



Rep. Rita Mayfield

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1 AMENDMENT TO HOUSE BILL 2378

2 AMENDMENT NO. _____. Amend House Bill 2378, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

7 (20 ILCS 2630/5.2)

8 Sec. 5.2. Expungement and sealing.

9 (a) General Provisions.

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

13 (A) The following terms shall have the meanings
14 ascribed to them in the Unified Code of Corrections,
15 730 ILCS 5/5-1-2 through 5/5-1-22:

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

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

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

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

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

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

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

24 (F) As used in this Section, "last sentence" means
25 the sentence, order of supervision, or order of
26 qualified probation (as defined by subsection

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

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

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

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

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

1 Section 70 of the Methamphetamine Control and
2 Community Protection Act, Section 5-6-3.3 or 5-6-3.4
3 of the Unified Code of Corrections, Section
4 12-4.3(b)(1) and (2) of the Criminal Code of 1961 (as
5 those provisions existed before their deletion by
6 Public Act 89-313), Section 10-102 of the Illinois
7 Alcoholism and Other Drug Dependency Act, Section
8 40-10 of the Alcoholism and Other Drug Abuse and
9 Dependency Act, or Section 10 of the Steroid Control
10 Act. For the purpose of this Section, "successful
11 completion" of an order of qualified probation under
12 Section 10-102 of the Illinois Alcoholism and Other
13 Drug Dependency Act and Section 40-10 of the Alcoholism
14 and Other Drug Abuse and Dependency Act means that the
15 probation was terminated satisfactorily and the
16 judgment of conviction was vacated.

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

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

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

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

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

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

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

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

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

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

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

25 (iii) Sections 12-3.1 or 12-3.2 of the
26 Criminal Code of 1961 or the Criminal Code of 2012,

1 or Section 125 of the Stalking No Contact Order
2 Act, or Section 219 of the Civil No Contact Order
3 Act, offenses defined as "crimes of violence" in
4 Section 2 of the Crime Victims Compensation Act or
5 a similar provision of a local ordinance;

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

8 (v) any offense or attempted offense that
9 would subject a person to registration under the
10 Sex Offender Registration Act.

11 (D) the sealing of the records of an arrest which
12 results in the petitioner being charged with a felony
13 offense or records of a charge not initiated by arrest
14 for a felony offense unless:

15 (i) the charge is amended to a misdemeanor and
16 is otherwise eligible to be sealed pursuant to
17 subsection (c);

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

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

3 (iv) the charge is for a felony offense listed
4 in subsection (c) (2) (F) or the charge is amended to
5 a felony offense listed in subsection (c) (2) (F);

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

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

11 (b) Expungement.

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

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

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

1 (a) (1) (J)) and such probation was successfully
2 completed by the petitioner.

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

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

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

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

24 (i-5) Those arrests or charges that resulted
25 in orders of supervision for a misdemeanor
26 violation of subsection (a) of Section 11-503 of

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

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

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

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

24 (4) Whenever a person has been arrested for or
25 convicted of any offense, in the name of a person whose
26 identity he or she has stolen or otherwise come into

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

26 (5) Whenever a person has been convicted of criminal

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

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

24 (7) Nothing in this Section shall prevent the
25 Department of State Police from maintaining all records of
26 any person who is admitted to probation upon terms and

1 conditions and who fulfills those terms and conditions
2 pursuant to Section 10 of the Cannabis Control Act, Section
3 410 of the Illinois Controlled Substances Act, Section 70
4 of the Methamphetamine Control and Community Protection
5 Act, Section 5-6-3.3 or 5-6-3.4 of the Unified Code of
6 Corrections, Section 12-4.3 or subdivision (b)(1) of
7 Section 12-3.05 of the Criminal Code of 1961 or the
8 Criminal Code of 2012, Section 10-102 of the Illinois
9 Alcoholism and Other Drug Dependency Act, Section 40-10 of
10 the Alcoholism and Other Drug Abuse and Dependency Act, or
11 Section 10 of the Steroid Control Act.

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

19 (c) Sealing.

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

25 (2) Eligible Records. The following records may be
26 sealed:

1 (A) All arrests resulting in release without
2 charging;

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

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

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

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

21 (F) Arrests or charges not initiated by arrest
22 resulting in felony convictions for the following
23 offenses:

24 (i) Class 4 felony convictions for:

25 Prostitution under Section 11-14 of the
26 Criminal Code of 1961 or the Criminal Code of

1 2012.

2 Possession of cannabis under Section 4 of
3 the Cannabis Control Act.

4 Possession of a controlled substance under
5 Section 402 of the Illinois Controlled
6 Substances Act.

7 Offenses under the Methamphetamine
8 Precursor Control Act.

9 Offenses under the Steroid Control Act.

10 Theft under Section 16-1 of the Criminal
11 Code of 1961 or the Criminal Code of 2012.

12 Retail theft under Section 16A-3 or
13 paragraph (a) of 16-25 of the Criminal Code of
14 1961 or the Criminal Code of 2012.

15 Deceptive practices under Section 17-1 of
16 the Criminal Code of 1961 or the Criminal Code
17 of 2012.

18 Forgery under Section 17-3 of the Criminal
19 Code of 1961 or the Criminal Code of 2012.

20 Possession of burglary tools under Section
21 19-2 of the Criminal Code of 1961 or the
22 Criminal Code of 2012.

23 (ii) Class 3 felony convictions for:

24 Theft under Section 16-1 of the Criminal
25 Code of 1961 or the Criminal Code of 2012.

26 Retail theft under Section 16A-3 or

1 paragraph (a) of 16-25 of the Criminal Code of
2 1961 or the Criminal Code of 2012.

3 Deceptive practices under Section 17-1 of
4 the Criminal Code of 1961 or the Criminal Code
5 of 2012.

6 Forgery under Section 17-3 of the Criminal
7 Code of 1961 or the Criminal Code of 2012.

8 Possession with intent to manufacture or
9 deliver a controlled substance under Section
10 401 of the Illinois Controlled Substances 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), (e), and (e-6) and sealing
24 under 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:

4 (A) seal felony records under clause (c) (2) (E);

5 (B) seal felony records for a violation of the
6 Illinois Controlled Substances Act, the
7 Methamphetamine Control and Community Protection Act,
8 or the Cannabis Control Act under clause (c) (2) (F);

9 (C) seal felony records under subsection (e-5); or

10 (D) expunge felony records of a qualified
11 probation under clause (b) (1) (B) (iv).

12 (4) Service of petition. The circuit court clerk shall
13 promptly serve a copy of the petition and documentation to
14 support the petition under subsection (e), (e-5), or (e-6)
15 on the State's Attorney or prosecutor charged with the duty
16 of prosecuting the offense, the Department of State Police,
17 the arresting agency and the chief legal officer of the
18 unit of local government effecting the arrest.

19 (5) Objections.

20 (A) Any party entitled to notice of the petition
21 may file an objection to the petition. All objections
22 shall be in writing, shall be filed with the circuit
23 court clerk, and shall state with specificity the basis
24 of the objection.

25 (B) Objections to a petition to expunge or seal
26 must be filed within 60 days of the date of service of

1 the petition.

2 (6) Entry of order.

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

10 (B) Unless the State's Attorney or prosecutor, the
11 Department of State Police, the arresting agency, or
12 the chief legal officer files an objection to the
13 petition to expunge or seal within 60 days from the
14 date of service of the petition, the court shall enter
15 an order granting or denying the petition.

16 (7) Hearings. If an objection is filed, the court shall
17 set a date for a hearing and notify the petitioner and all
18 parties entitled to notice of the petition of the hearing
19 date at least 30 days prior to the hearing. Prior to the
20 hearing, the State's Attorney shall consult with the
21 Department as to the appropriateness of the relief sought
22 in the petition to expunge or seal. At the hearing, the
23 court shall hear evidence on whether the petition should or
24 should not be granted, and shall grant or deny the petition
25 to expunge or seal the records based on the evidence
26 presented at the hearing. The court may consider the

1 following:

2 (A) the strength of the evidence supporting the
3 defendant's conviction;

4 (B) the reasons for retention of the conviction
5 records by the State;

6 (C) the petitioner's age, criminal record history,
7 and employment history;

8 (D) the period of time between the petitioner's
9 arrest on the charge resulting in the conviction and
10 the filing of the petition under this Section; and

11 (E) the specific adverse consequences the
12 petitioner may be subject to if the petition is denied.

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

22 (9) Implementation of order.

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

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

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

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

15 (iii) in response to an inquiry for expunged
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
19 existed.

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

22 (i) the records shall be expunged (as defined
23 in subsection (a) (1) (E)) by the arresting agency
24 and any other agency as ordered by the court,
25 within 60 days of the date of service of the order,
26 unless a motion to vacate, modify, or reconsider

1 the order is filed pursuant to paragraph (12) of
2 subsection (d) of this Section;

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

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

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

25 (v) in response to an inquiry for such records
26 from anyone not authorized by law to access such

1 records, the court, the Department, or the agency
2 receiving such inquiry shall reply as it does in
3 response to inquiries when no records ever
4 existed.

5 (B-5) Upon entry of an order to expunge records
6 under subsection (e-6):

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

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

22 (iii) the records shall be impounded by the
23 Department within 60 days of the date of service of
24 the order as ordered by the court, unless a motion
25 to vacate, modify, or reconsider the order is filed
26 under paragraph (12) of subsection (d) of this

1 Section;

2 (iv) records impounded by the Department may
3 be disseminated by the Department only as required
4 by law or to the arresting authority, the State's
5 Attorney, and the court upon a later arrest for the
6 same or a similar offense or for the purpose of
7 sentencing for any subsequent felony, and to the
8 Department of Corrections upon conviction for any
9 offense; and

10 (v) in response to an inquiry for these records
11 from anyone not authorized by law to access the
12 records, the court, the Department, or the agency
13 receiving the inquiry shall reply as it does in
14 response to inquiries when no records ever
15 existed.

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

25 (D) The Department shall send written notice to the
26 petitioner of its compliance with each order to expunge

1 or seal records within 60 days of the date of service
2 of that order or, if a motion to vacate, modify, or
3 reconsider is filed, within 60 days of service of the
4 order resolving the motion, if that order requires the
5 Department to expunge or seal records. In the event of
6 an appeal from the circuit court order, the Department
7 shall send written notice to the petitioner of its
8 compliance with an Appellate Court or Supreme Court
9 judgment to expunge or seal records within 60 days of
10 the issuance of the court's mandate. The notice is not
11 required while any motion to vacate, modify, or
12 reconsider, or any appeal or petition for
13 discretionary appellate review, is pending.

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

1 collect and forward the Department of State Police portion
2 of the fee to the Department and it shall be deposited in
3 the State Police Services Fund.

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

9 (12) Motion to Vacate, Modify, or Reconsider. Under
10 Section 2-1203 of the Code of Civil Procedure, the
11 petitioner or any party entitled to notice may file a
12 motion to vacate, modify, or reconsider the order granting
13 or denying the petition to expunge or seal within 60 days
14 of service of the order. If filed more than 60 days after
15 service of the order, a petition to vacate, modify, or
16 reconsider shall comply with subsection (c) of Section
17 2-1401 of the Code of Civil Procedure. Upon filing of a
18 motion to vacate, modify, or reconsider, notice of the
19 motion shall be served upon the petitioner and all parties
20 entitled to notice of the petition.

21 (13) Effect of Order. An order granting a petition
22 under the expungement or sealing provisions of this Section
23 shall not be considered void because it fails to comply
24 with the provisions of this Section or because of any error
25 asserted in a motion to vacate, modify, or reconsider. The
26 circuit court retains jurisdiction to determine whether

1 the order is voidable and to vacate, modify, or reconsider
2 its terms based on a motion filed under paragraph (12) of
3 this subsection (d).

4 (14) Compliance with Order Granting Petition to Seal
5 Records. Unless a court has entered a stay of an order
6 granting a petition to seal, all parties entitled to notice
7 of the petition must fully comply with the terms of the
8 order within 60 days of service of the order even if a
9 party is seeking relief from the order through a motion
10 filed under paragraph (12) of this subsection (d) or is
11 appealing the order.

12 (15) Compliance with Order Granting Petition to
13 Expunge Records. While a party is seeking relief from the
14 order granting the petition to expunge through a motion
15 filed under paragraph (12) of this subsection (d) or is
16 appealing the order, and unless a court has entered a stay
17 of that order, the parties entitled to notice of the
18 petition must seal, but need not expunge, the records until
19 there is a final order on the motion for relief or, in the
20 case of an appeal, the issuance of that court's mandate.

21 (16) The changes to this subsection (d) made by Public
22 Act 98-163 ~~this amendatory Act of the 98th General Assembly~~
23 apply to all petitions pending on August 5, 2013 (the
24 effective date of Public Act 98-163) ~~this amendatory Act of~~
25 ~~the 98th General Assembly~~ and to all orders ruling on a
26 petition to expunge or seal on or after August 5, 2013 (the

1 effective date of Public Act 98-163) ~~this amendatory Act of~~
2 ~~the 98th General Assembly.~~

