

1999 DRAFTING REQUEST

Bill

Received: **01/24/2000**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Tim Hoven (608) 267-2369**

By/Representing: **Michael Walsh**

This file may be shown to any legislator: NO

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous
Munis - miscellaneous**

Extra Copies: **MGD**

Pre Topic:

.

No specific pre topic given

Topic:

Expungement of arrest records

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>
/P1	olsenje 02/17/2000	j geller 02/1 8/2000	jfrantze 02/2 1/2000	_____	lrb-docadmin 02/21/2000		Local
/1	olsenje 03/17/2000	, jgeller 03/20/2000	martykr 03/20/2000	_____	lrb-docadmin 03/20/2000	lrb_docadmin	Local 03/20/2000

FE Sent For:

G 03-22-00

<END>

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/P1	olsenje 02/17/2000	jgeller 02/ 18/2000	jfrantze 02/21/2000	_____	lrb_docadmin 02/21/2000		Local

1 3/20 jlg
Jim 3/20
Salt 3/20

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<END>

Jacket "1"
for Assembly
JED

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MES**

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I?	olsenje	1/21 2/18 jwg		_____			

FE Sent For:

<END>

LEGISLATIVE REFERENCE BUREAU

Legal Section, 5th Floor, 100N.Hamilton St.
 (608) 266-3561

BILL REQUEST FORM

4303

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
 Use this form only for BILL drafts. Attach more pages if necessary.

Date of request: 18 JAN 2000	Legislator or agency requesting this draft: REP HOVEN
Name/phone number of person submitting request: HOVEN 7-2369	
Persons to contact for questions about this draft (names and phone numbers please): Michael Welsh 7-2370	
Describe the problem, including any helpful examples. How do you want to solve the problem? PLEASE SEE ATTACHMENT	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO

If yes, anyone who asks? YES NO

Any legislator? YES NO ONLY the following persons:

Do you consider this urgent? YES NO If yes, please indicate why:
 PER OUR CONVERSATION

Is this request of higher priority than other pending request(s) you have made?
 YES NO If yes, please sign your name here:

Draft of Proposed Statute

RE: : Expungement of Criminal Records for Non Criminals

Reason for Proposed Statute:

When an individual is **charged** with a crime, and later the charges **are** dropped by the same **people** who issued the **charges**, the person charged does not end up with a clean slate. This information (charge) is **used** by people to **decide** on employment issues and by **future** business associates to decide on character. Companies pay a lot of money to firms that specialize in obtaining more **than** just conviction records. **In** fact, the State of Wisconsin's new web site (CCAP), offers anyone with an **Internet** hookup access to these records. Companies **would** not spend this money to search, and the State **0%** Wisconsin would not spend this money to publish. if this information was not used by other parties. What do you do if the charges were dropped because there was no **crime**, and what ever happened to the Bill of Rights "presumption of **innocence**"?. **If you are** innocent, (not convicted), why can't you be **trated** like it?

Proposed Statute:

An individual may petition the Circuit Court and have their charge expunged off the **court's** record if **all** of the following conditions are true:

1. Seven years have passed since the charge was dropped.
2. The person has not been **convicted** of any crimes in the **seven** year period.
3. The charge **was** a misdemeanor.
4. The dropped charge did not result in a city ordinance in which a **fine** was paid.
5. The individual states that he/she would benefit from this, and society would **not** be harmed.
6. THE CHARGE DID NOT INVOLVE A JUVINILE NOR WAS SEXUAL IN NATURE.



Soon!
D. Kite

JG

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen

1 **AN ACT relating to:** expunging records of dismissed criminal charges in
2 certain cases.

Analysis by the Legislative Reference Bureau

Current law provides a special disposition for certain criminal cases. Under this special disposition, if a person is found guilty of a misdemeanor and the person was under the age of 21 at the time he or she committed the offense, the court may, at the time of sentencing, order that the record of the person's conviction be expunged if the person successfully completes the sentence. The court may order this special disposition only if the court determines the person will benefit from expunction and society will not be harmed by expunction. If the court orders this special disposition in a case, the court must expunge the person's record upon being informed that the person has successfully completed his or her sentence. Under supreme court rules governing circuit court records, when the clerk of the court is required to expunge a court record the clerk 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, except the case number; 3) seal the entire case file; and 4) destroy expunged court records in accordance with supreme court rules (for misdemeanor cases, records generally may be destroyed 20 years after entry of final judgment in the case).

This bill provides for the expunction of court records of certain dismissed misdemeanor charges. Under the bill, if a person was charged with a misdemeanor offense and the charge was subsequently dismissed, the person may petition a court for an order to expunge the court's records relating to the dismissed charge if all of the following apply:

1. The dismissed charge did not involve ~~involving~~ certain specified misdemeanors, including providing alcohol beverages to underage persons, delivering drug paraphernalia to a minor, any misdemeanor violation relating to sexual morality and any misdemeanor offenses against children.

2. The person was not found to have committed a violation of any other state law or any local ordinance based on the same conduct on which the dismissed charge was based.

3. At least seven years have passed from the date on which the charge was dismissed.

4. The court has not previously denied a petition filed by the person for expunction of the court records relating to the dismissed charge.

5. The court determines that the person will benefit from the records being expunged and society will not be harmed by the records being expunged.

A person seeking expunction of a court record under the bill must file a petition in the circuit court for the county in which the dismissed charge was filed. The person must serve a copy of the petition on the office of the district attorney that filed the dismissed charge, and the district attorney may file a written response to the petition. After reviewing a petition and any response from the district attorney, the court may either hold a hearing on the petition or decide the petition without a hearing. If the court determines that the criteria for expunction have been met, the court must grant the petition and order that the court's records relating to the dismissed misdemeanor charge be expunged. If a court determines that the criteria have not been met, the court must deny the petition. If the court orders that its records relating to a dismissed misdemeanor charge be expunged, neither the existence nor the contents of the court's records relating to the dismissed misdemeanor charge may be disclosed to any person other than to the person who was charged or, if authorized by the person who was charged, to an attorney representing the person who was charged.

For further information see the 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:

1 SECTION 1. 971.097 of the statutes is created to read:

2 **971.097 Expunction of records when misdemeanor charges are**

3 **dismissed. (1)** (a) Except as provided in par. (b), a person may petition under sub.

4 (2) for an order to expunge the court's records relating to a misdemeanor charge

5 against the person that was dismissed if all of the following apply:

1 1. The person was not found to have committed a violation of any other state
2 law or any local ordinance based on the same conduct on which the misdemeanor
3 charge was based.

4 2. At least 7 [✓] years have passed from the date on which the charge was
5 dismissed.

6 3. The court has not previously denied a petition filed by the person under sub.
7 (2) for expunction of the court records relating to the misdemeanor charge.

8 4. The court determines that the person will benefit from the records being
9 expunged and society will not be harmed by the records being expunged.

10 (b) A person may not petition under sub. [✓](2) for an order to expunge the court's
11 records relating to a misdemeanor charge against the person that was dismissed if
12 the charge was for a misdemeanor offense under s. [✓]125.07 or [✓]961.575 or ch. 944 or
13 948[✓] or if any victim of the misdemeanor charged was a minor.

14 (2) (a) A person who was charged with a misdemeanor that was subsequently
15 dismissed and who believes that he or she meets the criteria specified in sub. [✓](1) (a)
16 may petition the circuit court for the county in which the dismissed charge was filed
17 for an order requiring the court's records relating to the charge to be expunged. The
18 person shall serve a copy of the petition on the office of the district attorney that filed
19 the dismissed charge. The district attorney may file a written response to the
20 petition within a time limit set by the court.

21 (b) After reviewing a petition filed under par. [✓](a) and the district attorney's
22 response to the petition, if any, the court shall decide whether to hold a hearing on
23 the petition or, if it does not hold a hearing, whether to grant or deny the petition
24 without a hearing. **If** the court decides to hold a hearing on the petition, the hearing

1 shall be before the court without a jury The office of the district attorney that filed
2 the dismissed charge shall represent the state at the hearing.

3 (c) If a court determines after a review of or a hearing on a petition filed under
4 par. (a) that the person who filed the petition meets the criteria specified in sub. (1)
5 (a), then the court shall grant the petition and order that the court's records relating
6 to the dismissed misdemeanor charge be expunged. If a court determines that the
7 person who filed the petition does not meet the criteria specified in sub. (1) (a), then
8 the court shall deny the petition.

9 (3) (a) Except as provided in par. (b), if the court orders under sub. (2) that its
10 records relating to a dismissed misdemeanor charge be expunged, neither the
11 existence nor the contents of the court's records relating to the dismissed
12 misdemeanor charge may be disclosed to any person.

13 (b) The existence and content of a court record that is expunged pursuant to an
14 order issued under sub. (2) may be disclosed to the person who was charged or, if
15 authorized by the person who was charged, to an attorney representing the person
16 who was charged.

17 (END)

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

LRB-4303/P1dn

JEO:.....
x

JEO

Mike Walsh:

Please review this draft carefully to make sure that it does what you want it to do. As I mentioned during our most recent telephone conversation, the draft allows expunction of court records of dismissed charges only. Thus, law enforcement agency records of the arrest that led to the dismissed charge, as well of records of an arrest that leads to no charges whatsoever, are not subject to expunction under this draft. If you want to cover law enforcement agency arrest records, the draft will have to be expanded to do so.

Let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

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

LRB-4303/P1dn
JEO:jlg:jf

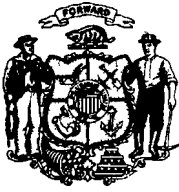
February 21, 2000

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Legislative Attorney
Phone: (608) 2664906
E-mail: Jefren.Olsen@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4303/T1

JEO:jlj:jf

R.M.V.

Soon!

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Regen

1 **AN ACT** to create 971.097 of the statutes; **relating** to: expunging records of
2 dismissed criminal charges in certain cases.

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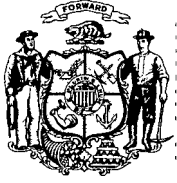
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17 (END)



STEPHEN R MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION (608) 266-3561
LEGAL FAX (608) 264-6522
REFERENCE SECTION (608) 266-0341
REFERENCE FAX (608) 266-5648

FISCAL ESTZMATES

BILL NUMBER:

ASSEMBLY BILL 923

Note: The analysis of this bill states that a fiscal estimate was required for this bill. A request was made though the department of administration to have a fiscal estimate prepared. The agency(s) assigned to prepare a fiscal estimate for this bill did not return a estimate for this bill so none are included in this file.