

LEGISLATIVE RESEARCH UNIT

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EXPUNGEMENT LAWS IN ILLINOIS

_____ asked us on your behalf for information about Illinois laws on expunging and sealing criminal records, and for a list of crimes that can be expunged. In general, records of adult convictions may not be expunged unless the Governor issues a pardon authorizing expungement; but some conviction records may be sealed. We describe those laws below, and enclose copies of pages from an index to the Illinois Compiled Statutes listing many offenses that may be expunged from a juvenile record after a person reaches age 17.

Expunction of Adult Charges

A person never previously convicted of a crime or municipal ordinance violation, who is prosecuted for a crime or municipal ordinance violation (whether the person is an adult or a minor prosecuted as an adult), but is acquitted or released without being convicted, can petition the court to have the records of the arrest expunged and the court records sealed.¹

Records of arrests that resulted in supervision can be expunged upon petition 2 or 5 years after discharge or dismissal from supervision, depending on the severity of the crime.² The crimes for which arrest records may be expunged only after 5 years involve driving while uninsured,³ failing to keep scrap processing records,⁴ reckless driving,⁵ domestic battery,⁶ criminal sexual abuse,⁷ and retail theft.⁸

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Records of arrests for a few crimes—mostly involving drugs—that resulted in probation may be expunged 5 years after the end of probation.⁹

Records of supervision for DUI, or for a sexual offense against a minor, cannot be expunged.¹⁰

Other provisions address persons who were impersonated by criminals, resulting in records wrongly showing them to have been convicted of crime;¹¹ and expunging conviction records if the Governor pardons and specifically authorizes expungement of those records.¹²

Notice of a petition for expungement under any provisions described above must be served by the court clerk on the state's attorney or the prosecutor who prosecuted the offense; the Department of State Police; the arresting agency; and the chief legal officer of the unit of local government that made the arrest. Unless one of them objects to the petition within 30 days after the notice, the court must enter an order either granting or denying the petition.¹³

Expunction of Juvenile Offenses

A minor can petition the court to have records expunged after reaching age 17, or when all his juvenile court proceedings have ended, if (1) no petition for delinquency was filed; (2) the minor was charged with an offense but was not found delinquent; (3) the minor was placed under supervision and the supervision was successfully terminated; or (4) the minor was adjudicated for an offense that if committed by an adult would have been a Class B or Class C misdemeanor, or a petty or business offense.¹⁴ Due to the very large number of Class B and Class C misdemeanors, and petty and business offenses, we have copied and enclose the pages from the West Group's index to the Illinois Compiled Statutes listing business offenses, Class B and C misdemeanors, and petty offenses. Although we are not certain that those lists contain all offenses in those classes, they should be reasonably comprehensive.

Any person can petition the court to have law enforcement records expunged relating to any offenses committed before age 17 (except any that resulted in criminal court proceedings, or juvenile court adjudications based on first-degree murder and sex offenses which would be felonies if committed by an adult) if the person has had no convictions since age 17, and (a) the person is at least 21 or (b) 5 years have passed since all juvenile court proceedings or commitments ended.¹⁵

A person requesting expungement under a provision described above for juvenile offenses must file a petition with the court in the circuit where the arrest was made or the charge brought. Notice of the petition must be served by the court

on the state's attorney or the prosecutor who prosecuted the offense; Department of State Police; and arresting agency. If an objection is filed within 45 days after the notice of the petition, a hearing must be held on whether to grant expungement.¹⁶

Expunction Based on Innocence

If a conviction or sentence is set aside on direct review or collateral attack, and a court determines by clear and convincing evidence that the defendant is factually innocent of the charge, the arrest record must be expunged and the records of the court and Department of State Police relating to the case sealed until further order of the court.¹⁷

Sealing of Records in Some Cases

Provisions added by a 2003 act¹⁸ allow "sealing" of the conviction records of adults, and minors prosecuted as adults, for many municipal ordinance violations and misdemeanors, and for some Class 4 felonies, if any of the following is true:

- (1) The defendant was acquitted, or was released without a conviction.
- (2) A conviction for the offense was overturned.
- (3) The defendant was put on misdemeanor supervision, and:
 - (a) at least 3 years have passed since all supervision has ended, and
 - (b) the defendant has not been convicted or put on supervision for a felony or misdemeanor during those 3 years.
- (4) The defendant was convicted, but:
 - (a) at least 4 years have passed since the latest conviction or end of the term of a sentence, probation, parole, or supervision, and
 - (b) the defendant has not been convicted or put on supervision for a felony or misdemeanor in those 4 years.¹⁹

All records of municipal ordinance violations and misdemeanors may be sealed in such situations, *except*²⁰ records of DUI,²¹ sex offenses (except prostitution),²² criminal sexual abuse,²³ violation of an order of protection,²⁴ dog fighting,²⁵ violent

crimes,²⁶ and Class A misdemeanors under the Humane Care for Animals Act.²⁷ The only other records that may be sealed are records of misdemeanor and Class 4 felony violations for prostitution²⁸ and drug possession.²⁹

The effects of "sealing" conviction records are similar to those of expunging them—basically preventing their use by most employers and other private parties.³⁰ But a person who has had any felony conviction record sealed may not obtain the sealing of any felony convictions after the first sealing.³¹

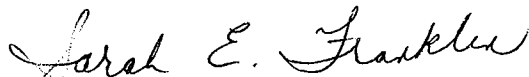
Procedural Provisions

If any person is acquitted, released without conviction, put on supervision, or convicted for a sealable offense, the court must inform that person of the right to have the records sealed and of the procedure for sealing. The person may file a petition requesting the sealing with the clerk of the court where the charge was brought. The clerk must serve a copy of the petition on the state's attorney or the prosecutor who prosecuted the offense; the Department of State Police; the arresting agency; and the chief legal officer of the unit of local government that made the arrest. Unless one of them objects within 90 days after the notice, the court must enter an order sealing the records. If an objection is filed, a hearing must be held before the court determines whether to seal the records.³²

A law effective January 1, 2008³³ allows each state's attorney to set up a "drug school" as an alternative to traditional prosecution for some drug crimes. Only participants who successfully complete the requirements of the drug school may apply for the sealing and expungement of records of arrest, and any other record of the proceedings of the case for which the participant was mandated to attend drug school.³⁴

We hope this information is helpful. Please let us know if you need anything further.

Sincerely,



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Enclosure

West Group index to Illinois Compiled Statutes (State Bar Association Edition), vol. 8, pp. 555-56, 558-59, and 571-72.

Notes

1. 20 ILCS 2630/5(a), second paragraph.
2. 20 ILCS 2630/5(a), second paragraph.
3. 625 ILCS 5/3-707, 5/3-708, and 5/3-710.
4. 625 ILCS 5/5-401.3.
5. 625 ILCS 5/11-503.
6. 720 ILCS 5/12-3.2.
7. 720 ILCS 5/12-15.
8. 720 ILCS 5/16A-3.
9. 20 ILCS 2630/5(a), second paragraph.
10. 20 ILCS 2630/5(a), second paragraph and (g).
11. 20 ILCS 2630/5(b).
12. 20 ILCS 2630/5(c).
13. 20 ILCS 2630/5(d).
14. 705 ILCS 405/5-915(1).
15. 705 ILCS 405/5-915(2).
16. 705 ILCS 405/5-915(3).
17. 20 ILCS 2630/5(c-6) and 730 ILCS 5/5-5-4(b).
18. P.A. 93-211 (2003), enacted by S.B. 788 (Cullerton-E.Jones-Hunter-J.Collins—Howard-M.Davis-A.Collins-Giles-Turner et al.), adding 20 ILCS 2630/5(h) and (i), and 2630/11 to 2630/13.
19. 20 ILCS 2630/5(h)(1) to (h)(3).
20. 20 ILCS 2630/5(h)(2).
21. 625 ILCS 5/11-501.
22. 720 ILCS 5/11-6 ff.
23. 720 ILCS 5/12-15.
24. 720 ILCS 5/12-30.
25. 720 ILCS 5/26-5.
26. 740 ILCS 45/2(c).
27. 510 ILCS 70/3.01 ff.
28. 720 ILCS 5/11-14.
29. 720 ILCS 550/4, 720 ILCS 570/402, and 720 ILCS 646/60.
30. See 20 ILCS 2630/12 and 2630/13.
31. 20 ILCS 2630/5(h)(5).
32. 20 ILCS 2630/5(h)(6) and (h)(7).
33. P.A. 95-160 (2008), enacted by H.B. 2734 (Jefferies-Molaro-Golar-Reboletti-Gordon et al.—Cullerton-J.Collins-Raoul-Koehler-Martinez et al.), adding 55 ILCS 130/1 to 130/40.
34. 55 ILCS 130/15(a).