

2001 ASSEMBLY BILL 258

March 30, 2001 – Introduced by Representatives HOVEN, ALBERS, BERCEAU, COLON, GUNDERSON, HUNDERTMARK, KAUFERT, JESKEWITZ, KESTELL, LADWIG, J. LEHMAN, MUSSER, OLSEN, PETROWSKI, POWERS, STASKUNAS, STONE, SYKORA and WADE, cosponsored by Senators ROESSLER, DARLING, FARROW, HARSDFORF, M. MEYER, ROSENZWEIG and SCHULTZ. Referred to Committee on Judiciary.

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

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1. The dismissed charge did not involve 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:

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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

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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)**