



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1831

Introduced 2/23/2007, by Rep. Constance A. Howard

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/0.02 new

20 ILCS 2630/5

20 ILCS 2630/6 new

from Ch. 38, par. 206-5

Amends the Criminal Identification Act relating to expungement. Changes the procedures relating to the expungement of adult criminal records and the records of minors prosecuted as adults. Establishes time limits and procedures for filing petitions to expunge. Excludes certain enumerated offenses from expungement. Provides for the sealing of certain arrest and court records.

LRB095 09795 RLC 30005 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Identification Act is amended by
5 changing Section 5 and by adding Sections 0.02 and 6 as
6 follows:

7 (20 ILCS 2630/0.02 new)

8 Sec. 0.02. Definitions. In this Act, words and phrases have
9 the meanings set forth in this Section, except when a
10 particular context clearly requires a different meaning.

11 "Defendant" means an adult or a minor prosecuted as an
12 adult.

13 "Expunge" means that all criminal records are physically
14 destroyed or the defendant's name obliterated from any official
15 index or public record, or both.

16 "Records" means all documentation that any agency has
17 regarding any report or arrest for any municipal ordinance
18 violation, misdemeanor or felony. Such documentation includes
19 but shall not be limited to incident reports, police reports,
20 fingerprints, booking photos, names, addresses, the records of
21 the circuit clerk and official indexes. Such documentation does
22 not include orders of protection.

23 "Seal" means that the criminal records shall be physically

1 and electronically maintained by each agency but shall be
2 unavailable without a court order, subject to the exceptions in
3 Sections 12 and 13 of this Act. The defendant's name shall be
4 removed from the official index or public record.

5 "Sexual offense committed against a minor" includes but is
6 not limited to the offenses of indecent solicitation of a child
7 or criminal sexual abuse when the victim of such offense is
8 under 18 years of age.

9 (20 ILCS 2630/5) (from Ch. 38, par. 206-5)

10 Sec. 5. Arrest reports, ~~expungement~~.

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

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

1 ~~years after discharge and dismissal of supervision. Those~~
2 ~~records that result from a supervision for a violation of~~
3 ~~Section 3-707, 3-708, 3-710, 5-401.3, or 11-503 of the Illinois~~
4 ~~Vehicle Code or a similar provision of a local ordinance, or~~
5 ~~for a violation of Section 12-3.2, 12-15 or 16A-3 of the~~
6 ~~Criminal Code of 1961, or probation under Section 10 of the~~
7 ~~Cannabis Control Act, Section 410 of the Illinois Controlled~~
8 ~~Substances Act, Section 70 of the Methamphetamine Control and~~
9 ~~Community Protection Act, Section 12-4.3(b)(1) and (2) of the~~
10 ~~Criminal Code of 1961 (as those provisions existed before their~~
11 ~~deletion by Public Act 89-313), Section 10-102 of the Illinois~~
12 ~~Alcoholism and Other Drug Dependency Act when the judgment of~~
13 ~~conviction has been vacated, Section 40-10 of the Alcoholism~~
14 ~~and Other Drug Abuse and Dependency Act when the judgment of~~
15 ~~conviction has been vacated, or Section 10 of the Steroid~~
16 ~~Control Act shall not be expunged from the records of the~~
17 ~~arresting authority nor impounded by the court until 5 years~~
18 ~~after termination of probation or supervision. Those records~~
19 ~~that result from a supervision for a violation of Section~~
20 ~~11-501 of the Illinois Vehicle Code or a similar provision of a~~
21 ~~local ordinance, shall not be expunged. All records set out~~
22 ~~above may be ordered by the court to be expunged from the~~
23 ~~records of the arresting authority and impounded by the court~~
24 ~~after 5 years, but shall not be expunged by the Department, but~~
25 ~~shall, on court order be sealed by the Department and may be~~
26 ~~disseminated by the Department only as required by law or to~~

1 ~~the arresting authority, the State's Attorney, and the court~~
2 ~~upon a later arrest for the same or a similar offense or for~~
3 ~~the purpose of sentencing for any subsequent felony. Upon~~
4 ~~conviction for any offense, the Department of Corrections shall~~
5 ~~have access to all sealed records of the Department pertaining~~
6 ~~to that individual.~~

