



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by John J. Cullerton

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5

from Ch. 38, par. 206-5

Amends the Criminal Identification Act. Makes technical changes in the Section concerning policing bodies furnishing fingerprints and descriptions of persons arrested to the Department of State Police and relating to the expungement of arrest records and the sealing of the records of the clerk of the circuit court.

LRB093 21153 RLC 47217 b

1 AN ACT concerning criminal identification.

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

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

6 (20 ILCS 2630/5) (from Ch. 38, par. 206-5)

7 Sec. 5. Arrest reports; expungement.

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

23 Whenever an adult or minor prosecuted as an adult, not
24 having previously been convicted of any criminal offense or
25 municipal ordinance violation, charged with a violation of a
26 municipal ordinance or a felony or misdemeanor, is acquitted or
27 released without being convicted, whether the acquittal or
28 release occurred before, on, or after the effective date of
29 this amendatory Act of 1991, the Chief Judge of the circuit
30 wherein the charge was brought, any judge of that circuit
31 designated by the Chief Judge, or in counties of less than
32 3,000,000 inhabitants, the presiding trial judge at the

1 defendant's trial may upon verified petition of the defendant
2 order the record of arrest expunged from the official records
3 of the arresting authority and the Department and order that
4 the records of the clerk of the circuit court be sealed until
5 further order of the court upon good cause shown and the name
6 of the defendant obliterated on the official index required to
7 be kept by the circuit court clerk under Section 16 of the
8 Clerks of Courts Act, but the order shall not affect any index
9 issued by the circuit court clerk before the entry of the
10 order. The Department may charge the petitioner a fee
11 equivalent to the cost of processing any order to expunge or
12 seal the records, and the fee shall be deposited into the State
13 Police Services Fund. The records of those arrests, however,
14 that result in a disposition of supervision for any offense
15 shall not be expunged from the records of the arresting
16 authority or the Department nor impounded by the court until 2
17 years after discharge and dismissal of supervision. Those
18 records that result from a supervision for a violation of
19 Section 3-707, 3-708, 3-710, 5-401.3, or 11-503 of the Illinois
20 Vehicle Code or a similar provision of a local ordinance, or
21 for a violation of Section 12-3.2, 12-15 or 16A-3 of the
22 Criminal Code of 1961, or probation under Section 10 of the
23 Cannabis Control Act, Section 410 of the Illinois Controlled
24 Substances Act, Section 12-4.3(b)(1) and (2) of the Criminal
25 Code of 1961 (as those provisions existed before their deletion
26 by Public Act 89-313), Section 10-102 of the Illinois
27 Alcoholism and Other Drug Dependency Act when the judgment of
28 conviction has been vacated, Section 40-10 of the Alcoholism
29 and Other Drug Abuse and Dependency Act when the judgment of
30 conviction has been vacated, or Section 10 of the Steroid
31 Control Act shall not be expunged from the records of the
32 arresting authority nor impounded by the court until 5 years
33 after termination of probation or supervision. Those records
34 that result from a supervision for a violation of Section
35 11-501 of the Illinois Vehicle Code or a similar provision of a
36 local ordinance, shall not be expunged. All records set out

1 above may be ordered by the court to be expunged from the
2 records of the arresting authority and impounded by the court
3 after 5 years, but shall not be expunged by the Department, but
4 shall, on court order be sealed by the Department and may be
5 disseminated by the Department only as required by law or to
6 the arresting authority, the State's Attorney, and the court
7 upon a later arrest for the same or a similar offense or for
8 the purpose of sentencing for any subsequent felony. Upon
9 conviction for any offense, the Department of Corrections shall
10 have access to all sealed records of the Department pertaining
11 to that individual.

