

1 AN ACT in relation to criminal convictions.

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 adding Sections 5.2, 5.3, and 5.4 as follows:

6 (20 ILCS 2630/5.2 new)

7 Sec. 5.2. Application for order setting aside conviction.

8 (a) Except as provided in subsection (b), a person who is
9 convicted of not more than one offense may file an
10 application with the convicting court for the entry of an
11 order setting aside the conviction.

12 (b) A person may not apply to have set aside, and a judge
13 may not set aside, a conviction for a felony for which the
14 maximum punishment is life imprisonment or an attempt to
15 commit a felony for which the maximum punishment is life
16 imprisonment, a conviction for a violation or attempted
17 violation of Section 12-13, 12-14, 12-14.1, 12-15, 12-16, or
18 12-16.2 of the Criminal Code of 1961, or a conviction for a
19 traffic offense.

20 (c) An application may not be filed until at least 5
21 years following completion of any term of imprisonment for
22 that conviction.

23 (d) The application is invalid unless it contains the
24 following information and is signed under oath by the person
25 whose conviction is to be set aside:

26 (1) The full name and current address of the
27 applicant.

28 (2) A certified record of the conviction that is to
29 be set aside.

30 (3) A statement that the applicant has not been
31 convicted of an offense other than the one sought to be

1 set aside as a result of this application.

2 (4) A statement as to whether the applicant has
3 previously filed an application to set aside this or any
4 other conviction and, if so, the disposition of the
5 application.

6 (5) A statement as to whether the applicant has any
7 other criminal charge pending against him or her in any
8 court in the United States or in any other country.

9 (6) A consent to the use of the nonpublic record
10 created under Section 5.4 to the extent authorized by
11 Section 5.4.

12 (e) The applicant shall submit a copy of the application
13 and 2 complete sets of fingerprints to the Department of
14 State Police. The Department of State Police shall compare
15 those fingerprints with the records of the Department,
16 including the nonpublic record created under Section 5.4, and
17 shall forward a complete set of fingerprints to the Federal
18 Bureau of Investigation for a comparison with the records
19 available to that agency. The Department of State Police
20 shall report to the court in which the application is filed
21 the information contained in the Department's records with
22 respect to any pending charges against the applicant, any
23 record of conviction of the applicant, and the setting aside
24 of any conviction of the applicant and shall report to the
25 court any similar information obtained from the Federal
26 Bureau of Investigation. The court may not act upon the
27 application until the Department of State Police reports the
28 information required by this subsection to the court.

29 (f) The copy of the application submitted to the
30 Department of State Police under subsection (e) shall be
31 accompanied by a fee of \$50 payable to the State of Illinois,
32 which shall be used by the Department of State Police to
33 defray the expenses incurred in processing the application.

34 (g) A copy of the application shall be served upon the

1 Attorney General and upon the office of the prosecuting
2 attorney who prosecuted the crime, and an opportunity shall
3 be given to the Attorney General and to the prosecuting
4 attorney to contest the application. If the conviction was
5 for a violent crime, the prosecuting attorney shall notify
6 the victim of the violent crime of the application pursuant
7 to subsection (f) of Section 4.5 of the Rights of Crime
8 Victims and Witnesses Act. The notice shall be by first-class
9 mail to the victim's last known address. The victim has the
10 right to appear at any proceeding under this Act concerning
11 that conviction and to make a written or oral statement.

12 (h) Upon the hearing of the application the court may
13 require the filing of affidavits and the taking of proofs as
14 it considers proper.

15 (i) If the court determines that the circumstances and
16 behavior of the applicant from the date of the applicant's
17 conviction to the filing of the application warrant setting
18 aside the conviction and that setting aside the conviction is
19 consistent with the public welfare, the court may enter an
20 order setting aside the conviction. The setting aside of a
21 conviction under this Act is a privilege and conditional and
22 is not a right.

23 (j) As used in this Section and Sections 5.3 and 5.4:

24 "Traffic offense" means a violation of the Illinois
25 Vehicle Code or a similar provision of a local ordinance.

26 "Violent crime" has the meaning ascribed to it in Section
27 3 of the Rights of Crime Victims and Witnesses Act.

28 "Victim" has the meaning ascribed to it in Section 3 of
29 the Rights of Crime Victims and Witnesses Act.

