



2023 SENATE BILL 38

February 3, 2023 - Introduced by Senators CABRAL-GUEVARA, WIMBERGER, ROYS, FELZKOWSKI, JAMES, L. JOHNSON, LARSON, SPREITZER, TAYLOR, WANGGAARD and WIRCH, cosponsored by Representatives STEFFEN, TITTL, GOYKE, C. ANDERSON, ANDRACA, ARMSTRONG, BALDEH, BARE, BILLINGS, BROOKS, CABRERA, CLANCY, CONLEY, CONSIDINE, DONOVAN, DOYLE, DRAKE, EDMING, EMERSON, GUNDRUM, GUSTAFSON, HAYWOOD, HONG, JOERS, KITCHENS, KRUG, MACCO, MADISON, MCGUIRE, MOORE OMOKUNDE, MOSES, MURSAU, MYERS, NOVAK, O'CONNOR, OHNSTAD, ORTIZ-VELEZ, RATCLIFF, RIEMER, ROZAR, SCHMIDT, SCHRAA, SHANKLAND, SHELTON, SINICKI, SNODGRASS, SNYDER, SORTWELL, STUBBS, SUBECK, VINING and ZIMMERMAN. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to renumber* 111.335 (3) (a); *to renumber and amend* 973.015 (1m) (a)
2 1.; *to amend* 111.335 (4) (b), 111.335 (4) (c) 1. (intro.), 111.335 (4) (e), 111.335
3 (4) (f) 1., 950.04 (1v) (g), 973.015 (1m) (a) 3. a., 973.015 (1m) (b) and 973.25 (1)
4 (a); and *to create* 111.335 (3) (ag), 111.335 (3) (g), 973.015 (1b), 973.015 (1m)
5 (a) 1. a. and b., 973.015 (1m) (a) 3. c., cg., cr. and d. and 4., 973.015 (1m) (c) and
6 973.015 (4) of the statutes; **relating to:** expungement of records of certain
7 crimes and discrimination based on expunged conviction.

Analysis by the Legislative Reference Bureau

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 six years or less (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.
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.

This bill removes the condition that the person committed the crime before the age of 25. (The bill retains the requirements that the crime be no greater than a Class

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H felony, the person had no previous felony convictions, and the crime was not a violent felony.) The bill makes certain crimes ineligible for expungement, such as traffic crimes, the crime of violating a domestic abuse restraining order or injunction, criminal trespass, and criminal damage to a business. The bill also allows the sentencing court to order that a person's record not be eligible for expungement.

The 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. The person must pay a \$100 fee to the county for a second petition, and no person may file more than two petitions per crime. The bill limits a person to one expungement. The changes described in this paragraph retroactively apply to persons who were convicted of a crime before the bill takes effect.

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. Finally, the bill provides that it is not employment discrimination because of conviction record for the Law Enforcement Standards Board to consider a conviction that has been expunged with respect to applying any standard or requirement for the certification, decertification, or required training of law enforcement officers, tribal law enforcement officers, jail officers, and juvenile detention officers.

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

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

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

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1 request to supply information regarding a crime the record of which has been
2 expunged under s. 973.015.

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

9 **SECTION 3.** 111.335 (3) (g) of the statutes is created to read:

10 111.335 (3) (g) Notwithstanding s. 111.322, it is not employment discrimination
11 because of conviction record for the law enforcement standards board to refuse to
12 certify, recertify, or allow to participate in a preparatory training program or to
13 decertify under s. 165.85 an individual who has a conviction the record of which has
14 been expunged under s. 973.015.

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

16 111.335 (4) (b) It is employment discrimination because of conviction record for
17 a licensing agency to refuse to license any individual under sub. (3) (a) (ar) 1. or to
18 bar or terminate an individual from licensing under sub. (3) (a) (ar) 1. because the
19 individual was adjudicated delinquent under ch. 938 for an offense other than an
20 exempt offense.

