



Criminal Records Relief: From Records to Reentry

June 2020

The Issue:

Both Arrests and Convictions Have Long-lasting, Debilitating Effects on Everyday Life for Individuals, Families, and Communities.

The Criminal System's Impact on our Community



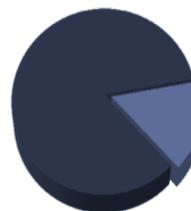
One in three Americans has been arrested by age 23, resulting in many job applicants having criminal records.

Communities of color are disproportionately affected.

45,000

Number of collateral consequences nationwide for past arrests and convictions.

15.7%

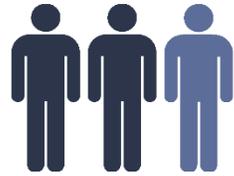


47%

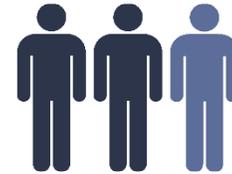
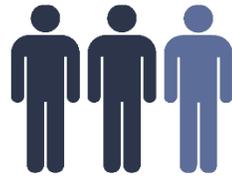


Recidivism rates for those with full-time employment for one year following incarceration vs. rates for those without employment.

Unemployment

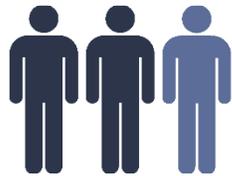


65% of employers WILL NOT hire individuals with even one criminal conviction *of any kind.*

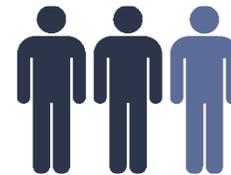
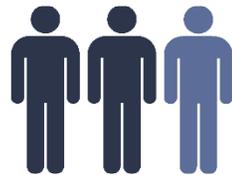


Improve
Economic
Opportunity

Broken Families



1.7million children have a mother or father that is incarcerated



Strengthen
Families

Homelessness

43% of landlords are “inclined” to reject applicants with even one criminal conviction.

Prevent
Homelessness

Why Expunging and Sealing is Important: Addressing the Collateral Consequences of a Criminal Record

What are “Collateral Consequences”?

Employment →
Housing →
Education →
Public Benefits →



← Parental Rights
← Immigration
← Voting / Jury Service
← Firearms

Legal and regulatory sanctions and restrictions that limit or prohibit people with criminal records from accessing employment, occupational licensing, housing, voting, education, and other opportunities.

The Life Long Consequences

“...more than **[48,000]** statutes impose collateral consequences on people convicted of crimes, creating barriers to jobs, housing, benefits and voting. More than 80% of the statutes operate as denial of employment opportunities”

** In Search of a Job: Criminal Records as Barriers to Employment, Amy Solomon, Attorney General's Reentry Council*

Fact or Myth

Individuals who have been convicted of a crime are “banned” from public housing.

Myth

HUD limits the types of offenses a Public Housing Authority or subsidized landlord can consider. A conviction is not required to deny an applicant, but the PHA or landlord must have some evidence of the offense. PHAs must set reasonable look back periods, but it can vary from 3 years for CHA to 20+ years for subsidized landlords.

Housing

Type of Housing at Issue – Subsidized housing includes any housing for which the government provides assistance paying a tenant's rent, including Public Housing, Project-Based Section 8 buildings, Housing Choice Voucher Program, and Low Income Tax Credits.

Two ways someone's criminal case can have a negative impact:

1. Admission into subsidized housing
2. Termination or eviction from subsidized housing

General Subsidized Housing Restrictions

Two types of criminal conduct result in a mandatory denial or termination of assistance:

- (1) one's requirement to register as a sex offender; and
- (2) a conviction for the manufacture or production of methamphetamine on federally assisted housing grounds.

Three types of criminal conduct can result in a discretionary denial or termination of assistance:

- (1) Drug related **activity**
- (2) **Violent criminal activity** (*only in the Housing Choice Voucher Program*)
- (3) Other criminal **activity** that "threatens the health, safety and rights to peaceful enjoyment of the premises by residents in the **"immediate vicinity."**

Fact or Myth

A person with a criminal record is eligible to receive federal student financial aid.

Fact

Individuals who are currently incarcerated in a federal, state, or local correctional institution have some limited eligibility for federal student aid. In general, restrictions on federal student aid eligibility are removed for formerly incarcerated individuals, including those on probation, on parole, or residing in a halfway house.

Student Financial Aid

- Federal law disqualifies a student from receiving student loans and Federal Pell Grants if the student is incarcerated in a federal or state prison
- All students with criminal records, including those on probation and parole, may receive federal financial aid unless they have been “convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance.”

Student Financial Aid – Conviction of Drug Offense

If a student was convicted for a drug offense while receiving financial aid, then the student is ineligible to receive aid for varying lengths of time.

Offense	Possession of Illegal Drugs	Sale of Illegal Drugs
First	1 year of ineligibility from date of conviction	2 years of ineligibility from date of conviction
Second	2 years of ineligibility from date of conviction	Indefinite period of ineligibility*
Third	Indefinite period of ineligibility*	Indefinite period of ineligibility*

Student Financial Aid – Indefinite Period of Ineligibility

A student will become eligible if:

1. Successfully completing an approved drug rehabilitation program that includes passing two unannounced drug tests; OR
2. Passing two unannounced drug tests by an approved drug rehabilitation program ; OR
3. Conviction is reversed, set aside, or otherwise rendered invalid

Fact or Myth

Individuals in Illinois convicted of a felony can never receive Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program) benefits.

Myth

This ban applies only applies in the 6 states have kept the ban in place in its entirety.

