

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1749

H. P. 1327

House of Representatives, April 2, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Connolly of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Nullification of Criminal Records.

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

Sec. 1. R. S., T. 16, c. 3, sub-c. VII, additional. Chapter 3 of Title 16 of the Revised Statutes is amended by adding a new subchapter VII, to read as follows:

SUBCHAPTER VII
RECORDS OF CONVICTION

§ 601. Records

Any person convicted of the violation of any law of the State of Maine, who following such conviction was placed on probation, fined or whose sentence was otherwise suspended, shall be entitled to expungement of any recordings of such conviction.

§ 602. —released on probation

Any person convicted of the violation of any law of the State of Maine, who following such conviction was mandatorily released or released on parole, shall be entitled to expungement of any recordings of such conviction.

§ 603. Petition

The State of Maine has the opportunity to petition the court to suspend or qualify the automatic nullification of a criminal record in a particular case by showing that nullification would be contrary to the purposes of this subchapter.

Any person, who has had the automatic nullification of his criminal record suspended or qualified through petition by the State of Maine, shall be entitled to bring petition to the court after a waiting period of one year to request his record nullified by showing new "evidence of rehabilitation."

§ 604. Conviction invalid

Any person who is convicted of the violation of any law of the State of Maine shall, if such conviction is shown on direct or collateral review or any hearing to be invalid because of innocence, or if such person with respect to such conviction has been pardoned because of innocence, have all recordings relating to his arrest, indictment, trial, conviction and subsequent correctional supervision nullified.

§ 605. —not guilty

Any person arrested, indicted or tried in connection with the violation of any law of the State of Maine shall, if such person was found not guilty of the offense for which he was indicted was dismissed, shall be entitled to nullification of all recordations relating to his arrest, indictment or trial, as the case may be.

§ 606. Effect

The effect of the nullification of criminal records as outlined in this subchapter shall have the following results:

1. Distribution. To prohibit the use, distribution or dissemination of any such record so nullified in connection with any inquiry or use involving employment, bonding or licensing in connection with any business, trade or profession of the person with respect to whom such order was issued;

2. Civil rights. To restore to such person any civil rights or privileges lost or forfeited as a result of any conviction the records with respect to which were nullified by such order, including the right to vote and to serve on juries;

3. Use. To prohibit the use of any such record for purposes of impeaching the testimony of any person with respect to whom such order was issued in any civil or other action;

4. Inquiry. To prohibit the use, dissemination or distribution of any such record so nullified in connection with an inquiry related to credit, purchase of a home or access to educational programs.

§ 607. Inquiry denial

In any case involving an inquiry made to any person involving any arrest, indictment, hearing, trial, conviction or correctional supervision, made, obtained or carried out in connection with such person and the records with respect to which were nullified, if such inquiry is made for any purpose involving employment, bonding or licensing in connection with any business, trade or profession shall be authorized to answer such inquiry in a way so as to deny that any such arrest, indictment, hearing, trial, conviction or cor-

rectional supervision, as the case may be, ever occurred. No such person shall be held thereafter under any provision of state law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, trial, hearing, conviction or correctional supervision.

§ 608. List

Any person whose record has been nullified shall present to the Attorney General a list of all persons, offices, agencies and other entities which such person has reason to believe have records or copies thereof under their jurisdiction or control. It is then the responsibility of the Attorney General to augment this list to the best of his knowledge and inform any such parties of the nullification of such records.

§ 609. Penalty

Any officer or employee of the State of Maine who releases or otherwise disseminates or makes available for any purpose involving employment, bonding or licensing in connection with any business, trade or profession, or for the purposes of credit applications, the purchase of a home or application to any educational programs, to any individual, corporation, firm, partnership, institution or entity, or to any department, agency or other instrumentality of the State Government, or any political subdivision thereof, any information or other data concerning any arrest, indictment, trial, hearing, conviction or correctional supervision the records with respect to which were nullified, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both.

§ 610. —refusal to employ, etc.

It shall be illegal for any person or entity to circumvent a nullification order by refusing to employ, bond or license a person in connection with a business, trade or profession, or by refusing to extend credit, denying ownership of a house and refusing admittance to an educational program solely on the ground that such person has a nullified conviction or arrest record, or who require the waiver of a nullification order as a condition of employment, bonding or licensing. Such actions will prove the individual guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both.

Sec. 2. R. S., T. 16, § 600, repealed. Section 600 of Title 16 of the Revised Statutes, as enacted by chapter 460 of the public laws of 1969, is repealed.

STATEMENT OF FACT

It is a given premise that the rehabilitation of criminal offenders is essential to the protection of society. Gainful employment is often significant to the rehabilitation of criminal offenders, but misuse of past criminal records

is a substantial barrier to employment and to the bonding and licensing necessary to secure employment. Furthermore, despite their innocence before the law, persons with an arrest record are subject to the lifelong disabilities of a "criminal record."

This Act attempts to insure the proper use of criminal records in order to aid the rehabilitation of offenders and to protect the interests of society and to insure that an arrest without a conviction cannot, as a matter of law, support any damaging inferences for employment, law enforcement or other purposes in the case of the person arrested.