30 (20 ILCS 2630/5.3 new)

31 Sec. 5.3. Entry of order.

32 (a) Upon entry of an order pursuant to Section 5.2, the
33 applicant, for purposes of the law, shall be considered not

1 to have been previously convicted, except as provided in this
2 Section and Section 5.4.

3 (b) The applicant is not entitled to the remission of any
4 fine, costs, or other money paid as a consequence of a
5 conviction that is set aside.

6 (c) If the conviction set aside pursuant to this Act is
7 for a sex offense as defined in Section 2 of the Sex Offender
8 Registration Act, the applicant is considered to have been
9 convicted of that offense for purposes of the Sex Offender
10 Registration Act.

11 (d) This Act does not affect the right of the applicant
12 to rely upon the conviction to bar subsequent proceedings for
13 the same offense.

14 (e) This Act does not affect the right of a victim of a
15 crime to prosecute or defend a civil action for damages.

16 (f) This Act does not create a right to commence an
17 action for damages for incarceration under the sentence that
18 the applicant served before a conviction was set aside
19 pursuant to this Act.

20 (g) A person may have only one conviction set aside under
21 this Act.

22 (20 ILCS 2630/5.4 new)

23 Sec. 5.4. Sending copy of order to arresting agency and
24 Department of State Police.

25 (a) Upon the entry of an order pursuant to Section 5.2,
26 the court shall send a copy of the order to the arresting
27 agency and the Department of State Police.

28 (b) The Department of State Police shall retain a
29 nonpublic record of the order setting aside a conviction and
30 of the record of the arrest, fingerprints, conviction, and
31 sentence of the applicant in the case to which the order
32 applies. Except as provided in subsection (c), this nonpublic
33 record shall be made available only to a court of competent

1 jurisdiction, an agency of the judicial branch of State
2 government, a law enforcement agency, a prosecuting attorney,
3 the Attorney General, or the Governor upon request and only
4 for the following purposes:

5 (1) Consideration in a licensing function conducted
6 by an agency of the judicial branch of State government.

7 (2) To show that a person who has filed an
8 application to set aside a conviction has previously had
9 a conviction set aside pursuant to this Act.

10 (3) The court's consideration in determining the
11 sentence to be imposed upon conviction for a subsequent
12 offense that is punishable as a felony or by imprisonment
13 for more than one year.

14 (4) Consideration by the Governor if a person whose
15 conviction has been set aside applies for a pardon for
16 another offense.

17 (5) Consideration by a law enforcement agency if a
18 person whose conviction has been set aside applies for
19 employment with the law enforcement agency.

20 (6) Consideration by a court, law enforcement
21 agency, prosecuting attorney, or the Attorney General in
22 determining whether an individual required to be
23 registered under the Sex Offender Registration Act has
24 violated that Act, or for use in a prosecution for
25 violating that Act.

26 (c) A copy of the nonpublic record created under
27 subsection (b) shall be provided to the person whose
28 conviction is set aside under this Act upon payment of a fee
29 determined and charged by the Department of State Police in
30 the same manner as the fee prescribed in Section 6 of the
31 Freedom of Information Act.

32 (d) The nonpublic record maintained under subsection (b)
33 is exempt from disclosure under the Freedom of Information
34 Act.

1 (e) Except as provided in subsection (b), a person, other
2 than the applicant, who knows or should have known that a
3 conviction was set aside under this Section and who divulges,
4 uses, or publishes information concerning a conviction set
5 aside under this section is guilty of a Class B misdemeanor
6 punishable by imprisonment for not more than 90 days or a
7 fine of not more than \$500, or both.

8 Section 10. The Rights of Crime Victims and Witnesses
9 Act is amended by changing Section 4.5 as follows:

10 (725 ILCS 120/4.5)

11 Sec. 4.5. Procedures to implement the rights of crime
12 victims. To afford crime victims their rights, law
13 enforcement, prosecutors, judges and corrections will provide
14 information, as appropriate of the following procedures:

15 (a) At the request of the crime victim, law enforcement
16 authorities investigating the case shall provide notice of
17 the status of the investigation, except where the State's
18 Attorney determines that disclosure of such information would
19 unreasonably interfere with the investigation, until such
20 time as the alleged assailant is apprehended or the
21 investigation is closed.

