

# MAINE STATE LEGISLATURE

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# ONE - HUNDRETH LEGISLATURE

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**Legislative Document**

**No. 417**

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S. P. 171

In Senate, January 18, 1961

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Marden of Kennebec.

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## STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-ONE

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### AN ACT Relating to Remedy of Coram Nobis.

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Be it enacted by the People of the State of Maine, as follows:

**R. S., c. 126-A, additional.** The Revised Statutes are amended by adding a new section 126-A, to read as follows:

**Chapter 126-A.**

**Coram Nobis.**

**Sec. 1. Availability of coram nobis; conditions.** Any person convicted of a crime and incarcerated thereunder, or released on probation, or paroled from a sentence thereof, who claims that his sentence was imposed in violation of the Constitution of the United States or the Constitution of this State, or that there were errors of fact not of record which were not known to the accused or the court and which by the use of reasonable diligence could not have been known to the accused at the time of trial and which, if known, would have prevented conviction, may institute a coram nobis proceeding to set aside the plea, conviction and sentence, provided the alleged error has not been previously or finally adjudicated or waived in the proceedings resulting in the conviction or in any other proceeding that the petitioner has taken to secure relief from his conviction.

The remedy of coram nobis provided in this chapter is not a substitute for nor does it affect any remedies which are incident to the proceedings in the trial court, or any other review of the sentence or conviction. A petition may be filed at any time after the criminal conviction is final.

**Sec. 2. Jurisdiction.** The Superior Court in the county where the conviction was had shall have jurisdiction of the petition and any hearing held thereunder.

Sec. 3. Commencement of proceedings, verification, filing, service. The proceeding shall be commenced by filing an original petition verified by the petitioner and 2 copies thereof with the clerk of courts in the county where the conviction took place. Facts within the personal knowledge of the petitioner and the authenticity of all documents and exhibits included in or attached to the petition must be sworn to affirmatively as true and correct. The clerk shall file the petition on the docket upon its receipt and bring it promptly to the attention of the court and to the Attorney General by sending him a copy of the petition by certified mail. Such petition, while pending, and for cause shown may be amended. Amendments when allowed shall be filed in the same manner as an original petition.

Sec. 4. Petition; contents. The petition shall identify the proceedings in which the petitioner was convicted, give the date of the entry of judgment and sentence complained of, specifically alleging valid facts that set forth grounds upon which the petition is based. The petition shall identify any previous proceedings that the petitioner has taken to secure relief from his conviction, setting forth the type of action, date forum and the result. Argument, citations and discussion of authorities shall be omitted from the petition but may be filed as separate documents.

Sec. 5. Pleadings and procedure. Within 30 days after a copy of the petition has been received by the Attorney General from the clerk of courts, or within such further time as the court may fix, the State shall respond by answer or motion. Thereafter the court may order a hearing on the motion or issue a writ notifying the petitioner and the Attorney General of the time and place of hearing. The court may grant leave at any time prior to entry of judgment to withdraw the petition. The order making final disposition of the petition shall constitute a final judgment for the purpose of review.

Sec. 6. Waiver of claims. All grounds for relief claimed by a petitioner under this remedy must be raised by a petitioner in his original or amended petition, and any grounds not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition.

Sec. 7. Review. A final judgment entered under this chapter may be reviewed by the Supreme Judicial Court sitting as a law court brought by the petitioner or the State in the same mode and scope of review as any civil action.'