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# Wisconsin - Restoration of Rights, Pardon, Expungement & Sealing

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Last updated: June 6, 2015

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#### I.  Restoration of civil rights/firearms privileges

##### *A.  Civil rights*

The right to vote is lost upon conviction of “treason, felony, or bribery,” and is automatically restored upon completion of the term of imprisonment or probation.  [Wis. Stat § 304.078](http://docs.legis.wisconsin.gov/statutes/statutes/304) (3).  The right to sit on a jury depends upon being a qualified elector, and is restored along with the vote upon completion of sentence.  [§ 756.01](http://docs.legis.wisconsin.gov/statutes/statutes/756)(1).   The right to hold public office and other rights lost (*e.g.,* firearms, licenses) are restored only by pardon.  [Wis. Const. art. XIII, § 3](https://docs.legis.wisconsin.gov/document/wisconsinconstitution/XIII,3); [Wis. Stat. §§ 111.335](http://docs.legis.wisconsin.gov/statutes/statutes/111)(cg), (cs); [941.29](http://docs.legis.wisconsin.gov/statutes/statutes/941)(1)(a)-(b),(5).

##### *B.  Firearms*

A person convicted of a felony may not possess a firearm.  [Wis. Stat. § 941.29](http://docs.legis.wisconsin.gov/statutes/statutes/941)(1)(a)-(b), (2).  Firearms rights may be restored by a governor’s pardon.  [§ 941.29](http://docs.legis.wisconsin.gov/statutes/statutes/941)(5).

#### II.  Discretionary restoration mechanisms

##### A.  Executive pardon

###### *Authority*

The governor has exclusive power to pardon, except in cases of treason and impeachment.  [Wis. Const. art V, § 6](https://docs.legis.wisconsin.gov/document/wisconsinconstitution/V,6).  He must communicate annually with legislature each case of clemency and the reasons.  *Id*.**[1](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-1" \o "</strong>The governor may also, upon the recommendation of the Department of Corrections, discharge state prison inmates absolutely or conditionally once the person has served the minimum sentence required by law (or in the case of lifers five years after their release on parole), without going through the notice and hearing procedure set forth in <a href="http://docs.legis.wisconsin.gov/statutes/statutes/304">§ 304.09</a>.  <a href="http://docs.legis.wisconsin.gov/statutes/statutes/973">Wis. Stat. § 973.013</a>(2).   In such instances, the discharge “has the effect of an absolute or conditional pardon, respectively.”  <em><a href="http://docs.legis.wisconsin.gov/statutes/statutes/973">Id.</a>  </em>It appears that this statutory clemency authority is rarely if ever used.<strong>)**

###### *Administration*

The governor generally appoints a non-statutory Pardon Advisory Board (PAB).  The current governor has not appointed a board, and has announced his general belief that “these decisions are best left up to the courts.”**[2](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-2" \o "</strong>Associated Press, <em>Walker has no plans for granting pardons</em>, JSOnline, Nov. 28, 2011, <a href="http://www.jsonline.com/news/statepolitics/walker-has-no-plans-for-granting-pardons-j837jvk-134584228.html">http://www.jsonline.com/news/statepolitics/walker-has-no-plans-for-granting-pardons-j837jvk-134584228.html</a>.  Governor Walker’s website includes information about applying for pardon, and in March of 2011 he signed an executive order allowing him to appoint a Pardon Advisory Board, though as of April 2015 he had not done so.  <em>Id.</em>  In November 2012 individuals with pending applications were informed that the Wisconsin process had been “suspended indefinitely,” that “applications currently on file will be saved for future use,” but that “no new applications [would] be accepted.”  See letter on file with author.<strong>)**

###### *Eligibility*

Recent governors have required a waiting period of eight years after the completion of sentence, including probation and parole, though this may be waived by the PAB in “extraordinary circumstances.”  Pardon is only available to persons convicted of felonies under Wisconsin law, and not to misdemeanants (unless “extraordinary circumstances”), or out-of-state or federal offenders.  Further details about the Wisconsin pardon process are available at the website of “Pardon 411,” <http://www.pardon411.com/wiki/Wisconsin_Pardon_Information>.**[3](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-3" \o "</strong>“Frequently Asked Questions” about pardon were removed from the Wisconsin website, making much of the information in this section unreliable and/or outdated.  See <a href="http://165.189.60.210/Documents/FAQs.pdf">http://165.189.60.210/Documents/FAQs.pdf</a>, including application form <em>available at </em><a href="http://165.189.60.210/Documents/Application%20for%20Executive%20Clemency.pdf">http://165.189.60.210/Documents/Application%20for%20Executive%20Clemency.pdf</a>.<strong>)**[[3]](#_ftn3)

###### *Process*

By statute, notification must be published in a county paper, or posted on the courthouse door. [Wis. Stat. § 304.09](http://docs.legis.wisconsin.gov/statutes/statutes/304).  The DA, sentencing judge, and victim must also be notified.  Id.  The pardon application must contain a statement from the DA and the sentencing judge giving their opinion on the merits of the application.  [§ 304.10](http://docs.legis.wisconsin.gov/statutes/statutes/304). Recent governors have required a public hearing before the PAB for applicants that show a demonstrated need for a pardon.

