

2007 ASSEMBLY BILL 891

February 26, 2008 – Introduced by Representatives KESSLER, GRIGSBY, POCAN, TOLES, FIELDS and A. WILLIAMS, cosponsored by Senator TAYLOR. Referred to Committee on Corrections and Courts.

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

Analysis by the Legislative Reference Bureau

Under current law, if a person commits a misdemeanor (which, in general, is a crime for which a person may be imprisoned for no more than one year) before he or she reaches the age of 21, a court may order that the court's record regarding the offense be expunged upon the offender's successful completion of his or her sentence. (A person successfully completes a sentence if he or she is not convicted of a subsequent offense and, if the person is placed on probation, he or she complies with any condition of probation.) The court may enter such an order only at the time of sentencing and only if it finds that expunging the record will benefit the person and will not harm society. 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 this expungement option available for all offenders, 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

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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 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.

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

1 **SECTION 1.** 301.45 (1p) of the statutes is amended to read:

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

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

10 **301.45 (7) (e) 2.** The department issues a certificate of discharge under s.
11 973.015 (2) (3).

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

13 **301.45 (7) (e) 3.** The department receives a certificate of discharge issued under
14 s. 973.015 (2) (3) by the detaining authority or, if s. 973.015 (3) does not apply but the

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1 requirements of s. 973.015 (2) are met, an expungement order issued under s.
2 973.015 (1).

3 **SECTION 4.** 973.015 (title) of the statutes is repealed and recreated to read:

4 **973.015 (title) Expungement of misdemeanors.**

5 **SECTION 5.** 973.015 (1) (a) of the statutes is amended to read:

6 973.015 (1) (a) Subject to par. (b), ~~when and sub. (6) (a), if~~ a person is under the
7 age of 21 at the time of the commission convicted of an offense for which the person
8 has been found guilty in a court for violation of a law a misdemeanor for which the
9 maximum penalty is imprisonment for one year or less in the county jail, ~~the court~~
10 ~~may order at the time of sentencing that the record be expunged upon successful~~
11 ~~completion of the sentence if and~~ the court determines the person will benefit and
12 society will not be harmed by this disposition, the court may order, at sentencing,
13 during the sentence, or after the completion of the sentence, that the record be
14 expunged if the requirements of sub. (2) are met.

15 **(6) (b)** This subsection section does not apply to information maintained by the
16 department of transportation regarding a conviction that is required to be included
17 in a record kept under s. 343.23 (2) (a).

18 **SECTION 6.** 973.015 (1) (b) of the statutes is amended to read:

19 973.015 (1) (b) ~~The court shall order at the time of sentencing that the record~~
20 ~~be expunged upon successful completion of the sentence if~~ If the offense
21 misdemeanor was a violation of s. 942.08 (2) (b), (c), or (d), and the person was under
22 the age of 18 when he or she committed it, the court shall order, at the time of
23 sentencing, that the record be expunged if the requirements of sub. (2) are met.

24 **SECTION 7.** 973.015 (2) of the statutes is renumbered 973.015 (2) (intro.) and
25 amended to read:

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1 973.015 **(2)** (intro.) A person's conviction for a misdemeanor may be expunged
2 through an order entered under sub. (1) if all of the following apply:

3 (a) The person has successfully completed the sentence if the,

4 (b) The person has not been convicted of a subsequent offense and, if crime
5 committed after the misdemeanor conviction.

6 (c) If on probation, the probation has not been revoked and the probationer
7 person has satisfied the conditions of probation. Upon successful completion of the
8 sentence

9 **(3)** If the requirements of sub. (2) are met and the order under sub. (1) was
10 entered before the person completed the sentence or less than 2 years after the
11 person's misdemeanor conviction, the detaining or probationary authority shall
12 issue a certificate of discharge which shall be forwarded to the court of record and
13 which shall have the effect of expunging the record. If the person has been
14 imprisoned, the detaining authority shall also forward a copy of the certificate of
15 discharge to the department.

16 **SECTION 8.** 973.015 (2) (d) of the statutes is created to read:

17 973.015 **(2)** (d) At least 2 years have passed since the person's misdemeanor
18 conviction.

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

20 973.015 **(2)** (e) If, as part of the misdemeanor conviction, a felony was
21 uncharged or dismissed as part of a plea agreement, the felony was not a violent
22 offense, as defined in s. 301.048 (2) (bm) 1., or a sex offense, as defined in s. 301.45
23 (1d) (b).

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

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1 973.015 (4) If a record of a person's conviction is expunged under this section,
2 the person shall not be subject to any prohibition, disqualification, disability,
3 increased penalty, or other adverse or unfavorable treatment that would otherwise
4 result from the person having been convicted of that offense.

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

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

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

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

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

19 973.015 (6) (a) This section applies to a person who has already been the subject
20 of an order entered under this section only if all of the following apply:

21 1. The order related to an offense that could have been joined under s. 971.12
22 (1) with the present offense.

23 2. The record of the offense to which the order related has been expunged or the
24 person remains eligible for expungement regarding that offense under sub. (2).

25 **SECTION 12. Effective date.**