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

10 ~~(b) Whenever a person has been convicted of a crime or of~~
11 ~~the violation of a municipal ordinance, in the name of a person~~
12 ~~whose identity he has stolen or otherwise come into possession~~
13 ~~of, the aggrieved person from whom the identity was stolen or~~
14 ~~otherwise obtained without authorization, upon learning of the~~
15 ~~person having been arrested using his identity, may, upon~~
16 ~~verified petition to the chief judge of the circuit wherein the~~
17 ~~arrest was made, have a court order entered nunc pro tunc by~~
18 ~~the chief judge to correct the arrest record, conviction~~
19 ~~record, if any, and all official records of the arresting~~
20 ~~authority, the Department, other criminal justice agencies,~~
21 ~~the prosecutor, and the trial court concerning such arrest, if~~
22 ~~any, by removing his name from all such records in connection~~
23 ~~with the arrest and conviction, if any, and by inserting in the~~
24 ~~records the name of the offender, if known or ascertainable, in~~
25 ~~lieu of the aggrieved's name. The records of the clerk of the~~
26 ~~circuit court clerk shall be sealed until further order of the~~

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

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

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

17 ~~(c 5) Whenever a person has been convicted of criminal~~
18 ~~sexual assault, aggravated criminal sexual assault, predatory~~
19 ~~criminal sexual assault of a child, criminal sexual abuse, or~~
20 ~~aggravated criminal sexual abuse, the victim of that offense~~
21 ~~may request that the State's Attorney of the county in which~~
22 ~~the conviction occurred file a verified petition with the~~
23 ~~presiding trial judge at the defendant's trial to have a court~~
24 ~~order entered to seal the records of the clerk of the circuit~~
25 ~~court in connection with the proceedings of the trial court~~
26 ~~concerning that offense. However, the records of the arresting~~

1 ~~authority and the Department of State Police concerning the~~
2 ~~offense shall not be sealed. The court, upon good cause shown,~~
3 ~~shall make the records of the clerk of the circuit court in~~
4 ~~connection with the proceedings of the trial court concerning~~
5 ~~the offense available for public inspection.~~

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

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

25 ~~(e) Nothing herein shall prevent the Department of State~~
26 ~~Police from maintaining all records of any person who is~~

1 ~~admitted to probation upon terms and conditions and who~~
2 ~~fulfills those terms and conditions pursuant to Section 10 of~~
3 ~~the Cannabis Control Act, Section 410 of the Illinois~~
4 ~~Controlled Substances Act, Section 70 of the Methamphetamine~~
5 ~~Control and Community Protection Act, Section 12 4.3 of the~~
6 ~~Criminal Code of 1961, Section 10 102 of the Illinois~~
7 ~~Alcoholism and Other Drug Dependency Act, Section 40 10 of the~~
8 ~~Alcoholism and Other Drug Abuse and Dependency Act, or Section~~
9 ~~10 of the Steroid Control Act.~~

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

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

23 ~~(h) (1) Applicability. Notwithstanding any other provision~~
24 ~~of this Act to the contrary and cumulative with any rights to~~
25 ~~expungement of criminal records, this subsection authorizes~~
26 ~~the sealing of criminal records of adults and of minors~~

1 ~~prosecuted as adults.~~

2 ~~(2) Sealable offenses. The following offenses may be~~
3 ~~sealed:~~

4 ~~(A) All municipal ordinance violations and~~
5 ~~misdemeanors, with the exception of the following:~~

6 ~~(i) violations of Section 11-501 of the Illinois~~
7 ~~Vehicle Code or a similar provision of a local~~
8 ~~ordinance;~~

9 ~~(ii) violations of Article 11 of the Criminal Code~~
10 ~~of 1961 or a similar provision of a local ordinance,~~
11 ~~except Section 11-14 of the Criminal Code of 1961 as~~
12 ~~provided in clause B(i) of this subsection (h);~~

13 ~~(iii) violations of Section 12-15, 12-30, or 26-5~~
14 ~~of the Criminal Code of 1961 or a similar provision of~~
15 ~~a local ordinance;~~

16 ~~(iv) violations that are a crime of violence as~~
17 ~~defined in Section 2 of the Crime Victims Compensation~~
18 ~~Act or a similar provision of a local ordinance;~~

19 ~~(v) Class A misdemeanor violations of the Humane~~
20 ~~Care for Animals Act; and~~

21 ~~(vi) any offense or attempted offense that would~~
22 ~~subject a person to registration under the Sex Offender~~
23 ~~Registration Act.~~

24 ~~(B) Misdemeanor and Class 4 felony violations of:~~

25 ~~(i) Section 11-14 of the Criminal Code of 1961;~~

26 ~~(ii) Section 4 of the Cannabis Control Act;~~

1 ~~(iii) Section 402 of the Illinois Controlled~~
2 ~~Substances Act; and~~

3 ~~(iv) Section 60 of the Methamphetamine Control and~~
4 ~~Community Protection Act.~~

