



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0771

Introduced 2/18/2005, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

New Act

Creates the Second Chance Act. Creates a Second Chance Commission in each of the 5 judicial districts of the State appointed by the presiding appellate judge of the district. Provides that a Commission shall deliberate petitions for relief filed by defendants after the final disposition of their criminal cases. Provides that a Commission may order the following forms of relief: (1) expungement of criminal records; (2) sealing of criminal records; (3) waiver of disabilities barring employment, licensing, benefits, or other right or privilege; or (4) certificates of good conduct. Establishes criteria that the Commission uses in determining whether or not to grant relief. Establishes procedures by which the State's Attorney, the arresting agency, the Department of State Police, and the chief legal officer of the unit of local government effecting the defendant's arrest may file an objection to the petition.

LRB094 07762 RLC 41574 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal records.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Second
5 Chance Act.

6 Section 5. Principle, purpose and goals. The General
7 Assembly hereby codifies the promise that Illinois, like the
8 nation at large, is the land of the second chance and the
9 principle that every person has the potential to turn his or
10 her life around after having run afoul of the law and to become
11 a law abiding member of the community with the full array of
12 rights and responsibilities of citizenship.

13 The chief goal of this Act is to reduce crime and
14 recidivism and thereby promote the safety of Illinois
15 communities. To accomplish this goal, people with criminal
16 records need to become fully engaged in assuming the
17 responsibilities of family, community and citizenship, and to
18 be able to work. Employment is the first and most critical step
19 in assuming personal responsibility for one's self and one's
20 family and for becoming a tax payor contributing to society at
21 large. Because criminal records impose barriers to assuming and
22 exercising these responsibilities, rights, and privileges,
23 this Act aims to provide relief from those criminal records. It
24 also aims to give those with criminal records an incentive to
25 stay on the straight and narrow because the Act will provide
26 them with a second chance a chance to be released from the
27 stigma of a criminal record if they can demonstrate they have
28 turned from crime to responsibility. This Act is intended to
29 provide those who have paid their debt to society the
30 opportunity to return to their communities as productive,
31 competent and healthy citizens with all the responsibilities,
32 rights, and privileges that such citizenship conveys.

1 Section 10. Second Chance Commissions. Five Second Chance
2 Commissions, one for each of the 5 Illinois judicial districts,
3 shall be appointed to review applications for relief under this
4 Act and to determine what, if any, relief is to be granted the
5 petitioner.

6 (a) Composition. Each Commission's members shall be
7 appointed by the presiding appellate judge of the judicial
8 district and include the following from within that judicial
9 district: the presiding appellate judge, or his or her
10 designee; a State's Attorney, or his or her designee; a chief
11 of police or sheriff, or his or her designee; a public
12 defender, which may include the State Appellate Defender, or
13 his or her designee; and an individual working with a faith
14 based or community based organization that helps former
15 prisoners make the transition back into the community. The
16 presiding appellate judge shall also appoint no less than 5
17 alternate Commissioners representing the 5 institutions
18 described in this subsection (a) to deliberate in instances
19 where Commissioners are absent or have a conflict of interest.
20 In judicial districts with a population of more than 2,800,000,
21 the presiding appellate judge may appoint as many additional
22 permanent commissioners as the workload warrants, so long as
23 each commission that deliberates a petition is composed of 5
24 individuals representing the 5 institutions described in this
25 subsection (a).

26 (b) Recusal and removal. A Commissioner shall recuse
27 himself or herself from deliberating on any petition if he or
28 she has a personal or financial or any other interest in the
29 matter. The presiding appellate judge shall have the power to
30 recuse any Commissioner from deliberations on a petition in
31 which the judge ascertains the individual has an interest. The
32 presiding appellate judge has the authority to remove
33 Commissioners for cause, including misconduct or repeated
34 absences.

35 (c) Duties. Each Commission shall deliberate petitions for

1 relief as set forth in this Act and decide such petitions by a
2 majority vote of the 5 Commissioners or their alternates.