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

15 (b) Whenever a person has been convicted of a crime or of
16 the violation of a municipal ordinance, in the name of a person
17 whose identity he has stolen or otherwise come into possession
18 of, the aggrieved person from whom the identity was stolen or
19 otherwise obtained without authorization, upon learning of the
20 person having been arrested using his identity, may, upon
21 verified petition to the chief judge of the circuit wherein the
22 arrest was made, have a court order entered nunc pro tunc by
23 the chief judge to correct the arrest record, conviction
24 record, if any, and all official records of the arresting
25 authority, the Department, other criminal justice agencies,
26 the prosecutor, and the trial court concerning such arrest, if
27 any, by removing his name from all such records in connection
28 with the arrest and conviction, if any, and by inserting in the
29 records the name of the offender, if known or ascertainable, in
30 lieu of the aggrieved's name. The records of the clerk of the
31 circuit court clerk shall be sealed until further order of the
32 court upon good cause shown and the name of the aggrieved
33 person obliterated on the official index required to be kept by
34 the circuit court clerk under Section 16 of the Clerks of
35 Courts Act, but the order shall not affect any index issued by
36 the circuit court clerk before the entry of the order. Nothing

1 in this Section shall limit the Department of State Police or
2 other criminal justice agencies or prosecutors from listing
3 under an offender's name the false names he or she has used.
4 For purposes of this Section, convictions for moving and
5 nonmoving traffic violations other than convictions for
6 violations of Chapter 4, Section 11-204.1 or Section 11-501 of
7 the Illinois Vehicle Code shall not be a bar to expunging the
8 record of arrest and court records for violation of a
9 misdemeanor or municipal ordinance.

10 (c) Whenever a person who has been convicted of an offense
11 is granted a pardon by the Governor which specifically
12 authorizes expungement, he may, upon verified petition to the
13 chief judge of the circuit where the person had been convicted,
14 any judge of the 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, may have a court order
17 entered expunging the record of arrest from the official
18 records of the arresting authority and order that the records
19 of the clerk of the circuit court and the Department be sealed
20 until further order of the court upon good cause shown or as
21 otherwise provided herein, and the name of the defendant
22 obliterated from the official index requested to be kept by the
23 circuit court clerk under Section 16 of the Clerks of Courts
24 Act in connection with the arrest and conviction for the
25 offense for which he had been pardoned but the order shall not
26 affect any index issued by the circuit court clerk before the
27 entry of the order. All records sealed by the Department may be
28 disseminated by the Department only as required by law or to
29 the arresting authority, the State's Attorney, and the court
30 upon a later arrest for the same or similar offense or for the
31 purpose of sentencing for any subsequent felony. Upon
32 conviction for any subsequent offense, the Department of
33 Corrections shall have access to all sealed records of the
34 Department pertaining to that individual. Upon entry of the
35 order of expungement, the clerk of the circuit court shall
36 promptly mail a copy of the order to the person who was

1 pardoned.

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

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

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

36 (e) Nothing herein shall prevent the Department of State

1 Police from maintaining all records of any person who is
2 admitted to probation upon terms and conditions and who
3 fulfills those terms and conditions pursuant to Section 10 of
4 the Cannabis Control Act, Section 410 of the Illinois
5 Controlled Substances Act, Section 12-4.3 of the Criminal Code
6 of 1961, Section 10-102 of the Illinois Alcoholism and Other
7 Drug Dependency Act, Section 40-10 of the Alcoholism and Other
8 Drug Abuse and Dependency Act, or Section 10 of the Steroid
9 Control Act.

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

15 (g) Except as otherwise provided in subsection (c-5) of
16 this Section, the court shall not order the sealing or
17 expungement of the arrest records and records of the circuit
18 court clerk of any person granted supervision for or convicted
19 of any sexual offense committed against a minor under 18 years
20 of age. For the purposes of this Section, "sexual offense
21 committed against a minor" includes but is not limited to the
22 offenses of indecent solicitation of a child or criminal sexual
23 abuse when the victim of such offense is under 18 years of age.

24 (h) (1) Notwithstanding any other provision of this Act to
25 the contrary and cumulative with any rights to expungement of
26 criminal records, whenever an adult or minor prosecuted as an
27 adult charged with a violation of a municipal ordinance or a
28 misdemeanor is acquitted or released without being convicted,
29 or if the person is convicted but the conviction is reversed,
30 or if the person has been placed on supervision for a
31 misdemeanor and has not been convicted of a felony or
32 misdemeanor or placed on supervision for a misdemeanor within 3
33 years after the acquittal or release or reversal of conviction,
34 or the completion of the terms and conditions of the
35 supervision, if the acquittal, release, finding of not guilty,
36 or reversal of conviction occurred on or after the effective

