



Expungement of a Criminal Conviction Record

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A judge may order that court records relating to a person's conviction be expunged, or removed, if the person meets certain eligibility requirements and successfully completes his or her sentence. An expungement does not reverse or set aside the conviction; it merely removes all records relating to the conviction from records maintained by the court system. This issue brief describes the eligibility criteria for expungement of an adult's¹ criminal record, the effects of expungement, and some of the limits on the effects of expungement under current law.

CRITERIA AND PROCEDURES FOR GRANTING OR DISALLOWING EXPUNGEMENT

A person's court records relating to his or her criminal conviction may be removed under certain circumstances through a process known as expungement (also called expunction). With limited exceptions, an adult is eligible for expungement only if the court orders it at the time of sentencing. Wisconsin law does not generally allow an adult to petition for expungement after he or she was sentenced.²

Generally, a court may order that an adult's criminal court record be expunged only if all of the following apply:

- The person was under the age of 25 when he or she committed the offense.
- The offense for which the person was found guilty has a maximum penalty of six or fewer years of imprisonment. This means that only records of misdemeanors and Class H and I felonies may be expunged.
- The sentencing court determines that the person will benefit from having his or her record expunged.
- The sentencing court determines that society will not be harmed by the expungement.
- The person successfully completed his or her sentence.³

A person has successfully completed his or her sentence when the person has completed serving all ordered confinement time in jail or prison, and any time he or she was ordered to serve on parole or extended supervision, and has not been convicted of a subsequent offense. If the person was serving a sentence of probation, he or she has successfully completed his or her sentence when the person satisfies all of the conditions of probation, the period of probation is over, and the person's probation was not revoked. When the person successfully completes his or her sentence, and the detaining or probationary authority forwards a certificate of discharge to the court of record, the process of expungement is self-executing.⁴ In other words, the person need not petition or otherwise revisit the issue of expungement in court again; so long as the court is satisfied that the person has successfully completed his or her sentence, the record will be expunged as ordered at the time of sentencing.

Under certain circumstances, a court may not order expungement of a Class H or I felony conviction records. A Class H felony record may not be expunged if either of the following apply:

- The person has a prior felony conviction.
- The current offense is defined as a violent offense, or is a violation of stalking, intentional or reckless physical abuse of a child, or sexual assault by a school staff member or by a person who volunteers with children.⁵

A Class I felony may not be expunged if either of the following apply:

- The person has a prior felony conviction.
- The offense is defined as a violent offense, or a violation of concealing the death of a child.⁶

LEGAL EFFECTS OF AN EXPUNGEMENT

An order of expungement requires all court records relating to the conviction be sealed, destroyed, obliterated, or otherwise removed entirely from view. No record of the case, except for its case number, may be found on the public-facing database maintained by the court system, commonly referred to as CCAP.⁷

Further, as the Wisconsin Supreme Court pointed out, “[expungement] of a court record of a conviction enables an offender to have a clean start so far as the prior conviction is concerned ... expunging the court record provides substantial advantages to the offender: an expunged record of a conviction cannot be considered at a subsequent sentencing; an expunged record of a conviction cannot be used for impeachment at trial [on the basis of a prior conviction], and an expunged record of a conviction is not available for repeater sentence enhancement.”⁸

LIMITS ON THE EFFECTS OF AN EXPUNGEMENT

While an expungement does afford significant advantages to a person whose criminal court record is expunged, there are limits to this remedy.

For example, an expungement does not affect records relating to the conviction that are held by other entities. The Department of Justice’s (DOJ) Crime Information Bureau maintains criminal records, as do many district attorney offices, the Department of Corrections, DOJ, law enforcement agencies, and the Department of Transportation. While expunged court records are not available, a court may use information from any of the other entities’ records for the purposes of sentencing, impeachment, or considering a person a repeat offender. Any other person conducting a background check or other investigation may have access to these records, as well.⁹

Additionally, an expungement does not reverse, set aside, or vacate an order of conviction. A person whose records are expunged has not been pardoned for committing the crime. If a person’s conviction of a crime renders that person ineligible for certain licensing or employment, the fact that the records of the conviction have been expunged will not affect the person’s eligibility. Other collateral consequences of a conviction, such as ineligibility for certain public benefits or the prohibition against a felon possessing a firearm, are not affected by expungement.

Finally, expungement is available only upon conviction of a crime. A person who is charged with a crime, but not convicted, may not seek expungement of the court records relating to that charge. Likewise, a person who commits a civil forfeiture, including first offense drunk driving or a local ordinance violation, is not eligible for expungement of the court records relating to that offense.

¹ A court may expunge a juvenile’s adjudication record if the juvenile petitions the court after turning 17 years old and the court finds that the juvenile has satisfactorily complied with the conditions of his or her dispositional order, the juvenile will benefit from the expungement, and society will not be harmed by the expungement. Additionally, there are certain circumstances under which a court must order an expungement of a juvenile’s record. A court must expunge a juvenile’s record if the adjudication for a first offense invasion of privacy violation and the juvenile has satisfactorily complied with the conditions of his or her dispositional order. [ss. 938.355 (4m) and 973.015 (1m) (a) 2.]

² A victim of human trafficking for the purpose of a commercial sex act may, at any time after conviction, request a court to vacate a conviction, adjudication, or finding, or to expunge the record for a violation of prostitution. [s. 973.015 (2m), Stats.]

³ Section 973.015 (1m) (a) 1., Stats.

⁴ Section 973.015 (1m) (b), Stats., *State v. Hemp*, 2014 WI 129, 359 Wis. 2d 320, 856 N.W.2d 811, *State v. Ozuma*, 2017 WI 64.

⁵ Section 973.015 (1m) (a) 3. a., Stats.

⁶ Section 973.015 (1m) (a) 3. b., Stats.

⁷ SCR 72.05 (2) (L) and 72.06.

⁸ *State v. Leitner*, 2002 WI 77.

⁹ *Leitner*, and *State v. Braunschweig*, 2018 WI 113.