

AN ACT in relation to the expungement and sealing of arrest and court records.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Criminal Identification Act is amended by changing Section 5 as follows:

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

Sec. 5. Arrest reports; expungement.

(a) All policing bodies of this State shall furnish to the Department, daily, in the form and detail the Department requires, fingerprints and descriptions of all persons who are arrested on charges of violating any penal statute of this State for offenses that are classified as felonies and Class A or B misdemeanors and of all minors of the age of 10 and over who have been arrested for an offense which would be a felony if committed by an adult, and may forward such fingerprints and descriptions for minors arrested for Class A or B misdemeanors. Moving or nonmoving traffic violations under the Illinois Vehicle Code shall not be reported except for violations of Chapter 4, Section 11-204.1, or Section 11-501 of that Code. In addition, conservation offenses, as defined in the Supreme Court Rule 501(c), that are classified as Class B misdemeanors shall not be reported.

Whenever an adult or minor prosecuted as an adult, not having previously been convicted of any criminal offense or municipal ordinance violation, charged with a violation of a municipal ordinance or a felony or misdemeanor, is acquitted or released without being convicted, whether the acquittal or release occurred before, on, or after the effective date of this amendatory Act of 1991, the Chief Judge of the circuit wherein the charge was brought, any judge of that circuit

designated by the Chief Judge, or in counties of less than 3,000,000 inhabitants, the presiding trial judge at the defendant's trial may upon verified petition of the defendant order the record of arrest expunged from the official records of the arresting authority and the Department and order that the records of the clerk of the circuit court be sealed until further order of the court upon good cause shown and the name of the defendant obliterated on the official index required to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act, but the order shall not affect any index issued by the circuit court clerk before the entry of the order. The Department may charge the petitioner a fee equivalent to the cost of processing any order to expunge or seal the records, and the fee shall be deposited into the State Police Services Fund. The records of those arrests, however, that result in a disposition of supervision for any offense shall not be expunged from the records of the arresting authority or the Department nor impounded by the court until 2 years after discharge and dismissal of supervision. Those records that result from a supervision for a violation of Section 3-707, 3-708, 3-710, 5-401.3, or 11-503 of the Illinois Vehicle Code or a similar provision of a local ordinance, or for a violation of Section 12-3.2, 12-15 or 16A-3 of the Criminal Code of 1961, or probation under Section 10 of the Cannabis Control Act, Section 410 of the Illinois Controlled Substances Act, Section 12-4.3(b)(1) and (2) of the Criminal Code of 1961 (as those provisions existed before their deletion by Public Act 89-313), Section 10-102 of the Illinois Alcoholism and Other Drug Dependency Act when the judgment of conviction has been vacated, Section 40-10 of the Alcoholism and Other Drug Abuse and Dependency Act when the judgment of conviction has been vacated, or Section 10 of the Steroid Control Act shall not be expunged from the records of the arresting authority nor impounded by

the court until 5 years after termination of probation or supervision. Those records that result from a supervision for a violation of Section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance, shall not be expunged. All records set out above may be ordered by the court to be expunged from the records of the arresting authority and impounded by the court after 5 years, but shall not be expunged by the Department, but shall, on court order be sealed by the Department and may be disseminated by the Department only as required by law or to the arresting authority, the State's Attorney, and the court upon a later arrest for the same or a similar offense or for the purpose of sentencing for any subsequent felony. Upon conviction for any offense, the Department of Corrections shall have access to all sealed records of the Department pertaining to that individual.

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

(b) Whenever a person has been convicted of a crime or of the violation of a municipal ordinance, in the name of a person whose identity he has stolen or otherwise come into possession of, the aggrieved person from whom the identity was stolen or otherwise obtained without authorization, upon learning of the person having been arrested using his identity, may, upon verified petition to the chief judge of the circuit wherein the arrest was made, have a court order entered nunc pro tunc by the chief judge to correct the arrest record, conviction record, if any, and all official records of the arresting authority, the Department, other criminal justice agencies, the prosecutor, and the trial court concerning such arrest, if any, by removing his name from all such records in connection with the arrest and

conviction, if any, and by inserting in the records the name of the offender, if known or ascertainable, in lieu of the aggrieved's name. The records of the clerk of the circuit court clerk shall be sealed until further order of the court upon good cause shown and the name of the aggrieved person obliterated on the official index required to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act, but the order shall not affect any index issued by the circuit court clerk before the entry of the order. Nothing in this Section shall limit the Department of State Police or other criminal justice agencies or prosecutors from listing under an offender's name the false names he or she has used. For purposes of this Section, convictions for moving and nonmoving traffic violations other than convictions for violations of Chapter 4, Section 11-204.1 or Section 11-501 of the Illinois Vehicle Code shall not be a bar to expunging the record of arrest and court records for violation of a misdemeanor or municipal ordinance.

