



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1736/1  
PJH&MPG:sbb&jld:rs

## 2011 BILL

1 AN ACT *to renumber* 938.355 (4m) (a); *to renumber and amend* 973.015 (1);  
2 *to amend* 973.015 (2); and *to create* 938.355 (4m) (ag) and (d), 939.735 and  
3 973.015 (1m), (1r) (title), (3) and (4) of the statutes; **relating to:** expungement  
4 of court records and granting rule-making authority.

---

### *Analysis by the Legislative Reference Bureau*

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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:***

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Review of Records Access of Circuit Court Documents.

#### Background on Current Law

Expungement Law: Under current law, a court may generally order at the time of sentencing that a person's court record of conviction for a Class H felony or lesser offense be expunged upon successful completion of the sentence if all of the following apply:

- The person was under the age of 25 at the time of the commission of the offense for which the person was found guilty.

**BILL**

- The maximum period of imprisonment for the violation of the law is 6 years or less.
- The court determines the person will benefit and society will not be harmed by this disposition.

Certain Class H and I felonies, however, may not be expunged. No court may order that a record of conviction for a Class H or I felony be expunged if either of the following applies:

- The person has, in his or her lifetime, been convicted of a prior felony offense or the felony is a violent offense as defined in s. 301.048 (2) (bm), stats.
- The offense is a violation of stalking, physical abuse of a child, sexual assault of a child by a school staff person or by a person who works or volunteers with children, or concealing the death of a child.

Also under current law, juvenile court records of a juvenile adjudication may be expunged. The juvenile court may order that the court's record of the adjudication be expunged if the juvenile, on attaining 17 years of age, petitions the juvenile court to expunge the record and the juvenile court finds that the juvenile has satisfactorily complied with the conditions of his or her dispositional order and that the juvenile will benefit from, and society will not be harmed by, the expungement.

The juvenile court is required to expunge the court's record of the juvenile's adjudication if it was the juvenile's first adjudication for a violation of invasion of privacy under s. 942.08 (2) (b), (c), or (d), stats., and if the court determines that the juvenile has satisfactorily complied with the conditions of his or her dispositional order.

Current law does not: (1) define what it means to expunge a court record; or (2) articulate whether an expunged court record can be considered in employment and housing matters.

Department of Justice's Crime Information Bureau Records: Under current law, the Wisconsin department of justice (DOJ) operates the crime information bureau (CIB). CIB holds the central criminal fingerprint depository for the state and has a computerized criminal history database that contains detailed information of arrests, arrest charges prosecution, court findings and sentences, and state correctional system admissions and releases. The database is derived from information submitted by law enforcement agencies, prosecutors, courts, and the department of corrections. All information about an individual in CIB's criminal history database is included in one single record. The information is based on submission of arrest fingerprint cards by law enforcement officers.

Current law does not prohibit CIB from disclosing information about a person's conviction even if the court record has been expunged. Generally CIB must, upon request, make these records available to state and federal law enforcement agencies and criminal identification agencies. Current law also does not prohibit other law enforcement agencies in Wisconsin from disclosing information about an expunged court record. Current law does not require the sentencing court to notify CIB when the court orders a person's record to be expunged. Thus, an authorized person could still be able to access the person's conviction record through CIB, law enforcement agencies in Wisconsin and in other states, and federal law enforcement agencies even though that record was expunged by the court.

*The Bill*

Expungement Law: This bill defines what it means for a court to expunge a court record, based on the expungement process outlined in SCR 72.06 in the Wisconsin Supreme Court rules. The bill also clarifies that an expunged court record may not be considered for employment or housing matters.

Under the bill, a person may petition to the circuit court at any time to expunge the following:

**BILL**

- The court record of a person who was under the age of 25 at the time of the commission of an offense and who has been found guilty of a forfeiture, misdemeanor, or certain felonies that are punishable by up to 6 years' imprisonment.

- The court record of a person who has been charged with an offense punishable by a forfeiture, misdemeanor, or felony and all charges have resulted in a dismissal or a judgment of acquittal and no count in the complaint for which the offense was charged was a read-in crime.

The circuit court may grant the person's petition and order that the court record be expunged if the court determines the person will benefit and society will not be harmed by the expungement. The bill requires the court to notify DOJ after a person's court record has been expunged.

DOJ's CIB Records: The bill also prohibits a record related to an expunged court record under the control or possession of DOJ, or a law enforcement agency, from being disclosed to any unauthorized person, except as otherwise required by state or federal law. The bill allows records related to an expunged court record to be disclosed to the following:

- The person whose court record is expunged.
- A law enforcement officer, law enforcement officer of another state, or federal law enforcement officer acting within the scope of his or her duties in a criminal investigation.
- A law enforcement agency, law enforcement agency of another state, or federal law enforcement agency for purposes specifically related to employing the person in that agency.