- Arizona,
- Arkansas,
- Indiana,
- Mississippi,
- South Carolina,
- West Virginia.

Most states have modified or eliminated the ban.

Fact or Myth

In Illinois, a parent with a felony conviction can receive TANF/welfare.

Fact

The 1996 Welfare ban applies only to individuals convicted of felony drug charges, and only eleven states have kept the ban in place in its entirety.

Illinois has modified the ban and will restore an individual's eligibility after a certain time period if they do not violate the terms of their supervision and are not convicted of a new crime

Public Benefits

SNAP and TANF

- Conviction can lead to loss of welfare benefits under both state and federal law.
- The most common programs affected by conviction are the federally funded but state-administered Temporary Assistance to Needy Families (TANF) and the Supplemental Nutrition Assistance Program (SNAP).
- **TANF** provides temporary financial assistance to pregnant women and to families with children. TANF funds can assist recipients in paying for housing, food, and utilities.
- **SNAP**, also known as the food stamp program, provides subsidies to low-income individuals and families to purchase food.



Public Benefits – Illinois SNAP

Individuals with felony convictions are ineligible to receive SNAP if:

1. You are in current violation of your probation or parole for any type of conviction;
2. You are a fugitive felon
3. In the last 10 years you were convicted of lying about who you are or where you live so that you could get SNAP

Public Benefits – Illinois TANF

Ineligible to receive TANF if:

1. You were convicted of a non-Class X OR Class 1 drug-related felony
UNLESS:
 - a. 2 years have passed since conviction; or
 - b. (if less than 2 years) person is participating in a treatment program or has completed treatment
2. You were convicted of Class X or Class 1 felony (or other similar federal offense) involving the possession, use, or distribution of a controlled substance
3. You are a fugitive felon
4. In the last 10 years you were convicted of lying about who you are or where you live so that you could get TANF

Fact or Myth

Eligibility for Social Security benefits cannot be reinstated when an individual is released from incarceration.

Myth

Social Security benefits are not payable if an individual is convicted of a criminal offense **and** confined. However, monthly benefits can be reinstated after a period of incarceration by contacting Social Security and providing proof of release.

Social Security (SSDI) and SSI Benefits

- By law, Social Security and SSI benefits are not payable to an individual who is convicted of a criminal offense and confined for more than 30 consecutive days.
- If an individual was getting Social Security benefits prior to confinement, benefits are suspended until he or she is released.
- If the individual was getting SSI benefits and was incarcerated for 12 consecutive months or more, **their benefits cannot be reinstated.**
- NOTE: a person who has been convicted of a felony may be barred from serving as a representative payee for a beneficiary

Employment – Your Client’s Rights



ILLINOIS HUMAN RIGHTS ACT

- Employers cannot inquire about arrest record, expunged, or sealed records.
- Complaints can be filed with the Illinois Dept. of Human Rights



FAIR CREDIT REPORTING ACT

- A person is entitled to a copy of a background check run by an employer if it is used in an adverse employment decision.
- A person is able to correct any errors (including the release of expunged or sealed records)



BAN THE BOX LAWS

- Employers in Illinois with 15 or more employees cannot ask on the application about a criminal record.
- Many municipalities have similar ordinances.
- Exceptions apply to employers who are required to run background checks.

Examples of Illinois Barriers

Park Districts (70 ILCS 1205/8-23)

- Can not work at a park district if convicted or adjudicated delinquent of a drug conviction in the last 7 years, or ever if Class X or sex crime.

Health Care (225 ILCS 46)

- Can never work in health care in an unlicensed position if convicted of any “disqualifying offense,” without a waiver from Dept. of Public Health.

Schools (105 ILCS 5/10-21.9)

- Can not work in schools – as a teacher, administrator, or volunteer – if ever convicted of a drug offense in the last 7 years or ever if a sex offense or Class X felony.

Medical Practice Act (20 ILCS 2105/2105-165)

- Any conviction for a forcible felony prohibits licensure as a licensed health care professional through the Illinois Department of Financial and Professional Regulation for a period of 5 years.

Duty to Report to IDFPR

As set forth in 68 IAC 1240.540(a), the following licensees shall notify the Division in writing, using this form, within thirty (30) days after any conviction(s), arrest(s), felony information, and/or indictment(s) against him or her:

- canine handlers
- fingerprint vendors
- firearm instructors
- Locksmiths
- permanent employee registrant card holders (PERCs)
- private alarm contractors
- private detectives
- private security contractor



Thirty Day Arrest & Conviction Reporting Form

Illinois Department of Financial and Professional Regulation - Division of Professional Regulation
320 West Washington Street, 3rd Floor
Springfield, Illinois 62786

1. As set forth in 68 IAC 1240.540(a), the following licensees shall notify the Division in writing, using this form, within thirty (30) days after any **conviction(s), arrest(s), felony information, and/or indictment(s)** against him or her:
 - canine handlers
 - fingerprint vendors
 - firearm instructors
 - locksmiths
 - permanent employee registrant card holders (PERCs)
 - private alarm contractors
 - private detectives
 - private security contractors
2. Email complete signed forms to FPR.DPREAU@illinois.gov within **thirty (30) days**.
3. Provide a copy of the complete signed form to your current employer, if any:

Licensee Name:	License No.:
Licensee Email:	Licensee Phone No.:
Licensee Address, City, State, Zip Code:	
<input type="checkbox"/> <i>check if address changed</i>	
MANDATORY REPORTING INFORMATION	
Date:	
Description of conviction(s), arrests, felony information, and/or indictments:	
<i>Please use additional pages if needed and attach all relevant documentation.</i>	
CERTIFICATION	
Under penalty of perjury, as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I herein certify that this Thirty Day Arrest & Conviction Reporting Form and the information herein are true and accurate. Failure to provide such a report to the Division shall be grounds for discipline as set forth in 225 ILCS 447/40-10.	
Signature:	Date:

The Basics: Expungement and Sealing

Expungement & Sealing

Expungement is available for non-conviction records, with limited exceptions.

Sealing is available for most misdemeanor and felony convictions

Non-Conviction Sentences

- **Supervision**
 - Typically given to first time offenders
 - Provides for other conditions (i.e., community service), no arrest
 - Terminated/Discharged → non-conviction → expunge
 - Unsatisfactory or Revoked → conviction → seal
- **710-1410 Probation and TASC Probation**
 - Offered to first time drug offenders
- **Second Chance Probation**
 - Offered to first time felony offenders for certain convictions
- **Offender Initiative Program**
 - Offered to first time offenders BEFORE a plea is entered
 - The State and the Defendant both waive a preliminary hearing and the proceedings are suspended. Charges are dismissed.
 - If Defendant does not complete the program satisfactorily, the case will be continued for arraignment and subsequent proceedings.

The Difference = Access



Expunged records are only available to law enforcement for limited offenses. No private entities can see expunged records.

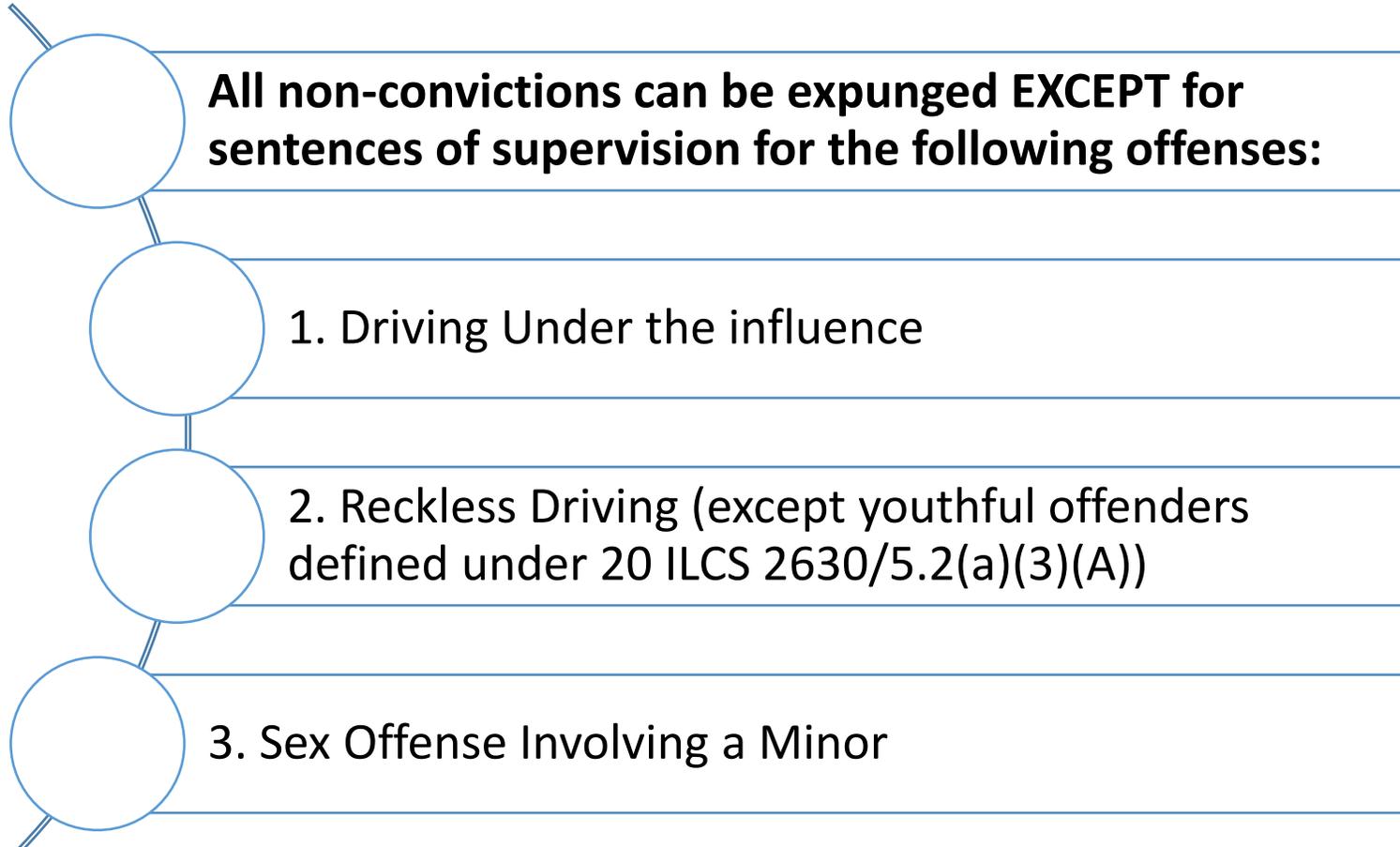


All sealed records are available to law enforcement. No private entities can see a sealed misdemeanor conviction, or a dismissal or acquittal.

