



BY JANAAN HASHIM

Until now, only nine felonies qualified for sealing of records. With passage of HB 2373, nearly all felony convictions qualify for sealing. More than a million Illinoisans are affected by this sweeping expansion, the legal analysis is also affected. Here's an update on the expansion.

New Law Broadly Expands Sealing of Criminal Records

"SO LET ME GET THIS STRAIGHT," I ASKED TO BE SURE, "SOMEONE WITH A CLASS X felony conviction can now apply for sealing of that conviction?!"

"Yes," I was told, in reference to HB 2373, which was signed into law on August 23 by Governor Rauner and with bi-partisan support.

Effective that day, all felony convictions regardless of class now qualify for sealing of record, except for a handful of offenses. Despite the lack of fanfare, this law potentially affects millions of Illinoisans, particularly those of low-income communities of color.¹

1. See Margaret (Peggy) Stevenson, *Expungement: A Gateway to Work*, Clearinghouse Community (Apr. 2015), <http://povertylaw.org/clearinghouse/articles/expungement>.



◀ **JANAAN HASHIM** is a partner at Amal Law Group, LLC, where she focuses on expungements and sealing of records. She is also a regular volunteer with Cabrini Greed Legal Aid.

✉ jhashim@amallaw.com

Moreover, it will also change the way attorneys practice this area of law.

The law governing expungements and sealing of records, 20 ILCS 2630/5.2 *et seq.*, has progressively expanded since its first enactment. For instance, until this year, if Person A had a conviction for one offense and a non-conviction for another offense, the latter offense could not qualify for expungement, it could only qualify for sealing. However, in January the law changed allowing that non-conviction arrest to qualify for expungement even if the petitioner had a conviction in their past.²

For Person A this could easily mean better job opportunities, better housing, and, equally important, “lifting of a heavy psychological weight.”³ On the broader level, this single expansion means that an estimated “1.14 million additional people would become eligible to expunge their records.”⁴ For the practitioner, it means that two petitions need to be filed for Person A, which remains the process until the supreme court crafts a new petition allowing for simultaneous filing, something that is already in the making (see sidebar).

Under the newly effective law, felony convictions now generally mirror misdemeanor convictions when it comes to which offenses the law allows to have sealed. The law allows all felony convictions, including most violent crimes, to qualify for sealing except for convictions of:

1. domestic battery;
2. battery or aggravated battery on unborn children;
3. violations of orders of protection;
4. DUI;
5. reckless and aggravated reckless driving;
6. sex crimes;
7. actually committing or attempting to commit crimes that would require registration on the sex offender registry; and
8. crimes against animals under the Humane Care for Animals Act.⁵

Implications for practitioners

For the practitioner, this new expansion carries several implications for clients who have now-qualifying felony convictions. First, for clients who are in the process of filing for a certificate of sealing or considering that path, they can now apply for sealing of those

convictions.

Second, for clients who have already filed for executive clemency, certificate of good conduct, certificates of relief from disability, or a health care waiver, the practitioner must consider whether to change mid-course and apply for sealing of record or continue on the course and simultaneously or later apply for sealing. Risks and benefits, of course, must be explained to and weighed by the client.

Third, for new cases, sealing is now another option for postconviction relief. A primary consideration before taking the more beneficial route of sealing is the chance of success at the hearing should the state object on, for instance, public policy grounds. At the hearing the petitioner’s attorney would have to persuade the court that the petitioner is worthy of having the petition granted using the factors listed under 20 ILCS 2630/5.2(d)(7).⁶

For instance, if it had been only a few years since the end of a Class 1 sentence for theft of a diamond-studded necklace that cost \$105,000, the attorney would have to give a reality check to the client who may think that they have a good chance at getting the conviction sealed. The state could argue that given the nature of the offense and its recency, the record should be available for public scrutiny. The court could conceivably agree with the state and want more time for the petitioner to prove that he has truly divorced from a lifestyle of luxury sticky fingers.

On the other hand, if the petitioner of a Class 1 felony conviction for residential burglary had completed his sentence decades ago, had no encounter with the law since then, acquired professional certification, can demonstrate personal stability, and can show that a denied petition would preclude him from getting employment in a better paying job, then the petitioner may have a better chance at success.

With the newfound hope that millions of ex-offenders may now have, legal counsel will need to explain to them that sealing is a process that relies on the discretion of the court. Too often those filled with renewed hope

2. 20 ILCS 2630/5.2(b)(1)(A), repealed by House Bill 6328 (eff. January 1, 2017).

3. Stevenson, *supra* note 1.

4. 99th Ill. Gen. Assem., House Bill 6328, 2016 Sess.

5. 20 ILCS 2630/5.2(c)(2)(F).

6. These factors are not exhaustive and each case should be decided on its own merits. See *People v. Laguna*, 2014 IL App (2d) 131145, ¶¶ 15, 16.

TAKEAWAYS >>

- As of August 23, 2017, all felony convictions in Illinois, regardless of class, now qualify for sealing of record, except for a handful of offenses.
- For clients who have already filed for executive clemency, a certificate of good conduct, a certificate of relief from disability, or a health care waiver, the practitioner must consider whether to change mid-course and apply for sealing of record or continue on the course and simultaneously or later apply for sealing.
- Petitioners have only one opportunity to seal felony record convictions and sealing is at the discretion of the court. The waiting periods in place under the previous law remain in effect.

EFFECTIVE AUGUST 23, ALL FELONY CONVICTIONS REGARDLESS OF CLASS NOW QUALIFY FOR SEALING OF RECORD, EXCEPT FOR A HANDFUL OF OFFENSES.

need to be clearly told that while the new law is an available tool, it does not bring with it a guarantee of sealing.

One chance to seal felony convictions

Still in place is the rule allowing only one opportunity to seal felony record convictions.⁷ Once a person has had their felony conviction sealed, the law does not allow them to file for another sealing if they get a subsequent conviction.⁸ In addition, this provision allows for the court to *unseal* prior felony conviction records.⁹

As such, the attorney must vet this out before filing a petition to seal so as to survive a state's objection based on a technicality. Counsel must also make it clear to the client that if the petition to seal is granted, there will be no other chance of doing this in the future should there be another conviction.

Wait periods remain the same

One of the more confusing aspects of expungements and sealing of records in Illinois are the wait periods imposed before someone can apply for either expungement or sealing of their records.

For expungement, there are four main time periods the practitioner should keep in mind plus one quirky time period. First, the client may apply immediately after there is an acquittal, dismissal, or a release without being charged.¹⁰ If there is a conviction that was reversed or vacated, there is also no wait period.¹¹ If the client receives an executive clemency or obtains a certificate of eligibility for expungement as an honorably discharged veteran, there is no wait period.¹²

For cases that are stricken off with leave to reinstate (commonly called SOLD) or non-suited, then the petitioner must wait

160 days before filing.

Supervision is a popular disposition of cases that involves one of two different wait periods as well as *no qualification for expungement* of certain offenses. The most common wait period before the client can file for expungement is two years after successfully finishing the supervision.¹³ However, if the supervision was for driving on a suspended license, criminal sexual abuse, or domestic battery, among others, then the wait period is five years.¹⁴

An interesting quirk for supervision is reckless driving. If the driver was under 25 when getting supervision for this offense, then after age 25 he may apply to expunge this so long as the driver has no other convictions by age 25.

Practitioners should keep in mind that *expungement is not available* in cases that resulted in supervision for a number of offenses including: reckless driving (over the age of 25), DUI, sex offenses, domestic battery, and violation of an OP.¹⁵

For qualified probations, like Treatment Alternatives for Safe Communities (TASC), the client may apply for expungement five years after successfully completing his or her qualified probation.¹⁶


Clients wanting to seal their records must wait a minimum of three years after the end of their last sentence before filing their petition.¹⁷ Thus, if a client wants to seal a felony conviction from 1991 and completed a sentence for another offense in 2016, the 1991 conviction cannot be sealed until 2019. In a sense, the most recent conviction serves as a magnet to all prior convictions in determining

New expungement forms now online

The Illinois Supreme Court's Access to Justice Commission created a forms committee to create statewide, standardized court forms to help self-represented litigants through the court process. (See last month's LawPulse for more on the committee's work.)

The expungement subcommittee has updated these forms to reflect recent changes in the law, which allow litigants to file simultaneously for an expungement and sealing of their criminal history record. The revised forms are available to laypersons and attorneys at <http://illinoiscourts.gov/Forms/approved/default.asp>.

These forms are drafted by experts in each area of law by attorneys, advocates, and judges. They are drafted at a 6th grade reading level, have a user-friendly "how-to" guide, and include instruction bubbles along the side. They can be filled out online and are also ADA accessible, and all courts in Illinois are required to accept these forms (even if they have a parallel local court form). Once the committee finalizes the forms, they are then translated into Illinois' top languages for people with limited English proficiency.

All forms go through user testing with real people and the committee accepts public comment from any person or organization. 

7. 20 ILCS 2630/5.2(c)(4).

8. *Id.*

9. *Id.*

10. *Id.* at § 2630/5.2(b)(2)(A).

11. *Id.*

12. *Id.*

13. *Id.* at § 2630/5.2(b)(2)(B)(ii).

14. *Id.* at § 2630/5.2(b)(2)(B)(i). Other offenses include driving an uninsured vehicle, display of a false insurance card, and scrap processors not keeping proper records.

15. For a complete list, see *id.* at § 2630/5.2(a)(3)(A)-(C).

16. *Id.* at § 2630/5.2(b)(2)(C). Unlike other arrest records for expungements, for qualified probation, the Illinois State Police does not destroy these records. See *id.* at § 2630/5.2(b)(7).

17. *Id.* at § 2630/5.2(c)(3)(C).

the eligibility date for sealing of any conviction.

One way, however, to bypass the wait period for sealing is through educational advancement.¹⁸ If the petitioner earned a high school diploma, GED, or other type of degree/certificate, then the petitioner skips the wait period and can file for the sealing of records upon successful termination of the last sentence.¹⁹

The main caveat is that the degree, diploma, or certificate earned must be earned during the period of the petitioner's sentence, aftercare release, or mandatory supervised release.²⁰ And there's no shortcut by completing the level of education *before* the sentence. In advising the client who expresses an interest in furthering their education, advising them of this wait period bypass could be a significant incentive.

Also, for any drug conviction, the law still requires a clean drug test to be taken within 30 days of filing the petition and to be included with the petition.²¹

One-year filing fee waiver pilot program to end soon

The law that took effect last January adopted a county fee waiver pilot program, which eliminates the \$120-plus filing fee for petitions in which the cases seeking expungement resulted in a release without charge, acquittal or dismissal, or a conviction that was vacated or reversed.²² On a practical level, eliminating this fee

has made it easier for petitioners to restore their reputations and move forward more easily in finding better employment and housing.

This provision, however, comes with three specific restrictions. First, it only applies to counties with a population exceeding 3 million – i.e., Cook.²³ Bearing that in mind, according to Cook County Sheriff's Office research, "17 percent of the more than 70,000 people who enter Cook County Jail every year get released as a result of having their cases dropped or being found not guilty."²⁴ As such, a large number of Illinoisans in Cook County can benefit from this pilot program.

Second, this provision does not include non-convictions resulting from supervision or qualified probation; with these, the fees still apply. Lastly, as the title of subsection 1.5 indicates, this is a pilot program and so it will expire on January 1, 2018.

On the practical level, where a client has either a supervision or qualified probation to be expunged *and* an arrest in which the charges were dropped, the attorney will need to prepare two petitions: one with the cases involving the fee and the other with the cases excluding the fee.

Call for volunteer attorneys

Illinois has a healthy handful of dedicated pro bono and low bono legal aid clinics that help bridge the gap between

STILL IN PLACE IS THE RULE ALLOWING ONLY ONE OPPORTUNITY TO SEAL FELONY RECORD CONVICTIONS.

the legal system and those with limited to no income. With the sealing expansion, there is no doubt that the number of people seeking assistance will increase significantly, placing an added strain on these already overworked organizations.

Many of these organizations welcome volunteer attorneys who want to give their time and legal skills to helping the disadvantaged. For many, a background in criminal defense is not needed, only an interest in learning and serving.

Additionally, Cook County Clerk Dorothy Brown offers a one-day expungement and sealing of records summit every June in coordination with Cabrini Green Legal Aid. The program involves a training session for interested attorneys of the legal and procedural analyses involved. Participation in this program is certified for CLE credit.

With the law now in place to help people climb out of the rut they've been in because of their felony conviction records, offering them a helping hand to get out of that rut has never been so important or needed. **ISB**

ISBA RESOURCES >>

- Andrew Gough, *Using Certificates of Good Conduct for Clients with Criminal Records*, 105 Ill. B.J. 36 (Sept. 2017), <https://www.isba.org/ibj/2017/09/usingcertificatesgoodconductclientscrimi>.
- ISBA Free CLE, *Getting Adult and Juvenile Criminal Records Expunged: The legal Process in Illinois* (recorded Jan. 27, 2016), <http://onlinecle.isba.org/store/seminar/seminar.php?seminar=51856>.
- Joshua D. Carter, *A Practitioner's Guide to Expunging and Sealing Criminal Records in Illinois*, 100 Ill. B.J. 642 (Dec. 2012), <https://www.isba.org/ibj/2012/12/apractitionersguidetoexpungingandseal>.

18. *Id.* at § 2630/5.2(c)(3)(E).

19. *Id.* Other types of educational achievement include associate's degree, bachelor's degree, career certificate, and vocational certification.

20. *Id.*

21. *Id.* at § 2630/5.2(d)(3).

22. *Id.* at § 2630/5.2(d)(1.5).

23. *Id.*

24. Press Release, Cook County Sheriff's Office, Landmark Expungement and Sealing Reform Legislation Passes Illinois (Apr. 22, 2016), http://www.cook-countysheriff.com/press_page/press_ExpungementReform_04_22_2016.html.