



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB3961

Introduced 2/26/2009, by Rep. Constance A. Howard

#### SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5	from Ch. 38, par. 206-5
20 ILCS 2630/5.2 new	
20 ILCS 2630/13	
730 ILCS 5/5-6-3.1	from Ch. 38, par. 1005-6-3.1
775 ILCS 5/2-103	from Ch. 68, par. 2-103

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. Provides that the court may, upon conviction for a subsequent felony offense, order the unsealing of prior felony conviction records previously ordered sealed by the court. Amends the Unified Code of Corrections and the Illinois Human Rights Act by changing cross-references.

LRB096 09615 RLC 19776 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 Sections 5 and 13 and by adding Section 5.2 as  
6 follows:

7 (20 ILCS 2630/5) (from Ch. 38, par. 206-5)

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

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

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

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

21 (20 ILCS 2630/5.2 new)

22 Sec. 5.2. Expungement and sealing.

23 (a) General Provisions.

24 (1) Definitions. In this Act, words and phrases have  
25 the meanings set forth in this subsection, except when a



1 particular context clearly requires a different meaning.

2 (A) The following terms shall have the meanings  
3 ascribed to them in the Unified Code of Corrections,  
4 730 ILCS 5/5-1-2 thru 5/5-1-22:

5 (i) Business Offense (730 ILCS 5/5-1-2),

6 (ii) Charge (730 ILCS 5/5-1-3),

7 (iii) Court (730 ILCS 5/5-1-6),

8 (iv) Defendant (730 ILCS 5/5-1-7),

9 (v) Felony (730 ILCS 5/5-1-9),

10 (vi) Imprisonment (730 ILCS 5/5-1-10),

11 (vii) Judgment (730 ILCS 5/5-1-12),

12 (viii) Misdemeanor (730 ILCS 5/5-1-14),

13 (ix) Offense (730 ILCS 5/5-1-15),

14 (x) Parole (730 ILCS 5/5-1-16),

15 (xi) Petty Offense (730 ILCS 5/5-1-17),

16 (xii) Probation (730 ILCS 5/5-1-18),

17 (xiii) Sentence (730 ILCS 5/5-1-19),

18 (xiv) Supervision (730 ILCS 5/5-1-21), and

19 (xv) Victim (730 ILCS 5/5-1-22).

20 (B) As used in this Section, "charge not initiated  
21 by arrest" means a charge (as defined by 730 ILCS  
22 5/5-1-3) brought against a defendant where the  
23 defendant is not arrested prior to or as a direct  
24 result of the charge.

25 (C) "Conviction" means a judgment of conviction or  
26 sentence entered upon a plea of guilty or upon a

1 verdict or finding of guilty of an offense, rendered by  
2 a legally constituted jury or by a court of competent  
3 jurisdiction authorized to try the case without a jury.  
4 An order of supervision successfully completed by the  
5 petitioner is not a conviction. An order of qualified  
6 probation (as defined in subsection (a)(1)(J))  
7 successfully completed by the petitioner is not a  
8 conviction. An order of supervision or an order of  
9 qualified probation that is terminated  
10 unsatisfactorily is a conviction, unless the  
11 unsatisfactory termination is reversed, vacated, or  
12 modified and the judgment of conviction, if any, is  
13 reversed or vacated.

14 (D) "Criminal offense" means a petty offense,  
15 business offense, misdemeanor, felony, or municipal  
16 ordinance violation (as defined in (a)(1)(H)). As used  
17 in this Section, a minor traffic offense (as defined in  
18 subsection (a)(1)(G)) shall not be considered a  
19 criminal offense.

20 (E) "Expunge" means to physically destroy the  
21 records or return them to the petitioner and to  
22 obliterate the petitioner's name from any official  
23 index or public record, or both. Nothing in this Act  
24 shall require the physical destruction of the Circuit  
25 Court file, but such records relating to arrests or  
26 charges, or both, ordered expunged shall be impounded

1 as required by subsections (d)(9)(A)(ii) and  
2 (d)(9)(B)(ii).

3 (F) As used in this Section, "last sentence" means  
4 the sentence, order of supervision, or order of  
5 qualified probation (as defined by subsection  
6 (a)(1)(J)), for a criminal offense (as defined by  
7 (a)(1)(D)) that terminates last in time in any  
8 jurisdiction, regardless of whether the petitioner has  
9 included the criminal offense for which the sentence or  
10 order of supervision or qualified probation was  
11 imposed in his or her petition or petitions. If  
12 multiple sentences, orders of supervision, or orders  
13 of qualified probation terminate on the same day and  
14 are last in time, they shall be collectively considered  
15 the "last sentence" regardless of whether they were  
16 ordered to run concurrently.

17 (G) "Minor traffic offense" means a petty offense,  
18 business offense, or Class C misdemeanor under the  
19 Illinois Vehicle Code or a similar provision of a  
20 municipal or local ordinance.

21 (H) "Municipal ordinance violation" means an  
22 offense defined by a municipal or local ordinance that  
23 is criminal in nature and with which the petitioner was  
24 charged or for which the petitioner was arrested and  
25 released without charging.

26 (I) "Petitioner" means an adult or a minor

1 prosecuted as an adult who has applied for relief under  
2 this Section.

