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131st Legislature, Second Regular Session

Criminal Records Review Committee

December 2024

Office of Policy and Legal Analysis

STATE OF MAINE
131st LEGISLATURE
SECOND REGULAR SESSION

Criminal Records Review Committee
December 2024

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Executive Summary

The Criminal Records Review Committee (the "Committee") was established during the 131st Maine Legislature as a two-year study, pursuant to Resolve 2023, chapter 103. The resolve is included as Appendix A. The Committee has 29 members representing various government agencies and public interests, serving in both official and personal capacities. The membership list is included as Appendix B.

The Committee was tasked with the following duties:

1. Reviewing activities in other states that address the expungement, sealing, vacating of, and otherwise limiting public access to, criminal records;
2. Considering so-called clean slate legislation options;
3. Considering whether the following convictions should be subject to different treatment:
    A. Convictions for conduct that has been decriminalized in this State over the last 10 years and conduct that is currently under consideration for decriminalization;
    B. Convictions for conduct that is nonviolent or involves the use of marijuana; and
    C. Convictions for conduct that was committed by victims and survivors of sexual exploitation and sex trafficking;
4. Considering whether there is a time limit after which some or all criminal records should not be publicly available;
5. Inviting comments and suggestions from interested parties, including but not limited to victim advocates and prison and correctional reform organizations;
6. Reviewing existing information about the harms and benefits of making criminal records confidential, including the use and dissemination of those records;
7. Inviting comments and suggestions concerning the procedures to limit public accessibility of criminal records;
8. Considering who, if anyone, should continue to have access to criminal records that are not publicly available;
9. Developing options to manage criminal records; and
10. Reviewing and considering criminal records expungement legislation referred to the Joint Standing Committee on Judiciary during the 131st Legislature, including, but not limited to, L.D.'s 848, 1550, 1646 and 1789.

The Committee was authorized to meet a total of eight times over the two-year period. The chairs determined that the Committee would plan to meet three times in 2023 during the interim between legislative sessions of the 131st Legislature and five times in 2024 during the interim between adjournment of the 131st Legislature and commencement of the 132nd Legislature. Meetings for the first interim were held on November 13, 2023, November 22, 2023, and December 11, 2023. At the conclusion of that work, as required by the resolve, the Committee issued an interim report in January of 2024 that included the Committee's findings and recommendations, including suggested legislation, regarding the expungement, sealing, vacating of and otherwise limiting public access to criminal records related to convictions for conduct that is nonviolent or involves the use of marijuana.

Meetings for the second interim were held on July 16, 2024, August 13, 2024, September 24, 2024, October 8, 2024 and November 19, 2024. After careful consideration of the information received over the past two years, including comments and suggestions from invited stakeholders, residents of county jail and correctional facilities and members of the public, the Committee recommends that the Legislature take the following actions.

A. Amend Title 15, chapter 310-A, the law governing post-judgment motions to seal criminal history record information to:

i. Allow sealing, with no required waiting period, of convictions for any conduct that has been decriminalized in the State—including by eliminating the waiting period in current law before a motion may be filed to seal convictions for decriminalized conduct involving marijuana or for the former Class E crime of engaging in prostitution.

ii. Expand the list of crimes eligible for sealing to include convictions for any drug possession crime in 17-A M.R.S. §1107-A and clarify that a person may request that more than one conviction for any eligible crime be sealed if the person has satisfied all of the requirements for sealing since the date of the last conviction to be sealed.

iii. Expand the list of crimes eligible for sealing, as long as all of the other requirements for sealing in current law are met, to include convictions for all Class A, B and C drug offenses, except convictions for Class A aggravated trafficking or convictions involving the use of a firearm.

iv. Expand the list of crimes eligible for sealing, as long as all of the other requirements for sealing in current law are met, to include convictions for most Class D crimes <u>except</u> (a) any Class D crime that would not have been eligible for sealing under LD 1459 from the 130th Legislature; (b) Class D assault if the defendant also was or could have been charged with a crime under Title 17-A, chapter 11 (sexual assaults) or chapter 12 (sexual exploitation of minors) arising out of the same conduct; and (c) violation of condition of release committed while the defendant was released on preconviction or postconviction bail for a charge under Title 17-A, chapter 11 (sexual assaults) or chapter 12 (sexual exploitation of minors).

v. Allow sealing, with no required waiting period, of convictions for any crime committed by a victim of sex trafficking or sexual exploitation if they demonstrate that the crime was committed as a substantial result of the trafficking or exploitation; clarify that the process in current law for sealing convictions for the former Class E crime of engaging in prostitution also applies to convictions for the former Class D crime of engaging in prostitution; and require businesses that assemble and sell criminal records to update their record to remove records of sealed or pardoned offenses.

B. Enact legislation directing the Maine Commission on Public Defense Services to establish a mechanism to assist individuals with filing post-judgment motions to seal criminal history record information under Title 15, chapter 310-A.

C. Enact legislation providing for the automatic sealing of criminal history record information related to convictions for conduct involving marijuana that has since been decriminalized in the State using LD 2269 from the 131st Legislature, as amended by the minority Judiciary Committee amendment, as a model.

D. Enact legislation establishing a process for victims of sex trafficking and sexual exploitation to file post-judgment motions to have their convictions for any crime reversed if they demonstrate that the crime was a substantial result of the trafficking or exploitation.

E. Enact legislation amending the list of criminal convictions that disqualify an individual from employment as a direct access worker by removing convictions for the crimes of aggravated cultivation of marijuana, refusing to submit to arrest or detention and eluding or passing a roadblock.

F. Amend the Criminal History Record Information Act to clarify that, when a plea agreement results in the court dismissing all criminal charges and the defendant admitting only to having committed a civil violation, information about the dismissed criminal charges is confidential criminal history record information.

G. Enact legislation establishing a permanent criminal records review commission to conduct ongoing review of the laws, rules and procedures pertaining to criminal history record information in this State, using LD 2252 from the 131st Legislature as a model but further specifying that the issues studied by the Commission shall include but are not limited to the topics for further study identified in other committee recommendations.

- ***i. Whether Maine should adopt all or certain portions of the Model Collateral Consequences of Conviction Act and how the text of the Model Act should be amended to fit Maine law and practice.***
- ***ii. How to establish an automatic record sealing process for adult criminal convictions, both which crimes should be eligible for automatic sealing and how to implement the process.***
- ***iii. Whether and in what circumstances convictions for all Class A, B and C crimes, or a specific subset of Class A, B and C crimes, should be eligible for sealing.***
- ***iv. Whether and in what circumstances to waive the statutorily required waiting period before a post-judgment motion to seal criminal history record information may be filed.***
- ***v. Whether to allow sealing of criminal records upon successful completion of or graduation from approved behavioral health treatment programs, including treatment courts.***
- ***vi. Whether and how to amend the laws governing consideration of criminal history record information by professional and occupational licensing agencies.***

vii. Whether and how to establish a process for awarding a "certificate of rehabilitation" to individuals who have successfully completed or graduated from approved behavioral health or mental health treatment programs.

I. INTRODUCTION

The Criminal Records Review Committee (the "Committee") was established during the 131st Maine Legislature as a two-year study, pursuant to Resolve 2023, chapter 103. The resolve is included as Appendix A. The Committee has 29 members representing various government agencies and public interests, serving in both official and personal capacities. A list of committee members appointed to serve in 2024, the second year of the study, appears in Appendix B.

The Committee was tasked with the following duties:

1. Reviewing activities in other states that address the expungement, sealing, vacating of, and otherwise limiting public access to, criminal records;
2. Considering so-called clean slate legislation options;
3. Considering whether the following convictions should be subject to different treatment:
    A. Convictions for conduct that has been decriminalized in this State over the last 10 years and conduct that is currently under consideration for decriminalization;
    B. Convictions for conduct that is nonviolent or involves the use of marijuana; and
    C. Convictions for conduct that was committed by victims and survivors of sexual exploitation and sex trafficking;
4. Considering whether there is a time limit after which some or all criminal records should not be publicly available;
5. Inviting comments and suggestions from interested parties, including but not limited to victim advocates and prison and correctional reform organizations;
6. Reviewing existing information about the harms and benefits of making criminal records confidential, including the use and dissemination of those records;
7. Inviting comments and suggestions concerning the procedures to limit public accessibility of criminal records;
8. Considering who, if anyone, should continue to have access to criminal records that are not publicly available;
9. Developing options to manage criminal records; and
10. Reviewing and considering criminal records expungement legislation referred to the Joint Standing Committee on Judiciary during the 131st Legislature, including, but not limited to, L.D.'s 848, 1550, 1646 and 1789.

The Committee was authorized to meet a total of eight times over the two-year period. The chairs determined that the Committee would plan to meet three times in 2023 during the interim between legislative sessions of the 131st Legislature and five times in 2024 during the interim between adjournment of the 131st Legislature and commencement of the 132nd Legislature. Meetings for the first interim were held on November 13, 2023, November 22, 2023, and December 11, 2023. At the conclusion of that work, as required by the resolve, the Committee issued an interim report in January of 2024 that included the Committee's findings and recommendations, including suggested legislation, regarding the expungement, sealing, vacating of and otherwise limiting public access to criminal records related to convictions for conduct that is nonviolent or involves the use of marijuana. Additional information about the first year of the Committee's work may be found by using the links provided in Appendix C.

Meetings for the second interim were held on July 16, 2024, August 13, 2024, September 24, 2024, October 8, 2024, and November 19, 2024. As required by the resolve, this second and final report includes the Committee's findings and recommendations on additional topics not addressed in the interim report. [1]

Materials from each of the Committee's meetings over the two-year period are available on the Committee's website at https://legislature.maine.gov/criminal-records-review-committee-131st-legislature. Links to archived videos of each meeting are also Linked to the Committee's website.

The Committee would like to note that throughout this report, the terms "marijuana" and "cannabis" are used to refer to the same substance. Prior to 2021, the term "marijuana" was used exclusively to refer to the substance. However, in 2021, the Legislature enacted Public Law 2021, chapter 669, "An Act To Promote Equity and Increase Opportunities in the Cannabis Industry by Reducing Restrictions Related to Convictions for Drug Offenses and To Replace the Term 'Marijuana' with the Term 'Cannabis' in the Maine Revised Statutes." This law replaced the term "marijuana" with the term "cannabis" in all titles of the Maine Revised Statues except Title 17-A, the Maine Criminal Code. Thus, this report will use the term "cannabis," except when referring to a criminal act, in which case it will use the term "marijuana."

II. UPDATE ON RECOMMENDATIONS INCLUDED IN THE 2024 INTERIM REPORT

In the 2024 Interim Report, the Committee made five recommendations for further action by the 131st Maine Legislature, the Maine Judicial Branch and the State Bureau of Identification (SBI) within the Department of Public Safety. Of these, four recommendations were legislative in nature, two of which led to the enactment of legislation before the committee began its work this year. Additional information about the legislation, letters and websites discussed in this Part of the report may be found using the links provided in Appendix C.

Recommendation 1: Establish a permanent commission based on the Criminal Records Review Committee.

The first recommendation proposed enactment of legislation establishing a permanent criminal records review commission with express authority both to submit legislation relating to criminal history record information at the start of each legislative session and to make recommendations to the Department of Public Safety, Chief Justice of the Maine Supreme Court and Advisory Committee on Maine Rules of Unified Criminal Procedure.

This recommendation was introduced by the Judiciary Committee as LD 2252, *An Act to Establish the Criminal Records Review Commission.* A majority of the Judiciary Committee voted in favor of an amended version of the bill, which included a $3,500 per year ongoing General Fund appropriation.

[1] Although Resolve 2023, chapter 103 established November 6, 2024, as the deadline for submission of the Committee's report, the Legislative Council granted the Committee's request pursuant to Joint Rule 353(7) to extend the report-submission deadline to December 4, 2024.

LD 2252 remained on the Special Appropriations Table when the Second Regular Session of the Legislature adjourned on May 10, 2024 and died upon the conclusion of the 131st Legislature. [2]

Recommendation 2: Establish a process to automatically seal criminal convictions for Class D and Class E crimes relating to marijuana possession and cultivation contained in electronic records.

The second recommendation proposed enactment of legislation that would establish a process to automatically seal convictions for Class D and Class E crimes related to marijuana possession and cultivation for crimes committed after January 1, 2001 (when the Maine Judicial Branch began using electronic court records) but before January 30, 2017 (the effective date of the State's adult use of cannabis law). The process would only apply to defendants not currently facing criminal charges who had neither been convicted of a crime nor had a criminal charge dismissed as a result of a deferred disposition after fully satisfying the sentence from the most recent conviction to be sealed. The proposed legislation would have required SBI to conduct monthly examinations of criminal history record information in its files to identify convictions potentially eligible for sealing and transmit that information to the Administrative Office of the Courts (AOC). The AOC would then gather all information in its files related to the identified convictions and transfer that information to the court of conviction for a judicial determination whether the conviction qualifies for automatic sealing. Like convictions sealed through the existing post-judgment motion to seal process, automatically sealed convictions would be treated as confidential criminal history record information and a defendant would be authorized by law to respond to inquiries from persons other than criminal justice agencies by not disclosing the existence of the conviction.