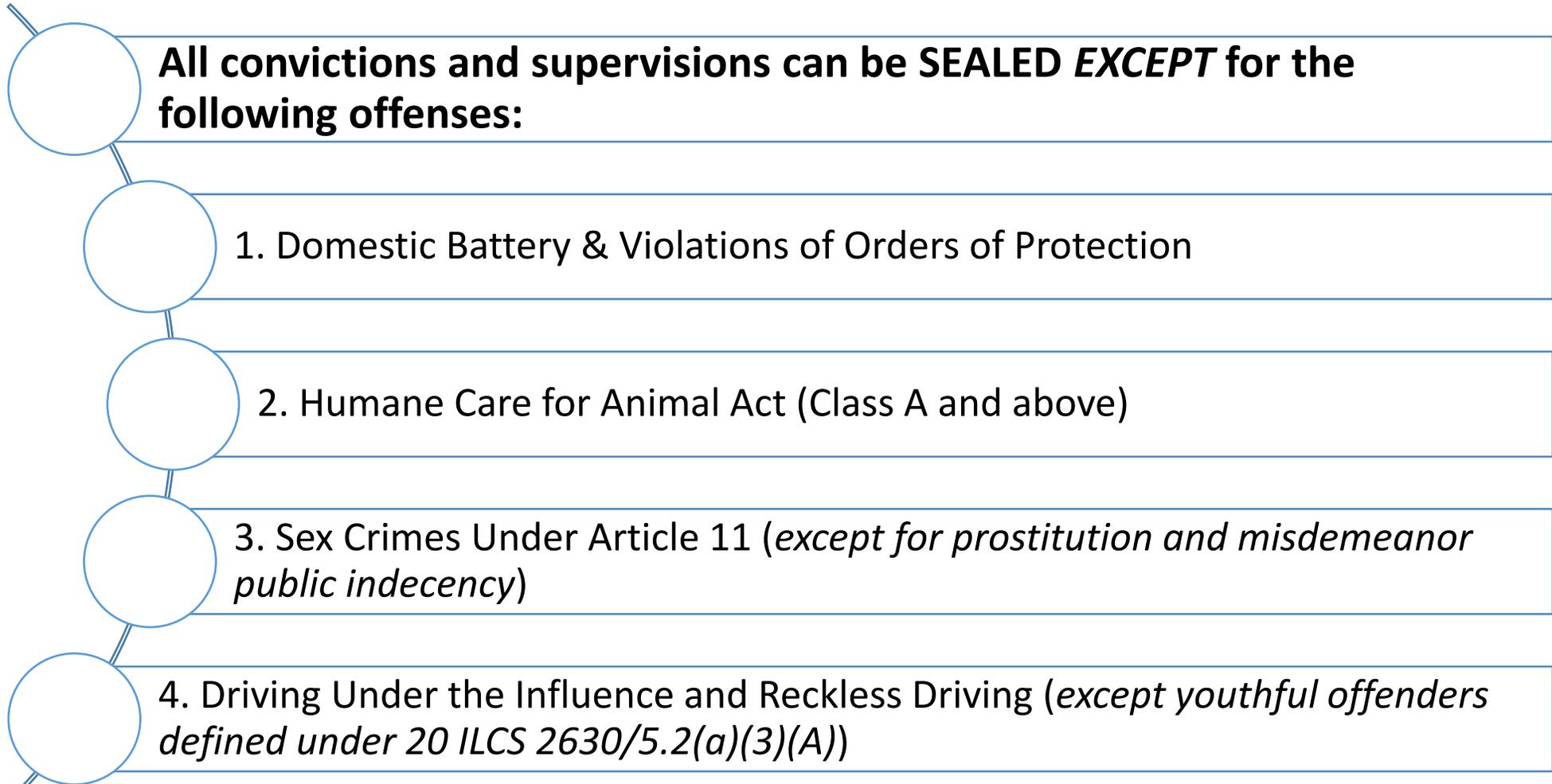


Sealed felony conviction records are available only to employers authorized by law (those that are regulated by statute and conduct fingerprint based background checks).

Expungement Eligibility



Sealing Eligibility



When to Petition to Relief

Acquittals & Dismissals –
Expungement

- There is no waiting period following an acquittal or dismissal (except 160 days for SOL/Non-Suit)

Supervision -
Expungement

- 2 years from successful completion of sentence

Qualified Probations -
Expungement

- 5 years from successful completion of sentence

Convictions -
Sealing

- 3 years from completion of most recent sentence

Hypo #1: What is Kim Eligible to Do and When?

- Retail Theft
 - Sentenced to 12 Months Supervision on January 2, 2015
 - Successfully Terminated on January 2, 2016
- Eligible to Expunge – January 2, 2018

Hypo #2: What is Kim Eligible to Do and When?

- Retail Theft
 - Sentenced to 12 Months Supervision on January 2, 2015
 - Successfully Terminated on January 2, 2016
- Disorderly Conduct
 - Sentenced to 2 Days CCDOC on March 4, 2018
- Eligible to Expunge – January 2, 2018
- Eligible to Seal – March 4, 2021

Hypo #3: What is Kim Eligible to Do and When?

- Battery
 - Sentenced to 12 Months Probation on January 2, 2005
 - Successfully Terminated on January 2, 2006
- Criminal Trespass to Vehicle
 - Sentenced to 2 Days CCDOC on March 4, 2018
- Eligible to Seal BOTH CONVICTIONS – March 4, 2021

Hypo #4: What is Kim Eligible to Do and When?

- Battery
 - Sentenced to 12 Months Probation on January 2, 2005
 - Successfully Terminated on January 2, 2006
- Criminal Trespass to Vehicle
 - Sentenced to 2 Days CCDOC on March 4, 2018
- Possession of Cannabis
 - Nolle Prosequi on June 7, 2018
- Eligible to Seal BOTH CONVICTIONS – March 4, 2021
- Eligible to Expunge – June 7, 2018

Quick Tips: Advising Clients

Waiving the Waiting Period

No waiting period to seal eligible offenses if the individual completes education or vocational training DURING their sentence.

