

2005 DRAFTING REQUEST

Bill

Received: **01/03/2005**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Frederick Kessler (608) 266-5813**

By/Representing: **himself**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kessler@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**
cathlene.hanaman@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Expungement of misdemeanors

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 01/19/2005	kfollett 01/19/2005		_____			
/P1			jfrantze 01/19/2005	_____	sbasford 01/19/2005		
/P2	mdsida 01/21/2005 mdsida	kfollett 01/28/2005 kfollett	jfrantze 01/28/2005	_____	lemery 01/28/2005		S&L

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	01/31/2005	02/01/2005 kfollett 02/03/2005		_____			
/1			pgreensl 02/03/2005	_____	lemery 02/03/2005	Inorthro 02/23/2005	S&L
/2	mdsida 03/10/2005	kfollett 03/11/2005	chaugen 03/11/2005	_____	Inorthro 03/11/2005	Inorthro 03/11/2005	

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	mdsida	kfollett		_____			

12/18/05
3/1/05

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

01/31/2005 02/01/2005
kfollett
02/03/2005

/1

pgreensl
02/03/2005

lemery
02/03/2005

Inorthro
02/23/2005

Ch 3-11
Def 3-11

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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02/03/2005

/1

pgreensl _____
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/P1			jfrantze 01/19/2005	<u>0</u> <u>3</u>	sbasford 01/19/2005		
/P2	mdsida 01/21/2005	kfollett 01/28/2005	jfrantze 01/28/2005	<u>1287</u> <u>01/28/2005</u>	lemery 01/28/2005		

Handwritten notes:
Under /P2 Reviewed: 11 kgf, 2/3
Under /P2 Typed: 2/3, 208
Under /P2 Proofed: [Signature]

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Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**
athlene.hanaman@legis.state.wi.us

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/?	mdsida	1/1/19 1/1/19	1/1/19	1/1/19			

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/?	mdsida			_____			

FE Sent For:

<END>

Expungement -
All misdemeanors

Takes effect 6 yrs after completion of sentence

No subseq convictions

Restitution / court costs / fines

or after end of expungement period for any
subseq offense



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1447(?)

MGD: [Signature]

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Today

Gen

1 AN ACT ...; relating to: expungement of misdemeanors.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

2 SECTION 1. 973.015 (1) (a) of the statutes, as affected by 2003 Wisconsin Act 33,
3 is amended to read:

4 973.015 (1) (a) Subject to par. (b), when a person is under the age of 21 at the
5 time of the commission of an offense for which the person has been found guilty in
6 a court for violation of a law for which the maximum penalty is imprisonment for one
7 year or less in the county jail, the court may order at the time of sentencing that the
8 record be expunged upon successful completion of the sentence if the court
9 determines the person will benefit and society will not be harmed by this disposition.

10 ~~This subsection does not apply to information maintained by the department of~~

1 ~~transportation regarding a conviction that is required to be included in a record kept~~
2 ~~under s. 343.23 (2) (a).~~

NOTE: NOTE: Par. (a) is affected by 3 acts of the 2003 Wisconsin legislature, eff. 9-30-05, to read: NOTE:

History: 1975 c. 39; 1975 s. 105; 1975 c. 189; 1975 c. 199; 1983 a. 519; 1991 a. 189; 2003 a. 33, 50, 320.

3 **SECTION 2.** 973.015 (2) of the statutes is amended to read:

4 973.015 (2) A person has successfully completed the sentence if the person has
5 not been convicted of a subsequent offense and, if on probation, ~~the probation has not~~
6 ~~been revoked and the probationer~~ has satisfied the conditions of probation. Upon
7 successful completion of the sentence the detaining or probationary authority shall
8 issue a certificate of discharge which shall be forwarded to the court of record and
9 which shall have the effect of expunging the record. Upon receiving the certificate
10 of discharge, the clerk of court shall notify the department of justice of the
11 expungement. If the person ~~has been~~ was imprisoned, the detaining authority shall
12 also forward a copy of the certificate of discharge to the department of corrections.