This recommendation was introduced by the Judiciary committee as LD 2269, *An Act to Automatically Seal Criminal History Record Information for Class D and Class E Crimes Relating to Marijuana Possession and Cultivation*. A majority of the Judiciary committee voted that the bill "Ought Not to Pass" and it was not enacted by the Legislature.[3]

Recommendation 3: Add convictions for Class D crimes relating to marijuana possession and cultivation to the list of eligible criminal convictions for which a person can submit a motion to seal criminal history record information related to the conviction.

The third recommendation proposed enactment of legislation expanding the crimes eligible for sealing under the law governing post-judgment motions to seal criminal history record information to include any Class D crime committed before January 30, 2017, related to unlawfully possessing or cultivating marijuana.

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[2] The majority committee amendment also included establishing an effective date of January 1, 2025. A minority committee amendment included previous amendments, as well as including a sunset provision that would repeal the authority for the commission on December 31, 2026.

[3] A minority of the Judiciary Committee voted in favor of an amended version of LD 2269 which would have amended the definition of "eligible criminal conviction" to include only crimes that are no longer considered illegal under Maine's adult use cannabis laws. The amended version of the bill was accompanied by a fiscal note requiring approximately $150,000 in funding to the Department of Public Safety in the first fiscal year for a paralegal position and one-time programing costs and an approximately $480,000 in funding to the Judicial Branch in the first fiscal year for two limited-period law clerk positions, active retired judge compensation and other temporary staffing. If this amended version of the bill had been enacted, the fiscal note indicated that a portion of these costs would have been ongoing.

This recommendation was introduced by the Judiciary committee as LD 2236, *An Act to Expand the List of Crimes Eligible for a Post-judgment Motion to Seal Criminal History Record Information to Include Convictions for Possession and Cultivation of Marijuana*. A majority of the committee voted in favor of an amended version of the bill that added only those Class D crimes which are no longer considered illegal under Maine's adult use cannabis laws to the definition of "eligible criminal conviction" in the post-judgment motion to seal criminal history information law. The amended bill was enacted as Public Law 2023, chapter 639.

Recommendation 4: Increase public outreach and notifications to qualified persons for the current post-judgment motion to seal criminal history record information.

Included in the 2024 Interim Report were letters sent by this committee to Chief Justice Stanfill of the Maine Supreme Court and Commissioner Sauschuck of the Department of Public Safety.

In the letter to Chief Justice Stanfill, the Committee requested that the Maine Judicial Branch revise the court form (CR-218), used by defendants filing post-judgment motions to seal, to clarify that representation by an attorney is not required to file the motion. The letter also requested that the Judicial Branch expand public outreach by updating the "Criminal Law" and other relevant sections of the Judicial Branch website to provide information on the post-judgment motion to seal process and providing information on the process to criminal defendants and others involved in the judicial system through any other recourses the branch feels appropriate and helpful. During the course of its meetings this year, Amanda Doherty of the Maine Judicial Branch advised the Committee that it has made the requested updates to court form CR-218 and the Maine Judicial Branch website.

In the letter to Commissioner Sauschuck, the Committee requested that the Department of Public Safety expand public outreach on the post-judgment motion to seal process by updating the SBI website to provide general information on the post-judgment motion to seal process, update relevant forms and materials used by SBI and provided to convicted persons informing them of this process, and create a system whereby individuals seeking their own criminal history record information are informed that they may be eligible to have their criminal history record information sealed. During the course of its meetings this year, Amy McCollett of the SBI informed the Committee that it has updated the forms for members of the public use when requesting their own criminal history record information from SBI by mail to provide information about the record-sealing process. SBI is also in the process of updating its website to include more prominent information about the record-sealing process, perhaps by providing a link to the Maine Judicial Branch webpage describing the process.

Recommendation 5: Remove the statutory prerequisite that a person must have been aged 18 to 27 years when they committed the underlying crime in order to be eligible to have the person's criminal history record information sealed.

The fifth and final recommendation proposed enactment of legislation repealing the requirement that a defendant must have been at least 18 years of age but less than 28 years of age at the time a crime was committed to qualify to file a post-judgment motion to seal the criminal history record information related to the conviction.

This recommendation was introduced by the Judiciary Committee as LD 2218, *An Act to Remove the Age-related Statutory Prerequisite for Sealing Criminal History Record Information*. A majority of the Judiciary Committee voted in favor of LD 2218 and the bill was enacted as Public Law 2023, chapter 666.

III. COMMITTEE PROCESS

The Committee held five meetings in 2024. Materials distributed at those meetings, including the materials and public comments discussed in this section, as well as links to the archived video of each committee meeting are available on the Committee's website, https://legislature.maine.gov/criminal-records-review-committee-131st-legislature, and may also be found using the direct links provided in Appendix C.

July 16, 2024 Meeting

The first meeting of the Committee took place on July 16, 2024. Committee chairs, Senator Bailey and Speaker Talbot Ross, began the meeting by introducing the 29 committee members. Following introductions, committee staff reviewed the Committee's authorizing legislation and duties and the study process generally. Staff also reviewed the outcome of legislative recommendations included in this Committee's January 2024 interim report as well as other legislation enacted in the Second Regular Session of the Legislature related to criminal records. Staff then provided an update on the current status of Maine's criminal record sealing law. The summary of the current law governing post-judgment motions to seal criminal history record information is included in Appendix D.

The Committee next heard from the Committee's representatives from the Maine Judicial Branch and the State Bureau of Identification (SBI) within the Department of Public Safety. Both the Maine Judicial Branch and the SBI indicated that, in response to recommendations made in the Interim Report, each entity was in the process of updating its website to provide additional information to the public regarding the post-judgment motion to seal criminal history record information process. The Maine Judicial Branch was also in the process of updating relevant court forms to clarify that attorney representation is not required to file such motions.

The Committee also received a presentation from Derek P. Langhauser, Esq., who had been invited by the committee chairs to provide information on the separation of powers issues related to clean slate legislation that were highlighted in the Interim Report as a topic for further discussion. A summary of Mr. Langhauser's presentation appears in Part IV.E of this report.

Following Mr. Langhauser's presentation, the Committee received a presentation on the process for the Legislature to request an opinion of the Justices, an option the Committee was considering as a way to address constitutional questions related to potential recommendations. Secretary of the Senate Darek M. Grant and Clerk of the House Robert B. Hunt explained that, while the Committee may not itself request an Opinion of the Justices regarding the constitutionality of proposals for record-clearing laws in the State, the Legislature could in the future ask the Justices to weigh in on whether particular legislation actually pending before the Legislature might, for example, run afoul of the separation of powers clauses of the Constitution of Maine. The meeting concluded with committee member discussion regarding

desired outcomes for the Committee's work this year and identification of additional information the Committee should receive or review at future meetings.

August 13, 2024 Meeting

The second meeting of the Committee took place on August 13, 2024. The meeting began with updates from committee staff, the Department of Corrections, the Maine Sheriff's Association and the Maine Judicial Branch on information requested during the meeting on July 16:

- Committee staff provided follow-up materials related to the separation of powers issues explored at the first committee meeting, including a list of all previous adopted and failed amendments to the Constitution of Maine regarding the Governor's pardon power and a May 19, 1981 Opinion of the Attorney General cited by Mr. Langhauser and that anticipates how a court might analyze whether an inherent constitutional authority of the legislative, executive or judicial branch of government under the Constitution of Maine might prevent another branch of government from exercising a related power.
- Committee staff next reviewed state laws that regulate the use of criminal history in the employment context, including laws prohibiting requests for criminal history record information in initial applications for government and private employment,[4] and the chapter of state law governing the consideration of criminal convictions by occupational licensing agencies.[5] Staff also reviewed the recently enacted law requiring the Department of Health and Human Services (DHHS) to enter into memoranda of understanding with correctional facilities and county jails in the state to provide assistance to persons who are incarcerated in such facilities in applying to MaineCare, an example of the types of reentry programming and requirements that can be created by statute.[6]
- The Committee then turned to representatives of the Department of Corrections (DOC) and Maine Sheriffs' Association to learn about information provided to current residents of DOC facilities and county jails regarding the process for filing post-judgment motions to seal criminal history record information and ways in which the Committee might solicit input from current residents as it engages in its duties to review and recommend changes to that process. Committee member Samuel Prawer, the DOC's Director of Government Affairs, indicated that currently record sealing information is not automatically provided to DOC facility residents, but that DOC could build it into the reentry process. Mr. Prawer also discussed the DOC's willingness to assist the Committee in soliciting written testimony from facility residents and potentially to invite committee members to visit a correctional facility to meet with residents. Maine Sheriffs Association representative and committee member Sheriff Joel Merry similarly explored the possibility that county jails could provide information to residents on the record sealing law prior to their reentry into the community as well as the logistics for the Committee to solicit written comments on ways to improve the current record-sealing process from residents of county jails.

[4] 5 M.R.S. §792 (prohibition on requests for criminal history on application forms for most positions in State Government); 26 M.R.S. §600-A (prohibition on requests for criminal history on initial application forms for most positions in local government and the private sector, sometimes referred to as the "Ban the Box" law).

[5] 5 M.R.S. ch. 341.

[6] P.L. 2023, ch. 458, An Act to Improve the Health of Maine Residents by Closing Coverage Gaps in the MaineCare program for Incarcerated Persons (amending 22 M.R.S. §3174-CC).

- Committee members Amanda Doherty, Criminal Process and Specialty Dockets Manager of the Maine Judicial Branch, and District Attorney Maeghan Maloney, representative of the Maine Prosecutors Association, provided statistics on the number of individuals convicted of criminal offenses broadly broken down by class of crime within the last four years.
- Ms. Doherty also reviewed the newly revised page of the Maine Judicial Branch's website providing information to members of the public about the general process for sealing one's criminal record, including elimination of the requirement that the conduct underlying the offense was committed when the individual was between 18 and 27 years of age that took effect on August 9, 2024 as well as changes to court form CR-218, Motion to Seal Criminal History, clarifying that an individual is not required to be represented by an attorney when filing the motion. Ms. Doherty also reviewed ways in which the Maine Judicial Branch increased the visibility of links to these materials throughout the website. Finally, Ms. Doherty reported that the Maine Judicial Branch was in the process of updating its website to include a separate webpage with information about different requirements and court forms for sealing criminal history record information related to the former Class E crime of engaging in prostitution.[7]

Following these responses to information requests, the Committee received a presentation on the "clean slate laws" that have been enacted in twelve other states from Senior Legislative Researcher, Darlene Shores Lynch of the Office of Policy and Legal Analysis. A summary of Ms. Shores Lynch's presentation is included in Part IV.D of this report and a copy of the presentation is included in Appendix E.

The next portion of the meeting was reserved for the Committee to hear from stakeholders specifically invited by committee chairs Senator Bailey and Speaker Talbot Ross, in part due to their participation in public hearings on related bills previously considered by the Legislature, to provide comments and suggestions on the Committee's duties. Restorative Justice Manager Molly Hoisser spoke on behalf of the Restorative Justice Project; Brendan McQuade, chair of the criminology department at University of Southern Maine, spoke on his own behalf; Professor Catherine Besteman accompanied by Chandler Dugal and Linda Small spoke on behalf of the Colby College Justice Think Tank; Policy Coordinator Rae Sage spoke on behalf of the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations; Legal Director Lauren Wille spoke on behalf of Disability Rights Maine; Staff Attorney Lisa Rodriguez-Ross spoke on behalf of GLBTQ Legal Advocates and Defenders; and Chair Josh Miller spoke on behalf of the Maine Prisoner Reentry Network.[8] Each of these organizations and individuals was also invited to submit written comments for the Committee's consideration.

The meeting concluded with further discussion by committee members regarding the best way to solicit comments from residents of DOC facilities and county jails, including developing targeted questions to clarify the type of information sought. The Committee established a process to develop a list of

[7] The new Maine Judicial Branch webpage with information about sealing convictions for eligible crimes (other than convictions for the Class E Crime of engaging in prostitution) and a link to revised court form CR-128 are available at https://www.courts.maine.gov/help/criminal/sealing.html.

[8] Although invited, representatives from the following organizations were unable to attend the committee meeting: My Sister's Keeper, the NAACP New England Area Conference, Maine Reentry Services, Equality Maine, Maine Trans.Net, the Penobscot Nation Tribal Court, Alliance for Addiction and Mental Health Service, Maine Drug Policy Lab at Colby College, Helping Incarcerated Individuals Transition, the Maine Commission on Domestic and Sexual Abuse, Restorative Justice Institute of Maine and Restorative Justice Project Maine.

questions to be provided to Director Samuel Prawer and Sheriff Merry who would facilitate dissemination of the handout to DOC facilities and county jails across the State.

September 24, 2024 Meeting

The third meeting of the Committee took place on September 24, 2024. The meeting began with a series of presentations. First, Samantha Warren, Director of Government & Community Relations for the University of Maine System (UMS), as well as the Sally Meredith, Associate General Counsel to the Maine Community College System (MCCS) and Becky Smith, Director of Government & Community Relations for MCCS provided information about current practices at Maine's public colleges and universities regarding the use of criminal records in student admissions, on-campus housing assignments, and faculty, staff and student employment. Committee members requested that, for the next meeting, MCCS provide additional detail about the policies restricting the use of criminal history records by admission staff and hiring committees, that UMS provide additional detail about the use of criminal history in the law school admission process and that both systems provide information about educational programming they provide to individuals in Maine correctional facilities.