What is qualifying education/training?

- GED/High School Diploma
- Associates, Bachelors, Masters
- Career Certificate
- Vocational Technical Certification

The Cost

- If a person qualifies for the services of the public defender, the person will mostly likely qualify for a fee waiver.
- If a person receives public aid, the person will automatically qualify for a fee waiver.

Immediate Sealing 20 ILCS 2630/5.2(g)

ELIGIBLE RECORDS

- Arrests resulting in acquittal or dismissal with prejudice

WHEN RECORDS ARE ELIGIBLE

- Immediately after entry of the final disposition

PROCEDURE

- File a petition in the courtroom following disposition, no notice required to ISP or police, just serve State's Attorney – **MUST REQUEST FEE WAIVER**

HEARINGS

- Court shall hear the petition on the same day and during the same hearing, entering an order to grant or deny

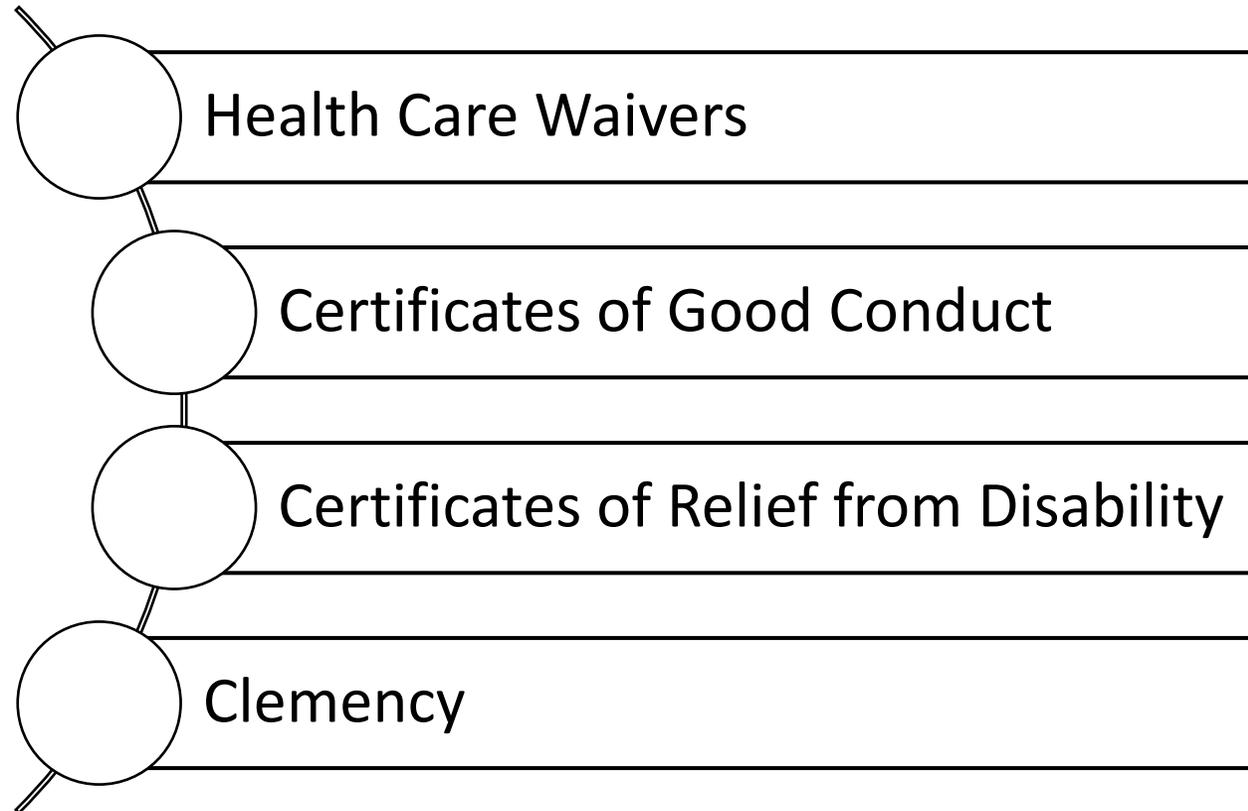
The Effect of Expungement & Sealing

- Searches in the clerk's system will reveal "no record," as if the cases did not occur. Files are impounded.

- Expunged records are destroyed by the arresting agency and Illinois State Police (ISP). Only "qualified probation" cases are available to law enforcement (e.g., 710-1410 probation, TASC probation).

- Sealed records are *not* destroyed by the ISP and are fully available to law enforcement.
- Only sealed felony conviction records are available to employers authorized by law to conduct fingerprint-based background checks through the ISP.

When Expungement and Sealing Are Not Enough: Other Forms of Relief



Health Care Waivers

The Healthcare Worker Background Check Act

- Prohibits healthcare employers from employing unlicensed persons with “disqualifying convictions.”

Types of Positions Covered

- CNAs
- Dietary Technician
- Environmental Service Technician
- Medical Assistant (or CMA)
- Medical Coding Specialist

Certificates of Rehabilitation

Certificates of Good Conduct

- Can remove specific statutory barriers (i.e. Illinois School Code, Park District Act)
- Waiting period is 2 years from completion of felony conviction or 1 year from completion of misdemeanor conviction

Certificates of Relief from Disability

- Available for 27 occupational licenses granted through Illinois Dept. of Financial and Professional Regulation
- No waiting period, can be applied for at time of sentencing or anytime thereafter

Petitions for Executive Clemency

Petition Submitted

- Type-written petition submitted to the Prisoner Review Board (PRB).

Hearing Held before PRB

- Hearings are held four times a year (twice in Chicago and twice in Springfield).

Governor has Sole Authority to Render Decision

- PRB makes non-binding recommendation.
- Governor has no mandated timeframes, so it may take years.

Characteristics of an Ideal Partnership Between A Specialty Court and CGLA

- Establish a relationship with the Specialty Court and all members of the Specialty Court Program Team
- Conduct a training for the Specialty Court Program Team
- Receive RAP Sheets and/or ISP reports for expected graduates approximately 1-2 months prior to completion of the program
- Conduct a Know Your Rights presentation for graduates
- Provide graduates with expungement and sealing petitions for all remaining eligible convictions and non-convictions on graduation day
 - NOTE: The Public Defender should file to immediately seal the case being addressed by the Specialty Court upon graduation/successful completion of the program.

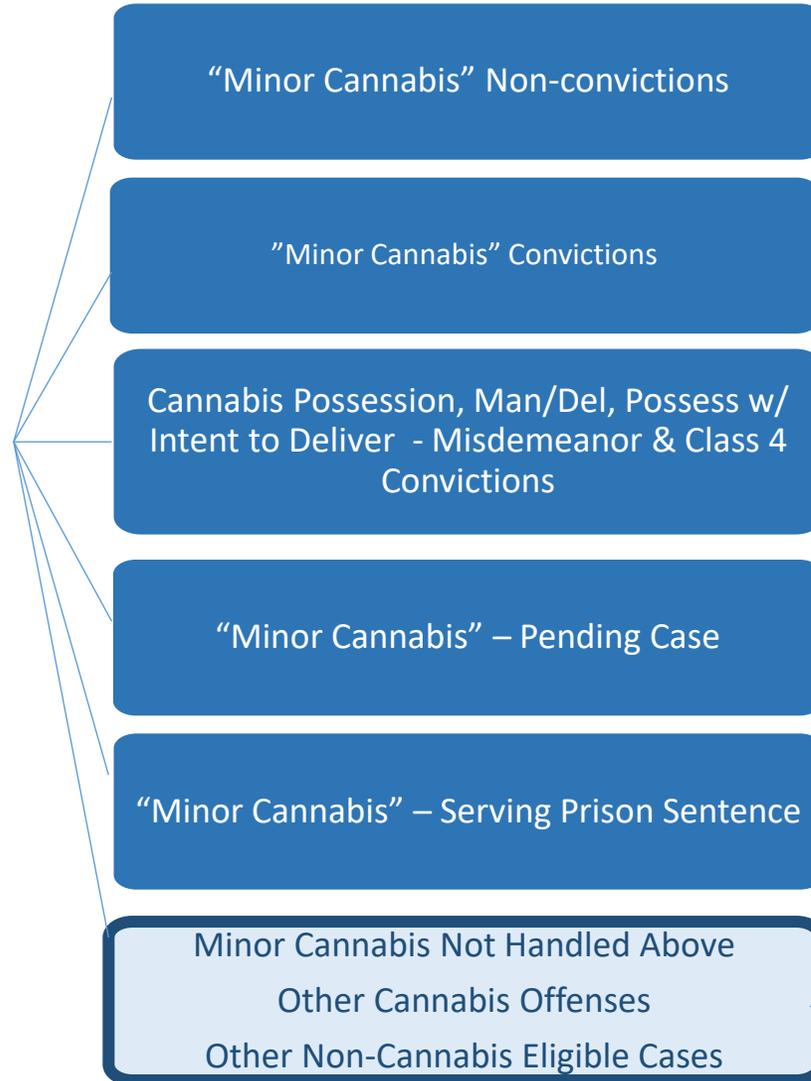
Clearing Your Record

Expungements Under the Cannabis Regulation and Tax Act

“Minor Cannabis Offenses” Defined

1. Section 4 (Possession)
2. Section 5 (“Dealing”)
(Manufacture/Delivery; Possession with Intent to Deliver)
3. 30 grams or less
4. No penalty enhancement
 - At least 18 years of age
 - Delivered cannabis to a person under 18 who was at least 3 years his junior
 - Sentenced to prison for up to twice the maximum term
5. No count involving a “violent crime” (even if dismissed)

Types of Offenses



- Supervision
- 710-1410 Probation
- TASC Probation
- Second Chance Probation
- Acquittals, Dismissals, RWOC

