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**April 27, 2017**

## **Rep. Sanfelippo public testimony on the Victim Prevention Package**

Chairman Ott and committee members, thank you for holding a public hearing today on Assembly bill 93, which are part of our victim prevent package.

The Victim Prevention Package uses our two-pronged philosophy: ensuring dangerous, violent repeat offenders are unable to continue victimizing our communities by removing them from our streets and continuing to provide evidence-based alternatives to incarceration.

Over 39% of violent criminals return to prison following their release from prior conviction, and we cannot allow repeat offenders to continue terrorizing our communities. Action must be taken, and this package of bills is a good start to addressing these serious issues plaguing both urban and rural communities across our state.

At the same time, we recognize that everyone can potentially make a mistake. Many first time low level offenders will recognize the error of their ways, turn themselves around and become productive, law-abiding members of society. Differentiating between these individuals and violent, repeat offenders is appropriate.

Currently, a judge can only order expungement at the time of sentencing for certain offenses an individual committed before the age of 25.

Assembly bill 93 allows a person to petition the court for expungement after they successfully complete their sentence and remain crime free for one year.

At the time of sentencing, it is difficult to discern whether an individual will successfully complete their sentence. Moving the process to the end provides an incentive for the individual to complete their sentence successfully and avoid criminal activity after completing their sentence. It also allows the judge to make a more informed decision on who is deserving of expungement and who is not.

Under our current system, it is possible for a person to miss an opportunity for expungement simply because they were unaware of the possibility and did not request it at the time of sentencing. This bill will provide a person deserving of this second to chance to have a fair crack at getting it.

I ask you that support Assembly bill 93.

Thank you again for listening to my testimony on the Victim Prevention Package. I'm happy to answer any questions you may have.

A handwritten signature in black ink, appearing to read "Joe Sanfelippo". The signature is written in a cursive, flowing style.

**STATE SENATOR**  
**Leah Vukmir**

**Assembly Committee on Judiciary**

Thursday, April 27, 2017

**Victim Prevention Package**

Assembly Bill 93

Chairman Ott and committee members, I would like to express my sincere gratitude for giving Representative Sanfelippo's and my bill a hearing. This piece of legislation before you is a part of our Victim Prevention Package and would amend the process for granting an expungement.

Under current law, should an offender meet qualifications, a judge may only grant expungement at the time of sentencing. The proposed legislation would alter that process, moving court determination for expungement from the initial sentencing phase to following the completion of the imposed sentence. The bill would allow a person to petition the court for expungement upon successful completion of their sentence should they remain law abiding for one year.

At the time of sentencing, it is difficult to discern whether an individual will successfully complete their sentence. By altering the point at which this determination is made we are incentivizing individuals to cooperate with their probation agents, comply with probation rules, and avoid criminal activity after completing their sentence. I should also note that the bill does not change the crimes eligible for expungement.

Representative Sanfelippo and I understand that human beings make mistakes and hope that individuals are able to rectify those mistakes to once again become productive members of society. This bill provides individuals with the tool to remove those mistakes from their record.

Thank you again for your consideration of Assembly Bill 93.

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# Supreme Court of Wisconsin

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J. Denis Moran  
Director of State Courts

Testimony  
Of  
Judge James Daley  
Rock County Circuit Court

For Information on Assembly Bill 93  
Relating to Expungement of Circuit Court Records

Assembly Committee on Judiciary  
Representative Jim Ott, Chair  
April 27, 2017

Thank you very much. My name is James Daley. I have been a circuit court judge in Rock County since 1989. Since 2013, I have served as the Chief Judge of the District Five Judicial Administrative District, comprised of Dane, Green, Lafayette and Rock Counties. I am appearing here for information only on Assembly Bill 93 relating to expungement of circuit court records.

We want to thank the authors of Assembly Bill 93 for bringing forward this proposal on expungement. My fellow judges and I have seen many more requests for expungement in recent years. We recognize the advent of the 24/7 world of information and the Internet has increased problems for persons with criminal records. It has increased the tension that exists between the need for open records and the privacy interests of individuals.

Over the last several years, the increased interest in expungement has led to litigation to explore the meaning of and limits of the current statute, s. 973.015, Wis. Stats. There have also been Legislative Council study committees, a rule petition to the Supreme Court, and several legislative proposals.

The court system, most recently through the Committee of Chief Judges on which I serve, has explored this issue in great depth. It is our committee's considered opinion that Wisconsin would benefit from a substantial revision to the current statute, both for purposes of clarifying expungement procedures and addressing certain substantive limitations. The committee approved proposed legislation embodying that revision, and it was introduced as 2015 Assembly Bill 1005 by request of the Director of State Courts. We continue to work with legislators of both parties and in both houses to advance the ideas embodied in AB 1005.

