



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2019 Assembly Bill 33</b>	<b>Assembly Amendments 1 and 2</b>
<i>Memo published: June 11, 2019</i>	<i>Contact: Melissa Schmidt, Senior Staff Attorney</i>

### BACKGROUND

#### Court Records

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 sentencing if the court determines the person will benefit and not be harmed by the expungement.<sup>1</sup> 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.

A person has successfully completed his or her sentencing 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. [s. 973.015, Stats.]

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<sup>1</sup> 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 by 2019 Assembly Bill 33.

If a court orders expungement, upon successful completion of the sentence, the clerk of court 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 the court's retention schedule. [s. SCR 72.06.] On the Wisconsin Circuit Court Access (WCCA) website, a search for the person's name or case number will not return the case.

### **Employment Discrimination**

Under Wisconsin's Fair Employment Law, with certain exceptions, it is an act of employment discrimination to take certain actions on the basis of a person's conviction record. [s. 111.322 (1), Stats.] Under one exception, a conviction record of an employee or applicant may be considered in certain cases if the underlying offense is substantially related to the particular job or licensed activity.<sup>2</sup> [s. 111.35 (3) (a), Stats.] For purposes of this law, "conviction record" includes, but is not limited to, "information indicating that an individual has been convicted of any felony, misdemeanor or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant to any law enforcement or military authority." [s. 111.32 (3), Stats.]

## **2019 ASSEMBLY BILL 33**

### **Eligibility for Expungement**

2019 Assembly Bill 33 eliminates the condition that a person must have been under the age of 25 years old at the time he or she committed an offense to be eligible for expungement.

In addition, the bill provides that a record of a conviction for a violation of chs. 341 to 348, Stats., is not eligible for expungement. Offenses in these chapters of the statutes primarily consist of traffic violations.

### **Availability and Process of Expungement**

The bill maintains the option for a court to order, at the time of sentencing, that a person's record be expunged upon successful completion of the sentence if it determines that the person will benefit and society will not be harmed by the disposition. In addition, the bill allows a court to order, at the time of sentencing, that a record is ineligible for expungement.

The bill also creates a new process for a person to seek expungement of his or her criminal court record in the county of conviction. The bill allows a person to file a petition for expungement with the court if at least one year has passed since the person successfully completed his or her sentence and there are no criminal charges pending against the person.

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<sup>2</sup> For more information about arrest and conviction records, see the Wisconsin Department of Workforce Development website, available at:  
[https://dwd.wisconsin.gov/er/civil\\_rights/discrimination/arrest\\_conviction.htm](https://dwd.wisconsin.gov/er/civil_rights/discrimination/arrest_conviction.htm).

Under the bill, the court is required to review the petition to determine whether the person is ineligible to petition for expungement. If the court determines that the person is eligible for expungement, the court must forward the petition to the district attorney. If the district attorney requests a hearing within 90 days after the court forwards the petition, the court must schedule a hearing to review the petition. If that time period passes or if the district attorney waives the hearing, the court may review the petition with or without a hearing. If a hearing is scheduled, then if practicable, the sentencing judge must be the judge to review the petition. The court may order that the record be expunged if, similar to current law, the court determines the person will benefit and society will not be harmed. If the court does not order the record be expunged, the person may file a second petition only if at least two years have passed since he or she filed the first petition and if he or she pays a \$100 fee to the clerk of circuit court. A person may not file more than two petitions for expungement per record.

### **Successful Completion of a Sentence**

The bill provides that a person has successfully completed the 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 and has completed any court-ordered community service; the person has not been convicted of a subsequent crime; and, if probation was imposed, the probation has not been revoked.

### **Victim Notification**

If a person files a petition for expungement, the bill requires the district attorney to make a reasonable attempt to notify the victim of the petition. In the notice, the district attorney must inform the victim that he or she may waive the hearing requirement and that, if waived, the court may review the petition without a hearing. The district attorney must inform the victim of the manner in which he or she may provide written statements concerning the petition and that if the victim does not waive the hearing requirement, he or she may appear at the hearing. If the victim waives the hearing requirement, the district attorney may inform the court that there is no objection to waiving the hearing requirement.

### **Employment Discrimination**

The bill provides that a record of a crime expunged is not considered a conviction for employment purposes. Furthermore, the bill specifies that employment discrimination because of a conviction record includes, but is not limited to, requesting an applicant, employee, member, licensee, or any other individual, on an application form or otherwise, to supply information regarding a crime the record of which was expunged. A request to supply information regarding criminal convictions may not be construed as a request to supply information regarding a crime the record of which has been expunged.

### Effective Date and Initial Applicability

The bill has a delayed effective date of approximately one year and first applies to any conviction for which sentencing has occurred, but for which the record has not been ordered expunged on the effective date.

### ASSEMBLY AMENDMENT 1

Assembly Amendment 1 (AA 1) makes three changes to the bill. First, the amendment defines the term “record,” for purposes of expungement, to mean “the criminal case file.” With this definition of a record, under the amendment, if a court orders the record to be expunged, the entire criminal case file must be expunged.

Second, the amendment provides that the record of a crime that has been expunged is not a conviction for purposes of licensure. Under the bill, the record of a crime that has been expunged is not a conviction for employment purposes. Assembly Amendment 1 retains this provision of the bill and also provides that, a record of a crime that has been expunged is not considered a conviction for purposes of issuing a license by a licensing agency,<sup>3</sup> except as otherwise required under federal law.

Lastly, under the bill, “employment discrimination because of a conviction record” includes, but is not limited to, **requesting** an applicant, employee, member, licensee, or any other individual, on an application form or otherwise, **to supply information** regarding a crime for which the record was expunged. The amendment retains this provision and also provides that that is “employment discrimination because of a conviction record” for an employer or licensing agency to **use** the record of an expunged conviction in employment and licensing decisions in violation of Wisconsin’s Fair Employment Law. Specifically, Assembly Amendment 1 provides that it is employment discrimination because of a conviction record to engage in any act of employment discrimination that is prohibited under Wisconsin’s Fair Employment Law on the basis of a conviction record that has been expunged, but only to the extent that its application does not conflict with federal law.

### ASSEMBLY AMENDMENT 2

Assembly Amendment 2 (AA 2) amends the bill to prohibit the expungement of a record if a person has previously had a record expunged. Specifically, AA 2 provides the following:

- A court may order at the time of sentencing that a person’s record be expunged upon successful completion of the sentence if it determines that: (1) the person **has not**

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<sup>3</sup> The bill uses the definition of a “licensing agency” found in Wisconsin’s Fair Employment Law, which is defined to mean “any board, commission, committee, department, examining board, affiliated credentialing board or officer, except a judicial officer, in the state or any city, village, town, county or local government authorized to grant, deny, renew, revoke, suspend, annul, withdraw or amend any license.” [s. 111.32 (10), Stats.]

**previously had a record expunged**; and (2) the person will benefit and society will not be harmed.

- A person is **ineligible** for petitioning for expungement under the new expungement petition process created by the bill if the person **has previously had a record expunged**.

## **BILL HISTORY**

AA 1 was introduced by Representative Steffen on March 26, 2019. On March 28, 2019, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of Assembly Amendment 1 by a vote of Ayes, 12; Noes, 0; and to recommend passage of the bill, as amended, by a vote of Ayes, 11; Noes, 1.

AA 2 was introduced by Representative Steffen on May 9, 2019. On May 15, 2019, the Assembly voted on voice votes to adopt AA 1 and AA 2, and to pass the bill, as amended.

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