

MAINE STATE LEGISLATURE

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Date: 6/18/13

L.D. 549

(Filing No. H-544)

Majority
JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 368, L.D. 549, Bill, "An Act To Allow a Person Who Is 21 Years of Age or Older To Expunge Certain Criminal Convictions"

Amend the bill by striking out the title and substituting the following:

'An Act To Provide for Special Restrictions on Dissemination and Use of Criminal History Record Information for Class E Crimes Committed by an Adult under 21 Years of Age'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 15 MRSA c. 310 is enacted to read:

CHAPTER 310

POST-JUDGMENT MOTION BY PERSON SEEKING TO SATISFY THE PREREQUISITES FOR OBTAINING SPECIAL RESTRICTIONS ON DISSEMINATION AND USE OF CRIMINAL HISTORY RECORD INFORMATION FOR CERTAIN CRIMINAL CONVICTIONS

§2251. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" has the same meaning as in Title 16, section 611, subsection 1.

2. Another jurisdiction. "Another jurisdiction" has the same meaning as in Title 17-A, section 2, subsection 3-B.

3. Criminal history record information. "Criminal history record information" has the same meaning as in Title 16, section 611, subsection 3.

4. Criminal justice agency. "Criminal justice agency" has the same meaning as in Title 16, section 611, subsection 4.

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1 5. Dissemination. "Dissemination" has the same meaning as in Title 16, section
2 611, subsection 6.

3 6. Eligible criminal conviction. "Eligible criminal conviction" means a conviction
4 for a Class E crime under Title 17-A, chapter 15.

5 **§2252. Statutory prerequisites for obtaining special restrictions on dissemination**
6 **and use of criminal history record information for a criminal conviction**

7 The special restrictions on dissemination and use of criminal history record
8 information for a criminal conviction specified in section 2255 apply only if:

9 1. Eligible criminal conviction. The criminal conviction is an eligible criminal
10 conviction;

11 2. Age of person at time of commission. At the time of the commission of the
12 crime underlying the eligible criminal conviction, the person had in fact attained 18 years
13 of age but not 21 years of age;

14 3. Time since sentence fully satisfied. At least 4 years have passed since the person
15 has fully satisfied each of the sentencing alternatives imposed for the eligible criminal
16 conviction;

17 4. Other state convictions. The eligible criminal conviction is the only criminal
18 conviction of the person in this State and the person has not had a criminal charge
19 dismissed as a result of a deferred disposition pursuant to Title 17-A, chapter 54-F and
20 has not been adjudicated as having committed a juvenile crime for which the hearing was
21 open to the general public under section 3307;

22 5. Convictions in another jurisdiction. The person has no criminal convictions
23 from another jurisdiction; and

24 6. Pending criminal charges. The person has no presently pending criminal
25 charges in this State or in another jurisdiction.

26 **§2253. Motion; persons who may file**

27 A person may file a written motion in the underlying criminal proceeding seeking a
28 court determination that the person satisfies the statutory prerequisites specified in section
29 2252 for obtaining the special restrictions on dissemination and use of criminal history
30 record information relating to a criminal conviction as specified in section 2255. The
31 written motion must briefly address each of the statutory prerequisites.

32 **§2254. Motion and hearing; process**

33 1. Filing motion. A motion filed pursuant to section 2253 must be filed in the
34 underlying criminal proceeding. After a motion has been filed, the clerk shall set the
35 motion for hearing.

36 2. Counsel. The person filing a motion pursuant to section 2253 has the right to
37 employ counsel but is not entitled to assignment of counsel at state expense.

38 3. Representation of the State. The prosecutorial office that represented the State
39 in the underlying criminal proceeding shall represent the State for purposes of this

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1 chapter. On a case-by-case basis, a different prosecutorial office may represent the State
2 on agreement between the 2 prosecutorial offices.

