



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 280**

October 3, 2005 – Offered by Representative GIELOW.

1 **AN ACT** *to renumber and amend* 973.015 (2); *to amend* 301.45 (7) (e) 2., 301.45
2 (7) (e) 3., 973.015 (1) (a) and 973.015 (1) (b); *to repeal and recreate* 973.015
3 (title); and *to create* 973.015 (2) (d), 973.015 (4) and (5) and 973.015 (6) (a) of
4 the statutes; **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. 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 substitute amendment makes this expungement option available for all offenders, regardless of their age at the time of their offenses. In addition, upon the 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 substitute amendment also permits a court to enter an order authorizing expungement at any time during or after the sentence. The substitute amendment, 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 only eligible for expungement 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 (7) (e) 2. of the statutes is amended to read:

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

4 **SECTION 2.** 301.45 (7) (e) 3. of the statutes is amended to read:

5 301.45 (7) (e) 3. The department receives a certificate of discharge issued under
6 s. 973.015 (2) (3) by the detaining authority or, if s. 973.015 (3) does not apply but the
7 requirements of s. 973.015 (2) are met, an expungement order issued under s.
8 973.015 (1).

9 **SECTION 3.** 973.015 (title) of the statutes is repealed and recreated to read:

10 **973.015 (title) Expungement of misdemeanors.**

11 **SECTION 4.** 973.015 (1) (a) of the statutes, as affected by 2003 Wisconsin Act
12 320, is amended to read:

13 973.015 (1) (a) Subject to par. (b), ~~when if~~ a person is under the age of 21 at the
14 time of the commission convicted of an offense for which the person has been found
15 ~~guilty in a court for violation of a law~~ a misdemeanor for which the maximum penalty

1 is imprisonment for one year or less in the county jail, ~~the court may order at the time~~
2 ~~of sentencing that the record be expunged upon successful completion of the sentence~~
3 ~~if and the court determines the person will benefit and society will not be harmed by~~
4 ~~this disposition, the court may order, at sentencing, during the sentence, or after the~~
5 ~~completion of the sentence, that the record be expunged if the requirements of sub.~~
6 ~~(2) are met.~~

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

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

11 973.015 (1) (b) ~~The court shall order at the time of sentencing that the record~~
12 ~~be expunged upon successful completion of the sentence if~~ If the offense
13 misdemeanor was a violation of s. 942.08 (2) (b), (c), or (d), and the person was under
14 the age of 18 when he or she committed it, the court shall order, at the time of
15 sentencing, that the record be expunged if the requirements of sub. (2) are met.

16 **SECTION 6.** 973.015 (2) of the statutes is renumbered 973.015 (2) (intro.) and
17 amended to read:

18 973.015 (2) (intro.) A person's conviction for a misdemeanor may be expunged
19 through an order entered under sub. (1) if all of the following apply:

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

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

23 (c) If on probation, the probation has not been revoked and the probationer
24 person has satisfied the conditions of probation. Upon successful completion of the
25 sentence

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

8 **SECTION 7.** 973.015 (2) (d) of the statutes is created to read:

9 973.015 (2) (d) At least 2 years have passed since the person's misdemeanor
10 conviction.

11 **SECTION 8.** 973.015 (4) and (5) of the statutes are created to read:

12 973.015 (4) If a record of a person's conviction is expunged under this section,
13 the person shall not be subject to any prohibition, disqualification, disability,
14 increased penalty, or other adverse or unfavorable treatment that would otherwise
15 result from the person having been convicted of that offense.

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

19 2. Notwithstanding SCR 72.06 (3), the existence and content of a court record
20 that is expunged under sub. (2) may be disclosed to the person who was convicted or,
21 if authorized by the person who was convicted, to an attorney representing the
22 person who was convicted.

23 (b) Within 45 days after a conviction is expunged under this section, the clerk
24 of the court of record shall ensure that all records and data relating to the

1 misdemeanor are removed from the automated information systems under s. 758.19
2 (4).

3 **SECTION 9.** 973.015 (6) (a) of the statutes is created to read:

4 973.015 (6) (a) This section applies to a person who has already been the subject
5 of an order entered under this section only if all of the following apply:

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

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

10 **SECTION 10. Effective date.**

11 (1) This act takes effect on September 30, 2005, or the day after publication,
12 whichever is later.

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(END)