3 (J) "Qualified probation" means an order of  
4 probation under Section 10 of the Cannabis Control Act,  
5 Section 410 of the Illinois Controlled Substances Act,  
6 Section 70 of the Methamphetamine Control and  
7 Community Protection Act, Section 12-4.3(b) (1) and (2)  
8 of the Criminal Code of 1961 (as those provisions  
9 existed before their deletion by Public Act 89-313),  
10 Section 10-102 of the Illinois Alcoholism and Other  
11 Drug Dependency Act, Section 40-10 of the Alcoholism  
12 and Other Drug Abuse and Dependency Act, or Section 10  
13 of the Steroid Control Act. For the purpose of this  
14 Section, "successful completion" of an order of  
15 qualified probation under Section 10-102 of the  
16 Illinois Alcoholism and Other Drug Dependency Act and  
17 Section 40-10 of the Alcoholism and Other Drug Abuse  
18 and Dependency Act means that the probation was  
19 terminated satisfactorily and the judgment of  
20 conviction was vacated.

21 (K) "Seal" means to physically and electronically  
22 maintain the records, unless the records would  
23 otherwise be destroyed due to age, but to make the  
24 records unavailable without a court order, subject to  
25 the exceptions in Sections 12 and 13 of this Act. The  
26 petitioner's name shall also be obliterated from the

1 official index required to be kept by the circuit court  
2 clerk under Section 16 of the Clerks of Courts Act, but  
3 any index issued by the circuit court clerk before the  
4 entry of the order to seal shall not be affected.

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

9 (M) "Terminate" as it relates to a sentence or  
10 order of supervision or qualified probation includes  
11 either satisfactory or unsatisfactory termination of  
12 the sentence, unless otherwise specified in this  
13 Section.

14 (2) Minor Traffic Offenses. Orders of supervision or  
15 convictions for minor traffic offenses shall not affect a  
16 petitioner's eligibility to expunge or seal records  
17 pursuant to this Section.

18 (3) Exclusions. Except as otherwise provided in  
19 subsections (b) (5), (b) (6), and subsection (e) of this  
20 Section, the court shall not order:

21 (A) the sealing or expungement of the records of  
22 arrests or charges not initiated by arrest that result in  
23 an order of supervision for or conviction of: (i) any  
24 sexual offense committed against a minor; (ii) Section  
25 11-501 of the Illinois Vehicle Code or a similar provision  
26 of a local ordinance; or (iii) Section 11-503 of the

1 Illinois Vehicle Code or a similar provision of a local  
2 ordinance.

3 (B) the sealing or expungement of records of minor  
4 traffic offenses (as defined in subsection (a)(1)(G)),  
5 unless the petitioner was arrested and released  
6 without charging.

7 (C) the sealing of the records of arrests or  
8 charges not initiated by arrest that result in a  
9 conviction for the following offenses:

10 (i) offenses included in Article 11 of the  
11 Criminal Code of 1961 or a similar provision of a  
12 local ordinance, except Sections 11-14, 11-14.1,  
13 and 11-15 of the Criminal Code of 1961 or a similar  
14 provision of a local ordinance;

15 (ii) Section 12-15, 12-30, or 26-5 of the  
16 Criminal Code of 1961 or a similar provision of a  
17 local ordinance;

18 (iv) offenses defined as "crimes of violence"  
19 in Section 2 of the Crime Victims Compensation Act  
20 or a similar provision of a local ordinance, except  
21 Sections 12-1 and 12-3 of the Criminal Code of 1961  
22 or a similar provision of a local ordinance;

23 (v) offenses under the Humane Care for Animals  
24 Act;

25 (vi) any offense or attempted offense that  
26 would subject a person to registration under the

1                   Sex Offender Registration Act;

2                   (vii) any Class 3 felony;

3                   (viii) any Class 2 felony;

4                   (ix) any Class 1 felony;

5                   (x) any Class X felony; or

6                   (xi) first degree murder.

7           (b) Expungement.

8                   (1) A petitioner may petition the circuit court to  
9                   expunge the records of his or her arrests and charges not  
10                   initiated by arrest when:

11                   (A) He or she has never been convicted of a  
12                   criminal offense; and

13                   (B) Each arrest or charge not initiated by arrest  
14                   sought to be expunged resulted in: (i) acquittal,  
15                   dismissal, or the petitioner's release without  
16                   charging, unless excluded by subsection (a)(3)(B);  
17                   (ii) a conviction which was vacated or reversed, unless  
18                   excluded by subsection (a)(3)(B); (iii) an order of  
19                   supervision and such supervision was successfully  
20                   completed by the petitioner, unless excluded by  
21                   subsection (a)(3)(A) or (a)(3)(B); or (iv) an order of  
22                   qualified probation (as defined in subsection  
23                   (a)(1)(J)) and such probation was successfully  
24                   completed by the petitioner.

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

26                   (A) When the arrest or charge not initiated by

1 arrest sought to be expunged resulted in an acquittal,  
2 dismissal, the petitioner's release without charging,  
3 or the reversal or vacation of a conviction, there is  
4 no waiting period to petition for the expungement of  
5 such records.

6 (B) When the arrest or charge not initiated by  
7 arrest sought to be expunged resulted in an order of  
8 supervision, successfully completed by the petitioner,  
9 the following time frames will apply:

10 (i) Those arrests or charges that resulted in  
11 orders of supervision under Section 3-707, 3-708,  
12 3-710, or 5-401.3 of the Illinois Vehicle Code or a  
13 similar provision of a local ordinance, or under  
14 Section 12-3.2, 12-15 or 16A-3 of the Criminal Code  
15 of 1961, shall not be eligible for expungement  
16 until 5 years have passed following the  
17 satisfactory termination of the supervision.

