

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 486

H.P. 349

House of Representatives, February 9, 2017

**An Act To Authorize Vacating the Convictions of Members of the
Houlton Band of Maliseet Indians Convicted under Prior Laws
Governing the Possession and Use of Marijuana**

(EMERGENCY)

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative BEAR of the Houlton Band of Maliseet Indians.

1 have been legal had that conduct been committed after enactment of the Marijuana
2 Legalization Act.

3 **§2402. Post-judgment motion for vacation of certain marijuana convictions**

4 1. Motion. A member of the Houlton Band of Maliseet Indians who has been
5 convicted of a criminal offense involving marijuana or who has been adjudicated as
6 having committed a civil violation involving marijuana who reasonably believes that the
7 conduct underlying the conviction or adjudication would have been legal under the
8 provisions of the Marijuana Legalization Act may file a written motion in the underlying
9 criminal or civil violation proceeding seeking vacation of the conviction or adjudication
10 and correction of the court records and related criminal justice agency records.

11 2. Time for filing. A motion under this section must be filed within 3 years of the
12 effective date of this section.

13 **§2403. Motion and hearing; process**

14 1. Filing motion. A motion filed pursuant to section 2402 must be filed in the
15 underlying criminal or civil violation proceeding. The appropriate chief judge or justice
16 shall specially assign the motion. The judge or justice to whom the motion is assigned
17 shall determine upon whom and how service of the motion is to be made and enter an
18 order in this regard.

19 2. Counsel. A person who files a motion pursuant to section 2402 has the right to
20 employ counsel but is not entitled to assignment of counsel at state expense.

21 3. Representation of the State. The prosecutorial office that represented the State
22 in the underlying criminal or civil violation proceeding shall represent the State for
23 purposes of this chapter. If the underlying criminal or civil violation proceeding was
24 disposed of without the appearance of an attorney for the State, the office of the District
25 Attorney in whose district the crime or civil violation was committed shall represent the
26 State for purposes of this chapter. On a case-by-case basis, a different prosecutorial
27 office may represent the State on agreement between the 2 prosecutorial offices.

28 4. Request for hearing. The court may decide a motion filed pursuant to section
29 2402 without hearing, unless a hearing is requested by the person filing the motion or by
30 the State within 14 days of service of the motion. If either party requests a hearing, the
31 court shall review the pleadings and any other material of record and determine whether
32 an evidentiary hearing is required.

33 5. Evidence. The Maine Rules of Evidence do not apply to proceedings under this
34 chapter. The court shall take judicial notice of the record in the underlying criminal or
35 civil violation proceeding.

36 6. Burden of proof. A person who files a motion pursuant to section 2402 bears the
37 burden of demonstrating a right to relief under this chapter by a preponderance of the
38 evidence.

1 **§2404. Relief**

2 **1. Decision.** The court shall issue a written decision on a motion filed pursuant to
3 section 2402. A copy of the court's written order must be provided to the person who
4 filed the motion and to the prosecutorial office that represented the State. The court must
5 grant the motion and vacate the criminal conviction or civil violation adjudication if the
6 court finds:

7 A. That the person who filed the motion was a member of the Houlton Band of
8 Maliseet Indians at the time of the conduct; and

9 B. That the conduct for which the person who filed the motion was convicted or
10 adjudicated would have been legal under the provisions of the Marijuana Legalization
11 Act if that conduct had been committed after the effective date of that Act.

12 **2. Correction of record.** If the court grants a motion filed pursuant to section 2402,
13 it shall determine what court records and related criminal justice records require
14 correction and shall order the corrections to be made in the court records and the records
15 of each of the appropriate criminal justice agencies.

16 **3. Other relief.** If the court grants a motion filed pursuant to section 2402, it shall
17 grant all other appropriate relief, including release from incarceration, discharge from
18 probation and reimbursement of fines, surcharges and assessments paid by the person
19 who filed the motion.

20 **§2405. Appeal**

21 A final judgment entered under section 2404 may be reviewed by the Supreme
22 Judicial Court.

23 **1. Appeal by person filing motion.** A person aggrieved by the final judgment under
24 section 2404 may not appeal as of right. The time for taking the appeal and the manner
25 and any conditions for the taking of the appeal are as the Supreme Judicial Court provides
26 by rule.

27 **2. Appeal by State.** If the State is aggrieved by the final judgment under section
28 2404, it may appeal as of right, and a certificate of approval by the Attorney General is
29 not required. The time for taking the appeal and the manner and any conditions for the
30 taking of the appeal are as the Supreme Judicial Court provides by rule.

31 **Sec. 2. 17-A MRSA §111** is enacted to read:

32 **§111. Conduct legal under the Marijuana Legalization Act**

33 If a member of the Houlton Band of Maliseet Indians is charged with a crime or civil
34 violation for conduct that occurred prior to the effective date of the Marijuana
35 Legalization Act, it is a defense to the prosecution that the conduct would have been legal
36 under the provisions of the Marijuana Legalization Act had the conduct occurred after the
37 effective date of that Act.

