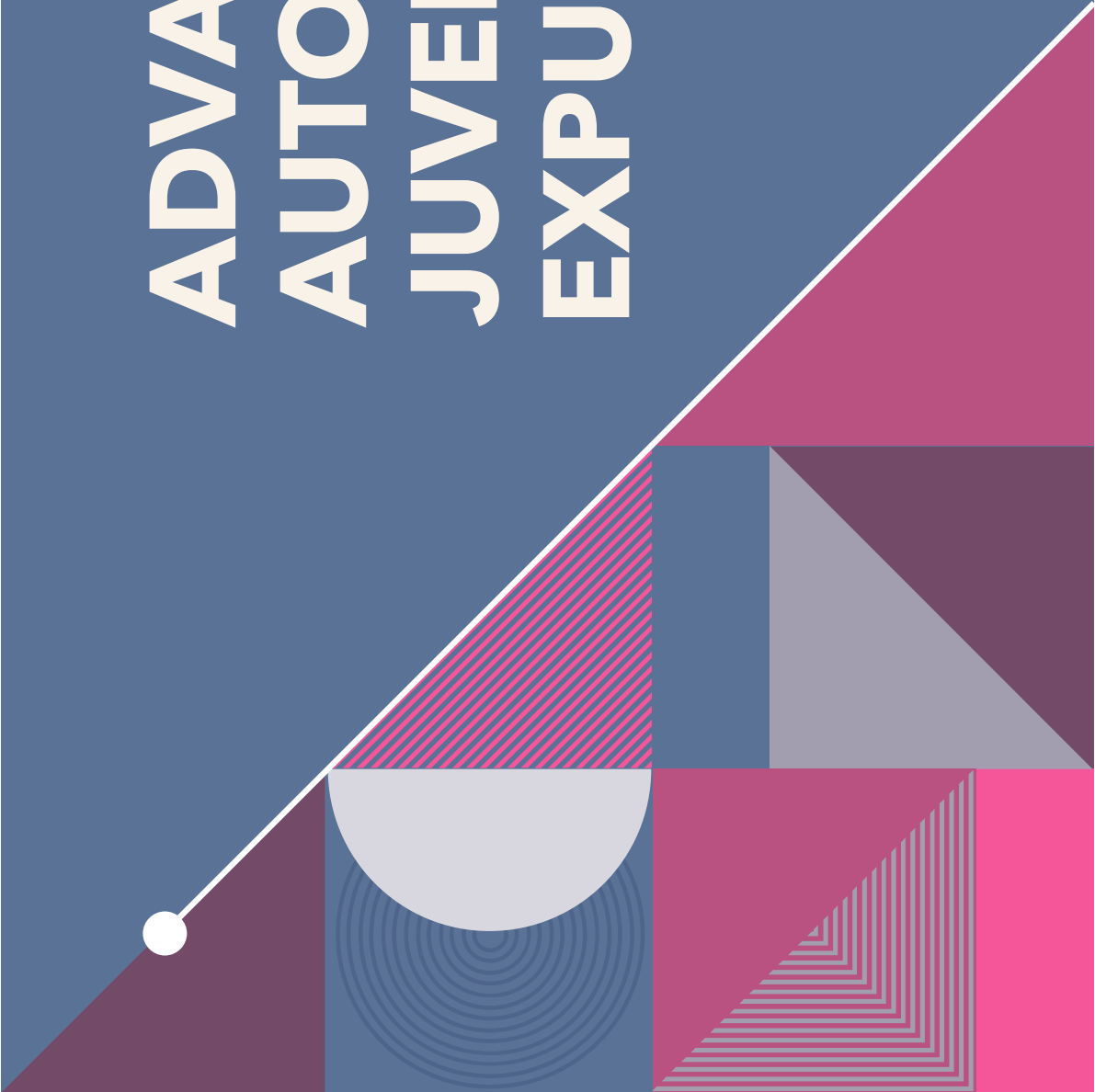


# ADVANCES IN AUTOMATIC JUVENILE EXPUNGEMENT



# AGENDA

Introduction

Where We Were

Where We Are

What's Next: 2025 Amendment

Final Suggestions

# JUVENILE EXPUNGEMENT





# WHAT IS JUVENILE EXPUNGMENT?

This is the process of "erasing" all the law enforcement and court records, making it as if those records never existed (with a few exceptions).

# WHAT ARE JUVENILE RECORDS?

Juvenile records are the “hangover” from interactions with law enforcement and the courts.

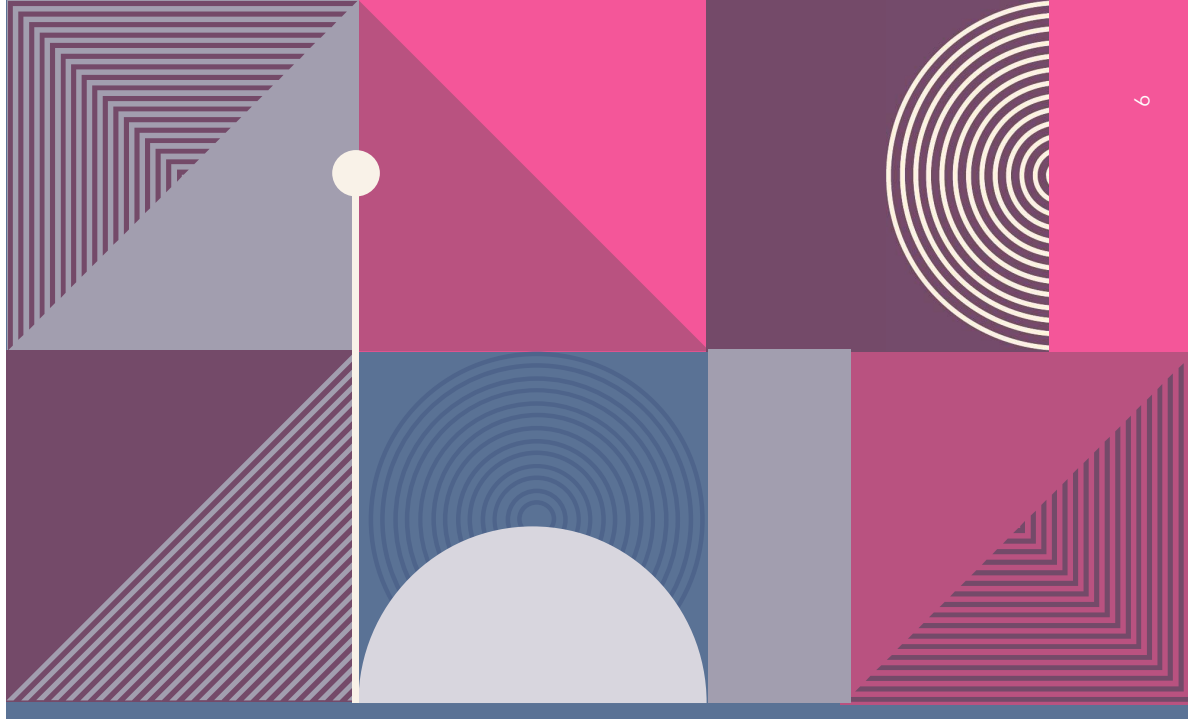
Records include:

- Arrest warrants and records;
- “Station adjustments”;
- Charging instruments, like an indictment;
- Court records, like from court dates, guilty pleas, trials.

# AREN'T JUVENILE RECORDS SEALED?

Juvenile records are sealed as a matter of law.

When a record is sealed, it is removed from public view, so that it will not pop up on a background check in most instances.



# SEALED JUVENILE RECORDS

But sealed records are still accessible to law enforcement, some employers and some government agencies.

This is usually through use of a fingerprint-based background check in applications for subsidized housing or jobs in schools, healthcare, childcare or security.

# WHY EXPUNGE?

Thus, sealed juvenile records may continue to act as a barrier to education, employment, housing, licensing and other opportunities.

When juvenile records are expunged, those entities no longer have access to juvenile records.

Expungement maximizes the chances that those with juvenile records can live productive and law-abiding lives after completion of the interactions with the criminal legal system.







# HOW DOES JUVENILE EXPUNGEMENT WORK?

705 ILCS 405/5-915

# TWO AVENUES TO JUVENILE EXPUNGEMENT

## **Automatic expungement:**

Law enforcement and/ or the court take care of the expungement.

## **Expungement by petition:**

Juvenile/ person with record files a petition in court seeking to clear the record.

# WHERE WE WERE:

- Back in 2016, the Illinois Juvenile Justice Commission issued a report on juvenile expungement.
- The Commission wrote that the state's treatment of juvenile records was "failing" its citizens.
- This was because: the eligibility requirements were extremely restrictive; the process for expungement was too complex and costly\*; and police agencies were failing to inform juveniles that expungement was an option, despite a legal obligation to do so.
- As a result, fewer than one-third of one percent of juvenile records were being expunged statewide.
  - Fewer than *one third* of **one percent**.
  - State Senator Justin Slaughter said that Illinois was the "worst in the nation" when it came to clearing juvenile records.

# WHY SO COSTLY?

IN COOK COUNTY, FOR EXAMPLE,  
THE CLERK'S OFFICE WAS  
CHARGING A FEE FOR EACH  
INDIVIDUAL ARREST!

THAT'S A LOT OF PEANUTS!



# 2017: NEW BILL FOR AUTOMATIC EXPUNGEMENT

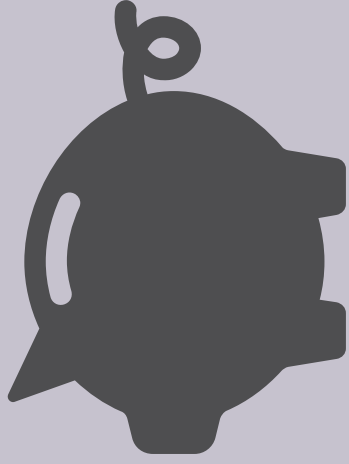


# WHAT CHANGED IN 2017?

New bill required:

- Police agencies to automatically expunge juvenile arrest reports yearly if charges are not brought; and
- Courts must expunge records of cases two years after closing of all but the most serious cases, so long as there are no new charges.
- Imposed a fine for anyone who illegally shared juvenile records.
- Youths may seek expungement as soon as they are cleared/ adjudicated not delinquent, rather than waiting til they are 18 years old.

# GREAT NEWS!



**THERE IS  
NO FEE  
TO EXPUNGE  
JUVENILE RECORDS!**

# WHERE ARE WE NOW?

## **Juvenile law enforcement records (arrest only)**

- automatically expunged each year if:
  - One year or more has elapsed since arrest/interaction
  - No petition for delinquency related to the arrest was filed; and
  - Six months have elapsed since date of arrest with no other arrest or charges for delinquency filed.



# \*LAW ENFORCEMENT RECORDS

The requirement for law enforcement to automatically expunge their records applies to records dating **1/1/2000** and forward.

Those with juvenile law enforcement records prior to 1/1/2000 must petition the court for expungement.

# WHERE ARE WE NOW?

## Expungement of records when case went to court:

- Two paths for **automatic expungement**:
  - Subsection 0.2
  - Subsection 0.3
- Petitioning the court for **discretionary** expungement

## SUBSECTION 2 EXPUNGEMENT:

- The statute requires the trial court to **automatically expunge** court and law enforcement records, upon:
  - dismissal of a petition of delinquency;
  - finding of not-delinquent;
  - successful termination of an order of supervision;
  - successful termination of adjudication for offense that would be Class B or C misdemeanor, or petty/ business offense if committed by an adult.
- 705 ILCS 405/5-915 (0.2) (a)

# IF THE CASE MEETS THE (0.2)(A) CRITERIA, THEN:

"The court SHALL"

- automatically order the expungement of the juvenile court records and juvenile law enforcement records.

