



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 2/6/2004, by John J. Cullerton

**SYNOPSIS AS INTRODUCED:**

20 ILCS 2630/5

from Ch. 38, par. 206-5

Amends the Criminal Identification Act. Makes a technical change in the Section concerning policing bodies furnishing fingerprints and descriptions of persons arrested to the Department of State Police and relating to the expungement of arrest records and the sealing of the records of the clerk of the circuit court.

LRB093 21097 RLC 47145 b

1 AN ACT concerning criminal identification.

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 as follows:

6 (20 ILCS 2630/5) (from Ch. 38, par. 206-5)

7 Sec. 5. Arrest reports; expungement.

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

23 Whenever an adult or minor prosecuted as an adult, not  
24 having previously been convicted of any criminal offense or  
25 municipal ordinance violation, charged with a violation of a  
26 municipal ordinance or a felony or misdemeanor, is acquitted or  
27 released without being convicted, whether the acquittal or  
28 release occurred before, on, or after the effective date of  
29 this amendatory Act of 1991, the Chief Judge of the circuit  
30 wherein the charge was brought, any judge of that circuit  
31 designated by the Chief Judge, or in counties of less than  
32 3,000,000 inhabitants, the presiding trial judge at the

1 defendant's trial may upon verified petition of the defendant  
2 order the record of arrest expunged from the official records  
3 of the arresting authority and the Department and order that  
4 the records of the clerk of the circuit court be sealed until  
5 further order of the court upon good cause shown and the name  
6 of the defendant obliterated on the official index required to  
7 be kept by the circuit court clerk under Section 16 of the  
8 Clerks of Courts Act, but the order shall not affect any index  
9 issued by the circuit court clerk before the entry of the  
10 order. The Department may charge the petitioner a fee  
11 equivalent to the cost of processing any order to expunge or  
12 seal the records, and the fee shall be deposited into the State  
13 Police Services Fund. The records of those arrests, however,  
14 that result in a disposition of supervision for any offense  
15 shall not be expunged from the records of the arresting  
16 authority or the Department nor impounded by the court until 2  
17 years after discharge and dismissal of supervision. Those  
18 records that result from a supervision for a violation of  
19 Section 3-707, 3-708, 3-710, 5-401.3, or 11-503 of the Illinois  
20 Vehicle Code or a similar provision of a local ordinance, or  
21 for a violation of Section 12-3.2, 12-15 or 16A-3 of the  
22 Criminal Code of 1961, or probation under Section 10 of the  
23 Cannabis Control Act, Section 410 of the Illinois Controlled  
24 Substances Act, Section 12-4.3(b)(1) and (2) of the Criminal  
25 Code of 1961 (as those provisions existed before their deletion  
26 by Public Act 89-313), Section 10-102 of the Illinois  
27 Alcoholism and Other Drug Dependency Act when the judgment of  
28 conviction has been vacated, Section 40-10 of the Alcoholism  
29 and Other Drug Abuse and Dependency Act when the judgment of  
30 conviction has been vacated, or Section 10 of the Steroid  
31 Control Act shall not be expunged from the records of the  
32 arresting authority nor impounded by the court until 5 years  
33 after termination of probation or supervision. Those records  
34 that result from a supervision for a violation of Section  
35 11-501 of the Illinois Vehicle Code or a similar provision of a  
36 local ordinance, shall not be expunged. All records set out

1 above may be ordered by the court to be expunged from the  
2 records of the arresting authority and impounded by the court  
3 after 5 years, but shall not be expunged by the Department, but  
4 shall, on court order be sealed by the Department and may be  
5 disseminated by the Department only as required by law or to  
6 the arresting authority, the State's Attorney, and the court  
7 upon a later arrest for the same or a similar offense or for  
8 the purpose of sentencing for any subsequent felony. Upon  
9 conviction for any offense, the Department of Corrections shall  
10 have access to all sealed records of the Department pertaining  
11 to that individual.