22 (b) The office of the State's Attorney:

23 (1) shall provide notice of the filing of
24 information, the return of an indictment by which a
25 prosecution for any violent crime is commenced, or the
26 filing of a petition to adjudicate a minor as a
27 delinquent for a violent crime;

28 (2) shall provide notice of the date, time, and
29 place of trial;

30 (3) or victim advocate personnel shall provide
31 information of social services and financial assistance
32 available for victims of crime, including information of

1 how to apply for these services and assistance;

2 (4) shall assist in having any stolen or other
3 personal property held by law enforcement authorities for
4 evidentiary or other purposes returned as expeditiously
5 as possible, pursuant to the procedures set out in
6 Section 115-9 of the Code of Criminal Procedure of 1963;

7 (5) or victim advocate personnel shall provide
8 appropriate employer intercession services to ensure that
9 employers of victims will cooperate with the criminal
10 justice system in order to minimize an employee's loss of
11 pay and other benefits resulting from court appearances;

12 (6) shall provide information whenever possible, of
13 a secure waiting area during court proceedings that does
14 not require victims to be in close proximity to defendant
15 or juveniles accused of a violent crime, and their
16 families and friends;

17 (7) shall provide notice to the crime victim of the
18 right to have a translator present at all court
19 proceedings;

20 (8) in the case of the death of a person, which
21 death occurred in the same transaction or occurrence in
22 which acts occurred for which a defendant is charged with
23 an offense, shall notify the spouse, parent, child or
24 sibling of the decedent of the date of the trial of the
25 person or persons allegedly responsible for the death;

26 (9) shall inform the victim of the right to have
27 present at all court proceedings, subject to the rules of
28 evidence, an advocate or other support person of the
29 victim's choice, and the right to retain an attorney, at
30 the victim's own expense, who, upon written notice filed
31 with the clerk of the court and State's Attorney, is to
32 receive copies of all notices, motions and court orders
33 filed thereafter in the case, in the same manner as if
34 the victim were a named party in the case; and

1 (10) at the sentencing hearing shall make a good
2 faith attempt to explain the minimum amount of time
3 during which the defendant may actually be physically
4 imprisoned. The Office of the State's Attorney shall
5 further notify the crime victim of the right to request
6 from the Prisoner Review Board information concerning the
7 release of the defendant under subparagraph (d)(1) of
8 this Section; and

9 (11) shall request restitution at sentencing and
10 shall consider restitution in any plea negotiation, as
11 provided by law.

12 (c) At the written request of the crime victim, the
13 office of the State's Attorney shall:

14 (1) provide notice a reasonable time in advance of
15 the following court proceedings: preliminary hearing, any
16 hearing the effect of which may be the release of
17 defendant from custody, or to alter the conditions of
18 bond and the sentencing hearing. The crime victim shall
19 also be notified of the cancellation of the court
20 proceeding in sufficient time, wherever possible, to
21 prevent an unnecessary appearance in court;

22 (2) provide notice within a reasonable time after
23 receipt of notice from the custodian, of the release of
24 the defendant on bail or personal recognizance or the
25 release from detention of a minor who has been detained
26 for a violent crime;

27 (3) explain in nontechnical language the details of
28 any plea or verdict of a defendant, or any adjudication
29 of a juvenile as a delinquent for a violent crime;

30 (4) where practical, consult with the crime victim
31 before the Office of the State's Attorney makes an offer
32 of a plea bargain to the defendant or enters into
33 negotiations with the defendant concerning a possible
34 plea agreement, and shall consider the written victim

1 impact statement, if prepared prior to entering into a
2 plea agreement;

3 (5) provide notice of the ultimate disposition of
4 the cases arising from an indictment or an information,
5 or a petition to have a juvenile adjudicated as a
6 delinquent for a violent crime;

7 (6) provide notice of any appeal taken by the
8 defendant and information on how to contact the
9 appropriate agency handling the appeal;

10 (7) provide notice of any request for
11 post-conviction review filed by the defendant under
12 Article 122 of the Code of Criminal Procedure of 1963,
13 and of the date, time and place of any hearing concerning
14 the petition. Whenever possible, notice of the hearing
15 shall be given in advance;

16 (8) forward a copy of any statement presented under
17 Section 6 to the Prisoner Review Board to be considered
18 by the Board in making its determination under subsection
19 (b) of Section 3-3-8 of the Unified Code of Corrections.

20 (d) (1) The Prisoner Review Board shall inform a victim
21 or any other concerned citizen, upon written request, of
22 the prisoner's release on parole, mandatory supervised
23 release, electronic detention, work release or by the
24 custodian of the discharge of any individual who was
25 adjudicated a delinquent for a violent crime from State
26 custody and by the sheriff of the appropriate county of
27 any such person's final discharge from county custody.
28 The Prisoner Review Board, upon written request, shall
29 provide to a victim or any other concerned citizen a
30 recent photograph of any person convicted of a felony,
31 upon his or her release from custody. The Prisoner Review
32 Board, upon written request, shall inform a victim or any
33 other concerned citizen when feasible at least 7 days
34 prior to the prisoner's release on furlough of the times

1 and dates of such furlough. Upon written request by the
2 victim or any other concerned citizen, the State's
3 Attorney shall notify the person once of the times and
4 dates of release of a prisoner sentenced to periodic
5 imprisonment. Notification shall be based on the most
6 recent information as to victim's or other concerned
7 citizen's residence or other location available to the
8 notifying authority. For purposes of this paragraph (1)
9 of subsection (d), "concerned citizen" includes relatives
10 of the victim, friends of the victim, witnesses to the
11 crime, or any other person associated with the victim or
12 prisoner.

13 (2) When the defendant has been committed to the
14 Department of Human Services pursuant to Section 5-2-4 or
15 any other provision of the Unified Code of Corrections,
16 the victim may request to be notified by the releasing
17 authority of the defendant's discharge from State
18 custody.

19 (3) In the event of an escape from State custody,
20 the Department of Corrections immediately shall notify
21 the Prisoner Review Board of the escape and the Prisoner
22 Review Board shall notify the victim. The notification
23 shall be based upon the most recent information as to the
24 victim's residence or other location available to the
25 Board. When no such information is available, the Board
26 shall make all reasonable efforts to obtain the
27 information and make the notification. When the escapee
28 is apprehended, the Department of Corrections immediately
29 shall notify the Prisoner Review Board and the Board
30 shall notify the victim.

31 (4) The victim of the crime for which the prisoner
32 has been sentenced shall receive reasonable written
33 notice not less than 15 days prior to the parole hearing
34 and may submit, in writing, on film, videotape or other

1 electronic means or in the form of a recording or in
2 person at the parole hearing, information for
3 consideration by the Prisoner Review Board. The victim
4 shall be notified within 7 days after the prisoner has
5 been granted parole and shall be informed of the right to
6 inspect the registry of parole decisions, established
7 under subsection (g) of Section 3-3-5 of the Unified Code
8 of Corrections. The provisions of this paragraph (4) are
9 subject to the Open Parole Hearings Act.

10 (5) If a statement is presented under Section 6,
11 the Prisoner Review Board shall inform the victim of any
12 order of discharge entered by the Board pursuant to
13 Section 3-3-8 of the Unified Code of Corrections.

14 (6) At the written request of the victim of the
15 crime for which the prisoner was sentenced, the Prisoner
16 Review Board shall notify the victim of the death of the
17 prisoner if the prisoner died while on parole or
18 mandatory supervised release.

19 (7) When a defendant who has been committed to the
20 Department of Corrections or the Department of Human
21 Services is released or discharged and subsequently
22 committed to the Department of Human Services as a
23 sexually violent person and the victim had requested to
24 be notified by the releasing authority of the defendant's
25 discharge from State custody, the releasing authority
26 shall provide to the Department of Human Services such
27 information that would allow the Department of Human
28 Services to contact the victim.

29 (e) The officials named in this Section may satisfy some
30 or all of their obligations to provide notices and other
31 information through participation in a statewide victim and
32 witness notification system established by the Attorney
33 General under Section 8.5 of this Act.

34 (f) The State's Attorney shall notify the victim of the

1 violent crime at least 15 days before the hearing on the
2 application of the defendant's filing of an application to
3 have his or her conviction set aside under Sections 5.2
4 through 5.4 of the Criminal Identification Act.

5 (Source: P.A. 90-14, eff. 7-1-97; 90-793, eff. 8-14-98;
6 91-237, eff. 1-1-00; 91-693, eff. 4-13-00.)

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