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

6 5. Hearing; certification of results. The judge or justice shall hold a hearing on the
7 motion under this section. At the conclusion of the hearing, if the court determines that
8 the person who filed the motion has established by a preponderance of the evidence each
9 of the statutory prerequisites specified in section 2252, the court shall find the person
10 entitled to the special restrictions on dissemination and use of the criminal history record
11 information relating to the criminal conviction as specified in section 2255 and shall issue
12 a written order certifying this determination. If, at the conclusion of the hearing, the court
13 determines that the person has not established one or more of the statutory prerequisites
14 specified in section 2252, the court shall deny the motion and issue a written order
15 certifying this determination. The order must contain written findings of fact supporting
16 the court's determination. A copy of the court's written order must be provided to the
17 person and the prosecutorial office that represented the State pursuant to subsection 3.

18 6. Notice to State Bureau of Identification; responsibility to inform. If the court
19 determines pursuant to subsection 5 that a person has established by a preponderance of
20 the evidence each of the statutory prerequisites specified in section 2252, a copy of the
21 court's written order certifying its determination must be provided to the Department of
22 Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of
23 Identification upon receipt of the order shall promptly alter its records relating to the
24 person's eligible criminal conviction to reflect that future dissemination of this criminal
25 history record information must be pursuant to section 2255 rather than pursuant to Title
26 16, section 615 and shall advise all prior recipients who have received that information
27 within the year prior to the court's written order under subsection 5 of the change. The
28 State Bureau of Identification shall also notify the person of compliance with that
29 requirement and the prior recipients notified.

30 7. Subsequent new criminal conviction; automatic loss of eligibility; person's
31 duty to notify. Notwithstanding that a person has been determined by a court pursuant to
32 subsection 5 to be entitled to the special restrictions on dissemination and use of criminal
33 history record information relating to a criminal conviction specified in section 2255, if at
34 any time subsequent to the court's determination the person is convicted of a new crime in
35 this State or in another jurisdiction, the new conviction extinguishes that entitlement. In
36 the event of a new criminal conviction, the person shall promptly file a written notice in
37 the underlying criminal proceeding of the person's disqualification from entitlement
38 identifying the new conviction, including the jurisdiction, court and docket number of the
39 criminal proceeding. If the person fails to file the required written notice and the court
40 learns of the existence of the new criminal conviction, the court shall notify the person of
41 its apparent existence and offer the person an opportunity at a hearing to contest the fact
42 of a new conviction. If a hearing is requested by the person, the court shall, after giving
43 notice to the person and the appropriate prosecutorial office, hold a hearing. At the
44 hearing, the person has the burden of proving by clear and convincing evidence that the
45 person does not have the new conviction. At the conclusion of the hearing, if the court
46 determines that the person has not satisfied the burden of proof, it shall find that the

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1 person has been convicted of the new crime and as a consequence is no longer entitled to
2 the special restrictions on dissemination and use of the criminal history record
3 information relating to the criminal conviction as specified in section 2255 and shall issue
4 a written order certifying this determination. If, at the conclusion of the hearing, the court
5 determines that the person has satisfied the burden of proof, it shall find that the person
6 has not been convicted of the new crime and issue a written order certifying this
7 determination. The order must contain written findings of fact supporting the court's
8 determination. A copy of the court's written order must be provided to the person and the
9 prosecutorial office that represented the State.

10 **8. Notice to State Bureau of Identification; responsibility to inform.** If the court
11 determines under subsection 7 that a person has been convicted of a new crime and as a
12 consequence is no longer eligible for the special restrictions on dissemination and use of
13 the criminal history record information relating to the criminal conviction as specified in
14 section 2255, a copy of the court's written order certifying its determination must be
15 provided to the Department of Public Safety, Bureau of State Police, State Bureau of
16 Identification. The State Bureau of Identification upon receipt of the order shall alter its
17 records relating to the person's criminal conviction to reflect that dissemination of this
18 criminal history record information is pursuant to Title 16, section 615 rather than
19 pursuant to section 2255 and shall advise all prior recipients who have received that
20 information within the year prior to the court's written order under subsection 5 of the
21 change. It shall also notify the person of compliance with that requirement and the prior
22 recipients notified.