21 **SECTION 5.** 111.335 (4) (c) 1. (intro.) of the statutes is amended to read:

22 111.335 (4) (c) 1. (intro.) If a licensing agency refuses to license an individual
23 under sub. (3) (a) (ar) 1. or bars or terminates an individual from licensing under sub.
24 (3) (a) (ar) 1., the licensing agency shall, subject to subd. 2., do all of the following:

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

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

6 **SECTION 7.** 111.335 (4) (f) 1. of the statutes is amended to read:

7 111.335 (4) (f) 1. A state licensing agency that may refuse to license individuals
8 under sub. (3) ~~(a)~~ (ar) 1. or that may bar or terminate individuals from licensing
9 under sub. (3) ~~(a)~~ (ar) 1. shall allow an individual who does not possess a license to,
10 without submitting a full application and without paying the fees applicable to
11 applicants, apply to the agency for a determination of whether the individual would
12 be disqualified from obtaining the license due to his or her conviction record.

13 **SECTION 8.** 950.04 (1v) (g) of the statutes is amended to read:

14 950.04 (1v) (g) To have reasonable attempts made to notify the victim of
15 hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6),
16 938.27 (4m) and (6), 938.273 (2), 971.095 (3) ~~and~~, 972.14 (3) (b), and 973.015 (1m) (c).

17 **SECTION 9.** 973.015 (1b) of the statutes is created to read:

18 973.015 (1b) In this section, "record" means a criminal case file.

19 **SECTION 10.** 973.015 (1m) (a) 1. of the statutes is renumbered 973.015 (1m) (a)
20 1. (intro.) and amended to read:

21 973.015 (1m) (a) 1. (intro.) Subject to subd. 2. ~~and except as provided in subd.~~
22 ~~3., when a person is under the age of 25 at the time of the commission of an offense~~
23 ~~for which the person has been found guilty in a court for violation of a law for which~~
24 ~~the maximum period of imprisonment is 6 years or less, the, a court may order at the~~
25 ~~time of sentencing after a conviction that the record a criminal case be expunged~~

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1 ~~upon successful completion of the sentence if the court determines the person will~~
2 ~~benefit and society will not be harmed by this disposition. by one of the following~~
3 ~~methods:~~

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

7 **SECTION 11.** 973.015 (1m) (a) 1. a. and b. of the statutes are created to read:

8 973.015 (1m) (a) 1. a. Except as provided in subd. 3., the court may order at the
9 time of sentencing that the record be expunged upon successful completion of the
10 sentence if the court determines that the person has not previously had a record
11 expunged under this section and that the person will benefit and society will not be
12 harmed by this disposition.

13 b. If at least one year has passed since the person successfully completed his
14 or her sentence, the person may file a petition in the county of conviction requesting
15 that the record be expunged. Upon receipt of the petition, the court shall review the
16 petition to determine if the person is ineligible to petition for expungement because
17 subd. 3. or 4. applies, less than one year has passed since the person successfully
18 completed his or her sentence, there are criminal charges pending against the
19 person, the person has previously had a record expunged under this section, or the
20 person has exceeded the maximum number of petitions allowed under this subd. 1.

21 b. If the court determines the person is eligible to petition for expungement, the court
22 shall forward the petition to the district attorney. If the district attorney requests
23 a hearing within 90 days after the court forwards the petition, the court shall
24 schedule a hearing to review the petition. If the district attorney waives the hearing
25 or at least 90 days have passed since the court forwarded the petition, the court may

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1 review the petition with or without a hearing. If a hearing is scheduled, then if
2 practicable, the sentencing judge shall be the judge to review the petition. The court
3 may order that the record be expunged if the court determines the person will benefit
4 and society will not be harmed by this disposition. If the court does not order the
5 record be expunged under this subd. 1. b., the person may file a 2nd petition under
6 this subd. 1. b. only if at least 2 years have passed since he or she filed the first
7 petition. No person may file more than 2 petitions per record under this subd. 1. b.
8 For a 2nd petition regarding the same record, the person shall pay to the clerk of
9 circuit court a \$100 fee to be retained for the use of the county.

10 **SECTION 12.** 973.015 (1m) (a) 3. a. of the statutes is amended to read:

11 973.015 (1m) (a) 3. a. A Class H felony, if the person has, in his or her lifetime,
12 been convicted of a prior felony offense, or if the felony is a violent offense, as defined
13 in s. 301.048 (2) (bm), or is a violation of s. ~~940.32~~, 948.03 (2), (3), or (5) (a) 1., 2., 3.,
14 or 4., or 948.095.

