

1 AN ACT in relation to expungement of criminal records.

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 and adding Sections 11, 12, and 13 as
6 follows:

7 (20 ILCS 2630/5) (from Ch. 38, par. 206-5)

8 Sec. 5. Arrest reports; expungement.

9 (a) All policing bodies of this State shall furnish to
10 the Department, daily, in the form and detail the Department
11 requires, fingerprints and descriptions of all persons who
12 are arrested on charges of violating any penal statute of
13 this State for offenses that are classified as felonies and
14 Class A or B misdemeanors and of all minors of the age of 10
15 and over who have been arrested for an offense which would be
16 a felony if committed by an adult, and may forward such
17 fingerprints and descriptions for minors arrested for Class A
18 or B misdemeanors. Moving or nonmoving traffic violations
19 under the Illinois Vehicle Code shall not be reported except
20 for violations of Chapter 4, Section 11-204.1, or Section
21 11-501 of that Code. In addition, conservation offenses, as
22 defined in the Supreme Court Rule 501(c), that are classified
23 as Class B misdemeanors shall not be reported.

24 Whenever an adult or minor prosecuted as an adult, ~~not~~
25 ~~having--previously--been--convicted--of--any--criminal--offense--or~~
26 ~~municipal--ordinance--violation,~~ charged with a violation of a
27 municipal ordinance or a felony or misdemeanor, is acquitted
28 or released without being convicted, or if a conviction is
29 reversed, whether the acquittal or release or a finding of
30 not guilty occurred before, on, or after the effective date
31 of this amendatory Act of 1991, the Chief Judge of the

1 circuit wherein the charge was brought, any judge of that
2 circuit designated by the Chief Judge, or in counties of less
3 than 3,000,000 inhabitants, the presiding trial judge at the
4 defendant's trial shall automatically ~~may--upon--verified~~
5 ~~petition-of-the-defendant~~ order the record of arrest expunged
6 from the official records of the arresting authority and the
7 Department and order that the records of the clerk of the
8 circuit court be sealed until further order of the court upon
9 good cause shown and the name of the defendant obliterated on
10 the official index required to be kept by the circuit court
11 clerk under Section 16 of the Clerks of Courts Act, but the
12 order shall not affect any index issued by the circuit court
13 clerk before the entry of the order. The Department may
14 charge the petitioner a fee equivalent to the cost of
15 processing any order to expunge or seal the records, and the
16 fee shall be deposited into the State Police Services Fund,
17 except there shall be no fee to apply to expunge a case that
18 was dismissed, no billed, found not guilty, or a reversal
19 because of actual innocence, or in the arrest of an aggrieved
20 person from whom identity was stolen. The records of those
21 arrests, however, that result in a disposition of supervision
22 for any offense shall ~~not~~ be automatically expunged from the
23 records of the arresting authority or the Department ~~not~~ and
24 impounded by the court ~~until~~ 2 years after discharge and
25 dismissal of supervision. Those records that result from a
26 supervision for a violation of Section 3-707, 3-708, 3-710,
27 5-401.3, or 11-503 of the Illinois Vehicle Code or a similar
28 provision of a local ordinance, or for a violation of Section
29 12-3.2, 12-15 or 16A-3 of the Criminal Code of 1961, or
30 probation under Section 10 of the Cannabis Control Act,
31 Section 410 of the Illinois Controlled Substances Act,
32 Section 12-4.3(b)(1) and (2) of the Criminal Code of 1961 (as
33 those provisions existed before their deletion by Public Act
34 89-313), Section 10-102 of the Illinois Alcoholism and Other

1 Drug Dependency Act when the judgment of conviction has been
2 vacated, Section 40-10 of the Alcoholism and Other Drug Abuse
3 and Dependency Act when the judgment of conviction has been
4 vacated, or Section 10 of the Steroid Control Act shall not
5 be automatically expunged from the records of the arresting
6 authority nor and impounded by the court until 5 years after
7 termination of probation or supervision. Those records that
8 result from a supervision for a violation of Section 11-501
9 of the Illinois Vehicle Code or a similar provision of a
10 local ordinance, shall not be expunged. All records set out
11 above may be ordered by the court to be automatically
12 expunged from the records of the arresting authority and
13 impounded by the court after 5 years, but shall not be
14 expunged by the Department, but shall, on court order be
15 sealed by the Department and may be disseminated by the
16 Department only as required by law or to the arresting
17 authority, the State's Attorney, and the court upon a later
18 arrest for the same or a similar offense or for the purpose
19 of sentencing for any subsequent felony. Upon conviction for
20 any offense, the Department of Corrections shall have access
21 to all sealed records of the Department pertaining to that
22 individual.

23 The arrest, conviction, and court records of a person who
24 has been convicted of a misdemeanor shall be expunged and
25 sealed automatically after completion of his or her sentence,
26 provided that the person has not been convicted of a felony
27 or misdemeanor within the previous 2 years, excluding non-DUI
28 traffic violations and any time served in jail by the person
29 and included as a part of the original sentence.