1 date of this amendatory Act of the 93rd General Assembly, the
2 Chief Judge of the circuit in which the charge was brought may
3 have the official records of the arresting authority, the
4 Department, and the clerk of the circuit court sealed 3 years
5 after the dismissal of the charge, the finding of not guilty,
6 the reversal of conviction, or the completion of the terms and
7 conditions of the supervision, except those records are subject
8 to inspection and use by the court for the purposes of
9 subsequent sentencing for misdemeanor and felony violations
10 and inspection and use by law enforcement agencies and State's
11 Attorneys or other prosecutors in carrying out the duties of
12 their offices. This subsection (h) does not apply to persons
13 placed on supervision for: (1) a violation of Section 11-501 of
14 the Illinois Vehicle Code or a similar provision of a local
15 ordinance; (2) a misdemeanor violation of Article 11 of the
16 Criminal Code of 1961 or a similar provision of a local
17 ordinance; (3) a misdemeanor violation of Section 12-15, 12-30,
18 or 26-5 of the Criminal Code of 1961 or a similar provision of
19 a local ordinance; (4) a misdemeanor violation that is a crime
20 of violence as defined in Section 2 of the Crime Victims
21 Compensation Act or a similar provision of a local ordinance;
22 (5) a Class A misdemeanor violation of the Humane Care for
23 Animals Act; or (6) any offense or attempted offense that would
24 subject a person to registration under the Sex Offender
25 Registration Act.

26 (2) Upon acquittal, release without conviction, or being
27 placed on supervision, the person charged with the offense
28 shall be informed by the court of the right to have the records
29 sealed and the procedures for the sealing of the records. Three
30 years after the dismissal of the charge, the finding of not
31 guilty, the reversal of conviction, or the completion of the
32 terms and conditions of the supervision, the defendant shall
33 provide the clerk of the court with a notice of request for
34 sealing of records and payment of the applicable fee and a
35 current address and shall promptly notify the clerk of the
36 court of any change of address. The clerk shall promptly serve

1 notice that the person's records are to be sealed on the
2 State's Attorney or prosecutor charged with the duty of
3 prosecuting the offense, the Department of State Police, the
4 arresting agency and the chief legal officer of the unit of
5 local government effecting the arrest. Unless the State's
6 Attorney or prosecutor, the Department of State Police, the
7 arresting agency or such chief legal officer objects to sealing
8 of the records within 90 days of notice the court shall enter
9 an order sealing the defendant's records 3 years after the
10 dismissal of the charge, the finding of not guilty, the
11 reversal of conviction, or the completion of the terms and
12 conditions of the supervision. The clerk of the court shall
13 promptly serve by mail or in person a copy of the order to the
14 person, the arresting agency, the prosecutor, the Department of
15 State Police and such other criminal justice agencies as may be
16 ordered by the judge. If an objection is filed, the court shall
17 set a date for hearing. At the hearing the court shall hear
18 evidence on whether the sealing of the records should or should
19 not be granted.

20 (3) The clerk may charge a fee equivalent to the cost
21 associated with the sealing of records by the clerk and the
22 Department of State Police. The clerk shall forward the
23 Department of State Police portion of the fee to the Department
24 and it shall be deposited into the State Police Services Fund.

25 (4) Whenever sealing of records is required under this
26 subsection (h), the notification of the sealing must be given
27 by the circuit court where the arrest occurred to the
28 Department in a form and manner prescribed by the Department.

29 (5) An adult or a minor prosecuted as an adult who was
30 charged with a violation of a municipal ordinance or a
31 misdemeanor who was acquitted, released without being
32 convicted, convicted and the conviction was reversed, or placed
33 on supervision for a misdemeanor before the date of this
34 amendatory Act of the 93rd General Assembly and was not
35 convicted of a felony or misdemeanor or placed on supervision
36 for a misdemeanor for 3 years after the acquittal or release or

