

CRIMINAL RECORD RELIEF: Pardon and Expungement Law in Wisconsin

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I. General info on criminal records and record relief

Having a criminal record carries far-reaching consequences

- **Professional/occupational licensing**
 - o Over 100 licensed professionals deny professional licensing to ex-offenders (restrictions set by individual licensing boards; no real state regulation)
 - o Some restrictions are mandatory for all offenses
 - o Examples of types of restrictions: Healthcare (paramedic, PT, MD, RN, vet), STEM positions (CPA, engineer, architects, landscaping), other positions (cosmetology, real estate appraisal, school bus driver)
- A note on **Employment Discrimination**
 - o Wisconsin's Fair Employment Act bars denial or termination of employment based on 14 factors, including arrest/conviction records—applies to private employers as well!
 - Wis. Stat. sec. 111.321: Prohibited cases of discrimination.¹
 - Wis. Stat. sec. 111.322: Discriminatory actions prohibited.²
 - **Criminal Conviction records** (broadly defined): “includes, but is not limited to, information indicating that an individual has been convicted of any felony, misdemeanor or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant to any law enforcement or military authority”

¹ “...no employer, labor organization, employment agency, licensing agency, or other person may engage in any act of employment discrimination as specified in s. 111.322 against any individual on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, **arrest record, conviction record**, military service, use or nonuse of lawful products off the employer’s premises during nonworking hours, or declining to attend a meeting or to participate in any communication about religious matters or political matters.”

² Employment discrimination includes **refusing to hire, employ, admit or license** protected individuals; **barring or terminating** protected individuals **from employment** or labor organization membership, and **discriminating** against protected individuals **in promotion, compensation, or terms/conditions/privileges of employment** or labor organization membership.

- Can't discriminate unless circumstances of conviction "substantially relate" to circumstances of specific type of job or licensed activity done. Burden is on the employer to show the substantial relationship.
 - **Criminal Arrest records** (broadly defined): includes, but is not limited to, "information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority"
 - Employers can't request these records (but "information" can include that information obtained from CCAP). Can only discriminate if employer has conducted an independent investigation and bases its decision on that investigation (arrest doesn't equate guilt)
 - Pending charges: a subset of arrest records. Can't terminate a current employee because of a pending charge (unless conducts independent investigation). Can't suspend a current employee or refuse to hire a potential employee (unless the circumstances of the pending charge substantially relate to the position).
 - Substantial relationship test clarified/defined in *Cree Inc. v. Labor & Industry Review Commission*³. Consensus seems to be that substantial relationship exists when there is a likelihood of an opportunity to reoffend.
 - [DWD Overview of Arrest/Conviction Record Discrimination](#)
 - Can file a complaint with DWD if you have an employment discrimination claim
- **Higher education, government benefits**
 - Questions about criminal convictions on most university applications
 - Ex-offenders may be ineligible for federal Pell Grants, federal student loans, federal work study
 - U.S. Small Business Administration and/or banks and financial institutions may deny loans and grants to people with criminal records
- **Housing** (some types of convictions make ex-offenders ineligible for Section 8 housing vouchers)
- **Civil rights**
 - Felony convictions - loss of right to vote; to sit on a jury; to hold public office; to possess a firearm
 - Restoration: For right to vote and serve on a jury, upon sentence completion
 - Some misdemeanor convictions (DV) - loss of firearm rights
- **Bias** (by law enforcement, general public, etc.)
- **Court Fees and Fines** (nonpayment leads to driver's license restrictions and more fees/fines)
- **DNA collection**: ordered for most crimes when probation or criminal sentence is ordered (DNA submitted to the state crime laboratories; may only be used as authorized by law⁴).

Different types of records: A person's public criminal record (what's on CCAP) is different than their criminal history/arrest record

- **CCAP** (public (electronic) records)
 - criminal/state cases
 - Non-criminal traffic cases where County Sheriff was the arresting agency

³ 2022 WI 15, 400 Wis. 2d 827, 970 N.W.2d 837.

⁴ Wis. Stat. sec. 165.77.