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

15 (b) Whenever a person has been convicted of a crime or of  
16 the violation of a municipal ordinance, in the name of a person  
17 whose identity he has stolen or otherwise come into possession  
18 of, the aggrieved person from whom the identity was stolen or  
19 otherwise obtained without authorization, upon learning of the  
20 person having been arrested using his identity, may, upon  
21 verified petition to the chief judge of the circuit wherein the  
22 arrest was made, have a court order entered nunc pro tunc by  
23 the chief judge to correct the arrest record, conviction  
24 record, if any, and all official records of the arresting  
25 authority, the Department, other criminal justice agencies,  
26 the prosecutor, and the trial court concerning such arrest, if  
27 any, by removing his name from all such records in connection  
28 with the arrest and conviction, if any, and by inserting in the  
29 records the name of the offender, if known or ascertainable, in  
30 lieu of the aggrieved's name. The records of the clerk of the  
31 circuit court clerk shall be sealed until further order of the  
32 court upon good cause shown and the name of the aggrieved  
33 person obliterated on the official index required to be kept by  
34 the circuit court clerk under Section 16 of the Clerks of  
35 Courts Act, but the order shall not affect any index issued by  
36 the circuit court clerk before the entry of the order. Nothing

1 in this Section shall limit the Department of State Police or  
2 other criminal justice agencies or prosecutors from listing  
3 under an offender's name the false names he or she has used.  
4 For purposes of this Section, convictions for moving and  
5 nonmoving traffic violations other than convictions for  
6 violations of Chapter 4, Section 11-204.1 or Section 11-501 of  
7 the Illinois Vehicle Code shall not be a bar to expunging the  
8 record of arrest and court records for violation of a  
9 misdemeanor or municipal ordinance.

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

1 pardoned.

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

17 (c-6) If a conviction has been set aside on direct review  
18 or on collateral attack and the court determines by clear and  
19 convincing evidence that the defendant was factually innocent  
20 of the charge, the court shall enter an expungement order as  
21 provided in subsection (b) of Section 5-5-4 of the Unified Code  
22 of Corrections.

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

36 (e) Nothing herein shall prevent the Department of State

1 Police from maintaining all records of any person who is  
2 admitted to probation upon terms and conditions and who  
3 fulfills those terms and conditions pursuant to Section 10 of  
4 the Cannabis Control Act, Section 410 of the Illinois  
5 Controlled Substances Act, Section 12-4.3 of the Criminal Code  
6 of 1961, Section 10-102 of the Illinois Alcoholism and Other  
7 Drug Dependency Act, Section 40-10 of the Alcoholism and Other  
8 Drug Abuse and Dependency Act, or Section 10 of the Steroid  
9 Control Act.

10 (f) No court order issued under ~~pursuant to~~ the expungement  
11 provisions of this Section shall become final for purposes of  
12 appeal until 30 days after notice is received by the  
13 Department. Any court order contrary to the provisions of this  
14 Section is void.

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

24 (h) (1) Notwithstanding any other provision of this Act to  
25 the contrary and cumulative with any rights to expungement of  
26 criminal records, whenever an adult or minor prosecuted as an  
27 adult charged with a violation of a municipal ordinance or a  
28 misdemeanor is acquitted or released without being convicted,  
29 or if the person is convicted but the conviction is reversed,  
30 or if the person has been placed on supervision for a  
31 misdemeanor and has not been convicted of a felony or  
32 misdemeanor or placed on supervision for a misdemeanor within 3  
33 years after the acquittal or release or reversal of conviction,  
34 or the completion of the terms and conditions of the  
35 supervision, if the acquittal, release, finding of not guilty,  
36 or reversal of conviction occurred on or after the effective