3 (e) Whenever a person who has been convicted of an offense
4 is granted a pardon by the Governor which specifically
5 authorizes expungement, he or she may, upon verified petition
6 to the Chief Judge of the circuit where the person had been
7 convicted, any judge of the circuit designated by the Chief
8 Judge, or in counties of less than 3,000,000 inhabitants, the
9 presiding trial judge at the defendant's trial, have a court
10 order entered expunging the record of arrest from the official
11 records of the arresting authority and order that the records
12 of the circuit court clerk and the Department be sealed until
13 further order of the court upon good cause shown or as
14 otherwise provided herein, and the name of the defendant
15 obliterated from the official index requested to be kept by the
16 circuit court clerk under Section 16 of the Clerks of Courts
17 Act in connection with the arrest and conviction for the
18 offense for which he or she had been pardoned but the order
19 shall not affect any index issued by the circuit court clerk
20 before the entry of the order. All records sealed by the
21 Department may be disseminated by the Department only to the
22 arresting authority, the State's Attorney, and the court upon a
23 later arrest for the same or similar offense or for the purpose
24 of sentencing for any subsequent felony. Upon conviction for
25 any subsequent offense, the Department of Corrections shall
26 have access to all sealed records of the Department pertaining

1 to that individual. Upon entry of the order of expungement, the
2 circuit court clerk shall promptly mail a copy of the order to
3 the person who was pardoned.

4 (e-5) Whenever a person who has been convicted of an
5 offense is granted a certificate of eligibility for sealing by
6 the Prisoner Review Board which specifically authorizes
7 sealing, he or she may, upon verified petition to the Chief
8 Judge of the circuit where the person had been convicted, any
9 judge of the circuit designated by the Chief Judge, or in
10 counties of less than 3,000,000 inhabitants, the presiding
11 trial judge at the petitioner's trial, have a court order
12 entered sealing the record of arrest from the official records
13 of the arresting authority and order that the records of the
14 circuit court clerk and the Department be sealed until further
15 order of the court upon good cause shown or as otherwise
16 provided herein, and the name of the petitioner obliterated
17 from the official index requested to be kept by the circuit
18 court clerk under Section 16 of the Clerks of Courts Act in
19 connection with the arrest and conviction for the offense for
20 which he or she had been granted the certificate but the order
21 shall not affect any index issued by the circuit court clerk
22 before the entry of the order. All records sealed by the
23 Department may be disseminated by the Department only as
24 required by this Act or to the arresting authority, a law
25 enforcement agency, the State's Attorney, and the court upon a
26 later arrest for the same or similar offense or for the purpose

1 of sentencing for any subsequent felony. Upon conviction for
2 any subsequent offense, the Department of Corrections shall
3 have access to all sealed records of the Department pertaining
4 to that individual. Upon entry of the order of sealing, the
5 circuit court clerk shall promptly mail a copy of the order to
6 the person who was granted the certificate of eligibility for
7 sealing.

8 (e-6) Whenever a person who has been convicted of an
9 offense is granted a certificate of eligibility for expungement
10 by the Prisoner Review Board which specifically authorizes
11 expungement, he or she may, upon verified petition to the Chief
12 Judge of the circuit where the person had been convicted, any
13 judge of the circuit designated by the Chief Judge, or in
14 counties of less than 3,000,000 inhabitants, the presiding
15 trial judge at the petitioner's trial, have a court order
16 entered expunging the record of arrest from the official
17 records of the arresting authority and order that the records
18 of the circuit court clerk and the Department be sealed until
19 further order of the court upon good cause shown or as
20 otherwise provided herein, and the name of the petitioner
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 for which he or she had been granted the certificate
25 but the order shall not affect any index issued by the circuit
26 court clerk before the entry of the order. All records sealed

1 by the Department may be disseminated by the Department only as
2 required by this Act or to the arresting authority, a law
3 enforcement agency, the State's Attorney, and the court upon a
4 later arrest for the same or similar offense or for the purpose
5 of sentencing for any subsequent felony. Upon conviction for
6 any subsequent offense, the Department of Corrections shall
7 have access to all expunged records of the Department
8 pertaining to that individual. Upon entry of the order of
9 expungement, the circuit court clerk shall promptly mail a copy
10 of the order to the person who was granted the certificate of
11 eligibility for expungement.

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

24 (Source: P.A. 97-443, eff. 8-19-11; 97-698, eff. 1-1-13;
25 97-1026, eff. 1-1-13; 97-1108, eff. 1-1-13; 97-1109, eff.
26 1-1-13; 97-1118, eff. 1-1-13; 97-1120, eff. 1-1-13; 97-1150,

1 eff. 1-25-13; 98-133, eff. 1-1-14; 98-142, eff. 1-1-14; 98-163,
2 eff. 8-5-13; 98-164, eff. 1-1-14; 98-399, eff. 8-16-13; revised
3 9-4-13.)".