

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1533

H.P. 1090

House of Representatives, March 18, 1997

An Act to Make Certain Changes to Post-conviction Review.

Submitted by the Department of the Attorney General pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative POVICH of Ellsworth.

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

2 **Sec. 1. 15 MRSA §2122**, as enacted by PL 1979, c. 701, §15, is
4 amended to read:

6 **§2122. Purpose**

8 This chapter ~~shall--provide~~ provides a comprehensive and,
10 except for direct appeals from a criminal ~~judgement~~ judgment, the
12 exclusive method of review of those criminal judgments and of
14 post-sentencing proceedings occurring during the course of
16 sentences. It is a remedy for illegal restraint and other
18 impediments specified in section 2124 which that have occurred
20 ~~directly--or--indirectly~~ as a result of an illegal criminal
22 judgment or post-sentencing proceeding. It replaces the remedies
24 available pursuant to post-conviction habeas corpus, to the
26 extent that review of a criminal conviction or proceedings were
28 are reviewable, the remedies available pursuant to common law
habeas corpus, including habeas corpus as recognized in Title 14,
sections 5501 and 5509 to 5546, coram nobis, writ of error,
declaratory judgment and any other previous common law or
statutory method of review, except appeal of a judgment of
conviction or juvenile adjudication and remedies which that are
incidental to proceedings in the trial court. The substantive
extent of the remedy of post-conviction review ~~shall--be--as~~ is
defined in this chapter and not as defined in the remedies which
that it replaces; provided that this chapter ~~shall--provide~~
provides and ~~shall--be~~ is construed to provide such relief for
those persons required to use this chapter as ~~is~~ required by the
Constitution of Maine, Article 1, Section 10.

32 **Sec. 2. 15 MRSA §2124, first ¶**, as repealed and replaced by PL
34 1983, c. 235, §4, is amended to read:

36 An action for post-conviction review of a criminal judgment
38 of this State or of a post-sentencing proceeding following the
40 criminal judgment, may be brought if the person seeking relief
demonstrates that the challenged criminal judgment or
post-sentencing proceeding is causing a present restraint or
other specified impediment as described in subsections 1 to 3,
1-A and 2:

42 **Sec. 3. 15 MRSA §2124, sub-§3**, as amended by PL 1985, c. 209,
44 §3, is repealed.

46 **Sec. 4. 15 MRSA §2128, sub-§5**, as repealed and replaced by PL
48 1995, c. 286, §4, is repealed and the following enacted in its
place:

2 5. Filing deadline. A one-year period of limitation
3 applies to initiating a petition for post-conviction review
4 seeking relief from a criminal judgment under section 2124,
5 subsection 1 or 1-A. The limitation period runs from the latest
6 of the following:

7 A. The date of final disposition of the direct appeal from
8 the underlying criminal judgment or the expiration of the
9 time for seeking the appeal;

10 B. The date on which the constitutional right, state or
11 federal, asserted was initially recognized by the Law Court
12 or the Supreme Court of the United States, if the right has
13 been newly recognized by that highest court and made
14 retroactively applicable to cases on collateral review; or

15 C. The date on which the factual predicate of the claim or
16 claims presented could have been discovered through the
17 exercise of due diligence.

18 The time during which a properly filed petition for writ of
19 certiorari to the Supreme Court of the United States with respect
20 to the same criminal judgment is pending is not counted toward
21 any period of limitation under this subsection.

22 **Sec. 5. Application.** Section 4 of this Act applies to any
23 petition filed after one year following the effective date of the
24 Act. A petition filed within the one year following the
25 effective date of this Act is not subject to the new filing
26 deadline, but remains subject to the provisions of former section
27 2128, subsection 5 relating to delay.

34 SUMMARY

35 This bill modifies statutory post-conviction review in 2
36 ways. First, it eliminates the current availability of
37 post-conviction review relative to a present restraint or
38 impediment resulting indirectly from a challenged criminal
39 judgment of the State. Availability of relief is not required by
40 the Constitution of Maine, Article 1, Section 10 as in YDE v.
41 State, 376 A.2d 465 (Me. 1977). Second, this bill adopts a
42 filing deadline for initiating a petition seeking relief from a
43 criminal judgment coming within the Maine Revised Statutes, Title
44 15, section 2124, subsection 1 or 1-A. That filing deadline is
45 modeled after the federal habeas corpus statute, 28 United States
46 Code, Section 2254. In order to ensure fairness, a grace period
47 of the same length as the new limitation period is provided.
48