Assembly Bill 93 addresses some of the limitations of the current statute, and we are very pleased that they are included. There are other provisions of the bill, however, that cause us some concern.

We strongly support removing the current limitation that requires the court to determine whether expungement will be ordered “at the time of sentencing.” It is difficult for the court to know at sentencing whether the standards for expungement have been met, that is, whether the defendant will benefit and society will not be harmed. It makes far more sense to have this decision made later, after defendants have had an opportunity to demonstrate they have pulled their lives together and can be contributing members of society. We think amending this portion of the current statute has broad support.

Another of the limitations of the current statute is that it lacks procedural guidance for the courts on how they should handle expungements. AB 93 provides that the process will be initiated by filing a petition and will lead to an order from the court. This is a common court procedure, and should make the process easier for defendants to follow. The court system already has petition and order forms for expungement, so that providing the forms would not be difficult.

Under its provisions, AB 93 requires the court to hold a hearing on every petition for expungement that is filed. We would strongly urge that this provision be made discretionary rather than mandatory. We believe there will be numerous petitions that could be handled without a hearing – or perhaps are obviously frivolous – and we can make the process move more efficiently through the courts without this requirement.

There are other procedures that we think could strengthen the expungement process and the bill. For instance:

- Notice should be provided to the District Attorney’s office that prosecuted the defendant. The DA’s office works closely with victims of crime, so it would be more logical for the DA to provide notice of any hearing to the victim rather than have the Clerk of Circuit Court do the notification.
- A requirement that all counts charged in a case must be eligible for expungement in order for a petition to be granted.
- There needs to be a procedure for defendants whose sentences do not include probation to show the court they have successfully completed their sentences. For those on probation, there is a certificate of discharge, but that is not available to defendants not on probation.
- An initial applicability section should be added in order to clarify that defendants with closed cases are eligible to bring petitions.

Finally, there are some important provisions that we added to 2015 AB 1005 that we hope the authors and the committee will study further. They are not in AB 93, but we think they are worth a closer look. They include the following:

- Expanding the expungement process to include cases in which the defendant was found not guilty; the case was dismissed; or the conviction was reversed, set aside or vacated. AB 1005 had no age limit for defendants in those cases. The current statute has the

anomalous result that a person with a conviction may have the record expunged but a person found not guilty does not have a way to have the record expunged.

- Expanding the expungement procedure to cover circuit court forfeiture cases. Examples of these types of cases are ordinance violations for retail theft or disorderly conduct. These cases can have a strong negative influence on a person, but currently there is no expungement procedure for these types of cases.
- Limiting the expungement process to exclude those cases involving violation of traffic laws.

Again, we applaud the authors of AB 93 for bringing the expungement issue before the Legislature. We hope they will be willing to work with us and with other legislators who are interested in changing this law.

The importance of the expungement procedure was reaffirmed in one of the cases recently litigated on the subject. Writing for a unanimous Wisconsin Supreme Court in *State v. Hemp*, 2014 WI 129, Justice Michael Gableman wrote:

¶21 Thus, Wisconsin's expungement statute indicates our legislature's willingness (as expressed by the plain language of the statute) to help young people who are convicted of crimes get back on their feet and contribute to society by providing them a fresh start, free from the burden of a criminal conviction. Through expungement, circuit court judges can, in appropriate circumstances, help not only the individual defendant, but also society at large.

I would be happy to take questions. Thank you.



# Wisconsin State Public Defender

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Assembly Committee on Judiciary  
Public Hearing on Assembly Bill 93  
Thursday, April 27, 2017

Current law requiring a judge to order expungement at the time of sentencing significantly limits the use of this provision. The statute requires judges to essentially guess whether individuals will have redeemed themselves after a multi-year sentence. This requirement is not fair to judges or the people who, through their actions, have demonstrated years later that they have earned the opportunity to have their conviction record expunged. Removing the requirement that expungement be ordered at the time of sentencing will make expungement more attainable and based on concrete actions.

There are two comments SPD would offer regarding the bill. Regarding the \$100 application fee, while it isn't made clear in statute, the Director of State Courts makes available a form requesting waiver of fees and costs that is consistent with case law. Adding language clarifying that a fee waiver is allowable based on inability to pay the petition fee would ensure that, in opening the door to expungement, economic factors don't stand in the way.

Also, expanding access to expungement can be a key factor in reducing recidivism, but one consideration is the impact of expunging a conviction. Two elements - clarifying statutorily how to answer the question on an employment application about an expunged conviction and sealing the crime information bureau record - would greatly increase the value of the expungement. Without addressing these elements, the bill will delay and make it more difficult to figure out if an applicant for employment who has an expunged record was convicted, but will not address the information a prospective employer will get from conducting a standard criminal background check.

