

MAINE STATE LEGISLATURE

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Amendment Name: Amendment CA (H-853) (LD 776 2020)

Date: 8/20/2020

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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 581, L.D. 776, “An Act Regarding Post-judgment Motion by a Person Seeking To Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions”

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

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

CHAPTER 310-A

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

§2261. 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 703, 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 703, subsection 3.

4. Criminal justice agency. "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.

COMMITTEE AMENDMENT

1 **5. Dissemination.** "Dissemination" has the same meaning as in Title 16, section 703,
2 subsection 6.

3 **6. Eligible criminal conviction.** "Eligible criminal conviction" means a conviction
4 for a current or former Class D or Class E crime, except:

5 A. A conviction for a current or former Class D or Class E crime under Title 17-A,
6 chapter 11 or 12 or Title 17-A, section 852, 853 or 855;

7 B. A conviction for stalking under Title 17-A, section 210-A or 210-C;

8 C. Unless a sentence has been commuted, any conviction involving a crime of
9 domestic violence or any crime involving domestic violence, as defined in section
10 1003, subsection 3-A;

11 D. If 20 years have not yet passed since the judgment of conviction was entered, a
12 crime against a family or household member, as defined in Title 19-A, section 4002,
13 subsection 4, regardless of whether the relationship was an element of that crime;

14 E. If 20 years have not yet passed since the judgment of conviction was entered, a
15 violation of a condition of release, pursuant to section 1092, committed while the
16 defendant is released on preconviction or post-conviction bail for a charge that involves
17 a crime against a family or household member, as defined in Title 19-A, section 4002,
18 subsection 4, regardless of whether the relationship was an element of that crime;

19 F. A violation of a protective order, as specified in section 321, subsection 6; Title 5,
20 section 4659, subsection 2; Title 17-A, section 506-B; Title 19-A, section 4011,
21 subsection 3; or Title 19-A, section 4012, subsection 5;

22 G. A conviction for cruelty to animals under Title 17, section 1031; and

23 H. A conviction for endangering the welfare of a child under Title 17-A, section 554.

24 **§2262. Statutory prerequisites for obtaining special restrictions on dissemination and**
25 **use of criminal history record information for a criminal conviction**

26 The special restrictions on dissemination and use of criminal history record information
27 for a criminal conviction specified in section 2265 apply only if:

28 **1. Eligible criminal conviction.** The criminal conviction is an eligible criminal
29 conviction;

30 **2. Time since sentence fully satisfied.** At least 4 years have passed since the person
31 has fully satisfied each of the sentencing alternatives imposed for the eligible criminal
32 conviction;

33 **3. Other state convictions.** The person has not been convicted of another criminal
34 violation in this State, and has not had a criminal charge dismissed as a result of a deferred
35 disposition pursuant to Title 17-A, former chapter 54-F or Title 17-A, chapter 67,
36 subchapter 4, between the time at which the person fully satisfied each of the sentencing
37 alternatives imposed for the most recent eligible criminal conviction and the filing of the
38 motion under this chapter;

39 **4. Convictions in another jurisdiction.** The person has no criminal convictions from
40 another jurisdiction between the time at which the person fully satisfied each of the
41 sentencing alternatives imposed for the most recent eligible criminal conviction and the
42 filing of the motion under this chapter; and

1 5. Pending criminal charges. The person has no presently pending criminal charges
2 in this State or in another jurisdiction.

3 **§2263. Motion; persons who may file**

4 A person may file a written motion in the underlying criminal proceeding seeking a
5 court determination that the person satisfies the statutory prerequisites specified in section
6 2262 for obtaining the special restrictions on dissemination and use of criminal history
7 record information relating to a criminal conviction as specified in section 2265. The
8 written motion must briefly address each of the statutory prerequisites.

9 **§2264. Motion and hearing; process**

10 1. Filing motion. A motion filed pursuant to section 2263 must be filed in the
11 underlying criminal proceeding. After a motion has been filed, the clerk shall set the
12 motion for hearing.

13 2. Counsel. The person filing a motion pursuant to section 2263 has the right to
14 employ counsel but is not entitled to assignment of counsel at state expense.

