

1                                    AMENDMENT TO HOUSE BILL 2391

2                    AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2391 as follows:

3        by replacing everything after the enacting clause with the  
4        following:

5                    "Section 5. The Criminal Identification Act is amended by  
6        changing Section 5 and adding Sections 11, 12, and 13 as  
7        follows:

8                    (20 ILCS 2630/5) (from Ch. 38, par. 206-5)

9                    Sec. 5. Arrest reports; expungement.

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

1 11-501 of that Code. In addition, conservation offenses, as  
2 defined in the Supreme Court Rule 501(c), that are classified  
3 as Class B misdemeanors shall not be reported.

4 Whenever an adult or minor prosecuted as an adult, ~~not~~  
5 ~~having-previously-been-convicted-of-any-criminal--offense--or~~  
6 ~~municipal--ordinance-violation,~~ charged with a violation of a  
7 municipal ordinance or a felony or misdemeanor, is acquitted  
8 or the charges are dismissed or no billed, or if the person  
9 is convicted, but the conviction is reversed released without  
10 ~~being-convicted,~~ whether the acquittal or release occurred  
11 before, ~~on,~~ or after the effective date of this amendatory  
12 Act of the 93rd General Assembly 1991, the Chief Judge of the  
13 circuit wherein the charge was brought, any judge of that  
14 circuit designated by the Chief Judge, or in counties of less  
15 than 3,000,000 inhabitants, the presiding trial judge at the  
16 defendant's trial shall ~~may-upon--verified--petition--of--the~~  
17 defendant order the record of arrest expunged from the  
18 official records of the arresting authority and the  
19 Department and order that the records of the clerk of the  
20 circuit court be sealed until further order of the court upon  
21 good cause shown and the name of the defendant obliterated on  
22 the official index required to be kept by the circuit court  
23 clerk under Section 16 of the Clerks of Courts Act, but the  
24 order shall not affect any index issued by the circuit court  
25 clerk before the entry of the order. The Department may  
26 charge the petitioner a fee equivalent to the cost of  
27 processing any order to expunge or seal the records, and the  
28 fee shall be deposited into the State Police Services Fund,  
29 except there shall be no fee to apply to expunge an aggrieved  
30 party's records resulting from a case in which the aggrieved  
31 party's identity was stolen. ~~The-records-of--those--arrests,~~  
32 ~~however,~~ ~~that-result-in-a-disposition-of-supervision-for-any~~  
33 ~~offense-shall--not--be--expunged--from--the--records--of--the~~  
34 ~~arresting--authority--or--the-Department-nor-impounded-by-the~~

1 court--until--2--years--after--discharge--and--dismissal---of  
2 supervision,---These--records--that--result--from--a--supervision  
3 for--a--violation--of--Section--3-707,--3-708,--3-710,--5-401.3,--or  
4 11-503--of--the--Illinois--Vehicle--Code--or--a--similar--provision--of  
5 a--local--ordinance,--or--for--a--violation--of--Section--12-3.2,  
6 12-15--or--16A-3--of--the--Criminal--Code--of--1961,--or--probation  
7 under--Section--10--of--the--Cannabis--Control--Act,--Section--410--of  
8 the--Illinois--Controlled--Substances--Act,--Section--12-4.3(b)(1)  
9 and--(2)--of--the--Criminal--Code--of--1961--(as--these--provisions  
10 existed--before--their--deletion--by--Public--Act--89-313),--Section  
11 10-102--of--the--Illinois--Alcoholism--and--Other--Drug--Dependency  
12 Act--when--the--judgment--of--conviction--has--been--vacated,--Section  
13 40-10--of--the--Alcoholism--and--Other--Drug--Abuse--and--Dependency  
14 Act--when--the--judgment--of--conviction--has--been--vacated,--or  
15 Section--10--of--the--Steroid--Control--Act--shall--not--be--expunged  
16 from--the--records--of--the--arresting--authority--nor--impounded--by  
17 the--court--until--5--years--after--termination--of--probation--or  
18 supervision,---These--records--that--result--from--a--supervision  
19 for--a--violation--of--Section--11-501--of--the--Illinois--Vehicle  
20 Code--or--a--similar--provision--of--a--local--ordinance,--shall--not  
21 be--expunged,--All--records--set--out--above--may--be--ordered--by--the  
22 court--to--be--expunged--from--the--records--of--the--arresting  
23 authority--and--impounded--by--the--court--after--5--years,--but--shall  
24 not--be--expunged--by--the--Department,--but--shall,--on--court--order  
25 be--sealed--by--the--Department--and--may--be--disseminated--by--the  
26 Department--only--as--required--by--law--or--to--the--arresting  
27 authority,--the--State's--Attorney,--and--the--court--upon--a--later  
28 arrest--for--the--same--or--a--similar--offense--or--for--the--purpose  
29 of--sentencing--for--any--subsequent--felony. Upon conviction for  
30 any offense, the Department of Corrections shall have access  
31 to all sealed records of the Department pertaining to that  
32 individual.