The bill requires DOJ to promulgate rules to create a process for ensuring that once DOJ is notified that a person's court record has been expunged, DOJ, within a reasonable time period established by DOJ, notify law enforcement agencies of the restrictions on disclosure of any record related to the expunged court record. The bill also requires DOJ to promulgate rules to create a specific process: (1) to ensure that the person's expunged court record is not disclosed to an unauthorized person or entity; and (2) the process for recovering that part of the record if it is disclosed.

1           **SECTION 1.** 938.355 (4m) (a) of the statutes is renumbered 938.355 (4m) (am).

2           **SECTION 2.** 938.355 (4m) (ag) and (d) of the statutes are created to read:

3           **938.355 (4m) (ag)** In this subsection:

4           1. "Expunge" means to do all of the following:

5           a. Remove any paper index and nonfinancial court record and place them in the  
6 case file.

7           b. Electronically remove any automated nonfinancial record, except the case  
8 number.

9           c. Seal the entire case file.

10          d. Destroy expunged court records by burning, shredding, or other means that  
11 will obliterate the records.

**BILL****SECTION 2**

1 e. Remove any reference to the case from the Wisconsin Circuit Court Access  
2 Web site.

3 f. Notify any requestor that no information regarding the case exists, if a  
4 request for the case file is made.

5 2. "Seal" means to prohibit access to an entire case file, both paper and  
6 electronic, unless a requestor presents a court order that explicitly permits access to  
7 the case file.

NOTE: Creates various definitions for purposes of s. 938.355 (4m), stats. [the  
expungement of record provision in the Juvenile Justice Code], including a definition  
clarifying what it means for a court to expunge a court record of a juvenile adjudication.  
The definition for "expunge" is derived from SCR 72.06.

8 (d) An expunged court record of a juvenile adjudication may not be considered  
9 by any person in matters of employment or housing. No person whose court record  
10 of a juvenile adjudication has been expunged may be required to disclose the  
11 existence of the expunged court record in an application for employment or for the  
12 rental, purchase, or financing of housing. No person may inquire as to the existence  
13 of any expunged court record in any matter relating to an application for employment  
14 or for the rental, purchase, or financing of housing.

NOTE: Specifies that an expunged court record of a juvenile adjudication may not  
be considered in any matters of employment or housing. The provision clarifies that no  
person whose record was expunged may be required to disclose the existence of this record  
and no person may ask about the record's existence in any matter relating to an  
application for employment or for the rental, purchase, or financing of housing. While  
juvenile court records are confidential, this provision provides directions to a juvenile as  
to how his or her expunged court record should be treated for employment and housing  
purposes.

15 **SECTION 3.** 939.735 of the statutes is created to read:

16 **939.735 Expungement of record. (1) DEFINITIONS.** In this section:

17 (a) "Expunge" means to do all of the following:

18 1. Remove any paper index and nonfinancial court record and place them in the  
19 case file.

**BILL**

1           2. Electronically remove any automated nonfinancial record, except the case  
2 number.

3           3. Seal the entire case file.

4           4. Destroy expunged court records by burning, shredding, or other means that  
5 will obliterate the records.

6           5. Remove any reference to the case from the Wisconsin Circuit Court Access  
7 Web site.

8           6. Notify any requestor that no information regarding the case exists, if a  
9 request for the case file is made.

10           (b) “Federal law enforcement agency” has the meaning in s. 343.237 (1) (ag).

11           (c) “Federal law enforcement officer” has the meaning in s. 175.40 (7) (a) 1.

12           (d) “Law enforcement agency” has the meaning in s. 165.83 (1) (b).

13           (e) “Law enforcement agency of another state” has the meaning in s. 343.237  
14 (1) (ar).

15           (f) “Law enforcement officer” has the meaning in s. 165.85 (2) (c).

16           (g) “Law enforcement officer of another state” means any person employed by  
17 another state or any political subdivision of that state, for the purpose of detecting  
18 and preventing crime and enforcing laws or ordinances and who is authorized to  
19 make arrests for violations of the laws or ordinances that the person is employed to  
20 enforce.

21           (h) “Seal” means to prohibit access to an entire case file, both paper and  
22 electronic, unless a requestor presents a court order that explicitly permits access to  
23 the case file.

NOTE: Creates various definitions in subch. VI in ch. 939, stats. [rights of the accused], including a definition clarifying what it means for a court to expunge a court

**BILL****SECTION 3**

record. The definition for "expunge" is derived from SCR 72.06 in the Wisconsin Supreme Court rules.

1           **(2) PETITION AND ORDER.** When a person has been charged in circuit court for  
2 committing an offense that is punishable by fine, forfeiture, or imprisonment, the  
3 person may petition the court to expunge the court's record of the offense if all counts  
4 in the complaint for which the offense was charged have resulted in either a  
5 dismissal or judgment of acquittal and no count was a read-in crime as defined in  
6 s. 973.20 (1g) (b). The court may order that the record be expunged if the court  
7 determines the person will benefit and society will not be harmed by this disposition.

NOTE: Creates a procedure for a person charged in circuit court with a forfeiture, misdemeanor, or felony offense to petition for the court record of the offense to be expunged if all of the counts in the complaint resulted in a dismissal or a judgment of acquittal and no count was a read-in crime. The provision allows the court to order that the record be expunged only if the court determines that the person will benefit and society will not be harmed by this disposition.

8           **(3) EFFECT OF EXPUNGEMENT.** An expunged court record may not be considered  
9 by any person in matters of employment or housing. No person may be required to  
10 disclose the existence of an expunged court record in an application for employment  
11 or for the rental, purchase, or financing of housing. No person may inquire as to the  
12 existence of any expunged court record in any matter relating to an application for  
13 employment or for the rental, purchase, or financing of housing.

NOTE: Provides that the effect of an expunged court record is to prohibit the record from being considered in any matters of employment or housing. The provision clarifies that no person whose record was expunged may be required to disclose the existence of this record and no person may ask about the record's existence in any matter relating to an application for employment or for the rental, purchase, or financing of housing.

14           **(4) LAW ENFORCEMENT RECORDS.** (a) Unless otherwise required by state or  
15 federal law and except under par. (b), if a person has his or her court record expunged  
16 under this section, any record of, or relating to, the expunged court record that is in  
17 the possession or under the control of the department of justice under s. 165.83 or

**BILL**

1 that is in the possession or control of any law enforcement agency, may not be  
2 disclosed to any person or entity.

NOTE: Generally prohibits the disclosure of any record of, or relating to, a person's expunged court record that is in the possession of or under the control of DOJ or any law enforcement agency to any unauthorized person or entity, except as otherwise required by state or federal law or under this new subsection.

3 (b) A record under par. (a) of, or relating to, the expunged court record may be  
4 disclosed to the person whose court record is expunged, or to any law enforcement  
5 officer, federal law enforcement officer, or law enforcement officer of another state  
6 acting within the scope of his or her duties in a criminal investigation, or to a law  
7 enforcement agency, federal law enforcement agency, or law enforcement agency of  
8 another state for purposes specifically related to employing the person in that  
9 agency.

NOTE: Allows the record related to an expunged court record to be disclosed to the persons whose conviction is expunged to: (1) various law enforcement officers acting within the scope of employment; or (2) various law enforcement agencies for purposes specifically related to employing that person in that agency.

10 (c) The court shall forward a copy of the court order of expungement to the  
11 department of justice for purposes of complying with this subsection.

NOTE: Requires the court to provide notice to DOJ that a court record has been expunged by forwarding a copy of the order to DOJ.

12 (d) In accordance with the provisions of this section, the department of justice  
13 shall promulgate rules relating to all of the following:

14 1. A process for ensuring that, once the department is notified under par. (c),  
15 the department notifies law enforcement agencies, within a reasonable time period  
16 established by the department, of a person's expunged court record and of the  
17 restrictions on disclosure of that person's record under par. (a).

18 2. A specific process to ensure that the expunged court record is not disclosed  
19 to an unauthorized person or entity and a specific process for recovering that part

**BILL****SECTION 3**

1 of the record or any evidence of that part of the record, to the extent possible, should  
2 it be disclosed to an unauthorized person or entity.

NOTE: Requires DOJ to promulgate rules relating to how it will notify law enforcement agencies that a court record has been expunged. The provision also requires DOJ to: (1) promulgate rules to ensure that any record related to an expunged court record is not disclosed to unauthorized persons; and (2) specify how to recover the record if it is disclosed.

