

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1238

H.P. 861

House of Representatives, March 30, 2017

**An Act To Permit the Expungement of Records Relating to
Proceedings That Do Not Result in Convictions**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative COOPER of Yarmouth.

Cosponsored by Representatives: DUCHESNE of Hudson, RYKERSON of Kittery, WARREN of Hallowell, Senators: JACKSON of Aroostook, MIRAMANT of Knox.

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

2 **Sec. 1. 15 MRSA c. 313** is enacted to read:

3 **CHAPTER 313**

4 **EXPUNGEMENT OF RECORDS RELATING TO CRIMINAL PROCEEDINGS**
5 **THAT DO NOT RESULT IN CONVICTIONS**

6 **§2401. Definitions**

7 **1. Eligible records.** "Eligible records" means records possessed by a state criminal
8 justice agency, the Department of Public Safety, Bureau of State Police, State Bureau of
9 Identification or the Federal Bureau of Investigation that contain confidential criminal
10 history record information pursuant to Title 16, section 703, subsection 2, paragraphs A
11 to K that relates to a state crime.

12 **2. Related criminal proceeding.** "Related criminal proceeding" means a criminal
13 proceeding involving a criminal offense based on the same conduct or arising from the
14 same criminal episode as the offense or offenses that are the subject of the eligible
15 records.

16 **3. State criminal justice agency.** "State criminal justice agency" means a
17 government agency of this State or a subunit of a government agency at any government
18 level that performs the administration of criminal justice within the meaning of Title 16,
19 section 703, subsection 1 pursuant to a statute or executive order. "State criminal justice
20 agency" includes courts of this State, the Department of the Attorney General and district
21 attorneys' offices. "State criminal justice agency" does not include a federal government
22 agency or a subunit of a federal government agency.

23 **§2402. Requirements for expungement of eligible records**

24 A court may order the expungement of eligible records only if:

25 **1. No conviction.** The person to whom the eligible records pertain has not been
26 convicted of a criminal offense that is the subject of the eligible records and has not been
27 convicted of a criminal offense in a related criminal proceeding;

28 **2. No pending charges.** The person to whom the eligible records pertain is not
29 currently subject to the criminal proceedings described in the eligible records and is not
30 currently subject to related criminal proceedings; and

31 **3. Time.** At least one year has passed after the date on which the person to whom
32 the eligible records pertain was arrested, summonsed or charged as described in the
33 eligible records or after the date on which the criminal proceedings described in the
34 eligible records were finally concluded, whichever is later.

1 **§2403. Motion**

2 **1. Motion; venue.** A person to whom eligible records pertain may file a written
3 motion in the underlying criminal proceeding seeking a court order expunging the eligible
4 records. If eligible records exist that relate to an alleged criminal offense for which the
5 person to whom the eligible records pertain has not been charged, that person may file a
6 written motion seeking a court order expunging the eligible records in the District Court
7 in the division where the person resides or in the division where the alleged criminal
8 offense was alleged to have occurred.

9 **2. Contents of motion.** A written motion filed under subsection 1 must briefly
10 address each of the requirements set forth in section 2402 for expungement of eligible
11 records.

12 **§2404. Process and decision**

13 **1. Counsel.** A person filing a motion under section 2403 has the right to employ
14 counsel but is not entitled to assignment of counsel at state expense.

15 **2. Notification of the State; opportunity to object.** Upon receipt of a motion filed
16 under section 2403, the court shall submit a copy of the motion to the prosecutorial office
17 that represented the State in the underlying criminal proceeding. If no underlying
18 criminal proceeding occurred, the court shall submit a copy of the motion to the district
19 attorney's office in the county where the court is located. The prosecutorial office or
20 district attorney's office may file a written objection to the motion within 21 days of
21 receiving the copy of the motion.

22 **3. Decision without hearing.** If no objection is filed under subsection 2, the court
23 shall issue a written order granting the motion and shall submit a copy of the order to the
24 Department of Public Safety, Bureau of State Police, State Bureau of Identification.

25 **4. Decision after hearing.** If a timely objection is filed under subsection 2, the clerk
26 shall set the motion for a hearing. The Maine Rules of Evidence do not apply to a
27 hearing on a motion under this subsection, and evidence presented at the hearing may
28 include testimony, affidavits and other reliable hearsay evidence as permitted by the
29 court. At the conclusion of the hearing, if the court determines that the person who filed
30 the motion has established by a preponderance of the evidence each of the requirements
31 set forth in section 2402 for expungement of eligible records, the court shall issue a
32 written order granting the motion. If the court grants the motion, it shall submit a copy of
33 the order to the Department of Public Safety, Bureau of State Police, State Bureau of
34 Identification.

35 **§2405. Fee**

36 The Supreme Judicial Court may by administrative order establish the fee, not to
37 exceed \$20, for filing a motion under section 2403.