15 **SECTION 13.** 973.015 (1m) (a) 3. c., cg., cr. and d. and 4. of the statutes are
16 created to read:

17 973.015 (1m) (a) 3. c. A crime for which the maximum period of imprisonment
18 is more than 6 years.

19 cg. A violation of s. 940.32 or 943.14 or, if the court noted in the record that the
20 property damaged was a business, a violation of s. 943.01.

21 cr. A violation of a temporary restraining order or injunction issued under s.
22 813.12 (3) or (4).

23 d. A violation of chs. 341 to 348.

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

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1 **SECTION 14.** 973.015 (1m) (b) of the statutes is amended to read:

2 973.015 **(1m)** (b) ~~—A—~~ For purposes of par. (a), a person has successfully
3 completed the sentence if the person has completed all periods of incarceration,
4 parole, or extended supervision to which he or she was sentenced; the person has paid
5 all fines, costs, fees, surcharges, and restitution assessed and has completed any
6 court-ordered community service; the person has not been convicted of a subsequent
7 offense crime; and, if ~~on~~ probation was imposed, the probation has not been revoked
8 and the probationer has satisfied the conditions of probation. Upon successful
9 completion of the a sentence involving incarceration or probation, the detaining or
10 probationary authority shall issue and forward to the court of record a certificate of
11 discharge which shall be forwarded to the court of record and which shall have the
12 effect of expunging the record that indicates whether the person successfully
13 completed his or her sentence. If the court has ordered the record expunged under
14 par. (a) 1. a. or 2. and the person has successfully completed the sentence, the person's
15 record shall be expunged as ordered. If the person has been imprisoned incarcerated,
16 the detaining authority shall also forward a copy of the certificate of discharge to the
17 department.

18 **SECTION 15.** 973.015 (1m) (c) of the statutes is created to read:

19 973.015 **(1m)** (c) Upon receipt of a petition under par. (a) 1. b., the district
20 attorney shall make a reasonable attempt to notify the victim, as defined in s. 950.02
21 (4), of the petition. In the notice, the district attorney shall inform the victim that
22 he or she may waive the hearing requirement and that, if waived, the court may
23 review the petition without a hearing. The district attorney shall inform the victim
24 of the manner in which he or she may provide written statements concerning the
25 petition and, if the victim does not waive the hearing requirement, that he or she may

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1 appear at the hearing. If the victim waives the hearing requirement, the district
2 attorney may inform the court that there is no objection to waiving the hearing
3 requirement. Notwithstanding the confidentiality of victim address information
4 obtained under s. 302.113 (9g) (g) 3., a district attorney who is required to make a
5 reasonable attempt to notify a victim under this paragraph may obtain from the clerk
6 of the circuit court the victim address information that the victim provided to the
7 clerk under s. 302.113 (9g) (g) 3.

8 **SECTION 16.** 973.015 (4) of the statutes is created to read:

9 973.015 (4) A record of a crime expunged under this section is not considered
10 a conviction for employment purposes or for purposes of the issuance of a license, as
11 defined in s. 111.32 (10), by a licensing agency, as defined in s. 111.32 (11). This
12 subsection does not apply to the extent that its application conflicts with federal law.

13 **SECTION 17.** 973.25 (1) (a) of the statutes is amended to read:

14 973.25 (1) (a) “Certificate of qualification for employment” means a certificate
15 issued by the council on offender employment that provides an offender with relief
16 from a collateral sanction, except that it does not provide relief from s. 48.685 (5m),
17 50.065 (4m), or 111.335 (3) ~~(a)~~ (ar), (b), (c), or (e) or (4) (h) or (i).

18 **SECTION 18. Initial applicability.**

19 (1) The treatment of s. 973.015 (1m) (a) 3. a., c., cg., cr., and d. and 4., (b), and
20 (c), the renumbering and amendment of s. 973.015 (1m) (a) 1., and the creation of s.
21 973.015 (1m) (a) 1. a. and b. first apply to any conviction for which sentencing has
22 occurred but for which the record has not been ordered expunged on the effective date
23 of this subsection.

24 **SECTION 19. Effective date.**

