



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Senate Bill 53

**Assembly Substitute
Amendment 1**

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BACKGROUND

State law allows a conviction to be removed from an offender's circuit court case record under certain circumstances, through a process known as "expungement."

Under current law related to adult criminal court records, if a person is under the age of 25 at the time he or she commits an offense eligible for expungement, the court may order, at the time of sentencing, that the person's court record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by the expungement.¹

A person has successfully completed his or her sentence if he or she has not been convicted of a subsequent offense and, if the person was on probation, the probation was not revoked and the conditions of probation were satisfied. If the court orders expungement and the person successfully completes the sentence, the detaining or probationary authority is required to issue a certificate of discharge which is forwarded to the court of record and has the effect of expunging the record.

Generally, an offense is eligible for expungement if it is a crime that carries a maximum term of imprisonment of six years or less (which includes misdemeanors and Class H and I felonies). Under certain circumstances, a Class H or I felony may not be expunged. [s. 973.015, Stats.]

¹ Wisconsin's expungement law treats convictions for "Peeping Tom" offenses committed by a person under age 18 differently than other offenses and contains special provisions that apply to victims of human trafficking. These provisions are not changed in 2017 Senate Bill 53.

SENATE BILL 53

Offenses Eligible for Expungement

Senate Bill 53, as passed by the Senate², (“the bill”) provides that a record of a conviction for “a violation of chs. 341 to 348, or a traffic regulation or ordinance in conformity with chs. 341 to 348” is not eligible for expungement. Offenses in these chapters of the statutes primarily consist of traffic violations.

Availability of Expungement

The bill generally eliminates the requirement that a court must decide whether to make a person eligible for expungement at the time of sentencing. Instead, the bill allows a court to order, at the time of sentencing, that a record is ineligible for expungement. If the sentencing court does not order that a record is ineligible, the bill allows a person to file a petition for expungement with the court if at least one year has passed since his or her sentence has been successfully completed and there are no criminal charges pending against the person. The bill requires that a person filing a petition for expungement pay to the clerk of circuit court a \$100 fee for each petition filed. This money is deposited in an appropriation account used to fund general program operations in circuit courts.

Under the bill, a person has successfully completed his or her sentence if the person has completed any period of incarceration, parole, or extended supervision to which he or she was sentenced; the person has paid all fines, costs, fees, surcharges, and restitution assessed; the person has not been convicted of a subsequent offense; and, if probation was imposed, the probation has not been revoked and the probationer has satisfied the conditions of the probation. If the person was not sentenced to any period of incarceration or placed on probation, the bill provides that a person has successfully completed the sentence if he or she has provided sufficient proof to the court that he or she has fulfilled all conditions of his or her sentence.

Upon receipt of a petition for expungement, the bill generally requires a court to schedule a hearing to review the petition. At the hearing, the court may order that the record be expunged if, similar to current law, the person is eligible for expungement and the court determines that the person will benefit and society will not be harmed. However, a court that receives a petition requesting that a record of a crime be expunged **must deny the petition** without a hearing if the court determines that any of the following are applicable:

- The person is not eligible for expungement.
- The person has been convicted of a crime since successfully completing the sentence for the crime subject of the petition.

² The Senate passed the bill, as amended by Senate Amendments 1 and 2. The prior Amendment Memo describing those amendments can be obtained by contacting the Legislative Council staff office.

- Criminal charges are pending against the person.
- The person has previously had a petition for expungement denied regarding the same crime.

Victim Notification

The bill provides that a crime victim has the right to have reasonable attempts made to notify him or her of a hearing concerning an expungement petition. If a person files a petition for expungement, the bill requires the district attorney to send a copy of the petition and a notice of hearing to the victim of the crime that is the subject of the petition, if the victim has submitted a card prepared by the Director of State Courts requesting notification. The notice must: (1) inform the victim that he or she may appear at the scheduled hearing; and (2) inform the victim of the manner in which he or she may testify or provide written statements concerning the petition.

The district attorney must make a reasonable attempt to send a copy of the petition to the last-known address of the victim within seven days of the date on which the petition is filed and must make a reasonable attempt to send the notice of hearing to the last-known address of the victim, postmarked at least 10 days before the date of the hearing.

Initial Applicability

The bill first applies to a person who is sentenced, or placed on probation, on the bill's effective date.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 ("the substitute amendment") makes the following key changes to the bill:

- Maintains an option available under current law for a court to order, at the time of sentencing, that a person's record be expunged upon successful completion of the sentence.
- Requires the judge to inform the defendant in writing at the time of sentencing of the process to file for expungement if the defendant is eligible for expungement and the court does not order expungement at that time.
- Excludes the requirement provided in the bill that a court must deny a petition for expungement without a hearing if the court determines that the factors described above are applicable.
- Allows a person to petition for expungement up to two times in his or her lifetime. Similar to the bill, a person may not petition for expungement until at least one year has passed since his or her sentence has been successfully completed. If the court does not order the record expunged, the substitute amendment allows the person to file a second petition, but only if at least two years have passed since he or she filed the first

petition. The substitute amendment requires the petitioner to pay to the clerk of circuit court a \$100 filing fee, but only for a second petition filed.

- Provides different victim notification requirements such that the district attorney must make a reasonable attempt to notify the victim and inform the victim of the following: (1) the victim may waive the hearing requirement; (2) the court may review the petition without a hearing if the victim waives the hearing requirement; (3) the manner in which the victim may provide written statements concerning the petition; and (4) the victim may appear at the hearing if the victim does not waive the hearing requirement. If the victim waives the hearing requirement, the district attorney may inform the court that there is no objection to waiving the hearing requirement.
- Specifies that a record of a crime that is expunged is not considered a conviction for employment purposes and that it is employment discrimination to request information regarding a crime if the record was expunged by court.
- Applies to any conviction for which sentencing has occurred but for which the record has not been ordered expunged.
- Creates a six-month delayed effective date so that the bill does not take effect until the first day of the seventh month after the bill goes into effect.

BILL HISTORY

Senate Action

Senate Amendment 1 was introduced by Senator Vukmir on May 5, 2017. Senate Amendment 2 was introduced by the Senate Committee on Judiciary and Public Safety on May 11, 2017. On the same day, the committee voted to recommend adoption of Senate Amendments 1 and 2 on votes of Ayes, 3; Noes, 2; and passage of the bill, as amended, on a vote of Ayes, 4; Noes, 1. On November 7, 2017, the Senate adopted Senate Amendments 1 and 2 on voice votes and passed the bill, as amended, on a vote of Ayes, 30; Noes, 2.

Assembly Action

Assembly Substitute Amendment 1 was introduced by Representative Steffen on February 20, 2018. On February 21, 2018, the Assembly voted to adopt the substitute amendment on a voice vote and concur in the bill, as amended, on a vote of Ayes, 95; Noes, 0.

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