1 reversal of conviction, or completion of the terms and
2 conditions of the supervision may petition the Chief Judge of
3 the circuit in which the charge was brought, any judge of that
4 circuit in which the charge was brought, any judge of the
5 circuit designated by the Chief Judge, or, in counties of less
6 than 3,000,000 inhabitants, the presiding trial judge at that
7 defendant's trial, to seal the official records of the
8 arresting authority, the Department, and the clerk of the
9 court, except those records are subject to inspection and use
10 by the court for the purposes of subsequent sentencing for
11 misdemeanor and felony violations and inspection and use by law
12 enforcement agencies, the Department of Corrections, and
13 State's Attorneys and other prosecutors in carrying out the
14 duties of their offices. This subsection (h) does not apply to
15 persons placed on supervision for: (1) a violation of Section
16 11-501 of the Illinois Vehicle Code or a similar provision of a
17 local ordinance; (2) a misdemeanor violation of Article 11 of
18 the Criminal Code of 1961 or a similar provision of a local
19 ordinance; (3) a misdemeanor violation of Section 12-15, 12-30,
20 or 26-5 of the Criminal Code of 1961 or a similar provision of
21 a local ordinance; (4) a misdemeanor violation that is a crime
22 of violence as defined in Section 2 of the Crime Victims
23 Compensation Act or a similar provision of a local ordinance;
24 (5) a Class A misdemeanor violation of the Humane Care for
25 Animals Act; or (6) any offense or attempted offense that would
26 subject a person to registration under the Sex Offender
27 Registration Act. The State's Attorney or prosecutor charged
28 with the duty of prosecuting the offense, the Department of
29 State Police, the arresting agency and the chief legal officer
30 of the unit of local government effecting the arrest shall be
31 served with a copy of the verified petition and shall have 90
32 days to object. If an objection is filed, the court shall set a
33 date for hearing. At the hearing the court shall hear evidence
34 on whether the sealing of the records should or should not be
35 granted. The person whose records are sealed under the
36 provisions of this Act shall pay to the clerk of the court and

1 the Department of State Police a fee equivalent to the cost
2 associated with the sealing of records. The fees shall be paid
3 to the clerk of the court who shall forward the appropriate
4 portion to the Department at the time the court order to seal
5 the defendant's record is forwarded to the Department for
6 processing. The Department of State Police portion of the fee
7 shall be deposited into the State Police Services Fund.

8 (i) (1) Notwithstanding any other provision of this Act to
9 the contrary and cumulative with any rights to expungement of
10 criminal records, whenever an adult or minor prosecuted as an
11 adult charged with a violation of a municipal ordinance or a
12 misdemeanor is convicted of a misdemeanor and has not been
13 convicted of a felony or misdemeanor or placed on supervision
14 for a misdemeanor within 4 years after the completion of the
15 sentence, if the conviction occurred on or after the effective
16 date of this amendatory Act of the 93rd General Assembly, the
17 Chief Judge of the circuit in which the charge was brought may
18 have the official records of the arresting authority, the
19 Department, and the clerk of the circuit court sealed 4 years
20 after the completion of the sentence, except those records are
21 subject to inspection and use by the court for the purposes of
22 subsequent sentencing for misdemeanor and felony violations
23 and inspection and use by law enforcement agencies and State's
24 Attorneys or other prosecutors in carrying out the duties of
25 their offices. This subsection (i) does not apply to persons
26 convicted of: (1) a violation of Section 11-501 of the Illinois
27 Vehicle Code or a similar provision of a local ordinance; (2) a
28 misdemeanor violation of Article 11 of the Criminal Code of
29 1961 or a similar provision of a local ordinance; (3) a
30 misdemeanor violation of Section 12-15, 12-30, or 26-5 of the
31 Criminal Code of 1961 or a similar provision of a local
32 ordinance; (4) a misdemeanor violation that is a crime of
33 violence as defined in Section 2 of the Crime Victims
34 Compensation Act or a similar provision of a local ordinance;
35 (5) a Class A misdemeanor violation of the Humane Care for
36 Animals Act; or (6) any offense or attempted offense that would

1 subject a person to registration under the Sex Offender
2 Registration Act.

