

1                                    AMENDMENT TO HOUSE BILL 300

2            AMENDMENT NO. \_\_\_\_\_. Amend House Bill 300, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5            "Section 5. The Criminal Identification Act is amended  
6 by changing Section 5 as 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  
10 the Department, daily, in the form and detail the Department  
11 requires, fingerprints and descriptions of all persons who  
12 are arrested on charges of violating any penal statute of  
13 this State for offenses that are classified as felonies and  
14 Class A or B misdemeanors and of all minors of the age of 10  
15 and over who have been arrested for an offense which would be  
16 a felony if committed by an adult, and may forward such  
17 fingerprints and descriptions for minors arrested for Class A  
18 or B misdemeanors. Moving or nonmoving traffic violations  
19 under the Illinois Vehicle Code shall not be reported except  
20 for violations of Chapter 4, Section 11-204.1, or Section  
21 11-501 of that Code. In addition, conservation offenses, as  
22 defined in the Supreme Court Rule 501(c), that are classified

1 as Class B misdemeanors shall not be reported.

2 Whenever an adult or minor prosecuted as an adult, not  
3 having previously been convicted of any criminal offense or  
4 municipal ordinance violation, charged with a violation of a  
5 municipal ordinance or a felony or misdemeanor, is acquitted  
6 or released without being convicted, whether the acquittal or  
7 release occurred before, on, or after the effective date of  
8 this amendatory Act of 1991, the Chief Judge of the circuit  
9 wherein the charge was brought, any judge of that circuit  
10 designated by the Chief Judge, or in counties of less than  
11 3,000,000 inhabitants, the presiding trial judge at the  
12 defendant's trial may upon verified petition of the defendant  
13 order the record of arrest expunged from the official records  
14 of the arresting authority and the Department and order that  
15 the records of the clerk of the circuit court be sealed until  
16 further order of the court upon good cause shown and the name  
17 of the defendant obliterated on the official index required  
18 to be kept by the circuit court clerk under Section 16 of the  
19 Clerks of Courts Act, but the order shall not affect any  
20 index issued by the circuit court clerk before the entry of  
21 the order. The Department may charge the petitioner a fee  
22 equivalent to the cost of processing any order to expunge or  
23 seal the records, and the fee shall be deposited into the  
24 State Police Services Fund. The records of those arrests,  
25 however, that result in a disposition of supervision for any  
26 offense shall not be expunged from the records of the  
27 arresting authority or the Department nor impounded by the  
28 court until 2 years after discharge and dismissal of  
29 supervision. Those records that result from a supervision  
30 for a violation of Section 3-707, 3-708, 3-710, 5-401.3, or  
31 11-503 of the Illinois Vehicle Code or a similar provision of  
32 a local ordinance, or for a violation of Section 12-3.2,  
33 12-15 or 16A-3 of the Criminal Code of 1961, or probation  
34 under Section 10 of the Cannabis Control Act, Section 410 of

1 the Illinois Controlled Substances Act, Section 12-4.3(b)(1)  
2 and (2) of the Criminal Code of 1961 (as those provisions  
3 existed before their deletion by Public Act 89-313), Section  
4 10-102 of the Illinois Alcoholism and Other Drug Dependency  
5 Act when the judgment of conviction has been vacated, Section  
6 40-10 of the Alcoholism and Other Drug Abuse and Dependency  
7 Act when the judgment of conviction has been vacated, or  
8 Section 10 of the Steroid Control Act shall not be expunged  
9 from the records of the arresting authority nor impounded by  
10 the court until 5 years after termination of probation or  
11 supervision. Those records that result from a supervision  
12 for a violation of Section 11-501 of the Illinois Vehicle  
13 Code or a similar provision of a local ordinance, shall not  
14 be expunged. All records set out above may be ordered by the  
15 court to be expunged from the records of the arresting  
16 authority and impounded by the court after 5 years, but shall  
17 not be expunged by the Department, but shall, on court order  
18 be sealed by the Department and may be disseminated by the  
19 Department only as required by law or to the arresting  
20 authority, the State's Attorney, and the court upon a later  
21 arrest for the same or a similar offense or for the purpose  
22 of sentencing for any subsequent felony. Upon conviction for  
23 any offense, the Department of Corrections shall have access  
24 to all sealed records of the Department pertaining to that  
25 individual.

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

30 (b) Whenever a person has been convicted of a crime or  
31 of the violation of a municipal ordinance, in the name of a  
32 person whose identity he has stolen or otherwise come into  
33 possession of, the aggrieved person from whom the identity  
34 was stolen or otherwise obtained without authorization, upon

1 learning of the person having been arrested using his  
2 identity, may, upon verified petition to the chief judge of  
3 the circuit wherein the arrest was made, have a court order  
4 entered nunc pro tunc by the chief judge to correct the  
5 arrest record, conviction record, if any, and all official  
6 records of the arresting authority, the Department, other  
7 criminal justice agencies, the prosecutor, and the trial  
8 court concerning such arrest, if any, by removing his name  
9 from all such records in connection with the arrest and  
10 conviction, if any, and by inserting in the records the name  
11 of the offender, if known or ascertainable, in lieu of the  
12 has name. The records of the clerk of the circuit court  
13 clerk shall be sealed until further order of the court upon  
14 good cause shown and the name of the aggrieved person  
15 obliterated on the official index required to be kept by the  
16 circuit court clerk under Section 16 of the Clerks of Courts  
17 Act, but the order shall not affect any index issued by the  
18 circuit court clerk before the entry of the order. Nothing in  
19 this Section shall limit the Department of State Police or  
20 other criminal justice agencies or prosecutors from listing  
21 under an offender's name the false names he or she has used.  
22 For purposes of this Section, convictions for moving and  
23 nonmoving traffic violations other than convictions for  
24 violations of Chapter 4, Section 11-204.1 or Section 11-501  
25 of the Illinois Vehicle Code shall not be a bar to expunging  
26 the record of arrest and court records for violation of a  
27 misdemeanor or municipal ordinance.