5 ~~However, for purposes of this subsection (h), a~~
6 ~~sentence of first offender probation under Section 10 of~~
7 ~~the Cannabis Control Act, Section 410 of the Illinois~~
8 ~~Controlled Substances Act, or Section 70 of the~~
9 ~~Methamphetamine Control and Community Protection Act shall~~
10 ~~be treated as a Class 4 felony conviction.~~

11 ~~(3) Requirements for sealing. Records identified as~~
12 ~~sealable under clause (h) (2) may be sealed when the individual~~
13 ~~was:~~

14 ~~(A) Acquitted of the offense or offenses or released~~
15 ~~without being convicted.~~

16 ~~(B) Convicted of the offense or offenses and the~~
17 ~~conviction or convictions were reversed.~~

18 ~~(C) Placed on misdemeanor supervision for an offense or~~
19 ~~offenses; and~~

20 ~~(i) at least 3 years have elapsed since the~~
21 ~~completion of the term of supervision, or terms of~~
22 ~~supervision, if more than one term has been ordered;~~
23 ~~and~~

24 ~~(ii) the individual has not been convicted of a~~
25 ~~felony or misdemeanor or placed on supervision for a~~
26 ~~misdemeanor or felony during the period specified in~~

1 ~~clause (i).~~

2 ~~(D) Convicted of an offense or offenses; and~~

3 ~~(i) at least 4 years have elapsed since the last~~
4 ~~such conviction or term of any sentence, probation,~~
5 ~~parole, or supervision, if any, whichever is last in~~
6 ~~time; and~~

7 ~~(ii) the individual has not been convicted of a~~
8 ~~felony or misdemeanor or placed on supervision for a~~
9 ~~misdemeanor or felony during the period specified in~~
10 ~~clause (i).~~

11 ~~(4) Requirements for sealing of records when more than one~~
12 ~~charge and disposition have been filed. When multiple offenses~~
13 ~~are petitioned to be sealed under this subsection (h), the~~
14 ~~requirements of the relevant provisions of clauses (h) (3) (A)~~
15 ~~through (D) each apply. In instances in which more than one~~
16 ~~waiting period is applicable under clauses (h) (C) (i) and (ii)~~
17 ~~and (h) (D) (i) and (ii), the longer applicable period applies,~~
18 ~~and the requirements of clause (h) (3) shall be considered met~~
19 ~~when the petition is filed after the passage of the longer~~
20 ~~applicable waiting period. That period commences on the date of~~
21 ~~the completion of the last sentence or the end of supervision,~~
22 ~~probation, or parole, whichever is last in time.~~

23 ~~(5) Subsequent convictions. A person may not have~~
24 ~~subsequent felony conviction records sealed as provided in this~~
25 ~~subsection (h) if he or she is convicted of any felony offense~~
26 ~~after the date of the sealing of prior felony records as~~

1 ~~provided in this subsection (h).~~

2 ~~(6) Notice of eligibility for sealing. Upon acquittal,~~
3 ~~release without conviction, or being placed on supervision for~~
4 ~~a sealable offense, or upon conviction of a sealable offense,~~
5 ~~the person shall be informed by the court of the right to have~~
6 ~~the records sealed and the procedures for the sealing of the~~
7 ~~records.~~

8 ~~(7) Procedure. Upon becoming eligible for the sealing of~~
9 ~~records under this subsection (h), the person who seeks the~~
10 ~~sealing of his or her records shall file a petition requesting~~
11 ~~the sealing of records with the clerk of the court where the~~
12 ~~charge or charges were brought. The records may be sealed by~~
13 ~~the Chief Judge of the circuit wherein the charge was brought,~~
14 ~~any judge of that 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, if any. If charges were~~
17 ~~brought in multiple jurisdictions, a petition must be filed in~~
18 ~~each such jurisdiction. The petitioner shall pay the applicable~~
19 ~~fee, if not waived.~~

20 ~~(A) Contents of petition. The petition shall contain~~
21 ~~the petitioner's name, date of birth, current address, each~~
22 ~~charge, each case number, the date of each charge, the~~
23 ~~identity of the arresting authority, and such other~~
24 ~~information as the court may require. During the pendency~~
25 ~~of the proceeding, the petitioner shall promptly notify the~~
26 ~~clerk of the court of any change of address.~~

