

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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Legislative Document

No. 2220

H.P. 1586

House of Representatives, February 25, 2008

**An Act To Aid Victims of Identity Theft in Securing a Police Report  
and To Aid Victims in Court Proceedings When Their Identities  
Have Been Stolen and Falsely Used**

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Reported by Representative SIMPSON of Auburn for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2. Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

2 **Sec. 1. 10 MRSA §1350-B** is enacted to read:

3 **§1350-B. Reporting of identity theft; mandatory police report and possible**  
4 **investigation**

5 A person who knows or reasonably believes that the person's personal information  
6 has been misused in violation of Title 17-A, section 905-A may report the misuse and  
7 obtain a police report by contacting the local law enforcement agency that has jurisdiction  
8 over the person's actual residence or place of business. That law enforcement agency  
9 shall make a police report of the matter and provide the complainant with a copy of that  
10 report. At its discretion, the law enforcement agency may undertake an investigation of  
11 the matter or refer it to another law enforcement agency. If the suspected crime was  
12 committed in a jurisdiction outside of the State, the local law enforcement agency shall  
13 refer the report to the law enforcement agency where the suspected crime was committed.

14 **Sec. 2. 15 MRSA c. 308** is enacted to read:

15 **CHAPTER 308**

16 **POST-JUDGMENT MOTION WHEN PERSON'S IDENTITY HAS BEEN**  
17 **STOLEN AND USED IN A CRIMINAL, CIVIL VIOLATION OR**  
18 **TRAFFIC INFRACTION PROCEEDING**

19 **§2181. Application**

20 This chapter is not intended to provide relief to a person who has stolen another  
21 person's identity and falsely used it in a criminal, civil violation or traffic infraction  
22 proceeding.

23 **§2182. Post-judgment motion for determination of factual innocence and correction**  
24 **of record**

25 **1. Motion; persons who may file.** A person who reasonably believes that the  
26 person's identity has been stolen and falsely used by another in a criminal proceeding, a  
27 civil violation proceeding or a traffic infraction proceeding in which a final judgment has  
28 been entered may file a written motion in the underlying criminal, civil violation or traffic  
29 infraction proceeding seeking a court determination of factual innocence and correction  
30 of the court records and related criminal justice agency records. The same motion may  
31 also be filed on behalf of such a person by an attorney for the State or by the court.

32 **2. Time for filing.** A motion for determination of factual innocence and correction  
33 of record must be filed by:

34 A. June 1, 2009 for a criminal, civil violation or traffic infraction proceeding  
35 finalized prior to the effective date of this section in which the person is aware that  
36 the person's identity had been stolen and falsely used by another; and

1 B. For a criminal, civil violation or traffic infraction proceeding finalized after the  
2 effective date of this section, one year from the date the person becomes aware that  
3 the person's identity has been stolen and falsely used by another in that proceeding.

4 **§2183. Motion and hearing; process**

5 1. **Filing motion.** A motion filed pursuant to section 2182 must be filed in the  
6 underlying criminal, civil violation or traffic infraction proceeding. The appropriate chief  
7 judge or justice must specially assign the motion. The assigned judge or justice shall  
8 determine upon whom and how service of the motion is to be made and enter an order in  
9 this regard.

10 2. **Counsel.** If the court finds that the person who files the motion under section  
11 2182 or on whose behalf the motion is filed is indigent, the court may appoint counsel for  
12 the person at any time during the proceedings under this chapter.

13 3. **Attorney for the State.** The attorney for the State shall represent the State for  
14 purposes of this chapter.

15 4. **Evidence.** The Maine Rules of Evidence do not apply to the hearing on the  
16 motion under this section, and evidence presented at the hearing by the participants may  
17 include testimony, affidavits and other reliable hearsay evidence as permitted by the  
18 court.

19 5. **Hearing; certification of results.** The judge or justice assigned pursuant to  
20 subsection 1 shall hold a hearing on the motion under this section. At the conclusion of  
21 the hearing, if the court finds that the person who filed the motion under section 2182 has  
22 established by clear and convincing evidence relative to a criminal proceeding or by a  
23 preponderance of the evidence relative to a civil violation or traffic infraction proceeding  
24 that the person is not the person who committed the crime, civil violation or traffic  
25 infraction, the court shall find the person factually innocent of that crime, civil violation  
26 or traffic infraction and shall issue a written order certifying this determination. If at the  
27 conclusion of the hearing the court finds otherwise as to the motion, the court shall deny  
28 the motion and shall issue a written order certifying this determination. The order must  
29 contain written findings of fact supporting the court's decision granting or denying the  
30 motion. A copy of the court's written order granting or denying the motion must be  
31 provided to the person.

32 6. **Correction of the record.** If the court grants the motion following the hearing in  
33 subsection 5, it shall additionally determine what court records and related criminal  
34 justice records require correction and shall enter a written order specifying the corrections  
35 to be made in the court records and the records of each of the appropriate criminal justice  
36 agencies.