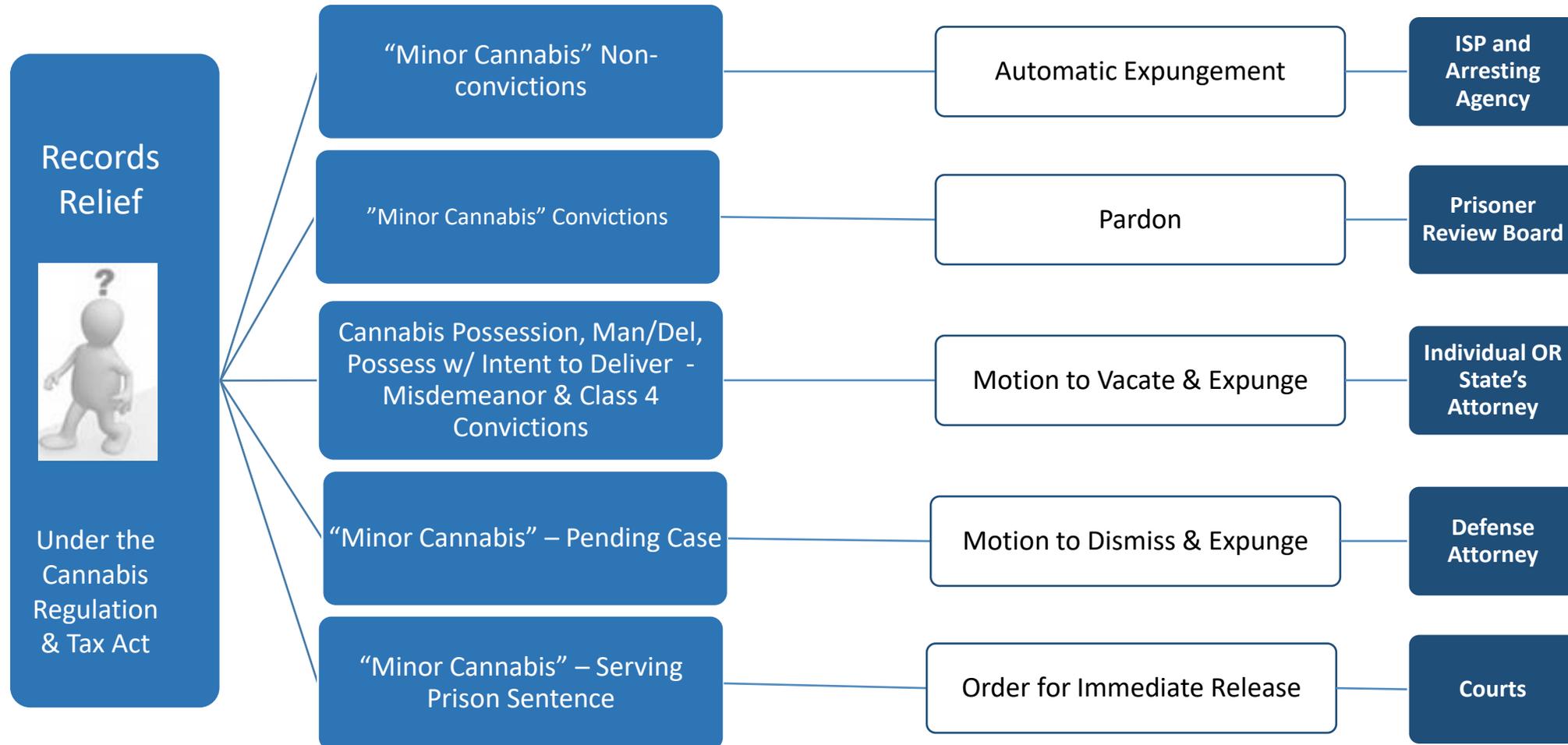
- Jail, Prison, or Bootcamp
- Probation
- Conditional Discharge
- Time Served (TCS)
- Fines (as stand-alone sentence)

Other Cannabis Offenses:

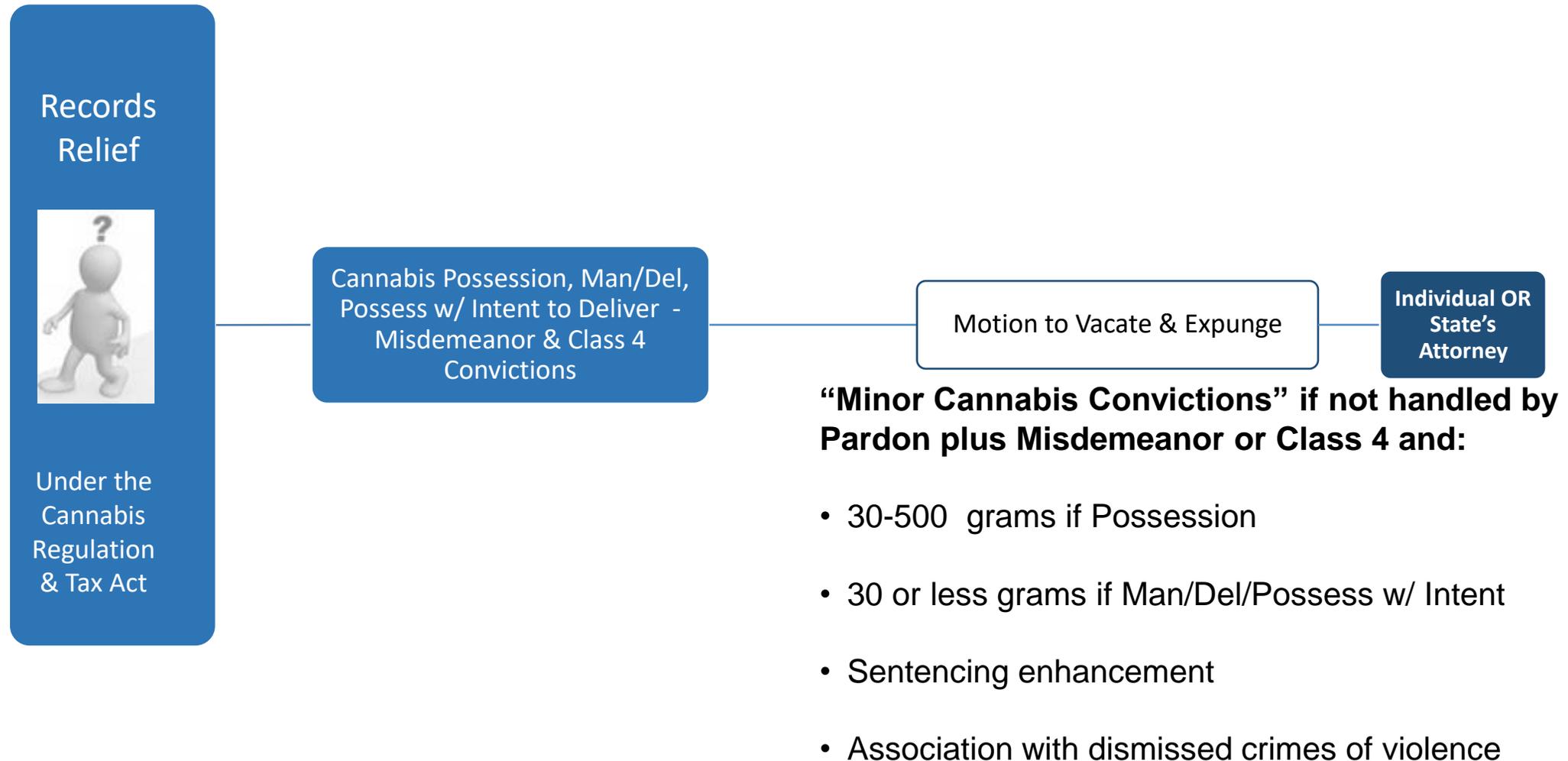
- > Class 4 Felony
- >30 grams if Man/Del/Possess w/ Intent
- NOT Possession or Man/Del/Poss w/ Intent
 - Trafficking
 - Man/Del on School Grounds
 - Conspiracy
 - Growing

