



2019 SENATE BILL 39

February 15, 2019 - Introduced by Senators DARLING, RISSER, L. TAYLOR, BERNIER, CARPENTER, FEYEN, JOHNSON, LARSON, OLSEN, PETROWSKI, RINGHAND, SCHACHTNER, SMITH, TESTIN, TIFFANY, WANGGAARD and WIRCH, cosponsored by Representatives STEFFEN, GOYKE, ALLEN, ANDERSON, BILLINGS, BOWEN, BROOKS, BROSTOFF, CABRERA, CONSIDINE, CROWLEY, DOYLE, EDMING, FELZKOWSKI, FIELDS, GUNDRUM, HAYWOOD, HINTZ, KERKMAN, KOLSTE, KRUG, KULP, LOUDENBECK, MURSAU, MYERS, NOVAK, NYGREN, OHNSTAD, PETRYK, PLUMER, POPE, PRONSCHINSKE, QUINN, RAMTHUN, RIEMER, ROHRKASTE, SARGENT, SCHRAA, SINICKI, SKOWRONSKI, SNYDER, SORTWELL, SPIROS, SPREITZER, STUBBS, SUBECK, TAUCHEN, C. TAYLOR, THIESFELDT, TITTL, VINING, VRUWINK, ZAMARRIPA and ZIMMERMAN. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to renumber* 111.335 (3) (a); *to renumber and amend* 973.015 (1m) (a)
2 1.; *to amend* 111.335 (4) (b), 111.335 (4) (c) 1. (intro.), 111.335 (4) (e), 111.335
3 (4) (f) 1., 950.04 (1v) (g) and 973.015 (1m) (b); and *to create* 111.335 (3) (ag),
4 973.015 (1m) (a) 1. a. and b., 973.015 (1m) (a) 3. c. and d. and 4., 973.015 (1m)
5 (c) and 973.015 (4) of the statutes; **relating to:** expungement of records of
6 certain crimes.

Analysis by the Legislative Reference Bureau

Under current law, a court may order a person's criminal record expunged of a crime for which the maximum term of imprisonment is six years or less (Class H felony and below) if the person committed that crime before the age of 25, the person had not been previously convicted of a felony, and the crime was not a violent felony. Current law specifies that the expungement order must be made only at sentencing and then the record is expunged when the person completes his or her sentence.

This bill removes the condition that the person committed the crime before the age of 25 (the bill retains the requirements that the crime be no greater than a Class H felony, the person had no previous felony convictions, and the crime was not a violent felony) and makes certain traffic crimes ineligible for expungement. This bill also provides that, if the sentencing court did not order the record expunged, the person may file a petition with the sentencing court after he or she completes his or her sentence. Upon receipt of the petition, the court must review the petition and

SENATE BILL 39

then may order the record expunged or may deny the petition. If the court denies the petition, the person may not file another petition for two years, and no person may file more than two petitions per crime. The changes described in this paragraph retroactively apply to persons who were convicted of a crime before this bill takes effect.

This bill also allows the sentencing court to order that a person's record not be eligible for expungement. This bill provides that, if a record is expunged of a crime, that crime is not considered a conviction for employment purposes and specifies that employment discrimination because of a conviction record includes requesting a person to supply information regarding a crime if the record has been expunged of the crime.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 111.335 (3) (a) of the statutes is renumbered 111.335 (3) (ar).

2 **SECTION 2.** 111.335 (3) (ag) of the statutes is created to read:

3 111.335 (3) (ag) Employment discrimination because of conviction record
4 includes, but is not limited to, requesting an applicant, employee, member, licensee,
5 or any other individual, on an application form or otherwise, to supply information
6 regarding a crime the record of which has been expunged under s. 973.015. A request
7 to supply information regarding criminal convictions shall not be construed as a
8 request to supply information regarding a crime the record of which has been
9 expunged under s. 973.015.

10 **SECTION 3.** 111.335 (4) (b) of the statutes is amended to read:

11 111.335 (4) (b) It is employment discrimination because of conviction record for
12 a licensing agency to refuse to license any individual under sub. (3) (a) (ar) 1. or to
13 bar or terminate an individual from licensing under sub. (3) (a) (ar) 1. because the
14 individual was adjudicated delinquent under ch. 938 for an offense other than an
15 exempt offense.

SENATE BILL 39

1 **SECTION 4.** 111.335 (4) (c) 1. (intro.) of the statutes is amended to read:

2 111.335 (4) (c) 1. (intro.) If a licensing agency refuses to license an individual
3 under sub. (3) ~~(a)~~ (ar) 1. or bars or terminates an individual from licensing under sub.
4 (3) ~~(a)~~ (ar) 1., the licensing agency shall, subject to subd. 2., do all of the following:

5 **SECTION 5.** 111.335 (4) (e) of the statutes is amended to read:

6 111.335 (4) (e) A state licensing agency that may refuse to license individuals
7 under sub. (3) ~~(a)~~ (ar) 1. or that may bar or terminate an individual from licensure
8 under sub. (3) ~~(a)~~ (ar) 1. shall publish on the agency's Internet site a document
9 indicating the offenses or kinds of offenses that may result in such a refusal, bar, or
10 termination.

11 **SECTION 6.** 111.335 (4) (f) 1. of the statutes is amended to read:

12 111.335 (4) (f) 1. A state licensing agency that may refuse to license individuals
13 under sub. (3) ~~(a)~~ (ar) 1. or that may bar or terminate individuals from licensing
14 under sub. (3) ~~(a)~~ (ar) 1. shall allow an individual who does not possess a license to,
15 without submitting a full application and without paying the fees applicable to
16 applicants, apply to the agency for a determination of whether the individual would
17 be disqualified from obtaining the license due to his or her conviction record.

18 **SECTION 7.** 950.04 (1v) (g) of the statutes is amended to read:

19 950.04 (1v) (g) To have reasonable attempts made to notify the victim of
20 hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6),
21 938.27 (4m) and (6), 938.273 (2), 971.095 (3) ~~and~~, 972.14 (3) (b), and 973.015 (1m) (c).

22 **SECTION 8.** 973.015 (1m) (a) 1. of the statutes is renumbered 973.015 (1m) (a)
23 1. (intro.) and amended to read:

24 973.015 (1m) (a) 1. (intro.) Subject to subd. 2. ~~and except as provided in subd.~~
25 ~~3., when a person is under the age of 25 at the time of the commission of an offense~~

SENATE BILL 39**SECTION 8**

1 ~~for which the person has been found guilty in a court for violation of a law for which~~
2 ~~the maximum period of imprisonment is 6 years or less, the, a court may order at the~~
3 ~~time of sentencing after a conviction that the record a criminal case be expunged~~
4 ~~upon successful completion of the sentence if the court determines the person will~~
5 ~~benefit and society will not be harmed by this disposition. by one of the following~~
6 methods:

7 (d) This subsection does not apply to information maintained by the
8 department of transportation regarding a conviction that is required to be included
9 in a record kept under s. 343.23 (2) (a).

10 **SECTION 9.** 973.015 (1m) (a) 1. a. and b. of the statutes are created to read:

11 973.015 (1m) (a) 1. a. Except as provided in subd. 3., the court may order at the
12 time of sentencing that the record be expunged upon successful completion of the
13 sentence if the court determines that person will benefit and society will not be
14 harmed by this disposition.

15 b. If at least one year has passed since the person successfully completed his
16 or her sentence, the person may file a petition in the county of conviction requesting
17 that the record be expunged. Upon receipt of the petition, the court shall review the
18 petition to determine if the person is ineligible to petition for expungement because
19 subd. 3. or 4. applies, less than one year has passed since the person successfully
20 completed his or her sentence, there are criminal charges pending against the
21 person, or the person has exceeded the maximum number of petitions allowed under
22 this subd. 1. b. If the court determines the person is eligible to petition for
23 expungement, the court shall forward the petition to the district attorney. If the
24 district attorney requests a hearing within 90 days after the court forwards the
25 petition, the court shall schedule a hearing to review the petition. If the district

SENATE BILL 39

1 attorney waives the hearing or at least 90 days have passed since the court forwarded
2 the petition, the court may review the petition with or without a hearing. If a hearing
3 is scheduled, then if practicable, the sentencing judge shall be the judge to review the
4 petition. The court may order that the record be expunged if the court determines
5 the person will benefit and society will not be harmed by this disposition. If the court
6 does not order the record be expunged under this subd. 1. b., the person may file a
7 2nd petition under this subd. 1. b. only if at least 2 years have passed since he or she
8 filed the first petition. No person may file more than 2 petitions per record under this
9 subd. 1. b. For a 2nd petition regarding the same record, the person shall pay to the
10 clerk of circuit court a \$100 fee.

11 **SECTION 10.** 973.015 (1m) (a) 3. c. and d. and 4. of the statutes are created to
12 read:

13 973.015 (1m) (a) 3. c. A crime for which the maximum period of imprisonment
14 is more than 6 years.

15 d. A violation of chs. 341 to 348.

16 4. The court may order at the time of sentencing that the record is ineligible
17 for expungement.

18 **SECTION 11.** 973.015 (1m) (b) of the statutes is amended to read:

19 973.015 (1m) (b) ~~A~~ For purposes of par. (a), a person has successfully
20 completed the sentence if the person has completed all periods of incarceration,
21 parole, or extended supervision to which he or she was sentenced; the person has paid
22 all fines, costs, fees, surcharges, and restitution assessed and has completed any
23 court-ordered community service; the person has not been convicted of a subsequent
24 offense crime; and, if on probation was imposed, the probation has not been revoked
25 and the probationer has satisfied the conditions of probation. Upon successful

SENATE BILL 39**SECTION 11**

1 completion of ~~the a sentence involving incarceration or probation,~~ the detaining or
2 probationary authority shall issue and forward to the court of record a certificate of
3 discharge ~~which shall be forwarded to the court of record and which shall have the~~
4 ~~effect of expunging the record~~ that indicates whether the person successfully
5 completed his or her sentence. If the court has ordered the record expunged under
6 par. (a) 1. a. or 2. and the person has successfully completed the sentence, the person's
7 record shall be expunged as ordered. If the person has been ~~imprisoned~~ incarcerated,
8 the detaining authority shall also forward a copy of the certificate of discharge to the
9 department.

10 **SECTION 12.** 973.015 (1m) (c) of the statutes is created to read:

11 973.015 (1m) (c) Upon receipt of a petition under par. (a) 1. b., the district
12 attorney shall make a reasonable attempt to notify the victim, as defined under s.
13 950.02 (4), of the petition. In the notice, the district attorney shall inform the victim
14 that he or she may waive the hearing requirement and that, if waived, the court may
15 review the petition without a hearing. The district attorney shall inform the victim
16 of the manner in which he or she may provide written statements concerning the
17 petition and, if the victim does not waive the hearing requirement, that he or she may
18 appear at the hearing. If the victim waives the hearing requirement, the district
19 attorney may inform the court that there is no objection to waiving the hearing
20 requirement. Notwithstanding the confidentiality of victim address information
21 obtained under s. 302.113 (9g) (g) 3., a district attorney who is required to make a
22 reasonable attempt to notify a victim under this paragraph may obtain from the clerk
23 of the circuit court the victim address information that the victim provided to the
24 clerk under s. 302.113 (9g) (g) 3.

25 **SECTION 13.** 973.015 (4) of the statutes is created to read:

