



# The Office of the State Appellate Defender

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## GENERAL INFORMATION - DO I QUALIFY?

### GUIDE TO EXPUNGE RECORD BASED ON IDENTITY THEFT/ACTUAL INNOCENCE

Financial Identity Theft 720 ILCS 5/16G  
Criminal Identity Theft 20 ILCS 2630/5(b)

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## **I INTRODUCTION**

Identity theft is a rapidly growing problem, not just in Illinois but nationwide. Many people are not aware that their personal information has been stolen until they apply for a job or a loan. Suddenly, they are rejected by the employer or turned down for the loan. If this has happened to you, there are steps you can take to clear up a false record. Which steps you take will depend on what type of identity theft you experienced.

## **II. TYPES OF IDENTITY THEFT**

Generally, Identity Theft falls into two broad categories (1) Financial Identity Theft and (2) Criminal Identity Theft.

### **A. Financial Identity Theft**

Financial Identity Theft is governed under 720 ILCS 5/16G. Financial Identity Theft occurs when someone has accessed your personal financial records, such as credit card numbers, PIN's (Personal Identification Number), banking records, etc. The thieves can get this information from a variety of sources and in a number of different ways. They may, for example, steal records from where they work, or bribe someone to do so. They can also hack into computers containing data, or as has been seen recently, steal data that has been stored on laptop computers. An easy method to obtain personal information is to go through the trash of the victim to find discarded credit card or bank statements, voided checks, credit card or loan applications. Once this information is obtained, false accounts can be opened, running up huge debts or fraudulent checks can be written. All of this activity is ultimately charged to the innocent consumer, destroying credit ratings, and may lead to actual criminal charges.

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### **B. Criminal Identity Theft**

Criminal Identity Theft is governed by 20 ILCS 2630/5(b), (The "Criminal Identification Act"). It defines Criminal Identity Theft as whenever a person has been convicted of a crime, or the violation of a municipal ordinance in the name of a person whose identity has been stolen or otherwise come into possession without authorization.

Criminal Identity Theft happens when someone has used your name and/or identification upon their arrest or conviction for a crime. Often, the victim of Criminal Identity Theft will not know what has happened until they apply for a job that requires a background check - or worse, a records check is conducted during a routine traffic stop that reveals active warrants issued in the victim's name, arrests or convictions. Criminal Identity Theft can occur when (1) the person arrested is carrying no identification and simply uses your name (2) the thief has actually stolen identity documents from you and he/she physically

resembles you to the extent that the arresting agency believes that it IS you (it is a sad fact, but often the person who has stolen your identity is a family member) or (3) the thief has tampered with an identity document, in some cases inserting his/her own photograph.

### **1. How do I find out if someone has committed a crime using my name?**

If you have been repeatedly rejected by employers or lenders with no good reason given, this could be a symptom of criminal identity theft. Usually people find out that they have been the victim of criminal identity theft by accident. The Privacy Rights Clearinghouse recommends that, just as you would order a credit history a few times a year, if you think you have been a victim, order a Driver's Abstract from the Secretary of State's office. You can also either hire an investigation service to run a full criminal background on yourself or, using one of the online information broker services, conduct your own investigation. You may also want to contact the Social Security Administration to obtain a copy of your Social Security Personal Earnings and Benefit Estimate Statement. This will tell you if someone is fraudulently using your Social Security Number for employment purposes. Go to our [Helpful Links](#) page for helpful links. You can also learn more about Identity Theft in general by accessing the [Privacy Rights Clearinghouse](#) website.

## **III. WHERE DO I GO FOR HELP**

### **A. Financial Identity Theft Help**

If you believe you've been a victim of Financial Identity Theft, contact the [Attorney General's Identity Theft Hotline](#). Advocates who specialize in Financial Identity Theft will walk you through the process of removing the false information from your records.

### **B. Criminal Identity Theft Help/ How Do I Clear "My Record?"**

The Criminal Identification Act contains specific remedies, or means of correcting the wrong to the victim. If you believe you are victim of Criminal Identity Theft, you may petition the Chief Judge of the circuit where the arrest occurred, to have an order entered to correct all official records and to have the name of the actual offender (if known) inserted on the record. In addition, as a victim of Criminal Identity Theft you are entitled to a Finding of Factual Innocence. This is a court order, signed by a judge, stating that there is no reasonable cause to believe that the Petitioner (you) committed the offense. Click here for a Petition for a [Finding of Factual Innocence](#).

If you believe you are a victim of Criminal Identity Theft, report at the police station that has jurisdiction over where you currently live.<sup>2</sup> (This is usually, but not always, the station closest to your home.) Before you go to the station, gather any documentation that will support your claim. If you can prove that you were elsewhere when the crime mistakenly charged to you was committed, provide evidence supporting

this. This can be (but is not limited to) such items as time sheets or punch cards, hotel/airline/restaurant/taxi cab/rental car receipts and/or affidavits from reliable witnesses. Make several copies of any documentation for (1) the Police, (2) to attach to the Petition when you file and (3) for your own records.

Take a copy of your Driver's License, Social Security Card, Passport, Birth Certificate, or any other kind of information that will positively identify you. Tell the officer at the station that you wish to file a formal report alleging Criminal Identity Theft. The officer who takes your report will give you a copy of it, or give you the report number. You will need this information for your Petition. Ask that the police fingerprint and photograph you. An investigation will be opened, in which your identifying information will be compared to that of the actual criminal. The police should then provide you with a written statement verifying that you are not the accused. If the crimes of which you were falsely accused occurred in another jurisdiction (another city, county or state), the local police will forward the identification information received from you to that Department along with your fingerprint card and photograph. The foreign police department should compare the identifiers and send written verification to the local department.

### **1. Identify Theft - Petition fo Expunge and For Judicial Determination of Factual Innocence**

Complete the [Factual Innocence Petition](#). Once filled out, with your signature notarized, make six copies. Attach copies of all of your supporting documents to each Petition. File your Petition with the [Clerk of the Circuit Court](#) where the crime occurred. There is no charge for filing a Petition to Expunge based on Identity Theft in Cook County. Other counties may charge a filing fee. You will probably be given a date to appear at a hearing. You MUST appear, or your Petition will most likely be denied. At the hearing, the Judge may ask you some questions. Do not be alarmed, but answer truthfully and politely ("Yes, ma'am/sir", "Yes, Your Honor").

### **2. Identify Theft - Traffic or Vehicular Offenses**

You may also want to check the Secretary of State's office to ensure that traffic tickets or other vehicular offenses have not been committed in your name. In Chicago, if traffic or parking tickets appear on your record, you will need to contact the City of Chicago, Department of Revenue to request a hearing. For other municipalities, contact the authority that issued the ticket. You should file a police report with your local department. If the identity thief has out of state infractions that have resulted in a suspension or revocation of your Illinois driving privileges, file a report with your local police and contact the Circuit Court in the county where the offenses occurred. You will also want to contact the branch of government (Department of Motor Vehicles, Department of Public Safety, etc.), that administers that state's driving records. If the traffic offenses occurred in a different county in Illinois, file a police report with your local police and contact the Circuit Court where the infractions happened. You will need a finding of "Wrongful Defendant" from them to send to the Illinois Secretary of State's Fraud Bureau. You can find out more about this process by accessing the "Links" section of this Guide.

### **3. Identify Theft - Arrest Records - Information Brokers**

An arrest, even if it does not result in a conviction or any court action, is a matter of public record. Various agencies - law enforcement, Circuit Court Clerk's offices and others often sell these records to "information brokers". This data base is used by private companies to run background checks on potential employees, renters, and loan applicants. The companies that obtain the information are not obligated to monitor their records for accuracy. So, even if you have been successful in getting the false criminal history expunged, this bad information could remain floating around in cyberspace. After there has been a judicial correction of the record, or finding of factual innocence, contact as many information brokers as you can so that they may correct their records. Otherwise, the erroneous information will still be accessible by those people/organizations who have reason to conduct a background investigation on you.

Realizing that someone has stolen your identity can be a very unnerving experience. Finding out that they have been accused of committing crimes, or have committed crimes under your name can be downright terrifying. However, if you can keep calm and remain persistent, you can come through this ordeal.

### **4. Identify Theft - Active Warrants**

Active warrants issued by a judge in the name of the victim are a frequent consequence of Criminal Identity Theft. The procedure for correcting this is called "Quashing a Warrant" and it can get a little complicated. You may wish to contact an attorney for assistance. The Office of the State Appellate Defender has a list of available attorneys on our [Legal Services](#) page. The attorney list is made up of attorneys who have agreed to be listed. The Office of the State Appellate Defender does not endorse or recommend any attorney on the attorney list.. Your attorney will ask that a hearing date be set. Make sure your attorney has all of the supporting materials proving that you have been mistakenly associated with a criminal offense. Based on these materials, your lawyer will ask the judge to enter an order correcting the record, (called correcting nunc pro tunc), quash the warrant and re-issue it in the correct name, if known or ascertainable. Your attorney should also ask the judge to order the arresting agency and/or the Illinois State Police to correct the Law Enforcement Agencies Data System ("LEADS").