AND

"The clerk SHALL"

- deliver a certified copy of the expungement order to the ISP and the arresting agency.

AND

- the Expungement "SHALL BE COMPLETED" within 60 days of receipt of the expungement order.

## SUBSECTION 3 EXPUNGEMENT:

- The statute requires the trial court to **automatically expunge** court and law enforcement records, two years after the case was closed, if:
  - no delinquency or criminal proceeding is pending;
  - no subsequent delinquency adjudication or criminal conviction;
  - EXCEPT for "disqualified offenses."
  - 705 ILCS 405/5-9-15 (0.3) (a)

# IF THE CASE MEETS THE (0.3)(A) CRITERIA, THEN:

"The court SHALL"

- automatically order the expungement of the juvenile court records and juvenile law enforcement records.

AND

"The clerk SHALL"

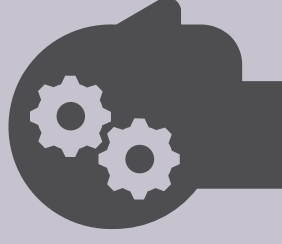
- deliver a certified copy of the expungement order to the ISP and the arresting agency.

AND

- the Expungement "SHALL BE COMPLETED" within 60 days of receipt of the expungement order.

# SHOUT OUT TO THE JUVENILE PD FOLKS

In the last year or two, the PDs have been EXTRA on top of getting these automatic expungement orders entered, which has been amazing and incredibly beneficial.



# CURRENT PROCEDURES:

- The trial judge enters an order to expunge two years from conclusion of the sentence.
- Often the PD will step up for the juvenile on that two-year check date.
- State will object if there was an intervening adjudications/ conviction, etc.



# PROBLEMS WE'VE SEEN:

This future-date process has been tricky to navigate.

- When to hold the hearing?
- Does the juvenile need to be present?
- And changes in the judge hearing the matter meant the process could get murky.



# EXPUNGEMENT IS STILL CONFUSING...

Even with fantastic representation at the trial court level, there is some confusion and frustration for individuals with adjudications due to 1) either no knowledge of that expungement check date (which happens for a number of reasons), or 2) a belief that it is a done deal without understanding complications for eligibility (disqualified offenses, subsequent delinquency adjudication or criminal conviction).

# SO, WHAT'S COMING IN 2025?

An **amendment** to the Juvenile Expungement statute, requiring:

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The trial court to set a future date to enter the automatic expungement order.

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Notice to the juvenile of the future court date.

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Juvenile not required to attend future court date.

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Subsequent court dates to be set if case is not yet eligible on initial date.

# FUTURE DATE FOR EXPUNGEMENT

"On the date that the minor's sentence ends or the date that the court enters an order committing the minor to the Department of Juvenile Justice, the juvenile court judge shall schedule a date to enter the automatic expungement order."

- Scheduling the future court date sets the record up for expungement, hopefully "automating" the automatic expungement process.

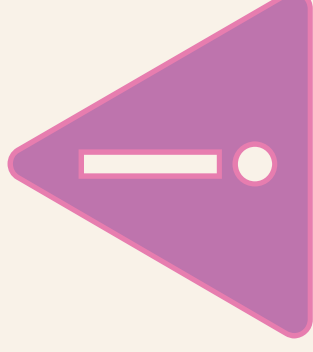
# WHAT'S THE IMPORT OF SETTING THE DATE?

"Now those juveniles who forget to seek expungement after their adjudication and sentence has been completed will be helped by having their expungement automatically being put on the call." -- Gov. J. B. Pritzker



# AND THE NOTICE PROVISION KEEPS IT ON THEIR RADAR.

Notice to the juvenile serves as a reminder to keep them aware of the case, and that it should be expunged.



# IS IT RETROACTIVE?

Probably not.

- Previously-adjudicated juveniles  
\*may\* have to be present for expungement check dates.
- But petition to expunge may be filed, anyway. And ask to waive the client's presence, noting the amendment.



# TAKEAWAY FOR THE AMENDMENT

Rather than being required to request and attend expungement proceedings after their adjudication and sentence has been completed, the court will set an expungement date on the record, when the sentence ends or when a young person is sent to the Department of Juvenile Justice. This will allow both greater flexibility and more precision, and reduce the likelihood of multiple court dates having to be scheduled.





# WHAT MORE CAN YOU DO?

The **amendment** to the Juvenile Expungement statute should help facilitate the automatic expungement process.

- What else can trial attorneys do?
  - Tell your clients about potential future expungement.
  - Provide a copy of the Order to the client, if feasible.
  - OR, keep a copy of the Order for client for the future.

# INFORM CLIENTS ABOUT EXPUNGEMENT

- Please tell your clients that their case may be eligible for future expungement.
- Give them the court date.
- Connect your clients to OSAD Expungement or legal aid, as needed.



# OBTAIN COPIES OF THE EXPUNGEMENT ORDER.



The statute does not require a copy to be sent to the juvenile.

If an arrest/adjudication that should be auto expunged comes up on a background check and client is asked to provide documentation, the most they get is a “no record found” letter from the Clerk to try to help get past the barrier that has subsequently come up.

Having documentation of expungement is especially critical for clients who are in immigration proceedings or seeking military/federal employment, since **EVERYTHING** regardless of expungement must be disclosed in these situations, and getting a copy of arrest and case info after expungement is near impossible.

# QUESTIONS?



# THANK YOU!

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<https://osad.illinois.gov/expungement.html>

**705 ILCS 405/5-915**

**Expungement of juvenile law enforcement and juvenile court records**

**LIST OF OFFENSES “DISQUALIFIED” FROM AUTOMATIC EXPUNGEMENT <sup>1</sup>**

<b>§ of Criminal Code of 2012</b>	<b>Name of Offense</b>	<b>§ of Criminal Code of 1961</b>
8-1.2	solicitation of murder for hire	
9-1	first degree murder	
9-1.2	intentional homicide of an unborn child	
9-2	second degree murder	
9-2.1	voluntary manslaughter of an unborn child	
9-3	involuntary manslaughter and reckless homicide	
9-3.2	involuntary manslaughter and reckless homicide of an unborn child	
10-1	kidnaping	
10-2	aggravated kidnaping	
10-3	unlawful restraint	
10-3.1	aggravated unlawful restraint	
10-4	forcible detention	
10-5	child abduction	
10-9	trafficking in persons, involuntary servitude, and related offenses	

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<sup>1</sup> 705 ILCS 405/5-915:

(0.3)(a)... “disqualified offense” means any of the following offenses: Section 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-9, 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-6.5, 12-2, 12-3.05, 12-3.3, 12-4.4a, 12-5.02, 12-6.2, 12-6.5, 12-7.1, 12-7.5, 12-20.5, 12-32, 12-33, 12-34, 12-34.5, 18-1, 18-2, 18-3, 18-4, 18-6, 19-3, 19-6, 20-1, 20-1.1, 24-1.2, 24-1.2-5, 24-1.5, 24-3A, 24-3B, 24-3.2, 24-3.8, 24-3.9, 29D-14.9, 29D-20, 30-1, 31-1a, 32-4a, or 33A-2 of the Criminal Code of 2012, or subsection (b) of Section 8-1, paragraph (4) of subsection (a) of Section 11-14.4, subsection (a-5) of Section 12-3.1, paragraph (1), (2), or (3) of subsection (a) of Section 12-6, subsection (a-3) or (a-5) of Section 12-7.3, paragraph (1) or (2) of subsection (a) of Section 12-7.4, subparagraph (i) of paragraph (1) of subsection (a) of Section 12-9, subparagraph (H) of paragraph (3) of subsection (a) of Section 24-1.6, paragraph (1) of subsection (a) of Section 25-1, or subsection (a-7) of Section 31-1 of the Criminal Code of 2012.