3 Section 15. Forms of relief. Notwithstanding any other
4 provision of law to the contrary and cumulative with any rights
5 to pardon, expungement, sealing of criminal records, and of
6 obtaining other forms of relief from disabilities, forfeitures
7 and bars imposed by law consequent to criminal convictions, any
8 person who has no charges pending against him or her and who
9 has a criminal record, whether the person was convicted or the
10 matter or matters were otherwise disposed of, may petition for,
11 and may be granted by the Commission, such relief from the
12 consequences that criminal records impose as follows:

13 (a) Expungement of records. The expungement of a record is
14 its complete destruction by government and private agencies and
15 the erasure of all indicia, including court indexes, that it
16 ever existed. The entirety of an individual's criminal record
17 may be expunged or only such parts as the Commission may
18 determine are consistent with the principle, purpose, and goals
19 of this Act.

20 (1) Legal effect of expungement. When a criminal record
21 is expunged, the legal effect is (i) the complete and
22 permanent extinguishment of all disabilities, forfeitures,
23 and bars imposed by law or practice that would otherwise be
24 consequent to the record, and (ii) that the record does not
25 exist and the acts giving rise to the conviction did not
26 occur. When a person has his or her record expunged, he or
27 she may deny or answer no, even under penalty of perjury,
28 to any question concerning that existence of the expunged
29 record and the acts giving rise to it.

30 (2) Penalties. Maintaining, revealing, or otherwise
31 using in any manner, regardless of intent, an expunged
32 record for any purpose gives an aggrieved party, including
33 but not limited to the party named in the expunged records,
34 a private right of action under this Act, and the court, in
35 its discretion, may impose, in addition to injunctive

1 relief and actual damages, statutory damages of no more
2 than \$10,000, and award attorney's fees to the plaintiff.

3 (b) Sealing of records. The sealing of a record is the
4 full or partial, temporary or permanent, removal of the record,
5 including index references to it, from such public or private
6 views and uses as the Commission determines are consistent with
7 the principle, purpose, and goals of this Act. The Commission
8 may seal some or all parts of a record; it may seal the record
9 on a temporary basis until such conditions imposed on the
10 applicant are fulfilled; it may seal the record permanently,
11 but subject it to reopening upon either subsequent arrest or
12 conviction; it may seal it and bar its view and use by all
13 parties, or only by named entities, including but not limited
14 to law enforcement and entities required to conduct background
15 checks.

16 (1) Legal effect. If a record is fully sealed as to all
17 parties and uses, the legal effect is the same as an
18 expungement except that the record may be reopened and used
19 in such a manner as the Commission shall direct in its
20 final order on the petition. If a record is partially
21 sealed and closed to all parties and uses, the legal effect
22 of such offenses as are sealed is the same as an
23 expungement of those offenses, subject to any conditions
24 imposed by the Commission. If a record is fully or
25 partially, but temporarily, sealed subject to conditions
26 imposed by the Commission being fulfilled by the
27 petitioner, during the period of the sealing the legal
28 effect is the same as an expungement. If the conditions are
29 not fulfilled, the record is reopened. If a record is
30 sealed only as to certain parties or certain purposes, the
31 legal effect as to those parties and purposes is the same
32 as an expungement.

33 (2) Penalties. Maintaining, revealing, or otherwise
34 using in any manner, regardless of intent, a sealed record
35 by any person or entity not authorized by the terms of the
36 order to view, maintain, or use the record and for any

1 purpose beyond the scope of the order gives an aggrieved
2 party, including but not limited to the party named in the
3 expunged records, a private right of action under this Act,
4 and the court, in its discretion, may impose, in addition
5 to injunctive relief and actual damages, statutory damages
6 of no more than \$10,000, and award attorney's fees to the
7 plaintiff.

8 (c) Waivers. A waiver is a determination by the Commission
9 that allows a person, otherwise barred by law from employment,
10 a license, benefit, or any other right or privilege, to
11 establish that lifting that bar is consistent with the
12 principle, purpose, and goals of this Act. Notwithstanding any
13 law to the contrary, the Commission may waive any disabilities
14 imposed by law and provide such relief to fulfill the purposes
15 of this Act. A waiver may cover as many disabilities as the
16 Commission may determine are consistent with this Act.

17 (1) Legal effect of waiver. The waiver has the effect
18 of lifting the disabilities consequent to the individual's
19 criminal record otherwise imposed by law that are
20 identified in the Commission's order.

21 (2) Penalties. If a person or entity does an act or
22 refuses to do an act on the basis of a criminal record when
23 the disability has been waived, the person with the waiver
24 has a private right of action under this Act, and the
25 court, in its discretion, may impose, in addition to
26 injunctive relief and actual damages, statutory damages of
27 no more than \$10,000, and award attorney's fees to the
28 plaintiff. This paragraph imposes no affirmative
29 obligations on any person or entity to grant employment, a
30 license, benefit, or any other right or privilege.

