

1 AMENDMENT TO SENATE BILL 788

2 AMENDMENT NO. _____. Amend Senate Bill 788 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 and cumulative with any rights to expungement
10 of criminal records, whenever an adult or minor prosecuted as
11 an adult charged with a violation of a municipal ordinance or
12 a misdemeanor is acquitted or released without being
13 convicted, or if the person is convicted but the conviction
14 is reversed, or if the person has been placed on supervision
15 for a misdemeanor and has not been convicted of a felony or
16 misdemeanor or placed on supervision for a misdemeanor within
17 3 years after the acquittal or release or reversal of
18 conviction, or the completion of the terms and conditions of
19 the supervision, if the acquittal, release, finding of not
20 guilty, or reversal of conviction occurred on or after the
21 effective date of this amendatory Act of the 93rd General
22 Assembly, the Chief Judge of the circuit in which the charge
23 was brought may have the official records of the arresting
24 authority, the Department, and the clerk of the circuit court
25 sealed 3 years after the dismissal of the charge, the finding
26 of not guilty, the reversal of conviction, or the completion
27 of the terms and conditions of the supervision, except those
28 records are subject to inspection and use by the court for
29 the purposes of subsequent sentencing for misdemeanor and
30 felony violations and inspection and use by law enforcement
31 agencies and State's Attorneys or other prosecutors in
32 carrying out the duties of their offices. This subsection
33 (h) does not apply to persons placed on supervision for: (1)
34 a violation of Section 11-501 of the Illinois Vehicle Code or

1 a similar provision of a local ordinance; (2) a misdemeanor
2 violation of Article 11 of the Criminal Code of 1961 or a
3 similar provision of a local ordinance; (3) a misdemeanor
4 violation of Section 12-15, 12-30, or 26-5 of the Criminal
5 Code of 1961 or a similar provision of a local ordinance; (4)
6 a misdemeanor violation that is a crime of violence as
7 defined in Section 2 of the Crime Victims Compensation Act or
8 a similar provision of a local ordinance; (5) a Class A
9 misdemeanor violation of the Humane Care for Animals Act; or
10 (6) any offense or attempted offense that would subject a
11 person to registration under the Sex Offender Registration
12 Act.

13 (2) Upon acquittal, release without conviction, or being
14 placed on supervision, the person charged with the offense
15 shall be informed by the court of the right to have the
16 records sealed and the procedures for the sealing of the
17 records. Three years after the dismissal of the charge, the
18 finding of not guilty, the reversal of conviction, or the
19 completion of the terms and conditions of the supervision,
20 the defendant shall provide the clerk of the court with a
21 notice of request for sealing of records and payment of the
22 applicable fee and a current address and shall promptly
23 notify the clerk of the court of any change of address. The
24 clerk shall promptly serve notice that the person's records
25 are to be sealed on the State's Attorney or prosecutor
26 charged with the duty of prosecuting the offense, the
27 Department of State Police, the arresting agency and the
28 chief legal officer of the unit of local government effecting
29 the arrest. Unless the State's Attorney or prosecutor, the
30 Department of State Police, the arresting agency or such
31 chief legal officer objects to sealing of the records within
32 90 days of notice the court shall enter an order sealing the
33 defendant's records 3 years after the dismissal of the
34 charge, the finding of not guilty, the reversal of

1 conviction, or the completion of the terms and conditions of
2 the supervision. The clerk of the court shall promptly serve
3 by mail or in person a copy of the order to the person, the
4 arresting agency, the prosecutor, the Department of State
5 Police and such other criminal justice agencies as may be
6 ordered by the judge. If an objection is filed, the court
7 shall set a date for hearing. At the hearing the court shall
8 hear evidence on whether the sealing of the records should or
9 should not be granted.

10 (3) The clerk may charge a fee equivalent to the cost
11 associated with the sealing of records by the clerk and the
12 Department of State Police. The clerk shall forward the
13 Department of State Police portion of the fee to the
14 Department and it shall be deposited into the State Police
15 Services Fund.

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

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

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

1 order to seal the defendant's record is forwarded to the
2 Department for processing. The Department of State Police
3 portion of the fee shall be deposited into the State Police
4 Services Fund.

5 (i) (1) Notwithstanding any other provision of this Act
6 to the contrary and cumulative with any rights to expungement
7 of criminal records, whenever an adult or minor prosecuted as
8 an adult charged with a violation of a municipal ordinance or
9 a misdemeanor is convicted of a misdemeanor and has not been
10 convicted of a felony or misdemeanor or placed on supervision
11 for a misdemeanor within 4 years after the completion of the
12 sentence, if the conviction occurred on or after the
13 effective date of this amendatory Act of the 93rd General
14 Assembly, the Chief Judge of the circuit in which the charge
15 was brought may have the official records of the arresting
16 authority, the Department, and the clerk of the circuit court
17 sealed 4 years after the completion of the sentence, except
18 those records are subject to inspection and use by the court
19 for the purposes of subsequent sentencing for misdemeanor and
20 felony violations and inspection and use by law enforcement
21 agencies and State's Attorneys or other prosecutors in
22 carrying out the duties of their offices. This subsection
23 (i) does not apply to persons convicted of: (1) a violation
24 of Section 11-501 of the Illinois Vehicle Code or a similar
25 provision of a local ordinance; (2) a misdemeanor violation
26 of Article 11 of the Criminal Code of 1961 or a similar
27 provision of a local ordinance; (3) a misdemeanor violation
28 of Section 12-15, 12-30, or 26-5 of the Criminal Code of 1961
29 or a similar provision of a local ordinance; (4) a
30 misdemeanor violation that is a crime of violence as defined
31 in Section 2 of the Crime Victims Compensation Act or a
32 similar provision of a local ordinance; (5) a Class A
33 misdemeanor violation of the Humane Care for Animals Act; or
34 (6) any offense or attempted offense that would subject a

1 person to registration under the Sex Offender Registration
2 Act.

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

29 (3) The clerk may charge a fee equivalent to the cost
30 associated with the sealing of records by the clerk and the
31 Department of State Police. The clerk shall forward the
32 Department of State Police portion of the fee to the
33 Department and it shall be deposited into the State Police
34 Services Fund.

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

5 (5) An adult or a minor prosecuted as an adult who was
6 charged with a violation of a municipal ordinance or a
7 misdemeanor who was convicted of a misdemeanor before the
8 date of this amendatory Act of the 93rd General Assembly and
9 was not convicted of a felony or misdemeanor or placed on
10 supervision for a misdemeanor for 4 years after the
11 completion of the sentence may petition the Chief Judge of
12 the circuit in which the charge was brought, any judge of
13 that circuit in which the charge was brought, any judge of
14 the circuit designated by the Chief Judge, or, in counties of
15 less than 3,000,000 inhabitants, the presiding trial judge at
16 that defendant's trial, to seal the official records of the
17 arresting authority, the Department, and the clerk of the
18 court, except those records are subject to inspection and use
19 by the court for the purposes of subsequent sentencing for
20 misdemeanor and felony violations and inspection and use by
21 law enforcement agencies, the Department of Corrections, and
22 State's Attorneys and other prosecutors in carrying out the
23 duties of their offices. This subsection (i) does not apply
24 to persons convicted of: (1) a violation of Section 11-501 of
25 the Illinois Vehicle Code or a similar provision of a local
26 ordinance; (2) a misdemeanor violation of Article 11 of the
27 Criminal Code of 1961 or a similar provision of a local
28 ordinance; (3) a misdemeanor violation of Section 12-15,
29 12-30, or 26-5 of the Criminal Code of 1961 or a similar
30 provision of a local ordinance; (4) a misdemeanor violation
31 that is a crime of violence as defined in Section 2 of the
32 Crime Victims Compensation Act or a similar provision of a
33 local ordinance; (5) a Class A misdemeanor violation of the
34 Humane Care for Animals Act; or (6) any offense or attempted

1 offense that would subject a person to registration under the
 2 Sex Offender Registration Act. The State's Attorney or
 3 prosecutor charged with the duty of prosecuting the offense,
 4 the Department of State Police, the arresting agency and the
 5 chief legal officer of the unit of local government effecting
 6 the arrest shall be served with a copy of the verified
 7 petition and shall have 90 days to object. If an objection is
 8 filed, the court shall set a date for hearing. At the hearing
 9 the court shall hear evidence on whether the sealing of the
 10 records should or should not be granted. The person whose
 11 records are sealed under the provisions of this Act shall pay
 12 to the clerk of the court and the Department of State Police
 13 a fee equivalent to the cost associated with the sealing of
 14 records. The fees shall be paid to the clerk of the court who
 15 shall forward the appropriate portion to the Department at
 16 the time the court order to seal the defendant's record is
 17 forwarded to the Department for processing. The Department of
 18 State Police portion of the fee shall be deposited into the
 19 State Police Services Fund.

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

22 (20 ILCS 2630/11 new)

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

28 (20 ILCS 2630/12 new)

29 Sec 12. Entry of order; effect of expungement or
 30 sealing.

31 (a) Except with respect to law enforcement agencies, the
 32 Department of Corrections, State's Attorneys, or other

1 prosecutors, an expunged or sealed record may not be
2 considered by any private or public entity in employment
3 matters, certification, licensing, revocation of
4 certification or licensure, or registration. Applications for
5 employment must contain specific language which states that
6 the applicant is not obligated to disclose sealed or expunged
7 records of conviction or arrest. Employers may not ask if an
8 applicant 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 may petition the court to open the records for the limited
17 purpose of using them in the course of litigation.

18 (20 ILCS 2630/13 new)

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

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

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