30 The arrest, conviction, and court records of a person
31 convicted of a Class 4 felony, other than a sex crime or
32 crime of violence, shall be automatically expunged after
33 completion of the person's sentence if the person has not
34 been convicted of a felony or misdemeanor within the previous

1 4 years.

2 (a-5) Those records maintained by the Department for
3 persons arrested prior to their 17th birthday shall be
4 automatically expunged as provided in Section 5-915 of the
5 Juvenile Court Act of 1987.

6 (b) Whenever a person has been convicted of a crime or
7 of the violation of a municipal ordinance, in the name of a
8 person whose identity he has stolen or otherwise come into
9 possession of, the aggrieved person from whom the identity
10 was stolen or otherwise obtained without authorization, upon
11 learning of the person having been arrested using his
12 identity, shall be ordered automatically expunged by ~~may,~~
13 ~~upon--verified--petition--to~~ the chief judge of the circuit
14 wherein the arrest was made, have a court order entered nunc
15 pro tunc by the chief judge to correct the arrest record,
16 conviction record, if any, and all official records of the
17 arresting authority, the Department, other criminal justice
18 agencies, the prosecutor, and the trial court concerning such
19 arrest, if any, by removing his name from all such records in
20 connection with the arrest and conviction, if any, and by
21 inserting in the records the name of the offender, if known
22 or ascertainable, in lieu of the aggrieved's name. The
23 records of the clerk of the circuit court clerk shall be
24 sealed until further order of the court upon good cause shown
25 and the name of the aggrieved person obliterated on the
26 official index required to be kept by the circuit court clerk
27 under Section 16 of the Clerks of Courts Act, but the order
28 shall not affect any index issued by the circuit court clerk
29 before the entry of the order. Nothing in this Section shall
30 limit the Department of State Police or other criminal
31 justice agencies or prosecutors from listing under an
32 offender's name the false names he or she has used. For
33 purposes of this Section, convictions for moving and
34 nonmoving traffic violations other than convictions for

1 violations of Chapter 4, Section 11-204.1 or Section 11-501
2 of the Illinois Vehicle Code shall not be a bar to automatic
3 expungement of expunging the record of arrest and court
4 records for violation of a misdemeanor or municipal
5 ordinance.

6 (c) Whenever A person who has been convicted of an
7 offense is granted a pardon by the Governor which
8 specifically authorizes expungement, ~~in he may, upon verified~~
9 ~~petition--to--the--chief--judge--of~~ the circuit where the person
10 had been convicted, any judge of the circuit designated by
11 the Chief Judge, or in counties of less than 3,000,000
12 inhabitants, the presiding trial judge at the defendant's
13 trial, shall may have a court order entered automatically
14 expunging the record of arrest from the official records of
15 the arresting authority and order that the records of the
16 clerk of the circuit court and the Department be sealed until
17 further order of the court upon good cause shown or as
18 otherwise provided herein, and the name of the defendant
19 obliterated from the official index requested to be kept by
20 the circuit court clerk under Section 16 of the Clerks of
21 Courts Act in connection with the arrest and conviction for
22 the offense for which he had been pardoned but the order
23 shall not affect any index issued by the circuit court clerk
24 before the entry of the order. All records sealed by the
25 Department may be disseminated by the Department only as
26 required by law or to the arresting authority, the State's
27 Attorney, and the court upon a later arrest for the same or
28 similar offense or for the purpose of sentencing for any
29 subsequent felony. Upon conviction for any subsequent
30 offense, the Department of Corrections shall have access to
31 all sealed records of the Department pertaining to that
32 individual. Upon entry of the order of automatic
33 expungement, the clerk of the circuit court shall promptly
34 mail a copy of the order to the person who was pardoned.

1 (c-5) Whenever a person has been convicted of criminal
2 sexual assault, aggravated criminal sexual assault, predatory
3 criminal sexual assault of a child, criminal sexual abuse, or
4 aggravated criminal sexual abuse, the victim of that offense
5 may request that the State's Attorney of the county in which
6 the conviction occurred file a verified petition with the
7 presiding trial judge at the defendant's trial to have a
8 court order entered to seal the records of the clerk of the
9 circuit court in connection with the proceedings of the trial
10 court concerning that offense. However, the records of the
11 arresting authority and the Department of State Police
12 concerning the offense shall not be sealed. The court, upon
13 good cause shown, shall make the records of the clerk of the
14 circuit court in connection with the proceedings of the trial
15 court concerning the offense available for public inspection.

16 (d) Notice of the automatic expungement petition for
17 subsections (a), (b), and (c) shall be served upon the
18 State's Attorney or prosecutor charged with the duty of
19 prosecuting the offense, the Department of State Police, the
20 arresting agency and the chief legal officer of the unit of
21 local government affecting the arrest. Unless the State's
22 Attorney or prosecutor, the Department of State Police, the
23 arresting agency or such chief legal officer objects to the
24 petition within 30 days from the date of the notice, the
25 court shall enter an order granting or denying the automatic
26 expungement petition. The clerk of the court shall promptly
27 mail a copy of the order to the person, the arresting agency,
28 the prosecutor, the Department of State Police and such other
29 criminal justice agencies as may be ordered by the judge.