23 **§2255. Special restrictions on dissemination and use of criminal history record**
24 **information relating to criminal conviction**

25 Notwithstanding Title 16, section 615, the criminal history record information
26 relating to a criminal conviction for which the court has determined the person is entitled
27 to special restrictions on dissemination and use is confidential and may not be
28 disseminated by a criminal justice agency, whether directly or through any intermediary,
29 except:

30 **1. Subject of conviction.** To the person who is the subject of the criminal
31 conviction or that person's designee; and

32 **2. Criminal justice agency.** To a criminal justice agency for the purpose of the
33 administration of criminal justice and criminal justice agency employment.

34 For the purposes of this section, dissemination to a criminal justice agency for the
35 purpose of the administration of criminal justice includes dissemination and use of the
36 criminal history record information relating to the qualifying criminal conviction by an
37 attorney for the State or for another jurisdiction as part of a prosecution of the person for
38 a new crime, including use in a charging instrument or other public court document and
39 in open court.

40 **§2256. Limited disclosure of eligible criminal conviction**

41 A person who has a criminal conviction eligible for the special restrictions on
42 dissemination and use of criminal history record information under section 2255 may

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1 respond to inquiries from other than criminal justice agencies by not disclosing its
2 existence, without being subject to any sanctions.

3 **§2257. Unlawful dissemination**

4 A person who intentionally disseminates criminal history record information relating
5 to a criminal conviction in violation of section 2255 knowing it to be in violation is guilty
6 of unlawful dissemination as provided in Title 16, section 619.

7 **§2258. Review of determination of eligibility; review of determination of subsequent**
8 **criminal conviction**

9 A final judgment entered under section 2254, subsection 5 or 7 may be reviewed by
10 the Supreme Judicial Court.

11 1. Appeal by the person. A person aggrieved by the final judgment under section
12 2254, subsection 5 or 7 may not appeal as of right. The time for taking the appeal and the
13 manner and any conditions for the taking of the appeal are as the Supreme Judicial Court
14 provides by rule.

15 2. Appeal by the State. If the State is aggrieved by the final judgment under section
16 2254, subsection 5 or 7, it may appeal as of right, and a certificate of approval by the
17 Attorney General is not required. The time for taking the appeal and the manner and any
18 conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

19 **§2259. Repeal**

20 This chapter is repealed October 1, 2017.

21 **Sec. 2. 16 MRSA §619, sub-§1**, as enacted by PL 1979, c. 433, §2, is amended to
22 read:

23 **1. Offense.** A person is guilty of unlawful dissemination if ~~he~~ the person knowingly
24 disseminates criminal history record information in violation of any of the provisions of
25 this subchapter or if the person intentionally disseminates criminal history record
26 information relating to a criminal conviction in violation of section 2255 knowing it to be
27 in violation.

28 **Sec. 3. Appropriations and allocations.** The following appropriations and
29 allocations are made.

30 **JUDICIAL DEPARTMENT**

31 **Courts - Supreme, Superior and District 0063**

32 Initiative: Provides funds for the temporary services of an Active Retired Judge and Clerk
33 position and related costs, including one-time funds for computer programming costs.

