

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, whether the acquittal or  
29 release occurred before, on, or after the effective date of  
30 this amendatory Act of 1991, the Chief Judge of the circuit  
31 wherein the charge was brought, any judge of that circuit

1 designated by the Chief Judge, or in counties of less than  
2 3,000,000 inhabitants, the presiding trial judge at the  
3 defendant's trial may upon verified petition of the defendant  
4 order the record of arrest expunged from the official records  
5 of the arresting authority and the Department and order that  
6 the records of the clerk of the circuit court be sealed until  
7 further order of the court upon good cause shown and the name  
8 of the defendant obliterated on the official index required  
9 to be kept by the circuit court clerk under Section 16 of the  
10 Clerks of Courts Act, but the order shall not affect any  
11 index issued by the circuit court clerk before the entry of  
12 the order. The Department may charge the petitioner a fee  
13 equivalent to the cost of processing any order to expunge or  
14 seal the records, and the fee shall be deposited into the  
15 State Police Services Fund. The records of those arrests,  
16 however, that result in a disposition of supervision for any  
17 offense shall not be expunged from the records of the  
18 arresting authority or the Department nor impounded by the  
19 court until 2 years after discharge and dismissal of  
20 supervision. Those records that result from a supervision  
21 for a violation of Section 3-707, 3-708, 3-710, 5-401.3, or  
22 11-503 of the Illinois Vehicle Code or a similar provision of  
23 a local ordinance, or for a violation of Section 12-3.2,  
24 12-15 or 16A-3 of the Criminal Code of 1961, or probation  
25 under Section 10 of the Cannabis Control Act, Section 410 of  
26 the Illinois Controlled Substances Act, Section 12-4.3(b)(1)  
27 and (2) of the Criminal Code of 1961 (as those provisions  
28 existed before their deletion by Public Act 89-313), Section  
29 10-102 of the Illinois Alcoholism and Other Drug Dependency  
30 Act when the judgment of conviction has been vacated, Section  
31 40-10 of the Alcoholism and Other Drug Abuse and Dependency  
32 Act when the judgment of conviction has been vacated, or  
33 Section 10 of the Steroid Control Act shall not be expunged  
34 from the records of the arresting authority nor impounded by

1 the court until 5 years after termination of probation or  
2 supervision. Those records that result from a supervision  
3 for a violation of Section 11-501 of the Illinois Vehicle  
4 Code or a similar provision of a local ordinance, shall not  
5 be expunged. All records set out above may be ordered by the  
6 court to be expunged from the records of the arresting  
7 authority and impounded by the court after 5 years, but shall  
8 not be expunged by the Department, but shall, on court order  
9 be sealed by the Department and may be disseminated by the  
10 Department only as required by law or to the arresting  
11 authority, the State's Attorney, and the court upon a later  
12 arrest for the same or a similar offense or for the purpose  
13 of sentencing for any subsequent felony. Upon conviction for  
14 any offense, the Department of Corrections shall have access  
15 to all sealed records of the Department pertaining to that  
16 individual.

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

21 (b) Whenever a person has been convicted of a crime or  
22 of the violation of a municipal ordinance, in the name of a  
23 person whose identity he has stolen or otherwise come into  
24 possession of, the aggrieved person from whom the identity  
25 was stolen or otherwise obtained without authorization, upon  
26 learning of the person having been arrested using his  
27 identity, may, upon verified petition to the chief judge of  
28 the circuit wherein the arrest was made, have a court order  
29 entered nunc pro tunc by the chief judge to correct the  
30 arrest record, conviction record, if any, and all official  
31 records of the arresting authority, the Department, other  
32 criminal justice agencies, the prosecutor, and the trial  
33 court concerning such arrest, if any, by removing his name  
34 from all such records in connection with the arrest and

1 conviction, if any, and by inserting in the records the name  
2 of the offender, if known or ascertainable, in lieu of the  
3 aggrieved's name. The records of the clerk of the circuit  
4 court clerk shall be sealed until further order of the court  
5 upon good cause shown and the name of the aggrieved person  
6 obliterated on the official index required to be kept by the  
7 circuit court clerk under Section 16 of the Clerks of Courts  
8 Act, but the order shall not affect any index issued by the  
9 circuit court clerk before the entry of the order. Nothing  
10 in this Section shall limit the Department of State Police or  
11 other criminal justice agencies or prosecutors from listing  
12 under an offender's name the false names he or she has used.  
13 For purposes of this Section, convictions for moving and  
14 nonmoving traffic violations other than convictions for  
15 violations of Chapter 4, Section 11-204.1 or Section 11-501  
16 of the Illinois Vehicle Code shall not be a bar to expunging  
17 the record of arrest and court records for violation of a  
18 misdemeanor or municipal ordinance.

19 (c) Whenever a person who has been convicted of an  
20 offense is granted a pardon by the Governor which  
21 specifically authorizes expungement, he may, upon verified  
22 petition to the chief judge of the circuit where the person  
23 had been convicted, any judge of the circuit designated by  
24 the Chief Judge, or in counties of less than 3,000,000  
25 inhabitants, the presiding trial judge at the defendant's  
26 trial, may have a court order entered expunging the record of  
27 arrest from the official records of the arresting authority  
28 and order that the records of the clerk of the circuit court  
29 and the Department be sealed until further order of the court  
30 upon good cause shown or as otherwise provided herein, and  
31 the name of the defendant obliterated from the official index  
32 requested to be kept by the circuit court clerk under Section  
33 16 of the Clerks of Courts Act in connection with the arrest  
34 and conviction for the offense for which he had been pardoned

1 but the order shall not affect any index issued by the  
2 circuit court clerk before the entry of the order. All  
3 records sealed by the Department may be disseminated by the  
4 Department only as required by law or to the arresting  
5 authority, the State's Attorney, and the court upon a later  
6 arrest for the same or similar offense or for the purpose of  
7 sentencing for any subsequent felony. Upon conviction for  
8 any subsequent offense, the Department of Corrections shall  
9 have access to all sealed records of the Department  
10 pertaining to that individual. Upon entry of the order of  
11 expungement, the clerk of the circuit court shall promptly  
12 mail a copy of the order to the person who was pardoned.

13 (c-5) Whenever a person has been convicted of criminal  
14 sexual assault, aggravated criminal sexual assault, predatory  
15 criminal sexual assault of a child, criminal sexual abuse, or  
16 aggravated criminal sexual abuse, the victim of that offense  
17 may request that the State's Attorney of the county in which  
18 the conviction occurred file a verified petition with the  
19 presiding trial judge at the defendant's trial to have a  
20 court order entered to seal the records of the clerk of the  
21 circuit court in connection with the proceedings of the trial  
22 court concerning that offense. However, the records of the  
23 arresting authority and the Department of State Police  
24 concerning the offense shall not be sealed. The court, upon  
25 good cause shown, shall make the records of the clerk of the  
26 circuit court in connection with the proceedings of the trial  
27 court concerning the offense available for public inspection.

28 (d) Notice of the petition for subsections (a), (b), and  
29 (c) shall be served upon the State's Attorney or prosecutor  
30 charged with the duty of prosecuting the offense, the  
31 Department of State Police, the arresting agency and the  
32 chief legal officer of the unit of local government affecting  
33 the arrest. Unless the State's Attorney or prosecutor, the  
34 Department of State Police, the arresting agency or such

1 chief legal officer objects to the petition within 30 days  
2 from the date of the notice, the court shall enter an order  
3 granting or denying the petition. The clerk of the court  
4 shall promptly mail a copy of the order to the person, the  
5 arresting agency, the prosecutor, the Department of State  
6 Police and such other criminal justice agencies as may be  
7 ordered by the judge.

8 (e) Nothing herein shall prevent the Department of State  
9 Police from maintaining all records of any person who is  
10 admitted to probation upon terms and conditions and who  
11 fulfills those terms and conditions pursuant to Section 10 of  
12 the Cannabis Control Act, Section 410 of the Illinois  
13 Controlled Substances Act, Section 12-4.3 of the Criminal  
14 Code of 1961, Section 10-102 of the Illinois Alcoholism and  
15 Other Drug Dependency Act, Section 40-10 of the Alcoholism  
16 and Other Drug Abuse and Dependency Act, or Section 10 of the  
17 Steroid Control Act.

18 (f) No court order issued pursuant to the expungement  
19 provisions of this Section shall become final for purposes of  
20 appeal until 30 days after notice is received by the  
21 Department. Any court order contrary to the provisions of  
22 this Section is void.

23 (g) Except as otherwise provided in subsection (c-5) of  
24 this Section, the court shall not order the sealing or  
25 expungement of the arrest records and records of the circuit  
26 court clerk of any person granted supervision for or  
27 convicted of any sexual offense committed against a minor  
28 under 18 years of age. For the purposes of this Section,  
29 "sexual offense committed against a minor" includes but is  
30 not limited to the offenses of indecent solicitation of a  
31 child or criminal sexual abuse when the victim of such  
32 offense is under 18 years of age.

33 (h) (1) Notwithstanding any other provision of this Act  
34 to the contrary, whenever an adult or minor prosecuted as an

1 adult charged with a violation of a municipal ordinance or a  
2 misdemeanor is acquitted or released without being convicted,  
3 or if the person is convicted but the conviction is reversed,  
4 or if the person has been convicted of or placed on  
5 supervision for a misdemeanor and has not been convicted of a  
6 felony or misdemeanor or placed on supervision for a  
7 misdemeanor within 3 years after the acquittal or release or  
8 reversal of conviction, the completion of the sentence or  
9 completion of the terms and conditions of the supervision, if  
10 the acquittal, release, finding of not guilty, or conviction  
11 occurred on or after the effective date of this amendatory  
12 Act of the 93rd General Assembly, the Chief Judge of the  
13 circuit in which the charge was brought, any judge of that  
14 circuit designated by the Chief Judge, or, in counties of  
15 less than 3,000,000 inhabitants, the presiding trial judge at  
16 the defendant's trial shall order the official records of the  
17 arresting authority, the Department, and the clerk of the  
18 circuit court sealed 3 years after the dismissal of the  
19 charge, the finding of not guilty, the reversal of  
20 conviction, or the completion of the sentence or terms and  
21 conditions of the supervision, except those records are  
22 subject to inspection and use by the court for the purposes  
23 of subsequent sentencing for misdemeanor and felony  
24 violations and inspection and use by law enforcement agencies  
25 and State's Attorneys or other prosecutors in carrying out  
26 the duties of their offices. This subsection (h) does not  
27 apply to persons convicted of or placed on supervision for:  
28 (1) a violation of Section 11-501 of the Illinois Vehicle  
29 Code or a similar provision of a local ordinance; (2) a  
30 misdemeanor violation of Article 11 of the Criminal Code of  
31 1961 or a similar provision of a local ordinance; (3) a  
32 misdemeanor violation of Section 12-15 or 12-30 of the  
33 Criminal Code of 1961 or a similar provision of a local  
34 ordinance; or (4) a misdemeanor violation that is a crime of

1 violence as defined in Section 2 of the Crime Victims  
2 Compensation Act or a similar provision of a local ordinance.

3 (2) The person whose records are to be sealed shall  
4 provide the clerk of the court with a current address and  
5 shall promptly notify the clerk of the court of any change of  
6 address. Notice that the person's records are to be sealed  
7 shall be served upon the State's Attorney or prosecutor  
8 charged with the duty of prosecuting the offense, the  
9 Department of State Police, the arresting agency and the  
10 chief legal officer of the unit of local government effecting  
11 the arrest within 2 years and 6 months after the dismissal of  
12 the charge, the finding of not guilty, the reversal of  
13 conviction, or the completion of the sentence or the terms  
14 and conditions of the supervision. Unless the State's  
15 Attorney or prosecutor, the Department of State Police, the  
16 arresting agency or such chief legal officer objects to  
17 sealing of the records within 90 days of notice the court  
18 shall enter an order sealing the defendant's records 3 years  
19 after the dismissal of the charge, the finding of not guilty,  
20 the reversal of conviction, or the completion of the sentence  
21 or the terms and conditions of the supervision. The clerk of  
22 the court shall promptly mail a copy of the order to the  
23 person, the arresting agency, the prosecutor, the Department  
24 of State Police and such other criminal justice agencies as  
25 may be ordered by the judge. If an objection is filed, the  
26 court shall set a date for hearing. At the hearing the court  
27 shall hear evidence on whether the sealing of the records  
28 should or should not be granted.

29 (3) The person whose records are sealed under the  
30 provisions of this Act shall pay a fee equivalent to the cost  
31 associated with the sealing or expungement of records. The  
32 fee shall be paid to the clerk of the court who shall forward  
33 it to the Department at the time the court order to seal or  
34 expunge the defendant's record is forwarded to the Department

1 for processing. The fee shall be deposited into the State  
2 Police Services Fund.

3 (4) Whenever sealing of records is required under this  
4 subsection (h), the notification of the sealing must be given  
5 by the circuit court where the arrest occurred to the  
6 Department in a form and manner prescribed by the Department.