30 (e) Nothing herein shall prevent the Department of State
31 Police from maintaining all records of any person who is
32 admitted to probation upon terms and conditions and who
33 fulfills those terms and conditions pursuant to Section 10 of
34 the Cannabis Control Act, Section 410 of the Illinois

1 Controlled Substances Act, Section 12-4.3 of the Criminal
2 Code of 1961, Section 10-102 of the Illinois Alcoholism and
3 Other Drug Dependency Act, Section 40-10 of the Alcoholism
4 and Other Drug Abuse and Dependency Act, or Section 10 of the
5 Steroid Control Act.

6 (f) No court order issued pursuant to the expungement
7 provisions of this Section shall become final for purposes of
8 appeal until 30 days after notice is received by the
9 Department. Any court order contrary to the provisions of
10 this Section is void.

11 (g) Except as otherwise provided in subsection (c-5) of
12 this Section, the court shall not order the sealing or
13 expungement of the arrest records and records of the circuit
14 court clerk of any person granted supervision for or
15 convicted of any sexual offense committed against a minor
16 under 18 years of age. For the purposes of this Section,
17 "sexual offense committed against a minor" includes but is
18 not limited to the offenses of indecent solicitation of a
19 child or criminal sexual abuse when the victim of such
20 offense is under 18 years of age.

21 (Source: P.A. 91-295, eff. 1-1-00; 91-357, eff. 7-29-99;
22 92-651, eff. 7-11-02.)

23 (20 ILCS 2630/11 new)

24 Sec. 11. Legal assistance and education. The State
25 Appellate Defender shall establish, maintain, and carryout an
26 expungement program to provide information and assistance to
27 persons eligible to have their arrest or criminal history
28 record information ordered expunged, sealed, or impounded.

29 (20 ILCS 2630/12 new)

30 Sec. 12. Entry of order; effect of pardon or
31 expungement.

32 (a) Upon the entry of an order under Section 5, the

1 person, for purposes of the law, shall be considered not to
2 have been previously convicted. The fact of the conviction
3 has been erased by either the pardon or the expungement,
4 except upon a later arrest for the same or similar offense or
5 for the purpose of sentencing for any subsequent felony. The
6 past conviction of a person who has been pardoned with
7 respect to the conviction and the records relative to the
8 arrest and underlying conduct cannot be considered by any
9 private or public entity in employment matters,
10 certification, licensing, revocation, registration, in
11 determining good character, or any other matter, whether
12 obtained through the official records of the arrest or
13 obtained from other sources. A person who has received a
14 pardon and an order expunging records of his or her arrest
15 and conviction should not answer in the affirmative when
16 asked on an application whether he or she has ever been
17 convicted of such an offense. All applications must contain
18 specific language which states that the applicant is not
19 obligated to answer such a question in the affirmative.

20 (b) The person who has been granted expungement is not
21 entitled to the remission of any fine, costs, or other money
22 paid as a consequence of the expungement. This amendatory Act
23 of the 93rd General Assembly does not affect the right of the
24 person who has been granted expungement to rely upon the
25 conviction to bar subsequent proceedings for the same
26 offense. This amendatory Act of the 93rd General Assembly
27 does not affect the right of the victim of a crime to
28 prosecute or defend a civil action for damages. This
29 amendatory Act of the 93rd General Assembly does not create a
30 right to commence an action for damages for incarceration
31 under the sentence that the person served before the
32 expungement under this amendatory Act of the 93rd General
33 Assembly.

1 (20 ILCS 2630/13 new)

2 Sec. 13. Prohibited conduct; misdemeanor; penalty.

3 (a) The Department of the State Police shall retain a
4 nonpublic sealed record under subsections (a), (b) and (c) of
5 Section 5. Except as provided by subsections (a), (b), (c) of
6 Section 5, this nonpublic sealed record shall be disseminated
7 by the Department only as required by law or to the arresting
8 authority, the State's Attorney, and the court upon a later
9 arrest for the same or a similar offense or for the purpose
10 of sentencing for any subsequent felony. Upon conviction for
11 any offense, the Department of Corrections shall have access
12 to all sealed records of the Department pertaining to that
13 individual.

14 (b) The nonpublic record maintained under subsection (a)
15 is exempt from disclosure under the Freedom of Information
16 Act.

17 (c) Except as provided in subsection (a), a person other
18 than the person whose record has been expunged, who knows or
19 should have known that a record was expunged under this
20 Section and who divulges uses, or publishes information
21 concerning an expunged record under this Section is guilty of
22 a Class B misdemeanor punishable by imprisonment for not more
23 than 90 days or a fine of not more than \$500, or both.