13 **SECTION 3.** 973.015 (3) and (4) of the statutes are created to read:

14 973.015 (3) If a record of a conviction is expunged under sub. (2), the petitioner
15 shall not be subject to any prohibition, disqualification, disability, increased penalty,
16 or other adverse or unfavorable treatment that would otherwise result from the
17 person having been convicted of that offense.

18 (4) (a) Except as provided in par. (b) and sub. (2), if a record of a conviction is
19 expunged under sub. (2), neither the existence nor the contents of the court's records
20 relating to the misdemeanor may be disclosed to any person.

21 (b) Notwithstanding SCR 72.06 (3), the existence and content of a court record
22 that is expunged under sub. (2) may be disclosed to the person who was convicted or,
23 if authorized by the person who was convicted, to an attorney representing the
24 person who was convicted.

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

4 **SECTION 4.** 973.016 of the statutes is created to read:

5 **973.016 Misdemeanor expungement.** (1) DEFINITIONS. In this subsection:

6 (a) "Satisfied the judgment of conviction" means that a defendant has
7 completed any term of probation or sentence imposed for an offense and has paid all
8 court costs, fines, and surcharges imposed and all restitution ordered in that case.

9 (b) "Subject to a misdemeanor judgment of conviction" means that a defendant
10 was convicted of a misdemeanor but has not satisfied the judgment of conviction.

11 (2) ELIGIBILITY. If a person is convicted of one or more misdemeanors that have
12 not been expunged under s. 973.015, the person is eligible to have the record of each
13 of the convictions expunged if all of the following apply:

14 (a) The person has satisfied the judgment of conviction in each case.

15 (b) At least 6 years have passed since the person was last subject to a
16 misdemeanor judgment of conviction.

17 (c) The person has never been convicted of a felony under federal law or the law
18 of any state.

19 (3) AFFIDAVIT OF ELIGIBILITY. A person who is eligible for expungement under
20 sub. (2) may file an affidavit with the clerk of court for the circuit court in which the
21 person was convicted of one of the misdemeanors or the circuit court for the county
22 in which the person resides. The department of justice shall design a form affidavit
23 to be used under this subsection and shall make the form available to all clerks of
24 court.

1 (4) EXPUNGEMENT. (a) If a person properly files an affidavit of eligibility under
2 sub. (3), the record of each of the person's misdemeanor convictions shall be
3 expunged, subject to par. (c). Thereafter, the person shall not be subject to any
4 prohibition, disqualification, disability, increased penalty, or other adverse or
5 unfavorable treatment that would otherwise result from the person having been
6 convicted of any of those offenses.

7 (b) The clerk of court shall notify the department of justice of any expungement
8 under this section.

9 (c) 1. Except as provided in subd. 2. and par. (b), if a record of a conviction is
10 expunged under this section, neither the existence nor the contents of the court's
11 records relating to the misdemeanor may be disclosed to any person.

12 2. Notwithstanding SCR 72.06 (3), the existence and content of a court record
13 that is expunged under this section may be disclosed to the person who was convicted
14 or, if authorized by the person who was convicted, to an attorney representing the
15 person who was convicted.

16 3. This paragraph does not apply to information maintained by the department
17 of transportation regarding a conviction that is required to be included in a record
18 kept under s. 343.23 (2) (a).

19 **SECTION 5. Effective date.**

20 (1) This act takes effect on September 30, 2005, or the day after publication,
21 whichever is later.

22 (END)

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

PI
LRB-1447/?dn

MGD: *[Signature]*

Date

Rep. Kessler:

A person who files a false affidavit would be subject to prosecution under s. 946.32, but should the bill specify that the expungement is void in such a case as well? Does the state have to wait until the person is convicted (by the beyond-a-reasonable-doubt standard) before voiding the expungement?

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1447/P1dn
MGD:kjf:jf

January 19, 2005

Rep. Kessler:

A person who files a false affidavit would be subject to prosecution under s. 946.32, but should the bill specify that the expungement is void in such a case as well? Does the state have to wait until the person is convicted (by the beyond-a-reasonable-doubt standard) before voiding the expungement?

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867



State of Wisconsin
2005 - 2006 LEGISLATURE

other

LRB-1447/PI

MGD:KMF

KA

Now

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INS
1/3

2/22

renumbered 973.015 (2m) and 973.015 (2m)(a), as
renumbered, is
Regen

1 AN ACT to amend 973.015 (1) (a) and 973.015 (2); and to create 973.015 (3) and
2 (4) and 973.016 of the statutes; relating to: expungement of misdemeanors.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

Change component

3 SECTION 973.015 (1) (a) of the statutes, as affected by 2003 Wisconsin Act 33,
4 is amended to read: ^{2m}
5 973.015 (1) (a) Subject to par. (b), when ^{if} a person is ~~under the age of 21 at the~~
6 ~~time of the commission~~ ^{convicted} of an offense for which the person has been found guilty in
7 a court for violation of a law for which the maximum penalty is imprisonment for one
8 year or less in the county jail, the court may order at the time of sentencing that the
9 record be expunged upon successful completion of the sentence if the court
10 determines the person will benefit and society will not be harmed by this disposition.

or during the
sentence

④ B (5)

section

PLAIN TEXT

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

change component

① (m)

~~SECTION 2. 973.015 (2) of the statutes is amended to read:~~

In this section, "successfully completes a sentence" means that a

~~973.015 (2) A person has successfully completed the sentence if the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation. Upon~~

~~successful completion of the sentence, the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record. Upon receiving the certificate~~

~~of discharge, the clerk of court shall notify the department of justice of the expungement. If the person has been was imprisoned, the detaining authority shall also forward a copy of the certificate of discharge to the department of corrections.~~

~~SECTION 3. 973.015 (3) and (4) of the statutes are created to read:~~

~~973.015 (3) If a record of a conviction is expunged under sub. (2), the petitioner shall not be subject to any prohibition, disqualification, disability, increased penalty, or other adverse or unfavorable treatment that would otherwise result from the person having been convicted of that offense.~~

~~(4) (a) Except as provided in par. (b) and sub. (2), if a record of a conviction is expunged under sub. (2), neither the existence nor the contents of the court's records relating to the misdemeanor may be disclosed to any person.~~

~~(b) Notwithstanding SCR 72.06 (3), the existence and content of a court record that is expunged under sub. (2) may be disclosed to the person who was convicted or, if authorized by the person who was convicted, to an attorney representing the person who was convicted.~~

④

(2m) (c) If a person who is the subject of an order under par. (a) or (b) successfully completes the

PLAIN

④ (4)

clerk of circuit court

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

4 **SECTION 4.** 973.016 of the statutes is created to read:

5 **973.016 Misdemeanor expungement.** (1) DEFINITIONS. In this subsection:

6 (a) “Satisfied the judgment of conviction” means that a defendant has
7 completed any term of probation or sentence imposed for an offense and has paid all
8 court costs, fines, and surcharges imposed and all restitution ordered in that case.

9 (b) “Subject to a misdemeanor judgment of conviction” means that a defendant
10 was convicted of a misdemeanor but has not satisfied the judgment of conviction.

11 (2) ELIGIBILITY. If a person is convicted of one or more misdemeanors that have
12 not been expunged under s. 973.015, the person is eligible to have the record of each
13 of the convictions expunged if all of the following apply:

14 (a) The person has satisfied the judgment of conviction in each case.

15 (b) At least 6 years have passed since the person was last subject to a
16 misdemeanor judgment of conviction.

17 (c) The person has never been convicted of a felony under federal law or the law
18 of any state.

