

HB3359



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3359

Introduced 2/17/2023, by Rep. Dan Ugaste - Amy L. Grant -
Patrick Windhorst

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-915

Amends the Juvenile Court Act of 1987. Precludes the court from ordering the automatic expungement of the juvenile court and law enforcement records of a delinquent minor based on an attempt to commit a disqualified offense.

LRB103 27664 RLC 54041 b

A BILL FOR

1 AN ACT concerning juvenile law.

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

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Section 5-915 as follows:

6 (705 ILCS 405/5-915)

7 Sec. 5-915. Expungement of juvenile law enforcement and
8 juvenile court records.

9 (0.05) (Blank).

10 (0.1) (a) The Illinois State Police and all law
11 enforcement agencies within the State shall automatically
12 expunge, on or before January 1 of each year, except as
13 described in paragraph (c) of subsection (0.1), all juvenile
14 law enforcement records relating to events occurring before an
15 individual's 18th birthday if:

16 (1) one year or more has elapsed since the date of the
17 arrest or law enforcement interaction documented in the
18 records;

19 (2) no petition for delinquency or criminal charges
20 were filed with the clerk of the circuit court relating to
21 the arrest or law enforcement interaction documented in
22 the records; and

23 (3) 6 months have elapsed since the date of the arrest

1 without an additional subsequent arrest or filing of a
2 petition for delinquency or criminal charges whether
3 related or not to the arrest or law enforcement
4 interaction documented in the records.

5 (b) If the law enforcement agency is unable to verify
6 satisfaction of conditions (2) and (3) of this subsection
7 (0.1), records that satisfy condition (1) of this subsection
8 (0.1) shall be automatically expunged if the records relate to
9 an offense that if committed by an adult would not be an
10 offense classified as a Class 2 felony or higher, an offense
11 under Article 11 of the Criminal Code of 1961 or Criminal Code
12 of 2012, or an offense under Section 12-13, 12-14, 12-14.1,
13 12-15, or 12-16 of the Criminal Code of 1961.

14 (c) If the juvenile law enforcement record was received
15 through a public submission to a statewide student
16 confidential reporting system administered by the Illinois
17 State Police, the record will be maintained for a period of 5
18 years according to all other provisions in subsection (0.1).

19 (0.15) If a juvenile law enforcement record meets
20 paragraph (a) of subsection (0.1) of this Section, a juvenile
21 law enforcement record created:

22 (1) prior to January 1, 2018, but on or after January
23 1, 2013 shall be automatically expunged prior to January
24 1, 2020;

25 (2) prior to January 1, 2013, but on or after January
26 1, 2000, shall be automatically expunged prior to January

1 1, 2023; and

2 (3) prior to January 1, 2000 shall not be subject to
3 the automatic expungement provisions of this Act.

4 Nothing in this subsection (0.15) shall be construed to
5 restrict or modify an individual's right to have his or her
6 juvenile law enforcement records expunged except as otherwise
7 may be provided in this Act.

8 (0.2) (a) Upon dismissal of a petition alleging
9 delinquency or upon a finding of not delinquent, the
10 successful termination of an order of supervision, or the
11 successful termination of an adjudication for an offense which
12 would be a Class B misdemeanor, Class C misdemeanor, or a petty
13 or business offense if committed by an adult, the court shall
14 automatically order the expungement of the juvenile court
15 records and juvenile law enforcement records. The clerk shall
16 deliver a certified copy of the expungement order to the
17 Illinois State Police and the arresting agency. Upon request,
18 the State's Attorney shall furnish the name of the arresting
19 agency. The expungement shall be completed within 60 business
20 days after the receipt of the expungement order.

21 (b) If the chief law enforcement officer of the agency, or
22 his or her designee, certifies in writing that certain
23 information is needed for a pending investigation involving
24 the commission of a felony, that information, and information
25 identifying the juvenile, may be retained until the statute of
26 limitations for the felony has run. If the chief law

1 enforcement officer of the agency, or his or her designee,
2 certifies in writing that certain information is needed with
3 respect to an internal investigation of any law enforcement
4 office, that information and information identifying the
5 juvenile may be retained within an intelligence file until the
6 investigation is terminated or the disciplinary action,
7 including appeals, has been completed, whichever is later.
8 Retention of a portion of a juvenile's law enforcement record
9 does not disqualify the remainder of his or her record from
10 immediate automatic expungement.