Basic Expungement and Sealing

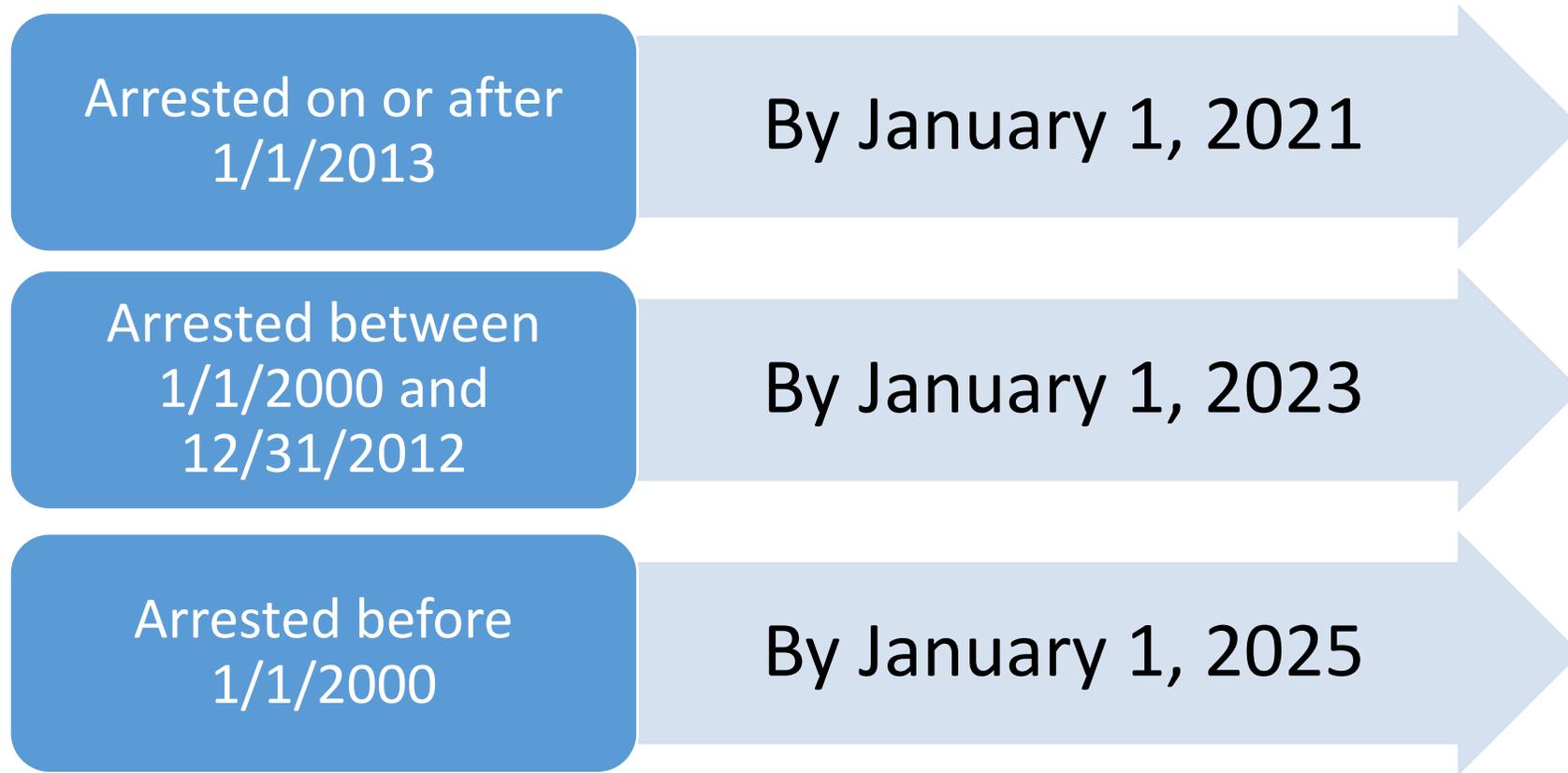
Relief for Cannabis Offenses



Misdemeanors and Class 4 Felonies



Timetable for Automatic Expungements



Timetable for Pardons

The Illinois State Police must provide the Prisoner Review Board a list of eligible offenses by December 22, 2019 (180 days after bill signed).

The timetable for consideration by the Prisoner Review Board has not been set.

Timetable for Motions to Vacate & Expunge

WAIT PLEASE

The Access to Justice Commission is developing statewide forms with estimated availability in 2020.

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Thank you.

Brandon Williams

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