(c) Whenever a person who has been convicted of an offense is granted a pardon by the Governor which specifically authorizes expungement, he may, upon verified petition to the chief judge of the circuit where the person had been convicted, any judge of the circuit designated by the Chief Judge, or in counties of less than 3,000,000 inhabitants, the presiding trial judge at the defendant's trial, may have a court order entered expunging the record of arrest from the official records of the arresting authority and order that the records of the clerk of the circuit court and the Department be sealed until further order of the court upon good cause shown or as otherwise provided herein, and the name of the defendant obliterated from the official index requested to be kept by the circuit court clerk under Section 16 of the Clerks of Courts Act in connection with the arrest and conviction for the offense for which he had been pardoned

but the order shall not affect any index issued by the circuit court clerk before the entry of the order. All records sealed by the Department may be disseminated by the Department only as required by law or to the arresting authority, the State's Attorney, and the court upon a later arrest for the same or similar offense or for the purpose of sentencing for any subsequent felony. Upon conviction for any subsequent offense, the Department of Corrections shall have access to all sealed records of the Department pertaining to that individual. Upon entry of the order of expungement, the clerk of the circuit court shall promptly mail a copy of the order to the person who was pardoned.

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

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

(d) Notice of the petition for subsections (a), (b), and

(c) shall be served upon the State's Attorney or prosecutor charged with the duty of prosecuting the offense, the Department of State Police, the arresting agency and the chief legal officer of the unit of local government affecting the arrest. Unless the State's Attorney or prosecutor, the Department of State Police, the arresting agency or such chief legal officer objects to the petition within 30 days from the date of the notice, the court shall enter an order granting or denying the petition. The clerk of the court shall promptly mail a copy of the order to the person, the arresting agency, the prosecutor, the Department of State Police and such other criminal justice agencies as may be ordered by the judge.

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

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

(g) Except as otherwise provided in subsection (c-5) of this Section, the court shall not order the sealing or expungement of the arrest records and records of the circuit court clerk of any person granted supervision for or convicted of any sexual offense committed against a minor under 18 years of age. For the purposes of this Section,

"sexual offense committed against a minor" includes but is not limited to the offenses of indecent solicitation of a child or criminal sexual abuse when the victim of such offense is under 18 years of age.

(Source: P.A. 91-295, eff. 1-1-00; 91-357, eff. 7-29-99; 92-651, eff. 7-11-02.)

Section 6. The State Appellate Defender Act is amended by adding Section 10.6 as follows:

(725 ILCS 105/10.6 new)

Sec. 10.6. Expungement program.

(a) The State Appellate Defender shall establish, maintain, and carry out an Expungement Program to provide information to persons eligible to have their arrest or criminal history record information ordered expunged, sealed, or impounded.

(b) The State Appellate Defender shall develop brochures, pamphlets, and other materials in printed form and through the agency's World Wide Web site. The pamphlets and other materials shall include at a minimum the following information:

(1) An explanation of the State's expungement process;

(2) The circumstances under which expungement may occur;

(3) The criminal offenses that may be expunged;

(4) The steps necessary to initiate and complete the expungement process; and

(5) Directions on how to contact the State Appellate Defender.

(c) The State Appellate Defender shall establish and maintain a statewide toll-free telephone number that a person may use to receive information or assistance concerning the

expungement or sealing of arrest or criminal history record information. The State Appellate Defender shall advertise the toll-free telephone number statewide. The State Appellate Defender shall develop an expungement information packet that may be sent to eligible persons seeking expungement of their arrest records, which may include, but is not limited to, a pre-printed expungement petition with instructions on how to complete the petition and a pamphlet containing information that would assist individuals through the expungement process.

(d) The State Appellate Defender shall compile a statewide list of volunteer attorneys willing to assist eligible individuals through the expungement process.

(e) This Section shall be implemented from funds appropriated by the General Assembly to the State Appellate Defender for this purpose. The State Appellate Defender shall employ the necessary staff and adopt the necessary rules for implementation of this Section.

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

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

Sec. 5-5-4. Resentences.

(a) Where a conviction or sentence has been set aside on direct review or on collateral attack, the court shall not impose a new sentence for the same offense or for a different offense based on the same conduct which is more severe than the prior sentence less the portion of the prior sentence previously satisfied unless the more severe sentence is based upon conduct on the part of the defendant occurring after the original sentencing. If a sentence is vacated on appeal or on collateral attack due to the failure of the trier of fact at trial to determine beyond a reasonable doubt the existence of

a fact (other than a prior conviction) necessary to increase the punishment for the offense beyond the statutory maximum otherwise applicable, either the defendant may be re-sentenced to a term within the range otherwise provided or, if the State files notice of its intention to again seek the extended sentence, the defendant shall be afforded a new trial.

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

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

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

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

Public Act 093-0210
SB423 Enrolled

LRB093 10646 BDD 10956 b

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

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Statutes amended in order of appearance

20 ILCS 2630/5	from Ch. 38, par. 206-5
725 ILCS 105/10.6 new	
730 ILCS 5/5-5-4	from Ch. 38, par. 1005-5-4