charge shall enter an expungement
26 order for the conviction for which the petitioner has been

1 determined to be innocent as provided in subsection (b) of
2 Section 5-5-4 of the Unified Code of Corrections.

3 (7) Nothing in this Section shall prevent the
4 Department of State Police from maintaining all records of
5 any person who is admitted to probation upon terms and
6 conditions and who fulfills those terms and conditions
7 pursuant to Section 10 of the Cannabis Control Act, Section
8 410 of the Illinois Controlled Substances Act, Section 70
9 of the Methamphetamine Control and Community Protection
10 Act, Section 5-6-3.3 of the Unified Code of Corrections,
11 Section 12-4.3 or subdivision (b)(1) of Section 12-3.05 of
12 the Criminal Code of 1961 or the Criminal Code of 2012,
13 Section 10-102 of the Illinois Alcoholism and Other Drug
14 Dependency Act, Section 40-10 of the Alcoholism and Other
15 Drug Abuse and Dependency Act, or Section 10 of the Steroid
16 Control Act.

17 (8) If the petitioner has been granted a certificate of
18 innocence under Section 2-702 of the Code of Civil
19 Procedure, the court that grants the certificate of
20 innocence shall also enter an order expunging the
21 conviction for which the petitioner has been determined to
22 be innocent as provided in subsection (h) of Section 2-702
23 of the Code of Civil Procedure.

24 (c) Sealing.

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

1 to expungement of criminal records, this subsection
2 authorizes the sealing of criminal records of adults and of
3 minors prosecuted as adults.

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

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

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

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

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

19 (E) Arrests or charges not initiated by arrest
20 resulting in orders of first offender probation under
21 Section 10 of the Cannabis Control Act, Section 410 of
22 the Illinois Controlled Substances Act, Section 70 of
23 the Methamphetamine Control and Community Protection
24 Act, or Section 5-6-3.3 of the Unified Code of
25 Corrections; and

26 (F) Arrests or charges not initiated by arrest

1 resulting in Class 4 felony convictions for the
2 following offenses:

3 (i) Section 11-14 of the Criminal Code of 1961
4 or the Criminal Code of 2012;

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

6 (iii) Section 402 of the Illinois Controlled
7 Substances Act;

8 (iv) the Methamphetamine Precursor Control
9 Act; and

10 (v) the Steroid Control Act.

11 (3) When Records Are Eligible to Be Sealed. Records
12 identified as eligible under subsection (c)(2) may be
13 sealed as follows:

14 (A) Records identified as eligible under
15 subsection (c)(2)(A) and (c)(2)(B) may be sealed at any
16 time.

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

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

6 (D) Records identified in subsection
7 (a) (3) (A) (iii) may be sealed after the petitioner has
8 reached the age of 25 years.

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

17 (5) Notice of eligibility for sealing. Upon entry of a
18 disposition for an eligible record under this subsection
19 (c), the petitioner shall be informed by the court of the
20 right to have the records sealed and the procedures for the
21 sealing of the records.

22 (d) Procedure. The following procedures apply to
23 expungement under subsections (b) and (e), and sealing under
24 subsections (c) and (e-5):

25 (1) Filing the petition. Upon becoming eligible to
26 petition for the expungement or sealing of records under

1 this Section, the petitioner shall file a petition
2 requesting the expungement or sealing of records with the
3 clerk of the court where the arrests occurred or the
4 charges were brought, or both. If arrests occurred or
5 charges were brought in multiple jurisdictions, a petition
6 must be filed in each such jurisdiction. The petitioner
7 shall pay the applicable fee, if not waived.

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

22 (3) Drug test. The petitioner must attach to the
23 petition proof that the petitioner has passed a test taken
24 within 30 days before the filing of the petition showing
25 the absence within his or her body of all illegal
26 substances as defined by the Illinois Controlled

1 Substances Act, the Methamphetamine Control and Community
2 Protection Act, and the Cannabis Control Act if he or she
3 is petitioning to seal felony records pursuant to clause
4 (c) (2) (E), (c) (2) (F) (ii)-(v), or (e-5) or if he or she is
5 petitioning to expunge felony records of a qualified
6 probation pursuant to clause (b) (1) (B) (iv).