3 (2) Upon the conviction of such offense, the person charged
4 with the offense shall be informed by the court of the right to
5 have the records sealed and the procedures for the sealing of
6 the records. Four years after the completion of the sentence,
7 the defendant shall provide the clerk of the court with a
8 notice of request for sealing of records and payment of the
9 applicable fee and a current address and shall promptly notify
10 the clerk of the court of any change of address. The clerk
11 shall promptly serve notice that the person's records are to be
12 sealed on the State's Attorney or prosecutor charged with the
13 duty of prosecuting the offense, the Department of State
14 Police, the arresting agency and the chief legal officer of the
15 unit of local government effecting the arrest. Unless the
16 State's Attorney or prosecutor, the Department of State Police,
17 the arresting agency or such chief legal officer objects to
18 sealing of the records within 90 days of notice the court shall
19 enter an order sealing the defendant's records 4 years after
20 the completion of the sentence. The clerk of the court shall
21 promptly serve by mail or in person a copy of the order to the
22 person, the arresting agency, the prosecutor, the Department of
23 State Police and such other criminal justice agencies as may be
24 ordered by the judge. If an objection is filed, the court shall
25 set a date for hearing. At the hearing the court shall hear
26 evidence on whether the sealing of the records should or should
27 not be granted.

28 (3) The clerk may charge a fee equivalent to the cost
29 associated with the sealing of records by the clerk and the
30 Department of State Police. The clerk shall forward the
31 Department of State Police portion of the fee to the Department
32 and it shall be deposited into the State Police Services Fund.

33 (4) Whenever sealing of records is required under this
34 subsection (i), the notification of the sealing must be given
35 by the circuit court where the arrest occurred to the
36 Department in a form and manner prescribed by the Department.

1 (5) An adult or a minor prosecuted as an adult who was
2 charged with a violation of a municipal ordinance or a
3 misdemeanor who was convicted of a misdemeanor before the date
4 of this amendatory Act of the 93rd General Assembly and was not
5 convicted of a felony or misdemeanor or placed on supervision
6 for a misdemeanor for 4 years after the completion of the
7 sentence may petition the Chief Judge of the circuit in which
8 the charge was brought, any judge of that circuit in which the
9 charge was brought, any judge of the circuit designated by the
10 Chief Judge, or, in counties of less than 3,000,000
11 inhabitants, the presiding trial judge at that defendant's
12 trial, to seal the official records of the arresting authority,
13 the Department, and the clerk of the court, except those
14 records are subject to inspection and use by the court for the
15 purposes of subsequent sentencing for misdemeanor and felony
16 violations and inspection and use by law enforcement agencies,
17 the Department of Corrections, and State's Attorneys and other
18 prosecutors in carrying out the duties of their offices. This
19 subsection (i) does not apply to persons convicted of: (1) a
20 violation of Section 11-501 of the Illinois Vehicle Code or a
21 similar provision of a local ordinance; (2) a misdemeanor
22 violation of Article 11 of the Criminal Code of 1961 or a
23 similar provision of a local ordinance; (3) a misdemeanor
24 violation of Section 12-15, 12-30, or 26-5 of the Criminal Code
25 of 1961 or a similar provision of a local ordinance; (4) a
26 misdemeanor violation that is a crime of violence as defined in
27 Section 2 of the Crime Victims Compensation Act or a similar
28 provision of a local ordinance; (5) a Class A misdemeanor
29 violation of the Humane Care for Animals Act; or (6) any
30 offense or attempted offense that would subject a person to
31 registration under the Sex Offender Registration Act. The
32 State's Attorney or prosecutor charged with the duty of
33 prosecuting the offense, the Department of State Police, the
34 arresting agency and the chief legal officer of the unit of
35 local government effecting the arrest shall be served with a
36 copy of the verified petition and shall have 90 days to object.

1 If an objection is filed, the court shall set a date for
2 hearing. At the hearing the court shall hear evidence on
3 whether the sealing of the records should or should not be
4 granted. The person whose records are sealed under the
5 provisions of this Act shall pay to the clerk of the court and
6 the Department of State Police a fee equivalent to the cost
7 associated with the sealing of records. The fees shall be paid
8 to the clerk of the court who shall forward the appropriate
9 portion to the Department at the time the court order to seal
10 the defendant's record is forwarded to the Department for
11 processing. The Department of State Police portion of the fee
12 shall be deposited into the State Police Services Fund.

13 (Source: P.A. 92-651, eff. 7-11-02; 93-210, eff. 7-18-03;
14 93-211, eff. 1-1-04; revised 8-25-03.)