



DAVID STEFFEN

STATE REPRESENTATIVE • 4TH ASSEMBLY DISTRICT

**Prepared Testimony by Rep. David Steffen before the
Assembly Committee on Criminal Justice and Public Safety
Assembly Bill 331: Re: Expungement of Records of Certain Crimes
June 1, 2017**

Chairman Spiros and Committee Members,

Thank you for scheduling a public hearing for Assembly Bill 331, which makes several important and commonsense changes to Wisconsin's expungement law. This bipartisan bill works to ensure that in Wisconsin, expungement truly means expungement, and for those individuals who do qualify and have reformed their lives, the opportunity to have their record expunged is made available. AB 331 seeks to provide a pathway to employment for our state's youthful offenders by addressing four key components of Wisconsin's expungement law.

- 1. Inform youthful offenders of their expungement options and eligibility.**
 - Many youthful offenders (ages 17-25) are unaware of their expungement eligibility, resulting in a missed opportunity to petition for the expungement of their record. This bill requires that youthful offenders who are eligible for expungement be notified of their expungement options at time of sentencing.
- 2. Eliminate the state mandate on judges to grant/deny expungement at the time of sentencing.**
 - Under current law, Wisconsin judges are denied the opportunity to re-evaluate a youthful offender's growth and development in a post-sentence hearing. This bill allows judges to approve (or deny) an expungement petition at the completion of the youthful offender's sentence.
- 3. Provide employers and employees with clarity and certainty in regards to criminal background disclosures on employment applications.**
 - Current law is very ambiguous on the matter of disclosure requirements relating to expunged records. This bill clarifies this matter so that employees and employers have a clear understanding of their respective requirements.
- 4. Create public access parity between the two Wisconsin administered criminal records databases (CCAP and CIB).**
 - Currently, expunged records are not accessible to the public on Wisconsin's most well-known criminal background system—CCAP. However, the same records are viewable under a second, subscriber based database called the Crime Information



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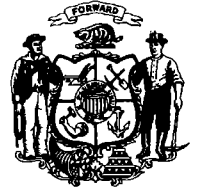
STATE REPRESENTATIVE • 4TH ASSEMBLY DISTRICT

Bureau (CIB). By removing public access from only one of the two databases, employers and others can still view expunged records. This situation has created concerns and confusion among those with expunged records, as well as employers who are often compelled to perform multiple background checks (CCAP and CIB) and receive inconsistent information between the two databases. This bill ensures public-access parity between CCAP and CIB as it relates to accessing expunged records. Expunged records in the CIB would still be accessible to law enforcement and other members of the criminal justice system, just as they are now.

Under Wisconsin's current expungement law, many of our youthful offenders are forced to sit on the workforce sidelines. During a time when nearly every industry in Wisconsin is facing a workforce shortage, AB 331 plays a crucial role in connecting employers in need with this untapped workforce—which is why organizations such as MMAC and the Alliance of Wisconsin Retailers are engaged and supportive of this measure. Beyond the employer benefit, the changes outlined in AB 331 serve a direct benefit to the youthful offenders who have straightened out their lives and are looking to become successful members of society—which often starts by finding a good job.

AB 331 is supported by a broad range of bipartisan legislators and organizations including: MMAC, the Wisconsin Retailers, the Association of State Prosecutors, the Office of the State Public Defenders, the State Bar of Wisconsin, Texas Public Policy Foundation, YWCA, United Migrant Opportunity Services, and the Fresh Start Coalition.

I encourage you to join in supporting this much needed reform to Wisconsin's expungement law. Please support AB 331.



June 1, 2017

Public Testimony of State Representative Evan Goyke

Re: Assembly Bill 331 - Pathways to Employment for Youthful Offenders Act

Wisconsin's current expungement law is unique in America. We are the only state that requires a judge to determine eligibility for expungement "at the time of sentencing." This requires judges to look into the future and guess whether an individual will earn expungement rather than base the decision on what the individual has done to earn expungement.

Assembly Bill 331 removes the "at the time of sentencing" language and replaces it with a procedure fair to all criminal justice system participants. The bill makes no changes to who is eligible, leaving in place the age restriction (25 and under) and offense restriction (misdemeanors and most Class I and H felonies).

The new procedure under AB 331 was created with the help of criminal justice system stakeholders. The process balances pressures on caseloads with the individual rights of victims and defendants. The result is a process that ensures victim input through the district attorney's office, while judges retain discretion to be the ultimate decision makers.