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

13 (5) Objections.

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

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

22 (6) Entry of order.

23 (A) The Chief Judge of the circuit wherein the
24 charge was brought, any judge of that circuit
25 designated by the Chief Judge, or in counties of less
26 than 3,000,000 inhabitants, the presiding trial judge

1 at the petitioner's trial, if any, shall rule on the
2 petition to expunge or seal as set forth in this
3 subsection (d) (6).

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

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

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

1 (9) Effect of order.

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

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

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

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

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

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

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

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

22 (iv) records impounded by the Department may
23 be disseminated by the Department only as required
24 by law or to the arresting authority, the State's
25 Attorney, and the court upon a later arrest for the
26 same or a similar offense or for the purpose of

1 sentencing for any subsequent felony, and to the
2 Department of Corrections upon conviction for any
3 offense; and

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

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

19 (10) Fees. The Department may charge the petitioner a
20 fee equivalent to the cost of processing any order to
21 expunge or seal records. Notwithstanding any provision of
22 the Clerks of Courts Act to the contrary, the circuit court
23 clerk may charge a fee equivalent to the cost associated
24 with the sealing or expungement of records by the circuit
25 court clerk. From the total filing fee collected for the
26 petition to seal or expunge, the circuit court clerk shall

1 deposit \$10 into the Circuit Court Clerk Operation and
2 Administrative Fund, to be used to offset the costs
3 incurred by the circuit court clerk in performing the
4 additional duties required to serve the petition to seal or
5 expunge on all parties. The circuit court clerk shall
6 collect and forward the Department of State Police portion
7 of the fee to the Department and it shall be deposited in
8 the State Police Services Fund.

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

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

19 (e) Whenever a person who has been convicted of an offense
20 is granted a pardon by the Governor which specifically
21 authorizes expungement, he or she may, upon verified petition
22 to the Chief Judge of the circuit where the person had been
23 convicted, any judge of the circuit designated by the Chief
24 Judge, or in counties of less than 3,000,000 inhabitants, the
25 presiding trial judge at the defendant's trial, have a court
26 order entered expunging the record of arrest from the official

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

20 (e-5) Whenever a person who has been convicted of an
21 offense is granted a certificate of eligibility for sealing by
22 the Prisoner Review Board which specifically authorizes
23 sealing, he or she may, upon verified petition to the Chief
24 Judge of the circuit where the person had been convicted, any
25 judge of the circuit designated by the Chief Judge, or in
26 counties of less than 3,000,000 inhabitants, the presiding

1 trial judge at the petitioner's trial, have a court order
2 entered sealing the record of arrest from the official records
3 of the arresting authority and order that the records of the
4 circuit court clerk and the Department be sealed until further
5 order of the court upon good cause shown or as otherwise
6 provided herein, and the name of the petitioner obliterated
7 from the official index requested to be kept by the circuit
8 court clerk under Section 16 of the Clerks of Courts Act in
9 connection with the arrest and conviction for the offense for
10 which he or she had been granted the certificate but the order
11 shall not affect any index issued by the circuit court clerk
12 before the entry of the order. All records sealed by the
13 Department may be disseminated by the Department only as
14 required by this Act or to the arresting authority, a law
15 enforcement agency, the State's Attorney, and the court upon a
16 later arrest for the same or similar offense or for the purpose
17 of sentencing for any subsequent felony. Upon conviction for
18 any subsequent offense, the Department of Corrections shall
19 have access to all sealed records of the Department pertaining
20 to that individual. Upon entry of the order of sealing, the
21 circuit court clerk shall promptly mail a copy of the order to
22 the person who was granted the certificate of eligibility for
23 sealing.

24 (f) Subject to available funding, the Illinois Department
25 of Corrections shall conduct a study of the impact of sealing,
26 especially on employment and recidivism rates, utilizing a

1 random sample of those who apply for the sealing of their
2 criminal records under Public Act 93-211. At the request of the
3 Illinois Department of Corrections, records of the Illinois
4 Department of Employment Security shall be utilized as
5 appropriate to assist in the study. The study shall not
6 disclose any data in a manner that would allow the
7 identification of any particular individual or employing unit.
8 The study shall be made available to the General Assembly no
9 later than September 1, 2010.

10 (Source: P.A. 96-409, eff. 1-1-10; 96-1401, eff. 7-29-10;
11 96-1532, eff. 1-1-12; 96-1551, Article 1, Section 905, eff.
12 7-1-11; 96-1551, Article 2, Section 925, eff. 7-1-11; 97-443,
13 eff. 8-19-11; 97-698, eff. 1-1-13; 97-1026, eff. 1-1-13;
14 97-1108, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1118, eff.
15 1-1-13; 97-1120, eff. 1-1-13; 97-1150, eff. 1-25-13.)

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

18 (730 ILCS 5/5-5-4) (from Ch. 38, par. 1005-5-4)

19 Sec. 5-5-4. Resentences.

20 (a) Where a conviction or sentence has been set aside on
21 direct review or on collateral attack, the court shall not
22 impose a new sentence for the same offense or for a different
23 offense based on the same conduct which is more severe than the
24 prior sentence less the portion of the prior sentence

1 previously satisfied unless the more severe sentence is based
2 upon conduct on the part of the defendant occurring after the
3 original sentencing. If a sentence is vacated on appeal or on
4 collateral attack due to the failure of the trier of fact at
5 trial to determine beyond a reasonable doubt the existence of a
6 fact (other than a prior conviction) necessary to increase the
7 punishment for the offense beyond the statutory maximum
8 otherwise applicable, either the defendant may be re-sentenced
9 to a term within the range otherwise provided or, if the State
10 files notice of its intention to again seek the extended
11 sentence, the defendant shall be afforded a new trial.

12 (b) If a conviction or sentence has been set aside on
13 direct review or on collateral attack and the court determines
14 by clear and convincing evidence that the defendant was
15 factually innocent of the charge, the court shall enter an
16 order expunging the record of arrest from the official records
17 of the arresting authority and order that the records of the
18 clerk of the circuit court and Department of State Police be
19 sealed until further order of the court upon good cause shown
20 or as 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 defendant 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 (c) If a conviction has been vacated as a result of a claim
14 of actual innocence based on newly discovered evidence made
15 under Section 122-1 of the Code of Criminal Procedure of 1963
16 or Section 2-1401 of the Code of Civil Procedure, and the
17 provisions of paragraphs (1) and (2) of subsection (g) of
18 Section 2-702 of the Code of Civil Procedure are otherwise
19 satisfied, the court shall enter an order for a certificate of
20 innocence and an order expunging the conviction for which the
21 petitioner has been determined to be innocent as provided in
22 subsection (h) of Section 2-702 of the Code of Civil Procedure.

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

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

1 (735 ILCS 5/2-702)

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

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

23 (b) Any person convicted and subsequently imprisoned for
24 one or more felonies by the State of Illinois which he or she
25 did not commit may, under the conditions hereinafter provided,

1 file a petition for certificate of innocence in the circuit
2 court of the county in which the person was convicted. The
3 petition shall request a certificate of innocence finding that
4 the petitioner was innocent of all offenses for which he or she
5 was incarcerated.