28 (c) Whenever a person who has been convicted of an  
29 offense is granted a pardon by the Governor which  
30 specifically authorizes expungement, he may, upon verified  
31 petition to the chief judge of the circuit where the person  
32 had been convicted, any judge of the circuit designated by  
33 the Chief Judge, or in counties of less than 3,000,000  
34 inhabitants, the presiding trial judge at the defendant's

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

22 (c-5) Whenever a person has been convicted of criminal  
23 sexual assault, aggravated criminal sexual assault, predatory  
24 criminal sexual assault of a child, criminal sexual abuse, or  
25 aggravated criminal sexual abuse, the victim of that offense  
26 may request that the State's Attorney of the county in which  
27 the conviction occurred file a verified petition with the  
28 presiding trial judge at the defendant's trial to have a  
29 court order entered to seal the records of the clerk of the  
30 circuit court in connection with the proceedings of the trial  
31 court concerning that offense. However, the records of the  
32 arresting authority and the Department of State Police  
33 concerning the offense shall not be sealed. The court, upon  
34 good cause shown, shall make the records of the clerk of the

1 circuit court in connection with the proceedings of the trial  
2 court concerning the offense available for public inspection.

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

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

23 (e) Nothing herein shall prevent the Department of State  
24 Police from maintaining all records of any person who is  
25 admitted to probation upon terms and conditions and who  
26 fulfills those terms and conditions pursuant to Section 10 of  
27 the Cannabis Control Act, Section 410 of the Illinois  
28 Controlled Substances Act, Section 12-4.3 of the Criminal  
29 Code of 1961, Section 10-102 of the Illinois Alcoholism and  
30 Other Drug Dependency Act, Section 40-10 of the Alcoholism  
31 and Other Drug Abuse and Dependency Act, or Section 10 of the  
32 Steroid Control Act.

33 (f) No court order issued pursuant to the expungement  
34 provisions of this Section shall become final for purposes of

1 appeal until 30 days after notice is received by the  
2 Department. Any court order contrary to the provisions of  
3 this Section is void.

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

14 (Source: P.A. 90-590, eff. 1-1-00; 91-295, eff. 1-1-00;  
15 91-357, eff. 7-29-99.)

16 Section 10. The Unified Code of Corrections is amended  
17 by changing Section 5-5-4 as follows:

18 (730 ILCS 5/5-5-4) (from Ch. 38, par. 1005-5-4)

19 Sec. 5-5-4. Resentences.

20 (a) Where a conviction or sentence has been set aside on  
21 direct review or on collateral attack, the court shall not  
22 impose a new sentence for the same offense or for a different  
23 offense based on the same conduct which is more severe than  
24 the prior sentence less the portion of the prior sentence  
25 previously satisfied unless the more severe sentence is based  
26 upon conduct on the part of the defendant occurring after the  
27 original sentencing. If a sentence is vacated on appeal or on  
28 collateral attack due to the failure of the trier of fact at  
29 trial to determine beyond a reasonable doubt the existence of  
30 a fact (other than a prior conviction) necessary to increase  
31 the punishment for the offense beyond the statutory maximum  
32 otherwise applicable, either the defendant may be

1 re-sentenced to a term within the range otherwise provided  
2 or, if the State files notice of its intention to again seek  
3 the extended sentence, the defendant shall be afforded a new  
4 trial.

5 (b) If a conviction or sentence has been set aside on  
6 direct review or on collateral attack and the court  
7 determines by clear and convincing evidence that the  
8 defendant was factually innocent of the charge, the court  
9 shall enter an order expunging the record of arrest from the  
10 official records of the arresting authority and order that  
11 the records of the clerk of the circuit court and Department  
12 of State Police be sealed until further order of the court  
13 upon good cause shown or as otherwise provided herein, and  
14 the name of the defendant obliterated from the official index  
15 requested to be kept by the circuit court clerk under Section  
16 16 of the Clerks of Courts Act in connection with the arrest  
17 and conviction for the offense but the order shall not affect  
18 any index issued by the circuit court clerk before the entry  
19 of the order.

20 All records sealed by the Department of State Police may  
21 be disseminated by the Department only as required by law or  
22 to the arresting authority, the State's Attorney, the court  
23 upon a later arrest for the same or similar offense, or for  
24 the purpose of sentencing for any subsequent felony. Upon  
25 conviction for any subsequent offense, the Department of  
26 Corrections shall have access to all sealed records of the  
27 Department pertaining to that individual.

28 Upon entry of the order of expungement, the clerk of the  
29 circuit court shall promptly mail a copy of the order to the  
30 person whose records were expunged and sealed.

31 (Source: P.A. 91-953, eff. 2-23-01.)

32 Section 99. Effective date. This Act takes effect upon  
33 becoming law."