

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), (e), and (e-5) of this Section,
8 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 shall enter an
18 expungement order as provided in subsection (b) of Section
19 5-5-4 of the Unified Code of Corrections.

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

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

8 (8) If a petitioner has been granted a certificate of
9 innocence under Section 2-702 of the Code of Civil
10 Procedure, the court that grants the certificate of
11 innocence shall also enter an order expunging the
12 conviction for which the petitioner has been determined to
13 be innocent, notwithstanding the presence of additional
14 felony charges or criminal convictions present on the
15 petitioner's record. Subsection (b) of Section 5-5-4 of the
16 Unified Code of Corrections does not prevent the court from
17 entering the expungement order for a petitioner who has
18 been granted a certificate of innocence under Section 2-702
19 of the Code of Civil Procedure. The court shall execute the
20 expungement according to the process established in
21 subsection (h) of Section 2-702 of the Code of Civil
22 Procedure. The procedures established in subsection (d) do
23 not govern or control this paragraph (8). The effect of the
24 order shall be to restore the person to the status he or
25 she occupied prior to the arrest, plea, or conviction for
26 which he or she was determined to be innocent. No person as

1 to whom the order has been entered shall be held
2 thereafter, under any provision of law, to be guilty of
3 perjury or otherwise giving a false statement due to his or
4 her failure to recite or acknowledge the arrest, plea,
5 trial, conviction, or expungement in response to any
6 inquiry made of him or her for any purpose whatsoever.

7 (c) Sealing.

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

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

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

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

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

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

1 (a) (3);

2 (E) Arrests or charges not initiated by arrest
3 resulting in orders of first offender probation under
4 Section 10 of the Cannabis Control Act, Section 410 of
5 the Illinois Controlled Substances Act, Section 70 of
6 the Methamphetamine Control and Community Protection
7 Act, or Section 5-6-3.3 of the Unified Code of
8 Corrections; and

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

12 (i) Section 11-14 of the Criminal Code of 1961
13 or the Criminal Code of 2012;

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

15 (iii) Section 402 of the Illinois Controlled
16 Substances Act;

17 (iv) the Methamphetamine Precursor Control
18 Act; and

19 (v) the Steroid Control Act.

20 (3) When Records Are Eligible to Be Sealed. Records
21 identified as eligible under subsection (c) (2) may be
22 sealed as follows:

23 (A) Records identified as eligible under
24 subsection (c) (2) (A) and (c) (2) (B) may be sealed at any
25 time.

26 (B) Records identified as eligible under

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

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

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

18 (4) Subsequent felony convictions. A person may not
19 have subsequent felony conviction records sealed as
20 provided in this subsection (c) if he or she is convicted
21 of any felony offense after the date of the sealing of
22 prior felony convictions as provided in this subsection
23 (c). The court may, upon conviction for a subsequent felony
24 offense, order the unsealing of prior felony conviction
25 records previously ordered sealed by the court.

26 (5) Notice of eligibility for sealing. Upon entry of a

1 disposition for an eligible record under this subsection
2 (c), the petitioner shall be informed by the court of the
3 right to have the records sealed and the procedures for the
4 sealing of the records.

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

8 (1) Filing the petition. Upon becoming eligible to
9 petition for the expungement or sealing of records under
10 this Section, the petitioner shall file a petition
11 requesting the expungement or sealing of records with the
12 clerk of the court where the arrests occurred or the
13 charges were brought, or both. If arrests occurred or
14 charges were brought in multiple jurisdictions, a petition
15 must be filed in each such jurisdiction. The petitioner
16 shall pay the applicable fee, if not waived.

17 (2) Contents of petition. The petition shall be
18 verified and shall contain the petitioner's name, date of
19 birth, current address and, for each arrest or charge not
20 initiated by arrest sought to be sealed or expunged, the
21 case number, the date of arrest (if any), the identity of
22 the arresting authority, and such other information as the
23 court may require. During the pendency of the proceeding,
24 the petitioner shall promptly notify the circuit court
25 clerk of any change of his or her address. If the
26 petitioner has received a certificate of eligibility for

1 sealing from the Prisoner Review Board under paragraph (10)
2 of subsection (a) of Section 3-3-2 of the Unified Code of
3 Corrections, the certificate shall be attached to the
4 petition.

5 (3) Drug test. The petitioner must attach to the
6 petition proof that the petitioner has passed a test taken
7 within 30 days before the filing of the petition showing
8 the absence within his or her body of all illegal
9 substances as defined by the Illinois Controlled
10 Substances Act, the Methamphetamine Control and Community
11 Protection Act, and the Cannabis Control Act if he or she
12 is petitioning to seal felony records pursuant to clause
13 (c) (2) (E), (c) (2) (F) (ii)-(v), or (e-5) or if he or she is
14 petitioning to expunge felony records of a qualified
15 probation pursuant to clause (b) (1) (B) (iv).

16 (4) Service of petition. The circuit court clerk shall
17 promptly serve a copy of the petition on the State's
18 Attorney or prosecutor charged with the duty of prosecuting
19 the offense, the Department of State Police, the arresting
20 agency and the chief legal officer of the unit of local
21 government effecting the arrest.

22 (5) Objections.

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

1 of the objection.

2 (B) Objections to a petition to expunge or seal
3 must be filed within 60 days of the date of service of
4 the petition.

5 (6) Entry of order.