18 (ii) Those arrests or charges that resulted in  
19 orders of supervision for any other offenses shall  
20 not be eligible for expungement until 2 years have  
21 passed following the satisfactory termination of  
22 the supervision.

23 (C) When the arrest or charge not initiated by  
24 arrest sought to be expunged resulted in an order of  
25 qualified probation, successfully completed by the  
26 petitioner, such records shall not be eligible for



1           expungement until 5 years have passed following the  
2           satisfactory termination of the probation.

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

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

1 required to be kept by the circuit court clerk under  
2 Section 16 of the Clerks of Courts Act, but the order shall  
3 not affect any index issued by the circuit court clerk  
4 before the entry of the order. Nothing in this Section  
5 shall limit the Department of State Police or other  
6 criminal justice agencies or prosecutors from listing  
7 under an offender's name the false names he or she has  
8 used.

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

26 (6) If a conviction has been set aside on direct review

1 or on collateral attack and the court determines by clear  
2 and convincing evidence that the petitioner was factually  
3 innocent of the charge, the court shall enter an  
4 expungement order as provided in subsection (b) of Section  
5 5-5-4 of the Unified Code of Corrections.

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

17 (c) Sealing.

18 (1) Applicability. Notwithstanding any other provision  
19 of this Act to the contrary, and cumulative with any rights  
20 to expungement of criminal records, this subsection  
21 authorizes the sealing of criminal records of adults and of  
22 minors prosecuted as adults.

23 (2) Eligible Records. The following records may be  
24 sealed:

25 (A) All arrests resulting in release without  
26 charging;

1           (B) Arrests or charges not initiated by arrest  
2           resulting in acquittal, dismissal, or conviction when  
3           the conviction was reversed or vacated, except as  
4           excluded by subsection (a) (3) (B);

5           (C) Arrests or charges not initiated by arrest  
6           resulting in orders of supervision successfully  
7           completed by the petitioner, unless excluded by  
8           subsection (a) (3);

9           (D) Arrests or charges not initiated by arrest  
10           resulting in convictions unless excluded by subsection  
11           (a) (3); and

12           (E) Arrests or charges not initiated by arrest  
13           resulting in orders of qualified probation (as defined  
14           in subsection (a) (1) (J)).

15           (3) When Records Are Eligible to Be Sealed. Records  
16           identified as eligible under subsection (c) (2) may be  
17           sealed as follows:

18           (A) Records identified as eligible under  
19           subsection (c) (2) (A) and (c) (2) (B) may be sealed at any  
20           time.

21           (B) Records identified as eligible under  
22           subsection (c) (2) (C) may be sealed (i) 3 years after  
23           the termination of petitioner's last sentence (as  
24           defined in subsection (a) (1) (F)) if the petitioner has  
25           never been convicted of a criminal offense (as defined  
26           in subsection (a) (1) (D)); or (ii) 4 years after the

1 termination of the petitioner's last sentence (as  
2 defined in subsection (a) (1) (F)) if the petitioner has  
3 ever been convicted of a criminal offense (as defined  
4 in subsection (a) (1) (D)).

5 (C) Records identified as eligible under  
6 subsections (c) (2) (D) and (c) (2) (E) may be sealed 4  
7 years after the termination of the petitioner's last  
8 sentence (as defined in subsection (a) (1) (F)).

9 (4) Subsequent felony convictions. A person may not  
10 have subsequent felony conviction records sealed as  
11 provided in this subsection (c) if he or she is convicted  
12 of any felony offense after the date of the sealing of  
13 prior felony convictions as provided in this subsection  
14 (c). The court may, upon conviction for a subsequent felony  
15 offense, order the unsealing of prior felony conviction  
16 records previously ordered sealed by the court.

17 (5) Notice of eligibility for sealing. Upon entry of a  
18 disposition for an eligible record under this subsection  
19 (c), the petitioner shall be informed by the court of the  
20 right to have the records sealed and the procedures for the  
21 sealing of the records.

22 (d) Procedure. The following procedures apply to  
23 expungement under subsections (b) and (e), and sealing under  
24 subsection (c):

25 (1) Filing the petition. Upon becoming eligible to  
26 petition for the expungement or sealing of records under

1       this Section, the petitioner shall file a petition  
2       requesting the expungement or sealing of records with the  
3       clerk of the court where the arrests occurred or the  
4       charges were brought, or both. If arrests occurred or  
5       charges were brought in multiple jurisdictions, a petition  
6       must be filed in each such jurisdiction. The petitioner  
7       shall pay the applicable fee, if not waived.

8           (2) Contents of petition. The petition shall be  
9       verified and shall contain the petitioner's name, date of  
10       birth, current address and, for each arrest or charge not  
11       initiated by arrest sought to be sealed or expunged, the  
12       case number, the date of arrest (if any), the identity of  
13       the arresting authority, and such other information as the  
14       court may require. During the pendency of the proceeding,  
15       the petitioner shall promptly notify the clerk of the court  
16       of any change of his or her address.

17           (3) Drug test. The petitioner must attach to the  
18       petition proof that the petitioner has passed a test taken  
19       within 30 days before the filing of the petition showing  
20       the absence within his or her body of all illegal  
21       substances as defined by the Illinois Controlled  
22       Substances Act, the Methamphetamine Control and Community  
23       Protection Act, and the Cannabis Control Act if he or she  
24       is petitioning to seal felony records pursuant to clause  
25       (c) (2) (E) or a felony drug conviction pursuant to (c) (2) (D)  
26       or if he or she is petitioning to expunge felony records of

1 a qualified probation pursuant to clause (b) (1) (B) (iv).