3 **SECTION 4.** 973.015 (1) of the statutes is renumbered 973.015 (1r), and 973.015  
4 (1r) (a), as renumbered, is amended to read:

5 973.015 (1r) (a) ~~Subject to par. (b) and except as provided in par. (c), when a~~  
6 ~~person is under the age of 25 at the time of the commission of an offense for which~~  
7 ~~the A person who has been found guilty in a court for violation of a law of committing~~  
8 ~~an offense that is punishable by a fine, forfeiture, or imprisonment for which the~~  
9 ~~maximum a period of imprisonment is 6 years or less, and who was under the age of~~  
10 ~~25 at the time of the commission of the offense may petition the court to expunge the~~  
11 ~~court's record of the offense. Subject to par. (b) and except as provided in par. (c), the~~  
12 ~~court may order at the time of sentencing upon petition that the record be expunged~~  
13 ~~upon successful completion of the sentence if the court determines the person will~~  
14 ~~benefit and society will not be harmed by this disposition. This subsection does not~~  
15 ~~apply to information maintained by the department of transportation regarding a~~  
16 ~~conviction that is required to be included in a record kept under s. 343.23 (2) (a).~~

NOTE: Allows a court to expunge a court record of an offense charged in circuit court that is punishable by a forfeiture. Also creates a procedure for a person charged in circuit court with a forfeiture, misdemeanor, or certain felony offenses punishable by up to 6 years in prison to petition for the court record of the offense to be expunged. This subsection allows the court to order that the record be expunged only if the court determines that the person will benefit and society will not be harmed by this disposition. The phrase, "at the time of sentencing" is removed so that the petition may be filed at any time. The structure of the paragraph was amended to be similar to the language used in s. 939.735 (2) of this bill.

17 **SECTION 5.** 973.015 (1m), (1r) (title), (3) and (4) of the statutes are created to  
18 read:



**BILL**

1           973.015 (1m) DEFINITIONS. In this section:

2           (a) "Expunge" means to do all of the following:

3           1. Remove any paper index and nonfinancial court record and place them in the  
4 case file.

5           2. Electronically remove any automated nonfinancial record, except the case  
6 number.

7           3. Seal the entire case file.

8           4. Destroy expunged court records by burning, shredding, or other means that  
9 will obliterate the records.

10          5. Remove any reference to the case from the Wisconsin Circuit Court Access  
11 Web site.

12          6. Notify any requestor that no information regarding the case exists, if a  
13 request for the case file is made.

14          (b) "Federal law enforcement agency" has the meaning in s. 343.237 (1) (ag).

15          (c) "Federal law enforcement officer" has the meaning in s. 175.40 (7) (a) 1.

16          (d) "Law enforcement agency" has the meaning in s. 165.83 (1) (b).

17          (e) "Law enforcement agency of another state" has the meaning in s. 343.237  
18 (1) (ar).

19          (f) "Law enforcement officer" has the meaning in s. 165.85 (2) (c).

20          (g) "Law enforcement officer of another state" means any person employed by  
21 another state or any political subdivision of that state, for the purpose of detecting  
22 and preventing crime and enforcing laws or ordinances and who is authorized to  
23 make arrests for violations of the laws or ordinances that the person is employed to  
24 enforce.

**BILL****SECTION 5**

1           (h) “Seal” means to prohibit access to an entire case file, both paper and  
2           electronic, unless a requestor presents a court order that explicitly permits access to  
3           the case file.

NOTE: Creates various definitions, including a definition clarifying what it means  
for a court to expunge a court record. The definition for “expunge” is derived from SCR  
72.06.

4           **(1r)** (title) PETITION AND ORDER.

5           **(3)** EFFECT OF EXPUNGEMENT. An expunged record may not be considered by any  
6           person in matters of employment or housing. No person may be required to disclose  
7           the existence of an expunged court record in an application for employment or for the  
8           rental, purchase, or financing of housing. No person may inquire as to the existence  
9           of any expunged court record in any matter relating to an application for employment  
10          or for the rental, purchase, or financing of housing.

NOTE: Provides that the effect of an expunged court record is to prohibit the record  
from being considered in any matters of employment or housing. The provision clarifies  
that no person whose record was expunged may be required to disclose the existence of  
this record and no person may ask about the record's existence in any matter relating to  
an application for employment or for the rental, purchase, or financing of housing.

11          **(4)** LAW ENFORCEMENT RECORDS. (a) Unless otherwise required by state or  
12          federal law and except under par. (b), if a person has his or her court record expunged  
13          under this section, any record of, or relating to, the expunged court record that is in  
14          the possession or under the control of the department of justice under s. 165.83 or  
15          that is in the possession or control of any law enforcement agency, may not be  
16          disclosed to any person or entity.