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

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

19 (7) Hearings. If an objection is filed, the court shall
20 set a date for a hearing and notify the petitioner and all
21 parties entitled to notice of the petition of the hearing
22 date at least 30 days prior to the hearing, and shall hear
23 evidence on whether the petition should or should not be
24 granted, and shall grant or deny the petition to expunge or
25 seal the records based on the evidence presented at the
26 hearing.

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

10 (9) Effect of order.

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

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

20 (ii) the records of the circuit court clerk
21 shall be impounded until further order of the court
22 upon good cause shown and the name of the
23 petitioner obliterated on the official index
24 required to be kept by the circuit court clerk
25 under Section 16 of the Clerks of Courts Act, but
26 the order shall not affect any index issued by the

1 circuit court clerk before the entry of the order;
2 and

3 (iii) in response to an inquiry for expunged
4 records, the court, the Department, or the agency
5 receiving such inquiry, shall reply as it does in
6 response to inquiries when no records ever
7 existed.

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

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

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

25 (iii) the records shall be impounded by the
26 Department within 60 days of the date of service of

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

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

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

19 (C) Upon entry of an order to seal records under
20 subsection (c), the arresting agency, any other agency
21 as ordered by the court, the Department, and the court
22 shall seal the records (as defined in subsection
23 (a)(1)(K)). 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 existed.

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

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

23 (12) Motion to Vacate, Modify, or Reconsider. The
24 petitioner or any party entitled to notice may file a
25 motion to vacate, modify, or reconsider the order granting
26 or denying the petition to expunge or seal within 60 days

1 of service of the order.

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

1 circuit court clerk shall promptly mail a copy of the order to
2 the person who was pardoned.

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

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

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

19 (Source: P.A. 96-409, eff. 1-1-10; 96-1401, eff. 7-29-10;
20 96-1532, eff. 1-1-12; 96-1551, Article 1, Section 905, eff.
21 7-1-11; 96-1551, Article 2, Section 925, eff. 7-1-11; 97-443,
22 eff. 8-19-11; 97-698, eff. 1-1-13; 97-1026, eff. 1-1-13;
23 97-1108, eff. 1-1-13; 97-1109, eff. 1-1-13; 97-1118, eff.
24 1-1-13; 97-1120, eff. 1-1-13; 97-1150, eff. 1-25-13.)

25 Section 10. The Unified Code of Corrections is amended by

1 changing Section 5-5-4 as follows:

2 (730 ILCS 5/5-5-4) (from Ch. 38, par. 1005-5-4)

3 Sec. 5-5-4. Resentences.

4 (a) Where a conviction or sentence has been set aside on
5 direct review or on collateral attack, the court shall not
6 impose a new sentence for the same offense or for a different
7 offense based on the same conduct which is more severe than the
8 prior sentence less the portion of the prior sentence
9 previously satisfied unless the more severe sentence is based
10 upon conduct on the part of the defendant occurring after the
11 original sentencing. If a sentence is vacated on appeal or on
12 collateral attack due to the failure of the trier of fact at
13 trial to determine beyond a reasonable doubt the existence of a
14 fact (other than a prior conviction) necessary to increase the
15 punishment for the offense beyond the statutory maximum
16 otherwise applicable, either the defendant may be re-sentenced
17 to a term within the range otherwise provided or, if the State
18 files notice of its intention to again seek the extended
19 sentence, the defendant shall be afforded a new trial.

20 (b) If a conviction or sentence has been set aside on
21 direct review or on collateral attack and the court determines
22 by clear and convincing evidence that the defendant was
23 factually innocent of the charge, excluding where the court has
24 granted the defendant a certificate of innocence and an
25 expungement under Section 2-702 of the Code of Civil Procedure,

1 the court shall enter an order expunging the record of arrest
2 from the official records of the arresting authority and order
3 that the records of the clerk of the circuit court and
4 Department of State Police be sealed until further order of the
5 court upon good cause shown or as otherwise provided herein,
6 and the name of the defendant obliterated from the official
7 index requested to be kept by the circuit court clerk under
8 Section 16 of the Clerks of Courts Act in connection with the
9 arrest and conviction for the offense but the order shall not
10 affect any index issued by the circuit court clerk before the
11 entry of the order.

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

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

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. Upon entry of the certificate of innocence, ~~and (2)~~
23 the court shall enter an order requiring the arresting agency,
24 the Department of State Police, and any other agency as ordered
25 by the court to expunge, as defined by subsection (a) (1) (E) of
26 Section 5.2 of the Criminal Identification Act, the records of

1 arrest and conviction for the offense that the petitioner was
2 found to be innocent, within 60 days of the date of service.
3 The order shall also ~~expunging or sealing the record of arrest~~
4 ~~from the official records of the arresting authority and order~~
5 that the records of the clerk of the circuit court regarding
6 the arrest and conviction for the offense be impounded and
7 ~~Department of State Police be sealed~~ until further order of the
8 court upon good cause shown or as otherwise provided herein,
9 and the name of the defendant obliterated from the official
10 index requested to be kept by the circuit court clerk under
11 Section 16 of the Clerks of Courts Act in connection with the
12 arrest and conviction for the offense but the order shall not
13 affect any index issued by the circuit court clerk before the
14 entry of the order. If a person is pardoned by the Governor
15 based on the grounds of innocence for the crime for which he or
16 she was imprisoned, the individual must file for an expungement
17 as provided in Section 5.2 of the Criminal Identification Act.

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

1 amendatory Act of the 95th General Assembly shall file his or
2 her petition within 2 years after the dismissal.

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

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