

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

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

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
23 as Class B misdemeanors shall not be reported.

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

1 designated by the Chief Judge, or in counties of less than
2 3,000,000 inhabitants, the presiding trial judge at the
3 defendant's trial may upon verified petition of the defendant
4 order the record of arrest expunged from the official records
5 of the arresting authority and the Department and order that
6 the records of the clerk of the circuit court be sealed until
7 further order of the court upon good cause shown and the name
8 of the defendant obliterated on the official index required
9 to be kept by the circuit court clerk under Section 16 of the
10 Clerks of Courts Act, but the order shall not affect any
11 index issued by the circuit court clerk before the entry of
12 the order. The Department may charge the petitioner a fee
13 equivalent to the cost of processing any order to expunge or
14 seal the records, and the fee shall be deposited into the
15 State Police Services Fund. The records of those arrests,
16 however, that result in a disposition of supervision for any
17 offense shall not be expunged from the records of the
18 arresting authority or the Department nor impounded by the
19 court until 2 years after discharge and dismissal of
20 supervision. Those records that result from a supervision
21 for a violation of Section 3-707, 3-708, 3-710, 5-401.3, or
22 11-503 of the Illinois Vehicle Code or a similar provision of
23 a local ordinance, or for a violation of Section 12-3.2,
24 12-15 or 16A-3 of the Criminal Code of 1961, or probation
25 under Section 10 of the Cannabis Control Act, Section 410 of
26 the Illinois Controlled Substances Act, Section 12-4.3(b)(1)
27 and (2) of the Criminal Code of 1961 (as those provisions
28 existed before their deletion by Public Act 89-313), Section
29 10-102 of the Illinois Alcoholism and Other Drug Dependency
30 Act when the judgment of conviction has been vacated, Section
31 40-10 of the Alcoholism and Other Drug Abuse and Dependency
32 Act when the judgment of conviction has been vacated, or
33 Section 10 of the Steroid Control Act shall not be expunged
34 from the records of the arresting authority nor impounded by

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

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

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

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

19 (c) Whenever a person who has been convicted of an
20 offense is granted a pardon by the Governor which
21 specifically authorizes expungement, he may, upon verified
22 petition to the chief judge of the circuit where the person
23 had been convicted, any judge of the circuit designated by
24 the Chief Judge, or in counties of less than 3,000,000
25 inhabitants, the presiding trial judge at the defendant's
26 trial, may have a court order entered expunging the record of
27 arrest from the official records of the arresting authority
28 and order that the records of the clerk of the circuit court
29 and the Department be sealed until further order of the court
30 upon good cause shown or as otherwise provided herein, and
31 the name of the defendant obliterated from the official index
32 requested to be kept by the circuit court clerk under Section
33 16 of the Clerks of Courts Act in connection with the arrest
34 and conviction for the offense for which he had been pardoned

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

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

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

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

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

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

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

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

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

5 (Source: P.A. 90-590, eff. 1-1-00; 91-295, eff. 1-1-00;
6 91-357, eff. 7-29-99; revised 12-3-01.)

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

9 (725 ILCS 105/10.6 new)

10 Sec. 10.6. Expungement program.

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

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

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

23 (2) The circumstances under which expungement may
24 occur;

25 (3) The criminal offenses that may be expunged;

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

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

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

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

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

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

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

21 (730 ILCS 5/5-5-4) (from Ch. 38, par. 1005-5-4)
 22 Sec. 5-5-4. Resentences.

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

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

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

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

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

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

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