2 (4) Service of petition. The clerk of the court shall  
3 promptly serve a copy of the petition on the State's  
4 Attorney or prosecutor charged with the duty of prosecuting  
5 the offense, the Department of State Police, the arresting  
6 agency and the chief legal officer of the unit of local  
7 government effecting the arrest.

8 (5) Objections.

9 (A) Any party entitled to notice of the petition  
10 may file an objection to the petition. All objections  
11 shall be in writing, shall be filed with the Clerk of  
12 Court, and shall state with specificity the basis of  
13 the objection.

14 (B) Objections to petitions to expunge or seal must  
15 be filed within 60 days of the date of service of the  
16 petition(s).

17 (6) Entry of order.

18 (A) The Chief Judge of the circuit wherein the  
19 charge was brought, any judge of that circuit  
20 designated by the Chief Judge, or in counties of less  
21 than 3,000,000 inhabitants, the presiding trial judge  
22 at the petitioner's trial, if any, shall rule on the  
23 petition(s) to expunge or seal as set forth in this  
24 subsection (d) (6).

25 (B) Unless the State's Attorney or prosecutor, the  
26 Department of State Police, the arresting agency, or

1           the chief legal officer files an objection to the  
2           petition(s) to expunge or seal within 60 days from the  
3           date of service of the petition(s), the court shall  
4           enter an order granting or denying the petition(s).

5           (7) Hearings. If an objection is filed, the court shall  
6           set a date for a hearing and notify the petitioner and all  
7           parties entitled to notice of the petition of the hearing  
8           date at least 30 days prior to the hearing, and shall hear  
9           evidence on whether the petition(s) should or should not be  
10           granted, and shall grant or deny the petition(s) to expunge  
11           or seal the records based on the evidence presented at the  
12           hearing.

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

22           (9) Effect of order.

23           (A) Upon entry of an order to expunge records  
24           pursuant to (b) (2) (A) or (b) (2) (B) (ii), or both,

25                   (i) the records shall be expunged (as defined  
26                   in subsection (a) (1) (E)) by the arresting agency,



1 the Department, and any other agency as ordered by  
2 the court; and

3 (ii) the records of the clerk of the circuit  
4 court shall be impounded until further order of the  
5 court upon good cause shown and the name of the  
6 petitioner obliterated on the official index  
7 required to be kept by the circuit court clerk  
8 under Section 16 of the Clerks of Courts Act, but  
9 the order shall not affect any index issued by the  
10 circuit court clerk before the entry of the order.

11 (iii) In response to an inquiry for expunged  
12 records, the court, the Department, or the agency  
13 receiving such inquiry shall reply as it does in  
14 response to inquiries when no records ever  
15 existed.

16 (B) Upon entry of an order to expunge records  
17 pursuant to (b) (2) (B) (i) or (b) (2) (C), or both,

18 (i) the records shall be expunged (as defined  
19 in subsection (a) (1) (E)) by the arresting agency  
20 and any other agency as ordered by the court;

21 (ii) the records of the clerk of the circuit  
22 court shall be impounded until further order of the  
23 court upon good cause shown and the name of the  
24 petitioner obliterated on the official index  
25 required to be kept by the circuit court clerk  
26 under Section 16 of the Clerks of Courts Act, but

1 the order shall not affect any index issued by the  
2 circuit court clerk before the entry of the order;  
3 and

4 (iii) the records shall be impounded by the  
5 Department.

6 (iv) Records impounded by the Department may  
7 be disseminated by the Department only to the  
8 arresting authority, the State's Attorney, and the  
9 court upon a later arrest for the same or a similar  
10 offense or for the purpose of sentencing for any  
11 subsequent felony, and to the Department of  
12 Corrections upon conviction for any offense.

13 (v) In response to an inquiry for such records  
14 from anyone not authorized by law to access such  
15 records the court, the Department, or the agency  
16 receiving such inquiry shall reply as it does in  
17 response to inquiries when no records ever  
18 existed.

19 (C) Upon entry of an order to seal records under  
20 subsection (c), the arresting agency, any other agency  
21 as ordered by the court, the Department, and the court  
22 shall seal the records (as defined in subsection  
23 (a) (1) (K)). In response to an inquiry for such records  
24 from anyone not authorized by law to access such  
25 records the court, the Department, or the agency  
26 receiving such inquiry shall reply as it does in

1 response to inquiries when no records ever existed.

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

17 (11) Final Order. No court order issued under the  
18 expungement or sealing provisions of this Section shall  
19 become final for purposes of appeal until 30 days after  
20 service of the order on the petitioner and all parties  
21 entitled to notice of the petition.

22 (12) Motion to Vacate, Modify, or Reconsider. The  
23 petitioner or any party entitled to notice may file a  
24 motion to vacate, modify, or reconsider the order(s)  
25 granting or denying the petition(s) to expunge or seal  
26 within 60 days of service of the order(s).

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

1 court shall promptly mail a copy of the order to the person who  
2 was pardoned.

3 (f) Subject to available funding, the Illinois Department  
4 of Corrections shall conduct a study of the impact of sealing,  
5 especially on employment and recidivism rates, utilizing a  
6 random sample of those who apply for the sealing of their  
7 criminal records under Public Act 93-211. At the request of the  
8 Illinois Department of Corrections, records of the Illinois  
9 Department of Employment Security shall be utilized as  
10 appropriate to assist in the study. The study shall not  
11 disclose any data in a manner that would allow the  
12 identification of any particular individual or employing unit.  
13 The study shall be made available to the General Assembly no  
14 later than September 1, 2010.

