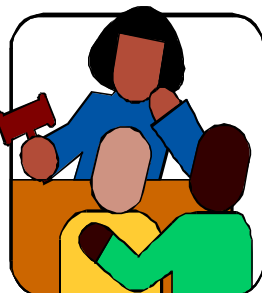
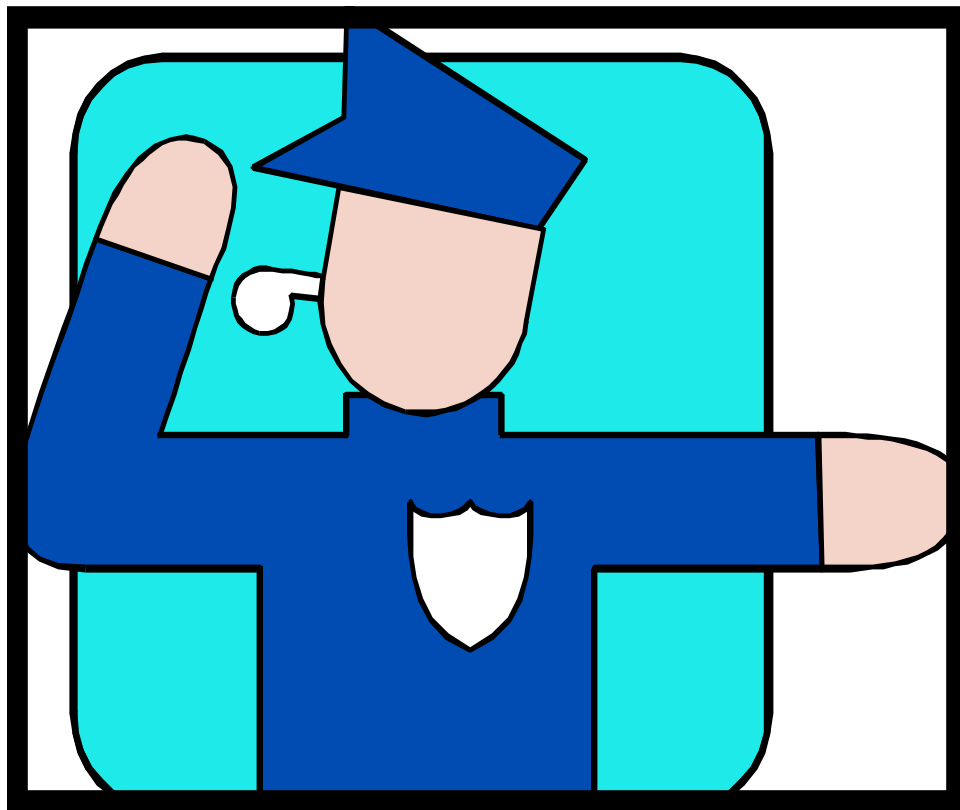


# Expunging an arrest record in Illinois©

Police #2

September 24, 2001



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The Self Help Legal Center  
Southern Illinois University School Of Law  
Carbondale, IL 62901  
(618) 453-3217

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## TABLE OF CONTENTS

<b>Table of Contents</b>	2
<b>Disclaimer</b>	3
<b>Warning to all readers</b>	4
<b>How to use this self help packet</b>	5
<b>Who should not use this packet</b>	6
<b>Who may have to wait to use this packet</b>	7
<b>Who these people are</b>	8
<b>Other publications on expungement</b>	9
<b>What these legal terms mean</b>	10-11
<b>Summary of the law in this area</b>	12
<b>How to ask the court for an expungement</b>	13
<b>How to file a document in a court file</b>	14
<b>Myths</b>	15
<b>Tips</b>	16

# Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer,

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Look for these symbols to tell you when to:



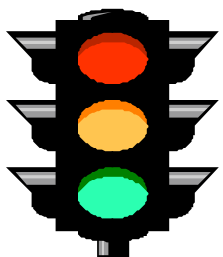
**STOP!**

You need legal representation or advice to continue.



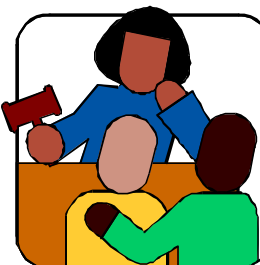
**USE CAUTION!**

This is very important so pay attention.



**GO!**

You can proceed to the next step.



**CHECK IT OUT!**

This issue is discussed in another packet.

# Warning to all readers



**Before you proceed with using this packet, you should ask yourself the following questions:**

## **1. Have I tried to consult a private attorney?**

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

## **2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?**

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

## **3. Is this something that I can do on my own?**

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

### Free sources of legal help

#### **Land Of Lincoln Legal Assistance**

Serves the 65 southernmost counties in Illinois

1-800-747-5523

#### **Prairie State Legal Services**

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

#### **Coordinated Advice and Referral Program for Legal Services**

serving Cook County

312-738-9494

#### **West Central Legal Assistance**

Serves Knox, Henderson, Stark, Warren, McDonough, and Fulton counties

800-331-0617

#### **Will County Legal Assistance**

Serving Will County

815-727-5123



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

## People you should know

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

## What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

## Summary of the law in this area

This section contains summaries of important areas of the law that you need to know.

