



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4585

Introduced 1/11/2006, by Rep. Arthur L. Turner

SYNOPSIS AS INTRODUCED:

20 ILCS 2630/5

from Ch. 38, par. 206-5

Amends the Criminal Identification Act. Provides that the record of arrest of a person charged with a felony or misdemeanor or an ordinance violation who is acquitted or released without being convicted of the violation shall be expunged from the official records of the arresting authority and the Department of State Police and the records of the clerk of the circuit court shall be sealed and the name of the defendant obliterated on the official index required to be kept by the circuit court clerk regardless of whether or not the person has previously been convicted of a criminal offense or municipal ordinance violation. Provides that the expungement and sealing of the records shall be made in such case without petition by the person to the court and without the payment of a fee to the Department of State Police.

LRB094 18142 RLC 53449 b

FISCAL NOTE ACT
MAY APPLY

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 Section 5 as follows:

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

7 Sec. 5. Arrest reports; expungement.

8 (a) All policing bodies of this State shall furnish to the
9 Department, daily, in the form and detail the Department
10 requires, fingerprints and descriptions of all persons who are
11 arrested on charges of violating any penal statute of this
12 State for offenses that are classified as felonies and Class A
13 or B misdemeanors and of all minors of the age of 10 and over
14 who have been arrested for an offense which would be a felony
15 if committed by an adult, and may forward such fingerprints and
16 descriptions for minors arrested for Class A or B misdemeanors.
17 Moving or nonmoving traffic violations under the Illinois
18 Vehicle Code shall not be reported except for violations of
19 Chapter 4, Section 11-204.1, or Section 11-501 of that Code. In
20 addition, conservation offenses, as defined in the Supreme
21 Court Rule 501(c), that are classified as Class B misdemeanors
22 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 the 94th General Assembly 1991, the
30 Chief Judge of the circuit wherein the charge was brought, any
31 judge of that circuit designated by the Chief Judge, or in
32 counties of less than 3,000,000 inhabitants, the presiding

1 trial judge at the defendant's trial shall ~~may upon verified~~
2 ~~petition of the defendant~~ order the record of arrest expunged
3 from the official records of the arresting authority and the
4 Department and order that the records of the clerk of the
5 circuit court be sealed ~~until further order of the court upon~~
6 ~~good cause shown~~ and the name of the defendant obliterated on
7 the official index required to be kept by the circuit court
8 clerk under Section 16 of the Clerks of Courts Act, but the
9 order shall not affect any index issued by the circuit court
10 clerk before the entry of the order. ~~The Department may charge~~
11 ~~the petitioner a fee equivalent to the cost of processing any~~
12 ~~order to expunge or seal the records, and the fee shall be~~
13 ~~deposited into the State Police Services Fund.~~ The records of
14 those arrests, however, that result in a disposition of
15 supervision for any offense shall not be expunged from the
16 records of the arresting authority or the Department nor
17 impounded by the court until 2 years after discharge and
18 dismissal of supervision. Those records that result from a
19 supervision for a violation of Section 3-707, 3-708, 3-710,
20 5-401.3, or 11-503 of the Illinois Vehicle Code or a similar
21 provision of a local ordinance, or for a violation of Section
22 12-3.2, 12-15 or 16A-3 of the Criminal Code of 1961, or
23 probation under Section 10 of the Cannabis Control Act, Section
24 410 of the Illinois Controlled Substances Act, Section 70 of
25 the Methamphetamine Control and Community Protection Act,
26 Section 12-4.3(b) (1) and (2) of the Criminal Code of 1961 (as
27 those provisions existed before their deletion by Public Act
28 89-313), Section 10-102 of the Illinois Alcoholism and Other
29 Drug Dependency Act when the judgment of conviction has been
30 vacated, Section 40-10 of the Alcoholism and Other Drug Abuse
31 and Dependency Act when the judgment of conviction has been
32 vacated, or Section 10 of the Steroid Control Act shall not be
33 expunged from the records of the arresting authority nor
34 impounded by the court until 5 years after termination of
35 probation or supervision. Those records that result from a
36 supervision for a violation of Section 11-501 of the Illinois