11 (0.3) (a) Upon an adjudication of delinquency based on any
12 offense except a disqualified offense or an attempt to commit
13 a disqualified offense, the juvenile court shall automatically
14 order the expungement of the juvenile court and law
15 enforcement records 2 years after the juvenile's case was
16 closed if no delinquency or criminal proceeding is pending and
17 the person has had no subsequent delinquency adjudication or
18 criminal conviction. The clerk shall deliver a certified copy
19 of the expungement order to the Illinois State Police and the
20 arresting agency. Upon request, the State's Attorney shall
21 furnish the name of the arresting agency. The expungement
22 shall be completed within 60 business days after the receipt
23 of the expungement order. In this subsection (0.3),
24 "disqualified offense" means any of the following offenses:
25 Section 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 10-1, 10-2,
26 10-3, 10-3.1, 10-4, 10-5, 10-9, 11-1.20, 11-1.30, 11-1.40,

1 11-1.50, 11-1.60, 11-6, 11-6.5, 12-2, 12-3.05, 12-3.3,
2 12-4.4a, 12-5.02, 12-6.2, 12-6.5, 12-7.1, 12-7.5, 12-20.5,
3 12-32, 12-33, 12-34, 12-34.5, 18-1, 18-2, 18-3, 18-4, 18-6,
4 19-3, 19-6, 20-1, 20-1.1, 24-1.2, 24-1.2-5, 24-1.5, 24-3A,
5 24-3B, 24-3.2, 24-3.8, 24-3.9, 29D-14.9, 29D-20, 30-1, 31-1a,
6 32-4a, or 33A-2 of the Criminal Code of 2012, or subsection (b)
7 of Section 8-1, paragraph (4) of subsection (a) of Section
8 11-14.4, subsection (a-5) of Section 12-3.1, paragraph (1),
9 (2), or (3) of subsection (a) of Section 12-6, subsection
10 (a-3) or (a-5) of Section 12-7.3, paragraph (1) or (2) of
11 subsection (a) of Section 12-7.4, subparagraph (i) of
12 paragraph (1) of subsection (a) of Section 12-9, subparagraph
13 (H) of paragraph (3) of subsection (a) of Section 24-1.6,
14 paragraph (1) of subsection (a) of Section 25-1, or subsection
15 (a-7) of Section 31-1 of the Criminal Code of 2012.

16 (b) If the chief law enforcement officer of the agency, or
17 his or her designee, certifies in writing that certain
18 information is needed for a pending investigation involving
19 the commission of a felony, that information, and information
20 identifying the juvenile, may be retained in an intelligence
21 file until the investigation is terminated or for one
22 additional year, whichever is sooner. Retention of a portion
23 of a juvenile's juvenile law enforcement record does not
24 disqualify the remainder of his or her record from immediate
25 automatic expungement.

26 (0.4) Automatic expungement for the purposes of this

1 Section shall not require law enforcement agencies to
2 obliterate or otherwise destroy juvenile law enforcement
3 records that would otherwise need to be automatically expunged
4 under this Act, except after 2 years following the subject
5 arrest for purposes of use in civil litigation against a
6 governmental entity or its law enforcement agency or personnel
7 which created, maintained, or used the records. However, these
8 juvenile law enforcement records shall be considered expunged
9 for all other purposes during this period and the offense,
10 which the records or files concern, shall be treated as if it
11 never occurred as required under Section 5-923.

12 (0.5) Subsection (0.1) or (0.2) of this Section does not
13 apply to violations of traffic, boating, fish and game laws,
14 or county or municipal ordinances.

15 (0.6) Juvenile law enforcement records of a plaintiff who
16 has filed civil litigation against the governmental entity or
17 its law enforcement agency or personnel that created,
18 maintained, or used the records, or juvenile law enforcement
19 records that contain information related to the allegations
20 set forth in the civil litigation may not be expunged until
21 after 2 years have elapsed after the conclusion of the
22 lawsuit, including any appeal.

23 (0.7) Officer-worn body camera recordings shall not be
24 automatically expunged except as otherwise authorized by the
25 Law Enforcement Officer-Worn Body Camera Act.

26 (1) Whenever a person has been arrested, charged, or

1 adjudicated delinquent for an incident occurring before his or
2 her 18th birthday that if committed by an adult would be an
3 offense, and that person's juvenile law enforcement and
4 juvenile court records are not eligible for automatic
5 expungement under subsection (0.1), (0.2), or (0.3), the
6 person may petition the court at any time for expungement of
7 juvenile law enforcement records and juvenile court records
8 relating to the incident and, upon termination of all juvenile
9 court proceedings relating to that incident, the court shall
10 order the expungement of all records in the possession of the
11 Illinois State Police, the clerk of the circuit court, and law
12 enforcement agencies relating to the incident, but only in any
13 of the following circumstances:

14 (a) the minor was arrested and no petition for
15 delinquency was filed with the clerk of the circuit court;

16 (a-5) the minor was charged with an offense and the
17 petition or petitions were dismissed without a finding of
18 delinquency;

19 (b) the minor was charged with an offense and was
20 found not delinquent of that offense;

21 (c) the minor was placed under supervision under
22 Section 5-615, and the order of supervision has since been
23 successfully terminated; or

24 (d) the minor was adjudicated for an offense which
25 would be a Class B misdemeanor, Class C misdemeanor, or a
26 petty or business offense if committed by an adult.