## How to file a document in a court file

This section answers commonly asked questions about filing documents.

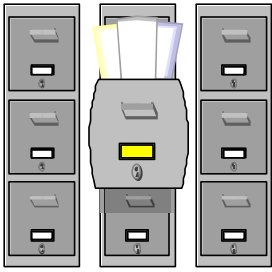
## Myths and Tips

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.



## Who should not use this packet

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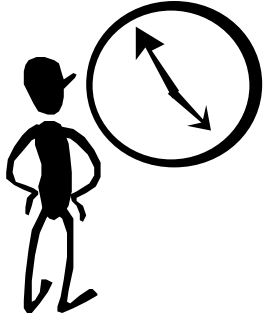
Persons convicted of or who received supervision for the following offenses cannot have their criminal records expunged by the presiding judge in their county.

any sexual offense committed against a minor under 18 years old including indecent solicitation of a child or criminal sexual abuse

a violation of Section 11-501 of the Illinois Vehicle Code (DUI) or a similar local ordinance



If you are unsure as to whether this applies to you, you should seek the assistance of an attorney.



Persons who received supervision for their offense **can** have their criminal records expunged by the presiding judge in their county but only after 2 years have passed since the supervision ended.

Persons who received supervision for the following offenses **can** have their criminal records expunged by the presiding judge in their county but only after 5 years have passed since the supervision ended.

a violation of Section 3-707 (uninsured motorist) ,708 (suspended registration due to no insurance) ,710 (false insurance I D) , 5-401.3 (failure to keep proper scrap records), or 11-503 (reckless driving) of the Illinois Vehicle Code or any similar local ordinance;

a violation of Section 12-3.2 (domestic battery), 12-15 (criminal sexual abuse), or 16A-3 of the Criminal Code of 1961 (retail theft)

Persons who received probation for the following offenses **can** have their criminal records expunged by the presiding judge in their county but only after 5 years have passed since the probation ended.

Section 10 (first offense) of the Cannabis Control Act;

Section 410 (first offense) of the Illinois Controlled Substances Act;

Section 12-4.3b(1) or (2) (aggravated battery of a mentally retarded child) of the Criminal Code of 1961;

Section 10-102 and 40-10 (treatment as a condition to probation) of the Illinois Alcoholism and Other Drug Dependency Act (when the judgment has been vacated only); and

Section 10 of the Steroid Control Act.

If you are unsure as to whether this applies to you, you should seek the assistance of an attorney.



# Who these people are



## Judge:

The judge is the person who presides over the courtroom. In most cases, including expungement cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



## Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



## Attorney:

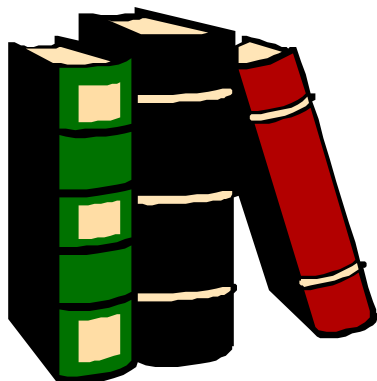
An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



## State Police:

The Department of State Police keeps a record of arrests, filing of charges, and the disposition of court proceedings for certain offenses. By law, the Department of State Police must transmit this information to certain agencies upon request.

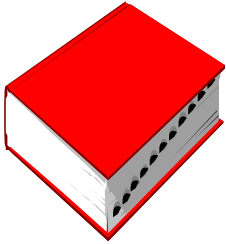




## Disclaimer: Please Read !!

The following is a list of publications which discuss the issues of expungement. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

Your rights if arrested, Illinois State Bar Association



## **affidavit**

A sworn statement by a person. Lying in an affidavit can result in a charge of perjury which could mean a fine, imprisonment, or both.

## **answer or response**

The written response to a complaint or a petition that is filed by the defendant (the person being sued) in a lawsuit.

## **circuit**

The judicial system in Illinois is divided into circuits. Each circuit defines a geographic area in Illinois.

## **conviction**

The result of a criminal trial or a plea in which the accused is found guilty by a judge or jury.

## **default**

If a person who is sued fails to appear at the first scheduled hearing (or any subsequent hearings) and/or if he/she fails to file an answer to a complaint, petition, motion, etc. filed against him/her, he/she can be held in default.

## **defendant**

A person who is sued.

## **hearing (trial)**

An opportunity for both parties to tell the judge or jury their side of a dispute. Some hearings are court ordered so missing them can result in being held in contempt of court. For hearings which are not court ordered, failure to appear can result in the other side getting what they want in relief.

## **jurisdiction**

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a thing. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state that gave rise to the case.

## **misdemeanor**

A misdemeanor is an offense which carries a penalty of a fine and/or imprisonment of a period not to exceed 6 months.

## **motion**

A written or oral request to the judge after a lawsuit has been started (see petition).

## **petition or complaint**

A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

## **petty offense**

In Illinois, an offense which carries a punishment of a fine but not time in jail.

## **plea**

Your response to a charge made against you.

