MAINE STATE LEGISLATURE

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1	L.D. 1861
2	Date: 3/39/12 (Filing No. H-857)
3	CRIMINAL JUSTICE AND PUBLIC SAFETY
4	Reproduced and distributed under the direction of the Clerk of the House.
5	STATE OF MAINE
6	HOUSE OF REPRESENTATIVES
7	125TH LEGISLATURE
8	SECOND REGULAR SESSION
9 10	COMMITTEE AMENDMENT "A" to H.P. 1378, L.D. 1861, Bill, "An Act To Amend Statutory Post-conviction Review"
11 12	Amend the bill in section 7 in §2124 in subsection 3 in paragraph A in the last line (page 4, line 9 in L.D.) by striking out the following: "or"
13 14 15	Amend the bill in section 7 in §2124 in subsection 3 in paragraph D in the last line (page 4, line 30 in L.D.) by striking out the following: "crime." and inserting the following: 'crime; or'
16 17	Amend the bill in section 7 in §2124 in subsection 3 by inserting at the end after paragraph D the following:
18 19 20 21	'E. A criminal judgment in this State pursuant to a plea of guilty or nolo contendered accepted by a trial court on or after March 31, 2010 by a represented defendant who is not a United States citizen and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding.'
22 23	Amend the bill in section 11 in §2128-B by striking out all of subsection 3 (page 7 lines 4 to 7 in L.D.) and inserting the following:
24 25 26 27 28 29 30 31 32 33	'3. Filing deadline for indirect impediment. A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraphs A and D. The one-year limitation period runs from the date of imposition of a sentence for the new crime resulting in the indirect impediment. A 60-day period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraph E. The 60-day limitation period runs from the date the noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against the noncitizen.'

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Amend the bill by adding after section 14 the following:

COMMITTEE AMENDMENT "A" to H.P. 1378, L.D. 1861

'Sec. 15. Application. If the date a noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against that noncitizen is on or after March 31, 2010, but prior to the effective date of this Act, the 60-day limitation period under the Maine Revised Statutes, Title 15, section 2128-B, subsection 3 runs from the effective date of this Act.'

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SUMMARY

This amendment provides to a noncitizen who, in the context of a plea in which the noncitizen was represented by counsel and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding a jurisdictional avenue independent of that already provided by the Maine Revised Statutes, Title 15, section 2124, subsection 1. This jurisdictional avenue provides a means by which to initiate a post-conviction review proceeding to test the effective-assistance-of-counsel guarantee under the United States Constitution, Amendment VI as reflected in the United States Supreme Court decision of Padilla v. Kentucky, 559 U.S. ____, 130 S.Ct. 1473 (2010). To qualify, the plea must also be accepted by a trial court on or after March 31, 2010.

The amendment also provides a different filing deadline for Title 15, section 2124, subsection 3, paragraph E than that provided for in paragraphs A and D of the same section. The 60-day limitation period runs from the date the noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against the noncitizen.

The amendment also adds an application section to provide a grace period of the same length as the new 60-day filing deadline for this indirect impediment.

FISCAL NOTE REQUIRED

(See attached)

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125th MAINE LEGISLATURE

LD 1861

LR 2741(02)

An Act To Amend Statutory Post-conviction Review

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-857)

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

The costs associated with additional post conviction reviews can be absorbed by the Judicial Department utilizing existing budgeted resources.