



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-2239/1
CMH&MED:ahc

2017 ASSEMBLY BILL 331

May 19, 2017 - Introduced by Representatives STEFFEN, GOYKE, TITTL, ANDERSON, BILLINGS, E. BROOKS, R. BROOKS, BROSTOFF, CONSIDINE, CROWLEY, DUCHOW, EDMING, FIELDS, GANNON, GENRICH, HINTZ, JARCHOW, KLEEFISCH, KOLSTE, KRUG, MURSAU, OHNSTAD, POPE, QUINN, RIPP, ROHRKASTE, SARGENT, SINICKI, SPREITZER, SUBECK, TAUCHEN, C. TAYLOR, TUSLER, VRUWINK, WACHS and ZEPNICK, cosponsored by Senators DARLING, RISSER, FEYEN, HARSDFORF, JOHNSON, OLSEN, RINGHAND and WIRCH. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to renumber and amend* 973.015 (1m) (a) 1.; *to amend* 950.04 (1v) (g)
2 and 973.015 (1m) (b); and *to create* 111.335 (1) (am), 165.83 (2) (q), 973.015
3 (1m) (a) 1. a. and b., 973.015 (1m) (a) 3. c. and d. and 4., 973.015 (1m) (c), 973.015
4 (4) and 973.181 of the statutes; **relating to:** expungement of records of certain
5 crimes.

Analysis by the Legislative Reference Bureau

Under current law, a court may order a person's criminal record expunged of certain crimes that the person committed before the age of 25. 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. Under this bill, the same crimes are eligible for expungement but, 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 at a hearing or, if the victim of the crime waives a hearing, without a hearing, 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. This bill also requires the sentencing court to inform an eligible person of the process to petition for an expungement order and allows the sentencing court to order that a person's record not be eligible for expungement.

This bill provides that, if a person's record is expunged of a crime, the Department of Justice must redact any record of that crime when DOJ responds to

ASSEMBLY BILL 331

a public records request. This bill also 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.

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

1 **SECTION 1.** 111.335 (1) (am) of the statutes is created to read:

2 111.335 (1) (am) Employment discrimination because of conviction record
3 includes, but is not limited to, requesting an applicant, employee, member, licensee,
4 or any other individual, on an application form or otherwise, to supply information
5 regarding a crime the record of which has been expunged under s. 973.015. A request
6 to supply information regarding criminal convictions shall not be construed as a
7 request to supply information regarding a crime the record of which has been
8 expunged under s. 973.015.

9 **SECTION 2.** 165.83 (2) (q) of the statutes is created to read:

10 165.83 (2) (q) Redact a record expunged under s. 973.015 when returning a
11 record maintained under this section in response to a public records request.

12 **SECTION 3.** 950.04 (1v) (g) of the statutes is amended to read:

13 950.04 (1v) (g) To have reasonable attempts made to notify the victim of
14 hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6),
15 938.27 (4m) and (6), 938.273 (2), 971.095 (3) ~~and~~, 972.14 (3) (b), and 973.015 (1m) (c).

16 **SECTION 4.** 973.015 (1m) (a) 1. of the statutes is renumbered 973.015 (1m) (a)
17 1. (intro.) and amended to read:

ASSEMBLY BILL 331

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

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

12 **SECTION 5.** 973.015 (1m) (a) 1. a. and b. of the statutes are created to read:

13 973.015 (1m) (a) 1. a. Except as provided in subd. 3., the court may, on its own
14 motion, order at the time of sentencing that the record be expunged upon successful
15 completion of the sentence if the court determines the person will benefit and society
16 will not be harmed by this disposition.

17 b. When the person has successfully completed his or her sentence and if there
18 are no criminal charges pending against the person, the person may file a petition
19 in the county of conviction requesting that the record of the crime be expunged. Upon
20 receipt of the petition, the court shall schedule a hearing to review the petition except
21 that, if the district attorney informs the court under par. (c) that there is no objection
22 to waiving the hearing requirement, the court may review the petition without a
23 hearing. If a hearing is scheduled, then if possible, the sentencing judge shall be the
24 judge to review the petition. The court may order that the record be expunged if subd.
25 3. or 4. does not apply and if the court determines the person will benefit and society

ASSEMBLY BILL 331

1 will not be harmed by this disposition. If the court does not order the record be
2 expunged under this subd. 1. b., the person may file a subsequent petition under this
3 subd. 1. b. only if at least 2 years have passed since he or she filed the previous
4 petition.

