

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

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Legislative Document

No. 1459

H.P. 1075

House of Representatives, April 12, 2021

An Act Regarding a 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

Received by the Clerk of the House on April 8, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.

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

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

3 **CHAPTER 310-A**

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

8 **§2261. Definitions**

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

11 **1. Administration of criminal justice.** "Administration of criminal justice" has the
12 same meaning as in Title 16, section 703, subsection 1.

13 **2. Another jurisdiction.** "Another jurisdiction" has the same meaning as in Title
14 17-A, section 2, subsection 3-B.

15 **3. Criminal history record information.** "Criminal history record information" has
16 the same meaning as in Title 16, section 703, subsection 3.

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

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

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

23 A. A conviction for a current or former Class D crime under Title 17-A, chapter 11 or
24 12 or Title 17-A, section 852, 853 or 855;

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

26 C. Unless a sentence has been commuted, any conviction involving a crime of
27 domestic violence or any crime involving domestic violence, as defined in section
28 1003, subsection 3-A;

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

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

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

4 G. A conviction for cruelty to animals under Title 17, section 1031.

5 **§2262. Statutory prerequisites for obtaining special restrictions on dissemination and**
6 **use of criminal history record information for a criminal conviction**

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

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

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

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

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

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

26 **§2263. 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 2262 for obtaining the special restrictions on dissemination and use of criminal history
30 record information relating to a criminal conviction as specified in section 2265. The
31 written motion must briefly address each of the statutory prerequisites.

32 **§2264. Motion and hearing; process**

33 **1. Filing motion.** A motion filed pursuant to section 2263 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 2263 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 in
39 the underlying criminal proceeding may represent the State for purposes of this chapter.
40 On a case-by-case basis, a different prosecutorial office may represent the State on
41 agreement between the 2 prosecutorial offices.

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

4 **5. Hearing; certification of results.** The judge or justice shall hold a hearing on the
5 motion under this section. At the conclusion of the hearing, if the court determines that the
6 person who filed the motion has established by a preponderance of the evidence each of
7 the statutory prerequisites specified in section 2262, the court shall find the person entitled
8 to the special restrictions on dissemination and use of the criminal history record
9 information relating to the criminal conviction as specified in section 2265 and shall issue
10 a written order certifying this determination. If, at the conclusion of the hearing, the court
11 determines that the person has not established one or more of the statutory prerequisites
12 specified in section 2262, the court shall deny the motion and issue a written order
13 certifying this determination. The order must contain written findings of fact supporting
14 the court's determination. A copy of the court's written order must be provided to the person
15 and the prosecutorial office that represented the State pursuant to subsection 3.

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

27 **7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty**
28 **to notify.** Notwithstanding that a person has been determined by a court pursuant to
29 subsection 5 to be entitled to the special restrictions on dissemination and use of criminal
30 history record information relating to a criminal conviction specified in section 2265, if at
31 any time subsequent to the court's determination the person is convicted of a new crime in
32 this State or in another jurisdiction, the new conviction extinguishes that entitlement. In
33 the event of a new criminal conviction, the person shall promptly file a written notice in
34 the underlying criminal proceeding of the person's disqualification from entitlement
35 identifying the new conviction, including the jurisdiction, court and docket number of the
36 criminal proceeding. If the person fails to file the required written notice and the court
37 learns of the existence of the new criminal conviction, the court shall notify the person of
38 its apparent existence and offer the person an opportunity at a hearing to contest the fact of
39 a new conviction. If a hearing is requested by the person, the court shall, after giving notice
40 to the person and the appropriate prosecutorial office, hold a hearing. At the hearing, the
41 person has the burden of proving by clear and convincing evidence that the person does not
42 have the new conviction. At the conclusion of the hearing, if the court determines that the
43 person has not satisfied the burden of proof, it shall find that the person has been convicted
44 of the new crime and as a consequence is no longer entitled to the special restrictions on
45 dissemination and use of the criminal history record information relating to the criminal
46 conviction as specified in section 2265 and shall issue a written order certifying this

1 determination. If, at the conclusion of the hearing, the court determines that the person has
2 satisfied the burden of proof, it shall find that the person has not been convicted of the new
3 crime and issue a written order certifying this determination. The order must contain
4 written findings of fact supporting the court's determination. A copy of the court's written
5 order must be provided to the person and the prosecutorial office that represented the State.

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

17 **§2265. Special restrictions on dissemination and use of criminal history record**
18 **information relating to criminal conviction**

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

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

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

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

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

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

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

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

1 **5. Office of Securities.** To the Department of Professional and Financial Regulation,
2 Office of Securities to ensure compliance with securities laws pursuant to Title 32, section
3 16412, subsection 4, paragraph C;

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

8 **7. Pursuant to court order.** In accordance with an order issued on a finding of good
9 cause by a court of competent jurisdiction. Good cause includes a finding that access to
10 the criminal history record information may be necessary for the determination of any issue
11 before the court.

12 **§2266. Limited disclosure of eligible criminal conviction**

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

18 **§2267. Unlawful dissemination**

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

22 **§2268. Review of determination of eligibility; review of determination of subsequent**
23 **criminal conviction**

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

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

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

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

36 **1. Offense.** A person other than a person receiving confidential criminal history record
37 information pursuant to section 2265, subsection 4 is guilty of unlawful dissemination of
38 confidential criminal history record information if the person intentionally disseminates
39 confidential criminal history record information knowing it to be in violation of any of the
40 provisions of this chapter or if the person intentionally disseminates criminal history record
41 information relating to a criminal conviction in violation of Title 15, section ~~2255~~ 2265
42 knowing it to be in violation.

1 **SUMMARY**

2 This bill replaces the special process to seal certain criminal records, found in the
3 Maine Revised Statutes, Title 15, chapter 310, that was repealed by its own terms on
4 October 1, 2019.

5 The bill uses the same process to seal criminal records of an eligible criminal
6 conviction as in the repealed law. The bill defines "eligible criminal conviction" to include
7 all current and former Class D and Class E crimes except for:

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

23 A person with an eligible criminal conviction may file a motion for the special
24 restrictions on dissemination and use of criminal history record information for an eligible
25 criminal conviction if at least 4 years have passed since the person fully satisfied each of
26 the sentencing alternatives imposed for the conviction; the person has not been convicted
27 of another criminal violation in this State, and has not had a criminal charge dismissed as
28 a result of a deferred disposition, since satisfying the sentencing alternatives; the person
29 has no criminal convictions in another jurisdiction since satisfying the sentencing
30 alternatives; and the person has no presently pending criminal charges in this State or in
31 another jurisdiction.

32 The court must hold a hearing on the motion and, if the court determines all the
33 requirements have been met, the court must find the person entitled to the special
34 restrictions on dissemination and issue a written order certifying the determination. A copy
35 of the order must be provided to the person and the prosecutorial office that prosecuted the
36 person. The order must also be provided to the Department of Public Safety, Bureau of
37 State Police, State Bureau of Identification, which must promptly amend its records relating
38 to the eligible criminal conviction.

39 If the person is convicted of a crime after the court's order, the new conviction
40 extinguishes the entitlement. The person is required to file notice of the new conviction,
41 but if the person does not do so, the court is required to notify the person of the new
42 conviction and offer an opportunity for a hearing to contest the fact of the new conviction.

1 If the court determines that there is a new criminal conviction, the court must issue an order
2 that the person is no longer eligible to have the criminal record sealed. That order must be
3 submitted to the State Bureau of Identification.

4 When a person's records are subject to the special restrictions on dissemination and
5 use, the criminal history record information is confidential and may not be disseminated by
6 a criminal justice agency to anyone except the following for limited purposes: the person;
7 a criminal justice agency; the Secretary of State; victims; the Department of Professional
8 and Financial Regulation, Office of Securities; and financial institutions. The criminal
9 history record information may also be disseminated pursuant to court order.

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

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