15 (20 ILCS 2630/13)

16 Sec. 13. Retention and release of sealed records.

17 (a) The Department of State Police shall retain records  
18 sealed under subsection (c) ~~(h)~~ of Section 5.2 ~~5~~ and shall  
19 release them only as authorized by this Act. Felony records  
20 sealed under subsection (c) ~~(h)~~ of Section 5.2 ~~5~~ shall be used  
21 and disseminated by the Department only as otherwise  
22 specifically required or authorized by a federal or State law,  
23 rule, or regulation that requires inquiry into and release of  
24 criminal records, including, but not limited to, subsection (A)  
25 of Section 3 of this Act. However, all requests for records

1 that have been expunged, sealed, and impounded and the use of  
2 those records are subject to the provisions of Section 2-103 of  
3 the Illinois Human Rights Act. Upon conviction for any offense,  
4 the Department of Corrections shall have access to all sealed  
5 records of the Department pertaining to that individual.

6 (b) Notwithstanding the foregoing, all sealed records are  
7 subject to inspection and use by the court and inspection and  
8 use by law enforcement agencies and State's Attorneys or other  
9 prosecutors in carrying out the duties of their offices.

10 (c) The sealed records maintained under subsection (a) are  
11 exempt from disclosure under the Freedom of Information Act.

12 (d) The Department of State Police shall commence the  
13 sealing of records of felony arrests and felony convictions  
14 pursuant to the provisions of subsection (c) ~~(h)~~ of Section 5.2  
15 ~~5~~ of this Act no later than one year from the date that funds  
16 have been made available for purposes of establishing the  
17 technologies necessary to implement the changes made by this  
18 amendatory Act of the 93rd General Assembly.

19 (Source: P.A. 93-211, eff. 1-1-04; 93-1084, eff. 6-1-05.)

20 Section 10. The Unified Code of Corrections is amended by  
21 changing Section 5-6-3.1 as follows:

22 (730 ILCS 5/5-6-3.1) (from Ch. 38, par. 1005-6-3.1)

23 (Text of Section after amendment by P.A. 95-983)

24 Sec. 5-6-3.1. Incidents and Conditions of Supervision.

1           (a) When a defendant is placed on supervision, the court  
2 shall enter an order for supervision specifying the period of  
3 such supervision, and shall defer further proceedings in the  
4 case until the conclusion of the period.

5           (b) The period of supervision shall be reasonable under all  
6 of the circumstances of the case, but may not be longer than 2  
7 years, unless the defendant has failed to pay the assessment  
8 required by Section 10.3 of the Cannabis Control Act, Section  
9 411.2 of the Illinois Controlled Substances Act, or Section 80  
10 of the Methamphetamine Control and Community Protection Act, in  
11 which case the court may extend supervision beyond 2 years.  
12 Additionally, the court shall order the defendant to perform no  
13 less than 30 hours of community service and not more than 120  
14 hours of community service, if community service is available  
15 in the jurisdiction and is funded and approved by the county  
16 board where the offense was committed, when the offense (1) was  
17 related to or in furtherance of the criminal activities of an  
18 organized gang or was motivated by the defendant's membership  
19 in or allegiance to an organized gang; or (2) is a violation of  
20 any Section of Article 24 of the Criminal Code of 1961 where a  
21 disposition of supervision is not prohibited by Section 5-6-1  
22 of this Code. The community service shall include, but not be  
23 limited to, the cleanup and repair of any damage caused by  
24 violation of Section 21-1.3 of the Criminal Code of 1961 and  
25 similar damages to property located within the municipality or  
26 county in which the violation occurred. Where possible and

1 reasonable, the community service should be performed in the  
2 offender's neighborhood.

3 For the purposes of this Section, "organized gang" has the  
4 meaning ascribed to it in Section 10 of the Illinois Streetgang  
5 Terrorism Omnibus Prevention Act.

6 (c) The court may in addition to other reasonable  
7 conditions relating to the nature of the offense or the  
8 rehabilitation of the defendant as determined for each  
9 defendant in the proper discretion of the court require that  
10 the person:

11 (1) make a report to and appear in person before or  
12 participate with the court or such courts, person, or  
13 social service agency as directed by the court in the order  
14 of supervision;

15 (2) pay a fine and costs;

16 (3) work or pursue a course of study or vocational  
17 training;

18 (4) undergo medical, psychological or psychiatric  
19 treatment; or treatment for drug addiction or alcoholism;

20 (5) attend or reside in a facility established for the  
21 instruction or residence of defendants on probation;

22 (6) support his dependents;

23 (7) refrain from possessing a firearm or other  
24 dangerous weapon;

25 (8) and in addition, if a minor:

26 (i) reside with his parents or in a foster home;



- 1           (ii) attend school;
- 2           (iii) attend a non-residential program for youth;
- 3           (iv) contribute to his own support at home or in a  
4 foster home; or
- 5           (v) with the consent of the superintendent of the  
6 facility, attend an educational program at a facility  
7 other than the school in which the offense was  
8 committed if he or she is placed on supervision for a  
9 crime of violence as defined in Section 2 of the Crime  
10 Victims Compensation Act committed in a school, on the  
11 real property comprising a school, or within 1,000 feet  
12 of the real property comprising a school;
- 13       (9) make restitution or reparation in an amount not to  
14 exceed actual loss or damage to property and pecuniary loss  
15 or make restitution under Section 5-5-6 to a domestic  
16 violence shelter. The court shall determine the amount and  
17 conditions of payment;
- 18       (10) perform some reasonable public or community  
19 service;
- 20       (11) comply with the terms and conditions of an order  
21 of protection issued by the court pursuant to the Illinois  
22 Domestic Violence Act of 1986 or an order of protection  
23 issued by the court of another state, tribe, or United  
24 States territory. If the court has ordered the defendant to  
25 make a report and appear in person under paragraph (1) of  
26 this subsection, a copy of the order of protection shall be