###### *Effect of pardon*

Pardon restores rights and privileges lost as a result of conviction, relieves legal disabilities, and signals rehabilitation, but does not expunge or seal the conviction.  Gun rights are restored unless the conviction was for a domestic violence misdemeanor.  Those convicted of a felony involving possession of a firearm must receive a pardon for both the underlying felony conviction and the firearm possession conviction in order to regain gun rights.  Pardon does not result in removal from the sex offender registry.  A pardoned conviction must be revealed to an employer if asked, but pardoned individuals are also encouraged to furnish proof of pardon to prospective employers.  See Clemency FAQs available prior to 2011.

###### *Standards*

According to the Clemency FAQs that were posted on the Pardon Advisory Board website prior to 2011, an applicant should have a “significant and documented need” such as employment, education or job training.  Pardons to clear conscience or regain firearms rights are not generally granted, unless the conviction is old and minor.  Factors taken into account include age and seriousness of conviction, extent of need, applicant’s “personal development” since crime was committed, and community or civic contributions.

###### *Frequency of grants*

Governor Walker has granted no pardons to date, and early in his tenure announced his disinclination to do so, disbanding the Pardon Advisory Board.  During his eight years in office, Governor Doyle granted 293 pardons overall, 176 in his final year, mainly for dated minor offenses.  Since 2003, between 200-300 people who meet eligibility requirements apply annually, a number that has been increasing each year.  More than triple the usual number applied in 2010, the final year of Governor Doyle’s tenure.  Another 250 people apply for waivers, either because they have not satisfied the five-year waiting period or because they were convicted of a misdemeanor, but few waivers are granted (about 10 each year).  Only about 15% of applicants are successful:  Source: Governor’s Office.

##### B.  Judicial expungement

###### *Youthful conviction expungement*

“[W]hen a person is under the age of 25 at the time of the commission of an offense . . . for violation of a law for which the maximum period of imprisonment is 6 years or less, 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 this disposition.”  *See* [Wis. Stat. § 973.015](http://docs.legis.wisconsin.gov/statutes/statutes/973)(1m)(a).  This provision applies to misdemeanors and minor nonviolent first felonies, and requires the trial court to make the expungement decision *at the time of sentencing* and not at the conclusion of the sentence or at some later time.  *See [State v. Matasek](https://www.lexis.com/research/buttonTFLink?_m=db8fcac3027b0fc56a6b880f814b3e9e&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bWis.%20Stat.%20%a7%20973.015%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=58&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2013%20WI%20App%2063%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAA&_md5=c16643ba1e7ed317c257a68ed98e25ff)*[, 831 N.W.2d 450, 453 (Wisc. App. 2013).](https://www.lexis.com/research/buttonTFLink?_m=db8fcac3027b0fc56a6b880f814b3e9e&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5bWis.%20Stat.%20%a7%20973.015%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=58&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2013%20WI%20App%2063%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzB-zSkAA&_md5=c16643ba1e7ed317c257a68ed98e25ff)  The person must have successfully completed the sentence without being convicted of a subsequent offense and, if on probation, without having the probation revoked.  *See* [§ 973.015](http://docs.legis.wisconsin.gov/statutes/statutes/973)(2).  “Upon successful completion of the sentence the detaining or probationary authority shall issue a certificate of discharge which shall be forwarded to the court of record and which shall have the effect of expunging the record.”  *[Id.](http://docs.legis.wisconsin.gov/statutes/statutes/973)*  The Wisconsin Supreme Court recently held that expungement upon successful completion of sentence is automatic, and there is no need to file an additional petition when authorities failed to forward the appropriate papers to the court.  *State v. Hemp*, 214 WI 129 (December 18, 2014).

Expungement “shall” be ordered at the time of sentencing for “invasion of privacy” (peeping) if under 18 at the time of the offense. [§ 973.015](http://docs.legis.wisconsin.gov/statutes/statutes/973)(1m)(b).

###### *Prostitution by victims of human trafficking*

[Wis. Stat. § 973.015](http://docs.legis.wisconsin.gov/statutes/statutes/973)(2m)(a).Expungement available at any time after sentencing.