34	GENERAL FUND	2013-14	2014-15
35	Personal Services	\$3,463	\$3,567
36	All Other	\$11,203	\$203
37		_____	_____

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COMMITTEE AMENDMENT "A" to H.P. 368, L.D. 549

1	GENERAL FUND TOTAL	\$14,666	\$3,770
2	JUDICIAL DEPARTMENT		
3	DEPARTMENT TOTALS	2013-14	2014-15
4			
5	GENERAL FUND	\$14,666	\$3,770
6			
7	DEPARTMENT TOTAL - ALL FUNDS	<u>\$14,666</u>	<u>\$3,770</u>
8	PUBLIC SAFETY, DEPARTMENT OF		
9	State Police 0291		
10	Initiative: Provides funding for computer programming costs.		
11	GENERAL FUND	2013-14	2014-15
12	All Other	\$76,500	\$2,550
13			
14	GENERAL FUND TOTAL	<u>\$76,500</u>	<u>\$2,550</u>
15	HIGHWAY FUND	2013-14	2014-15
16	All Other	\$73,500	\$2,450
17			
18	HIGHWAY FUND TOTAL	<u>\$73,500</u>	<u>\$2,450</u>
19	PUBLIC SAFETY, DEPARTMENT OF		
20	DEPARTMENT TOTALS	2013-14	2014-15
21			
22	GENERAL FUND	\$76,500	\$2,550
23	HIGHWAY FUND	\$73,500	\$2,450
24			
25	DEPARTMENT TOTAL - ALL FUNDS	<u>\$150,000</u>	<u>\$5,000</u>
26	SECTION TOTALS	2013-14	2014-15
27			
28	GENERAL FUND	\$91,166	\$6,320
29	HIGHWAY FUND	\$73,500	\$2,450
30			
31	SECTION TOTAL - ALL FUNDS	<u>\$164,666</u>	<u>\$8,770</u>
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COMMITTEE AMENDMENT

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SUMMARY

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This amendment is the majority report of the Joint Standing Committee on Judiciary and it replaces the bill. It establishes a process to apply special restrictions on the dissemination and use of criminal history record information about an eligible criminal conviction. An eligible criminal conviction must meet 6 requirements in order for the person to be eligible for special treatment of the conviction information. The person must have been at least 18 years of age but under 21 years of age when the person committed the crime, and the crime is limited to Class E theft. In addition, at least 4 years must have passed since the person has fully satisfied each of the sentencing alternatives imposed for the conviction of the Class E theft. The Class E theft conviction must be the only criminal conviction of the person in this State, the person may not have been adjudicated as having committed a juvenile crime for which the hearing was open to the general public under the Maine Revised Statutes, Title 15, section 3307 and the person may not have had a criminal charge dismissed as a result of a deferred disposition pursuant to Title 17-A, chapter 54-F. The person may have no criminal convictions from another jurisdiction, and no criminal charges may be pending in this State or in another jurisdiction.

To be eligible for the special restrictions, a person must file a motion with the court in the underlying criminal proceeding. The person is entitled to employ counsel, but the State is not required to cover the expense. The prosecutorial office that represented the State in the underlying criminal proceeding must represent the State, except in certain circumstances.

The judge or justice must hold a hearing on the motion. At the conclusion of the hearing, if the court determines that the person who filed the motion has established by a preponderance of the evidence each of the 6 statutory prerequisites, the court must find the person entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction and issue a written order certifying this determination. If, at the conclusion of the hearing, the court determines that the person has not established one or more of the statutory prerequisites, the court must deny the motion and issue a written order certifying this determination.

The Department of Public Safety, Bureau of State Police, State Bureau of Identification upon receipt of the order must promptly alter its records relating to the person's qualifying criminal conviction to reflect that future dissemination of this criminal history record information must be pursuant to the new procedure rather than pursuant to Title 16, section 615 and shall notify all prior recipients who have received that information within the year prior to the court order of the change. It must also notify the person of compliance with that requirement and the prior recipients notified. This is consistent with the requirements for notification of changes or amendments to criminal history record information under Title 16, section 620.

If the person is convicted of a subsequent crime, the person is required to file a written notice in the underlying criminal proceeding. If the person fails to file the required written notice and the court learns of the existence of the new criminal conviction, the court must notify the person of its apparent existence and offer the person an opportunity at a hearing to contest the fact of a new conviction. At the hearing the person has the burden of proving by clear and convincing evidence that the person does

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1 not have the new conviction. At the conclusion of the hearing, if the court determines
2 that the person has not satisfied the burden of proof, it must find that the person has been
3 convicted of the new crime and as a consequence is no longer eligible for the special
4 restrictions on dissemination and use of the criminal history record information relating to
5 the criminal conviction and issue a written order certifying this determination. The order
6 must contain written findings of fact supporting the court's determination.

7 If the court determines that the person has been convicted of a new crime and as a
8 consequence is no longer entitled to the special restrictions on dissemination and use of
9 the criminal history record information relating to the criminal conviction, a copy of the
10 court's written order certifying its determination must be provided to the State Bureau of
11 Identification. The State Bureau of Identification upon receipt of the order must alter its
12 records relating to the person's criminal conviction to reflect that dissemination of this
13 criminal history record information is pursuant to the criminal history record information
14 laws under Title 16, chapter 3, subchapter 8 rather than pursuant to the new process and
15 notify the person, the appropriate criminal justice agencies and all prior recipients of
16 record of the change.

17 Notwithstanding Title 16, chapter 3, subchapter 8, the criminal history record
18 information relating to the eligible criminal conviction is confidential and may not be
19 disseminated by a criminal justice agency, whether directly or through any intermediary,
20 except to the person and to a criminal justice agency for the purpose of the administration
21 of criminal justice and criminal justice agency employment. Dissemination to a criminal
22 justice agency for the purpose of the administration of criminal justice includes
23 dissemination and use of the criminal history record information relating to the eligible
24 criminal conviction by an attorney for the State or for another jurisdiction as part of a
25 prosecution of the person for a new crime, including use in a charging instrument or other
26 public court document and in open court.

27 A person who has an eligible criminal conviction for which the court has determined
28 the person is entitled to special restrictions on dissemination and use may respond to
29 inquiries from other than criminal justice agencies by not disclosing its existence, without
30 being subject to any sanctions.

31 Unlawfully releasing the restricted information is a violation of the release of
32 confidential information under the criminal history record information laws under Title
33 16, chapter 3, subchapter 8.

34 A final judgment on the motion or determination on a subsequent criminal conviction
35 may be reviewed by the Supreme Judicial Court.

36 The provisions establishing the process to apply special restrictions on the
37 dissemination and use of criminal history record information about an eligible criminal
38 conviction are repealed October 1, 2017.

39 This amendment also adds an appropriations and allocations section.

40 **FISCAL NOTE REQUIRED**

41 (See attached)

COMMITTEE AMENDMENT



126th MAINE LEGISLATURE

LD 549

LR 1529(02)

An Act To Allow a Person Who Is 21 Years of Age or Older To Expunge Certain Criminal Convictions

Fiscal Note for Bill as Amended by Committee Amendment

A (H-544)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

	FY 2013-14	FY 2014-15	Projections FY 2015-16	Projections FY 2016-17
Net Cost (Savings)				
General Fund	\$91,166	\$6,320	\$6,427	\$6,538
Highway Fund	\$73,500	\$2,450	\$2,450	\$2,450
Appropriations/Allocations				
General Fund	\$91,166	\$6,320	\$6,427	\$6,538
Highway Fund	\$73,500	\$2,450	\$2,450	\$2,450

Fiscal Detail and Notes

This bill includes a General Fund appropriation of \$14,666 in fiscal year 2013-14 and \$3,770 in fiscal year 2014-15 for the Judicial Department for the temporary services of one Active Retired Judge and a Clerk position and one-time funding for the required computer programming costs.

The bill also includes a General Fund appropriation and Highway Fund allocation of \$76,500 and \$73,500, respectively, in fiscal year 2013-14 and \$2,550 and \$2,450, respectively, in fiscal year 2014-15 to the Department of Public Safety for programming costs to update criminal history records information.