31 (d) Certificate of good conduct. A certificate of good
32 conduct is a statement provided by the Commission that the
33 petitioner has proven such good conduct as set forth in the
34 certificate to the satisfaction of the Commission. A
35 certificate of good conduct has no legal effect and imposes no
36 duties on third parties. The Commission shall issue

1 certificates of good conduct such as are consistent with the
2 principle, purpose, and goals of this Act and set forth its
3 findings as to the good conduct of the applicant on the
4 certificate.

5 Section 20. Criteria for relief. The petitioner shall
6 address and, on the deliberations and determinations on each
7 petition before the Commission, the Commission shall consider
8 the following criteria for relief:

9 (1) the principle, purpose, and goals of this Act as
10 applied to the petitioner;

11 (2) public safety, based on the nature and seriousness
12 of the crime or crimes in the record and the evidence of
13 rehabilitation of the petitioner.

14 (3) the number of offenses in the record and the
15 disposition and penalties imposed for each;

16 (4) the age of the individual at which the crime or
17 crimes were committed;

18 (5) the circumstances surrounding the crime or crimes;

19 (6) the nature and severity of the harm to others as a
20 consequence of the crime or crimes, and the extent to which
21 the petitioner has acknowledged that harm by making efforts
22 at restitution and shown contrition toward the victims, if
23 any, of the crime or crimes;

24 (7) the length of time since the last conviction;

25 (8) the nature of the conditions of probation and
26 parole and whether they were fulfilled;

27 (9) rehabilitative efforts relevant to the offenses
28 and circumstances of the petitioner's life such as alcohol
29 or substance abuse treatment; mental health treatment;
30 anger management; education; job readiness and skills
31 training; parenting training; and participation in
32 community or faith based services or programs, the results
33 of such efforts, and the references of program's staff;

34 (10) the facts and circumstances, if any, that led the
35 petitioner to make a choice to engage in no further

1 criminal conduct;

2 (11) the petitioner's work history, both paid and
3 voluntary, and references of employers;

4 (12) character references; and

5 (13) any other evidence the petitioner may present
6 concerning his or her rehabilitation and commitment to
7 refrain from criminal activity.

8 Section 25. Notice of eligibility for relief. Upon the
9 final disposition of a criminal case, such as acquittal,
10 release without conviction, being placed on supervision, or
11 conviction of a sealable offense, the defendant shall be
12 informed by the court of the right to petition for any of the 4
13 forms of relief under this Act. Upon release from a
14 correctional facility, State or local, the individual shall
15 again be informed of the right to petition for any of the 4
16 forms of relief under this Act. The notice shall be in writing
17 and shall include the address of the Commission in the district
18 where the incident arose.

19 Section 30. Guidelines. A Commission may establish
20 guidelines for the 4 kinds of relief for purposes of putting
21 petitioners on notice of what kind of relief, under what
22 circumstances, is likely to be granted. The guidelines may not,
23 however, be used to bar from full consideration petitions that
24 ask for relief that is inconsistent with the guidelines. Every
25 petition must be considered under the principle, purpose, and
26 goals of this Act on its own merits.

27 Section 35. Contents of petition. The petition seeking
28 relief may be submitted to the Commission in such a form and
29 manner as the petitioner chooses, or the Commission may
30 prescribe the use of a form it has prepared for these purposes,
31 in which case the petitioner shall use that form. In either
32 case, the petition shall be verified and contain the
33 petitioner's name, all aliases, date of birth, current address,

1 each charge, and for each charge: the case number, the date of
2 each charge, the identity of the arresting authority, the
3 disposition and sentence, if any, and such other and further
4 information as the Commission may require. It shall also
5 provide evidence of entitlement to relief based on the criteria
6 for relief set forth in Section 20 of this Act. The petitioner
7 may include references, statements of third parties, copies of
8 certificates, diplomas, academic transcripts, and such other
9 documents as may be relevant to the Commissioner's
10 deliberations. The petitioner may request a particular kind of
11 relief, and state why that form of relief is sought, but the
12 Commission is not bound by the scope of relief requested in the
13 petition and may narrow or enlarge it in a manner consistent
14 with the principle, purpose, and goals of this Act. During the
15 pendency of the petition, the petitioner shall promptly notify
16 the clerk of the court of any change of address. The petitioner
17 may also request to appear before the Commission for an
18 interview; however, the Commission is not required to grant the
19 request before acting on the petition.

