



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4831/1
PJH:klm&jld

2015 ASSEMBLY BILL 1005

March 21, 2016 - Introduced by Representative MILROY, by request of Director of State Courts. Referred to Committee on Judiciary.

1 **AN ACT** *to repeal* 973.015 (title) and (1m); *to renumber* 973.015 (2m); *to*
2 *renumber and amend* 973.015 (3); *to amend* 301.45 (1p) (a), 301.45 (7) (e) 2.,
3 301.45 (7) (e) 3., 452.01 (3p) and 452.01 (4v); and *to create* 778.095, 939.76,
4 939.77 (title) and 939.77 (2) (a) of the statutes; **relating to:** petitions for
5 expungement of certain court records.

Analysis by the Legislative Reference Bureau

This bill establishes criteria for expunging certain civil and criminal court records. Under current law, if a person is convicted of a criminal offense for which the maximum period of imprisonment is not more than six years and the person committed the offense before he or she was 25 years old, the court may order, at the time the person is sentenced, that the person's record of the offense be expunged when the person completes his or her sentence or any period of probation imposed for the offense. Current law excludes certain offenses from expungement and generally requires the court to determine that the person will benefit from, and society will not be harmed by, expungement.

Under this bill, a person who has been convicted of a criminal offense for which the maximum period of imprisonment is not more than six years, or who has been ordered to pay a forfeiture related to a criminal charge, except an offense related to a violation of a traffic law, may petition the court for an order expunging the record of his or her offense or forfeiture. The bill retains the requirement that, in order to be eligible for an order of expungement, the person who is convicted of a crime or

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found to have committed a civil offense be under the age of 25 when he or she committed the offense.

Under the bill, the record of a civil violation may be expunged when the person has satisfied the judgment against him or her, including paying all costs, fees, surcharges, and restitution ordered or assessed, and the record of a criminal conviction may be expunged when the person completes his or her sentence.

A person who was sentenced to imprisonment or placed on probation has completed his or her sentence if he or she has not been convicted of a subsequent criminal offense; he or she has completed his or her term of imprisonment or probation; the detaining or probationary authority has issued a certificate of discharge; and the person has paid all costs, fees, surcharges, and restitution ordered or assessed. A person who is not sentenced to a term of imprisonment or placed on probation has completed his or her sentence if the person provides sufficient proof to the court that all conditions of his or her sentence have been fulfilled.

Under the bill, if a person was charged with a crime or a violation not related to a traffic law but the person was acquitted of the charge, the charge was dismissed, or the conviction or imposition of a forfeiture was reversed, set aside, or vacated, the person may petition the court at any time to expunge the circuit court record related to the offense. Under the bill, there is no age limit regarding when the alleged offense was committed for a person who petitions for expungement on these grounds.

Under the bill, a court may order that the record of the case be expunged if the court determines that all charges, orders, or judgments against the person are eligible for expungement, that the person will benefit from, and that society will not be harmed by, the expungement. The bill requires the clerk of courts to take certain actions upon receiving an order of expungement, including informing the Department of Justice that an order of expungement has been entered, removing electronic records of the case, and sealing the file.

The bill excludes certain violations from expungement, including traffic violations and certain felonies, if the felony is violent, the person has a history of violent offenses, or the felony is for stalking or certain crimes against children.

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

1 **SECTION 1.** 301.45 (1p) (a) of the statutes, as affected by 2015 Wisconsin Act 80,
2 is amended to read:

3 301.45 **(1p)** (a) If a person is covered under sub. (1g) based solely on an order
4 that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in connection with a
5 delinquency adjudication or a conviction for a violation of s. 942.08 (2) (b), (c), or (d)
6 or (3), the person is not required to comply with the reporting requirements under

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1 this section if the delinquency adjudication is expunged under s. 938.355 (4m) (b) or
2 if the conviction is expunged under s. ~~973.015 (1m) (b)~~ 939.76 or 939.77.

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

4 301.45 (7) (e) 2. The department issues a certificate of discharge ~~under s.~~
5 ~~973.015 (1m) (b)~~ and a court grants expungement pursuant to s. 939.76 or 939.77.

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

7 301.45 (7) (e) 3. The department receives a certificate of discharge issued ~~under~~
8 ~~s. 973.015 (1m) (b)~~ pursuant to s. 939.76 or 939.77 by the detaining authority.

9 **SECTION 4.** 452.01 (3p) of the statutes is amended to read:

10 452.01 (3p) “Crime” does not include a crime for which the individual has been
11 pardoned; a crime for which the conviction has been reversed, set aside, or vacated;
12 or a crime for which the conviction has been expunged under s. ~~973.015~~ 939.76 or
13 939.77.

14 **SECTION 5.** 452.01 (4v) of the statutes is amended to read:

15 452.01 (4v) “Felony” means a felony under the laws of this state or a crime
16 committed elsewhere that would be a felony if committed in this state. “Felony” does
17 not include a felony for which the applicant has been pardoned; a felony for which
18 the conviction has been reversed, set aside, or vacated; or a felony for which the
19 conviction has been expunged under s. ~~973.015~~ 939.76 or 939.77.

20 **SECTION 6.** 778.095 of the statutes is created to read:

21 **778.095 Expungement of circuit court records. (1) ELIGIBILITY; ACQUITTAL,**
22 **DISMISSAL, OR REVERSAL.** A person may petition the circuit court for expungement
23 under this subsection if any of the following applies:

24 (a) The person has been charged with, but acquitted of, a violation for which
25 a forfeiture could have been assessed.

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1 (b) The person has been charged with a violation for which a forfeiture could
2 have been assessed, but the charge was dismissed.

3 (c) The person was found to have committed a violation for which a forfeiture
4 could have been assessed, but the finding was reversed, set aside, or vacated.

5 **(2) ELIGIBILITY; CIVIL VIOLATIONS.** A person may petition the court for
6 expungement under this subsection if, except as provided in sub. (3) or (5), the person
7 was found to have committed a violation for which a forfeiture may be assessed and
8 the person was under the age of 25 when he or she committed the violation.

9 **(3) EXCEPTIONS.** No person may petition the court for expungement of a record
10 of a violation of chs. 341 to 348, or a traffic regulation or ordinance in conformity with
11 any statute within chs. 341 to 348.

12 **(4) PROCEDURE OF EXPUNGEMENT.** (a) A person who is eligible to petition for
13 expungement of a record under sub. (1) may petition the court for expungement at
14 any time.

15 (b) A person who is eligible to petition for expungement of a record under sub.
16 (2) may petition the court for an order of expungement when the person has satisfied
17 the judgment; all costs, fees, and surcharges; and any restitution assessed against
18 the person. The clerk of circuit court shall provide a certification that the person has
19 paid, in full, the judgment; all costs, fees, and surcharges; and any restitution
20 assessed.

21 (c) A court may order that the record of the case be expunged if the court
22 determines that all charges or judgments are eligible for expungement, and that the
23 person will benefit from, and that society will not be harmed by, the expungement.
24 This paragraph does not apply to information maintained by the department of

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

3 (d) Upon receiving an order from the court to expunge a court record, the clerk
4 of the court shall do all of the following:

5 1. If the clerk of the court had informed the department of justice that the
6 person had been ordered to pay a forfeiture, inform the department of justice that the
7 record is being expunged by order of the court.

8 2. Treat the record in the manner required by SCR 72.06.

9 (e) Notwithstanding par. (d) 2., the clerk of court shall allow access to the file
10 and the order for expungement to the person who petitioned for expungement and
11 to another person with the petitioner's written permission.

12 **(5) CERTAIN ORDERS OF EXPUNGEMENT PROHIBITED.** A court may expunge the
13 record of a charge that was dismissed but was considered by the court at the time the
14 court entered the judgment for another civil violation or crime only if the record of
15 the other civil violation or crime is expunged under this section or under s. 939.76.
16 A petition for expungement of such a charge shall include the name, county, and case
17 number of the other civil violation or crime.

18 **(6) EFFECT OF EXPUNGEMENT.** An expunged record may not be considered by any
19 person in any matter relating to an application for employment or for the rental,
20 purchase, or financing of housing.

21 **SECTION 7.** 939.76 of the statutes is created to read:

22 **939.76 Expungement of circuit court records. (1) ELIGIBILITY; ACQUITTAL,**
23 **DISMISSAL, OR REVERSAL.** A person may petition the circuit court for expungement
24 under this subsection if any of the following applies:

25 (a) The person has been charged with, but acquitted of, a crime.

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1 (b) The person has been charged with a crime, but the charge was dismissed.

2 (c) The person has been convicted of a crime, but the conviction was reversed,
3 set aside, or vacated.