AB 93 is a good step in the right direction on expungement. The committee may wish to consider the two issues outlined above as possible additions to the bill.

MEMORANDUM

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TO: Members of the Assembly Committee on Judiciary

FROM: Jordan Lamb – Association of State Prosecutors

DATE: April 27, 2017

RE: Support for Assembly Bill 93 – Expungement of Certain Offenses  
Committed Before the Age of 25

On behalf of Wisconsin's Assistant District Attorneys, represented by the Association of State Prosecutors (ASP), I am writing to urge you to **support** Assembly Bill 93, authored by Rep. Sanfelippo and Sen. Vukmir.

ASP supports the concept of expungement. Expungement enhances public safety by providing a significant incentive for first time offenders to aggressively address the underlying rehabilitative needs that results in their criminal behavior.

The biggest improvement that is necessary to current expungement law is giving the judge the discretion to decide on expungement either before *or after* the completion of the sentence.

It is a frequent comment by judges that they wish they could make a decision *after* successful sentence completion instead of being forced to make the decision before they have information about what the offender is doing during the probationary period.

Allowing this evaluation after sentence completion also gives the prosecutor the opportunity to review and present information that is not necessarily available to the judge.

Accordingly, ASP urges you to support Assembly Bill 93 and allow the expungement evaluation to be made after completion of a person's sentence.

Contact: Attorney Jordan Lamb at (608) 252-9358 or [jkl@dewittross.com](mailto:jkl@dewittross.com)



LEAGUE OF WOMEN VOTERS®  
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April 27, 2017

To: Assembly Committee on Judiciary

Re: Comments on AB 36/AB 117, AB 93, AB 137

The League of Women Voters of Wisconsin believes there are three important measures in establishing criminal sanctions. Society is protected from criminal acts by deterrence, incapacitation and reform. We have a justice system whose purpose is to review criminal acts by citizens and to take appropriate action to protect society and help prevent further criminal acts. The final disposition of these actions is in the hands of judges. It is important that citizens have confidence in the functioning of all aspects of our justice system.

**The League of Women Voters of Wisconsin opposes AB 36/AB 117** for the following reasons:

- We believe there is a public perception concern about potentially having an elected official representing a specific religious organization.
- District Attorneys and others in elected positions in law, as part of Professional Standards, are already allowed *pro bono* work when it is in support of efforts to improve the justice system i.e. serving on a Bar Association committee or other organization devoted to improving the justice system such as alternatives to incarceration.
- Being a District, Deputy or Assistant District Attorney is a full-time job. Any civil litigation involving courts would have to be done during the week when these public servants are needed for their public responsibility.
- It could be time consuming and difficult to ensure that parties involved in a prosecution case were not also being given *pro bono* services by someone in the same department regarding a civil matter, i.e., a landlord throwing out someone's belonging when that renter may be getting help on the eviction. All of that has to be coordinated and watched over.
- There are many public service lawyers, including city attorneys, university attorneys and others. Why are only the District Attorneys being singled out?
- This bill only applies to full-time District Attorneys (Deputy and Assistants) and the law already allows elected officials who are in these occupations on a part-time basis to do *pro bono* work.
- This measure could make it difficult for more clients to submit a grievance against a District Attorney.

This legislation has many negative aspects and would enable only a small number of lawyers to add to the *pro bono* work in this state. We urge you to reject it.

**The League of Women Voters of Wisconsin supports AB 93.** This bill removes the request for an expungement order at the time of sentencing and allows a petition to the court one year after sentence served and with payment of a fee. We support SB53 because it would more easily allow citizens to expunge records of juvenile actions. Such actions, which take place before full development of the brain, should not be allowed to be a long-term stigma which can impede a young person's career development.

(continued)



**The League of Women Voters of Wisconsin supports AB 137**, which requires notice of certain campaign finance contributions made to a judge or justice. Any citizen who has to appear in court should have absolute confidence that the judge will be fair and impartial. We are not suggesting that campaign gifts automatically undermine a judge's neutrality. Unfortunately, though, campaign contributions and support can erode public trust, even when a judge may be acting fairly. In the absence of recusal rules addressing this problem, notice of financial contributions to a judge or justice by a party in a pending case is essential.

This bill provides that whenever an interested contributor makes a contribution to the candidate committee of a court of appeals, circuit, or municipal judge or supreme court justice in a pending civil or criminal action or proceeding over which the judge or justice is presiding, the contributor must within five days notify in writing the judge or justice and the parties in the case of the date and amount of the contribution.

Public trust is enhanced by public information. Requiring notice of contributions made by parties in a case will boost public confidence in the courts.

Thank you.