20 Section 40. Fee. The fee for filing a petition shall be \$75
21 and shall be paid at the time of filing the petition.

22 Section 45. Procedure. The person seeking relief under this
23 Act shall file the petition described in Section 35 of this Act
24 along with the fee with the Commission in the judicial district
25 where his or her last criminal offense took place. Petitions
26 may be filed in person or by mail.

27 (a) Service on law enforcement agencies. The Commission
28 shall promptly provide a copy of the petition to each State's
29 Attorney or prosecutor charged with the duty of prosecuting the
30 offense or offenses from which the petitioner seeks relief, the
31 Department of State Police, the arresting agency or agencies,
32 and the chief legal officers of each unit of local government
33 effecting the arrest or arrests. Unless an objection is filed
34 with the Commission from one or more of these agencies within

1 90 days of notice of the petition, the Commission shall proceed
2 to act on the petition.

3 (b) Hearing upon objection. If an objection is filed, the
4 Commission shall set a date for a hearing no more than 30 days
5 from the date the objection was filed and notify the petitioner
6 and the party or parties that objected to the relief being
7 sought, and shall hear evidence on whether the relief requested
8 or any other relief under this Act should or should not be
9 granted.

10 (c) Timing of deliberations. The Commission shall take
11 initial action on the petition within 120 days of its receipt.
12 Within that 120 day period, whether objections have been filed
13 or not, the Commission must either (1) make a determination
14 based on the face of the petition and what materials, if any,
15 are submitted with it, and upon the facts adduced at the
16 hearing, if a hearing was held, (2) make a request for further
17 information from the petitioner, or (3) schedule an interview
18 with the petitioner, and with third parties, with or without a
19 request for further information. The petitioner shall be given
20 30 days to submit the additional requested information. If
21 further information requested of the petitioner cannot be
22 obtained in 30 days, the petitioner shall request an extension
23 of time, which shall not be unreasonably withheld. The
24 Commission, in the case of a hearing, an interview, or its
25 request for additional information, shall make its
26 determination on the petition within 30 days of the hearing,
27 interview or the receipt of additional information, and if more
28 than one apply, whichever is later in time.

29 Section 50. Order. The deliberations of the Commission
30 shall be final with the issuance of an order that sets forth
31 findings of fact and conclusions based on the principle,
32 purpose, and goals of this Act. The order must address the
33 community's concern for public safety and demonstrate how the
34 Commission concluded the individual had been rehabilitated
35 based on the criteria set forth in Section 20 of this Act. The

1 Commission may deny all forms of relief, or grant any such
2 relief as is authorized in Section 15 of this Act, and may set
3 such terms and conditions on the relief as are consistent with
4 the principle, purpose, and goals of this Act. Such conditions
5 may include, but are not limited to, periodic drug testing and
6 good faith participation in designated programs.

7 The effective date of the order may also be delayed until
8 the required conditions are fulfilled.

9 Section 55. Service of order. The Commission shall provide
10 copies of the order to such parties as are necessary to
11 accomplish its purposes, including the petitioner, the clerk of
12 the court or courts where the records may be found, the
13 Department of State Police, in a form and manner prescribed by
14 the Department, the State's Attorney or prosecutor charged with
15 the duty of prosecuting the offense, the arresting agency, the
16 chief legal officer of the unit of local government effecting
17 the arrest, and such other civil and criminal justice agencies
18 as may be necessary to provide the relief granted. If a record
19 is ordered sealed or expunged, all references to the case,
20 including all indexes of the case name, shall be obliterated or
21 otherwise remove from public view.

22 Section 60. Effect of subsequent acts. Except where a
23 record has been expunged, subsequent arrests affect the relief
24 granted under a Commission's order only to the extent
25 established in the order itself. The conviction of the
26 petitioner of any crime other than traffic infractions and
27 municipal violations nullifies and rescinds orders of sealing,
28 waivers, and certificates of good conduct.

29 Section 65. Reporting. Each Commission shall file an annual
30 report to the Governor and the General Assembly, that sets
31 forth: the number of petitions filed; the number where all
32 forms of relief are denied; and the number of petitions
33 granted, specifying the number of petitions granted by the type

1 of relief granted.