6 (c) In order to present the claim for certificate of
7 innocence of an unjust conviction and imprisonment, the
8 petitioner must attach to his or her petition documentation
9 demonstrating that:

10 (1) he or she has been convicted of one or more
11 felonies by the State of Illinois and subsequently
12 sentenced to a term of imprisonment, and has served all or
13 any part of the sentence; and

14 (2) his or her judgment of conviction was reversed or
15 vacated, and the indictment or information dismissed or, if
16 a new trial was ordered, either he or she was found not
17 guilty at the new trial or he or she was not retried and
18 the indictment or information dismissed; or the statute, or
19 application thereof, on which the indictment or
20 information was based violated the Constitution of the
21 United States or the State of Illinois; and

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

24 (d) The petition shall state facts in sufficient detail to
25 permit the court to find that the petitioner is likely to
26 succeed at trial in proving that the petitioner is innocent of

1 the offenses charged in the indictment or information or his or
2 her acts or omissions charged in the indictment or information
3 did not constitute a felony or misdemeanor against the State of
4 Illinois, and the petitioner did not by his or her own conduct
5 voluntarily cause or bring about his or her conviction. The
6 petition shall be verified by the petitioner.

7 (e) A copy of the petition shall be served on the Attorney
8 General and the State's Attorney of the county where the
9 conviction was had. The Attorney General and the State's
10 Attorney of the county where the conviction was had shall have
11 the right to intervene as parties.

12 (f) In any hearing seeking a certificate of innocence, the
13 court may take judicial notice of prior sworn testimony or
14 evidence admitted in the criminal proceedings related to the
15 convictions which resulted in the alleged wrongful
16 incarceration, if the petitioner was either represented by
17 counsel at such prior proceedings or the right to counsel was
18 knowingly waived.

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

21 (1) the petitioner was convicted of one or more
22 felonies by the State of Illinois and subsequently
23 sentenced to a term of imprisonment, and has served all or
24 any part of the sentence;

25 (2) (A) the judgment of conviction was reversed or
26 vacated, and the indictment or information dismissed or, if

1 a new trial was ordered, either the petitioner was found
2 not guilty at the new trial or the petitioner was not
3 retried and the indictment or information dismissed; or (B)
4 the statute, or application thereof, on which the
5 indictment or information was based violated the
6 Constitution of the United States or the State of Illinois;

7 (3) the petitioner is innocent of the offenses charged
8 in the indictment or information or his or her acts or
9 omissions charged in the indictment or information did not
10 constitute a felony or misdemeanor against the State; and

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

13 (h) If the court finds that the petitioner is entitled to a
14 judgment, it shall enter a certificate of innocence finding
15 that the petitioner was innocent of all offenses for which he
16 or she was incarcerated. Upon entry of the certificate of
17 innocence or pardon from the Governor stating that such pardon
18 was issued on the ground of innocence of the crime for which he
19 or she was imprisoned, (1) the clerk of the court shall
20 transmit a copy of the certificate of innocence to the clerk of
21 the Court of Claims, together with the claimant's current
22 address; and (2) the court shall enter an order expunging ~~or~~
23 ~~sealing~~ the record of arrest from the official records of the
24 arresting authority and order that the records of the clerk of
25 the circuit court and Department of State Police be sealed
26 until 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 but the order shall not affect any index issued by the
6 circuit court clerk before the entry of the order. The court
7 shall enter the expungement order regardless of whether the
8 petitioner has prior criminal convictions.

9 All records sealed by the Department of State Police may be
10 disseminated by the Department only as required by law or to
11 the arresting authority, the State's Attorney, the court upon a
12 later arrest for the same or similar offense, or for the
13 purpose of sentencing for any subsequent felony. Upon
14 conviction for any subsequent offense, the Department of
15 Corrections shall have access to all sealed records of the
16 Department pertaining to that individual.

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

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

1 based on the dismissal of an indictment or information or
2 acquittal that occurred on or after the effective date of this
3 amendatory Act of the 95th General Assembly shall file his or
4 her petition within 2 years after the dismissal.

5 (j) The decision to grant or deny a certificate of
6 innocence shall be binding only with respect to claims filed in
7 the Court of Claims and shall not have a res judicata effect on
8 any other proceedings.

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