Second, Secretary of State Shenna Bellows and Bureau of Motor Vehicles Director of Legal Affairs, Lynne Gardner, presented information to the Committee on public access to driving records and the contents of a driving record in Maine. Secretary Bellows informed the Committee that a public driving record includes a brief description of any motor-vehicle-related criminal conviction, civil violation, or traffic infraction within the previous three or ten years (depending on the request made), regardless of whether a particular conviction has been sealed or pardoned. Secretary Bellows also emphasized to the Committee that federal law prohibits the masking or redacting of sealed or pardoned convictions within driving records in certain circumstances, including driving records compiled for licensure of commercial drivers. Additional information regarding Secretary Bellows' presentation is included in Part IV.B of this report.

Third, the Committee received comments and suggestions regarding the Committee's duties in Resolve 2023, chapter 103 from two invited stakeholders who were unable to present at the previous meeting: Chair Rebecca Austin from the Maine Commission on Domestic and Sexual Abuse, who also submitted written comments, and committee member and President of the Maine State Prison Branch of the NAACP, Foster Bates.

Fourth, Janet Sternecky, Legislative Counsel for the Uniform Law Commission, provided an overview of the Model Collateral Consequences of Conviction Act (formerly known as the Uniform Collateral Consequences of Conviction Act). To date, this Model Law has been adopted in New Mexico and Vermont. A copy of Vermont's version of this legislation was provided to committee members by staff. A summary of the Model Act is included in Part IV.F of this report.

Finally, committee members Andrea Mancuso from the Maine Coalition to End Domestic Violence and Michael Kebede from ACLU Maine presented proposals for clearing criminal records of victims and survivors of sexual exploitation and sex trafficking, which they developed in collaboration with committee members Amanda Comeau of Survivor Speak USA and Melissa Martin of the Maine Coalition Against Sexual Assault. The draft legislation would provide relief to this population in two different, but potentially complementary ways.

- Their first proposal would expand the current law regarding post-judgment motions to seal criminal history record information to allow the sealing of convictions for any crimes committed by a victim of sex trafficking or sexual exploitation, regardless of the time since the convictions were imposed, if the crimes were committed as a substantial result of the trafficking or exploitation. This draft legislation would also amend current law to allow sealing of all convictions for the former crime of engaging in prostitution, regardless of the class of the crime, and would require businesses that assemble and sell criminal records to update their records to remove records of sealed or pardoned offenses.
- Their second proposal would establish a new post-judgment motion process to reverse the criminal convictions of sex trafficking or sexual exploitation victims if the victims demonstrate, by a preponderance of the evidence, both that they experienced sex trafficking or sexual exploitation and that the conduct that led to the convictions was a substantial result of the sex trafficking or sexual exploitation. If such a motion is granted, their proposed legislation directs the court to specify which court records and criminal justice agency records should be corrected to reflect reversal of the convictions.

After these presentations, committee members Director Samuel Prawer from the DOC and Sheriff Joel Merry from the Maine Sheriffs Association updated the Committee on the progress made towards soliciting comments and suggestions from residents of correctional facilities and county jails using the handout/poster developed by committee staff that explained the goals of the Committee, briefly explained what it means for a record to be sealed under current law, and asked facility residents to respond to the Committee's targeted questions by mail by September 20, 2024. A copy of this handout/poster is included in Appendix F. Director Prawer reported that, by September 13, 2024, the handout/poster had been distributed to DOC residents utilizing tablets available to most residents and had been posted in the common areas of each DOC facility. In addition, each DOC facility library contained copies of all materials posted on the Committee's webpage. Sheriff Merry reported that information about the Committee and copies of the handout/poster were distributed to all sheriffs and county jails across the State by mid-September and that, to date, at least six facilities had posted the handout in the common areas of their facilities and on their residents' tablets. Neither the DOC facilities nor the county jails would require payment of postage on any comments sent by facility residents to the Committee.

The Committee next reviewed several types of information members requested during the August 13th meeting:

- Amanda Doherty provided the Committee with updated data on the number of post-judgment motions to seal criminal history record information filed across the State between August 8, 2022, the date Title 15, chapter 310-A took effect, and September 6, 2024, when the statistics were compiled.[9]
- Ms. Doherty also announced that the Maine Judicial Branch has newly made available on its website information describing the requirements for filing a post-judgment motion to seal a

[9] After further investigating the cases in which post-judgment motions to seal were reported in Maine Judicial Branch statistics as either pending or denied, Amanda Doherty submitted revised statistics to the Committee. Those corrected statistics are included in Part IV.B of this report.

conviction for the former Class E crime of engaging in prostitution, which includes a link to the form (CR-289) that may be used to file such a motion.[10]

- Information about racial disparities in school suspensions and expulsions that had been requested from the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations was disseminated to committee members.
- Committee staff reviewed the definition of the term "restorative justice" in State law and the ways that that term is used in statutes that pertain to both adult and juvenile corrections.
- Committee staff provided a summary of the Illinois law governing sealing and expunging criminal history, which had been cited favorably by several stakeholders.[11]
- Director Samuel Prawer discussed the logistics of implementing, through the DOC rulemaking process, a requirement that probation officers provide information regarding criminal record sealing to parolees. This type of rulemaking could help ensure that information about record sealing is provided to DOC facility residents in the future, regardless of potentially changing administrations and priorities.

Finally, committee staff provided members with copies of two written comments that had been submitted by members of the public through a committee email address established for this purpose. [12]

October 8, 2024 Meeting

The fourth meeting of the Committee was held on October 8, 2024. The meeting began with a brief review by committee staff of the following written materials submitted in response to previous information requests:[13]

- The MCCS provided additional detail regarding the language and contours of its policies governing the use of criminal history information in employment and admissions decisions.
- The UMS provided detailed information about the inquiries on the University of Maine School of Law's application for admission the about the applicant's criminal history; postsecondary education opportunities provided by UMS within State correctional facilities; and statistics about the racial makeup of both students and employees within UMS.[14]
- The Secretary of State provided further information regarding requests for public driver history records and reported that, as requested by the Committee, she had sent inquiries to but had not yet received responses from the Federal Motor Carrier Safety Administration regarding whether the Maine Legislature may, without violating federal law, establish a process for sealing all or a portion of an individual's driver history information from the general public as long as the

[10] The new Maine Judicial Branch webpage with information about sealing convictions for the Class E crime of engaging in prostitution and a link to court form CR-289 are available at: https://www.courts.maine.gov/help/criminal/sealing-prostitution.html.

[11] Additional information about the Illinois law is included in Part IV.D of this report.

[12] Notice that written public comments would be accepted had been published on the Committee's website and sent on July 31, 2024 to the interested parties email subscription lists for the Criminal Records Review Committee and for the Maine Legislature's Joint Standing Committees on Judiciary and Criminal Records and Public Safety.

[13] In response to committee member inquiries, staff also summarized "Second Chance Probation" in Illinois.

[14] A brief summary of the ways that criminal history impacts student admissions at the UMS and MCCS is included in Part IV.A. of this report.

information is not withheld from law enforcement or other states' commercial driver's license programs.

- The Uniform Law Commission provided a copy of a "Fiscal Impact Report" prepared by legislative staff when the New Mexico Legislature was considering whether to enact the Uniform Collateral Consequences of Conviction Act.

The Committee set aside the balance of the October 8, 2024 meeting for receiving public comment.[15] The Committee heard from individuals and organizations with knowledge of or experience in matters related to the Committee's charge.[16] The commenters highlighted the negative impact criminal convictions have on the ability of individuals to obtain professional licensure and employment, housing, education, and community service opportunities, which adds difficulty to the process of reintegrating into and becoming productive members of the community. They urged the Committee to consider methods to reduce these consequences of conviction including by decriminalizing the use of controlled substances and expanding the types of convictions eligible for sealing. The Committee also reviewed written testimony that had been mailed to committee staff by residents of DOC correctional facilities and county jails in response to the Committee's request for comments. Many of the residents revealed that they had little knowledge of the current record sealing process and expressed concerns regarding the negative effects that their criminal convictions will have on their ability to obtain housing, professional licensure and employment, and transportation when they are released from incarceration. Like the other public commenters, several facility residents urged the committee to consider ways to expand the types of convictions eligible for sealing in Maine.[17]

Before adjourning, committee chairs requested that committee members submit potential recommendations to staff prior to the next meeting for compilation, distribution and consideration at the fourth committee meeting. Director Samuel Prawer also invited committee members to individually visit the Maine State Prison Re-entry Fair on October 23, 2024 both to learn about the reentry services offered to DOC facility residents and to speak with Maine State Prison residents and receive their feedback on the committee's duties.

November 19, 2024 Meeting

The final meeting of the committee was held on November 19, 2024. The meeting began with a brief review by committee staff of the following written materials submitted in response to previous information requests:

- Information from Amanda Doherty of the Maine Judicial Branch summarizing, after a manual review of individual case files, why post-judgment motions to seal criminal history record information were denied between when the law took effect in August 2022 and September 2024.

[15] The Committee had, on September 17, notified members of the interested parties email lists for the Criminal Records Review Committee and the Maine Legislature's Joint Standing Committees on Judiciary and Criminal Justice and Public Safety that it would be accepting public comments and suggestions during the October 8, 2024 meeting. Notice of the invitation for public comments was also posted on the Committee's webpage.

[16] Six of these individuals also submitted written comments, which are included in the October 8, 2024 committee meeting materials. The Committee also received three written public comments from individuals who did not appear in person at the meeting, which are also included in the meeting materials.

[17] Additional information about the consequences of conviction that were raised by public commenters is included in Part IV.A. of this report.

Specifically, of the 16 motions denied, two were denied because the defendant had not actually been convicted of a crime and 14 were denied based on the defendant's failure to meet the statutory requirements for sealing at the time the motion was filed (for example, ineligible criminal conviction, failure to wait the required period, conviction of a crime or dismissal of a criminal charge as a result of a deferred disposition during the waiting period or, for motions filed before August 2024, defendant's age at the time of conviction).

- Information from Assistant Attorney General Kent Avery explaining why, when a criminal defendant enters a plea agreement resulting in dismissal of one or more criminal charges, the dismissed charges are treated by Maine criminal justice agencies as public criminal history record information, not confidential criminal history information — even if the defendant does not plead guilty to any criminal charges as part of the plea agreement. He noted that this treatment is based on the language of 16 M.R.S. §703(2)(H), which includes within the definition of "confidential criminal history record information" all "information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor *other than as part of a plea agreement*" (emphasis added).
- Data from Amy McCollett of the Department of Public Safety, State Bureau of Identification revealing that of the 2902 total active registrants on the Maine Sex Offender Registry in October, 794 were registered based solely on an out-of-state criminal conviction while 110 were registered based both on out-of-state and in-state criminal convictions.
- Information from William Montejo of the Department of Health and Human Services on the current list of crimes that cause an individual to be eligible for employment as a direct access worker under the Maine Background Check Center Rule, 10-144 C.M.R. ch. 60 (last amended Oct. 2018), and a PowerPoint presentation providing further information about the Maine Background Check Center.
- Information from Jane Sternecky of the Uniform Law Commission explaining that, although the Model Collateral Consequences of Conviction Act requires states to provide information to defendants about federal collateral consequences of their convictions, it does not authorize state courts to grant relief from those federal collateral consequences. Ms. Sternecky also noted that she was unable to find any data from Vermont or New Mexico regarding the effects of implementing the model law in those states.
- A document prepared by staff summarizing the ways in which criminal history record information related to convictions that have been sealed through the post-judgment motion to seal process may nevertheless be disclosed to certain government agencies and entities for specific purposes under either the Criminal History Record Information Act, Title 16, chapter 7, or the law governing the sealing process, Title 15, chapter 310-A. A copy of this summary is included in Appendix G.
- A document prepared by staff providing examples of Maine laws and rules that set barriers for employment, housing or other benefits based on substantiated findings of abuse or neglect. A copy of this document is included in Appendix H.

The balance of the final meeting was spent discussing the preliminary recommendations proposed by committee members prior to the meeting. These preliminary proposals were compiled by staff, circulated to committee members via email prior to the meeting and made available during the meeting in both hard copy and electronically on the Committee's website to committee members and members of the public. As the discussion progressed, several of the preliminary proposals were set aside and others

were more fully developed by committee members before they became the subject of particular motions and voting. After the meeting, staff prepared a document detailing the content of each motion that was voted during the meeting along with a chart indicating how each committee member voted. Committee members who had been absent during all or a portion of the final meeting were given until the close of business on Monday, November 25, 2024, to cast their absentee votes. A document detailing the substance of each motion and the final vote tally after all absentee votes were cast is included in Appendix H.[18] Further discussion of the recommendations supported by at least a majority of the Committee members voting is included in Part V of this report.