1 (1.5) The Illinois State Police shall allow a person to
2 use the Access and Review process, established in the Illinois
3 State Police, for verifying that his or her juvenile law
4 enforcement records relating to incidents occurring before his
5 or her 18th birthday eligible under this Act have been
6 expunged.

7 (1.6) (Blank).

8 (1.7) (Blank).

9 (1.8) (Blank).

10 (2) Any person whose delinquency adjudications are not
11 eligible for automatic expungement under subsection (0.3) of
12 this Section may petition the court to expunge all juvenile
13 law enforcement records relating to any incidents occurring
14 before his or her 18th birthday which did not result in
15 proceedings in criminal court and all juvenile court records
16 with respect to any adjudications except those based upon
17 first degree murder or an offense under Article 11 of the
18 Criminal Code of 2012 if the person is required to register
19 under the Sex Offender Registration Act at the time he or she
20 petitions the court for expungement; provided that 2 years
21 have elapsed since all juvenile court proceedings relating to
22 him or her have been terminated and his or her commitment to
23 the Department of Juvenile Justice under this Act has been
24 terminated.

25 (2.5) If a minor is arrested and no petition for
26 delinquency is filed with the clerk of the circuit court at the

1 time the minor is released from custody, the youth officer, if
2 applicable, or other designated person from the arresting
3 agency, shall notify verbally and in writing to the minor or
4 the minor's parents or guardians that the minor shall have an
5 arrest record and shall provide the minor and the minor's
6 parents or guardians with an expungement information packet,
7 information regarding this State's expungement laws including
8 a petition to expunge juvenile law enforcement and juvenile
9 court records obtained from the clerk of the circuit court.

10 (2.6) If a minor is referred to court, then, at the time of
11 sentencing, dismissal of the case, or successful completion of
12 supervision, the judge shall inform the delinquent minor of
13 his or her rights regarding expungement and the clerk of the
14 circuit court shall provide an expungement information packet
15 to the minor, written in plain language, including information
16 regarding this State's expungement laws and a petition for
17 expungement, a sample of a completed petition, expungement
18 instructions that shall include information informing the
19 minor that (i) once the case is expunged, it shall be treated
20 as if it never occurred, (ii) he or she may apply to have
21 petition fees waived, (iii) once he or she obtains an
22 expungement, he or she may not be required to disclose that he
23 or she had a juvenile law enforcement or juvenile court
24 record, and (iv) if petitioning he or she may file the petition
25 on his or her own or with the assistance of an attorney. The
26 failure of the judge to inform the delinquent minor of his or

1 her right to petition for expungement as provided by law does
2 not create a substantive right, nor is that failure grounds
3 for: (i) a reversal of an adjudication of delinquency; (ii) a
4 new trial; or (iii) an appeal.

5 (2.7) (Blank).

6 (2.8) (Blank).

7 (3) (Blank).

8 (3.1) (Blank).

9 (3.2) (Blank).

10 (3.3) (Blank).

11 (4) (Blank).

12 (5) (Blank).

13 (5.5) Whether or not expunged, records eligible for
14 automatic expungement under subdivision (0.1) (a), (0.2) (a), or
15 (0.3) (a) may be treated as expunged by the individual subject
16 to the records.

17 (6) (Blank).

18 (6.5) The Illinois State Police or any employee of the
19 Illinois State Police shall be immune from civil or criminal
20 liability for failure to expunge any records of arrest that
21 are subject to expungement under this Section because of
22 inability to verify a record. Nothing in this Section shall
23 create Illinois State Police liability or responsibility for
24 the expungement of juvenile law enforcement records it does
25 not possess.

26 (7) (Blank).

1 (7.5) (Blank).

2 (8) The expungement of juvenile law enforcement or
3 juvenile court records under subsection (0.1), (0.2), or (0.3)
4 of this Section shall be funded by appropriation by the
5 General Assembly for that purpose.

6 (9) (Blank).

7 (10) (Blank).

8 (Source: P.A. 102-538, eff. 8-20-21; 102-558, eff. 8-20-21;
9 102-752, eff. 1-1-23; revised 8-23-22.)