- **Paper files:** Clerk of Courts' offices keep public paper records (and can access older files that are not on CCAP)
- **Criminal history records:** The stuff of "background checks." In Wisconsin, managed by the WI DOJ's Crime Information Bureau (CIB) - not immediately public (but available if you pay)
 - o Based on fingerprint records taken anytime (every time) a person is arrested - All arrest information in WI criminal history records maintained by the WI DOJ must be accompanied by an arrest fingerprint card.
 - o When an employer or landlord does a background check or "deep dive" of someone's records, it often means they've requested the person's CIB report
 - o This report will show older cases, charges/incidents that didn't lead to a conviction, expunged cases
- **Federal and out-of-state records:**
 - o Federal records: Managed through the PACER website (Public Access to Court Electronic Records). Must register/pay for an account to gain access
 - o Out-of-state records: can't easily access in Wisconsin, but can still affect a person here
- **DNA records**
- **Juvenile (Children's Court) records**

Removing a criminal record is hard (and, there are different types of removal)

- Getting a case statutorily expunged only removes it from the public record
 - o Still on CIB reports and background checks
- Getting pardoned for a case doesn't even remove it from the public record
 - o Will still show up everywhere, but the public record will include a note on the pardon.
- **Types of Removal:**
 - o Removal from arrest fingerprint record (CIB Criminal History Report)
 - Only available if ALL charges in a cycle were not prosecuted, acquitted, or dismissed (dismissed ENTIRELY, not dismissed/read into something else or dismissed in part)
 - Or if the record was mistakenly entered to begin with
 - [Form DJ-LE-250B](#)
 - See Wis. Stat. sec. 165.84(1)
 - o Removal from CCAP
 - Expunged cases should be removed from CCAP by court immediately
 - Dismissed cases on CCAP *should* be removed within 2 years of date of dismissal (if not, can file [Request to Correct Court Record form - GF-184A](#))
 - Some cases get automatically removed after a certain length of time⁵
 - Felony cases: 75 years (Class A) or 50 years (Class B through I)
 - Misdemeanor cases: 20 years
 - Other civil records: (usually) 20 years
 - o Removal from DNA database: similar criteria as removal from arrest fingerprint record. Must be upon written request and include "any documentation the department requires"⁶ - handled by DOJ, not court
 - o VERY FEW cases can be removed from the public record for other reasons (like in the interests of justice; due to safety concerns)
 - Wisconsin public policy favors public access to government records

⁵ See WI SCR Chapter 72: Retention and Maintenance of Court Records ([chap72.pdf \(wicourts.gov\)](#)).

⁶ See Wis. Stat. sec. 165.77(4)

- Civil ordinance violations: typically only removable if you file a motion under Wis. Stat. sec. 806 to reopen and dismiss a case

II. Expungement versus Pardon

- Many people use the term “expungement” and “pardon” interchangeably, or they say they want to “expunge” their case when they’re referring to the pardon process (or when they’re not sure of their options but want to remove a record)
- Because of the nature of the expungement statute, very few people are actually eligible for expungement in Wisconsin. For those who are eligible, the process *should* take place automatically (upon successful sentence completion)
- For people who are not eligible for expungement but have an older felony conviction, they are usually eligible to ask for a Governor’s pardon on the case
- **Venn diagram**
 - **Key differences:**
 - Expungement removes from public record; pardon does not (but forgives/restores rights)
 - Pardons are only for felony convictions; expungements are for misdemeanors and some (the lowest level) felonies
 - Expungement is extremely time-sensitive; must ask for at sentencing
 - Pardon: need to wait to apply until at least 5 years from sentence completion
 - Expungement authority is statutory; handled by the courts
 - Pardon authority is a discretionary power given to the Governor by the WI Constitution

III. Expungement

Effect of Expungement – What it Does:

- **Seals court record on CCAP**/from public access (gets removed from CCAP; court destroys paper file). May only become available by special court order
- Means “to strike or obliterate from the record all references to the defendant’s name and identity.”⁷
- Provides “a clean start so far as the prior conviction is concerned”⁸– Namely, it **prevents expunged conviction record from being used against you in certain circumstances**
 - Can’t be used at later sentencings (however, the facts underlying the expunged conviction may be considered)
 - Can’t be used for impeachment purposes at trial
 - Can’t be used for repeater sentence enhancement in subsequent chargings
 - Employers can’t rely on an expunged conviction to deny employment by claiming that the conviction is “substantially related” to the position sought.
- Expunge = remove/clear from PUBLIC record (electronic files and paper files)

Statutes

⁷ 67 Atty. Gen 301 (1978).

⁸ See State v. Leitner, 646 N.W.2d 341, 253 Wis. 2d 449 (2002).

- **Juvenile Expungement** (Wis. Stat. sec. 938.355(4m))
 - o Only deals with juvenile/Children’s Court records (removal from Children’s Court records; not on public CCAP to begin with)
 - o After age 17, person may petition the court for expungement – CAN be requested after the fact
 - o Standard: Court must determine that the person has satisfied all conditions of the sentence AND that the person will benefit from/society will not be harmed by expungement
- **Expungement for victims of sex trafficking** (Wis. Stat. sec. 973.015(2m))
 - o For folks who violated the prostitution statute (944.30) and can show, by filing a motion, that they were “a victim of trafficking for the purposes of a commercial sex act” and committed the violation as a result of being a victim of sex trafficking
- **Adult Expungement: Wis. Stat. sec. 973.015(1m) – Special Disposition**

The main expungement statute:

*Eligibility for Adult Expungement (for “Youthful Offenders”): **Wis. Stat. § 973.015(1m) – Special Disposition***

1. Must have been younger than 25 years old at time of offense.

- Only people sentenced after July 1, 2009 are eligible under this current statute.
- Before 2009 WI Act 28 expanded the scope of the statute, defendant must have been under age 21 on offense date

2. Maximum penalty for imprisonment must have been 6 years or less.

- Available for all misdemeanors (class A, B, and C).
- Available for some felonies (class H or I only). Must be non-violent and must have no prior felonies (prior to 2009, no felonies available for expungement).
 - o (non-violent: no murder, battery, abuse, sexual assault, endangering safety use of dangerous weapon, arson, robbery, abuse, etc.)
- Must be a criminal conviction/must involve some period of imprisonment.
 - o Municipal/traffic/civil convictions (even OWIs), small claims cases, dismissed charges, or charges that were resolved as non-criminal offenses are NOT eligible.

3. Judge must have ordered at the time of sentencing that the record be expunged upon successful sentence completion.

- Will usually state on CCAP (in sentencing notes or in “History and details of charges/sentences” section). If not there, should be in Judgment of Conviction (and at the very least, in the transcript)--would have to request those things from the Clerk of Court
- Must determine that the offender will benefit from, and society will not be harmed by, the expungement.

4. Must have successfully completed entire sentence.

- All confinement/supervision (jail, probation, etc.) and all conditions of sentence.

Effect of Expungement: What it Does NOT do: The limited scope of Wisconsin’s expungement statute

- **Does not vacate/remove/otherwise undo the conviction**
 - o Expungement affects the court record only; not other records. The expunged case is still available in DA and law enforcement records, DOT records, DOJ Crime Information Bureau (CIB) records, etc.—and employers, schools, licensing agencies can still request this information.

- Still on CIB reports, so arrest fingerprint records still remain
 - Must still list the conviction on applications for employment, housing, etc. when asked.
- **Does not restore gun rights** that are lost as a result of a felony conviction⁹
- Practically, expunction of one case doesn't provide much relief if the person has other cases on their record
- **Does not happen automatically**
 - Wisconsin is one of a few states that does not automatically expunge upon dismissal or acquittal of charges.
 - Wisconsin is the only state which requires judges to make expungement decision at sentencing. If expungement isn't addressed at sentencing, even perfect completion of all aspects of the sentence will not entitle the defendant to expunge the case, and there is no ability to go back and litigate the issue afterward.
 - Assuming that court has ordered it and the defendant has successfully completed their sentence, expungement should happen automatically¹⁰ (the statute is "unambiguous and places no burden on [defendant] to petition within a certain period of time"; "Once an individual defendant successfully completes his sentence, the plain language of the expungement statute mandates a self-executing process.")--
 - –but recently, sentencing courts have been putting the onus back on the defendant/the decision back on the court (requiring the person to file a motion and have a hearing on the matter)
 - In cases where no criminal sentence issued (no probation or jail ordered / fine only), can file a simple form to request expungement ([Form CR-266](#))
 - "Successful completion of sentence" now up for interpretation
 - Per the statute (973.015(1m)(b), this means "the person has not been convicted of a subsequent offense and, if on probation, the probation has not been revoked and the probationer has satisfied the conditions of probation."
 - Based on caselaw and recent interpretations of caselaw by courts, the statute is qualified significantly. Practically, we have seen it to mean defendant must have satisfied all of the following criteria during the period of probation/detention (before discharge date):
 - a) fulfilled all of the conditions of probation set by the probation agency AND the sentencing court;
 - b) was not revoked from probation/had no probation violations; and
 - c) was not convicted of any new offenses (including non-criminal convictions)¹¹.

Takeaways

- Ask for expungement at sentencing!
- Pay close attention to details of sentence
- Form for expungement in non-probation/non-incarceration cases
- No standard form for expungement in other cases
 - Again, because per the statute, it's supposed to be "self-effectuating"

⁹ See Wis. Stat. sec. 941.29(1m).

¹⁰ See State v. Hemp, 2014 WI 129, 359 Wis. 2d 320, 856 N.W.2d 811

¹¹ See State v. Ozuna, 2017 WI 64, 379 Wis. 2d 1, 898 N.W.2d 20 (DOC's Certificate of Discharge and Satisfaction of Probation is not enough; defendant's non-criminal underage drinking ticket while on probation acted as a bar to expungement).

- If successfully completed sentence and not ordered, be prepared to file own motion with the court
 - Court will likely hold a hearing on the matter

IV. Pardon Process and Application

Pardon Background

- **Wisconsin's Pardon Advisory Board (PAB)**
 - Each elected governor has the discretionary power to issue pardons.¹² If the governor decides to issue pardons, he or she will establish a Pardon Advisory Board to oversee parts of the process.
 - Governor Tony Evers reestablished the Pardon Advisory Board shortly after taking office in June 2019 (Former Governor Scott Walker had disbanded the PAB at the start of his term and no pardons were issued during that time).
 - The PAB started considering pardon applications in October 2019, and as of December 2022, it has issued 774 pardons.
- **Purposes of Pardon** – language from Executive Order #130¹³ and Governor's Pardon Advisory Board webpage¹⁴:
 - Acts as “an official grant of forgiveness” and signals rehabilitation
 - “Can restore certain rights and privileges and relieve some legal disabilities”
 - Can provide “greater work opportunities”
 - Addresses “the profound racial inequalities in our State’s criminal justice system”
 - May also help with collateral consequences of the felony conviction
- **Executive Order #130**
 - In September 2021, the Governor’s [Executive Order #130](#) expanded the pardon eligibility requirements and allows for expedited review of older, non-violent felony convictions
 - Now, people with more than one felony conviction can apply for a pardon, as well as people with misdemeanor convictions after their felony conviction
 - If recommended for expedition by the PAB, the pardon application can be forwarded straight to the Governor for approval, bypassing the formal hearing.

Pardon Effects

- **Effect of Pardon – What it does**
 - Restores right to hold public office¹⁵
 - Relieves some barriers to employment¹⁶
 - It is employment discrimination to refuse to employ a person who has been convicted of a felony and later pardoned
 - Restores firearm rights lost as a result of a felony conviction¹⁷

¹² See Wis. Const. art. V, sec. 6.

¹³ [2021-130.pdf \(wisconsin.gov\)](#).

¹⁴ [Official Website for Wisconsin Governor Tony Evers Pardon Information](#).

¹⁵ See Wis. Const. art. XIII, sec. 3(2).

¹⁶ See Wis. Stat. sec. 111.335(3).

¹⁷ See Wis. Stat. sec. 941.29(5)(a).

4. The person must not be currently required to register as a sex offender.²³

Pardon Application Process

- Steps

- **Establish eligibility**
 - Confirm it's been a full 5 years since the completion of any criminal sentence.
- **Obtain Certified Copies** of (1) Felony Information; (2) Criminal Complaint; and (3) Judgment of Conviction for each case asking to be pardoned.
- **Complete and submit [pardon application](#).**
 - Include Certified Copies
 - Include all other attachments/materials (letters of recommendation, resumes, certificates/diplomas, etc.)
 - Materials must be hand-mailed to PAB in Madison
 - Notice to Judge and Notice to DA of Pardon Application also required
 - Judge and DA sign off on Notice and send to Madison (support, oppose, or no opinion)
- **Review period** by Pardon Advisory Board
 - Initial: If minor issues, PAB will notify applicant and may give opportunity to rectify
 - Supplemental: More thorough review period. Background checks on all applicants. If issues remain, PAB may notify applicant if they will no longer be considered for a pardon (will not be scheduled for a hearing)
 - Expedited: All applications are considered for Expedited Review (possible via Executive Order #130). For those that PAB recommends for expedition, applications sent directly to the Governor for review (no hearing).
- **Timelines:**
 - The process of reviewing applications, scheduling applicants for hearings, and issuing decisions takes incredibly long
 - Typically 12-13 months from when application is submitted to the hearing date
 - The expedition decision isn't made that much faster; typically notify expedited applicants one month before the hearing would be scheduled
- **Hearings** in front of Pardon Advisory Board
 - Hearings are open to the public. Formerly held in Madison but currently on Zoom 1-2 times per month.
 - Each applicant has around 15 minutes to summarize the following for the Board:
 - Explain the charges/your involvement in the crime
 - Talk about the sentence you received/how it went
 - Talk about what's happened since then—progress made, community involvement, charges since, education/employment, etc.
 - Briefly summarize why you think you deserve a pardon
 - Then the Board will have an opportunity to ask questions
- **Written decision** by Pardon Board
 - Anywhere from 2 weeks to 2 months from the hearing
 - If pardon denied: No appeal process. You get one chance to re-apply but must wait at least 18 months from the date of denial

²³ Note: Per Wis. Stat. § 301.45, the reporting requirement for most sex offenses is removed after 15 years (but even if the person is no longer required to register, past sex offense cases are unlikely to be successfully pardoned).

- If pardon granted: The public (CCAP) record will be updated to reflect the Pardon
- **Factors considered by the Pardon Advisory Board**
 - Seriousness of circumstances surrounding criminal offense
 - Applicant's *entire* criminal record
 - How the sentence went and whether restitution was paid
 - How much time has passed since the offense
 - Input and opinions from the DA, court, victim, or other community members
 - Applicant's personal development and progress since the commission of the crime (employment, community service, letters of recommendation, etc.)
 - Whether applicant has a significant and documented need for a pardon (schooling, job training, desire to hold public office, etc.)
- **General tips for the pardon application**
 - Application answers can be handwritten, typed, or a combination (just must be legible)
 - PAB is fine with additional attachments
 - Keep PAB informed of changes in contact info
 - Social media should be on private
 - They will search!
 - Can be emotionally heavy work
 - Over-disclosure better than under-disclosure
 - Include an answer for every question, even if the answer is N/A
 - Letters of recommendation/character letters are important! The more, the better. The board will ask if the applicant hasn't submitted any
 - "Explanations, not excuses" – context is crucial for the Board in making their decisions, but they also value a person taking responsibility for their own actions.
- **When asking for a pardon may not be appropriate/may be especially difficult**
 - Claims of innocence
 - Violent offenses
 - Lengthy criminal/traffic history
 - Any other indication that the person may re-offend

A happy ending: Excerpts from press releases on pardoned individuals (many taken from clients who worked with our clinic and received pardons!)

- "[A.D.] was 18 years old when officers found him in possession of a controlled substance. Now more than two decades later, [he] is a foster parent and grandfather. The court supports his pardon."
- "[S.G.] was caught selling a controlled substance. Now nearly 20 years later, [she] has received both her associate and bachelor's degrees and works to help families facing homelessness."
- "[M.M] used someone else's public library and movie rental cards, respectively, to check out books and rent movies. [She] has since obtained associate and bachelor's degrees and has worked at her local library."
- "[R.I.] was 22 years old when he participated in the burglary of several residences. Now nearly 50 years later, [he] is actively involved with the Milwaukee VA Medical Center and co-founded a nonprofit support group for veterans with visual impairments."
- "[P.H.] was 22, pregnant, and without a job or child support when she made fraudulent financial transactions. Now a mother of three, she works as a caregiver in a residential facility and aspires to obtain her social work degree so that she can help youth entangled in the justice system."

Questions?

- For info on volunteering/specific questions: Email Natalie.lewandowski@wicourts.gov
- For general clinic info: visit [Pardon/Expungement Assistance | Mobile Legal Clinic \(mkemobilelegalclinic.com\)](http://Pardon/Expungement Assistance | Mobile Legal Clinic (mkemobilelegalclinic.com))
- For specific client inquiries: Email ExpungeMKE@gmail.com