1 ~~(B) Drug test. A person filing a petition to have his~~
2 ~~or her records sealed for a Class 4 felony violation of~~
3 ~~Section 4 of the Cannabis Control Act or for a Class 4~~
4 ~~felony violation of Section 402 of the Illinois Controlled~~
5 ~~Substances Act must attach to the petition proof that the~~
6 ~~petitioner has passed a test taken within the previous 30~~
7 ~~days before the filing of the petition showing the absence~~
8 ~~within his or her body of all illegal substances in~~
9 ~~violation of either the Illinois Controlled Substances Act~~
10 ~~or the Cannabis Control Act.~~

11 ~~(C) Service of petition. The clerk shall promptly serve~~
12 ~~a copy of the petition on the State's Attorney or~~
13 ~~prosecutor charged with the duty of prosecuting the~~
14 ~~offense, the Department of State Police, the arresting~~
15 ~~agency and the chief legal officer of the unit of local~~
16 ~~government effecting the arrest.~~

17 ~~(D) Entry of order. Unless the State's Attorney or~~
18 ~~prosecutor, the Department of State Police, the arresting~~
19 ~~agency or such chief legal officer objects to sealing of~~
20 ~~the records within 90 days of notice the court shall enter~~
21 ~~an order sealing the defendant's records.~~

22 ~~(E) Hearing upon objection. If an objection is filed,~~
23 ~~the court shall set a date for a hearing and notify the~~
24 ~~petitioner and the parties on whom the petition had been~~
25 ~~served, and shall hear evidence on whether the sealing of~~
26 ~~the records should or should not be granted, and shall make~~

1 ~~a determination on whether to issue an order to seal the~~
2 ~~records based on the evidence presented at the hearing.~~

3 ~~(F) Service of order. After entering the order to seal~~
4 ~~records, the court must provide copies of the order to the~~
5 ~~Department, in a form and manner prescribed by the~~
6 ~~Department, to the petitioner, to the State's Attorney or~~
7 ~~prosecutor charged with the duty of prosecuting the~~
8 ~~offense, to the arresting agency, to the chief legal~~
9 ~~officer of the unit of local government effecting the~~
10 ~~arrest, and to such other criminal justice agencies as may~~
11 ~~be ordered by the court.~~

12 ~~(8) Fees. Notwithstanding any provision of the Clerk of the~~
13 ~~Courts Act to the contrary, and subject to the approval of the~~
14 ~~county board, the clerk may charge a fee equivalent to the cost~~
15 ~~associated with the sealing of records by the clerk and the~~
16 ~~Department of State Police. The clerk shall forward the~~
17 ~~Department of State Police portion of the fee to the Department~~
18 ~~and it shall be deposited into the State Police Services Fund.~~

19 ~~(i) Subject to available funding, the Illinois Department~~
20 ~~of Corrections shall conduct a study of the impact of sealing,~~
21 ~~especially on employment and recidivism rates, utilizing a~~
22 ~~random sample of those who apply for the sealing of their~~
23 ~~criminal records under Public Act 93-211, in accordance to~~
24 ~~rules adopted by the Department. At the request of the Illinois~~
25 ~~Department of Corrections, records of the Illinois Department~~
26 ~~of Employment Security shall be utilized as appropriate to~~

~~1 assist in the study. The study shall not disclose any data in a
2 manner that would allow the identification of any particular
3 individual or employing unit. The study shall be made available
4 to the General Assembly no later than September 1, 2006.~~

(Source: P.A. 93-210, eff. 7-18-03; 93-211, eff. 1-1-04;
6 93-1084, eff. 6-1-05; 94-556, eff. 9-11-05.)

7 (20 ILCS 2630/6 new)

8 Sec. 6. Expungement and sealing.

9 (a) Expungement.

10 (1) An adult or a minor prosecuted as a adult may
11 petition the circuit court to expunge the records of his or
12 her arrest when:

13 (A) The petitioner has never been convicted of any
14 municipal ordinance violation, misdemeanor or felony;

15 (B) The arrest sought to be expunged resulted in an
16 acquittal, or the petitioner's release without
17 conviction;

18 (C) The arrest sought to be expunged resulted in an
19 order of supervision and such supervision was
20 successfully completed by the petitioner; or

21 (D) The arrest sought to be expunged resulted in an
22 order of probation under:

23 (i) Section 10 of the Cannabis Control Act,
24 Section 410 of the Illinois Controlled Substances
25 Act;

1 (ii) Section 70 of the Methamphetamine Control
2 and Community Protection Act;

3 (iii) Section 12-4.3(b)(1) and (2) of the
4 Criminal Code of 1961 (as those provisions existed
5 before their deletion by Public Act 89-313);

6 (iv) Section 10-102 of the Illinois Alcoholism
7 and Other Drug Dependency Act when the judgment of
8 conviction has been vacated;

9 (v) Section 40-10 of the Alcoholism and Other
10 Drug Abuse and Dependency Act when the judgment of
11 conviction has been vacated; or

12 (vi) Section 10 of the Steroid Control Act and
13 such probation was successfully completed by the
14 petitioner.

15 (2) Time frame for filing a petition to expunge.

16 (A) When the arrest sought to be expunge resulted
17 in an acquittal, or the petitioner's release without
18 conviction, there is no waiting period to petition for
19 the expungement of such records.

20 (B) When the arrest sought to be expunged resulted
21 in an order of supervision, successfully completed by
22 the petitioner, the following time frames will apply:

23 (i) Those records that resulted in an order of
24 supervision for a violation of Section 3-707,
25 3-708, 3-710, 5-401.3, or 11-503 of the Illinois
26 Vehicle Code or a similar provision of a local

1 ordinance, or for a violation of Section 12-3.2,
2 12-15 or 16A-3 of the Criminal Code of 1961, shall
3 not be eligible for expungement until 5 years have
4 passed following the termination of the
5 supervision.

6 (ii) Those records that resulted in an order of
7 supervision for a violation of Section 11-501 of
8 the Illinois Vehicle Code or a similar provision of
9 a local ordinance, shall not be expunged.

10 (iii) Those records that resulted in an order
11 of supervision for any other offense shall not be
12 eligible for expungement until 2 years have passed
13 following the termination of the supervision.

14 (C) When the arrest sought to be expunged resulted
15 in an order of probation, successfully completed by the
16 petitioner, under Section 10 of the Cannabis Control
17 Act, Section 410 of the Illinois Controlled Substances
18 Act, Section 70 of the Methamphetamine Control and
19 Community Protection Act, Section 12-4.3(b) (1) and (2)
20 of the Criminal Code of 1961 (as those provisions
21 existed before their deletion by Public Act 89-313),
22 Section 10-102 of the Illinois Alcoholism and Other
23 Drug Dependency Act when the judgment of conviction has
24 been vacated, Section 40-10 of the Alcoholism and Other
25 Drug Abuse and Dependency Act when the judgment of
26 conviction has been vacated, or Section 10 of the

1 Steroid Control Act, such records shall not be eligible
2 for expungement until 5 years have passed following the
3 termination of the probation.

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

8 (4) Whenever a person has been convicted of a crime or
9 of the violation of a municipal ordinance, in the name of a
10 person whose identity he has stolen or otherwise come into
11 possession of, the aggrieved person from whom the identity
12 was stolen or otherwise obtained without authorization,
13 upon learning of the person having been arrested using his
14 identity, may, upon verified petition to the chief judge of
15 the circuit wherein the arrest was made, have a court order
16 entered nunc pro tunc by the chief judge to correct the
17 arrest record, conviction record, if any, and all official
18 records of the arresting authority, the Department, other
19 criminal justice agencies, the prosecutor, and the trial
20 court concerning such arrest, if any, by removing his name
21 from all such records in connection with the arrest and
22 conviction, if any, and by inserting in the records the
23 name of the offender, if known or ascertainable, in lieu of
24 the aggrieved's name. The records of the clerk of the
25 circuit court clerk shall be sealed until further order of
26 the court upon good cause shown and the name of the

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

15 (5) Whenever a person who has been convicted of an
16 offense is granted a pardon by the Governor which
17 specifically authorizes expungement, he may, upon verified
18 petition to the chief judge of the circuit where the person
19 had been convicted, any judge of the circuit designated by
20 the Chief Judge, or in counties of less than 3,000,000
21 inhabitants, the presiding trial judge at the defendant's
22 trial, may have a court order entered expunging the record
23 of arrest from the official records of the arresting
24 authority and order that the records of the clerk of the
25 circuit court and the Department be sealed until further
26 order of the court upon good cause shown or as otherwise

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

18 (6) Whenever a person has been convicted of criminal
19 sexual assault, aggravated criminal sexual assault,
20 predatory criminal sexual assault of a child, criminal
21 sexual abuse, or aggravated criminal sexual abuse, the
22 victim of that offense may request that the State's
23 Attorney of the county in which the conviction occurred
24 file a verified petition with the presiding trial judge at
25 the defendant's trial to have a court order entered to seal
26 the records of the clerk of the circuit court in connection

1 with the proceedings of the trial court concerning that
2 offense. However, the records of the arresting authority
3 and the Department of State Police concerning the offense
4 shall not be sealed. The court, upon good cause shown,
5 shall make the records of the clerk of the circuit court in
6 connection with the proceedings of the trial court
7 concerning the offense available for public inspection.

8 (7) If a conviction has been set aside on direct review
9 or on collateral attack and the court determines by clear
10 and convincing evidence that the defendant was factually
11 innocent of the charge, the court shall enter an
12 expungement order as provided in subsection (b) of Section
13 5-5-4 of the Unified Code of Corrections.

14 (8) Nothing herein shall prevent the Department of
15 State Police from maintaining all records of any person who
16 is admitted to probation upon terms and conditions and who
17 fulfills those terms and conditions pursuant to Section 10
18 of the Cannabis Control Act, Section 410 of the Illinois
19 Controlled Substances Act, Section 70 of the
20 Methamphetamine Control and Community Protection Act,
21 Section 12-4.3 of the Criminal Code of 1961, Section 10-102
22 of the Illinois Alcoholism and Other Drug Dependency Act,
23 Section 40-10 of the Alcoholism and Other Drug Abuse and
24 Dependency Act, or Section 10 of the Steroid Control Act.

25 (9) Except as otherwise provided in paragraph (6) of
26 this subsection (a), the court shall not order the sealing

1 or expungement of the arrest records and records of the
2 circuit court clerk of any person granted supervision for
3 or convicted of any sexual offense committed against a
4 minor under 18 years of age.

5 (b) Sealing.

6 (1) Applicability. Notwithstanding any other provision
7 of this Act to the contrary and cumulative with any rights
8 to expungement of criminal records, this subsection
9 authorizes the sealing of criminal records of adults and of
10 minors prosecuted as adults.

11 (2) An adult or a minor prosecuted as a adult may
12 petition the circuit court to seal the records of his or
13 her arrest when:

14 (A) The arrest sought to be sealed resulted in an
15 acquittal, or the petitioner's release without
16 conviction, or a conviction which was later reversed,
17 or

18 (B) The arrest sought to be sealed resulted in an
19 order of supervision and such supervision was
20 successfully completed by the petitioner, except that
21 an arrest resulting in supervision for the following
22 offenses is not eligible for sealing:

23 (i) violations of Section 11-501 of the
24 Illinois Vehicle Code or a similar provision of a
25 local ordinance;

26 (ii) violations of Article 11 of the Criminal

1 Code of 1961 or a similar provision of a local
2 ordinance, except Section 11-14 of the Criminal
3 Code of 1961 as provided in subparagraph (D),
4 clause (i) of this subsection (b);

5 (iii) violations of Section 12-15, 12-30, or
6 26-5 of the Criminal Code of 1961 or a similar
7 provision of a local ordinance;

8 (iv) violations that are a crime of violence as
9 defined in Section 2 of the Crime Victims
10 Compensation Act or a similar provision of a local
11 ordinance;

12 (v) Class A misdemeanor violations of the
13 Humane Care for Animals Act; and

14 (vi) any offense or attempted offense that
15 would subject a person to registration under the
16 Sex Offender Registration Act.

17 (C) The arrest sought to be sealed resulted in a
18 conviction for a misdemeanor offense, except that an
19 arrest resulting in a conviction for the following
20 offenses is not eligible for sealing:

21 (i) violations of Section 11-501 of the
22 Illinois Vehicle Code or a similar provision of a
23 local ordinance;

24 (ii) violations of Article 11 of the Criminal
25 Code of 1961 or a similar provision of a local
26 ordinance, except Section 11-14 of the Criminal

1 Code of 1961 as provided in subparagraph (D),
2 clause (i) of this subsection (b);

3 (iii) violations of Section 12-15, 12-30, or
4 26-5 of the Criminal Code of 1961 or a similar
5 provision of a local ordinance;

6 (iv) violations that are a crime of violence as
7 defined in Section 2 of the Crime Victims
8 Compensation Act or a similar provision of a local
9 ordinance;

10 (v) Class A misdemeanor violations of the
11 Humane Care for Animals Act; and

12 (vi) any offense or attempted offense that
13 would subject a person to registration under the
14 Sex Offender Registration Act.

15 (D) The arrest sought to be sealed resulted in a
16 misdemeanor or Class 4 felony conviction for an offense
17 under:

18 (i) Section 11-14 of the Criminal Code of 1961;

19 (ii) Section 4 of the Cannabis Control Act;

20 (iii) Section 402 of the Illinois Controlled
21 Substances Act; and

22 (iv) Section 60 of the Methamphetamine Control
23 and Community Protection Act.

24 However, for purposes of this subsection (b), a sentence of
25 first offender probation under Section 10 of the Cannabis
26 Control Act, Section 410 of the Illinois Controlled Substances

1 Act, or Section 70 of the Methamphetamine Control and Community
2 Protection Act shall be treated as a Class 4 felony conviction.

3 (3) Time frame for filing a petition to seal.

4 (A) When the arrest sought to be sealed resulted in
5 an acquittal, or the petitioner's release without
6 conviction, or in a conviction which was later
7 reversed, there is no waiting period to petition for
8 the sealing of such records.

9 (B) When the arrest sought to be sealed resulted in
10 an order of supervision for an eligible offense under
11 paragraph (2), subparagraph (B) of subsection (b),
12 such records will not be eligible to be sealed until:

13 (i) at least 3 years have elapsed since the
14 completion of the term of supervision, or terms of
15 supervision, if more than one term has been
16 ordered; and

17 (ii) the individual has not been convicted of a
18 felony or misdemeanor or placed on supervision for
19 any misdemeanor or felony offense during the
20 period specified in clause (i).

21 (C) When the arrest sought to be sealed resulted in
22 a conviction of an eligible offense or offenses under
23 paragraph (2), subparagraph (C) or (D), such records
24 will not be eligible to be sealed until:

25 (i) at least 4 years have elapsed since the
26 last such conviction or term of any sentence,

1 probation, parole, or supervision, if any,
2 whichever is last in time; and

3 (ii) the individual has not been convicted of a
4 felony or misdemeanor or placed on supervision for
5 any other misdemeanor or felony offense during the
6 period specified in clause (i).

7 (4) Requirements for sealing of records when more
8 than one charge and disposition have been filed. When
9 multiple offenses are petitioned to be sealed under
10 paragraph (2), the requirements of the relevant
11 provisions of subsection (b), paragraph (3),
12 subparagraphs (A) through (D) each apply. In instances
13 in which more than one waiting period is applicable
14 under subsection (b), paragraph (3), subparagraph (C),
15 clauses (i) and (ii) and subsection(b), paragraph (3),
16 subparagraph (D), clauses (i) and (ii), the longer
17 applicable period applies, and the requirements of
18 subsection (b) paragraph (3) shall be considered met
19 when the petition is filed after the passage of the
20 longer applicable waiting period. That period
21 commences on the date of the completion of the last
22 sentence or the end of supervision, probation, or
23 parole, whichever is last in time.

24 (5) Subsequent convictions. A person may not have
25 subsequent felony conviction records sealed as
26 provided in this subsection (b) if he or she is

1 convicted of any felony offense after the date of the
2 sealing of prior felony records as provided in this
3 subsection (b).

4 (6) Notice of eligibility for sealing. Upon
5 acquittal, release without conviction, or being placed
6 on supervision for a sealable offense, or upon
7 conviction of a sealable offense, the person shall be
8 informed by the court of the right to have the records
9 sealed and the procedures for the sealing of the
10 records.

11 (c) Procedure. Upon becoming eligible to petition for the
12 expungement or sealing of records under this Section, the
13 person who seeks the expungement or sealing of his or her
14 records shall file a petition requesting either the expungement
15 or sealing of records with the clerk of the court where the
16 charge or charges were brought. The records may be ordered
17 expunged or sealed by the Chief Judge of the circuit wherein
18 the charge was brought, any judge of that circuit designated by
19 the Chief Judge, or in counties of less than 3,000,000
20 inhabitants, the presiding trial judge at the defendant's
21 trial, if any. If charges were brought in multiple
22 jurisdictions, a petition must be filed in each such
23 jurisdiction. The petitioner shall pay the applicable fee, if
24 not waived.

25 (1) Contents of petition. The petition shall be
26 verified and shall contain the petitioner's name, date of

1 birth, current address and, for each arrest sought to be
2 sealed or expunged, the case number, the date of arrest,
3 the identity of the arresting authority, and such other
4 information as the court may require. During the pendency
5 of the proceeding, the petitioner shall promptly notify the
6 clerk of the court of any change of his or her address.

7 (2) Drug test. A person filing a petition to have his
8 or her records sealed for a Class 4 felony violation of
9 Section 4 of the Cannabis Control Act or for a Class 4
10 felony violation of Section 402 of the Illinois Controlled
11 Substances Act must attach to the petition proof that the
12 petitioner has passed a test taken within the previous 30
13 days before the filing of the petition showing the absence
14 within his or her body of all illegal substances in
15 violation of either the Illinois Controlled Substances Act
16 or the Cannabis Control Act.

17 (3) Service of petition. The clerk shall promptly serve
18 a copy of the petition on the State's Attorney or
19 prosecutor charged with the duty of prosecuting the
20 offense, the Department of State Police, the arresting
21 agency and the chief legal officer of the unit of local
22 government effecting the arrest.

23 (4) Entry of order.

24 (A) Expungement. Unless the State's Attorney or
25 prosecutor, the Department of State Police, the
26 arresting agency or such chief legal officer objects to

1 a petition to expunge within 30 days from the date of
2 the notice, the court shall enter an order granting or
3 denying the petition.

4 (B) Sealing. Unless the State's Attorney or
5 prosecutor, the Department of State Police, the
6 arresting agency or such chief legal officer objects to
7 a petition to seal within 90 days of notice the court
8 shall enter an order sealing the defendant's records.

9 (5) Hearing upon objection. If an objection is filed,
10 the court shall set a date for a hearing and notify the
11 petitioner and the parties on whom the petition had been
12 served, and shall hear evidence on whether the sealing of
13 the records should or should not be granted, and shall make
14 a determination on whether to issue an order to seal the
15 records based on the evidence presented at the hearing.

16 (6) Service of order. After entering the order to seal
17 records, the court must provide copies of the order to the
18 Department, in a form and manner prescribed by the
19 Department, to the petitioner, to the State's Attorney or
20 prosecutor charged with the duty of prosecuting the
21 offense, to the arresting agency, to the chief legal
22 officer of the unit of local government effecting the
23 arrest, and to such other criminal justice agencies as may
24 be ordered by the court.

25 (7) Effect of order.

26 (A) Upon entry of an order to expunge records

1 relating to an arrest which did not result in an order
2 of supervision or probation, the records of arrest
3 shall be expunged from the official records of the
4 arresting authority and the Department and the records
5 of the clerk of the circuit court shall be sealed until
6 further order of the court upon good cause shown and
7 the name of the defendant obliterated on the official
8 index required to be kept by the circuit court clerk
9 under Section 16 of the Clerks of Courts Act, but the
10 order shall not affect any index issued by the circuit
11 court clerk before the entry of the order. In response
12 to an inquiry for expunged records, the agency
13 receiving such inquiry shall reply "No records found."

14 (B) Upon entry of an order to expunge records
15 relating to an arrest which resulted in an order of
16 supervision or probation, the records of arrest shall
17 be expunged from the records of the arresting authority
18 and impounded by the court, but shall not be expunged
19 by the Department. Such records shall be sealed by the
20 Department and may be disseminated by the Department
21 only as required by law or to the arresting authority,
22 the State's Attorney, and the court upon a later arrest
23 for the same or a similar offense or for the purpose of
24 sentencing for any subsequent felony. Upon conviction
25 for any offense, the Department of Corrections shall
26 have access to all sealed records of the Department

1 pertaining to that individual. In response to an
2 inquiry for such records from anyone not authorized by
3 law to access such records, the reply shall be "No
4 records found."

5 (C) Upon entry of an order to seal records under
6 subsection (b), such records shall be maintained by
7 each agency but shall be unavailable without a court
8 order, subject to the exceptions in Sections 12 and 13
9 of this Act. In response to an inquiry for such records
10 from anyone not authorized by law to access such
11 records, the agency maintaining the records under seal
12 shall reply "No records found."

13 (8) Fees. Notwithstanding any provision of the Clerk of
14 the Courts Act to the contrary, and subject to the approval
15 of the county board, the clerk may charge a fee equivalent
16 to the cost associated with the sealing of records by the
17 clerk and the Department of State Police. The clerk shall
18 forward the Department of State Police portion of the fee
19 to the Department and it shall be deposited into the State
20 Police Services Fund.

21 (9) Appeal. No court order issued under the expungement
22 or sealing provisions of this Section shall become final
23 for purposes of appeal until 30 days after notice is
24 received by the Department. Any court order contrary to the
25 provisions of this Section is void.

26 (d) Subject to available funding, the Illinois Department

1 of Corrections shall conduct a study of the impact of sealing,
2 especially on employment and recidivism rates, utilizing a
3 random sample of those who apply for the sealing of their
4 criminal records under Public Act 93-211, in accordance to
5 rules adopted by the Department. At the request of the Illinois
6 Department of Corrections, records of the Illinois Department
7 of Employment Security shall be utilized as appropriate to
8 assist in the study. The study shall not disclose any data in a
9 manner that would allow the identification of any particular
10 individual or employing unit. The study shall be made available
11 to the General Assembly no later than September 1, 2008.