



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 331

Assembly Amendment 1

Memo published: June 22, 2017

Contact: Melissa Schmidt, Senior Staff Attorney

BACKGROUND

State law allows a conviction to be removed from an offender's circuit court case record under certain circumstances, through a process known as "expungement."

Under current law related to adult criminal court records, if a person is under the age of 25 at the time he or she commits an offense eligible for expungement, the court may order, at the time of sentencing, that the person's court record be expunged upon successful completion of the sentencing if the court determines the person will benefit and not be harmed by the expungement.¹ Generally, an offense is eligible for expungement if it is a crime that carries a maximum term of imprisonment of six years or less (which includes misdemeanors and Class H and I felonies). Under certain circumstances, a Class H or I felony may not be expunged.

A person has successfully completed his or her sentencing if he or she has not been convicted of a subsequent offense and, if the person was on probation, the probation was not revoked and the conditions of probation were satisfied. If the court orders expungement and the person successfully completes the sentence, the detaining or probationary authority is required to issue a certificate of discharge which is forwarded to the court of record and has the effect of expunging the record. [s. 973.015, Stats.]

If a court orders expungement, upon successful completion of the sentence, the clerk of court must do all of the following: (1) remove any paper index and nonfinancial court record and place them in the case file; (2) electronically remove any automated nonfinancial record

¹ Wisconsin's expungement law treats convictions for "Peeping Tom" offenses committed by a person under age 18 differently than other offenses and contains special provisions that apply to victims of human trafficking. These provisions are not changed by 2017 Assembly Bill 331.

except the case number; (3) seal the entire case file; and (4) destroy expunged court records in accordance with the court's retention schedule. [s. SCR 72.06.] On the Wisconsin Circuit Court Access (WCCA) website, a search for the person's name or case number will not return the case. However, an expungement order does not affect any records of the court case that are kept by other agencies, including records maintained by the Department of Justice's (DOJ) Crime Information Bureau (CIB), the Department of Transportation, or law enforcement agencies.

2017 ASSEMBLY BILL 331

2017 Assembly Bill 331 (the bill) does not affect which crimes are eligible for expungement.

Under the bill, a court may, at the time of sentencing, order on its own motion either of the following: (1) that the record is ineligible for expungement; or (2) that the record be expunged upon successful completion of the sentence if the court determines that the person will benefit and society will not be harmed by this disposition. If the court did not issue one of these orders, then when the person has successfully completed his or her sentence, he or she may file a petition requesting that the record of the crime be expunged, provided that there are no criminal charges pending against the person. If the person files a petition for expungement, all of the following apply:

- The court must order a hearing to review the petition, except that the court may review the petition without a hearing if the District Attorney (DA) notifies the court that there is no objection from the victim to waiving the hearing requirement.
- The clerk of circuit court must send a copy of the petition and a notice of the hearing to the DA.
- The DA must make a reasonable attempt to notify the victim and inform the victim of the following: (1) the victim may waive the hearing requirement; (2) the court may review the petition without a hearing if the victim waives the hearing requirement; (3) the manner in which the victim may provide written statements concerning the petition; and (4) the victim may appear at the hearing if the victim does not waive the hearing requirement. If the victim waives the hearing requirement, the DA may inform the court that there is no objection to waiving the hearing requirement.
- If a hearing is scheduled, then if possible, the sentencing judge must be the judge to review the petition.
- The court may order that the record be expunged if it determines that the person will benefit and society will not be harmed.
- If the court does not order that the record be expunged, then the person must wait at least two years before filing a subsequent petition.

If the court orders that a record be expunged, then the bill requires DOJ to redact any record of that crime when returning a record it maintains in response to a public records request.

The bill also specifies that a record of a crime that is expunged is not considered a conviction for employment purposes and that it is employment discrimination to request information regarding a crime if the record was expunged by court.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 makes the following changes to the bill:

- Limits the number of times a person may petition for expungement to three petitions in his or her lifetime.
- Requires the clerk of circuit court to notify DOJ, in the manner determined by DOJ, that a court has ordered that a record be expunged.
- With respect to a person who has had a record expunged prior to the effective date of the bill, requires DOJ to redact the expunged record if that person submits a written request to DOJ in a manner determined by DOJ.
- Creates a six-month delayed effective date so that the bill does not take effect until the first day of the seventh month after the bill goes into effect.

BILL HISTORY

Representatives Steffen and Goyke introduced AA 1 on June 7, 2017. On June 8, 2017, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of AA 1 by a vote of Ayes, 12; Noes, 0; and voted to recommend passage of the bill, as amended, by a vote of Ayes, 10; Noes, 2.

MS:jal