*Effect of expungement:*  “Expunge” under [§ 973.015](http://docs.legis.wisconsin.gov/statutes/statutes/973) means “to strike or obliterate from the record all references to the defendant’s name and identity.” 67 Atty. Gen. 301 (1978). Expungement of a court record “enables an offender to have a clean start so far as the prior conviction is concerned.”  *See State v. Leitner*, 646 N.W.2d 341, 352 (Wis. 2002) (“An expunged record of a conviction cannot be considered at a subsequent sentencing; an expunged record of a conviction cannot be used for impeachment at trial under[§ 906.09](http://docs.legis.wisconsin.gov/statutes/statutes/906)(1); and an expunged record of a conviction is not available for repeater sentence enhancement.”)  However, [§ 973.015](http://docs.legis.wisconsin.gov/statutes/statutes/973)(2) authorizes expungement of court records only, and not records in the possession of law enforcement agencies or prosecutors.  Nor does it prohibit courts from considering the facts underlying an expunged conviction in sentencing in another case:

*“[N]othing in the language or history of § 973.015 indicates that the legislature intended record expunction under § 973.015 to wipe away all information relating to an expunged record of a conviction or to shield a misdemeanant from all of the future consequences of the facts underlying a record of a conviction expunged under § 973.015.”*

*Leitner, 646 N.W. 2d at 352.*

###### *Deferred prosecution*

[Wis. Stat § 971.37](http://docs.legis.wisconsin.gov/statutes/statutes/971) authorizes a prosecutor to enter into a deferred prosecution agreement with a defendant in domestic violence and some sex offense cases.  The prosecutor may require a guilty plea as a condition of deferral, notwithstanding [Wis. Stat. § 971.37](http://docs.legis.wisconsin.gov/statutes/statutes/971)(4) (consent to deferred prosecution is not an admission of guilt).  *See State v. Daley*, 716 N.W.2d 146, 149 (Wis. Ct. App. 2006).  Notwithstanding statutory eligibility factors, it appears that prosecutors have considerable latitude in extending deferral to other offenses.**[4](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-4" \o "</strong><em>See, e.g.,</em> the Milwaukee Journal Sentinel’s investigative report on the deferred prosecution program of the Milwaukee County District Attorney, <em>available at</em> <a href="http://www.jsonline.com/watchdog/watchdogreports/111733029.html">http://www.jsonline.com/watchdog/watchdogreports/111733029.html</a>.   While the report found that some admitted to the program had serious criminal records that should have made them ineligible under the DA’s own policy, it also reported a 70% rate of successful completion of probation in 910 cases studied.<strong>)**  *See* [Wis. Stat. § 971.37](http://docs.legis.wisconsin.gov/statutes/statutes/971)(5) (deferred prosecution agreements are not precluded “for any alleged violations not subject to this section”).  Upon successful completion of the terms of deferral, the charges may be dismissed and no conviction results.  [Wis. Stat. § 971.37](http://docs.legis.wisconsin.gov/statutes/statutes/971)(3).  There is no provision for expungement of deferred prosecution records.

###### *Juvenile records*

Upon turning age 17, a juvenile adjudicated delinquent may petition the court to expunge the adjudication records.  [Wis. Stat. § 938.355](http://docs.legis.wisconsin.gov/statutes/statutes/938)(4m).  The court may expunge upon a finding “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.”  *Id.*  Upon expungement, all paper and electronic records are removed, and the case file is sealed.  Wis. Sup. Ct. R. 72.06.  Arrest records generally remain confidential, but there is no method by which to expunge them.

##### C.  Administrative restoration: N/A

#### III.  Occupational licensing and employment

The *Wisconsin Fair Employment Act (*1977) expressly bars employers from discriminating in employment and licensing decisions on the basis of an individual’s criminal record.  [Wis. Stat. § 111.321](http://docs.legis.wisconsin.gov/statutes/statutes/111).  However, it is not unlawful to discriminate against those previously convicted of a crime if the circumstances of the particular criminal offense “substantially relate to the circumstances of the particular job or licensed activity,” or if the person is not bondable.  [§ 111.335](http://docs.legis.wisconsin.gov/statutes/statutes/111)(1)(c).  It is also not employment discrimination for an educational agency to refuse to employ, or to terminate the employment of, an individual who has been convicted of a felony, whether or not the circumstances of the crime relate to the job.  [§ 111.335](http://docs.legis.wisconsin.gov/statutes/statutes/111)(d)(2).  Licensing authorities are specifically prohibited from issuing licenses to convicted persons for certain professions if they have not been pardoned (e.g., security personnel and private investigators, installer of burglar alarms), or who have been convicted of certain offenses (including drug offenses).  *See*[§ 111.335](http://docs.legis.wisconsin.gov/statutes/statutes/111)(cg), (cm), (cs), (cv), (cx).**[5](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-5" \o "</strong>Wisconsin law makes people convicted of a felony ineligible for more than 100 other professional licenses. <em>See </em>National Inventory of the Collateral Consequences of Conviction, <a href="http://www.abacollateralconsequences.org/">www.abacollateralconsequences.org</a>.<strong>)**