## **plea bargain**

An agreement between you and the State's or City Attorney as to how you will plead and what punishment the State's or City Attorney will recommend to the judge.

## **probation**

When a convicted person is released into the community instead of going to jail or prison on the condition that his/her conduct meets with certain standards. If a person violates his/her probation, he/she can be sent to jail or prison.

## **pro-se**

A person who is not represented by an attorney and is involved as a party in a lawsuit.

## **public defender**

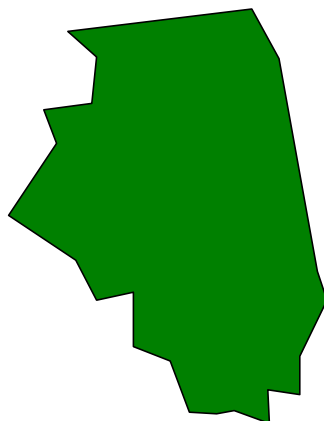
If a person who is charged with a crime faces the possibility of time in jail, and he/she cannot afford to hire their own attorney, the court will appoint them an attorney to represent them. This attorney is called a public defender.

## **statute**

The law that the state legislature or federal government enacted on a particular subject.

## **court supervision**

When a person receives court supervision, no record of a conviction is made (including reports to the Secretary of State or the person's insurance company). A person under court supervision must refrain from certain acts including being arrested for any offense during the period of his/her supervision. If a person violates the terms of his/court supervision, they will be convicted (found guilty) of the offense for which he/she received supervision.



Expunging an arrest record in Illinois is discussed in Section 5 of the Criminal Identification Act. The Criminal Identification Act can be found in Chapter 20 of the Illinois Compiled Statutes.

## What is expungement?

In Illinois, expungement means that the record of your arrest is removed from the official records of the arresting authority and the Department of State Police and that the records of the Circuit Clerk are sealed. Your name is also removed from the official index required to be kept by the Circuit Clerk under Section 16 of the Clerk of Courts Act. The judge, however, has the power to order that record of your arrest be sealed instead of removed from the records of the Department of State Police.

## Who grants the expungement?

The Chief Judge of the Circuit where the charge was brought, any judge designated by the Chief Judge, or in counties of less than 3 million, the judge who presided over the defendant's trial.

## Who is eligible to have his/her record expunged?

**If** you are an adult, **and** you have not been previously convicted of any criminal offense or municipal ordinance violation, **if** you are acquitted or released without being convicted of a municipal ordinance, felony, or misdemeanor, any record of your being arrested or charged can be expunged.

## Is there a fee?

The Circuit Clerk will charge a fee to file your Petition. Similarly, the Department of State Police may charge the person asking for an expungement a fee equal to the cost of processing the order.



## STEP 1: PREPARE YOUR PETITION

In the supplement to this packet you will find a Petition to Expunge and Seal Arrest Record and an Order to Expunge and Seal. Using the forms guide in the supplement, you will want to complete these documents.



## STEP 2: FIGURE OUT WHERE TO FILE

You will want to file your documents in the county where the criminal record you want expunged was filed.



## STEP 3: FILE YOUR DOCUMENTS

File your Petition at the Circuit Clerk's office. After you file your Petition, give the file-stamped copy of the Petition and your proposed Order to the Clerk to give to a judge for his/her approval. The Clerk will then mail a copy of your Petition to the arresting agency, State's Attorney, and in some cases, to the Department of State Police. You will have to pay a fee to file your Petition. You should also give the Clerk a self-addressed stamped envelope so they can mail your Order to you if it is approved.



## STEP 4: WAIT FOR YOUR ORDER

In most jurisdictions, there is no hearing on your Petition. Rather, in 30-45 days the Clerk will send your Petition and proposed Order to the Judge and within a reasonable time thereafter, the Judge will make a decision whether to grant or deny your Petition. If your Petition is approved, you will receive your proposed Order signed by the Judge in the mail.



## STEP 5: WRAP IT UP

You will need to mail a copy of your Order to the Department of State Police to have your records with the Department expunged. For further information about this procedure, contact the Illinois Department of State Police.



**Q: What is a court file?**

**A:** The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

**Q: When do you need to file a document in a court file?**

**A:** Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

**Q: What does it mean to file a document in a court file?**

**A:** Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

**Q: Does filing a document make it legal?**

**A:** No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

**Q: Why is filing so important?**

**A:** Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.



**4 Commonly held beliefs about expungement which are not true:**

**Any criminal record can be expunged**

Wrong, certain offenses cannot be expunged.

**Only acts committed as a minor can be expunged**

Wrong. Expungement is for people who charged as an adult, not a minor.

**Expungement means that no one can ever see these records again**

Wrong. In some cases, the judge can order that the records be sealed instead of expunged. If sealed, the records can be used in certain cases — for example, if you are convicted of a subsequent offense.

**My petition for expungement cannot be denied**

Yes, it can.



## **Make sure that you meet the qualifications**

While it is not required, to save yourself time and money, you should make sure that you meet the qualifications for expungement before you file your Petition.

## **Get help if you need it**

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, requesting an expungement may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if representing yourself proves to be too difficult a task for you, talk to an attorney.