NOTE: Generally prohibits the disclosure of any record of, or relating to, a person's  
expunged court record that is in the possession of or under the control of DOJ or any law  
enforcement agency to any unauthorized person or entity, except as otherwise required  
by state or federal law or under this new subsection.

17          (b) A record under par. (a) of or relating to the expunged court record may be  
18          disclosed to the person whose court record is expunged, or to any law enforcement

**BILL**

1 officer, federal law enforcement officer, or law enforcement officer of another state  
2 acting within the scope of his or her duties in a criminal investigation, or to a law  
3 enforcement agency, federal law enforcement agency, or law enforcement agency of  
4 another state for purposes specifically related to employing the person in that  
5 agency.

NOTE: Allows the record related to an expunged court record to be disclosed to the persons whose conviction is expunged to: (1) law enforcement officers acting within the scope of employment; or (2) law enforcement agencies for purposes specifically related to employing that person in the agency.

6 (c) Upon successful completion of the sentence, after the court has received a  
7 copy of the certificate of discharge under sub. (2), the court shall forward a copy of  
8 the certificate of discharge and a copy of the court order of expungement to the  
9 department of justice for purposes of complying with this subsection.

NOTE: Requires the court to provide notice to DOJ that a court record has been expunged by forwarding a copy of the order of expungement to DOJ along with the certificate of discharge. The court must send this documentation to DOJ after the person whose court record has been expunged has successfully completed his or her sentence.

10 (d) In accordance with the provisions of this section, the department of justice  
11 shall promulgate rules relating to all of the following:

12 1. A process for ensuring that, once the department is notified under par. (c),  
13 the department notifies law enforcement agencies, within a reasonable time period  
14 established by the department, of a person's expunged court record and of the  
15 restrictions on disclosure of that person's record under par. (a).

16 2. A specific process to ensure that the expunged court record is not disclosed  
17 to an unauthorized person or entity and a specific process for recovering that part  
18 of the record or any evidence of that part of the record, to the extent possible, should  
19 it be disclosed to an unauthorized person or entity.

NOTE: Requires DOJ to promulgate rules relating to how it will notify various law enforcement agencies in Wisconsin that a court record has been expunged. The provision also requires DOJ to promulgate rules to: (1) ensure that any record related to an

**BILL****SECTION 5**

expunged court record is not disclosed to unauthorized persons; and (2) specify how to recover the record if it is disclosed.

1       **SECTION 6.** 973.015 (2) of the statutes is amended to read:

2       973.015 (2) SUCCESSFUL COMPLETION OF SENTENCE. A person has successfully  
3 completed the sentence if the person has not been convicted of a subsequent offense  
4 and, if on probation, the probation has not been revoked and the probationer has  
5 satisfied the conditions of probation. Upon successful completion of the sentence, if  
6 the court ordered the record of an offense be expunged, the detaining or probationary  
7 authority shall issue a certificate of discharge which shall be forwarded to the court  
8 of record and which shall have the effect of expunging the record. If the person has  
9 been imprisoned; the detaining authority shall also forward a copy of the certificate  
10 of discharge to the department.

11       **SECTION 7. Initial applicability.**

12       (1) The treatment of sections 939.735 and 973.015 (1), (1r) (title), and (2) of the  
13 statutes first applies to offenses committed on or after the effective date of this  
14 subsection.

NOTE: Clarifies that only court records of offenses committed on or after the effective date and charged in circuit court may be expunged if the offenses resulted in a dismissal or a judgment of acquittal and no count was a read-in crime. This SECTION also clarifies that only convictions of forfeiture offenses committed on or after the effective date of this bill and charged in circuit court may be expunged. This SECTION also clarifies that the person who was found guilty of certain offenses committed on or after the effective date of this bill may petition for expungement and may file the petition at any time. All other provisions under this bill apply to court records that have already been expunged or offenses that were expungeable before the effective date.

15       **SECTION 8. Effective dates.** This act takes effect on the day after publication,  
16 except as follows:

17       (1) The treatment of sections 939.735 (4) (a) to (c) and 973.015 (4) (a) to (c) of  
18 the statutes takes effect on the first day of the 9th month beginning after publication.

NOTE: Provides for an immediate effective date for the bill, except for the sections prohibiting disclosure of expunged court records by DOJ or a law enforcement agency.

**BILL**

The effective date for this prohibition is delayed by nine months so that DOJ has time to promulgate rules. DOJ has authority to begin the rule promulgation process on the first day after publication of the new law. Beginning on the first day after the 9th month after publication, neither DOJ nor a law enforcement agency may disclose a record related to an expunged court record to an unauthorized person or entity.

1

**(END)**