The expungement process under AB 331 would work like this:

1. An eligible individual is sentenced and informed of his/her eligibility for expungement
2. The individual successfully completes his or her sentence
3. The individual petitions for expungement
4. District Attorney contacts victim, decides whether to contest expungement
5. Judge schedules hearing if needed, both sides argue and Judge decides
6. If denied, individual must wait 2 years before petitioning again

One important feature of AB 331 is that it is retroactive. Retroactivity is critical to give an opportunity for eligible individuals that never had a chance for expungement. Under our current procedure, individuals that never asked for expungement at sentencing, or those that didn't know they could ask, don't have a remedy. Applying AB 331's procedure retroactively gives these individuals the opportunity at a second chance.

You will hear from some individuals today that have done everything they can to rehabilitate themselves – they've long finished the court ordered sentence, but because expungement wasn't granted "at the time of sentencing," they will be without a remedy.

While researching expungement in Wisconsin, we discovered an additional error that is remedied in AB 331: currently expungement doesn't mean the records disappear.

The Criminal Investigation Bureau (CIB) is a records system housed within the Department of Justice. The CIB is not public, though the records are retrievable through an open records request.

Attached to my testimony is a redacted copy of the CIB printout for an individual that received expungement. I've highlighted the only section that references expungement.

As you can see, the CIB retains information that has been expunged from CCAP and the records inside the courthouse. This inconsistency causes a few problems:

First, which set of records should the employer rely on? Further, what liability issues may present an employer for relying on the wrong records?

Second, what should a job applicant say about a conviction? Further, what consequences does an applicant face if they answer incorrectly?

We've answered these questions with a compromise that allows unfettered access to CIB by criminal justice professionals, like law enforcement officers, but shields the records from public access when an expungement has been ordered.

AB 331 creates parity between CCAP and CIB. When expungement is ordered it will mean the same to both records systems and settle frequent unanswered questions, especially in the workplace.

Together, moving the "time of sentencing" and bringing parity to CIB records, AB 331 modernizes Wisconsin's expungement law in two important ways. Together, these changes will benefit a large number of Wisconsinites forced to the sidelines of employment because of a old criminal conviction.

I am writing this letter to address my support for Assembly Bill 331. I want to start out by giving some background information on myself and the situation I found myself in my freshman year of college. In high school I graduated with a 3.85 GPA, was captain of 2 varsity sports teams and ran 2 businesses. During the second month of my college career I was arrested for possession of marijuana with intent to distribute and kicked out of school. The only option I was given when speaking with the assistant district attorney and my lawyer was the chance for expunction of my record if I completed probation successfully. After my conviction I instantly started to rebuild my life and contribute positively to society. I first began by completing triple the amount of community service hours I was told to do, then paid off my entire fine within the first year by working as many hours as I could and then I reapplied to college and was accepted in. I was sentenced to 3 years of probation at the time of sentencing but only ended up spending 1.5 years on probation because of outstanding behavior. When I motioned the court for expungement it required a recommendation from my probation officer, not only did she provide a recommendation but she stated that I was the best person to ever walk through her door. At that point in time I thought the past was finally going to be in the past and that I will never have to worry about this mistake for the rest of my life.

In the spring of 2016 I was 1 of 14 students selected to participate in a 17-month long rigorous Investment management program that is one of the top finance programs in the world. One of the requirements of the program was obtaining an internship for the summer when school was not in session. I interviewed at many places and received multiple offers but the one that I chose was a position at BMO Harris Bank. I was so excited for this internship that I instantly called my program director and told him about it and then called my parents to express how happy I was to have an internship offer in January. That all changed when April came and it was time for reference and background checks. A week later I received a call from the hiring manager saying that they were rescinding my offer because my charge from my freshman year came up in my background check. I was so confused because I knew that my record was expunged and I believed that no one should be able to see it. The HR manager said she was going to call me back because she had never seen this happen before with an expunged record and that if the record was expunged she should not be able to see. After doing research and speaking with multiple attorneys I came to the understanding that Wisconsin is one of the only states in the U.S. that expunged records do not mean what they do in other states. If Wisconsin's expunction law was in line with all of the other states I would have been able to do my internship at BMO Harris and would be still working in Wisconsin. Now I currently I am working in Chicago as an investment analyst but the road to getting this job was no easy task. I spent almost a year networking and convincing my current employer to give me a chance and they did. Although I am employed right now, my career path has been completely thrown off and I am not able to seek the jobs that I want because of Wisconsin's outdated expunction laws. The reason I am not here today is because I recently started my new position and I am not able to take any time off. I am asking you to please consider my story and how passing this bill will significantly change the course of my life and other lives for the better and for Wisconsin's workforce



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Request Date: 2/17/2017

Report Date: 2/17/2017

This criminal background check was performed by searching the following data submitted to the Crime Information Bureau.

