

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1179

H.P. 818

House of Representatives, March 25, 2009

**An Act To Create a Post-judgment Mechanism To Provide Relief
for a Person Whose Identity Has Been Stolen and Falsely Used in
Court Proceedings**

Reported by Representative PRIEST of Brunswick 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. 15 MRSA c. 308 is enacted to read:

3 CHAPTER 308

4 POST-JUDGMENT MOTION WHEN PERSON'S IDENTITY HAS BEEN
5 STOLEN AND USED IN A CRIMINAL, CIVIL VIOLATION OR TRAFFIC
6 INFRACTION PROCEEDING

7 §2181. Application

8 This chapter is not intended to and may not be used to provide relief to a person who
9 has stolen another person's identity and falsely used the identity in a criminal, civil
10 violation or traffic infraction proceeding.

11 §2182. Post-judgment motion for determination of factual innocence and correction
12 of record

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

20 2. Time for filing. A motion for determination of factual innocence and correction
21 of record must be filed:

22 A. By June 1, 2010 for a criminal, civil violation or traffic infraction proceeding
23 finalized prior to the effective date of this section in which the person is aware that
24 the person's identity had been stolen and falsely used by another; and

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

28 §2183. Motion and hearing; process

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

34 2. Counsel. If the court finds that the person who files the motion under section
35 2182 or on whose behalf the motion is filed is indigent, the court may appoint counsel for
36 the person at any time during the proceedings under this chapter.

1 **3. Representation of the State.** The prosecutorial office that represented the State
2 in the underlying criminal, civil violation or traffic infraction proceeding shall represent
3 the State for purposes of this chapter. If the underlying criminal, civil violation or traffic
4 infraction proceeding was disposed of without the appearance of an attorney for the State,
5 the office of the District Attorney in whose district the crime, civil violation or traffic
6 infraction was committed shall represent the State for purposes of this chapter. On a
7 case-by-case basis, a different prosecutorial office may represent the State on agreement
8 between the 2 prosecutorial offices.

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

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

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

31 **7. Subsequent discovery of fraud or misrepresentation.** If the court that has
32 issued an order certifying a determination of factual innocence pursuant to subsection 5
33 subsequently discovers that the motion or information submitted in support of the motion
34 may contain material misrepresentation or fraud, the court may, after giving notice to the
35 participants, hold a hearing. At the conclusion of the hearing, if the court finds by a
36 preponderance of the evidence the existence of material misrepresentation or fraud, it
37 may, by written order, vacate its earlier order certifying a determination of factual
38 innocence and modify accordingly any record correction earlier made pursuant to
39 subsection 6. The written order must contain findings of fact supporting its decision to
40 vacate or not to vacate.

1 issue an order certifying this determination. Under either outcome, the order must be in
2 writing and must contain findings of fact supporting the judge's or justice's decision
3 granting or denying the motion. A copy of that written order must be provided to the
4 person. If the judge or justice grants the motion, the judge or justice must additionally
5 determine what court records and related criminal justice records require correction and
6 enter a written order specifying the corrections to be made in the court records and the
7 records of each of the related criminal justice agencies.

8 If, subsequent to granting relief, a judge or justice learns that the motion or
9 information submitted in support of the motion may contain material misrepresentation or
10 fraud, the judge or justice may, after proper notice, hold a hearing. At the conclusion of
11 the hearing, if the judge or justice finds by a preponderance of the evidence the existence
12 of material misrepresentation or fraud, the judge or justice may, by written order, vacate
13 the earlier order certifying a determination of factual innocence and modify accordingly
14 any record correction made earlier. The written order must contain findings of fact
15 supporting the judge's or justice's decision to vacate or not to vacate.

16 If the person or the State is aggrieved by a final judgment, the person or the State
17 may appeal to the law court. The person's appeal, unlike that of the State, is not of right.