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

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

16 (b) Whenever a person has been convicted of a crime or of
17 the violation of a municipal ordinance, in the name of a person
18 whose identity he has stolen or otherwise come into possession
19 of, the aggrieved person from whom the identity was stolen or
20 otherwise obtained without authorization, upon learning of the
21 person having been arrested using his identity, may, upon
22 verified petition to the chief judge of the circuit wherein the
23 arrest was made, have a court order entered nunc pro tunc by
24 the chief judge to correct the arrest record, conviction
25 record, if any, and all official records of the arresting
26 authority, the Department, other criminal justice agencies,
27 the prosecutor, and the trial court concerning such arrest, if
28 any, by removing his name from all such records in connection
29 with the arrest and conviction, if any, and by inserting in the
30 records the name of the offender, if known or ascertainable, in
31 lieu of the aggrieved's name. The records of the clerk of the
32 circuit court clerk shall be sealed until further order of the
33 court upon good cause shown and the name of the aggrieved
34 person obliterated on the official index required to be kept by
35 the circuit court clerk under Section 16 of the Clerks of
36 Courts Act, but the order shall not affect any index issued by

1 the circuit court clerk before the entry of the order. Nothing
2 in this Section shall limit the Department of State Police or
3 other criminal justice agencies or prosecutors from listing
4 under an offender's name the false names he or she has used.
5 For purposes of this Section, convictions for moving and
6 nonmoving traffic violations other than convictions for
7 violations of Chapter 4, Section 11-204.1 or Section 11-501 of
8 the Illinois Vehicle Code shall not be a bar to expunging the
9 record of arrest and court records for violation of a
10 misdemeanor or municipal ordinance.

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

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

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

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

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

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

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

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

25 (h) (1) Applicability. Notwithstanding any other provision
26 of this Act to the contrary and cumulative with any rights to
27 expungement of criminal records, this subsection authorizes
28 the sealing of criminal records of adults and of minors
29 prosecuted as adults.

30 (2) Sealable offenses. The following offenses may be
31 sealed:

32 (A) All municipal ordinance violations and
33 misdemeanors, with the exception of the following:

34 (i) violations of Section 11-501 of the Illinois
35 Vehicle Code or a similar provision of a local
36 ordinance;

1 (ii) violations of Article 11 of the Criminal Code
2 of 1961 or a similar provision of a local ordinance,
3 except Section 11-14 of the Criminal Code of 1961 as
4 provided in clause B(i) of this subsection (h);

5 (iii) violations of Section 12-15, 12-30, or 26-5
6 of the Criminal Code of 1961 or a similar provision of
7 a local ordinance;

8 (iv) violations that are a crime of violence as
9 defined in Section 2 of the Crime Victims Compensation
10 Act or a similar provision of a local ordinance;

11 (v) Class A misdemeanor violations of the Humane
12 Care for Animals Act; and

13 (vi) any offense or attempted offense that would
14 subject a person to registration under the Sex Offender
15 Registration Act.

16 (B) Misdemeanor and Class 4 felony violations of:

17 (i) Section 11-14 of the Criminal Code of 1961;

18 (ii) Section 4 of the Cannabis Control Act;

19 (iii) Section 402 of the Illinois Controlled
20 Substances Act; and

21 (iv) Section 60 of the Methamphetamine Control and
22 Community Protection Act.

23 However, for purposes of this subsection (h), a
24 sentence of first offender probation under Section 10 of
25 the Cannabis Control Act, Section 410 of the Illinois
26 Controlled Substances Act, or Section 70 of the
27 Methamphetamine Control and Community Protection Act shall
28 be treated as a Class 4 felony conviction.

29 (3) Requirements for sealing. Records identified as
30 sealable under clause (h) (2) may be sealed when the individual
31 was:

32 (A) Acquitted of the offense or offenses or released
33 without being convicted.

34 (B) Convicted of the offense or offenses and the
35 conviction or convictions were reversed.

36 (C) Placed on misdemeanor supervision for an offense or

1 offenses; and

2 (i) at least 3 years have elapsed since the
3 completion of the term of supervision, or terms of
4 supervision, if more than one term has been ordered;
5 and

6 (ii) the individual has not been convicted of a
7 felony or misdemeanor or placed on supervision for a
8 misdemeanor or felony during the period specified in
9 clause (i).

10 (D) Convicted of an offense or offenses; and

11 (i) at least 4 years have elapsed since the last
12 such conviction or term of any sentence, probation,
13 parole, or supervision, if any, whichever is last in
14 time; and

15 (ii) the individual has not been convicted of a
16 felony or misdemeanor or placed on supervision for a
17 misdemeanor or felony during the period specified in
18 clause (i).