1 date of this amendatory Act of the 93rd General Assembly, the  
2 Chief Judge of the circuit in which the charge was brought may  
3 have the official records of the arresting authority, the  
4 Department, and the clerk of the circuit court sealed 3 years  
5 after the dismissal of the charge, the finding of not guilty,  
6 the reversal of conviction, or the completion of the terms and  
7 conditions of the supervision, except those records are subject  
8 to inspection and use by the court for the purposes of  
9 subsequent sentencing for misdemeanor and felony violations  
10 and inspection and use by law enforcement agencies and State's  
11 Attorneys or other prosecutors in carrying out the duties of  
12 their offices. This subsection (h) does not apply to persons  
13 placed on supervision for: (1) a violation of Section 11-501 of  
14 the Illinois Vehicle Code or a similar provision of a local  
15 ordinance; (2) a misdemeanor violation of Article 11 of the  
16 Criminal Code of 1961 or a similar provision of a local  
17 ordinance; (3) a misdemeanor violation of Section 12-15, 12-30,  
18 or 26-5 of the Criminal Code of 1961 or a similar provision of  
19 a local ordinance; (4) a misdemeanor violation that is a crime  
20 of violence as defined in Section 2 of the Crime Victims  
21 Compensation Act or a similar provision of a local ordinance;  
22 (5) a Class A misdemeanor violation of the Humane Care for  
23 Animals Act; or (6) any offense or attempted offense that would  
24 subject a person to registration under the Sex Offender  
25 Registration Act.

26 (2) Upon acquittal, release without conviction, or being  
27 placed on supervision, the person charged with the offense  
28 shall be informed by the court of the right to have the records  
29 sealed and the procedures for the sealing of the records. Three  
30 years after the dismissal of the charge, the finding of not  
31 guilty, the reversal of conviction, or the completion of the  
32 terms and conditions of the supervision, the defendant shall  
33 provide the clerk of the court with a notice of request for  
34 sealing of records and payment of the applicable fee and a  
35 current address and shall promptly notify the clerk of the  
36 court of any change of address. The clerk shall promptly serve



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

20 (3) The clerk may charge a fee equivalent to the cost  
21 associated with the sealing of records by the clerk and the  
22 Department of State Police. The clerk shall forward the  
23 Department of State Police portion of the fee to the Department  
24 and it shall be deposited into the State Police Services Fund.

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

29 (5) An adult or a minor prosecuted as an adult who was  
30 charged with a violation of a municipal ordinance or a  
31 misdemeanor who was acquitted, released without being  
32 convicted, convicted and the conviction was reversed, or placed  
33 on supervision for a misdemeanor before the date of this  
34 amendatory Act of the 93rd General Assembly and was not  
35 convicted of a felony or misdemeanor or placed on supervision  
36 for a misdemeanor for 3 years after the acquittal or release or

1 reversal of conviction, or completion of the terms and  
2 conditions of the supervision may petition the Chief Judge of  
3 the circuit in which the charge was brought, any judge of that  
4 circuit in which the charge was brought, any judge of the  
5 circuit designated by the Chief Judge, or, in counties of less  
6 than 3,000,000 inhabitants, the presiding trial judge at that  
7 defendant's trial, to seal the official records of the  
8 arresting authority, the Department, and the clerk of the  
9 court, except those records are subject to inspection and use  
10 by the court for the purposes of subsequent sentencing for  
11 misdemeanor and felony violations and inspection and use by law  
12 enforcement agencies, the Department of Corrections, and  
13 State's Attorneys and other prosecutors in carrying out the  
14 duties of their offices. This subsection (h) does not apply to  
15 persons placed on supervision for: (1) a violation of Section  
16 11-501 of the Illinois Vehicle Code or a similar provision of a  
17 local ordinance; (2) a misdemeanor violation of Article 11 of  
18 the Criminal Code of 1961 or a similar provision of a local  
19 ordinance; (3) a misdemeanor violation of Section 12-15, 12-30,  
20 or 26-5 of the Criminal Code of 1961 or a similar provision of  
21 a local ordinance; (4) a misdemeanor violation that is a crime  
22 of violence as defined in Section 2 of the Crime Victims  
23 Compensation Act or a similar provision of a local ordinance;  
24 (5) a Class A misdemeanor violation of the Humane Care for  
25 Animals Act; or (6) any offense or attempted offense that would  
26 subject a person to registration under the Sex Offender  
27 Registration Act. The State's Attorney or prosecutor charged  
28 with the duty of prosecuting the offense, the Department of  
29 State Police, the arresting agency and the chief legal officer  
30 of the unit of local government effecting the arrest shall be  
31 served with a copy of the verified petition and shall have 90  
32 days to object. If an objection is filed, the court shall set a  
33 date for hearing. At the hearing the court shall hear evidence  
34 on whether the sealing of the records should or should not be  
35 granted. The person whose records are sealed under the  
36 provisions of this Act shall pay to the clerk of the court and