19 (3) AFFIDAVIT OF ELIGIBILITY. A person who is eligible for expungement under
20 sub. (2) may file an affidavit with the clerk of court for the circuit court in which the
21 person was convicted of one of the misdemeanors or the circuit court for the county
22 in which the person resides. The department of justice shall design a form affidavit
23 to be used under this subsection and shall make the form available to all clerks of
24 court.

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1447/P2ins
MGD:.....

INSERT 1/3

Change Component

SECTION 1. 973.015 (title) of the statutes is amended to read:

~~973.015 (title) Misdemeanors, special disposition~~ Expungement of
misdemeanors.

History: 1975 c. 39; 1975 c. 189 s. 105; 1975 c. 199; 1983 a. 519; 1991 a. 189; 2003 a. 33, 50, 320.

INSERT 2/11

for a person who is subject to an order under sub. (2m) or upon the entry of an
expungement order under sub. (3).

INSERT 2/13

SECTION 2. 973.015 (3) of the statutes is created to read:

973.015 (3) If a person is convicted of an offense for which the maximum penalty is imprisonment for one year or less in the county jail and the person successfully completes the sentence, the court may order at any time thereafter that the record be expunged if it determines the person will benefit and society will not be harmed by this disposition. The detaining or probationary authority shall notify the court, upon request, whether a person successfully completed his or her sentence.

repealed and recreated

Dsida, Michael

From: Dsida, Michael
Sent: Monday, January 31, 2005 1:46 PM
To: Little, Sharon
Subject: Requested change in 05-1447

I don't think that you need to make the change that Rep. Kessler requested this morning. Subsection (2m) will cover cases in which the person's conviction is expunged automatically, but only upon completion of the sentence -- and not later. Thus, "during the sentence" makes more sense on p. 2, line 3. The "any other time" scenario will be covered by sub. (3).

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@legis.state.wi.us

*P/c from Sharon -
make the change anyway.*

1447

X-refs to renumbered

973.015(2) →
973.015(1m)

301.45(1p)

(1p) Exception to registration requirement; expungement of invasion of privacy adjudication or conviction. If a person is covered under sub. (1g) based solely on an order that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in connection with a delinquency adjudication or a conviction for a violation of s. 942.08 (2) (b), (c), or (d), the person is not required to comply with the reporting requirements under this section if the delinquency adjudication is expunged under s. 938.355 (4m) (b) or if the conviction is expunged under s. 973.015 (2).

301.45(7)(e)2.

2. The department issues a certificate of discharge under s. 973.015 (2).

301.45(7)(e)3.

3. The department receives a certificate of discharge issued under s. 973.015 (2) by the detaining authority.

f/c from Rep Keosler -

If expunged, then no registration req'd



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1447/P2

MGD:kjf

Kjf
1
RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Thus

Regen

1 AN ACT *to renumber and amend* 973.015 (1) and 973.015 (2); *to repeal and*
2 *recreate* 973.015 (title); and *to create* 973.015 (3) of the statutes; **relating to:**
3 expungement of misdemeanors.

ANALYSIS/NS

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

NS
1/4

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

4 SECTION 1. 973.015 (title) of the statutes is repealed and recreated to read:
5 **973.015 (title) Expungement of misdemeanors.**

6 SECTION 2. 973.015 (1) of the statutes, as affected by 2003 Wisconsin Act 33,
7 is renumbered 973.015 (2m), and 973.015 (2m) (a), as renumbered, is amended to
8 read:

9 973.015 (2m) (a) Subject to par. (b), when if a person is under the age of 21 at
10 ~~the time of the commission convicted~~ of an offense for which the person has been

1 found guilty in a court for violation of a law for which the maximum penalty is
 2 imprisonment for one year or less in the county jail, the court may order at the time
 3 of sentencing or during the sentence ^{at any other time} that the record be expunged upon successful
 4 completion of the sentence if the court determines the person will benefit and society
 5 will not be harmed by this disposition.

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

9 SECTION 3. 973.015 (2) of the statutes is renumbered 973.015 (1m) and
 10 amended to read:

11 973.015 (1m) ~~A person has successfully completed the sentence if the~~ In this
 12 section, "successfully complete^s a sentence" means that a person has not been
 13 convicted of a subsequent offense and, if on probation, ~~the probation has not been~~
 14 ~~revoked and the probationer has satisfied the conditions of probation.~~ Upon
 15 successful completion of the

16 (2m) (c) If a person who is the subject of an order under par. (a) or (b)
 17 successfully completes the sentence, the detaining or probationary authority shall
 18 issue a certificate of discharge which shall be forwarded to the court of record and
 19 which shall have the effect of expunging the record.

20 (4) Upon receiving a certificate of discharge for a person who is subject to an
 21 order under sub. (2m) or upon the entry of an expungement order under sub. (3), the
 22 clerk of circuit court shall notify the department of justice of the expungement. If the
 23 person has been ^{was} imprisoned, the detaining authority ^{clerk of circuit court shall}
 24 also forward a copy of the ^{any} certificate of discharge or expungement order to the
 25 department of corrections.

not issued by the
department of corrections
and any

1 **SECTION 4.** 973.015 (3) of the statutes is created to read:

2 973.015 (3) If a person is convicted of an offense for which the maximum
3 penalty is imprisonment for one year or less in the county jail and the person
4 successfully completes the sentence, the court may order at any time thereafter that
5 the record be expunged if it determines the person will benefit and society will not
6 be harmed by this disposition. The detaining or probationary authority shall notify
7 the court, upon request, whether a person successfully completed his or her sentence.

8 **SECTION 5. Effective date.**

9 (1) This act takes effect on September 30, 2005, or the day after publication,
10 whichever is later.

11

(END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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analysis INSERT

X Under current law, if a person commits a misdemeanor (which, in general, is a crime for which a person may be imprisoned for no more than one year) before he or she reaches the age of 21, a court may order that ~~its~~ record regarding the offense be expunged upon the offender's successful completion of his or her sentence. (A person successfully completes a sentence if he or she is not convicted of a subsequent offense and, if the person is placed on probation, he or she complies with any conditions of probation.) The court may enter such an order only at the time of sentencing and only if it finds that expunging the record will benefit the person and will not harm society.

This bill makes this expungement option available for all offenders, regardless of their age at the time of the offense. In addition, under the bill, a court may enter an order authorizing expungement at any time during the sentence. ~~The court may also enter an order expunging a misdemeanor conviction any time after a person successfully completes the sentence.~~ or after

X
X
X The bill also changes how expunged misdemeanor convictions are treated for the purpose of the sex offender registry law. Under current law, a court may order a person to register as a sex offender with the Department of Corrections in connection with crimes under chapter 940 (which covers crimes against life and bodily security), chapter 944 (which covers crimes against sexual morality), or chapter 948 (which covers crimes against children), of the statutes, certain property crimes, or the crime of invasion of privacy if the court determines that the conduct was sexually motivated and that it would be in the interest of public protection to have the person register. With the exception of invasion of privacy cases, expungement does not affect such an order. The person remains obligated to register as a sex offender for as long as would be required for a non-expunged offense. Under this bill, expungement of a misdemeanor conviction terminates any sex offender registration requirement that a court may have imposed in connection with that conviction.

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

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3

SECTION 1. 301.45 (1p) of the statutes is amended to read:

4

301.45 (1p) EXCEPTION TO REGISTRATION REQUIREMENT; EXPUNGEMENT OF INVASION

5

OF PRIVACY ADJUDICATION OR CONVICTION. If a person is covered under sub. (1g) based

6

solely on an order that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in

7

connection with a delinquency adjudication or a conviction for a violation of s. 942.08

1 (2) (b), (c), or (d), the person is not required to comply with the reporting requirements
2 under this section if the delinquency adjudication is expunged under s. 938.355 (4m)
3 (b) ~~or if the conviction is expunged under s. 973.015 (2).~~

4 **History:** 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109; 2003 a. 50, 53.

SECTION 2. 301.45 (1r) of the statutes is created to read:

5 301.45 (1r) EXCEPTION TO REGISTRATION REQUIREMENT; EXPUNGEMENT OF
6 MISDEMEANOR CONVICTION. A person is not required to comply with the reporting
7 requirements under this section if the person is covered under sub. (1g) based solely
8 on a misdemeanor conviction that is expunged under s. 973.015.

9 **SECTION 3.** 301.45 (7) (e) (intro.) of the statutes is amended to read:

10 301.45 (7) (e) (intro.) The department shall purge all of the information
11 maintained in the registry under sub. (2) concerning a person to whom sub. (1p) or
12 (1r) applies if any of the following occurs:

13 **History:** 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109; 2003 a. 50, 53.

SECTION 4. 301.45 (7) (e) 2. of the statutes is amended to read:

14 301.45 (7) (e) 2. The department issues a certificate of discharge under s.
15 973.015 (2) (2m) (c).

16 **History:** 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109; 2003 a. 50, 53.

SECTION 5. 301.45 (7) (e) 3. of the statutes is amended to read:

17 301.45 (7) (e) 3. The department receives a certificate of discharge issued or
18 expungement order under s. 973.015 (2) ~~by the detaining authority~~ (4).

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109; 2003 a. 50, 53.

Northrop, Lori

From: Dsida, Michael
Sent: Wednesday, February 23, 2005 2:13 PM
To: LRB.Legal
Subject: please jacket 05-1447

thanks!



Kjf

2005 BILL

Tues

Regen

1 **AN ACT to renumber and amend 973.015 (1) and 973.015 (2); to amend 301.45**
2 **(1p), 301.45 (7) (e) (intro.), 301.45 (7) (e) 2. and 301.45 (7) (e) 3.; to repeal and**
3 **recreate 973.015 (title); and to create 301.45 (1r) and 973.015 (3) of the**
4 **statutes; relating to: expungement of misdemeanors.**

Analysis by the Legislative Reference Bureau

Under current law, if a person commits a misdemeanor (which, in general, is a crime for which a person may be imprisoned for no more than one year) before he or she reaches the age of 21, a court may order that the court's record regarding the offense be expunged upon the offender's successful completion of his or her sentence. (A person successfully completes a sentence if he or she is not convicted of a subsequent offense and, if the person is placed on probation, he or she complies with any conditions of probation.) The court may enter such an order only at the time of sentencing and only if it finds that expunging the record will benefit the person and will not harm society.

This bill makes this expungement option available for all offenders, regardless of their age at the time of the offense. In addition, under the bill, a court may enter an order authorizing expungement at any time during or after the sentence.

The bill also changes how expunged misdemeanor convictions are treated for the purpose of the sex offender registry law. Under current law, a court may order a person to register as a sex offender with the Department of Corrections in connection with crimes under ch. 940 (which covers crimes against life and bodily security), ch. 944 (which covers crimes against sexual morality), or ch. 948 (which

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covers crimes against children), stats., certain property crimes, or the crime of invasion of privacy if the court determines that the conduct was sexually motivated and that it would be in the interest of public protection to have the person register. With the exception of invasion of privacy cases, expungement does not affect such an order. The person remains obligated to register as a sex offender for as long as would be required for a nonexpunged offense. Under this bill, expungement of a misdemeanor conviction terminates any sex offender registration requirement that a court may have imposed in connection with that conviction.

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:

SECTION 1. 301.45 (1p) of the statutes is amended to read:

301.45 (1p) EXCEPTION TO REGISTRATION REQUIREMENT; EXPUNGEMENT OF INVASION OF PRIVACY ADJUDICATION OR CONVICTION. If a person is covered under sub. (1g) based solely on an order that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in connection with a delinquency adjudication or a conviction for a violation of s. 942.08 (2) (b), (c), or (d), the person is not required to comply with the reporting requirements under this section if the delinquency adjudication is expunged under s. 938.355 (4m) (b) or if the conviction is expunged under s. 973.015 (2).

SECTION 2. 301.45 (1r) of the statutes is created to read:

301.45 (1r) EXCEPTION TO REGISTRATION REQUIREMENT; EXPUNGEMENT OF MISDEMEANOR CONVICTION. A person is not required to comply with the reporting requirements under this section if the person is covered under sub. (1g) based solely on a misdemeanor conviction that is expunged under s. 973.015.

SECTION 3. 301.45 (7) (e) (intro.) of the statutes is amended to read:

301.45 (7) (e) (intro.) The department shall purge all of the information maintained in the registry under sub. (2) concerning a person to whom sub. (1p) or (1r) applies if any of the following occurs:

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1 ~~SECTION 4.~~ 301.45 (7) (e) 2. of the statutes is amended to read:

2 301.45 (7) (e) 2. The department issues a certificate of discharge under s.
3 973.015 (2) (2m) (c).

4 **SECTION 5.** 301.45 (7) (e) 3. of the statutes is amended to read:

5 301.45 (7) (e) 3. The department receives a certificate of discharge issued or
6 expungement order under s. 973.015 (2) ~~by the detaining authority~~ (4).

7 **SECTION 6.** 973.015 (title) of the statutes is repealed and recreated to read:

8 **973.015 (title) Expungement of misdemeanors.**

9 **SECTION 7.** 973.015 (1) of the statutes, as affected by 2003 Wisconsin Act 33,
10 is renumbered 973.015 (2m), and 973.015 (2m) (a), as renumbered, is amended to
11 read:

12 973.015 (2m) (a) Subject to par. (b), ~~when if~~ a person is ~~under the age of 21 at~~
13 ~~the time of the commission~~ convicted of an offense for which the person has been
14 ~~found guilty in a court for violation of a law~~ for which the maximum penalty is
15 imprisonment for one year or less in the county jail, the court may order at the time
16 of sentencing or at any other time that the record be expunged upon successful
17 completion of the sentence if the court determines the person will benefit and society
18 will not be harmed by this disposition.

19 (5) This ~~subsection~~ section does not apply to information maintained by the
20 department of transportation regarding a conviction that is required to be included
21 in a record kept under s. 343.23 (2) (a).

22 **SECTION 8.** 973.015 (2) of the statutes is renumbered 973.015 (1m) and
23 amended to read:

24 973.015 (1m) ~~A person has successfully completed the sentence if the~~ In this
25 section, “successfully completes the sentence” means that a person has not been

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1 convicted of a subsequent offense and, if on probation, ~~the probation has not been~~
2 ~~revoked and the probationer~~ has satisfied the conditions of probation. Upon
3 ~~successful completion of the~~

4 (2m) (c) If a person who is the subject of an order under par. (a) or (b)
5 successfully completes the sentence, the detaining or probationary authority shall
6 issue a certificate of discharge which shall be forwarded to the court of record and
7 which shall have the effect of expunging the record. ~~If the person has been~~
8 ~~imprisoned, the detaining authority~~

9 (4) Upon receiving a certificate of discharge for a person who is subject to an
10 order under sub. (2m) or upon the entry of an expungement order under sub. (3), the
11 clerk of circuit court shall notify the department of justice of the expungement. The
12 clerk of circuit court shall also forward a copy of the any certificate of discharge not
13 issued by the department of corrections and any expungement order to the
14 department of corrections.

15 **SECTION 9.** 973.015 (3) of the statutes is created to read:

16 973.015 (3) If a person is convicted of an offense for which the maximum
17 penalty is imprisonment for one year or less in the county jail and the person
18 successfully completes the sentence, the court may order at any time thereafter that
19 the record be expunged if it determines the person will benefit and society will not
20 be harmed by this disposition. The detaining or probationary authority shall notify
21 the court, upon request, whether a person successfully completed his or her sentence.

22 **SECTION 10. Effective date.**

23 (1) This act takes effect on September 30, 2005, or the day after publication,
24 whichever is later.

25 (END)