37 7. **Subsequent discovery of fraud or misrepresentation.** If the court that has  
38 issued an order certifying a determination of factual innocence pursuant to subsection 5  
39 subsequently discovers that the motion or information submitted in support of the motion  
40 may contain material misrepresentation or fraud, the court may, after giving notice to the  
41 participants, hold a hearing. At the conclusion of the hearing, if the court finds by a

1 preponderance of the evidence the existence of material misrepresentation or fraud, it  
2 may, by written order, vacate its earlier order certifying a determination of factual  
3 innocence and modify accordingly any record correction earlier made pursuant to  
4 subsection 6. The written order must contain findings of fact supporting its decision to  
5 vacate or not to vacate.

6 **§2184. Review of determination of factual innocence; review of a subsequent**  
7 **vacating of determination**

8 A final judgment entered under section 2183, subsection 5 or 7 may be reviewed by  
9 the Supreme Judicial Court sitting as the Law Court.

10 **1. Appeal by the person.** A person aggrieved by the final judgment under section  
11 2183, subsection 5 or 7 may not appeal as of right. The time for taking the appeal and the  
12 manner and any conditions for the taking of the appeal are as the Supreme Judicial Court  
13 provides by rule.

14 **2. Appeal by the State.** The State aggrieved by the final judgment under section  
15 2183, subsection 5 or 7 may appeal as a matter of right, and a certificate of approval by  
16 the Attorney General is not required. The time for taking the appeal and the manner and  
17 any conditions for the taking of the appeal are as the Supreme Judicial Court provides by  
18 rule.

19 **SUMMARY**

20 The bill is proposed by the Criminal Law Advisory Commission.

21 This bill allows a person who is a victim of identity theft to make a report to the  
22 police and obtain a copy of the police report.

23 The bill provides for a simple, expedient and comprehensive post-judgment method  
24 of relief when a person's identity has been stolen and falsely used by another person in a  
25 criminal proceeding, a civil violation proceeding or a traffic infraction proceeding. It is  
26 immaterial as to what the final outcome is in that proceeding. The relief offered is a court  
27 determination of factual innocence and the correction of the court records and related  
28 criminal justice agency records. This bill does not provide relief to a person who has  
29 stolen another person's identity and falsely used in it a criminal, civil violation or traffic  
30 infraction proceeding.

31 The relief process commences with the filing of a post-judgment motion in the  
32 underlying criminal, civil violation or traffic infraction proceeding seeking a court  
33 determination of factual innocence and the correction of the court records and related  
34 criminal justice agency records. A person who reasonably believes that the person's  
35 identity has been stolen and falsely used by another person may file the post-judgment  
36 motion or an attorney for the State or the court may file the motion on the person's behalf.  
37 There is a one-year statute of limitations on the filing of a motion. Once filed, a judge or  
38 justice must be specially assigned, and that judge or justice must determine upon whom  
39 and how service of the motion is to be made and enter an order in this regard. If the  
40 judge or justice finds the person to be indigent, the court may appoint counsel for the

1 person at any time during the proceedings. A hearing on a timely motion must be held by  
2 the judge or justice thereafter. The Maine Rules of Evidence do not apply, and evidence  
3 presented at the hearing may include testimony, affidavits and other reliable hearsay  
4 evidence as permitted by the judge or justice. At the hearing the burden is on the movant  
5 to establish by clear and convincing evidence relative to a criminal proceeding or by a  
6 preponderance of the evidence relative to a civil violation or traffic infraction proceeding  
7 that the person is factually innocent of that crime, civil violation or traffic infraction. If  
8 the movant satisfies the appropriate burden of proof, the judge or justice must find the  
9 person factually innocent of that crime, civil violation or traffic infraction and issue an  
10 order certifying this determination. If the movant fails to satisfy the appropriate burden  
11 of proof, the judge or justice must deny the motion and issue an order certifying this  
12 determination. Under either outcome, the order must be in writing and must contain  
13 findings of fact supporting the judge's or justice's decision granting or denying the  
14 motion. A copy of that written order must be provided to the person. If the judge or  
15 justice grants the motion, the judge or justice must additionally determine what court  
16 records and related criminal justice records require correction and enter a written order  
17 specifying the corrections to be made in the court records and the records of each of the  
18 related criminal justice agencies.

19 If, subsequent to granting relief, a judge or justice learns that the motion or  
20 information submitted in support of the motion may contain material misrepresentation or  
21 fraud, the judge or justice may, after proper notice, hold a hearing. At the conclusion of  
22 the hearing, if the judge or justice finds by a preponderance of the evidence the existence  
23 of material misrepresentation or fraud, the judge or justice may, by written order, vacate  
24 the earlier order certifying a determination of factual innocence and modify accordingly  
25 any record correction made earlier. The written order must contain findings of fact  
26 supporting the judge's or justice's decision to vacate or not to vacate.

27 If the person or the State is aggrieved by a final judgment, the person or the State  
28 may appeal to the Law Court. The person's appeal, unlike that of the State, is not of right.