1 the Department of State Police a fee equivalent to the cost  
2 associated with the sealing of records. The fees shall be paid  
3 to the clerk of the court who shall forward the appropriate  
4 portion to the Department at the time the court order to seal  
5 the defendant's record is forwarded to the Department for  
6 processing. The Department of State Police portion of the fee  
7 shall be deposited into the State Police Services Fund.

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

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

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

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

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

1           (5) An adult or a minor prosecuted as an adult who was  
2 charged with a violation of a municipal ordinance or a  
3 misdemeanor who was convicted of a misdemeanor before the date  
4 of this amendatory Act of the 93rd General Assembly and was not  
5 convicted of a felony or misdemeanor or placed on supervision  
6 for a misdemeanor for 4 years after the completion of the  
7 sentence may petition the Chief Judge of the circuit in which  
8 the charge was brought, any judge of that circuit in which the  
9 charge was brought, any judge of the circuit designated by the  
10 Chief Judge, or, in counties of less than 3,000,000  
11 inhabitants, the presiding trial judge at that defendant's  
12 trial, to seal the official records of the arresting authority,  
13 the Department, and the clerk of the court, except those  
14 records are subject to inspection and use by the court for the  
15 purposes of subsequent sentencing for misdemeanor and felony  
16 violations and inspection and use by law enforcement agencies,  
17 the Department of Corrections, and State's Attorneys and other  
18 prosecutors in carrying out the duties of their offices. This  
19 subsection (i) does not apply to persons convicted of: (1) a  
20 violation of Section 11-501 of the Illinois Vehicle Code or a  
21 similar provision of a local ordinance; (2) a misdemeanor  
22 violation of Article 11 of the Criminal Code of 1961 or a  
23 similar provision of a local ordinance; (3) a misdemeanor  
24 violation of Section 12-15, 12-30, or 26-5 of the Criminal Code  
25 of 1961 or a similar provision of a local ordinance; (4) a  
26 misdemeanor violation that is a crime of violence as defined in  
27 Section 2 of the Crime Victims Compensation Act or a similar  
28 provision of a local ordinance; (5) a Class A misdemeanor  
29 violation of the Humane Care for Animals Act; or (6) any  
30 offense or attempted offense that would subject a person to  
31 registration under the Sex Offender Registration Act. The  
32 State's Attorney or prosecutor charged with the duty of  
33 prosecuting the offense, the Department of State Police, the  
34 arresting agency and the chief legal officer of the unit of  
35 local government effecting the arrest shall be served with a  
36 copy of the verified petition and shall have 90 days to object.

1 If an objection is filed, the court shall set a date for  
2 hearing. At the hearing the court shall hear evidence on  
3 whether the sealing of the records should or should not be  
4 granted. The person whose records are sealed under the  
5 provisions of this Act shall pay to the clerk of the court and  
6 the Department of State Police a fee equivalent to the cost  
7 associated with the sealing of records. The fees shall be paid  
8 to the clerk of the court who shall forward the appropriate  
9 portion to the Department at the time the court order to seal  
10 the defendant's record is forwarded to the Department for  
11 processing. The Department of State Police portion of the fee  
12 shall be deposited into the State Police Services Fund.

13 (Source: P.A. 92-651, eff. 7-11-02; 93-210, eff. 7-18-03;  
14 93-211, eff. 1-1-04; revised 8-25-03.)