15 3. Representation of the State. The prosecutorial office that represented the State in
16 the underlying criminal proceeding may represent the State for purposes of this chapter.
17 On a case-by-case basis, a different prosecutorial office may represent the State on
18 agreement between the 2 prosecutorial offices.

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

22 5. Hearing; certification of results. The judge or justice shall hold a hearing on the
23 motion under this section. At the conclusion of the hearing, if the court determines that the
24 person who filed the motion has established by a preponderance of the evidence each of
25 the statutory prerequisites specified in section 2262, the court shall find the person entitled
26 to the special restrictions on dissemination and use of the criminal history record
27 information relating to the criminal conviction as specified in section 2265 and shall issue
28 a written order certifying this determination. If, at the conclusion of the hearing, the court
29 determines that the person has not established one or more of the statutory prerequisites
30 specified in section 2262, the court shall deny the motion and issue a written order
31 certifying this determination. The order must contain written findings of fact supporting
32 the court's determination. A copy of the court's written order must be provided to the person
33 and the prosecutorial office that represented the State pursuant to subsection 3.

34 6. Notice to State Bureau of Identification. If the court determines pursuant to
35 subsection 5 that a person has established by a preponderance of the evidence each of the
36 statutory prerequisites specified in section 2262, a copy of the court's written order
37 certifying its determination must be provided to the Department of Public Safety, Bureau
38 of State Police, State Bureau of Identification for all criminal offenses deemed retainable
39 pursuant to Title 25, section 1547. The State Bureau of Identification upon receipt of the
40 order shall promptly amend its records relating to the person's eligible criminal conviction
41 to reflect that future dissemination of this criminal history record information must be
42 pursuant to section 2265 rather than pursuant to Title 16, section 704. The State Bureau of
43 Identification shall send notification of compliance with that requirement to the person's
44 last known address.

1 **7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty**
2 **to notify.** Notwithstanding that a person has been determined by a court pursuant to
3 subsection 5 to be entitled to the special restrictions on dissemination and use of criminal
4 history record information relating to a criminal conviction specified in section 2265, if at
5 any time subsequent to the court's determination the person is convicted of a new crime in
6 this State or in another jurisdiction, the new conviction extinguishes that entitlement. In
7 the event of a new criminal conviction, the person shall promptly file a written notice in
8 the underlying criminal proceeding of the person's disqualification from entitlement
9 identifying the new conviction, including the jurisdiction, court and docket number of the
10 criminal proceeding. If the person fails to file the required written notice and the court
11 learns of the existence of the new criminal conviction, the court shall notify the person of
12 its apparent existence and offer the person an opportunity at a hearing to contest the fact of
13 a new conviction. If a hearing is requested by the person, the court shall, after giving notice
14 to the person and the appropriate prosecutorial office, hold a hearing. At the hearing, the
15 person has the burden of proving by clear and convincing evidence that the person does not
16 have the new conviction. At the conclusion of the hearing, if the court determines that the
17 person has not satisfied the burden of proof, it shall find that the person has been convicted
18 of the new crime and as a consequence is no longer entitled to the special restrictions on
19 dissemination and use of the criminal history record information relating to the criminal
20 conviction as specified in section 2265 and shall issue a written order certifying this
21 determination. If, at the conclusion of the hearing, the court determines that the person has
22 satisfied the burden of proof, it shall find that the person has not been convicted of the new
23 crime and issue a written order certifying this determination. The order must contain
24 written findings of fact supporting the court's determination. A copy of the court's written
25 order must be provided to the person and the prosecutorial office that represented the State.

26 **8. Notice to State Bureau of Identification of new crime.** If the court determines
27 under subsection 7 that a person has been convicted of a new crime and as a consequence
28 is no longer eligible for the special restrictions on dissemination and use of the criminal
29 history record information relating to the criminal conviction as specified in section 2265,
30 a copy of the court's written order certifying its determination must be provided to the
31 Department of Public Safety, Bureau of State Police, State Bureau of Identification. The
32 State Bureau of Identification upon receipt of the order shall promptly amend its records
33 relating to the person's criminal conviction to reflect that dissemination of this criminal
34 history record information is pursuant to Title 16, section 704 rather than pursuant to
35 section 2265. The State Bureau of Identification shall send notification of compliance with
36 that requirement to the person's last known address.

37 **§2265. Special restrictions on dissemination and use of criminal history record**
38 **information relating to criminal conviction**

39 Notwithstanding Title 16, section 704, the criminal history record information relating
40 to a criminal conviction for which the court has determined the person is entitled to special
41 restrictions on dissemination and use is confidential and may not be disseminated by a
42 criminal justice agency, whether directly or through any intermediary, except:

43 **1. Subject of conviction.** To the person who is the subject of the criminal conviction
44 or that person's designee;

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

1 For the purposes of this subsection, dissemination to a criminal justice agency for the
2 purpose of the administration of criminal justice includes dissemination and use of the
3 criminal history record information relating to the eligible criminal conviction by an
4 attorney for the State or for another jurisdiction as part of a prosecution of the person for a
5 new crime, including use in a charging instrument or other public court document and in
6 open court;

7 **3. Secretary of State.** To the Secretary of State to ensure compliance with federal
8 motor vehicle law;

9 **4. Victims.** To the victim or victims of the crime related to the conviction or:

10 A. If the victim is a minor, to the parent or parents, guardian or legal custodian of the
11 victim; or

12 B. If the victim cannot act on the victim's own behalf due to death, age, physical or
13 mental disease or disorder or intellectual disability or autism or other reason, to an
14 immediate family member, guardian, legal custodian or attorney representing the
15 victim;

16 **5. Office of Securities.** To the Department of Professional and Financial Regulation,
17 Office of Securities to ensure compliance with securities laws pursuant to Title 32, section
18 16412, subsection 4, paragraph C; or

19 **6. Financial institutions.** To a financial institution if the financial institution is
20 required by federal or state law, regulation or rule to conduct a criminal history record
21 check for the position for which a prospective employee or prospective board member is
22 applying.

23 **§2266. Limited disclosure of eligible criminal conviction**

24 A person who has a criminal conviction eligible for the special restrictions on
25 dissemination and use of criminal history record information under section 2265 for which
26 the court has determined the person is entitled to special restrictions on dissemination may
27 respond to inquiries from other than criminal justice agencies by not disclosing its existence
28 without being subject to any sanctions.

29 **§2267. Unlawful dissemination**

30 A person who intentionally disseminates criminal history record information relating
31 to a criminal conviction in violation of section 2265 knowing it to be in violation is guilty
32 of unlawful dissemination as provided in Title 16, section 707.

33 **§2268. Review of determination of eligibility; review of determination of subsequent**
34 **criminal conviction**

35 A final judgment entered under section 2264, subsection 5 or 7 may be reviewed by
36 the Supreme Judicial Court.

37 **1. Appeal by the person.** A person aggrieved by the final judgment under section
38 2264, subsection 5 or 7 may not appeal as of right. The time for taking the appeal and the
39 manner and any conditions for the taking of the appeal are as the Supreme Judicial Court
40 provides by rule.

41 **2. Appeal by the State.** If the State is aggrieved by the final judgment under section
42 2264, subsection 5 or 7, it may appeal as of right, and a certificate of approval by the

1 Attorney General is not required. The time for taking the appeal and the manner and any
2 conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

3 **Sec. 2. 16 MRSA §707, sub-§1**, as amended by PL 2015, c. 354, §2, is further
4 amended to read:

5 **1. Offense.** A person is guilty of unlawful dissemination of confidential criminal
6 history record information if the person intentionally disseminates confidential criminal
7 history record information knowing it to be in violation of any of the provisions of this
8 chapter or if the person intentionally disseminates criminal history record information
9 relating to a criminal conviction in violation of Title 15, section ~~2255~~ 2265 knowing it to
10 be in violation.'

11 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
12 number to read consecutively.

13 SUMMARY

14 This amendment is the majority report of the Joint Standing Committee on Judiciary.
15 It replaces the bill and replaces the special process to seal certain criminal records, found
16 in the Maine Revised Statutes, Title 15, chapter 310, that was repealed by its own terms
17 on October 1, 2019.

18 This amendment uses the same process to seal criminal records of an eligible criminal
19 conviction as in the repealed law. This amendment defines "eligible criminal conviction"
20 to include all current and former Class D and Class E crimes except for:

- 21 1. Class D or Class E crimes contained in Title 17-A, chapter 11, Sexual Assaults;
- 22 2. Class D or Class E crimes contained in Title 17-A, chapter 12, Sexual Exploitation
23 of Minors;
- 24 3. The Class D and Class E crimes of aggravated sex trafficking, sex trafficking and
25 patronizing prostitution of a minor or a person with a mental disability;
- 26 4. Stalking and domestic violence stalking;
- 27 5. Any crime involving domestic violence, unless the sentence has been commuted;
- 28 6. A crime against a family or household member before 20 years have passed since
29 entry of the judgment of conviction;
- 30 7. A conviction for a violation of a condition of release for a charge that involves a
31 crime against a family or household member before 20 years have passed since entry of the
32 judgment of conviction;
- 33 8. A conviction for a violation of a protective order under Title 5, section 4659,
34 subsection 2; Title 15, section 321, subsection 6; Title 17-A, section 506-B; Title 19-A,
35 section 4011, subsection 3; or Title 19-A, section 4012, subsection 5;
- 36 9. A conviction for cruelty to animals; and
- 37 10. A conviction for endangering the welfare of a child.

38 A person with an eligible criminal conviction may file a motion for the restrictions on
39 dissemination and use of criminal history record information for an eligible criminal
40 conviction if at least 4 years have passed since the person fully satisfied each of the

1 sentencing alternatives imposed for the conviction; the person has not been convicted of
2 another criminal violation in this State, and has not had a criminal charge dismissed as a
3 result of a deferred disposition, since satisfying the sentencing alternatives; the person has
4 no criminal convictions in another jurisdiction since satisfying the sentencing alternatives;
5 and the person has no presently pending criminal charges in this State or in another
6 jurisdiction.

7 The court must hold a hearing on the motion and, if the court determines all the
8 requirements have been met, the court must find the person entitled to the special
9 restrictions and issue a written order certifying the determination. A copy of the order must
10 be provided to the person and the prosecutorial office that prosecuted the person. The order
11 must also be provided to the Department of Public Safety, Bureau of State Police, State
12 Bureau of Identification, which must promptly amend its records relating to the eligible
13 criminal conviction.

14 If the person is convicted of a crime after the court's order, the new conviction
15 extinguishes the entitlement. The person is required to file notice of the new conviction,
16 but if the person does not do so, the court is required to notify the person of the new
17 conviction and offer an opportunity for a hearing to contest the fact of the new conviction.
18 If the court determines that there is a new criminal conviction, the court must issue an order
19 that the person is no longer eligible to have the criminal record sealed. That order must be
20 submitted to the State Bureau of Identification.

21 When a person's records are subject to the special restrictions on dissemination and
22 use, the criminal history record information is confidential and may not be disseminated by
23 a criminal justice agency to anyone except the following for limited purposes: the person;
24 a criminal justice agency; the Secretary of State; victims; the Department of Professional
25 and Financial Regulation, Office of Securities; and financial institutions.

26 A person whose criminal conviction is covered by the special restrictions on
27 dissemination and use may respond to inquiries from other than criminal justice agencies
28 by not disclosing its existence without being subject to any sanctions.

29 The State may appeal as of right an order to seal a record; the person may appeal, but
30 not as of right, when the court does not order the record sealed.

31 **FISCAL NOTE REQUIRED**

32 **(See attached)**



129th MAINE LEGISLATURE

LD 776

LR 1202(02)

An Act Regarding Post-judgment Motion by a Person Seeking To Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record

Information for Certain Criminal Convictions

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor cost increase - Highway Fund

Minor revenue increase - General Fund

Minor revenue increase - Other Special Revenue Funds

Correctional and Judicial Impact Statements

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional fine and/or fee revenue will increase General Fund and dedicated revenue by minor amounts.

Fiscal Detail and Notes

Additional costs to the Department of Public Safety related to this legislation can be absorbed within existing budgeted resources.