



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB0067

Introduced 1/14/2009, by Rep. LaShawn K. Ford

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5

from Ch. 38, par. 206-5

Amends the Criminal Identification Act. Provides that notwithstanding any other provision of the Act to the contrary and cumulative with any rights to expungement or sealing of criminal records, whenever a person has been convicted of or placed on supervision for an offense, other than a capital offense, or for a violation of an ordinance of a unit of local government and 20 years has elapsed since the completion of the person's sentence or term of supervision and the person has not been convicted of or placed on supervision for any misdemeanor or felony offense or misdemeanor ordinance violation within such period, he or she may, upon verified petition to the chief judge of the circuit where the person had been convicted, any judge of the circuit designated by the Chief Judge, or in counties of less than 3,000,000 inhabitants, the presiding trial judge at the defendant's trial, have a court order entered expunging the record of arrest from the official records of the arresting authority and order that the records of the clerk of the circuit court and the Department of State Police be sealed until further order of the court upon good cause shown or as otherwise provided by law, and the name of the defendant obliterated from the official index requested to be kept by the circuit court clerk in connection with the arrest and conviction for the offense for which he had been charged, but the order shall not affect any index issued by the circuit court clerk before the entry of the order.

LRB096 03254 RLC 13271 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 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 (c-7) Notwithstanding any other provision of this Act to
12 the contrary and cumulative with any rights to expungement or
13 sealing of criminal records, whenever a person has been
14 convicted of or placed on supervision for an offense, other
15 than a capital offense, or for a violation of an ordinance of a
16 unit of local government and 20 years have elapsed since the
17 completion of the person's sentence or term of supervision and
18 the person has not been convicted of or placed on supervision
19 for any misdemeanor or felony offense or misdemeanor ordinance
20 violation within such period, he or she may, upon verified
21 petition to the chief judge of the circuit where the person had
22 been convicted, any judge of the circuit designated by the
23 Chief Judge, or in counties of less than 3,000,000 inhabitants,
24 the presiding trial judge at the defendant's trial, have a
25 court order entered expunging the record of arrest from the
26 official records of the arresting authority and order that the

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

20 (d) Notice of the petition for subsections (a), (b), ~~and~~
21 (c), and (c-7) shall be served by the clerk upon the State's
22 Attorney or prosecutor charged with the duty of prosecuting the
23 offense, the Department of State Police, the arresting agency
24 and the chief legal officer of the unit of local government
25 affecting the arrest. Unless the State's Attorney or
26 prosecutor, the Department of State Police, the arresting

1 agency or such chief legal officer objects to the petition
2 within 30 days from the date of the notice, the court shall
3 enter an order granting or denying the petition. The court may
4 not deny a petition filed under subsection (c-7) if the
5 conditions described in that subsection are met. The clerk of
6 the court shall promptly mail a copy of the order to the
7 person, the arresting agency, the prosecutor, the Department of
8 State Police and such other criminal justice agencies as may be
9 ordered by the judge.

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

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

25 (g) Except as otherwise provided in subsection (c-5) or
26 (c-7) of this Section, the court shall not order the sealing or

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

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

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

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

17 (i) violations of Section 11-501 of the Illinois
18 Vehicle Code or a similar provision of a local
19 ordinance;

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

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

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

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

6 (vi) any offense or attempted offense that would
7 subject a person to registration under the Sex Offender
8 Registration Act.

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

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

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

12 (iii) Section 402 of the Illinois Controlled
13 Substances Act; and

14 (iv) Section 60 of the Methamphetamine Control and
15 Community Protection Act.

16 However, for purposes of this subsection (h), a
17 sentence of first offender probation under Section 10 of
18 the Cannabis Control Act, Section 410 of the Illinois
19 Controlled Substances Act, or Section 70 of the
20 Methamphetamine Control and Community Protection Act shall
21 be treated as a Class 4 felony conviction.

22 (3) Requirements for sealing. Records identified as
23 sealable under clause (h) (2) may be sealed when the individual
24 was:

25 (A) Acquitted of the offense or offenses or released
26 without being convicted.

1 (B) Convicted of the offense or offenses and the
2 conviction or convictions were reversed.

3 (C) Placed on misdemeanor supervision for an offense or
4 offenses; and

5 (i) at least 3 years have elapsed since the
6 completion of the term of supervision, or terms of
7 supervision, if more than one term has been ordered;
8 and

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

13 (D) Convicted of an offense or offenses; and

14 (i) at least 4 years have elapsed since the last
15 such conviction or term of any sentence, probation,
16 parole, or supervision, if any, whichever is last in
17 time; and

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

22 (4) Requirements for sealing of records when more than one
23 charge and disposition have been filed. When multiple offenses
24 are petitioned to be sealed under this subsection (h), the
25 requirements of the relevant provisions of clauses (h)(3)(A)
26 through (D) each apply. In instances in which more than one

1 waiting period is applicable under clauses (h)(C)(i) and (ii)
2 and (h)(D)(i) and (ii), the longer applicable period applies,
3 and the requirements of clause (h)(3) shall be considered met
4 when the petition is filed after the passage of the longer
5 applicable waiting period. That period commences on the date of
6 the completion of the last sentence or the end of supervision,
7 probation, or parole, whichever is last in time.