7 (5) An adult or a minor prosecuted as an adult who was  
8 charged with a violation of a municipal ordinance or a  
9 misdemeanor who was acquitted, released without being  
10 convicted, convicted and the conviction was reversed,  
11 convicted of a misdemeanor or placed on supervision for a  
12 misdemeanor before the date of this amendatory Act of the  
13 93rd General Assembly and was not convicted of a felony or  
14 misdemeanor or placed on supervision for a misdemeanor for 3  
15 years after the acquittal or release or reversal of  
16 conviction, the completion of the sentence or completion of  
17 the terms and conditions of the supervision may petition the  
18 Chief Judge of the circuit in which the charge was brought,  
19 any judge of that circuit in which the charge was brought,  
20 any judge of the circuit designated by the Chief Judge, or,  
21 in counties of less than 3,000,000 inhabitants, the presiding  
22 trial judge at that defendant's trial, to seal the official  
23 records of the arresting authority, the Department, and the  
24 clerk of the court, except those records are subject to  
25 inspection and use by the court for the purposes of  
26 subsequent sentencing for misdemeanor and felony violations  
27 and inspection and use by law enforcement agencies, the  
28 Department of Corrections, and State's Attorneys and other  
29 prosecutors in carrying out the duties of their offices. This  
30 subsection (h) does not apply to persons convicted of or  
31 placed on supervision for: (1) a violation of Section 11-501  
32 of the Illinois Vehicle Code or a similar provision of a  
33 local ordinance; (2) a misdemeanor violation of Article 11 of  
34 the Criminal Code of 1961 or a similar provision of a local

1 ordinance; (3) a misdemeanor violation of Section 12-5 or  
 2 12-30 of the Criminal Code of 1961 or a similar provision of  
 3 a local ordinance; or (4) a misdemeanor violation that is a  
 4 crime of violence as defined in Section 2 of the Crime  
 5 Victims Compensation Act or a similar provision of a local  
 6 ordinance. The State's Attorney or prosecutor charged with  
 7 the duty of prosecuting the offense, the Department of State  
 8 Police, the arresting agency and the chief legal officer of  
 9 the unit of local government effecting the arrest shall be  
 10 served with a copy of the verified petition and shall have 90  
 11 days to object. If an objection is filed, the court shall set  
 12 a date for hearing. At the hearing the court shall hear  
 13 evidence on whether the sealing of the records should or  
 14 should not be granted. The person whose records are sealed  
 15 under the provisions of this Act shall pay a fee equivalent  
 16 to the cost associated with the sealing of records. The fee  
 17 shall be paid to the clerk of the court who shall forward it  
 18 to the Department at the time the court order to seal or  
 19 expunge the defendant's record is forwarded to the Department  
 20 for processing. The fee shall be deposited into the State  
 21 Police Services Fund.

22 (Source: P.A. 91-295, eff. 1-1-00; 91-357, eff. 7-29-99;  
 23 92-651, eff. 7-11-02.)

24 (20 ILCS 2630/11 new)

25 Sec. 11. Legal assistance and education. The State  
 26 Appellate Defender shall establish, maintain, and carry out a  
 27 sealing and expungement program to provide information to  
 28 persons eligible to have their arrest or criminal history  
 29 records expunged or sealed.

30 (20 ILCS 2630/12 new)

31 Sec 12. Entry of order; effect of expungement or  
 32 sealing.

1       (a) An expunged or sealed record may not be considered  
 2       by any private or public entity in employment matters,  
 3       certification, licensing, revocation of certification or  
 4       licensure, or registration. Applications for employment must  
 5       contain specific language which states that the applicant is  
 6       not obligated to disclose sealed or expunged records of  
 7       conviction or arrest. Employers may not ask if an applicant  
 8       has had records expunged or sealed.

9       (b) A person whose records have been sealed or expunged  
 10       is not entitled to remission of any fines, costs, or other  
 11       money paid as a consequence of the sealing or expungement.  
 12       This amendatory Act of the 93rd General Assembly does not  
 13       affect the right of the victim of a crime to prosecute or  
 14       defend a civil action for damages. Persons engaged in civil  
 15       litigation involving criminal records that have been sealed  
 16       or expunged may petition the court to open the records for  
 17       the limited purpose of using them in the course of  
 18       litigation.

19       (20 ILCS 2630/13 new)

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

21       (a) The Department of State Police shall retain records  
 22       sealed under subsection (h) of Section 5. The sealed records  
 23       shall be used and disseminated by the Department only as  
 24       allowed by law. Upon conviction for any offense, the  
 25       Department of Corrections shall have access to all sealed  
 26       records of the Department pertaining to that individual.

27       (b) The sealed records maintained under subsection (a)  
 28       are exempt from disclosure under the Freedom of Information  
 29       Act.

30       (c) Except as provided in subsection (a), a person who  
 31       is a keeper of arrest, conviction, or court records who knows  
 32       that a record was expunged or sealed under Section 5 and  
 33       knowingly divulges, uses, or publishes information concerning

1 an expunged or sealed record under this Section is guilty of  
2 a Class B misdemeanor punishable by imprisonment for not more  
3 than 90 days or a fine of not more than \$500, or both.