

1                                    AMENDMENT TO HOUSE BILL 2391

2            AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2391 by replacing  
3 everything after the enacting clause with the following:

4            "Section 5. The Criminal Identification Act is amended  
5 by 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

1 as Class B misdemeanors shall not be reported.

2 Whenever an adult or minor prosecuted as an adult, not  
3 having previously been convicted of any criminal offense or  
4 municipal ordinance violation, charged with a violation of a  
5 municipal ordinance or a felony or misdemeanor, is acquitted  
6 or released without being convicted, whether the acquittal or  
7 release occurred before, on, or after the effective date of  
8 this amendatory Act of 1991, the Chief Judge of the circuit  
9 wherein the charge was brought, any judge of that circuit  
10 designated by the Chief Judge, or in counties of less than  
11 3,000,000 inhabitants, the presiding trial judge at the  
12 defendant's trial may upon verified petition of the defendant  
13 order the record of arrest expunged from the official records  
14 of the arresting authority and the Department and order that  
15 the records of the clerk of the circuit court be sealed until  
16 further order of the court upon good cause shown and the name  
17 of the defendant obliterated on the official index required  
18 to be kept by the circuit court clerk under Section 16 of the  
19 Clerks of Courts Act, but the order shall not affect any  
20 index issued by the circuit court clerk before the entry of  
21 the order. The Department may charge the petitioner a fee  
22 equivalent to the cost of processing any order to expunge or  
23 seal the records, and the fee shall be deposited into the  
24 State Police Services Fund. The records of those arrests,  
25 however, that result in a disposition of supervision for any  
26 offense shall not be expunged from the records of the  
27 arresting authority or the Department nor impounded by the  
28 court until 2 years after discharge and dismissal of  
29 supervision. Those records that result from a supervision  
30 for a violation of Section 3-707, 3-708, 3-710, 5-401.3, or  
31 11-503 of the Illinois Vehicle Code or a similar provision of  
32 a local ordinance, or for a violation of Section 12-3.2,  
33 12-15 or 16A-3 of the Criminal Code of 1961, or probation  
34 under Section 10 of the Cannabis Control Act, Section 410 of

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

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

30 (b) Whenever a person has been convicted of a crime or  
31 of the violation of a municipal ordinance, in the name of a  
32 person whose identity he has stolen or otherwise come into  
33 possession of, the aggrieved person from whom the identity  
34 was stolen or otherwise obtained without authorization, upon

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

28 (c) Whenever a person who has been convicted of an  
29 offense is granted a pardon by the Governor which  
30 specifically authorizes expungement, he may, upon verified  
31 petition to the chief judge of the circuit where the person  
32 had been convicted, any judge of the circuit designated by  
33 the Chief Judge, or in counties of less than 3,000,000  
34 inhabitants, the presiding trial judge at the defendant's

1 trial, may have a court order entered expunging the record of  
2 arrest from the official records of the arresting authority  
3 and order that the records of the clerk of the circuit court  
4 and the Department be sealed until further order of the court  
5 upon good cause shown or as otherwise provided herein, and  
6 the name of the defendant obliterated from the official index  
7 requested to be kept by the circuit court clerk under Section  
8 16 of the Clerks of Courts Act in connection with the arrest  
9 and conviction for the offense for which he had been pardoned  
10 but the order shall not affect any index issued by the  
11 circuit court clerk before the entry of the order. All  
12 records sealed by the Department may be disseminated by the  
13 Department only as required by law or to the arresting  
14 authority, the State's Attorney, and the court upon a later  
15 arrest for the same or similar offense or for the purpose of  
16 sentencing for any subsequent felony. Upon conviction for  
17 any subsequent offense, the Department of Corrections shall  
18 have access to all sealed records of the Department  
19 pertaining to that individual. Upon entry of the order of  
20 expungement, the clerk of the circuit court shall promptly  
21 mail a copy of the order to the person who was pardoned.

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

1 circuit court in connection with the proceedings of the trial  
2 court concerning the offense available for public inspection.

3 (d) Notice of the petition for subsections (a), (b), and  
4 (c) shall be served upon the State's Attorney or prosecutor  
5 charged with the duty of prosecuting the offense, the  
6 Department of State Police, the arresting agency and the  
7 chief legal officer of the unit of local government affecting  
8 the arrest. Unless the State's Attorney or prosecutor, the  
9 Department of State Police, the arresting agency or such  
10 chief legal officer objects to the petition within 30 days  
11 from the date of the notice, the court shall enter an order  
12 granting or denying the petition. The clerk of the court  
13 shall promptly mail a copy of the order to the person, the  
14 arresting agency, the prosecutor, the Department of State  
15 Police and such other criminal justice agencies as may be  
16 ordered by the judge.

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

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

32 (g) Except as otherwise provided in subsection (c-5) of  
33 this Section, the court shall not order the sealing or  
34 expungement of the arrest records and records of the circuit

1 court clerk of any person granted supervision for or  
2 convicted of any sexual offense committed against a minor  
3 under 18 years of age. For the purposes of this Section,  
4 "sexual offense committed against a minor" includes but is  
5 not limited to the offenses of indecent solicitation of a  
6 child or criminal sexual abuse when the victim of such  
7 offense is under 18 years of age.

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

1 the duties of their offices. This subsection (h) does not  
2 apply to persons convicted of or placed on supervision for:  
3 (1) a violation of Section 11-501 of the Illinois Vehicle  
4 Code or a similar provision of a local ordinance; (2) a  
5 misdemeanor violation of Article 11 of the Criminal Code of  
6 1961 or a similar provision of a local ordinance; (3) a  
7 misdemeanor violation of Section 12-15 or 12-30 of the  
8 Criminal Code of 1961 or a similar provision of a local  
9 ordinance; or (4) a misdemeanor violation that is a crime of  
10 violence as defined in Section 2 of the Crime Victims  
11 Compensation Act or a similar provision of a local ordinance.

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



1 court shall set a date for hearing. At the hearing the court  
2 shall hear evidence on whether the sealing of the records  
3 should or should not be granted.

4 (3) The person whose records are sealed under the  
5 provisions of this Act shall pay a fee equivalent to the cost  
6 associated with the sealing or expungement of records. The  
7 fee shall be paid to the clerk of the court who shall forward  
8 it to the Department at the time the court order to seal or  
9 expunge the defendant's record is forwarded to the Department  
10 for processing. The fee shall be deposited into the State  
11 Police Services Fund.

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

16 (5) An adult or a minor prosecuted as an adult who was  
17 charged with a violation of a municipal ordinance or a  
18 misdemeanor who was acquitted, released without being  
19 convicted, convicted and the conviction was reversed,  
20 convicted of a misdemeanor or placed on supervision for a  
21 misdemeanor before the date of this amendatory Act of the  
22 93rd General Assembly and was not convicted of a felony or  
23 misdemeanor or placed on supervision for a misdemeanor for 3  
24 years after the acquittal or release or reversal of  
25 conviction, the completion of the sentence or completion of  
26 the terms and conditions of the supervision may petition the  
27 Chief Judge of the circuit in which the charge was brought,  
28 any judge of that circuit in which the charge was brought,  
29 any judge of the circuit designated by the Chief Judge, or,  
30 in counties of less than 3,000,000 inhabitants, the presiding  
31 trial judge at that defendant's trial, to seal the official  
32 records of the arresting authority, the Department, and the  
33 clerk of the court, except those records are subject to  
34 inspection and use by the court for the purposes of

1 subsequent sentencing for misdemeanor and felony violations  
2 and inspection and use by law enforcement agencies, the  
3 Department of Corrections, and State's Attorneys and other  
4 prosecutors in carrying out the duties of their offices. This  
5 subsection (h) does not apply to persons convicted of or  
6 placed on supervision for: (1) a violation of Section 11-501  
7 of the Illinois Vehicle Code or a similar provision of a  
8 local ordinance; (2) a misdemeanor violation of Article 11 of  
9 the Criminal Code of 1961 or a similar provision of a local  
10 ordinance; (3) a misdemeanor violation of Section 12-5 or  
11 12-30 of the Criminal Code of 1961 or a similar provision of  
12 a local ordinance; or (4) a misdemeanor violation that is a  
13 crime of violence as defined in Section 2 of the Crime  
14 Victims Compensation Act or a similar provision of a local  
15 ordinance. The State's Attorney or prosecutor charged with  
16 the duty of prosecuting the offense, the Department of State  
17 Police, the arresting agency and the chief legal officer of  
18 the unit of local government effecting the arrest shall be  
19 served with a copy of the verified petition and shall have 90  
20 days to object. If an objection is filed, the court shall set  
21 a date for hearing. At the hearing the court shall hear  
22 evidence on whether the sealing of the records should or  
23 should not be granted. The person whose records are sealed  
24 under the provisions of this Act shall pay a fee equivalent  
25 to the cost associated with the sealing of records. The fee  
26 shall be paid to the clerk of the court who shall forward it  
27 to the Department at the time the court order to seal or  
28 expunge the defendant's record is forwarded to the Department  
29 for processing. The fee shall be deposited into the State  
30 Police Services Fund.

31 (Source: P.A. 91-295, eff. 1-1-00; 91-357, eff. 7-29-99;  
32 92-651, eff. 7-11-02.)

1       Sec. 11. Legal assistance and education. The State  
2 Appellate Defender shall establish, maintain, and carry out a  
3 sealing and expungement program to provide information to  
4 persons eligible to have their arrest or criminal history  
5 records expunged or sealed.

6           (20 ILCS 2630/12 new)

7       Sec 12. Entry of order; effect of expungement or  
8 sealing.

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

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

27           (20 ILCS 2630/13 new)

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

29       (a) The Department of State Police shall retain records  
30 sealed under subsection (h) of Section 5. The sealed records  
31 shall be used and disseminated by the Department only as  
32 allowed by law. Upon conviction for any offense, the

1 Department of Corrections shall have access to all sealed  
2 records of the Department pertaining to that individual.

3 (b) The sealed records maintained under subsection (a)  
4 are exempt from disclosure under the Freedom of Information  
5 Act.

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