

HB2637



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2637

Introduced 2/20/2009, by Rep. Dennis M. Reboletti

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5

from Ch. 38, par. 206-5

Amends the Criminal Identification Act. Provides that records may not be expunged or sealed until 6 months after the petitioner's conviction for the offense or the petitioner's acquittal or release without being convicted unless the State's Attorney of the county where the charges were brought authorizes or agrees to the expungement or sealing of the records and files a statement to that effect with the court before the court grants the petition for expungement or sealing of the petitioner's records.

LRB096 02007 RLC 19489 b

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 (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 (k) Notwithstanding any provision of this Section to the
19 contrary, records may not be expunged or sealed until 6 months
20 after the petitioner's conviction for the offense or the
21 petitioner's acquittal or release without being convicted
22 unless the State's Attorney of the county where the charges
23 were brought authorizes or agrees to the expungement or sealing
24 of the records and files a statement to that effect with the
25 court before the court grants the petition for expungement or
26 sealing of the petitioner's records.

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