

**2001 DRAFTING REQUEST**

**Bill**

Received: 11/13/2000

Received By: **mdsida**

Wanted: As time permits

Identical to LRB:

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

By/Representing: **Michael**

This file may be shown to any legislator: **NO**

Drafter: **nelsorp1**

May Contact:

Alt. Drafters: **mdsida**

Subject: **Criminal Law - miscellaneous**

Extra Copies: **rlr**

**Pre Topic:**

No specific pre topic given

**Topic:**

Expunging dismissed misdemeanor charges

**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> |
|--------------|--|---------------------|-----------------------|----------------|----------------------------|----------------------------|-----------------|
| /?           | mdsida<br>01/24/2001<br>nelsorp1<br>01/24/2001 | jdyer<br>01/25/2001 |                       | _____          |                            |                            | Local           |
| /1           |  |                     | martykr<br>01/31/2001 | _____          | lrb_docadmin<br>01/31/2001 | lrb_docadmin<br>02/22/2001 |                 |

FE Sent For:

<END>

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| 1?           | mdsida<br>01/24/2001<br>nelsorp1 | 1/1/25 jld      | 2/1/31       | RS<br>Km 1/31  |                  |                 |                 |
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| /?           | mdsida         |                 |              | _____          |                  |                 |                 |
|              |                |                 |              | _____          |                  |                 |                 |

FE Sent For:

<END>

**LEGISLATIVE REFERENCE BUREAU****BILL REQUEST FORM**

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

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:<br><i>09 NOV 2000</i>   | Legislator or agency requesting this draft:<br><i>REP. HOVEN</i> |
| Name/phone number of person submitting request:<br><i>REP. HOVEN - 7-2370</i>  |  |
| Persons to contact for questions about this draft<br>(names and phone numbers please):<br><i>Michael Welsh - 7-2370</i>                                  |  |
| Describe the problem, including any helpful examples. How do you want to solve the problem?<br><i>PLEASE REDRAFT THIS BILL FOR THE 2001-2002 SESSION</i> |  |
| 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:

Is this request of higher priority than other pending request(s) you have made?

YES  NO If yes, please sign your name here:

B923

**ASSEMBLY BILL 923**

An Act to create 971.097 of the statutes; relating to: expunging records of dismissed criminal charges in certain cases. (FE)

2000

03-22-00. A. Introduced by Representative Hoven.

03-22-00. A. Read first time and referred to committee on Judiciary and Personal Privacy

**796**

04-06-00. A. Failed to pass pursuant to Senate Joint Resolution 1 ..... **915**

2001  
1999 ASSEMBLY BILL 923

March 22, 2000 - Introduced by Representative HOVEN. Referred to Committee on  
Judiciary and Personal Privacy.

LPS-  
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Regen

- 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:

**ASSEMBLY BILL 923**

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<sup>✓x</sup> 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),<sup>✓</sup> a person may petition under sub.
- 4 (2)<sup>✓</sup> 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:<sup>✓</sup>



**ASSEMBLY BILL 923**

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

**ASSEMBLY BILL 923**

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),<sup>✓</sup> 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)



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

STEPHEN R. MILLER  
CHIEF

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

January 31, 2001

### MEMORANDUM

To: Representative Hoven

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-0990 Expunging dismissed misdemeanor charges

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.