



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB2053

Introduced 2/7/2008, by Sen. David Koehler

#### SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5

from Ch. 38, par. 206-5

Amends the Criminal Identification Act. Provides that notwithstanding any provision of the Clerks of Courts Act to the contrary, the clerk may charge a fee equivalent to the cost associated with the sealing or expungement of records by the clerk. Provides that from the total filing fee collected for the Petition to seal or expunge, the clerk shall deposit \$10 into the Circuit Court Clerk Operation and Administrative Fund, to be used to offset the costs incurred by the Circuit Court Clerk in performing the additional duties required to serve the Petition to Seal or Expunge on all parties. Provides that the clerk shall also charge a filing fee equivalent to the cost of sealing or expunging the record by the Department of State Police. Provides that the clerk shall collect and forward the Department of State Police portion of the fee to the Department and it shall be deposited in the State Police Services Fund.

LRB095 17433 RLC 43505 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning courts.

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

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

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

1 upon a later arrest for the same or a similar offense or for  
2 the purpose of sentencing for any subsequent felony. Upon  
3 conviction for any offense, the Department of Corrections shall  
4 have access to all sealed records of the Department pertaining  
5 to that individual.

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

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

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

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

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

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

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

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

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

24 (e) Nothing herein shall prevent the Department of State  
25 Police from maintaining all records of any person who is  
26 admitted to probation upon terms and conditions and who



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

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

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

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

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

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

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

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

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

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

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

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

23           (B) Misdemeanor and Class 4 felony violations of:

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

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

26                 (iii) Section 402 of the Illinois Controlled

1 Substances Act; and

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

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

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

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

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

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

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

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

1 (D) Convicted of an offense or offenses; and  
2 (i) at least 4 years have elapsed since the last  
3 such conviction or term of any sentence, probation,  
4 parole, or supervision, if any, whichever is last in  
5 time; and

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

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

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

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

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

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

26           (B) Drug test. A person filing a petition to have his

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

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

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

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

1 records based on the evidence presented at the hearing.

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

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

18 (i) Subject to available funding, the Illinois Department  
19 of Corrections shall conduct a study of the impact of sealing,  
20 especially on employment and recidivism rates, utilizing a  
21 random sample of those who apply for the sealing of their  
22 criminal records under Public Act 93-211, in accordance to  
23 rules adopted by the Department. At the request of the Illinois  
24 Department of Corrections, records of the Illinois Department  
25 of Employment Security shall be utilized as appropriate to  
26 assist in the study. The study shall not disclose any data in a

1 manner that would allow the identification of any particular  
2 individual or employing unit. The study shall be made available  
3 to the General Assembly no later than September 1, 2006.

4 (j) Notwithstanding any provision of the Clerks of Courts  
5 Act to the contrary, the clerk may charge a fee equivalent to  
6 the cost associated with the sealing or expungement of records  
7 by the clerk. From the total filing fee collected for the  
8 Petition to seal or expunge, the clerk shall deposit \$10 into  
9 the Circuit Court Clerk Operation and Administrative Fund, to  
10 be used to offset the costs incurred by the Circuit Court Clerk  
11 in performing the additional duties required to serve the  
12 Petition to Seal or Expunge on all parties. The clerk shall  
13 also charge a filing fee equivalent to the cost of sealing or  
14 expunging the record by the Department of State Police. The  
15 clerk shall collect and forward the Department of State Police  
16 portion of the fee to the Department and it shall be deposited  
17 in the State Police Services Fund.

18 (Source: P.A. 93-210, eff. 7-18-03; 93-211, eff. 1-1-04;  
19 93-1084, eff. 6-1-05; 94-556, eff. 9-11-05.)