4 **(2) ELIGIBILITY; CONVICTION.** A person may petition to have the circuit court
5 record of a case expunged under this subsection if, except as provided in subs. (4) and
6 (5), the person has been convicted of a crime for which the maximum period of
7 imprisonment is 6 years or less and the person was under the age of 25 when he or
8 she committed the crime.

9 **(3) PROCEDURE OF EXPUNGEMENT.** (a) A person who is eligible to petition for
10 expungement of a record under sub. (1) may petition the court for expungement at
11 any time.

12 (b) 1. A person who is eligible to petition for expungement of a record under sub.
13 (2) may petition the court for an order that the record be expunged upon successful
14 completion of the sentence.

15 2. a. A person who is sentenced to a term of imprisonment or who is placed on
16 probation has successfully completed his or her sentence if the person has not been
17 convicted of a subsequent criminal offense, the person has completed his or her term
18 of imprisonment or probation, the detaining or probationary authority has issued a
19 certificate of discharge, and the person has paid, in full, the fine; costs, fees, and
20 surcharges; and any restitution assessed. If these conditions were met at the time
21 the department of corrections or a probationary authority issued its certificate of
22 discharge, the department of corrections shall so notify the court. If these conditions
23 are satisfied after the person has been discharged from probation, the clerk of circuit
24 court shall so notify the court.

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1 b. A person who is not sentenced to a term of imprisonment or placed on
2 probation has successfully completed his or her sentence if the person provides
3 sufficient proof to the court that all conditions of his or her sentence have been
4 fulfilled. The clerk of circuit court may provide a certification that the person has
5 paid, in full, the fine; costs, fees, and surcharges; and any restitution assessed.

6 (c) Except as provided in sub. (4) or (5), a court may order that the record of the
7 case be expunged if the court determines that all charges or convictions are eligible
8 for expungement, and that the person will benefit from, and that society will not be
9 harmed by, the expungement. This paragraph does not apply to information
10 maintained by the department of transportation regarding a conviction that is
11 required to be included in a record kept under s. 343.23 (2) (a).

12 (d) Upon receiving an order from the court to expunge a court record, the clerk
13 of the court shall do all of the following:

14 1. Inform the department of justice that the record is being expunged by order
15 of the court.

16 2. Treat the record in the manner required by SCR 72.06.

17 (e) Notwithstanding par. (d) 2., the clerk of court shall allow access to the file
18 and the order for expungement to the person who petitioned for expungement or to
19 another person with the petitioner's written permission.

20 **(4) CERTAIN PERSONS MAY NOT APPLY.** No person may apply for expungement of
21 the following:

22 (a) A record of a conviction of a Class H felony, if the person has, in his or her
23 lifetime, been convicted of a prior felony offense, or if the felony is a violent offense,
24 as defined in s. 301.048 (2) (bm), or is a violation of s. 940.32, 948.03 (2) or (3), or
25 948.095.

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1 (b) A record of a conviction of a Class I felony, if the person has, in his or her
2 lifetime, been convicted of a prior felony offense, or if the felony is a violent offense,
3 as defined in s. 301.048 (2) (bm), or is a violation of s. 948.23 (1) (a).

4 (c) A record of a violation of chs. 341 to 348, or a traffic regulation or ordinance
5 in conformity with any statute within chs. 341 to 348.

6 **(5) CERTAIN ORDERS OF EXPUNGEMENT PROHIBITED, ALLOWED, OR REQUIRED.** (a) A
7 court may order that a record containing a read-in crime, as defined in s. 973.20 (1g)
8 (b), be expunged only if the record of the offense for which the read-in crime was
9 considered is expunged under this section. A petition for expungement of such a
10 charge shall include the name, county, and case number of the other civil violation
11 or crime.

12 (b) A court may order that a record containing multiple charges be expunged
13 only if the records for all of the charges are expunged under this section.

14 (c) A court shall order, upon application, that a record be expunged upon
15 successful completion of the sentence if the offense was a violation of s. 942.08 (2) (b),
16 (c), or (d), and the person was under the age of 18 when he or she committed it.

17 **(6) EFFECT OF EXPUNGEMENT.** (a) An expunged record may not be considered by
18 any person in any matter relating to an application for employment or for the rental,
19 purchase, or financing of housing.

20 (b) Expungement of a record under this section is not a basis for a claim under
21 s. 775.05.

22 **SECTION 8.** 939.77 (title) of the statutes is created to read:

23 **939.77 (title) Expungement; trafficking.**

24 **SECTION 9.** 939.77 (2) (a) of the statutes is created to read:

