

# MAINE STATE LEGISLATURE

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Amendment Name: Amendment CB (H-854) (LD 776 2020)

Date: 8/20/2020



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**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.

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

**COMMITTEE AMENDMENT**

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

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

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

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

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

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

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

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

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

22           **§2262. Statutory prerequisites for obtaining special restrictions on dissemination and**  
23 **use of criminal history record information for a criminal conviction**

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

26           1. Eligible criminal conviction. The criminal conviction is an eligible criminal  
27 conviction;

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

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

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

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

1 **§2263. Motion; persons who may file**

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

7 **§2264. Motion and hearing; process**

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

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

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

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

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

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

43 **7. Subsequent new criminal conviction; automatic loss of eligibility.**  
44 Notwithstanding that a person has been determined by a court pursuant to subsection 5 to

1 be entitled to the special restrictions on dissemination and use of criminal history record  
2 information relating to a criminal conviction specified in section 2265, if at any time  
3 subsequent to the court's determination the person is convicted of a new crime in this State  
4 or in another jurisdiction, the new conviction extinguishes that entitlement. If the court  
5 learns of the existence of the new criminal conviction, the court shall notify the person, at  
6 the person's last known address, of its apparent existence and offer the person an  
7 opportunity at a hearing to contest the fact of a new conviction. If a hearing is requested  
8 by the person, the court shall, after giving notice to the person and the appropriate  
9 prosecutorial office, hold a hearing. At the hearing, the person has the burden of proving  
10 by clear and convincing evidence that the person does not have the new conviction. At the  
11 conclusion of the hearing, if the court determines that the person has not satisfied the burden  
12 of proof, it shall find that the person has been convicted of the new crime and as a  
13 consequence is no longer entitled to the special restrictions on dissemination and use of the  
14 criminal history record information relating to the criminal conviction as specified in  
15 section 2265 and shall issue a written order certifying this determination. If, at the  
16 conclusion of the hearing, the court determines that the person has satisfied the burden of  
17 proof, it shall find that the person has not been convicted of the new crime and issue a  
18 written order certifying this determination. The order must contain written findings of fact  
19 supporting the court's determination. A copy of the court's written order must be provided  
20 to the person and the prosecutorial office that represented the State.

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

32 **§2265. Special restrictions on dissemination and use of criminal history record**  
33 **information relating to criminal conviction**

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

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

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

42 For the purposes of this subsection, dissemination to a criminal justice agency for the  
43 purpose of the administration of criminal justice includes dissemination and use of the  
44 criminal history record information relating to the eligible criminal conviction by an  
45 attorney for the State or for another jurisdiction as part of a prosecution of the person for a

1 new crime, including use in a charging instrument or other public court document and in  
2 open court;

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

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

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

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

12 **5. Office of Securities.** To the Department of Professional and Financial Regulation,  
13 Office of Securities to ensure compliance with securities laws pursuant to Title 32, section  
14 16412, subsection 4, paragraph C; or

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

19 **§2266. Unlawful dissemination**

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

23 **§2267. Review of determination of eligibility; review of determination of subsequent**  
24 **criminal conviction**

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

27 **1. Appeal by the person.** A person aggrieved by the final judgment under section  
28 2264, subsection 5 or 7 may not appeal as of right. The time for taking the appeal and the  
29 manner and any conditions for the taking of the appeal are as the Supreme Judicial Court  
30 provides by rule.

31 **2. Appeal by the State.** If the State is aggrieved by the final judgment under section  
32 2264, subsection 5 or 7, it may appeal as of right, and a certificate of approval by the  
33 Attorney General is not required. The time for taking the appeal and the manner and any  
34 conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

35 **§2268. Repeal**

36 This chapter is repealed October 1, 2025.

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

39 **1. Offense.** A person is guilty of unlawful dissemination of confidential criminal  
40 history record information if the person intentionally disseminates confidential criminal  
41 history record information knowing it to be in violation of any of the provisions of this



1 chapter or if the person intentionally disseminates criminal history record information  
2 relating to a criminal conviction in violation of Title 15, section ~~2255~~ 2265 knowing it to  
3 be in violation.'

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

## 6 SUMMARY

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

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

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

31 A person with an eligible criminal conviction may file a motion for the restrictions on  
32 dissemination and use of criminal history record information for an eligible criminal  
33 conviction if at least 4 years have passed since the person fully satisfied each of the  
34 sentencing alternatives imposed for the conviction; the person has not been convicted of  
35 another criminal violation in this State, and has not had a criminal charge dismissed as a  
36 result of a deferred disposition, since satisfying the sentencing alternatives; the person has  
37 no criminal convictions in another jurisdiction since satisfying the sentencing alternatives;  
38 and the person has no presently pending criminal charges in this State or in another  
39 jurisdiction.

40 The court must hold a hearing on the motion and, if the court determines all the  
41 requirements have been met, the court must find the person entitled to the special

1 restrictions and issue a written order certifying the determination. A copy of the order must  
2 be provided to the person and the prosecutorial office that prosecuted the person. The order  
3 must also be provided to the Department of Public Safety, Bureau of State Police, State  
4 Bureau of Identification, which must promptly amend its records relating to the eligible  
5 criminal conviction.

6 If the person is convicted of a crime after the court's order, the new conviction  
7 extinguishes the entitlement. The court is required to notify the person of the new  
8 conviction and offer an opportunity for a hearing to contest the fact of the new conviction.  
9 If the court determines that there is a new criminal conviction, the court must issue an order  
10 that the person is no longer eligible to have the criminal record sealed. That order must be  
11 submitted to the State Bureau of Identification.

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

17 This amendment differs from the majority report in that it does not include language  
18 stating that the person whose conviction has been sealed will not be subject to sanctions  
19 for not disclosing the conviction.

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

22 This amendment provides that the whole chapter is repealed October 1, 2025.

23 **FISCAL NOTE REQUIRED**

24 **(See attached)**



# 129th MAINE LEGISLATURE

LD 776

LR 1202(03)

**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**

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## 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.