

Co-Sponsorship Memorandum

To: All Legislators

From: Representative Evan Goyke

Date: February 21, 2020

Re: Co-Sponsorship of LRB 5660/1 - Additional Steps to Reform Wisconsin's Expungement Law

DEADLINE: Friday, February 28th at 5:00 p.m.

This session a bi-partisan group of legislators authored Assembly Bill 33/Senate Bill 39, which proposed to make several very important changes to Wisconsin's expungement law. This bill builds off of the work in AB33/SB39 and signals some of the additional changes needed. LRB 5660/1 closes an illogical loophole in Wisconsin law. Currently, individuals with a conviction are eligible for expungement, while individuals without a conviction, where the case was dismissed or the individual found not guilty, have no statutory ability to expunge their record. LRB 5660/1 creates a path for expunging records where there was no conviction. Several states currently allow expungement for non-convictions, including: Illinois, Indiana, Michigan, Minnesota and Iowa.^[1] This proposal will align Wisconsin with our neighboring states, the vast majority of the country, and proposes a common-sense protocol that should already exist.

While a record of non-convictions should not have any collateral consequences, in practice, these records can harm the individual. Justice Sonia Sotomayor recently described the damage an arrest and resulting non-conviction has on a person, writing, "even if you are innocent, you will now join the 65 million Americans with an arrest record and experience the 'civil death' of discrimination by employers, landlords, and whoever else conducts a background check." *Utah v. Strieff*, 136 S. Ct. 2056 (2016).

Allowing people an opportunity to expunge records when the case results in a non-conviction will remove any prejudicial bias against that individual and provide an opportunity for them to move forward in their lives without any lingering prejudicial ramifications.

Under the bill, a non-conviction for a misdemeanor charge will result in an expungement *automatically* upon dismissal or acquittal of the case. Under the bill, non-convictions of felony level offenses are expungable by motion to the court and may be made at the time of the dismissal, acquittal, or at a later date. No hearing is required for the court to act on the expungement petition. Under the bill, no fee is required for the petition to expunge a record of non-conviction and the law is applied retroactively.

LRB 5660/1 would align Wisconsin's expungement law and close the non-conviction loophole. Innocent until proven guilty should mean exactly what it says and this bill is necessary to fulfill that promise.

To be added as a co-sponsor please reply to this e-mail or contact Rep. Goyke's office at 608-266-0645 **by 5:00 p.m. on Friday, February 28th**.

“A Fresh Start: Wisconsin's Atypical Expungement Law and Options for Reform by Wisconsin Policy Forum. June 2018 (p. 32)”

Analysis by the Legislative Reference Bureau

This bill creates a procedure to expunge the records of a criminal case that did not result in a conviction.

Under current law, when a criminal record is expunged, all information in the case record is sealed or destroyed. Under current law, there is no requirement to expunge a record of a case that did not result in a conviction.

Under the bill, if a person is charged with a misdemeanor or certain traffic violations but the person is acquitted or the charges are dismissed, the court must order that the record of the case be expunged.

Under the bill, if a person is charged with a felony, but the person is acquitted or the charges are dismissed, the person may petition the court to order expungement of the case record. If the court finds that the person will benefit and society will not be harmed by the expungement, the court may order expungement of the case record. Under the bill, a person may not file an expungement petition for a felony charge of operating a vehicle while intoxicated or for a felony traffic violation involving an injury. Under the bill, the court must notify the Department of Justice that the record has been expunged and must seal or destroy the case documents. The bill allows a person to petition for expungement of cases that were closed before the effective date of the bill.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.