Name: [REDACTED]

Date of Birth: [REDACTED]

Alias Names:

IMPORTANT EXPLANATION ABOUT HOW TO UNDERSTAND THIS RESPONSE

This response reports the results of a criminal history search conducted with the name, date of birth, and any other identifying data you provided. The identifying data you provided is printed above. If you submitted fingerprints with your search request see the statement below.

Read this entire explanation, the "How to Read the Following Criminal History Report" section and the "Notice to Employers" section. Read these sections carefully to understand how this response relates to the identifying data you provided.

Printed below these explanations is a Wisconsin criminal history record that has been identified as a possible match to the identifying data you provided.

A criminal history search based only on a name, date of birth, and other identifying data that is not unique to a particular person (like "sex" or "race") may result in:

1. Identification of criminal history records for multiple persons as potential matches for the identifying data submitted, or
2. Identification of a criminal history record belonging to a person whose identifying information is similar in some way to the identifying data that was submitted to be searched, but is not the same person whose identifying data was submitted for searching.

The Crime Information Bureau (CIB) therefore cannot guarantee that the criminal history record below pertains to the person in whom you are interested.

You must carefully read the entire Wisconsin criminal history record below in order to determine whether the record pertains to the person in whom you are interested.

Do not just assume that the criminal history record below pertains to the person in whom you are interested.

Additional information about finger-based search submissions: Fingerprint-based background checks generally provide a more reliable result and are prone to fewer false matches due to the specific identifying features of fingerprints.

HOW TO READ THE FOLLOWING CRIMINAL HISTORY REPORT

The criminal history reported below is linked by fingerprints to the name appearing directly after these

explanatory sections, following the label "IDENTIFICATION." That name is the name that was provided by the fingerprinted person the first time his or her fingerprints were submitted to CIB; it may or may not be the real name of the fingerprinted person. That name is called the "Master Name" in these explanatory sections.

It is not uncommon for criminal offenders to use alias or fraudulent names and false dates of birth, sometimes known as "identity theft." Other names used by the person identified who is the "Master Name" are listed in the "Alias Names/Fraudulent Data" section of the criminal history report below.

If the name you submitted to be searched is DIFFERENT from the "Master Name" below, the Wisconsin criminal history record below may belong to someone other than the person whose name and other identifying data you submitted for searching. If an alias or fraudulent name used by the person who is the "Master Name" is similar to the name you submitted for searching, that does not mean that the person whose name you submitted for searching has a criminal history. It means that the person associated by fingerprints with the Wisconsin criminal history below has used a name similar to the name you submitted for searching.

If the name you submitted to be searched is THE SAME as the "Master Name" below, the Wisconsin criminal history record below may belong to someone other than the person whose name and other identifying data you submitted for searching. That is because the "Master Name" is the name attached to the initial fingerprint submission to CIB that is associated with the reported criminal history, may have been an alias name or a name similar to the name you submitted for searching.

To determine whether the Wisconsin criminal history below actually belongs to the person whose name and other identifying information you submitted for searching, compare the information reported below to the other information you have obtained about that person. Inconsistencies may indicate that the criminal history reported below does not belong to the person whose name and other identifying information you submitted for searching. You may need to ask for clarification from the person whose name and other identifying information you submitted for searching.

Before you make a final decision adverse to a person based on the following criminal history record, in addition to any other opportunity you offer the applicant to explain the following criminal history record, please notify the applicant of:

1. His or her right to challenge the accuracy and completeness of any information contained in a criminal history record, and
2. The process for submitting a challenge.

The person should submit his or her challenge to CIB on Form DJ-LE-247. Form DJ-LE-247 is available free of charge on the Department of Justice website at <http://www.doj.state.wi.us/dles/cib/background-check-criminal-history-information> or by calling (608) 266-7314. A challenge may include a request for comparison of the fingerprints of the person submitting the challenge to the fingerprints on file that are associated with the Wisconsin criminal history record below.

The Wisconsin criminal history report below may not show all arrests for the person whose fingerprints are associated with the reported criminal history. However, the criminal history report contains all information that has been provided to the state criminal history database that may be released in response to your request.

The results of this search are effective and current for the date of this search only. A new search request should be submitted at a later time if an updated response is needed.

NOTICE TO EMPLOYERS

It may be a violation of state law to discriminate against a job applicant because of an arrest or conviction record. Generally speaking, an employer may refuse to hire an applicant on the basis of a conviction record only if the

circumstances of the offense for which the applicant was convicted substantially relate to the circumstances of the particular job. For more information, see Wisconsin Statute § 111.335 and the Department of Workforce Development's publication, Arrest and Conviction Records Under the Law.

Before you make a final decision adverse to an applicant based on the following criminal history record, in addition to any other opportunity you offer the applicant to explain the following criminal history record, please notify the applicant of:

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RECORD LAST UPDATED: 02/10/2017

IDENTIFICATION

[REDACTED]
Female/Black
Born in WISCONSIN; Citizen of USA

[REDACTED]
Height: 5'03" Weight: 120lbs;
Eye Color: Brown; Hair Color: Black

[REDACTED] MILWAUKEE, WI
STATE ID: WI1432801

OFFENDER NOTICE:

ALIAS NAMES/FRAUDULENT DATA: Alias Names: [REDACTED]

PHOTO INFORMATION:

WI013035Y WI CIB IDENTIFICATION SECTION
02/25/2014 WI0460000 OZAUKEE COUNTY SHERIFF

CRIMINAL HISTORY

CYCLE 01

EARLIEST EVENT DATE: 03/22/2013

DATE OF OFFENSE: 03/22/2013

ARREST TRACKING NUMBER: 46001000308787

ARREST DATA

SUBJECT NAME: [REDACTED]

TYPE: ADULT ONLY

DATE: 02/25/2014

CASE NUMBER: 166207

ARREST AGENCY: WI0460000 OZAUKEE COUNTY SHERIFF

CHARGE

SEQUENCE NUMBER: 01

STATUTE NUMBER: 943.203(2)(A) - UNAUTH USE OF AN ENTITY'S ID TO OBTAIN CREDIT, MONEY,ETC

LITERAL: UNAUTH USE OF AN ENTITY'S ID TO OBTAIN CREDIT, MONEY,ETC

NCIC CODE: 2604

COUNTS: 1

CLASSIFICATION:

CHARGE SEVERITY: FELONY

COURT

SUBJECT NAME: [REDACTED]

DATE: 05/13/2014

COURT: UNKNOWN - UNKNOWN

COMMENTS: CCAP DISPOSITION - Court case has been expunged from official court record.

CHARGE

LOCAL IDENTIFICATION NUMBER: 46001000308787

SEQUENCE NUMBER: 01

STATUTE NUMBER: 943.203(2)(A) - UNAUTH USE OF AN ENTITY'S ID TO OBTAIN CREDIT, MONEY,ETC

LITERAL: UNAUTH USE OF AN ENTITY'S ID TO OBTAIN CREDIT, MONEY,ETC

NCIC CODE:

COUNTS: 1

CLASSIFICATION:

CHARGE SEVERITY: FELONY

COMMENTS: INFORMATION FILED

DISPOSITION

LITERAL: OTHER

DISPOSITION DATE: 05/13/2014

DISPOSITION: INFORMATION FILED

CHARGE

LOCAL IDENTIFICATION NUMBER: 46001000308787

SEQUENCE NUMBER: 01

STATUTE NUMBER: 943.20(1)(A) - THEFT-MOVABLE PROPERTY

LITERAL: THEFT-MOVABLE PROPERTY

NCIC CODE:

COUNTS: 1

CLASSIFICATION:

CHARGE SEVERITY: MISDEMEANOR

DISPOSITION

LITERAL: CONVICTED

DISPOSITION DATE: 05/13/2014

DISPOSITION: CONVICTED

SENTENCING

DATE: 05/13/2014

CASE NUMBER: 452013CF000146

COURT: UNKNOWN - UNKNOWN

CONVICTED OFFENSE:

CHARGE SEQUENCE NUMBER: 01

CHARGE SEQUENCE NUMBER: 01

SENTENCE: PROBATION

COMMENTS:

SENTENCING

DATE: 05/13/2014

CASE NUMBER: 452013CF000146

COURT: UNKNOWN - UNKNOWN

CONVICTED OFFENSE:

CHARGE SEQUENCE NUMBER: 01

SENTENCE: PROBATION

BEGIN DATE: MAY 13, 2014

SENTENCE INDICATOR: PROBATION BY JUDGMENT

LENGTH: 1 YEAR

COMMENTS: *5/6/15 COURT ORDERS PROBATION EXTENDED 1 YEAR.

SENTENCING

DATE: 05/13/2014

CASE NUMBER: 452013CF000146

COURT: UNKNOWN - UNKNOWN

CONVICTED OFFENSE:

CHARGE SEQUENCE NUMBER: 01

SENTENCE: RESTITUTION

COMMENTS: DUE DURING PERIOD OF SUPERVISION. THE RESTITUTION AMOUNT LISTED REFLECTS AN ADDITIONAL ADMINISTRATIVE COST OF 10% OF THE AMOUNT OF RESTITUTION PURSUANT TO SECTION 973.06(1)(G). THE 5% RESTITUTION SURCHARGE IS EQUAL TO 5% OF THE TOTAL OF THE RESTITUTION, COSTS, ATTORNEY FEES, AND FINES, PURSUANT TO