8 (5) Subsequent convictions. A person may not have
9 subsequent felony conviction records sealed as provided in this
10 subsection (h) if he or she is convicted of any felony offense
11 after the date of the sealing of prior felony records as
12 provided in this subsection (h).

13 (6) Notice of eligibility for sealing. Upon acquittal,
14 release without conviction, or being placed on supervision for
15 a sealable offense, or upon conviction of a sealable offense,
16 the person shall be informed by the court of the right to have
17 the records sealed and the procedures for the sealing of the
18 records.

19 (7) Procedure. Upon becoming eligible for the sealing of
20 records under this subsection (h), the person who seeks the
21 sealing of his or her records shall file a petition requesting
22 the sealing of records with the clerk of the court where the
23 charge or charges were brought. The records may be sealed by
24 the Chief Judge of the circuit wherein the charge was brought,
25 any judge of that circuit designated by the Chief Judge, or in
26 counties of less than 3,000,000 inhabitants, the presiding

1 trial judge at the defendant's trial, if any. If charges were
2 brought in multiple jurisdictions, a petition must be filed in
3 each such jurisdiction. The petitioner shall pay the applicable
4 fee, if not waived.

5 (A) Contents of petition. The petition shall contain
6 the petitioner's name, date of birth, current address, each
7 charge, each case number, the date of each charge, the
8 identity of the arresting authority, and such other
9 information as the court may require. During the pendency
10 of the proceeding, the petitioner shall promptly notify the
11 clerk of the court of any change of address.

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

22 (C) Service of petition. The clerk shall promptly serve
23 a copy of the petition on the State's Attorney or
24 prosecutor charged with the duty of prosecuting the
25 offense, the Department of State Police, the arresting
26 agency and the chief legal officer of the unit of local

1 government effecting the arrest.

2 (D) Entry of order. Unless the State's Attorney or
3 prosecutor, the Department of State Police, the arresting
4 agency or such chief legal officer objects to sealing of
5 the records within 90 days of notice the court shall enter
6 an order sealing the defendant's records.

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

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

23 (8) Fees. Notwithstanding any provision of the Clerk of the
24 Courts Act to the contrary, and subject to the approval of the
25 county board, the clerk may charge a fee equivalent to the cost
26 associated with the sealing of records by the clerk and the

1 Department of State Police. The clerk shall forward the
2 Department of State Police portion of the fee to the Department
3 and it shall be deposited into the State Police Services Fund.

4 (i) Subject to available funding, the Illinois Department
5 of Corrections shall conduct a study of the impact of sealing,
6 especially on employment and recidivism rates, utilizing a
7 random sample of those who apply for the sealing of their
8 criminal records under Public Act 93-211, in accordance to
9 rules adopted by the Department. At the request of the Illinois
10 Department of Corrections, records of the Illinois Department
11 of Employment Security shall be utilized as appropriate to
12 assist in the study. The study shall not disclose any data in a
13 manner that would allow the identification of any particular
14 individual or employing unit. The study shall be made available
15 to the General Assembly no later than September 1, 2006.

16 (j) Notwithstanding any provision of the Clerks of Courts
17 Act to the contrary, the clerk may charge a fee equivalent to
18 the cost associated with the sealing or expungement of records
19 by the clerk. From the total filing fee collected for the
20 Petition to seal or expunge, the clerk shall deposit \$10 into
21 the Circuit Court Clerk Operation and Administrative Fund, to
22 be used to offset the costs incurred by the Circuit Court Clerk
23 in performing the additional duties required to serve the
24 Petition to Seal or Expunge on all parties. The clerk shall
25 also charge a filing fee equivalent to the cost of sealing or
26 expunging the record by the Department of State Police. The

1 clerk shall collect and forward the Department of State Police
2 portion of the fee to the Department and it shall be deposited
3 in the State Police Services Fund.

4 (k) This amendatory Act of the 96th General Assembly
5 applies to a person who meets the conditions established in
6 subsection (c-7) regardless of whether the offense for which
7 that person seeks expungement occurred before, on, or after the
8 effective date of this amendatory Act of the 96th General
9 Assembly.

10 (Source: P.A. 94-556, eff. 9-11-05; 95-955, eff. 1-1-09;
11 revised 10-28-08.)