33 (a-2) An adult or minor prosecuted as an adult who,  
34 previous to the effective date of this amendatory Act of the

1 93rd General Assembly, was charged with a violation of a  
2 municipal ordinance or a felony or a misdemeanor and who was  
3 acquitted, had the charges dismissed or no billed, or had a  
4 conviction reversed may, upon verified petition to the Chief  
5 Judge of the circuit wherein the charge was brought, any  
6 judge of that circuit designated by the Chief Judge, or in  
7 counties of less than 3,000,000 inhabitants, the presiding  
8 trial judge at the defendant's trial, request expungement of  
9 those arrest records. Upon finding the applicant statutorily  
10 eligible for expungement, the court shall order the records  
11 of arrest expunged from the official records of the arresting  
12 authority and the Department and order that the records of  
13 the clerk of the circuit court be sealed until further order  
14 of the court upon good cause shown and the name of the  
15 defendant obliterated on the official index required to be  
16 kept by the circuit court clerk under Section 16 of the  
17 Clerks of Courts Act, but the order shall not affect any  
18 index issued by the circuit court clerk before the entry of  
19 the order.

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

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

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

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

1 requested to be kept by the circuit court clerk under Section  
2 16 of the Clerks of Courts Act in connection with the arrest  
3 and conviction for the offense for which he had been pardoned  
4 but the order shall not affect any index issued by the  
5 circuit court clerk before the entry of the order. All  
6 records sealed by the Department may be disseminated by the  
7 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 similar offense or for the purpose of  
10 sentencing for any subsequent felony. Upon conviction for  
11 any subsequent offense, the Department of Corrections shall  
12 have access to all sealed records of the Department  
13 pertaining to that individual. Upon entry of the order of  
14 expungement, the clerk of the circuit court shall promptly  
15 mail a copy of the order to the person who was pardoned.

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

31 (d) Notice of the petition for subsections (a), (b), and  
32 (c) shall be served upon the State's Attorney or prosecutor  
33 charged with the duty of prosecuting the offense, the  
34 Department of State Police, the arresting agency and the

1 chief legal officer of the unit of local government affecting  
2 the arrest. Unless the State's Attorney or prosecutor, the  
3 Department of State Police, the arresting agency or such  
4 chief legal officer objects to the petition within 90 30 days  
5 from the date of the notice, the court shall enter an order  
6 granting or denying the petition. The clerk of the court  
7 shall promptly mail a copy of the order to the person, the  
8 arresting agency, the prosecutor, the Department of State  
9 Police and such other criminal justice agencies as may be  
10 ordered by the judge. If an objection is filed, the court  
11 shall set a date for hearing. At the hearing the court shall  
12 hear evidence on whether the expungement of the records  
13 should or should not be granted.

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

24 (f) No court order issued pursuant to the expungement  
25 provisions of this Section shall become final for purposes of  
26 appeal until 30 days after notice is received by the  
27 Department. Any court order contrary to the provisions of  
28 this Section is void.

29 (g) Except as otherwise provided in subsection (c-5) of  
30 this Section, the court shall not order the sealing or  
31 expungement of the arrest records and records of the circuit  
32 court clerk of any person granted supervision for or  
33 convicted of any sexual offense committed against a minor  
34 under 18 years of age. For the purposes of this Section,

1 "sexual offense committed against a minor" includes but is  
2 not limited to the offenses of indecent solicitation of a  
3 child or criminal sexual abuse when the victim of such  
4 offense is under 18 years of age.

5 (h) (1) Notwithstanding any other provision of this Act  
6 to the contrary, whenever an adult or minor prosecuted as an  
7 adult charged with a violation of a municipal ordinance or a  
8 misdemeanor has been convicted or placed on supervision for a  
9 misdemeanor and has not been convicted of a felony or  
10 misdemeanor or placed on supervision for a misdemeanor within  
11 3 years after the completion of the sentence or completion of  
12 the terms and conditions of the supervision and the  
13 conviction entered or the supervision was imposed after the  
14 effective date of this amendatory Act of the 93rd General  
15 Assembly, the Chief Judge of the circuit in which the charge  
16 was brought, any judge of that circuit designated by the  
17 Chief Judge, or, in counties of less than 3,000,000  
18 inhabitants, the presiding trial judge at the defendant's  
19 trial shall order the record of arrest expunged from the  
20 official records of the arresting authority and the  
21 Department and order that the records of the clerk of the  
22 circuit court be sealed until further order of the court upon  
23 good cause shown and the name of the defendant obliterated on  
24 the official index required to be kept by the circuit court  
25 clerk under Section 16 of the Clerks of Courts Act, but the  
26 order shall not affect any index issued by the circuit court  
27 clerk before the entry of the order, 3 years after the  
28 completion of the sentence or terms and conditions of  
29 supervision, except those records are subject to inspection  
30 and use by the court for the purposes of subsequent  
31 sentencing for misdemeanor and felony violations and  
32 inspection and use by law enforcement agencies and State's  
33 Attorneys or prosecutors in carrying out the duties of their  
34 offices. This subsection (h) does not apply to persons



1 convicted of or placed on supervision for: (1) a violation of  
2 Section 11-501 of the Illinois Vehicle Code or a similar  
3 provision of a local ordinance; (2) a misdemeanor violation  
4 of Article 11 of the Criminal Code of 1961 or a similar  
5 provision of a local ordinance; (3) a misdemeanor violation  
6 of Section 12-15 or 12-30 of the Criminal Code of 1961 or a  
7 similar provision of a local ordinance; or (4) a misdemeanor  
8 violation that is a crime of violence as defined in Section 2  
9 of the Crime Victims Compensation Act or a similar provision  
10 of a local ordinance.

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

34 (3) Notwithstanding any other provision of this Act to

1 the contrary, an adult or minor prosecuted as an adult  
2 charged with a violation of a municipal ordinance or a  
3 misdemeanor who was convicted or placed on supervision for a  
4 misdemeanor and was not convicted of a felony or misdemeanor  
5 or placed on supervision for a misdemeanor within 3 years  
6 after the completion of the sentence or completion of the  
7 terms and conditions of the supervision, and if the arrest  
8 for the offense that resulted in conviction or supervision  
9 occurred before the effective date of this amendatory Act of  
10 the 93rd General Assembly, the Chief Judge of the circuit in  
11 which the charge was brought, any judge of that circuit  
12 designated by the Chief Judge, or, in counties of less than  
13 3,000,000 inhabitants, the presiding trial judge at the  
14 defendant's trial shall, upon a verified petition filed by  
15 the defendant, order the record of arrest expunged from the  
16 official records of the arresting authority and the  
17 Department and order that the records of the clerk of the  
18 circuit court be sealed until further order of the court upon  
19 good cause shown and the name of the defendant obliterated on  
20 the official index required to be kept by the circuit court  
21 clerk under Section 16 of the Clerks of Courts Act, but the  
22 order shall not affect any index issued by the circuit court  
23 clerk before the entry of the order, immediately or 3 years  
24 after the completion of the sentence or terms and conditions  
25 of the supervision, whichever is later, except those records  
26 are subject to inspection and use by the court for the  
27 purposes of subsequent sentencings for misdemeanor and felony  
28 violations and inspection and use by law enforcement agencies  
29 and State's Attorneys or prosecutors in carrying out the  
30 duties of their offices. This subsection (h) does not apply  
31 to persons convicted of or placed on supervision for: (1) a  
32 violation of Section 11-501 of the Illinois Vehicle Code or a  
33 similar provision of a local ordinance; (2) a misdemeanor  
34 violation of Article 11 of the Criminal Code of 1961 or a

1 similar provision of a local ordinance; (3) a misdemeanor  
2 violation of Section 12-15 of 12-30 of the Criminal Code of  
3 1961 or a similar provision of a local ordinance; or (4) a  
4 misdemeanor violation that is a crime of violence as defined  
5 in Section 2 of the Crime Victims Compensation Act or a  
6 similar provision of a local ordinance. The State's Attorney  
7 or prosecutor charged with the duty of prosecuting the  
8 offense, the Department of State Police, the arresting agency  
9 and the chief legal officer of the unit of local government  
10 effecting the arrest shall be served with a copy of the  
11 verified petition and shall have 3 months in which to object.  
12 If an objection is filed, the court shall set a date for  
13 hearing. At the hearing the court shall hear evidence on  
14 whether the sealing of the records should or should not be  
15 granted. Upon conviction for any offense, the Department of  
16 Corrections shall have access to all sealed records of the  
17 Department pertaining to that individual.

18 (4) The person whose records are sealed under this  
19 subsection (h) shall pay to the Department a fee equivalent  
20 to the cost of processing any sealing of records. The fee  
21 shall be paid within 30 days after the dismissal of the  
22 charge, the finding of not guilty, the reversal of  
23 conviction, or the completion of the sentence or terms and  
24 conditions of the supervision. The fee shall be deposited  
25 into the State Police Services Fund.

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

30 (Source: P.A. 91-295, eff. 1-1-00; 91-357, eff. 7-29-99;  
31 92-651, eff. 7-11-02.)

32 (20 ILCS 2630/11 new)

33 Sec. 11. Legal assistance and education. The State

1 Appellate Defender shall establish, maintain, and carry out  
 2 an expungement program to provide information to persons  
 3 eligible to have their arrest or criminal history records  
 4 expunged or sealed.

5 (20 ILCS 2630/12 new)

6 Sec 12. Entry of order; effect of expungement or sealing.

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

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

25 (20 ILCS 2630/13 new)

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

27 (a) The Department of State Police shall retain a  
 28 nonpublic sealed or expunged record under subsections (a),  
 29 (b), (c), and (h) of Section 5. This nonpublic sealed record  
 30 shall be used and disseminated by the Department only as  
 31 allowed by law.

32 (b) The nonpublic record maintained under subsection (a)

1 is exempt from disclosure under the Freedom of Information  
2 Act.

3 (c) Except as provided in subsection (a), a person who  
4 is a keeper of arrest, conviction, or court records who knows  
5 that a record was expunged or sealed under Section 5 and  
6 knowingly divulges, uses, or publishes information concerning  
7 an expunged or sealed record under this Section is guilty of  
8 a Class B misdemeanor punishable by imprisonment for not more  
9 than 90 days or a fine of not more than \$500, or both."