



## 2011 ASSEMBLY BILL 709

March 15, 2012 - Introduced by Representatives KESSLER, TURNER, GRIGSBY, POCAN and BIES, cosponsored by Senators TAYLOR and S. COGGS. Referred to Committee on Criminal Justice and Corrections.

1     **AN ACT to renumber and amend** 973.015 (1) (b) and 973.015 (2); **to amend**  
2             301.45 (1p) (a), 301.45 (7) (e) 2., 301.45 (7) (e) 3. and 973.015 (1) (a); and **to**  
3             **create** 973.015 (2) (e), 973.015 (2m) (a), 973.015 (2m) (c), 973.015 (4) and (5) and  
4             973.015 (6) of the statutes; **relating to:** expungement of misdemeanors.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if a person is found guilty of a misdemeanor or a nonviolent Class H or Class I felony that he or she commits before age 25, the sentencing court may order that the record of conviction be expunged when he or she completes his or her sentence. The court must find that expungement would benefit the person and not harm society and the person may not commit another crime or have his or her probation revoked in order to be eligible for expungement. If the person successfully completes the sentence in such a case, the Department of Corrections or the county jail or house of correction must issue a certificate stating that the person successfully completed the sentence. The expungement takes effect immediately upon the issuance of that certificate.

This bill makes expungement available for all persons who were convicted of a misdemeanor with a maximum jail sentence of one year, regardless of their age at the time of their offenses, unless the misdemeanor conviction was the result of a plea agreement for certain felony charges. In addition, upon the expungement of a person's conviction, he or she can no longer be affected by any prohibition, disqualification, disability, increased penalty, or other adverse or unfavorable treatment that results from a misdemeanor conviction, including any adverse

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consequences that might result from a court's consideration of the expunged offense in any subsequent case. Moreover, neither the existence nor the contents of court records relating to the expunged offense may be disclosed to anyone other than the person or his or her attorney. The bill also permits a court to enter an order authorizing expungement at any time during or after the sentence. The bill, however, specifies that expungement may not occur within the first two years after the person's misdemeanor conviction and that, in general, a person is eligible for expungement only once in his or her lifetime.

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

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*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 is amended to read:

2           301.45 **(1p)** (a) If a person is covered under sub. (1g) based solely on an order  
3 that was entered under s. 938.34 (15m) (am) or 973.048 (1m) in connection with a  
4 delinquency adjudication or a conviction for a violation of s. 942.08 (2) (b), (c), or (d),  
5 the person is not required to comply with the reporting requirements under this  
6 section if the delinquency adjudication is expunged under s. 938.355 (4m) (b) or if the  
7 conviction is expunged under s. 973.015 ~~(2)~~.

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

9           301.45 **(7)** (e) 2. The department issues a certificate of discharge under s.  
10 973.015 ~~(2)~~ (3).

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

12           301.45 **(7)** (e) 3. The department receives a certificate of discharge issued under  
13 s. 973.015 ~~(2)~~ (3) by the detaining authority or, if s. 973.015 (3) does not apply but the  
14 requirements of s. 973.015 (1) or (2m) (c) are met, an expungement order issued  
15 under s. 973.015 (1) or (2m).

16           **SECTION 4.** 973.015 (1) (a) of the statutes is amended to read:

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1           973.015 (1) (a) Subject to ~~par. sub. (2m)~~ (b) and except as provided in par. (c),  
2       when if a person is convicted of a felony for which the maximum period of  
3       imprisonment is 6 years or less or of a misdemeanor for which the maximum penalty  
4       is imprisonment for more than one year in the county jail and the person is under the  
5       age of 25 at the time of the commission of ~~an offense for which the person has been~~  
6       ~~found guilty in a court for violation of a law for which the maximum period of~~  
7       ~~imprisonment is 6 years or less~~ the offense, the court may order at the time of  
8       sentencing that the record be expunged upon successful completion of the sentence  
9       if the court determines the person will benefit and society will not be harmed by this  
10      disposition.

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

14           **SECTION 5.** 973.015 (1) (b) of the statutes is renumbered 973.015 (2m) (b) and  
15      amended to read:

16           973.015 **(2m)** (b) ~~The court shall order at the time of sentencing that the record~~  
17      ~~be expunged upon successful completion of the sentence if~~ If the offense  
18      misdemeanor was a violation of s. 942.08 (2) (b), (c), or (d), and the person was under  
19      the age of 18 when he or she committed it, the court shall order, at the time of  
20      sentencing, that the record be expunged if the requirements of par. (c) are met.

21           **SECTION 6.** 973.015 (2) of the statutes is renumbered 973.015 (1) (d) and  
22      amended to read:

23           973.015 **(1)** (d) A person has successfully completed the sentence if the person  
24      has not been convicted of a subsequent offense and, if on probation, the probation has  
25      not been revoked and the probationer has satisfied the conditions of probation.

**ASSEMBLY BILL 709****SECTION 6**

1           **(3)** Upon successful completion of the sentence under sub. (1) or upon meeting  
2 the requirements under sub. (2m) (c), whichever is appropriate, the detaining or  
3 probationary authority shall issue a certificate of discharge which shall be forwarded  
4 to the court of record and which shall have the effect of expunging the record. If the  
5 person has been imprisoned, the detaining authority shall also forward a copy of the  
6 certificate of discharge to the department.

7           **SECTION 7.** 973.015 (2) (e) of the statutes is created to read:

8           973.015 **(2)** (e) If, as part of the misdemeanor conviction, a felony was  
9 uncharged or dismissed as part of a plea agreement, the felony was not a violent  
10 offense, as defined in s. 301.048 (2) (bm) 1., or a sex offense, as defined in s. 301.45  
11 (1d) (b).

12           **SECTION 8.** 973.015 (2m) (a) of the statutes is created to read:

13           973.015 **(2m)** (a) Subject to par. (b) and sub. (6), if a person is convicted of a  
14 misdemeanor for which the maximum penalty is one year or less in the county jail,  
15 the court may order, at sentencing, during the sentence, or after the completion of  
16 the sentence, that the record be expunged if the requirements of par. (c) are met and  
17 if the court determines that the person will benefit and society will not be harmed  
18 by this disposition.

19           **SECTION 9.** 973.015 (2m) (c) of the statutes is created to read:

20           973.015 **(2m)** (c) A person's conviction for a misdemeanor may be expunged  
21 through an order entered under par. (a) or (b) if all of the following apply:

22           1. The person has completed the sentence.

23           2. The person has not been convicted of a crime committed after the  
24 misdemeanor conviction.

25           3. If on probation, the person has satisfied the conditions of probation.

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1           4. At least 2 years have passed since the person's misdemeanor conviction.

2           5. If, as part of the misdemeanor conviction, a felony was uncharged or  
3 dismissed as part of a plea agreement, the felony was not a violent offense, as defined  
4 in s. 301.048 (2) (bm) 1., or a sex offense, as defined in s. 301.45 (1d) (b).

5           **SECTION 10.** 973.015 (4) and (5) of the statutes are created to read:

6           973.015 (4) If a record of a person's conviction is expunged under this section,  
7 the person shall not be subject to any prohibition, disqualification, disability,  
8 increased penalty, or other adverse or unfavorable treatment that would otherwise  
9 result from the person having been convicted of that offense.

10          (5) (a) 1. Except as provided in subd. 2. and sub. (3), if a record of a conviction  
11 is expunged under this section, neither the existence nor the contents of the court's  
12 records relating to the misdemeanor may be disclosed to any person.

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

17          (b) Within 45 days after a conviction is expunged under this section, the clerk  
18 of the court of record shall ensure that all records and data relating to the offence,  
19 with the exception of a notation "Expungement," are removed from the automated  
20 information systems under s. 758.19 (4).

21          (c) When a conviction is expunged under this section, the clerk of the court of  
22 record shall ensure that public notice of the expungement is provided.

23           **SECTION 11.** 973.015 (6) of the statutes is created to read:

24           973.015 (6) Subsection (2m) applies to a person who has already been the  
25 subject of an order entered under sub. (2m) only if all of the following apply:

