



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #245

### Expunging Record of Conviction (Circuit Courts)

[LFB 2009-11 Budget Summary: Page 177, #6]

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#### CURRENT LAW

The sentencing court may order that the record of a conviction be expunged after successful completion of the sentence, if the person was under the age of 21 at the time of the commission of the offense, and the person has been found guilty of a violation for which the maximum penalty is imprisonment for one year or less in the county jail (a misdemeanor).

#### GOVERNOR

Modify statutory language to provide that a person is eligible to have his or her record of conviction expunged if: (a) the person was under the age of 25 at the time of the commission of the offense; and (b) the person has been found guilty of a violation for which the maximum period of imprisonment is six years. Specify that no court may order that a record be expunged for a Class H or I felony that is a violent offense. Specify that the modifications would apply to sentencing orders that occur on the effective date of the subsection.

#### DISCUSSION POINTS

1. Current law provides for a special disposition in cases where a person is found guilty of committing an offense, if: (a) the person was under the age of 21 at the time of commission of the offense; and (b) the maximum penalty for the offense is imprisonment of one year or less in county jail. In such cases, the court may order at the time of sentencing that the record be expunged upon successful completion of the sentence if the court determines the person will benefit and society will not be harmed by such disposition. The special disposition does not apply to records

required to be kept by the Department of Transportation for traffic convictions.

2. A person has successfully completed the sentence if he or she has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the person satisfied the probation conditions. Upon successful completion, the detaining or probationary authority will issue and forward a certificate of discharge to the court, which will have the effect of expunging the record. If the person has been imprisoned, the detaining authority will also forward a copy of the certificate of discharge to the Department of Corrections. According to the Director of State Courts Office, there were 1,487 cases expunged in 2007 and 1,672 cases expunged in 2008.

3. Assembly Bill 75 would increase the eligible age for special disposition from persons who are under the age of 21 at the time of commission of the offense to under the age of 25. In addition, AB 75 would modify the eligible offenses for special disposition for offenses with a maximum penalty of imprisonment of one year or less in a county jail to a maximum penalty of imprisonment of six years.

4. The bill would also specify that no court could order a record be expunged for a Class H or Class I felony that is a violent offense, as defined under the intensive sanctions program. Violent offenses would include: (a) battery, substantial battery, aggravated battery; (b) battery to an unborn child, substantial battery to an unborn child, aggravated battery to an unborn child; (c) battery by prisoners; (d) battery by certain committed persons; (e) battery to law enforcement offices, fire fighters, and commission wardens; (f) battery to probation, extended supervision, and parole agents and aftercare agents; (g) battery to jurors; (h) battery to emergency medical care providers; (i) battery or threat to witnesses; (j) battery or threat to a judge; (k) abuse or neglect of patients and residents; (l) battery by person subject to certain injunctions; (m) battery to public officers; (n) battery to technical college district or school district officers and employees; (o) battery to public transit vehicle operator, driver, or passenger; (p) abuse of residents of penal facilities; (q) machine guns and other weapons; (r) tampering with household products; (s) arson with intent to defraud; (t) Molotov cocktails; (u) threats to injure or accuse of crime; (v) damage to property; (w) damage or threat to property of witness; (x) criminal damage, threat, property of judge; and (y) physical abuse of child.

5. It should be noted that a technical modification to the bill is needed. The bill language provides that eligibility includes offenses for which the maximum period of imprisonment is "6 years." The language should be modified to "6 years or less." Without the modification, the provision could be interpreted to only include Class H felonies (which have maximum periods of imprisonment for six years) for expungement, excluding all misdemeanors and Class I felonies.

6. Since current law does not apply to Class H or Class I felonies or offenders over the age of 21, it is unknown how many additional cases would be expunged under the provision.

7. In his Budget in Brief, the Governor indicated his intent to expand eligibility for record expungement to include "Class H to I felonies, allowing more young people to learn from their mistakes and start a new life with a clean slate." Alternatively, some may argue that Class H

and Class I felonies are serious offenses and that current law already provides an opportunity for less serious, younger offenders to remove criminal convictions from their record.

### **ALTERNATIVES**

1. Approve the Governor's recommendation with the modification that eligible offenses include violations for which the maximum period of imprisonment is six years or less.
2. Delete provision.

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