

2007 DRAFTING REQUEST

Bill

Received: 12/28/2007

Received By: chanaman

Wanted: As time permits

Identical to LRB:

For: Lena Taylor (608) 266-5810

By/Representing: Eric

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous
Criminal Law - sentencing

Extra Copies:

Submit via email: YES

Requester's email: Sen.Taylor@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Expungement of misdemeanors

Instructions:

See Attached--redraft 2005 AB-280 with provisions about CCAP

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>
/?	chanaman 01/02/2008	kfollett 01/10/2008		_____			S&L
/1	chanaman 02/25/2008	csicilia 02/25/2008	rschluet 01/10/2008	_____	cduerst 01/10/2008		S&L
/2			nmatzke 02/25/2008	_____	cduerst 02/25/2008	cduerst 02/25/2008	

FE Sent For:

at intro
2/26

<END>

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			nwn/ 2/25	nwn/rs 2/25			

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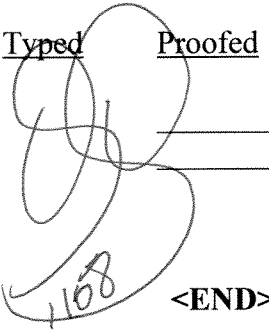
Expungement of misdemeanors

Instructions:

See Attached--redraft 2005 AB-280 with provisions about CCAP

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/?	chanaman	1/15 f 1/10					
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FE Sent For:

<END>



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3734/2

CMH: [handwritten initials]

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

for cal

1 AN ACT ...; relating to: expungement of 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 conditions 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.

This bill makes this expungement option available for all offenders, regardless of their age at the time of the offense. In addition, under the bill, a court may enter an order authorizing expungement at any time during or after the sentence.

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:

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

3 301.45 (1p) EXCEPTION TO REGISTRATION REQUIREMENT; EXPUNGEMENT OF INVASION

4 OF PRIVACY ADJUDICATION OR CONVICTION. If a person is covered under sub. (1g) based

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

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109; 2003 a. 50, 53; 2005 a. 25, 253, 277, 344, 432, 434; 2007 a. 20 ss. 3130 to 3132, 9121 (6) (a).

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

7 301.45 (7) (e) 2. The department issues a certificate of discharge under s.
8 973.015 (2) (2m) (c).

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109; 2003 a. 50, 53; 2005 a. 25, 253, 277, 344, 432, 434; 2007 a. 20 ss. 3130 to 3132, 9121 (6) (a).

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

10 301.45 (7) (e) 3. The department receives a certificate of discharge issued or
11 expungement order under s. 973.015 (2) by the detaining authority (4).

History: 1995 a. 440 ss. 26 to 49, 53 to 74; Stats. 1995 s. 301.45; 1997 a. 3, 35, 130, 191, 237, 283; 1999 a. 9, 89, 156, 186; 2001 a. 38, 96, 109; 2003 a. 50, 53; 2005 a. 25, 253, 277, 344, 432, 434; 2007 a. 20 ss. 3130 to 3132, 9121 (6) (a).

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

13 **973.015 (title) Expungement of misdemeanors.**

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

16 973.015 (2m) (a) Subject to par. (b), ~~when if~~ a person is ~~under the age of 21 at~~
17 ~~the time of the commission convicted~~ of an offense for which the person has been
18 found guilty in a court for violation of a law for which the maximum penalty is
19 imprisonment for one year or less in the county jail, the court may order at the time
20 of sentencing or at any other time that the record be expunged upon successful
21 completion of when the person successfully completes the sentence if the court
22 determines the person will benefit and society will not be harmed by this disposition.

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

4 History: 1975 c. 39; 1975 c. 189 s. 105; 1975 c. 199; 1983 a. 519; 1991 a. 189; 2003 a. 33, 50, 320.

4 **SECTION 6.** 973.015 (2) of the statutes is renumbered 973.015 (1m) and
5 amended to read:

6 973.015 (1m) ~~A person has successfully completed the sentence if the~~ In this
7 section, "successfully completes the sentence" means that a person has not been
8 convicted of a subsequent offense and, if on probation, the probation has not been
9 revoked and the probationer has satisfied the conditions of probation. Upon
10 successful completion of the

11 (2m) (c) If a person who is the subject of an order under par. (a) or (b)
12 successfully completes the sentence, the detaining or probationary authority shall
13 issue a certificate of discharge which shall be forwarded to the court of record and
14 which shall have the effect of expunging the record. If the person has been
15 imprisoned, the detaining authority

16 (4) Upon receiving a certificate of discharge for a person who is subject to an
17 order under sub. (2m) or upon the entry of an expungement order under sub. (3), the
18 clerk of circuit court shall notify the department of justice of the expungement. The
19 clerk of circuit court shall also forward a copy of the any certificate of discharge to
20 the department of corrections. Within 45 days after the receipt of the certificate or
21 the entry of the order, the clerk shall ensure that all records and data relating to the
22 misdemeanor are removed from the automated information systems under s. 758.19
23 (4).

24 History: 1975 c. 39; 1975 c. 189 s. 105; 1975 c. 199; 1983 a. 519; 1991 a. 189; 2003 a. 33, 50, 320.

24 **SECTION 7.** 973.015 (3) of the statutes is created to read:

1 973.015 (3) If a person is convicted of an offense for which the maximum
 2 penalty is imprisonment for one year[✓] or less in the county jail and the person
 3 successfully completes[✓] the sentence, the court may order at any time thereafter that
 4 the record be expunged[✓] if the court determines the person will benefit and society will
 5 not be harmed by this disposition. The detaining or probationary authority shall
 6 notify the court, upon request, whether a person successfully[✓] completed his or her
 7 sentence.

8

(END)

-3734/2
LRB-4151/1
CMH:cjs:jf
stays
NOTE
CHANGE
IN
CRB
#

Today
2007 BILL

D-Note

repeal

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

BILL

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:

BILL

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:

BILL

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.~~

BILL

1 (1) This act takes effect on September 30, 2007, or on the day after publication,
2 whichever is later.

3 (END)

D-note

LRB- 3734/2dm
CMH:cjs:

Eric:

I removed the effective date since ~~the~~
^{one} ~~earlier~~ of the two options (September 30,
2007) had passed. IF you'd like
a delayed effective date, please let me
know.

CMH

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

LRB-3734/2dn
CMH:cjs:nwn

February 25, 2008

Eric:

I removed the effective date since one of the two options (September 30, 2007) had passed. If you'd like a delayed effective date, please let me know.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov

Duerst, Christina

From: Peterson, Eric
Sent: Monday, February 25, 2008 1:37 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-3734/2 Topic: Expungement of misdemeanors

RUSH PLEASE

Please Jacket LRB 07-3734/2 for the SENATE.