



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-0378/P3  
CMH&MIM:cdc&skw

DOA:.....Potts, BB0073 - Expungement

**FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION**

**AN ACT** ...; **relating to:** the budget.

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*Analysis by the Legislative Reference Bureau*

**CRIMINAL PROCEDURE**

***Expungement of criminal records***

Under current law, a court may order a person's criminal record expunged of a crime if all of the following apply: 1) the maximum term of imprisonment for the crime is not more than six years, which is a Class H felony and below; 2) the person committed the crime before the age of 25; 3) the person had not been previously convicted of a felony; and 4) the crime was not a violent felony. Current law specifies that the expungement order must be made only at sentencing and then the record is expunged when the person completes his or her sentence. If the court does not order expungement at sentencing, the record may not be expunged.

This bill removes the condition that the person committed the crime before the age of 25 (the bill retains the other requirements that the crime be no greater than a Class H felony, the person had no previous felony convictions, and the crime was not a violent felony) and makes certain traffic crimes ineligible for expungement. This bill also provides that, if the sentencing court did not order the record expunged, the person may file a petition with the sentencing court after he or she completes his or her sentence. Upon receipt of the petition, the court must review the petition and then may order the record expunged or may deny the petition. If the court denies the petition, the person may not file another petition for two years, and no person may file more than two petitions per crime. The changes described in this paragraph

retroactively apply to persons who were convicted of a crime before this bill takes effect.

The bill also allows the sentencing court to order that a person's record not be eligible for expungement.

The bill provides that, if a record is expunged of a crime, that crime is not considered a conviction for employment purposes and specifies that employment discrimination because of a conviction record includes requesting a person to supply information regarding a crime if the record has been expunged of the crime.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

**SECTION 1.** 111.335 (3) (a) of the statutes is renumbered 111.335 (3) (ar).

\*\*\*NOTE: This is reconciled s. 111.335 (3) (a). This SECTION has been affected by drafts with the following LRB numbers: -0378/p2 and -0729/p1.

**SECTION 2.** 111.335 (3) (ae) of the statutes is created to read:

111.335 (3) (ae) 1. Employment discrimination because of 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 has been expunged under s. 973.015. A request to supply information regarding criminal convictions shall not be construed as a request to supply information regarding a crime the record of which has been expunged under s. 973.015.

2. Notwithstanding par. (ar) 1., it is employment discrimination because of conviction record for an employer or licensing agency to engage in any act of employment discrimination specified in s. 111.322 on the basis of a conviction the record of which has been expunged under s. 973.015. This subdivision does not apply to the extent that its application conflicts with federal law.

**SECTION 3.** 111.335 (4) (b) of the statutes is amended to read:

111.335 (4) (b) It is employment discrimination because of conviction record for a licensing agency to refuse to license any individual under sub. (3) ~~(a)~~ (ar) 1. or to bar or terminate an individual from licensing under sub. (3) ~~(a)~~ (ar) 1. because the individual was adjudicated delinquent under ch. 938 for an offense other than an exempt offense.

\*\*\*NOTE: This is reconciled s. 111.335 (4) (b). This SECTION has been affected by drafts with the following LRB numbers: -0378/p2 and -0729/p1.

**SECTION 4.** 111.335 (4) (c) 1. (intro.) of the statutes is amended to read:

111.335 (4) (c) 1. (intro.) If a licensing agency refuses to license an individual under sub. (3) ~~(a)~~ (ar) 1. or bars or terminates an individual from licensing under sub. (3) ~~(a)~~ (ar) 1., the licensing agency shall, subject to subd. 2., do all of the following:

\*\*\*NOTE: This is reconciled s. 111.335 (4) (c) 1. (intro). This SECTION has been affected by drafts with the following LRB numbers: -0378/p2 and -0729/p1.

**SECTION 5.** 111.335 (4) (e) of the statutes is amended to read:

111.335 (4) (e) A state licensing agency that may refuse to license individuals under sub. (3) ~~(a)~~ (ar) 1. or that may bar or terminate an individual from licensure under sub. (3) ~~(a)~~ (ar) 1. shall publish on the agency's Internet site a document indicating the offenses or kinds of offenses that may result in such a refusal, bar, or termination.

\*\*\*NOTE: This is reconciled s. 111.335 (4) (e). This SECTION has been affected by drafts with the following LRB numbers: -0378/p2 and -0729/p1.

**SECTION 6.** 111.335 (4) (f) 1. of the statutes is amended to read:

111.335 (4) (f) 1. A state licensing agency that may refuse to license individuals under sub. (3) ~~(a)~~ (ar) 1. or that may bar or terminate individuals from licensing under sub. (3) ~~(a)~~ (ar) 1. shall allow an individual who does not possess a license to, without submitting a full application and without paying the fees applicable to

applicants, apply to the agency for a determination of whether the individual would be disqualified from obtaining the license due to his or her conviction record.

\*\*\*NOTE: This is reconciled s. 111.335 (4) (f) 1. This SECTION has been affected by drafts with the following LRB numbers: -0378/p2 and -0729/p1.

**SECTION 7.** 950.04 (1v) (g) of the statutes is amended to read:

950.04 (1v) (g) To have reasonable attempts made to notify the victim of hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6), 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and, 972.14 (3) (b), and 973.015 (1m) (c).

**SECTION 8.** 973.015 (1b) of the statutes is created to read:

973.015 (1b) In this section, “record” means a criminal case file.

**SECTION 9.** 973.015 (1m) (a) 1. of the statutes is renumbered 973.015 (1m) (a) 1. (intro.) and amended to read:

973.015 (1m) (a) 1. (intro.) Subject to subd. 2. and ~~except as provided in subd. 3., when a person is under the age of 25 at the time of the commission of an offense for which the person has been found guilty in a court for violation of a law for which the maximum period of imprisonment is 6 years or less, the, a court may order at the time of sentencing after a conviction that the record a criminal case be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by this disposition. by one of the following methods:~~

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

**SECTION 10.** 973.015 (1m) (a) 1. a. and b. of the statutes are created to read:

973.015 (1m) (a) 1. a. Except as provided in subd. 3., the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines that the person will benefit and society will not be harmed by this disposition.

b. If at least one year has passed since the person successfully completed his or her sentence, the person may file a petition in the county of conviction requesting that the record be expunged. Upon receipt of the petition, the court shall review the petition to determine if the person is ineligible to petition for expungement because subd. 3. or 4. applies, less than one year has passed since the person successfully completed his or her sentence, there are criminal charges pending against the person, or the person has exceeded the maximum number of petitions allowed under this subd. 1. b. If the court determines the person is eligible to petition for expungement, the court shall 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 shall schedule a hearing to review the petition. If the district attorney waives the hearing or at least 90 days have passed since the court forwarded the petition, the court may review the petition with or without a hearing. If a hearing is scheduled, then if practicable, the sentencing judge shall be the judge to review the petition. The court may order that the record be expunged if the court determines the person will benefit and society will not be harmed by this disposition. If the court does not order the record be expunged under this subd. 1. b., the person may file a 2nd petition under this subd. 1. b. only if at least 2 years have passed since he or she filed the first petition. No person may file more than 2 petitions per record under this subd. 1. b. For a 2nd petition regarding the same record, the person shall pay to the clerk of circuit court a \$100 fee.

**SECTION 11**

**SECTION 11.** 973.015 (1m) (a) 3. c. and d. and 4. of the statutes are created to read:

973.015 (1m) (a) 3. c. A crime for which the maximum period of imprisonment is more than 6 years.

d. A violation of chs. 341 to 348.

4. The court may order at the time of sentencing that the record is ineligible for expungement.

**SECTION 12.** 973.015 (1m) (b) of the statutes is amended to read:

973.015 (1m) (b) ~~—A—~~ For purposes of par. (a), a person has successfully completed the sentence if the person has completed all periods 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 offense crime; and, if on probation was imposed, the probation has not been revoked and the probationer has satisfied the conditions of probation. Upon successful completion of the a sentence involving incarceration or probation, the detaining or probationary authority shall issue and forward to the court of record a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record that indicates whether the person successfully completed his or her sentence. If the court has ordered the record expunged under par. (a) 1. a. or 2. and the person has successfully completed the sentence, the person's record shall be expunged as ordered. If the person has been imprisoned incarcerated, the detaining authority shall also forward a copy of the certificate of discharge to the department.

**SECTION 13.** 973.015 (1m) (c) of the statutes is created to read:

973.015 (1m) (c) Upon receipt of a petition under par. (a) 1. b., the district attorney shall make a reasonable attempt to notify the victim, as defined under s. 950.02 (4), of the petition. In the notice, the district attorney shall 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 shall inform the victim of the manner in which he or she may provide written statements concerning the petition and, if the victim does not waive the hearing requirement, that 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. Notwithstanding the confidentiality of victim address information obtained under s. 302.113 (9g) (g) 3., a district attorney who is required to make a reasonable attempt to notify a victim under this paragraph may obtain from the clerk of the circuit court the victim address information that the victim provided to the clerk under s. 302.113 (9g) (g) 3.

**SECTION 14.** 973.015 (4) of the statutes is created to read:

973.015 (4) A record of a crime expunged under this section is not considered a conviction for employment purposes or for purposes of the issuance of a license, as defined in s. 111.32 (10), by a licensing agency, as defined in s. 111.32 (11). This subsection does not apply to the extent that its application conflicts with federal law.

**SECTION 15.** 973.25 (1) (a) of the statutes is amended to read:

973.25 (1) (a) "Certificate of qualification for employment" means a certificate issued by the council on offender employment that provides an offender with relief from a collateral sanction, except that it does not provide relief from s. 48.685 (5m), 50.065 (4m), or 111.335 (3) (~~a~~) (ar), (b), (c), or (e) or (4) (h) or (i).

\*\*\*NOTE: This is reconciled s. 973.25 (1) (a). This SECTION has been affected by drafts with the following LRB numbers: -0378/p2 and -0729/p1.

**SECTION 9351. Initial applicability; Other.**

(1) EXPUNGEMENT OF CRIMINAL RECORDS. The treatment of s. 973.015 (1m) (a) 3. c. and d. and 4., (b), and (c), the renumbering and amendment of s. 973.015 (1m) (a) 1., and the creation of s. 973.015 (1m) (a) 1. a. and b. first apply to any conviction for which sentencing has occurred but for which the record has not been ordered expunged on the effective date of this subsection.

**(END)**