5 **SECTION 6.** 973.015 (1m) (a) 3. c. and d. and 4. of the statutes are created to read:

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

8 d. A violation of chs. 341 to 348, or of a traffic regulation or ordinance in
9 conformity with chs. 341 to 348.

10 4. The court may, on its own motion, order at the time of sentencing that the
11 record is ineligible for expungement.

12 **SECTION 7.** 973.015 (1m) (b) of the statutes is amended to read:

13 973.015 **(1m)** (b) ~~A~~ For purposes of par. (a), a person has successfully
14 completed the sentence if the person has completed any period of incarceration,
15 parole, or extended supervision to which he or she was sentenced; the person has paid
16 all fines, costs, fees, surcharges, and restitution assessed; the person has not been
17 convicted of a subsequent offense; and, if on probation was imposed, the probation
18 has not been revoked and the probationer has satisfied the conditions of probation.
19 If the person was not sentenced to any period of incarceration or placed on probation,
20 the person has successfully completed the sentence if he or she has provided
21 sufficient proof to the court that he or she has fulfilled all conditions of his or her
22 sentence. Upon successful completion of the a sentence involving incarceration or
23 probation, the detaining or probationary authority shall issue and forward to the
24 court of record a certificate of discharge which shall be forwarded to the court of
25 record and which shall have the effect of expunging the record. If the court has

ASSEMBLY BILL 331

1 ordered the record expunged under par. (a) 1. a. or 2. and the person has successfully
2 completed the sentence, the person's record shall be expunged as ordered. If the court
3 has ordered the record expunged under par. (a) 1. b., the person's record shall be
4 expunged as ordered. If the person has been ~~imprisoned~~ incarcerated, the detaining
5 authority shall also forward a copy of the certificate of discharge to the department.

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

7 973.015 **(1m)** (c) If a person files a petition under par. (a) 1. b., the clerk of the
8 circuit court in which the petition is filed shall send to the district attorney a copy
9 of the petition and a notice of the hearing. The district attorney shall make a
10 reasonable attempt to notify the victim, as defined under s. 950.02 (4), of the petition.
11 In the notice, the district attorney shall inform the victim that he or she may waive
12 the hearing requirement and that, if waived, the court may review the petition
13 without a hearing. The district attorney shall inform the victim of the manner in
14 which he or she may provide written statements concerning the petition and, if the
15 victim does not waive the hearing requirement, that he or she may appear at the
16 hearing. If the victim waives the hearing requirement, the district attorney may
17 inform the court that there is no objection to waiving the hearing requirement.
18 Notwithstanding the confidentiality of victim address information obtained under
19 s. 302.113 (9g) (g) 3., a district attorney who is required to make a reasonable attempt
20 to notify a victim under this paragraph may obtain from the clerk of the circuit court
21 the victim address information that the victim provided to the clerk under s. 302.113
22 (9g) (g) 3.

23 **SECTION 9.** 973.015 (4) of the statutes is created to read:

24 973.015 **(4)** (a) The department of justice shall treat any record expunged under
25 this section as directed in s. 165.83 (2) (q).

ASSEMBLY BILL 331**SECTION 9**

1 (b) A record of a crime expunged under this section is not considered a
2 conviction for employment purposes.

3 **SECTION 10.** 973.181 of the statutes is created to read:

4 **973.181 Notice of expungement process.** If the defendant is eligible to
5 petition for expungement under s. 973.015 (1m) (a) 1. b. and the court has not ordered
6 the record expunged under s. 973.015 (1m) (a) 1. a., the judge shall inform the
7 defendant in writing at the time of sentencing of the process to file for expungement.

8 **SECTION 11. Initial applicability.**

9 (1) This act first applies to any conviction for which sentencing has occurred
10 but for which the record has not been ordered expunged on the effective date of this
11 subsection.

12 (END)