*11-1.20 <sup>2</sup>	criminal sexual assault	12-13
*11-1.30	aggravated criminal sexual assault	12-14
*11-1.40	predatory criminal sexual assault of a child	12-14.1
*11-1.50	criminal sexual abuse	12-15
*11-1.60	aggravated criminal sexual abuse	12-16
*11-6	indecent solicitation of a child	
*11-6.5	indecent solicitation of an adult	
12-2	aggravated assault	
12-3.05	aggravated battery	
12-3.3	aggravated domestic battery	
12-4.4a	abuse/neglect of long term facility resident; criminal abuse or neglect of elderly person or person with disability	
12-5.02	vehicular endangerment	
12-6.2	aggravated intimidation	
12-6.5	compelling organization membership of persons	
12-7.1	hate crime	
12-7.5	cyberstalking	
12-20.5	dismembering a human body	
12-32	ritual mutilation	
12-33	ritualized abuse of a child	
12-34	female genital mutilation	
12-34.5	inducement to commit suicide	
18-1	robbery	
18-2	armed robbery	
18-3	vehicular hijacking	
18-4	aggravated vehicular hijacking	
18-6	vehicular invasion	

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<sup>2</sup>Article 11 = “SEX OFFENSES”

19-3	residential burglary	
19-6	home invasion	
20-1	arson	
20-1.1	aggravated arson	
24-1.2	aggravated discharge of a firearm	
24-1.2-5	aggravated discharge of a machine gun or a firearm equipped with silencer	
24-1.5	reckless discharge of a firearm	
24-3A	Gunrunning	
24-3B	Firearms trafficking	
24-3.2	unlawful discharge of firearm projectiles	
24-3.8	possession of a stolen firearm	
24-3.9	firearms; child protection	
29D-14.9	terrorism	
29D-20	making a terrorist threat	
30-1	treason	
31-1a	disarming a police officer or correctional institution employee	
32-4a	harassment of representative for a child, jurors, witnesses, others	
33A-2	armed violence	



8-1(b)	solicitation of murder with intent that first degree murder be committed	
*11-14.4(a)(4)	promoting juvenile prostitution; confines a child under 18 or severely mentally retarded person by threat, or by administering drugs or alcohol without consent for other than medical purposes	
12-3.1(a-5)	aggravated battery of unborn child by knowingly causing great bodily or permanent disability or disfigurement	
12-6(a)(1), (2), or (3)	intimidation by (1) inflicting physical harm on person threatened or any other person/ property; (2) subject any person to physical confinement or restraint; or (3) commit a felony or Class A misdemeanor	
12-7.3(a-3)	stalking when on at least two separate occasions follows another person or places person under surveillance and [one of two conditions]	
12-7.3(a-5)	previously convicted of stalking and knowingly and without lawful justification [follows/surveils or transmits a threat]	
12-9(1)(a)(i)	threatening public officials, by directly or indirectly delivers or conveys to a public official, containing a threat that would place the public official or an immediate family member in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint	
24-1.6(a)(3)(H)	aggravated unlawful use of a weapon, when person possessing weapon was engaged in commission of misdemeanor involving use of threat of violence against person or property of another	
25-1(a)(1)	mob action involving the knowing or reckless use of force or violence disturbing the public peace by 2 or more persons acting together and w/o authority of law	
31-1(a-7)	Class 4 felony – resisting or obstructing a peace officer or correctional officer, when defendant was proximate cause of an injury to a peace officer, firefighter, or correctional institution employee	