19 (4) Requirements for sealing of records when more than one
20 charge and disposition have been filed. When multiple offenses
21 are petitioned to be sealed under this subsection (h), the
22 requirements of the relevant provisions of clauses (h) (3) (A)
23 through (D) each apply. In instances in which more than one
24 waiting period is applicable under clauses (h) (C) (i) and (ii)
25 and (h) (D) (i) and (ii), the longer applicable period applies,
26 and the requirements of clause (h) (3) shall be considered met
27 when the petition is filed after the passage of the longer
28 applicable waiting period. That period commences on the date of
29 the completion of the last sentence or the end of supervision,
30 probation, or parole, whichever is last in time.

31 (5) Subsequent convictions. A person may not have
32 subsequent felony conviction records sealed as provided in this
33 subsection (h) if he or she is convicted of any felony offense
34 after the date of the sealing of prior felony records as
35 provided in this subsection (h).

36 (6) Notice of eligibility for sealing. Upon acquittal,

1 release without conviction, or being placed on supervision for
2 a sealable offense, or upon conviction of a sealable offense,
3 the person shall be informed by the court of the right to have
4 the records sealed and the procedures for the sealing of the
5 records.

6 (7) Procedure. Upon becoming eligible for the sealing of
7 records under this subsection (h), the person who seeks the
8 sealing of his or her records shall file a petition requesting
9 the sealing of records with the clerk of the court where the
10 charge or charges were brought. The records may be sealed by
11 the Chief Judge of the circuit wherein the charge was brought,
12 any judge of that circuit designated by the Chief Judge, or in
13 counties of less than 3,000,000 inhabitants, the presiding
14 trial judge at the defendant's trial, if any. If charges were
15 brought in multiple jurisdictions, a petition must be filed in
16 each such jurisdiction. The petitioner shall pay the applicable
17 fee, if not waived.

18 (A) Contents of petition. The petition shall contain
19 the petitioner's name, date of birth, current address, each
20 charge, each case number, the date of each charge, the
21 identity of the arresting authority, and such other
22 information as the court may require. During the pendency
23 of the proceeding, the petitioner shall promptly notify the
24 clerk of the court of any change of address.

25 (B) Drug test. A person filing a petition to have his
26 or her records sealed for a Class 4 felony violation of
27 Section 4 of the Cannabis Control Act or for a Class 4
28 felony violation of Section 402 of the Illinois Controlled
29 Substances Act must attach to the petition proof that the
30 petitioner has passed a test taken within the previous 30
31 days before the filing of the petition showing the absence
32 within his or her body of all illegal substances in
33 violation of either the Illinois Controlled Substances Act
34 or the Cannabis Control Act.

35 (C) Service of petition. The clerk shall promptly serve
36 a copy of the petition on the State's Attorney or

1 prosecutor charged with the duty of prosecuting the
2 offense, the Department of State Police, the arresting
3 agency and the chief legal officer of the unit of local
4 government effecting the arrest.

5 (D) Entry of order. Unless the State's Attorney or
6 prosecutor, the Department of State Police, the arresting
7 agency or such chief legal officer objects to sealing of
8 the records within 90 days of notice the court shall enter
9 an order sealing the defendant's records.

10 (E) Hearing upon objection. If an objection is filed,
11 the court shall set a date for a hearing and notify the
12 petitioner and the parties on whom the petition had been
13 served, and shall hear evidence on whether the sealing of
14 the records should or should not be granted, and shall make
15 a determination on whether to issue an order to seal the
16 records based on the evidence presented at the hearing.

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

26 (8) Fees. Notwithstanding any provision of the Clerk of the
27 Courts Act to the contrary, and subject to the approval of the
28 county board, 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 (i) Subject to available funding, the Illinois Department
34 of Corrections shall conduct a study of the impact of sealing,
35 especially on employment and recidivism rates, utilizing a
36 random sample of those who apply for the sealing of their

1 criminal records under Public Act 93-211, in accordance to
2 rules adopted by the Department. At the request of the Illinois
3 Department of Corrections, records of the Illinois Department
4 of Employment Security shall be utilized as appropriate to
5 assist in the study. The study shall not disclose any data in a
6 manner that would allow the identification of any particular
7 individual or employing unit. The study shall be made available
8 to the General Assembly no later than September 1, 2006.

9 (Source: P.A. 93-210, eff. 7-18-03; 93-211, eff. 1-1-04;
10 93-1084, eff. 6-1-05; 94-556, eff. 9-11-05.)