1 transmitted to the person or agency so designated by the  
2 court;

3 (12) reimburse any "local anti-crime program" as  
4 defined in Section 7 of the Anti-Crime Advisory Council Act  
5 for any reasonable expenses incurred by the program on the  
6 offender's case, not to exceed the maximum amount of the  
7 fine authorized for the offense for which the defendant was  
8 sentenced;

9 (13) contribute a reasonable sum of money, not to  
10 exceed the maximum amount of the fine authorized for the  
11 offense for which the defendant was sentenced, (i) to a  
12 "local anti-crime program", as defined in Section 7 of the  
13 Anti-Crime Advisory Council Act, or (ii) for offenses under  
14 the jurisdiction of the Department of Natural Resources, to  
15 the fund established by the Department of Natural Resources  
16 for the purchase of evidence for investigation purposes and  
17 to conduct investigations as outlined in Section 805-105 of  
18 the Department of Natural Resources (Conservation) Law;

19 (14) refrain from entering into a designated  
20 geographic area except upon such terms as the court finds  
21 appropriate. Such terms may include consideration of the  
22 purpose of the entry, the time of day, other persons  
23 accompanying the defendant, and advance approval by a  
24 probation officer;

25 (15) refrain from having any contact, directly or  
26 indirectly, with certain specified persons or particular

1 types of person, including but not limited to members of  
2 street gangs and drug users or dealers;

3 (16) refrain from having in his or her body the  
4 presence of any illicit drug prohibited by the Cannabis  
5 Control Act, the Illinois Controlled Substances Act, or the  
6 Methamphetamine Control and Community Protection Act,  
7 unless prescribed by a physician, and submit samples of his  
8 or her blood or urine or both for tests to determine the  
9 presence of any illicit drug;

10 (17) refrain from operating any motor vehicle not  
11 equipped with an ignition interlock device as defined in  
12 Section 1-129.1 of the Illinois Vehicle Code; under this  
13 condition the court may allow a defendant who is not  
14 self-employed to operate a vehicle owned by the defendant's  
15 employer that is not equipped with an ignition interlock  
16 device in the course and scope of the defendant's  
17 employment; and

18 (18) if placed on supervision for a sex offense as  
19 defined in subsection (a-5) of Section 3-1-2 of this Code,  
20 unless the offender is a parent or guardian of the person  
21 under 18 years of age present in the home and no  
22 non-familial minors are present, not participate in a  
23 holiday event involving children under 18 years of age,  
24 such as distributing candy or other items to children on  
25 Halloween, wearing a Santa Claus costume on or preceding  
26 Christmas, being employed as a department store Santa

1 Claus, or wearing an Easter Bunny costume on or preceding  
2 Easter.

3 (d) The court shall defer entering any judgment on the  
4 charges until the conclusion of the supervision.

5 (e) At the conclusion of the period of supervision, if the  
6 court determines that the defendant has successfully complied  
7 with all of the conditions of supervision, the court shall  
8 discharge the defendant and enter a judgment dismissing the  
9 charges.

10 (f) Discharge and dismissal upon a successful conclusion of  
11 a disposition of supervision shall be deemed without  
12 adjudication of guilt and shall not be termed a conviction for  
13 purposes of disqualification or disabilities imposed by law  
14 upon conviction of a crime. Two years after the discharge and  
15 dismissal under this Section, unless the disposition of  
16 supervision was for a violation of Sections 3-707, 3-708,  
17 3-710, 5-401.3, or 11-503 of the Illinois Vehicle Code or a  
18 similar provision of a local ordinance, or for a violation of  
19 Sections 12-3.2 or 16A-3 of the Criminal Code of 1961, in which  
20 case it shall be 5 years after discharge and dismissal, a  
21 person may have his record of arrest sealed or expunged as may  
22 be provided by law. However, any defendant placed on  
23 supervision before January 1, 1980, may move for sealing or  
24 expungement of his arrest record, as provided by law, at any  
25 time after discharge and dismissal under this Section. A person  
26 placed on supervision for a sexual offense committed against a

1 minor as defined in clause (a)(1)(L) ~~subsection (g)~~ of Section  
2 5.2 ~~5~~ of the Criminal Identification Act or for a violation of  
3 Section 11-501 of the Illinois Vehicle Code or a similar  
4 provision of a local ordinance shall not have his or her record  
5 of arrest sealed or expunged.

6 (g) A defendant placed on supervision and who during the  
7 period of supervision undergoes mandatory drug or alcohol  
8 testing, or both, or is assigned to be placed on an approved  
9 electronic monitoring device, shall be ordered to pay the costs  
10 incidental to such mandatory drug or alcohol testing, or both,  
11 and costs incidental to such approved electronic monitoring in  
12 accordance with the defendant's ability to pay those costs. The  
13 county board with the concurrence of the Chief Judge of the  
14 judicial circuit in which the county is located shall establish  
15 reasonable fees for the cost of maintenance, testing, and  
16 incidental expenses related to the mandatory drug or alcohol  
17 testing, or both, and all costs incidental to approved  
18 electronic monitoring, of all defendants placed on  
19 supervision. The concurrence of the Chief Judge shall be in the  
20 form of an administrative order. The fees shall be collected by  
21 the clerk of the circuit court. The clerk of the circuit court  
22 shall pay all moneys collected from these fees to the county  
23 treasurer who shall use the moneys collected to defray the  
24 costs of drug testing, alcohol testing, and electronic  
25 monitoring. The county treasurer shall deposit the fees  
26 collected in the county working cash fund under Section 6-27001

1 or Section 6-29002 of the Counties Code, as the case may be.

2 (h) A disposition of supervision is a final order for the  
3 purposes of appeal.

4 (i) The court shall impose upon a defendant placed on  
5 supervision after January 1, 1992 or to community service under  
6 the supervision of a probation or court services department  
7 after January 1, 2004, as a condition of supervision or  
8 supervised community service, a fee of \$50 for each month of  
9 supervision or supervised community service ordered by the  
10 court, unless after determining the inability of the person  
11 placed on supervision or supervised community service to pay  
12 the fee, the court assesses a lesser fee. The court may not  
13 impose the fee on a minor who is made a ward of the State under  
14 the Juvenile Court Act of 1987 while the minor is in placement.  
15 The fee shall be imposed only upon a defendant who is actively  
16 supervised by the probation and court services department. The  
17 fee shall be collected by the clerk of the circuit court. The  
18 clerk of the circuit court shall pay all monies collected from  
19 this fee to the county treasurer for deposit in the probation  
20 and court services fund pursuant to Section 15.1 of the  
21 Probation and Probation Officers Act.

22 A circuit court may not impose a probation fee in excess of  
23 \$25 per month unless: (1) the circuit court has adopted, by  
24 administrative order issued by the chief judge, a standard  
25 probation fee guide determining an offender's ability to pay,  
26 under guidelines developed by the Administrative Office of the

1 Illinois Courts; and (2) the circuit court has authorized, by  
2 administrative order issued by the chief judge, the creation of  
3 a Crime Victim's Services Fund, to be administered by the Chief  
4 Judge or his or her designee, for services to crime victims and  
5 their families. Of the amount collected as a probation fee, not  
6 to exceed \$5 of that fee collected per month may be used to  
7 provide services to crime victims and their families.

8 (j) All fines and costs imposed under this Section for any  
9 violation of Chapters 3, 4, 6, and 11 of the Illinois Vehicle  
10 Code, or a similar provision of a local ordinance, and any  
11 violation of the Child Passenger Protection Act, or a similar  
12 provision of a local ordinance, shall be collected and  
13 disbursed by the circuit clerk as provided under Section 27.5  
14 of the Clerks of Courts Act.

15 (k) A defendant at least 17 years of age who is placed on  
16 supervision for a misdemeanor in a county of 3,000,000 or more  
17 inhabitants and who has not been previously convicted of a  
18 misdemeanor or felony may as a condition of his or her  
19 supervision be required by the court to attend educational  
20 courses designed to prepare the defendant for a high school  
21 diploma and to work toward a high school diploma or to work  
22 toward passing the high school level Test of General  
23 Educational Development (GED) or to work toward completing a  
24 vocational training program approved by the court. The  
25 defendant placed on supervision must attend a public  
26 institution of education to obtain the educational or

1 vocational training required by this subsection (k). The  
2 defendant placed on supervision shall be required to pay for  
3 the cost of the educational courses or GED test, if a fee is  
4 charged for those courses or test. The court shall revoke the  
5 supervision of a person who wilfully fails to comply with this  
6 subsection (k). The court shall resentence the defendant upon  
7 revocation of supervision as provided in Section 5-6-4. This  
8 subsection (k) does not apply to a defendant who has a high  
9 school diploma or has successfully passed the GED test. This  
10 subsection (k) does not apply to a defendant who is determined  
11 by the court to be developmentally disabled or otherwise  
12 mentally incapable of completing the educational or vocational  
13 program.

14 (1) The court shall require a defendant placed on  
15 supervision for possession of a substance prohibited by the  
16 Cannabis Control Act, the Illinois Controlled Substances Act,  
17 or the Methamphetamine Control and Community Protection Act  
18 after a previous conviction or disposition of supervision for  
19 possession of a substance prohibited by the Cannabis Control  
20 Act, the Illinois Controlled Substances Act, or the  
21 Methamphetamine Control and Community Protection Act or a  
22 sentence of probation under Section 10 of the Cannabis Control  
23 Act or Section 410 of the Illinois Controlled Substances Act  
24 and after a finding by the court that the person is addicted,  
25 to undergo treatment at a substance abuse program approved by  
26 the court.



1           (m) The Secretary of State shall require anyone placed on  
2 court supervision for a violation of Section 3-707 of the  
3 Illinois Vehicle Code or a similar provision of a local  
4 ordinance to give proof of his or her financial responsibility  
5 as defined in Section 7-315 of the Illinois Vehicle Code. The  
6 proof shall be maintained by the individual in a manner  
7 satisfactory to the Secretary of State for a minimum period of  
8 3 years after the date the proof is first filed. The proof  
9 shall be limited to a single action per arrest and may not be  
10 affected by any post-sentence disposition. The Secretary of  
11 State shall suspend the driver's license of any person  
12 determined by the Secretary to be in violation of this  
13 subsection.

14           (n) Any offender placed on supervision for any offense that  
15 the court or probation department has determined to be sexually  
16 motivated as defined in the Sex Offender Management Board Act  
17 shall be required to refrain from any contact, directly or  
18 indirectly, with any persons specified by the court and shall  
19 be available for all evaluations and treatment programs  
20 required by the court or the probation department.