SENTENCING

DATE: 05/13/2014

CASE NUMBER: 452013CF000146

COURT: UNKNOWN - UNKNOWN

CONVICTED OFFENSE:

CHARGE SEQUENCE NUMBER: 01

SENTENCE: COSTS

COMMENTS: COURT COSTS DUE DURING PERIOD OF SUPERVISION. PAY SUPERVISION FEES. IF PROBATION IS REVOKED OR DISCHARGED WITH OUTSTANDING FINANCIAL OBLIGATIONS, IN ADDITION TO ALL OTHER ENFORCEMENT SANCTIONS AVAILABLE TO THE COURT, A CIVIL JUDGMENT ENFORCEABLE BY ALL CREDITORS' REMEDIES SHALL BE ENTERED AGAINST

SENTENCING

DATE: 05/13/2014

CASE NUMBER: 452013CF000146

COURT: UNKNOWN - UNKNOWN

CONVICTED OFFENSE:

CHARGE SEQUENCE NUMBER: 01

SENTENCE: COURT ORDERED CONDITION

COMMENTS: UPON SUCCESSFUL COMPLETION OF SUPERVISION

CONTRIBUTING AGENCIES

WI013035Y-WI CIB IDENTIFICATION SECTION

WI0460000-OZAUKEE COUNTY SHERIFF

UNKNOWN-UNKNOWN

End of Rapsheet

Crime Information Bureau
WI Department of Justice

Background Request Payment

Date: 2/17/2017

Time: 11:53 AM

Entered By: [REDACTED]

Order Reference Number: u4yk82Gp

Request Type: General

Number of Requests: 1

Fees per Request:

CIB: \$7.00

Total Fee: \$7.00

Payment Method: Bill to Account

Use the Order Reference Number listed above to retrieve your result online at:

<https://recordcheck.doj.wi.gov/BackgroundRequest/Results/u4yk82Gp>



STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.®

To: Members of Assembly Criminal Justice and Public Safety Committee

From: State Bar of Wisconsin

Date: June 1, 2017

Re: AB 331 - expungement

The **State Bar of Wisconsin strongly supports the passage of AB 331**, which expands the expungement of court records for individuals under the age of 25. The State Bar has long sought changes to this statute and applauds Representatives Steffen and Goyke, as well as Senator Darling, along with other legislators' efforts this session to address this substantial public issue. Over the years, studies have shown time and again even minimal contact with the criminal justice system can have a significant detrimental impact on various aspects of a person's life. The collateral consequences of a criminal record can be a life-long barrier to success, presenting obstacles to employment, housing, education, family reunification and often resulting in significant debt.

AB 331 allows for offenders before the age of 25 to petition for expungement of a criminal record upon completion of his/her sentence, rather than exclusively at the time of sentencing, which is currently the only opportunity an individual can petition for expungement. In addition, this legislation requires DOJ to redact any record of an expunged crime when responding to a public records request and clarifies that a crime is not considered to be a conviction for employment purposes if the record has been expunged. This legislation does not modify the crimes that are eligible for expungement, nor does it change the age in which an offender is eligible for expungement.

Expungement is an issue that has been before the Legislature and the Supreme Court during the last several years, yet, despite extensive study and discussion, there have been few changes made. AB 331 is the opportunity to reverse that trend, as well as improve the lives of those who continue to struggle well into adulthood due to the consequences of poor choices as a young adult.

For these reasons, the **State Bar respectfully requests Assembly Criminal Justice members to support AB 331.**

For more information, please do not hesitate to contact the State Bar lobbyists, Cale Battles, cbattles@wisbar.org or (608) 695-5686, or Lynne Davis, ldavis@wisbar.org or (608) 852-3603.



Wisconsin State Public Defender

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Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State
Public Defender

Assembly Committee on Criminal Justice & Public Safety
Public Hearing - Thursday, June 1, 2017

Assembly Bill 331

Dear Chairman Spiros & Committee members,

Thank you for having this hearing on Assembly Bill (AB) 331, which makes several changes to expunction statutes. I'd like to start by thanking Representatives Steffen and Goyke and their staff for all of the work and outreach that went into drafting this legislation.

There are three key components of AB 331 that make the bill worthy of this committee's support. First, it clarifies statutorily that when people are asked whether they've been convicted of a felony, they make check no an on employment application if they have a previous conviction that has been expunged. This seemingly simple change will clarify decades of unclear statute and caselaw on this subject. It will also lessen a significant collateral consequence of conviction in finding employment.

Second, the bill makes both the court record as well as the crime information bureau contents publicly inaccessible. This considerably strengthens the impact of expunging a record. Under current law, an expunged record only removes the court record. Any employer conducting the standard background check presently receives notice from the crime information bureau that the person has been convicted of a crime.

Finally, and most importantly, it allows a court to order expungement after the sentence has been completed. Under current law, the judge can only order expungement at the time of sentencing. This restriction on the timing artificially limits how often expungement is granted because it unfairly asks Judges to predict future good conduct when sentencing someone for bad conduct.

In addition, Wisconsin is participating in an Evidence Based Decision Making project with the National Institute of Corrections. Principles learned in that project as applied to a treatment court setting include the concept of both swift sanctions as well as both short and long term rewards to incentivize good behavior. Having expungement available at the successful conclusion of a sentence would be a powerful incentive towards good behavior.

Thank you for considering AB 331. SPD looks forward to the committee's support of this proposal.



**Assembly Committee on Criminal Justice and Public Safety
Testimony on Assembly Bill 331
June 1, 2017**

Current expunction law in Wisconsin leaves many unanswered questions about the consequences of an expunction. We know two things happen as a result of an expunction. First, the physical court file maintained by the clerk of circuit courts is sealed. A person requesting to view the contents of the file will be denied access. Second, the case will be removed from CCAP. A member of the public will not be able to see the court records online. Other potential consequences of an expunged conviction are not answered in statute.

AB 331 helps clarify the exact nature of a couple collateral consequences of expunction. The bill makes clear a recipient of expunction is not required to disclose the conviction on a job application. The bill also expunges the conviction on the CIB in cases of open record requests. Both changes are helpful to the courts, the defendant, and the economy.

Expunction is not defined in the criminal code. The only definition for criminal expunction in Wisconsin statutes is found in Chapter 224 (the chapter addresses miscellaneous banking regulations). Without a definition, courts are largely left to guesswork if a defendant asks about the consequences of an expunction. AB 331 aids the courts in being able to explain with accuracy the consequences.

Expunction is not a pardon. A pardon reverses the conviction while an expunction seals the conviction. Consequently, a person whose record is expunged can be faced with uncertainty under current law as to the correct answer on job applications and licensure applications to the question of past criminal convictions.

A criminal conviction can be a significant barrier to employment. Requiring the disclosure of a conviction can even prevent a job applicant from even applying. The ambiguity of how a criminal conviction will be evaluated in job applications is in desperate need of clarification. At the same time, numerous studies have indicated employment is a significant indication of not reoffending. AB 331 will be a helpful tool for upward economic mobility for those whose record has been expunged.



Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

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J. Denis Moran
Director of State Courts

Testimony
Of
Judge Scott Needham
St. Croix County Circuit Court

For Information on Assembly Bill 331
Relating to Expungement of Circuit Court Records

Assembly Committee on Criminal Justice and Public Safety
Representative John Spiros, Chair
June 1, 2017

Thank you very much. My name is Scott Needham. I have been a circuit court judge in St. Croix County since 1994. Since 2011, I have served as the Chief Judge of the Tenth Judicial Administrative District. The Tenth District includes the 13 counties in northwest Wisconsin and is approximately 23% of Wisconsin's geography. I am appearing here for information only on Assembly Bill 331 relating to expungement of circuit court records.

As we have in testimony on other versions of expungement legislation, Senate Bill 53 and Assembly Bill 93, we want to thank the authors of Assembly Bill 331 for bringing forward this proposal. My fellow judges and I have seen many more requests for expungement in recent years. We recognize the advent of the 24/7 world of information and the Internet has increased problems for persons with criminal records. It has increased the tension that exists between the need for open records and the privacy interests of individuals.

Over the last several years, the increased interest in expungement has led to litigation to explore the meaning of and limits of the current statute, s. 973.015, Wis. Stats. There have also been Legislative Council study committees, a rule petition to the Supreme Court, and several legislative proposals.

The court system, most recently through the Committee of Chief Judges, which I currently chair, has explored this issue in great depth. It is our committee's considered opinion that Wisconsin would benefit from a substantial revision to the current statute, both for purposes of clarifying expungement procedures and addressing certain substantive limitations. The committee approved proposed legislation embodying that revision, and it was introduced as 2015 Assembly Bill 1005 by request of the Director of State Courts. We continue to work with legislators of both parties and in both houses to advance the ideas embodied in AB 1005.

I have included with my testimony a copy of a brochure the state court system provides to clerks of circuit court for distribution to the public, entitled "Expunging Court Records: Helpful Information and Frequently Asked Questions." The brochure addresses the procedures used under the current statute, as well as the interaction of the expungement process with records kept by other entities, including the Crime Information Bureau.

Like SB 53 and AB 93, Assembly Bill 331 addresses some of the limitations of the current statute, and we are very pleased that they are included.

We strongly support removing the current limitation that requires the court to determine whether expungement will be ordered "at the time of sentencing." It is difficult for the court to know at sentencing whether the standards for expungement have been met, that is, whether the defendant will benefit and society will not be harmed. It makes far more sense to have this decision made later, after defendants have had an opportunity to demonstrate they have pulled their lives together and can be contributing members of society. We think amending this portion of the current statute has broad support.

AB 331 provides greater procedural guidance for the courts on how they should handle expungements. AB 331 provides that the process will be initiated by filing a petition and will lead to an order from the court. This is a common court procedure, and should make the process easier for defendants to follow. The court system already has petition and order forms for expungement, so that providing the forms required by the bill would not be difficult.

Under its provisions, AB 331 allows the court to determine whether a hearing on every petition for expungement will be held. We strongly prefer this discretionary approach to the mandatory approach in the original SB 53 and AB 93. We recognize SB 53 was amended in the Senate Committee on Judiciary and Public Safety to eliminate the hearing requirement under certain limited circumstances. That is certainly an improvement from the original bill, but we think the language in AB 331 is preferable from a procedural standpoint. We believe there will be numerous petitions that could be handled without a hearing, and we can make the process move more efficiently through the courts with this language.

There are two other provisions in AB 331 that were added as an amendment to SB 53 that are very helpful from a procedural standpoint:

- Notice is to be provided to the District Attorney's office that prosecuted the defendant and the DA's office will notify the crime victim. The DA's office works closely with victims of crime, so it is more logical for the DA to provide notice of any hearing to the victim rather than have the Clerk of Circuit Court do the notification.
- A procedure was added for defendants whose sentences do not include probation to show the court they have successfully completed their sentences. For those on probation, there is a certificate of discharge, but that is not available to defendants not on probation.

There is a conflict between this bill and the other expungement bills about the initial applicability section. This is a very important issue because it impacts thousands of potential cases. AB 331 provides the opportunity for persons with closed cases to bring a petition, while the amended version of SB 53 would make the new expungement process prospective only. The language in AB 331 is closer to the language we proposed in 2015 AB 1005, and we would strongly encourage the committee to support that approach. The approach we proposed was discussed extensively by the Committee of Chief Judges.

Finally, there are some other provisions that we added to 2015 AB 1005 that we hope the authors and the committee will study further. They are not in AB 331, but we think they are worth a closer look by the Legislature in the future. They include the following:

- Expanding the expungement process to include cases in which the defendant was found not guilty; the case was dismissed; or the conviction was reversed, set aside or vacated. AB 1005 had no age limit for defendants in those cases. The current statute has the anomalous result that a person with a conviction may have the record expunged but a person found not guilty does not have a way to have the record expunged.
- Expanding the expungement procedure to cover circuit court forfeiture cases. Examples of these types of cases are ordinance violations for retail theft or disorderly conduct. These cases can have a strong negative influence on a person, but currently there is no expungement procedure for these types of cases.

Again, we applaud the authors of AB 331 for bringing the expungement issue before the Legislature. We are willing to work with all legislators who are interested in changing this law.

The importance of the expungement procedure was reaffirmed in one of the cases recently litigated on the subject. Writing for a unanimous Wisconsin Supreme Court in *State v. Hemp*, 2014 WI 129, Justice Michael Gableman wrote:

¶21 Thus, Wisconsin's expungement statute indicates our legislature's willingness (as expressed by the plain language of the statute) to help young people who are convicted of crimes get back on their feet and contribute to society by providing them a fresh start, free from the burden of a criminal conviction. Through expungement, circuit court judges can, in appropriate circumstances, help not only the individual defendant, but also society at large.

I would be happy to take questions. Thank you.

Expunging Court Records

What Does It Mean When the Court Expunges a Record?

When a court record is expunged, the court will seal the entire criminal case file and will not allow anyone to access the file without a court order. If someone asks the court about the case, the person will be told that no other information is available. On the Wisconsin Circuit Court Access (WCCA) website, a search for the defendant's name or case number will not return the case.

Is My Record Eligible For Expungement?

The circuit court can expunge criminal records in three circumstances:

1) For certain crimes committed by youthful offenders where the sentence is successfully completed (See Wisconsin Statute § 973.015). Eligibility for expungement must be approved by the court at the time of sentencing. The court must find that you will benefit and society will not be harmed by expunging the record.

For sentences imposed on or after July 1, 2009, the record of your conviction may be expunged if you were under age 25 at the time of the offense and if the maximum punishment for the crime was 6 years or less. Some offenses are excluded, and felony offenders are not eligible if they have a prior felony conviction. See Wis. Stat. § 973.015(1m)(a) for details. If you were sentenced before July 1, 2009, the record of your conviction may be expunged if you were under age 21 at the time of the offense and if the crime was a misdemeanor.

2) For juvenile cases where the offender has reached age 17 and has satisfactorily complied with the conditions of the dispositional order. See Wis. Stat. §

938.355(4m). In deciding whether to expunge the record of your juvenile adjudication, the court will determine whether you satisfactorily complied with the conditions of your dispositional order. The court must also find that you will benefit and society will not be harmed by the expungement.

3) If you committed a commercial sex act as a victim of human trafficking. See Wis. Stat. § 973.015(2m).

Other than these three situations, a judge has no authority to expunge other types of cases. For example, the statute does not allow the judge to expunge the record of traffic citations, civil or small claims cases.

What Do I Have To Do To Get My Criminal Record Expunged?

What steps you need to take depends on your situation:

1) If you were placed on probation or sentenced to serve time in jail or prison, and you have successfully completed your sentence, the clerk will expunge the record of your conviction. Successful completion of a sentence means that you have not been convicted of a subsequent offense, your probation was not revoked, and the conditions of your probation have been satisfied. Your probation agent or correctional institution will send a certificate of discharge to the clerk of circuit court. If no certificate was filed with the court, you should contact your probation agent or the correctional institution to request the certificate.

2) If you did not serve any time in jail or prison and were not placed on probation (for example, if you were only sentenced to pay a fine or restitution), you may request the court to expunge the record when your sentence is successfully completed. Circuit court form CR-266 can be used to request expungement of the court record in this situation.

3) In order to have your juvenile record expunged, you must petition the court. Form JD-1780 is available for this purpose.

Circuit court forms are posted on the court's website at <http://wicourts.gov/forms/circuit/index.htm>.

My Record Was Expunged. Does That Mean That No One Will Find Out About My Case?

No. Although your case was expunged and your court record sealed, the judge's order does not reverse or set aside your conviction. An expungement order only affects whether the conviction is accessible through court records. It does not affect the records kept by other criminal justice agencies.

The Crime Information Bureau (CIB), which is part of the Wisconsin Department of Justice, operates the Wisconsin Criminal History Repository. The repository maintains a record of all convictions regardless of whether the court expunged your record. Anyone can make a request for this information, and employers, schools and licensing agencies often run background checks of applicants this way. For this reason, you may want to consider explaining the circumstances of your case and why the court record of the conviction was expunged.

Additionally, the case may still exist in the records of the district attorney, law enforcement, the Department of Transportation, and other agencies. The judge has no authority to require removal of those agency records. Even if your court record has been expunged, anyone who asks for information about your conviction from another agency may be able to obtain it.

The Charges Against Me Were Dismissed. Can I Still Get My Record Expunged?

No. A court can only expunge the record if you were convicted of a criminal offense or adjudicated as a juvenile delinquent. If your case was dismissed, or if you were charged with a crime and found not guilty, you were not convicted.

In this situation, you may be able to have certain information removed from the Wisconsin Criminal History Repository. Contact CIB to get a special form for this request. Even if CIB removes information from the repository, that does not remove information from other agency records.

I Was Arrested But Never Charged. Can The Court Expunge That Information?

No. If you were never charged with a crime, the circuit court does not have a criminal case record to expunge. If you were arrested but never formally charged, you may be able to have certain information about your arrest removed from the Wisconsin Criminal History Repository by submitting a special form to the CIB. Again, removing information from the repository does not remove information from other agency records.

Is A Governor's Pardon The Same Thing As Getting My Case Expunged?

No. A governor's pardon does not expunge your court record. If you receive a governor's pardon, the court will add a notation to your court record indicating that a pardon was granted for your case. However, your record will not be sealed and the file will still be accessible both at the clerk of courts office and on the WCCA website. A pardon will not remove your record from the Wisconsin Criminal History Repository.

How Do I Find More Information About The Wisconsin Criminal History Repository?

Visit the Wisconsin Department of Justice website at www.doj.state.wi.us/ and search for "background check". There you will find information about how to remove your arrest information at CIB, forms, and answers to frequently asked questions about criminal records.

<http://www.doj.state.wi.us/dles/cib/background-check-criminal-history-information>.

Additional information can be found at:

Wisconsin Circuit Court Access Website:
<http://wcca.wicourts.gov/>

Wisconsin Court System
www.wicourts.gov

Wisconsin Department of Justice: www.doj.state.wi.us/

Wisconsin State Bar: www.wisbar.org

Department of Workforce Development Fact Sheet "Arrest and Conviction Records under the Law":
http://dwd.wisconsin.gov/dwd/forms_publications_search.htm

Wisconsin Statutes:
<http://legis.wisconsin.gov/rsb/stats.html>

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