It is employment discrimination to ask an employee or applicant for employment for information about an arrest record, except when charges are pending, or when employment depends on bondability. [§ 111.335](http://docs.legis.wisconsin.gov/statutes/statutes/111)(1)(a).   The provisions of the Fair Employment Act are explained at <http://dwd.wisconsin.gov/er/discrimination_civil_rights/publication_erd_7609_p.htm>.**[6](http://ccresourcecenter.org/?post_type=tt_font_control&p=1589" \l "easy-footnote-bottom-6" \o )**

As an integral part of the state’s nondiscrimination scheme, the provision is enforced by the Labor and Industry Review Commission (LIRC).  In *County of Milwaukee v. LIRC*, [407 N.W.2d 908, 916 (Wis. 1987)](https://web2.westlaw.com/find/default.wl?DB=595&SerialNum=1987082232&FindType=Y&AP=&mt=LawSchoolPractitioner&fn=_top&sv=Split&vr=2.0&rs=WLW5.02), the Wisconsin Supreme Court rejected an interpretation of the “substantial relationship” test as “a detailed inquiry into the facts of the offense and the job.”  Instead, the court looked to the circumstances fostering criminal activity as essential evaluative criteria, such as having the opportunity for criminal behavior.  The court concluded that the county could terminate a crisis intervention specialist after he was convicted of homicide by reckless conduct and multiple misdemeanor counts of patient neglect arising from actions taken during his previous employment as a nursing home administrator:

*“On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. . .  On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism*.”

407 N.W.2d at 914-15.  Since the *County of Milwaukee* decision, the “substantial relationship” test has for the most part been applied in favor of employers.  *See, e.g.,* *[Halverson v. LIRC](https://web2.westlaw.com/find/default.wl?DB=595&SerialNum=1988137860&FindType=Y&ReferencePositionType=S&ReferencePosition=328&AP=&mt=LawSchoolPractitioner&fn=_top&sv=Split&vr=2.0&rs=WLW5.02)*[, 431 N.W.2d 328 (Wis. Ct. App. 1988)](https://web2.westlaw.com/find/default.wl?DB=595&SerialNum=1988137860&FindType=Y&ReferencePositionType=S&ReferencePosition=328&AP=&mt=LawSchoolPractitioner&fn=_top&sv=Split&vr=2.0&rs=WLW5.02) (unpublished) (termination of employment following conviction for shoplifting from employer’s customer was not wrongful; shoplifting substantially related to work involving the need to enter residential and commercial premises when customers may not be present).  *Cf.* *Milwaukee Bd. of Sch. Dirs. v. LIRC, 632 N.W.2d 123 (Wis. Ct. App. 2001)* (school district improperly discriminated against an individual convicted of a class C felony by refusing to hire him as a boiler attendant); *[Wal-Mart Stores v. LIRC](https://web2.westlaw.com/find/default.wl?DocName=583NW2D674&FindType=Y&AP=&mt=LawSchoolPractitioner&fn=_top&sv=Split&vr=2.0&rs=WLW5.02)*[, 583 N.W.2d 674 (Wis. Ct. App. 1998)](https://web2.westlaw.com/find/default.wl?DocName=583NW2D674&FindType=Y&AP=&mt=LawSchoolPractitioner&fn=_top&sv=Split&vr=2.0&rs=WLW5.02) (misdemeanor drug possession did not substantially relate to a “stocker” position at a retail store involving a highly regimented and structured workday).

For a more complete discussion of the adoption and modification of Wisconsin’s Fair Employment Act, *see* Jeffrey D. Myers, *Note, [County of Milwaukee v. LIRC: Levels of Abstraction and Employment Discrimination Because of Arrest or Conviction Record](https://web2.westlaw.com/find/default.wl?DB=1290&SerialNum=0101744218&FindType=Y&AP=&mt=LawSchoolPractitioner&fn=_top&sv=Split&vr=2.0&rs=WLW5.10)*[, 1988 Wis. L. Rev. 891 (1988)](https://web2.westlaw.com/find/default.wl?DB=1290&SerialNum=0101744218&FindType=Y&AP=&mt=LawSchoolPractitioner&fn=_top&sv=Split&vr=2.0&rs=WLW5.10). *See also* Thomas M. Hruz*,* Comment, *The Unwisdom of the Wisconsin Fair Employment Act’s Ban on Discrimination on the Basis of Conviction Records*, 85 Marq. L. Rev. 779, 779-801 (2002) (discussing interpretation and application of Act).

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