21           (o) An offender placed on supervision for a sex offense as  
22 defined in the Sex Offender Management Board Act shall refrain  
23 from residing at the same address or in the same condominium  
24 unit or apartment unit or in the same condominium complex or  
25 apartment complex with another person he or she knows or  
26 reasonably should know is a convicted sex offender or has been

1 placed on supervision for a sex offense. The provisions of this  
2 subsection (o) do not apply to a person convicted of a sex  
3 offense who is placed in a Department of Corrections licensed  
4 transitional housing facility for sex offenders.

5 (p) An offender placed on supervision for an offense  
6 committed on or after June 1, 2008 (the effective date of  
7 Public Act 95-464) that would qualify the accused as a child  
8 sex offender as defined in Section 11-9.3 or 11-9.4 of the  
9 Criminal Code of 1961 shall refrain from communicating with or  
10 contacting, by means of the Internet, a person who is not  
11 related to the accused and whom the accused reasonably believes  
12 to be under 18 years of age. For purposes of this subsection  
13 (p), "Internet" has the meaning ascribed to it in Section 16J-5  
14 of the Criminal Code of 1961; and a person is not related to  
15 the accused if the person is not: (i) the spouse, brother, or  
16 sister of the accused; (ii) a descendant of the accused; (iii)  
17 a first or second cousin of the accused; or (iv) a step-child  
18 or adopted child of the accused.

19 (q) An offender placed on supervision for an offense  
20 committed on or after June 1, 2008 (the effective date of  
21 Public Act 95-464) that would qualify the accused as a child  
22 sex offender as defined in Section 11-9.3 or 11-9.4 of the  
23 Criminal Code of 1961 shall, if so ordered by the court,  
24 refrain from communicating with or contacting, by means of the  
25 Internet, a person who is related to the accused and whom the  
26 accused reasonably believes to be under 18 years of age. For

1 purposes of this subsection (q), "Internet" has the meaning  
2 ascribed to it in Section 16J-5 of the Criminal Code of 1961;  
3 and a person is related to the accused if the person is: (i)  
4 the spouse, brother, or sister of the accused; (ii) a  
5 descendant of the accused; (iii) a first or second cousin of  
6 the accused; or (iv) a step-child or adopted child of the  
7 accused.

8 (r) An offender placed on supervision for an offense under  
9 Section 11-6, 11-9.1, 11-15.1, 11-20.1, 11-20.3, or 11-21 of  
10 the Criminal Code of 1961, or any attempt to commit any of  
11 these offenses, committed on or after the effective date of  
12 this amendatory Act of the 95th General Assembly shall:

13 (i) not access or use a computer or any other device  
14 with Internet capability without the prior written  
15 approval of the court, except in connection with the  
16 offender's employment or search for employment with the  
17 prior approval of the court;

18 (ii) submit to periodic unannounced examinations of  
19 the offender's computer or any other device with Internet  
20 capability by the offender's probation officer, a law  
21 enforcement officer, or assigned computer or information  
22 technology specialist, including the retrieval and copying  
23 of all data from the computer or device and any internal or  
24 external peripherals and removal of such information,  
25 equipment, or device to conduct a more thorough inspection;

26 (iii) submit to the installation on the offender's

1 computer or device with Internet capability, at the  
2 offender's expense, of one or more hardware or software  
3 systems to monitor the Internet use; and

4 (iv) submit to any other appropriate restrictions  
5 concerning the offender's use of or access to a computer or  
6 any other device with Internet capability imposed by the  
7 court.

8 (Source: P.A. 94-159, eff. 7-11-05; 94-161, eff. 7-11-05;  
9 94-556, eff. 9-11-05; 95-211, eff. 1-1-08; 95-331, eff.  
10 8-21-07; 95-464, eff. 6-1-08; 95-696, eff. 6-1-08; 95-876, eff.  
11 8-21-08; 95-983, eff. 6-1-09.)

12 Section 15. The Illinois Human Rights Act is amended by  
13 changing Section 2-103 as follows:

14 (775 ILCS 5/2-103) (from Ch. 68, par. 2-103)

15 Sec. 2-103. Arrest Record.

16 (A) Unless otherwise authorized by law, it is a civil  
17 rights violation for any employer, employment agency or labor  
18 organization to inquire into or to use the fact of an arrest or  
19 criminal history record information ordered expunged, sealed  
20 or impounded under Section 5.2 ~~5~~ of the Criminal Identification  
21 Act as a basis to refuse to hire, to segregate, or to act with  
22 respect to recruitment, hiring, promotion, renewal of  
23 employment, selection for training or apprenticeship,  
24 discharge, discipline, tenure or terms, privileges or

1 conditions of employment. This Section does not prohibit a  
2 State agency, unit of local government or school district, or  
3 private organization from requesting or utilizing sealed  
4 felony conviction information obtained from the Department of  
5 State Police under the provisions of Section 3 of the Criminal  
6 Identification Act or under other State or federal laws or  
7 regulations that require criminal background checks in  
8 evaluating the qualifications and character of an employee or a  
9 prospective employee.

10 (B) The prohibition against the use of the fact of an  
11 arrest contained in this Section shall not be construed to  
12 prohibit an employer, employment agency, or labor organization  
13 from obtaining or using other information which indicates that  
14 a person actually engaged in the conduct for which he or she  
15 was arrested.

16 (Source: P.A. 93-1084, eff. 6-1-05.)