IV. BACKGROUND

A. Collateral and Other Consequences of Convictions in Maine

According to Maine Judicial Branch data, in 2019, approximately 21,000 individuals were convicted of crimes in state courts, including approximately 2,500 individuals convicted of murder or at least one Class A, Class B or Class C offense (sometimes referred to as "felonies" because punishable by at least one year of incarceration) and approximately 20,000 individuals convicted of at least one Class D or Class E offense (sometimes referred to as "misdemeanors" because punishable by less than one year of incarceration). A copy of these conviction statistics is included in Appendix I. [19] Although conviction rates decreased during and immediately after the pandemic, they have since begun to rebound. Approximately 12,000 to 15,000 individuals were convicted of a crime in state courts each year from 2020 to 2023, including averages of approximately 2,000 individuals convicted of felony-level crimes per year and approximately 13,000 individuals convicted of misdemeanor-level crimes per year. *Id.* Overall, according to statistics cited by the Clean Slate Initiative, as of 2019, 25% of the adult population in Maine (approximately 300,000 individuals) possessed some form of criminal record.[20]

When each of these individuals was convicted, the court imposed a sentence that may have included, for example, a period of incarceration, probation, suspension of a driver's license or community service and payment of a fine or restitution. Beyond these "direct consequences" imposed by the court, each of these individuals also faces many "collateral consequences"—federal and state statutory and regulatory restrictions that limit individuals with criminal records from accessing certain employment, professional and occupational licensing, housing, and other rights, benefits and opportunities. They also face additional challenges when private actors, including landlords, employers, insurance companies, institutions of higher education, financial institutions and others, exclude them or treat them differently after reviewing publicly available criminal history record information.

[18] Speaker Talbot Ross was unable to attend the final meeting or cast her votes by the absentee-voting deadline but did wish to record how she would have voted. Her preferences are recorded on the document included in Appendix J.

[19] Because each individual may be convicted of multiple offenses, adding the number of individuals convicted of crimes punishable by at least one year of incarceration in a particular year to the number of individuals convicted of crimes punishable by less than one year of incarceration in the same year will yield a number that exceeds the total number of individuals convicted of any crime during the year. *See* Appendix I.

[20] *See* Clean Slate Initiative, Written Public Comment (distributed at Sept. 24, 2024 committee meeting), at https://legislature.maine.gov/doc/11136.

Collateral Consequences

The federal and state statutory prohibition against the possession of most firearms by individuals convicted of either any crime punishable by more than one year of imprisonment or a domestic violence crime even though punishable by a shorter term of imprisonment is perhaps the most widely known collateral consequence of a criminal conviction.[21] Collateral consequences that automatically apply when an individual is convicted of certain crimes or categories of crimes affect many other aspects of an individual's life, however. For example, under state law:

- Individuals convicted of certain offenses are ineligible for employment as certified nursing assistants or "direct care workers"—*i.e.,* individuals who provide direct contact assistance with personal care or activities of daily living—for a period of 5, 10 or 30 years depending on the particular offense;[22]
- Individuals who have been convicted of a felony in any state or federal court at any time in the past are automatically disqualified from being commissioned or enlisted in the Maine State Guard;[23] and
- Individuals who have been convicted of burglary of a building located in the unorganized territories or of certain hunting, trapping or fishing theft offenses are ineligible to obtain any license or permit issued by the Maine Department of Inland Fisheries and Wildlife for a period of two years from the date of conviction.[24]

In addition to the various laws that automatically disqualify an individual with a criminal record from engaging in certain activities, other state and federal laws grant or expressly recognize the discretion of specific entities or persons to treat individuals convicted of certain crimes or categories of crimes differently than individuals without criminal records. As the following examples demonstrate, these collateral consequences also have the potential to impact many different aspects of an individual's life:

- In the family law context, courts presiding over adoption proceedings are required by law to conduct criminal history record checks of each prospective adoptive parent who is not a parent of the child;[25]
- In the housing context, federal law authorizes public housing agencies and owners of federally assisted housing to deny admission to an applicant if, during "a reasonable time preceding" the application, the applicant or a member of the applicant's household engaged in criminal activity involving drugs, violence or any other criminal activity that might "adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees."[26] State rules adopted by the Maine Human Rights Commission similarly clarify that the Maine Human Rights Act does not prohibit discrimination against a prospective buyer or renter based on the fact that that individual, or any the persons with whom they

[21] 18 U.S.C. §922(g)(1), (9) (2023); 15 M.R.S. §393(1), (1-B) (2024).

[22] Certified Nursing Assistant and Direct Care Worker Registry Rule, 10-144 C.M.R. ch. 128 (last amended June 15, 2019); *see also* 22 M.R.S. §1812-G (2024); 42 U.S.C. §§1395i-3, 13964 (2023).

[23] 37-B M.R.S. §224(8) (2024).

[24] 12 M.R.S. §10752(5) (2024).

[25] 18-C M.R.S. §9-304(1)(B). *But see* 18-C M.R.S. §9-316(6)(B) (generally eliminating the background check requirement in the context of confirmatory adoptions following assisted reproduction).

[26] 42 U.S.C. §13622(c).

reside, has been convicted by any state or federal court of the illegal manufacture or distribution of controlled substances; [27] and

- In the occupational licensing context, state law authorizes licensing agencies to consider whether an applicant for a state license, permit or registration has been convicted of any crime for which at least one year of incarceration may be imposed or has been convicted of a crime punishable by less than a year of incarceration if the crime involves dishonesty or a false statement or directly relates to the trade or occupation for which the license is sought. A 3-year lookback period applies to most licensing agencies, with a 10-year lookback period applicable in the context of certain health care professions. Although such convictions "shall not operate as an automatic bar to being licensed, registered or permitted," an applicant with a relevant criminal record bears the burden of proving to the licensing agency that they have been sufficiently rehabilitated to warrant the public trust.[28]

These are only a few examples of the myriad collateral consequences imposed or authorized by state and federal laws and regulations that affect many facets of an individual's participation in civil society. The Committee did not have sufficient time or resources to examine each collateral consequence mandated or authorized by federal and state law. Nevertheless, an online searchable database that identifies and categorizes all federal and state laws and regulations that impose collateral consequences has been compiled by the National Institute of Justice, American Bar Association and other partners. This database, known as the National Inventory of Collateral Consequences of Conviction, is available at https://niccc.nationalreentryresourcecenter.org/consequences, and identifies approximately 1000 collateral consequences under federal laws and regulations as well as approximately 500 collateral consequences under Maine laws and rules.

Additional consequences

Unless prohibited by law, landlords, employers, insurance companies, institutions of higher education, financial institutions and other members of the community can also make decisions that negatively impact individuals with criminal records. Statistics cited in public comments submitted to the Committee reveal that nine out of 10 employers and four out of five landlords inquire about an applicant's criminal record.[29] Studies also demonstrate that an individual with a felony record earns

[27] Maine Housing Regulations of the Maine Human Rights Commission, 94-348 C.M.R. ch. 8, §2(A)(4) (last amended Dec. 10, 2022). Indeed, a new law that takes effect on January 1, 2025, specifically authorizes a mobile home park owner or operator, in connection with an application to rent a mobile home or mobile home park lot, to pay a fee associated with the actual cost of conducting a background check. 10 M.R.S. §9093-A.

[28] 5 M.R.S. §§5301, 5303.

[29] Since 2019, state law has prohibited applications for employment in state government or for employment by a quasi-independent state entity or public instrumentality of the State from including any questions regarding an applicant's criminal history unless, due to the nature and requirements of the position, a person with criminal history might be disqualified from holding the position. *See* 22 M.R.S. §792, enacted by P.L. 2019, ch. 22. Two years later, An Act Relating to Fair Chance Employment (also known as the "Ban the Box law") generally prohibited all other employers within the State both from advertising that a person with criminal history will not be considered for a position and from requesting criminal history record information on an initial application for employment, unless a federal or state law, regulation or rule creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offense. By design, the Ban the Box law requires most employers to determine whether an applicant for employment is qualified for the position before requesting the applicant's criminal history. After determining that a particular applicant is qualified, the employer may inquire about the applicant's criminal history but must afford the applicant the opportunity to explain the circumstances regarding that criminal history, including any post-conviction rehabilitation. *See* 26 M.R.S. §600-A, enacted by P.L. 2021, ch. 404.

$7,000 less per year, on average, than a person without a criminal record and that the wages of individuals who successfully seal or expunge their criminal records increase by more than 22% within one year immediately after record clearance. In addition, 79% of people who live with a person with a criminal record reporting that they have been denied housing at least once because of that record.[30]

Public comments received by the Committee from individuals with criminal records echo these statistics. These individuals report having been offered employment opportunities that were subsequently revoked once background checks have been performed; having been deemed presumptively ineligible for licensure as certified alcohol and drug counselors (CADC) due to crimes they committed while affected by substance use disorder, even though they are successfully navigating long-term recovery and believe their history uniquely qualifies them to provide this type of counseling; having been denied separate employment working with both children and adults in behavioral health and mental health residential treatment settings due to their criminal records, despite worker shortages in these facilities; and being afraid to volunteer at their children's schools because they may be rejected on the basis of their criminal records. Written statements that the Committee received from residents of county jails and correctional facilities similarly revealing residents' concerns that their criminal records will make it difficult to obtain housing and employment when they are released from incarceration. Residents also expressed concern that their criminal history may prohibit them from obtaining certain types of professional licensure, including commercial driver's licenses, needed to obtain employment in their field of preference.[31]

The Committee explored the degree to which a criminal record affects an individual's ability to access higher education from the state's public colleges and universities. Representatives from the Maine Community College System informed the Committee that each of the State's community colleges inquire whether an applicant for admission "has ever been convicted of a crime or adjudication other than a minor traffic offense" and requests that applicants who answer in the affirmative explain the circumstances of the conviction. However, MCCC policies specify that colleges may exclude or limit the applicant's admission or enrollment only to the extent that the criminal conviction diminishes, for example, the applicant's likelihood of success in the program of academic study, ability to be placed in a required internship or clinical experience, ability to qualify for a professional license after graduation, or reliability to comply with the reasonable rules and regulations of the college. MCCC colleges may also consider the applicant's criminal history in determining, for example, whether the applicant is eligible for on-campus employment or placement in a college residence hall at one of the two campuses that offer on-campus housing. In making these determinations, MCCC policies further college officials to consider certain factors including how recently the conduct was committed; whether the conduct involved violence and the degree of criminal intent; the harm actually caused; and whether the applicant successfully completed the punishment imposed and the degree to which the applicant has been rehabilitated.

By contrast, representatives from the University of Maine System (UMS) report that, in 2020, all universities within UMS ceased inquiring about the criminal history of applicants for undergraduate

[30] *See* Sarah Johnson, Written Public Comment (distributed at the Oct. 8, 2024 committee meeting), at https://legislature.maine.gov/doc/11166, citing to Eliza Roady, Driving Impact and Equity through Criminal Record Expungement, Forbes (Nov. 29, 2023), at https://www.forbes.com/sites/sorensonimpact/2023/11/29/driving-impact-and-equity-through-criminal-record-expungement/.

[31] Copies of these comments can be found on pages 229-255 of the October 8, 2024 committee meeting materials at https://legislature.maine.gov/doc/11166.

admission. Nevertheless, there are situations where a student's criminal history has an impact. If a student applies for on-campus housing, the student is asked to disclose any criminal convictions within the past five years and whether the student is currently subject to a court order requiring supervision, restriction or monitoring (for example, a protection from abuse or protection from harassment order). In addition, certain undergraduate degree programs within UMS necessitate criminal history checks before students may be placed in non-university settings for required internships and clinical education, however. Similarly, because the University of Maine School of Law is required to certify the good character and fitness of its graduates who apply for admission to the bar, like nearly every other law school in the country, it continues to require disclosure of criminal history on its application for admission.

B. Current Process for Sealing Criminal History Record Information in Maine

In Maine, an individual who has an eligible criminal conviction and who has met the requirements set forth in Title 15, chapter 310-A of the Maine Revised Statutes may file a post-judgment motion to seal the criminal history record information associated with the conviction. If the motion is granted, the criminal history record information associated with the conviction will be treated as confidential and may not, for example, be disclosed by the State Bureau of Identification ("SBI") to members of the public—including institutions of higher education, landlords and most employers—in response to a public criminal history records check.

Statutory pre-requisites for sealing a criminal record

Under Chapter 310-A, an individual who has been convicted of an "eligible criminal conviction"—*i.e.*, any Class E crime[32] other than a sexual assault under Title 17-A, chapter 11 of the Maine Revised Statutes or certain enumerated Class D marijuana cultivation and possession offenses that are no longer illegal in the State[33]—may file a motion with the court in which they were convicted to seal the criminal history record information associated with that conviction.

To prevail in a post-judgment motion to seal a conviction for the former Class E crime of engaging in prostitution under former 17-A M.R.S.A. §853-A, the moving party must demonstrate that the prerequisites set forth in 15 M.R.S. §2262-A have been met: that at least one year has passed since the moving party fully satisfied each of the sentencing alternatives imposed for the conviction and that the moving party has not been convicted of violating Title 17-A, section 852 (aggravated sex trafficking), section 853 (sex trafficking), section 853-B (engaging a person for prostitution) or section 855 (commercial sexual exploitation of a minor or person with mental disability) within the State or for engaging in substantially similar conduct in another jurisdiction.

By contrast, to prevail in a post-judgment motion to seal a conviction for any other Class E crime other than a sexual assault or an eligible Class D marijuana cultivation and possession offense, the moving party must demonstrate that the prerequisites set forth in 15 M.R.S. §2262 have been met: that at least

[32] A list of current and former Class E crimes can be obtained from the following Maine Judicial Branch website: https://mjbportal.courts.maine.gov/StatuteSearch/Home/Index.

[33] Convictions for the following marijuana offenses may be eligible for sealing if they were committed prior to January 30, 2017: Class D aggravated trafficking, furnishing or cultivation of marijuana under former section 1105 of Title 17-A; Class D aggravated cultivation of marijuana under 17-1 M.R.S. §1105-D(1)(A)(4);

four years have passed since the moving party fully satisfied each of the sentencing alternatives imposed for the conviction to be sealed; the moving party has not been convicted of another crime in Maine or in another jurisdiction and has not had a criminal charge dismissed as a result of a deferred disposition in Maine since the time the person fully satisfied all sentencing alternatives[34] for the conviction to be sealed; and the moving party does not have any presently pending criminal charges in Maine or in another jurisdiction. Prior to August 9, 2024, the moving party was also required to demonstrate that they were aged 18 to 27 when they committed the crime underlying the conviction to be sealed.

Court proceedings

The post-judgment motion to seal process begins when an individual completes the relevant Maine Judicial Branch form—CR-289 to seal a conviction for engaging in prostitution or CR-218 to seal a conviction for another eligible offense—and files it with the court that had jurisdiction over the underlying criminal proceeding.[35] The moving party is not entitled to an attorney at public expense and, as newly revised form CR-218 makes clear, may file the post-judgment motion *pro se*. The State may be represented by the prosecutorial office that represented the State in the underlying proceeding or a different office under agreement. Once the motion has been filed, the court clerk will schedule a hearing during which the moving party and the State may submit testimony, affidavits and any reliable hearsay permitted by the court. The moving party bears the burden of establishing, by a preponderance of the evidence, that they have meet the requirements in section 2262 or section 2262-A.

If the court determines that the moving party has met the statutory burden, it must issue a written order sealing the criminal history record information for the eligible criminal conviction and notify the State Bureau of Identification ("SBI") of the order. Upon receipt of the notification, the SBI must promptly amend its records marking the criminal history record information for the sealed conviction as "confidential" and send notification of compliance with this requirement to the moving party. If the moving party has not met the statutory burden, the court must issue an order containing written findings supporting its decision not to seal the conviction record.

Loss of eligibility

Previously sealed criminal history record information must be unsealed if the individual is convicted of a new crime in Maine or in another jurisdiction. Maine law requires the individual to promptly file a written notice in the underlying criminal proceeding of the person's disqualification from eligibility. If the individual fails to file written notice and the court becomes aware of a new criminal conviction, the court must offer the person an opportunity to request a hearing to contest fact of new conviction. At the hearing, the individual has the burden of proving by clear and convincing evidence that they have not been convicted of another crime since their criminal record was sealed. If the individual fails to satisfy this burden or fails to request a hearing, the court must issue an order containing written findings of fact supporting its decision to unseal the conviction. A copy of the court's written order unsealing the

[34] Throughout Chapter 310-A, the relevant sentencing alternatives are those set forth in 17-A M.R.S. §1502(2) and include, but are not limited to, split sentences of imprisonment with probation, fine, term of imprisonment, restitution and community service

[35] Copies of these forms are available on the Maine Judicial Branch's "Sealing Your Criminal Record" website: https://www.courts.maine.gov/help/criminal/sealing.html.

conviction or concluding that the conviction may remain sealed must be provided both to the individual and to the prosecutorial office that represented the State.

If the court enters an order unsealing previously sealed criminal history record information, the court must electronically provide notice of the order to SBI. Upon receipt of the notice, the SBI shall promptly amend its records and send notification of compliance with this requirement to the convicted individual.

Current statistics regarding use of the record-sealing process

Committee member Amanda Doherty, Criminal Process Manager for the Maine Judicial Branch, provided the following data on the number of post-judgment motions for sealing filed since the current statute took effect on August 8, 2022. These numbers have been updated from the statistics discussed in this Committee's January 2024 interim report to reflect court filings and decisions through September 9, 2024.

Post-Judgment Motions to Seal Criminal History Record Information
Pursuant to Title 15, Chapter 310-A of the Maine Revised Statutes

	# Motions Filed	# Motions Granted	# Motions Denied [36]	# Motions Pending
2023	14	8	5	1
2024 (through 9/9/24)	18	6	11 denied 1 moot	0

C. Access to Sealed Criminal History Record Information

Section 2265 of Title 15 delineates when a criminal justice agency, including SBI, may disclose criminal history record information relating to sealed criminal convictions. Section 2265 first directs that sealed convictions "must be treated as confidential criminal history record information for the purposes of dissemination to the public under" the Criminal History Record Information Act (CHIRA) in Title 16, chapter 7. Pursuant to CHIRA, a Maine criminal justice agency may disclose confidential criminal history record information only:

- To another criminal justice agency or a contractor of the criminal justice agency, for purposes of administration of criminal justice and criminal justice agency employment;
- When specifically authorized by statute, executive order, court rule or decision;

[36] Of the 16 motions that have been denied, two were denied because the moving party had not actually been convicted of a crime. Each of the other denials was based on the moving party's failure to meet one or more of the statutory prerequisites for sealing their conviction—for example, the conviction was for the wrong type of offense, the individual was not the correct age at time of conviction (as required before August 9, 2024), or the individual was convicted of a crime or had a criminal charge dismissed as a result of a deferred disposition after the conviction that was the subject of the motion.

- For research, evaluation or statistical purposes under an agreement requiring the recipient to follow the confidentiality provisions of the CHIRA;
- To any person who specifically inquires "whether a named individual was summonsed, arrested or detained or had formal criminal charges initiated on a specific date";
- To the public for the purpose of announcing the fact of a specific disposition within 30 days of its occurrence;
- To the public at any time if the subject of the information specifically authorizes that it be made public; and
- To a public entity for purposes of international travel, such as issuing visas and granting citizenship. [37]

In addition to this general authority to disseminate information about confidential criminal history under CHIRA, 15 M.R.S. §2265 also authorizes a criminal justice agency to disseminate criminal history information about sealed convictions to the following additional recipients:

- The person who is the subject of the criminal conviction or their designee;
- A criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment, including for use by a prosecutor in any jurisdiction as part of the prosecution of the individual for a new crime or as permitted or required by Maine court rules of evidence and procedure;
- The Secretary of State to ensure compliance with state and federal motor vehicle laws;
- The victim or victims of the crime related to the conviction; the parents, guardian or legal custodian of a victim who is a minor; or the immediate family member, guardian, legal custodian or attorney of a victim who cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder, intellectual disability, autism or other reason;
- The Department of Professional and Financial Regulation's Bureau of Insurance, Bureau of Consumer Credit Protection, Bureau of Financial Institutions and Office of Securities to ensure compliance with applicable parts of Title 9-A (the Maine Consumer Credit Code), Title 9-B (governing financial institutions), Title 10 (governing commerce and trade), Title 24 (governing insurance), Title 24-A (the Maine Insurance Code), Title 32 (governing professions and occupations), and any state or federal requirement to perform criminal background checks by those agencies;
- Professional licensing agencies conducting criminal history record checks for licensees, registrants and applicants for licensure or registration;
- A financial institution required by federal or state law, regulation or rule to conduct a criminal history record check for the position for which a prospective employee or prospective board member is applying; and
- An entity that is "required by federal or state law to conduct a fingerprint-based criminal history record check pursuant to Title 25, section 1542-A."

Public comments and presentations to the Committee highlighted the ways in which disclosure of sealed conviction records to two of these categories of recipients impact the convicted individuals.

[37] 16 M.R.S. §705.

Inclusion of sealed criminal history record information in driver history records

After receiving queries about why the public could access information about sealed convictions for motor vehicle related Class E crimes through public driver history records, Secretary of State Bellows offered to discuss the differences between driver records and criminal records with the Committee. She explained that, unlike other conviction records possessed by criminal justice agencies, "records of traffic crimes maintained by the Secretary of State" are not governed by CHIRA.[38] Nor is the Secretary of State considered a "criminal justice agency" under either CHIRA or Title 15, chapter 310-A, the law governing the sealing of convictions.[39] Accordingly, regardless of whether the criminal history record information for conviction of a Class E traffic crime has been sealed under Title 15, chapter 310-A, neither CHIRA nor 15 M.R.S. §2265 restrict the persons to whom the Secretary of State may disseminate information about that conviction. Instead, when a court transmits an abstract of a conviction for a motor vehicle crime to the Secretary of State, the abstract is a public record under Maine law.[40] Maine law also directs the Secretary of State to create a database of driver history records, including records of conviction for motor vehicle crimes, and to make those records available to the public upon payment of the required fee.[41]

In certain circumstances, federal law also prohibits states from removing information about pardoned or sealed criminal convictions from a person's driving history record. As an example, the Secretary of State observed that federal regulations prohibit the State from "masking" a person's conviction for violation of a traffic control law—other than convictions for parking, vehicle weight or vehicle defect offenses—on the Commercial Driver's License Information System (CDILS), which must be checked before a person may be issued a Commercial Driver's License in any state.[42] For purposes of these regulations, a "conviction" includes any "unvacated adjudication of guilt … in a court of original jurisdiction or by an authorized administrative tribunal."[43] Thus, while federal law authorizes Maine to remove from the CDILS convictions for traffic crimes that have been vacated by the courts, Maine lacks authority to remove from the CDILS a conviction for any traffic crime that has been pardoned by the Governor or any Class E traffic crime that has been sealed by the court.

Consideration of sealed criminal convictions by professional and occupational licensing agencies

Several public comments received by the Committee highlighted the use of sealed conviction records by professional and occupational licensing agencies in the State. Title 5, chapter 341 of the Maine Revised Statutes governs occupational license disqualification based on an applicant's or licensee's criminal record. When deciding whether to deny, revoke or suspend occupational licenses, registrations or permits, state licensing agencies may consider the following types of criminal convictions—unless the conviction has been set aside or pardoned:

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[38] 16 M.R.S. §708(6). Indeed, because state courts do not transmit abstracts of convictions for Class D or Class E crimes under Title 29-A (governing motor vehicles) to the SBI, s*ee* 25 M.R.S. §1547, these conviction records are not disclosed to members of the public who submit a public criminal history record request to SBI.

[39] *See* 16 M.R.S. §703(4); 15 M.R.S. §2261(4).

[40] 29-A M.R.S. §2607(3).

[41] 29-A M.R.S. §252(1), (1-A).

[42] *See* 49 C.F.R. §384.226; 49 C.F.R. §384.205.

[43] See 49 C.F.R. §384.105(a) (providing that the definitions in Title 49, part 383 if the Code of Federal Regulations apply to Part 384); 49 C.F.R. §383.5 (defining "conviction").

- Crimes punishable by less than one year of incarceration—including crimes sealed under current law—if the crimes involve dishonesty or false statement; the crimes directly relate to the trade or occupation; or, if the applicant is seeking licensure in certain health-care-related professions, the crime involves sexual misconduct; and
- All crimes punishable by at least one year of incarceration—none of which are eligible for sealing under current law.

However, if the licensee or applicant demonstrates that they are "sufficiently rehabilitated to warrant the public trust," the licensing agency may not revoke or suspend a licensee's or deny the applicant's license, registration or permit based on the conviction.

The law further restricts when a conviction may be considered by an occupational licensing agency. As a general rule, state licensing agencies may suspend, revoke or impose other discipline on licensees or deny applicants for licensure or registration based on the types of criminal convictions described above within three years of the licensee's or applicant's final discharge, if any, from the correctional system for each conviction. Due to the limited 3-year lookback period, it is not possible for these agencies to consider most convictions sealed under Title 15, chapter 310-A, since no convictions other than for the former Class E crime of engaging in prostitution are eligible for sealing until at least four years after the person fully satisfies each of the sentencing alternatives imposed by the court. However, a 10-year lookback period applies to certain enumerated state licensing agencies—including the state licensing agencies that oversee most health-care-related professions in the State—rendering it possible that the licensing agency may be entitled to consider a criminal conviction that the licensee or applicant successfully sealed under the process established in current law.

Other methods for accessing information about the conduct underlying a sealed conviction

The statutory restrictions on access to sealed criminal history record information are designed to ensure that individuals whose records have been sealed will not be treated differently due to their convictions, except in circumstances where the Legislature specifically concluded that access to sealed records is essential for public safety purposes. Indeed, an individual "whose eligible criminal conviction is the subject of a sealing order . . . may respond to inquiries from persons other than criminal justice agencies and other than entities that are authorized to obtain the sealed criminal history record information under section 2265 by not disclosing the existence of the eligible criminal conviction without being subject to any sanctions under the laws of this State."[44]

Several committee members were concerned to learn that, even in circumstances when a conviction has been sealed, the conduct underlying the conviction may nevertheless be considered by entities that are not authorized by 15 M.R.S. §2265 to access sealed criminal history record information if that conduct gave rise to an administrative substantiation of the individual for abuse or neglect. For example, the Department of Health and Human Services (DHHS) is charged by law with maintaining a registry of certified nursing assistants (CNAs) and direct care workers (DCWs). If DHHS receives a complaint alleging that a CNA or DCW engaged in abuse, neglect, or exploitation of or the misappropriation of the property of a client, patient or resident, it must conduct an investigation and issue a written decision that the allegation is either substantiated or unsubstantiated. The aggrieved CNA or DCW has 30 days to

[44] 15 M.R.S. §2266.

request an administrative hearing to challenge a substantiation and, if unsuccessful, may further appeal the substantiation to the Superior Court. If the CNA or DCW does not appeal the substantiation or the appeal is unsuccessful, the substantiation must be noted on the registry and the individual is ineligible for continued or future employment as a CNA or DCW.[45] This ineligibility persists even if the conduct that gave rise to the substantiation also gave rise to a criminal conviction that is later sealed through the current post-judgment motion to seal process.[46] The Child and Family Services and Child Protection Act and the Adult Protective Services act create similar administrative processes for DHHS to receive complaints alleging abuse, neglect or exploitation of children or of incapacitated or dependent adults and for the creation of registries of substantiated allegations.[47] A court's subsequent decision to seal a criminal conviction based on the conduct underlying the substantiation does not affect the existence of a substantiation of abuse, neglect or exploitation on either the child protective services registry or the adult protective services registry.

Although it did not conduct an exhaustive review of state and federal laws, the Committee is aware of multiple state laws and rules that require an entity that does not have access to sealed criminal history record information to consider substantiations of abuse or neglect. Examples include:

- Employers may not employ direct access workers if a comprehensive background check conducted by the Maine Background Check Center—including checks of child protective services records and the Certified Nursing Assistant and Direct Care Worker Registry—reveals a substantiated finding of patient or resident abuse, neglect or exploitation or misappropriation of patient or resident property;
- If any adult household member of an applicant for licensure as a family child care provider has a substantiated finding of child abuse or neglect from DHHS or a comparable department in another state where the relative resided within the previous five years, the license may not be granted; and
- DHHS is not required to consider an adult relative for placement of a child who has been removed from the child's home if the adult relative has been substantiated for child abuse or neglect by DHHS or if a substantially equivalent determination has been made in another state.[48]

Several members of the Committee believe it is important that the Legislature or a future iteration of the Committee take time to carefully consider whether and when public policy supports continuing to subject an individual to the legal penalties associated with an administrative substantiation of abuse or neglect based on the same conduct as a criminal conviction that has subsequently been sealed by the court due after the individual met all of the statutory requirements—including fully satisfying the criminal sentence and avoiding further criminal behavior—imposed by the Legislature for sealing of that conviction.

[45] *See* 22 M.R.S. §1812-G (2024); 10-144 C.M.R. ch. 128, §4 (last updated May 16, 2019).

[46] At least 12 months after entry of the substantiation on the registry, a CNA or DCW may petition DHHS for removal of certain types of substantiations; however, removal is not at all tied to whether the court has subsequently entered an order sealing a criminal conviction for the same conduct. *See id.*

[47] 22 M.R.S. ch. 98-A (Adult Protective Services Act) and ch. 1071 (Child and Family Services and Child Protection Act).

[48] *See* Appendix H for citations to these laws and rules and for additional examples of state statutes and rules that require consideration of an individual's substantiations for abuse, neglect or exploitation.

D. Record-Clearing Laws in Other States

The Committee spent significant time throughout the committee process learning about the varied approaches to adult criminal record clearing in other states. Senior Legislative Researcher, Darlene Shores Lynch, informed the Committee about the adult record-clearing laws enacted in states that have adopted clean slate legislation, providing background information for the Committee regarding the various types of record relief laws, the range of convictions eligible for clearing, the varied prerequisites for record clearing, and challenges associated with these laws.[49] In addition, stakeholders and other public commenters highlighted record-clearing legislation adopted in other states, including Illinois, that they suggested might serve as a useful model for amending Maine's current petition-based, record-sealing law.

Types of record-clearing: petition-based record clearing & Clean Slate (automatic) record clearing

State record-clearing laws generally adopt one of two approaches. Many states have adopted petition-based criminal record relief processes that require an individual with a criminal record to determine whether their criminal record information is eligible for relief and whether they believe they have satisfied any other statutory prerequisites for relief before filing a petition with the court to seal or expunge their conviction records. Since the burden is on the individual, barriers identified with a petition-based process include, but are not limited to, the difficulties and amount of time expended to gather required documents and file the petition; the financial costs associated with, for example, preparing the petition and missing work to attend court hearings; the limited degree to which the public is aware of the petition process; and the limited access to and potentially burdensome cost of exercising one's option to hire counsel to assist with the petition.

As an alternative (or sometimes in addition to) petition-based criminal record clearing, 12 states[50] have adopted "clean slate laws," which shift the burden from the individual to the state to initiate and manage the relief process by utilizing an automatic record clearing system. Under Clean Slate approaches to record clearing, the state assumes responsibility for identifying eligible persons and cases based on statutory requirements; completing detailed analyses and reviews of court records, state criminal history records, and other systems and data to confirm eligibility; and then initiating the record clearing process on the individual's behalf. Clean slate laws are a relatively new approach to record clearing; Pennsylvania was the first state to enact such a law in 2018.

Ms. Shores Lynch identified several important issues and challenges that states have had to address as they adopt and implement clean slate laws. First, states must determine which of the potentially numerous government agencies that possess conviction records bears the responsibility for both managing the automated process and ensuring that other agencies are notified of and adhere to the results of that process. Different states have charged different agencies with managing the process: in Utah and Pennsylvania, for example, courts are responsible for determining which convictions are eligible for automatic record clearing while Michigan and Oklahoma, the process begins with initial eligibility determinations by the State Criminal History Repository followed by court review of case

[49] A copy of the chart prepared by Ms. Shores Lynch comparing the record-clearing laws in the 12 states that have adopted Clean Slate legislation is included in Appendix E.

[50] The 12 states that have adopted clean slate legislation are California, Colorado, Connecticut, Delaware, Michigan, Minnesota, New Jersey, New York, Oklahoma, Pennsylvania, Utah, and Virginia.

records to ensure the validity of those determinations. In addition to identifying the agencies responsible for initiating or managing the record clearing process, states must ensure that the automated process is efficient and take time to develop the technological or other resources necessary to implement the process. Sates have also experienced challenges notifying notify individuals whose records have been cleared through the automated process given that contact information maintained by implementing agencies may be out of date.[51] Without notification, individuals with automatically cleared records will not be aware, for example, that they may no longer be required to disclose their criminal records when seeking employment, education, housing or other services or benefits. Some states, like Utah, have attempted to address this challenge by establishing online portals where an individual may proactively check the status of their own public criminal history record. Importantly, due to these and other financial and administrative burdens of implementing clean slate laws, of the 12 states that have enacted clean slate laws, only five states had begun automating the clearing of criminal records at the time of Ms. Shores Lynch's presentation, with an additional two states scheduled to begin automatic clearing in the summer of 2024.[52] In addition, in light of implementation issues experienced in other states, New York established a three-year implementation timeline for its automatic record clearing law.

Effect of Record Clearing: expungement and sealing

Regardless of whether states adopt petition-based or Clean Slate record-clearing, or both, states must determine the effect that their record-clearing processes will have on access to cleared records of conviction. State laws generally take two approaches, providing either for expungement or sealing of conviction records, with some states applying both approaches, depending on the type of conviction being cleared. Unfortunately, the definitions of the terms "expungement" and "sealing" vary from state to state and, unhelpfully, the two are often used interchangeably. In addition, some states use alternative terms like "erasure" or "limited access" to describe the effects of their record-clearing processes. Nevertheless, "expungement" is generally considered to be the complete erasure or physical destruction of government records of the conviction. Regardless of the term used in their laws, of the 12 states' laws reviewed by Ms. Shores Lynch, only Delaware, Minnesota, Pennsylvania, and Oklahoma actually destroy records under very specific eligibility criteria and through a petition-based process rather than through a Clean Slate process. By contrast, the "sealing" of a criminal record is generally understood to mean that the government retains the record of conviction but renders it unavailable for public inspection, thereby preventing access to the record for most employment, housing, and other purposes. Sealing laws frequently authorize the defendant, criminal justice agencies and other select agencies to access sealed records for specific purposes, however.

Criteria for record clearing: types of convictions eligible for clearing and other statutory prerequisites

Each of the 12 states that have adopted clean slate laws has established different criteria that must be met before a conviction record may be cleared. In the majority of these states, only certain misdemeanors and less serious felonies are eligible for records relief through an automated process, although more serious offenses may be eligible for relief through a petition-based process.[53] Most of the

[51] Petition-based record relief programs can mitigate the issue of lack of notification contact information as the petitioner typically provides up to date contact information as part of the formal papers filed with the court.

[52] The five states that had begun automatic clearing of criminal records were California, Connecticut, Michigan, Utah and Pennsylvania; while Delaware and Colorado were scheduled to begin automatic record clearing in the summer of 2024.

[53] Including, non-convictions, arrests and pardons are also eligible.

12 states with clean slate laws do not permit either petition-based or automatic record clearing of convictions involving violent acts, domestic violence or vulnerable populations or convictions that require sex offender registration. Additional prerequisites adopted by various states for record-clearing through both petition-based and automated processes include (a) limiting the number of offenses that may be sealed; (b) requiring individuals to wait a specific period of time after the conviction or completion of any sentence of imprisonment, without being convicted of further offenses, before a conviction may be cleared—generally, misdemeanors have a shorter waiting period of 2-5 years, whereas felonies, if eligible at all for relief, have a waiting period of 5-10 years; and (c) requiring individuals to pay all court fines, fees, and restitution associated with the conviction or, in at least one state, requiring that the individual maintain a good-faith effort to pay court-ordered restitution.

Record clearing in Illinois

The Committee also reviewed the broad contours of Illinois' record-clearing legislation after several public commenters suggested it as a model for future legislation in Maine.[54] Although the details of this law are quite complex, the law, briefly summarized, provides that an individual with an eligible criminal conviction may file a petition with the court in the county where the charges or conviction arose. Most misdemeanor and felony convictions may be sealed by the court through the petition-based process if at least three years have passed after the individual finally completed the sentences imposed for all of the eligible criminal convictions the individual seeks to seal. Conviction records may not be sealed for the following types of crimes, however: minor traffic offenses, driving under the influence and reckless driving; certain domestic violence offenses, certain sexual offenses (but not engaging in prostitution) and certain offenses against animals; and convictions for new felonies after a prior felony conviction has been sealed. Alternatively, the court may expunge a conviction if: the conviction has been reversed or vacated; the conviction has been pardoned by the Governor, including convictions for certain minor cannabis offenses not associated with convictions of violent crimes that have been identified by the State Police and subsequently pardoned; or the individual convicted is an honorably discharged veteran who has received a certificate of expungement for certain minor felonies from the Illinois Prisoner Review Board.

If a conviction record is "sealed" by the court, it may be accessed only by law enforcement agencies, the Department of Child and Family Services, and, if the conviction involved a felony, by employers required by law to conduct fingerprint-based background checks. By contrast, if a conviction is "expunged," the record must be destroyed by the arresting agency and impounded by the courts and Illinois State Police, who must reply to inquires about these records as if they never existed. Notably, an individual with an expunged or sealed record may answer "no" to the question, "*have you ever been convicted"* on job applications.[55] If an employer discovers that an individual has an expunged or sealed

[54] *See* Criminal Identification Act, 20 ILCS 2630. Although the Illinois law provides authority for sealing and expunging both conviction records and non-conviction records (arrests, second chance probation, etc.), the report focuses on the provisions of the law applicable to conviction records. A more extensive summary of the Illinois law prepared by committee staff is included in the September 24, 2024 committee meeting materials and a detailed guide from the Illinois Supreme Court entitled, "How to Expunge and/or Seal a Criminal Record" is available at https://www.illinoiscourts.gov/documents-and-forms/approved-forms/circuit-court-standardized-forms-suites/expungement-sealing/ (last visited November 2024).

[55] In Illinois, private employers with 15 or more employees are not allowed to ask if a person has ever been convicted of a crime and it is against the law for employers to ask if a person has expunged or sealed criminal records unless they are one of the agencies authorized by law to access those records.

criminal record, the Illinois Human Rights Act prohibits the employer from discriminating against the individual based on that record.

E. Separation of Powers

As a previous iteration of the Criminal Records Review Committee had done in 2021, in 2023 this committee explored the issue of how the separation of powers doctrine enshrined in the Maine Constitution impacts the Legislature's ability to enact laws affecting a persons' criminal conviction or sentence. The relevant provisions of the Maine Constitution discussed by this Committee in the past include:

> **Article III**
>
> **Section 1. Powers distributed.** The powers of this government shall be divided into three distinct departments, the legislative, executive and judicial.
>
> **Section 2. To be kept separate.** No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.
>
> **Article V, Part First**
>
> **Section 11. Power to pardon and remit penalties, etc.; conditions.** The Governor shall have power to remit after conviction all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. Such power to grant reprieves, commutations and pardons shall include offenses of juvenile delinquency.

As this Committee explained in its January 2024 Interim Report:

> The Maine Supreme Judicial Court has interpreted the separation of powers doctrine in three separate cases relevant to the Committee's discussion. In *State v. Hunter,* the court struck down a statute that permitted courts to resentence a person based on that person's "progress towards a noncriminal way of life," holding that it was an unconstitutional attempt to invest the judiciary with the power to commute sentences, which power is granted expressly to the Governor under the Maine Constitution.[56] In *Bossie v. State*, the court held that a statute which increased "good-time" reductions available to prisoners that was expressly applicable to persons in the custody of the Department of Corrections prior to its effective date has the effect of commuting the lengths of existing sentences, an infringement on the Governor's express commutation authority under the Maine Constitution.[57] And similarly in *Gilbert v. State*, the court held that a law allowing the parole board to grant a full discharge to a prisoner if he successfully completed 10 years of parole could not be applied to a person required to serve a full life sentence, because it effectively commuted that person's sentence.[58]

[56] *State v. Hunter*, 447 A.2d 797 (Me. 1982).
[57] *Bossie v. State*, 488 A.2d 477 (Me. 1985).
[58] *Gilbert v. State*, 505 A.2d 1326 (Me. 1986).

> It is not clear whether any statute expunging or permanently deleting criminal history record information would be held unconstitutional. It is also unclear whether it's possible to be done through statute alone or if it would require a constitutional amendment.

Due to the significant, outstanding issues regarding how Maine's separation of powers provisions limit the Legislature's ability to enact record-clearing legislation, committee chairs Senator Bailey and Speaker Talbot Ross invited Attorney Derrick Langhauser to the first committee meeting in 2024 to provide further clarity on this issue. Attorney Langhauser is particularly qualified to provide insight on separation of powers issues in the State, especially those involving the gubernatorial pardon and commutation power, because he has served as chief legal counsel to Maine Governors John R. McKernan and Janet Mills, constitutional counsel to United States Senator Olympia Snow and taught constitutional law for the University of Maine School of Law. He also administered the pardon process for Governors McKernan and Mills and authored *Powers and Duties of a Governor*, a book recently distributed by the National Governors' Association to every governor and governor's counsel in the nation.

Mr. Langhauser began by reviewing the text of Sections 1 and 2 of Article III of the Maine Constitution, quoted above, which establish strict separation between the three coordinate branches of government in the State. As the *Hunter, Bossie* and *Gilbert* cases demonstrate, the Maine Constitution's explicit separation of powers between "distinct" branches of government within Article III has been interpreted as establishing a stricter separation between the branches of Maine's government than that created by structure of the U.S. Constitution and many other state constitutions, which only impliedly separate government authority between three branches of government. For this reason, Mr. Langhauser noted, the fact that certain models of criminal record clearing legislation have not be subject to constitutional challenge in other states (or federally) does not necessarily imply that the same model of criminal record clearing legislation would survive a constitutional challenge in Maine.

Mr. Langhauser advised that the outcome of a potential separation of powers challenge to record sealing or expungement legislation is impossible to predict with certainty and necessarily depends on the specific details of the legislation enacted. As it seeks to avoid separation of powers issues, the Committee should carefully consider whether it supports legislation to expunge, seal or vacate a criminal record and whether the legislation will apply only prospectively to criminal convictions entered after the legislation's effective date or also retroactively to convictions previously entered by state courts. Each of these considerations has a potentially different impact on the question of constitutionality.

The Maine Supreme Judicial Court has interpreted the separation of powers clauses within Article III as prohibiting one branch of state government from exercising any power that has been *expressly* delegated to another branch of government within the Constitution of Maine. In addition, in 1981 the Maine Attorney General opined that, in addition to the powers it expressly grants each branch of state government, the Maine Constitution allocates to each branch of government certain *implied or inherent* powers necessary to accomplish the powers it has been expressly granted. Although the Maine Supreme Judicial Court has not announced the appropriate separation of powers test that will be applied when one branch's exercise of power relates to the necessary and implied powers of another branch of state government, the Attorney General suggested that the Court would adopt the test applicable to separation

of powers challenges under the U.S. Constitution—whether the exercise of power by one branch unduly impedes or infringes on a necessary and inherent power of the other branch of government.[59]

Under these tests, Maine legislation that appears to operate as an act of clemency or pardon—perhaps by lessening or eliminating the legal consequences of a previously imposed conviction based on a legislative determination that a given punishment is no longer appropriate when applied to a certain individual or group of similarly situated individuals—may be held to violate the separation of powers clauses of the Maine constitution. To the extent Maine legislation requires individualized assessments of the appropriateness of penalties or vacatur of previous judgments, the legislation may also or instead be seen as infringing on the judicial power expressly granted to the judicial branch under Article VI, Section 1 of the Maine Constitution. Mr. Langhauser suggested these separation of powers concerns related to executive branch's pardon and clemency power and the judicial branch's judicial power may be heightened when a law seeks to retroactively alter the legal effects of a criminal conviction rather than merely establishing the punishments and consequences that may be imposed prospectively on future criminal conduct.

Mr. Langhauser further advised the Committee to carefully consider the language employed in any record clearing legislation it recommends. He noted that laws enacted in states across the country use words like "expungement", "sealing", and "vacatur" to describe the effects of record-clearing legislation. To date, he noted, the word "expungement" has not been used in Maine law, which does not contemplate a process for completely erasing or destroying all records of a particular conviction. Indeed, records of conviction are not destroyed even upon issuance of a full pardon by the Governor; instead, like a sealed criminal record, pardoned records are considered confidential criminal history and remain available to, for example, criminal justice agencies in the State. If the Legislature adopts legislation providing for automatic "vacatur" of criminal records—in effect, setting aside or annulling a previously imposed conviction—as is mentioned above, such legislation may trigger separation of powers concerns due to the potential infringement on the express powers of the judicial branch.[60]

Finally, Mr. Langhauser observed that the current post-judgment motion to seal criminal history record information process established in Title 15, chapter 310-A of the Maine Revised Statutes, summarized in Part IV.B of this report, has several features that may bolster its ability to withstand a separation of powers challenge, including that: (a) the law proposes to seal, rather than vacate or expunge, certain criminal convictions for some but not all purposes—involving a traditional legislative weighing of public policy concerns regarding who should have access to conviction information and for what purposes; (b) it applies only after the individual has satisfied the sentence imposed—thus it does not, like an executive act of clemency or pardon, have the potential to shorten a previously imposed sentence; and (c) it requires the participation of the judicial branch as well as notice to and an opportunity for the executive branch (in the guise of a prosecutor) to participate in the sealing process.

[59] *See* Op. Me. Atty. Gen. 1981-49. A copy of this Attorney General opinion is included in the August 13, 2024 committee meeting materials.

[60] For more information on the definitions of "expungement," "sealing," "vacatur" and related terms, see page 2 of the 2021 report of the Criminal Records Review Committee, which is available at https://legislature.maine.gov/doc/7761.

F. Model Collateral Consequences of Conviction Act

Jane Sternecky, Legislative Counsel to the Uniform Law Commission (ULC), described the adoption and provisions of the Model Collateral Consequences of Conviction Act (MCCCA), formerly known as the Uniform Collateral Consequences of Conviction Act (UCCCA), to the Committee.[61] She explained that the Uniform Law Commission is a nonprofit, nonpartisan organization comprised of more than 350 commissioners from each states, including three Maine commissioners, who draft uniform and model acts within their areas of expertise over an extended, multi-year process of study and review. The UCCCA was promulgated by the ULC in 2009 and revised in 2010 to incorporate the U.S. Supreme Court's decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010), that failure to inform a criminal defendant that the defendant's guilty plea carries a risk of deportation violates the Sixth Amendment to the U.S. Constitution. The law, which has been enacted in both Vermont (2014) and New Mexico (2021), was redesignated from a uniform law to a model law by the ULC in 2022 to provide additional flexibility to enacting states in selecting which portions of the law to adopt.

The MCCCA is largely a procedural act, which Jane Sternecky identified as having three key pillars designed to clarify the substantive legal effects of a criminal conviction that already exist in state law. The first key pillar of the MCCCA is the requirement that all collateral consequences of conviction created in the state's constitution, laws and regulations, and provisions for avoiding or lessening those consequences, be collected by the appropriate agency in a single document that is then published online. This document must include both collateral sanctions (automatic bars) and disqualifications (discretionary penalties), which the MCCCA defines as follows:

> "Collateral sanction" means a penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment, or costs of prosecution.
>
> "Disqualification" means a penalty, disability, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction of an offense.

States may rely on the National Inventory of Collateral Consequences of Conviction prepared by the National Institute of Justice, which is available online, to fulfill this requirement.[62]

The second key pillar of the MCCCA is the requirement that defendants be notified that they may be subject to collateral consequences as a result of a criminal conviction, including by providing a link to the compiled list of collateral consequences under state law, at three important points during their criminal case: (1) at or before the formal notification of charges, so a defendant can make an informed decision about how to proceed; (2) at the time of sentencing; and (3) if the defendant is sentenced to a period of incarceration, prior to leaving custody. Trial courts are further required to confirm that defendants wishing to plead guilty or *nolo contendere* have received and understood the notice of

[61] A copy of Ms. Sternecky's PowerPoint presentation is included in the October 8, 2024 committee meeting materials.

[62] *See* National Inventory of Collateral Consequences of Conviction, at https://niccc.nationalreentryresourcecenter.org/ (last visited November 2024).

collateral consequences and have had an opportunity to discuss these consequences with defense counsel. In this way, the MCCCA is similar to the current court processes applicable when a defendant pleads guilty to murder or a Class A, B or C crime under Rule 11 of the Maine Rules of Unified Criminal Procedure and to the requirement that defendants be notified that there may be immigration consequences as a result of pleading guilty to any crime.

The third key pillar of the MCCCA involves relief from collateral consequences. The MCCCA creates two different forms of relief, one available as early as sentencing designed to facilitate reentry (Order of Limited Relief) and the other available only after a period of law-abiding conduct (Certificate of Restoration of Rights). An Order of Limited Relief permits the criminal court or an agency designated by the State to lift the automatic bar of a specific collateral sanction, leaving, for example, the licensing agency or public housing authority that is ordinarily required to apply the automatic bar free to consider whether to disqualify an individual based on the facts and circumstances underlying the conviction. To obtain such an order, a convicted individual must prove that (a) granting the petition will materially assist the individual in obtaining employment, education, housing, public benefits or occupational licensing; (b) that the individual has a substantial need for relief in order to live a law-abiding life; and (c) that the relief would not pose an unreasonable risk to the safety or welfare of any person or the public. The second form of relief, a Certificate of Restoration of Rights, may be issued by a board or agency designed by the State to relieve an individual of all except a few designated collateral sanctions of conviction. To obtain a certificate, the individual must demonstrate (a) they are engaged or seeking to engage in a lawful occupation or activity or have a lawful source of support; (b) they are not inexcusably in violation of any criminal sentence; (c) they are not subject to pending criminal charges; and (d) granting the certificate would not pose an unreasonable risk to the safety or welfare of any person or the public. Because these findings must be made before a certificate is granted, it offers potential public and private employers, landlords and licensing agencies concrete and objective information about an individual under consideration for an opportunity or benefit and a degree of assurance about that individual's progress toward rehabilitation thereby facilitating the reintegration of individuals whose behavior demonstrates their efforts to behave in accordance with the law.

Additional provisions of the MCCCA establish standards that a decision-maker can use to individually assess an individual with a criminal conviction to determine whether they should be disqualified based on a discretionary penalty established by law; provide a mechanism for an adopting state to establish the legal effect of federal and out-of-state convictions, including convictions that have been expunged, sealed, annulled, set aside or vacated in the issuing jurisdiction; and establish that pardoned convictions and charges that have been dismissed as part of a deferred disposition may not be used as the basis for imposing collateral consequences.

V. RECOMMENDATIONS

The Committee focused on its duties in Resolve 2023, chapter 103 as it developed its final recommendations. Section 5 of the resolve directed the Committee to study and explore options for expunging, sealing, vacating or otherwise limiting public access to criminal records in the State, including by considering whether convictions for certain types of conduct should be treated differently, specifically convictions for conduct decriminalized in the State over the last 10 years or currently under consideration for decriminalization, conduct that is nonviolent or involves the use of marijuana and

conduct committed by victims and survivors of sexual exploitation and sex trafficking. Section 5 further directed the Committee to examine information regarding the current use and dissemination of criminal records and to develop options to manage criminal records. In examining these issues, Section 5 directed the Committee to invite comments and suggestions from interested parties, including comments and suggestions regarding the harms and benefits of making criminal records confidential and procedures for limiting public accessibility of records as well as. In light of these duties, and after careful consideration of the information received over the past two years, the Committee recommends the Legislature take the following actions.[63]

A. Amend Title 15, chapter 310-A, the law governing post-judgment motions to seal criminal history record information to:

i. Allow sealing, with no required waiting period, of convictions for any conduct that has been decriminalized in the State—including by eliminating the waiting period in current law before a motion may be filed to seal convictions for decriminalized conduct involving marijuana or for the former Class E crime of engaging in prostitution. (20 in favor; 0 opposed; 5 abstained)

Under current law, individuals convicted for engaging in conduct involving marijuana that was subsequently decriminalized through the adult use cannabis law and individuals convicted of the Class E crime of engaging in prostitution, which was decriminalized by the 131st Legislature, may file a post-judgment motion requesting that the trial court seal the criminal history record information related to their convictions either four years after they have fully satisfied each of the sentencing alternatives imposed for the relevant marijuana conviction or one year after they have fully satisfied each of the sentencing alternatives imposed for the engaging in prostitution conviction. The committee members who voted unanimously agree that individuals with criminal convictions for engaging in any conduct that has been decriminalized in the State, not just these few specifically identified decriminalized offenses, should have the option to request that the court seal the records of their convictions immediately. This relief should be available even if the conduct for which the person was committed is currently classified as a civil violation or a traffic infraction. Committee members did not believe that conduct decriminalized more than 10 years ago should be treated less favorably than conduct decriminalized within the past 10 years.

Several members of the Committee expressed concern, however, that the process for filing a post-judgment motion to seal criminal history record is too cumbersome, as evidenced by the small number of individuals who have filed motions since the sealing law took effect. They suggest that only an automatic sealing process can ensure that individuals with convictions for decriminalized conduct will obtain the relief from many collateral consequences and stigma that a sealing order provides. After carefully considering this proposal, however, the Committee ultimately determined that further study is required before an automatic sealing process can be established. For example, although conduct giving rise to a conviction under a subsequently repealed criminal statute might appear to have been decriminalized, it is possible that the conduct nevertheless remains criminal under a different statute, which may have a different name or have been completely restructured over time. Yet, the sealing

[63] Speaker Talbot Ross was unable to attend the final meeting or cast her votes by the absentee-voting deadline but did wish to record how she would have voted. Her preferences are recorded on the document included in Appendix J but are not included in the vote totals reported in this Part.

process cannot be automated unless the specific criminal offenses involving conduct that is no longer criminal in the State are clearly identified. For this reason, committee members recommend that, while further study of this topic continues, individuals who believe their convictions are based on conduct that has since been decriminalized in the State have the opportunity to file a post-judgment motion. A judge will then examine the specific circumstances of their case to ensure that the conduct for which they were convicted has been decriminalized before granting the motion.

Draft legislation to implement this recommendation is included in Appendix K.

ii. Expand the list of crimes eligible for sealing to include convictions for any drug possession crime in 17-A M.R.S. §1107-A and clarify that a person may request that more than one conviction for any eligible crime be sealed if the person has satisfied all of the requirements for sealing since the date of the last conviction to be sealed. (19 in favor; 3 opposed; 3 abstained)

A majority of the committee members who voted recommend that individuals who have been convicted of drug possession crimes set forth in 17-A M.R.S. §1107-A, regardless of the class of those crimes, have an opportunity to seal criminal history record information related to each of these convictions through the post-judgment motion to seal process as long as they have met all of the statutory prerequisites for sealing set forth in 15 M.R.S. §2262—*i.e.,* the individual does not have any pending criminal charges and at least four years have passed since the individual finally satisfied the sentencing alternatives imposed for all of the convictions to be sealed and, during those four years, the individual has not been convicted of another crime in this State or another state and has not had a criminal charge dismissed in this State as a result of a deferred disposition.

During their discussion, committee members observed that current law suggests an individual may only petition the court to seal a single eligible criminal conviction; however, many individuals struggling with substance use disorder engage with the criminal justice system multiple times before they successfully enter recovery. Committee members recommending that the existing sealing law be clarified to address this issue believe the law was always intended to allow individuals with multiple convictions for eligible crimes to obtain relief through the post-judgment motion to seal process if they successfully navigate the 4-year waiting period after completing all aspects of their final criminal sentence and they do not currently have pending criminal charges.

Draft legislation to implement this recommendation, along with recommendations A(iii) and A(iv), is included in Appendix L.

iii. ***Expand the list of crimes eligible for sealing, as long as all of the other requirements for sealing in current law are met, to include convictions for all Class A, B and C drug offenses, except convictions for Class A aggravated trafficking or convictions involving the use of a firearm.*** (14 in favor; 8 opposed, including 4 who support further study of the issue; 3 abstained)

A majority of the committee members who voted also recommend that the current post-judgment motion to seal criminal history record information process be available to individuals who have been convicted of any Class A, B or C drug offense—including, for example, many drug trafficking, cultivating,

importation and other offenses currently set forth in Title 17-A, chapter 45—except any aggravated trafficking offense that is a Class A crime and except any offense that involved the use of a firearm. Individuals with convictions for these offenses should also be required to meet all of the statutory prerequisites for sealing set forth in 15 M.R.S. §2262 and described in the discussion of recommendation A(ii) above.

Draft legislation to implement this recommendation, along with recommendations A(ii) and A(iv), is included in Appendix L.

iv. Expand the list of crimes eligible for sealing, as long as all of the other requirements for sealing in current law are met, to include convictions for most Class D crimes except (a) any Class D crime that would not have been eligible for sealing under LD 1459 from the 130th Legislature; (b) Class D assault if the defendant also was or could have been charged with a crime under Title 17-A, chapter 11 (sexual assaults) or chapter 12 (sexual exploitation of minors) arising out of the same conduct; and (c) violation of condition of release committed while the defendant was released on preconviction or postconviction bail for a charge under Title 17-A, chapter 11 (sexual assaults) or chapter 12 (sexual exploitation of minors). (15 in favor; 4 opposed; 6 abstained)

Currently, only individuals convicted of Class E crimes or of specific Class D crimes involving decriminalized conduct may obtain relief through the post-judgment motion to seal process. A majority of the committee members voting support allowing individuals convicted of nonviolent Class D crimes to utilize the post-judgment motion to seal criminal history record information process if they have met all of the statutory prerequisites for sealing set forth in 15 M.R.S. §2262 and described in the discussion of recommendation A(ii) above. Like the Class E crimes currently eligible for sealing, Class D crimes are punishable by less than one year of imprisonment and, for that reason, are commonly referred to as misdemeanor rather than felony offenses. Nevertheless, several committee members opined that individuals with convictions for Class D crimes may face more significant collateral consequences and difficulties securing housing and employment than individuals who only have convictions for Class E crimes. For this reason, the post-judgment motion to seal process may be more attractive to and have a greater impact on qualified individuals convicted of Class D crimes.

To ensure that only convictions involving nonviolent conduct are newly eligible for sealing under this proposal, the members of the committee voting in favor of this proposal recommend that the ***following Class D crimes should remain ineligible for sealing***:

(a) Any Class D crime that would have been ineligible for sealing under LD 1459 from the 130th Legislature:[64]

- Any current or former Class D crime under Title 17-A, chapter 11 (sexual assaults), chapter 12 (sexual exploitation of minors), §852 (aggravated sex trafficking), §853 (sex trafficking) and §855 (commercial sexual exploitation of a minor or person with a mental disability);

[64] LD 1459 from the 130th Legislature was developed by an informal working group on criminal records that met in 2019 and 2020 and was studied by a prior iteration of the Committee that met in 2021. *See* Criminal Records Review Committee Report (Dec. 2021) at 13-18, at https://legislature.maine.gov/doc/7761.

- Any Class D stalking offense under 17-A M.R.S. §210-A (stalking) or §210-C (domestic violence stalking);
- Any Class D crime of domestic violence or crime involving domestic violence, unless the sentence has been commuted;
- Unless 20 years have passed since entry of the judgment of conviction, any Class D crime committed against a family or household member;
- Unless 20 years have passed since entry of the judgment of conviction, any Class D violation of condition of release, if the defendant was released on preconviction or post-conviction bail for a charge involving a crime against a family or household member;
- Any Class D crime of violating a protection order, including a protective order issued against a defendant charged with crime against a family or household member, a protection from harassment order and a protection from abuse order; and
- Any Class D crime of cruelty to animals under 17 M.R.S. §1031.

(b) Any Class D crime of assault under 17-A M.R.S. §207 if the defendant also was, or could have been charged, with a crime under Title 17-A, chapter 11 (sexual assaults) or chapter 12 (sexual exploitation of minors) arising out of the same conduct that led to the assault conviction.

(c) Any current or former Class D crime of violation of condition of release committed while the defendant was released on preconviction or post-conviction bail for a charge under Title 17-A, chapter 11 (sexual assaults) or chapter 12 (sexual exploitation of minors).

Draft legislation to implement this recommendation, along with recommendations A(ii) and A(iii), is included in Appendix L.

v. ***Allow sealing, with no required waiting period, of convictions for any crime committed by a victim of sex trafficking or sexual exploitation if they demonstrate that the crime was committed as a substantial result of the trafficking or exploitation; clarify that the process in current law for sealing convictions for the former Class E crime of engaging in prostitution also applies to convictions for the former Class D crime of engaging in prostitution; and require businesses that assemble and sell criminal records to update their record to remove records of sealed or pardoned offenses.*** (18 in favor; 0 opposed; 7 abstained)

During the course of its work, the Committee learned that studies demonstrate survivors of sex trafficking and sexual exploitation are disproportionately represented in the criminal justice system. According to the recent National Survivor Study, 62% of sex and labor trafficking survivors surveyed reported being cited, detained or arrested by law enforcement. In addition, of the survivors with a criminal record, 90% reported that at least some of their convictions were related to their trafficking experience. Committee members observed that charges commonly associated with trafficking and exploitation include theft, drug possession and engaging in prostitution, all of which can be the result of force or coercion by a trafficker. Having a criminal record negatively affects a survivor's ability to

access and maintain employment and housing and may negatively impact a survivor's parental rights in family court, even after the survivor has successfully exited the trafficking situation. [65]

The committee members who voted unanimously recommend that the Legislature enact legislation allowing a survivor of sex trafficking or sexual exploitation to file a post-judgment motion to seal criminal history record information, without requiring a waiting period, for offenses arising out of the trafficking or exploitation. The legislation should direct the court to enter an order sealing the conviction for any crime if the moving party demonstrates both that they have been a victim of sex trafficking or sexual exploitation, as specifically defined in the legislation, and that their commission of the crime was a substantial result of that trafficking or exploitation. To reduce the traumatic nature of these proceedings, the legislation should authorize the person filing the motion and any witness to participate remotely in most circumstances and should allow the court to grant the motion without hearing if the moving party provides specific types of documentation or other evidence, including affidavit testimony, sufficient to satisfy the moving party's burden of proof.

As part of this recommendation, the committee members also request that the Legislature correct a potential oversight in the current law authorizing a person to file a post-judgment motion to seal criminal history record information related to the former crime of engaging in prostitution. Under 15 M.R.S. §2262-A, to prevail on such a motion, the moving party must demonstrate that the conviction is "an eligible criminal conviction." This term is defined in §2261(6), in relevant part, to include only a current or former Class E crime. While engaging in prostitution was only a Class E crime when it was decriminalized in 2023, in the past a person could have been convicted of engaging in prostitution as a Class D crime if the person had a prior conviction within the preceding two years. The Committee recommends that, because engaging in prostitution is no longer a crime in the State, the law should be clarified to render all convictions for engaging in prostitution equally eligible for sealing.

Finally, through this recommendation the committee members propose that the Legislature enact a new provision of law regulating businesses regularly engaged in collecting, assembling, evaluating or disseminating criminal records for a fee. The law should require these businesses to regularly ensure that their records are up-to-date and accurate, including by deleting records of criminal convictions that have been sealed or the subject of a pardon.

Draft legislation to implement this recommendation is included in Appendix M.

B. Enact legislation directing the Maine Commission on Public Defense Services to establish a mechanism to assist individuals with filing post-judgment motions to seal criminal history record information under Title 15, chapter 310-A. (14 in favor; 4 opposed; 2 abstained)

Committee members remain concerned that only a small number of individuals have filed post-judgment motions to seal their criminal history record information since the sealing law took effect in August of 2022. While they are encouraged that the Maine Judicial Branch has revised CR-128, the court form for filing a post-judgment motion to seal, to clarify that "Having an attorney is not required for filing" this

[65] *See* Polaris, Criminal Record Relief for Trafficking Survivors: Updating Grades and Rubric to Reflect Current Improvements and Changes (2023) at 5, at https://polarisproject.org/wp-content/uploads/2023/04/Criminal-Record-Relief-for-Trafficking-Survivors-by-Polaris.pdf. *See also* Public Comment from Melissa Martin on behalf of the Maine Coalition Against Sexual Assault (Nov. 18, 2024) at 3-4, at https://legislature.maine.gov/doc/11234.

type of motion, Committee members nevertheless remain concerned that the process for filing a post-judgment motion is too daunting for many defendants, who may not be certain of the precise steps to take and evidence to present to qualify for relief under the law. Accordingly, a majority of the committee members voting recommend that legislation be enacted directing the Maine Commission on Public Defense Services (PDS) to establish a mechanism to provide assistance to individuals who wish to file post-judgment motions to seal. PDS should have discretion to determine the scope of assistance to provide, which need not necessarily involve full representation of each defendant and could instead involve some or all of the following: education about who qualifies for sealing, assistance filing the necessary paperwork, negotiating with prosecutors regarding whether they will oppose a motion, advice about what evidence to prepare for the hearing and education regarding the legal effect of a sealing order, if it is granted.

Draft legislation to implement this recommendation is included in Appendix N.

C. Enact legislation providing for the automatic sealing of criminal history record information related to convictions for conduct involving marijuana that has since been decriminalized in the State using LD 2269 from the 131st Legislature, as amended by the minority Judiciary Committee amendment, as a model. (11 in favor; 7 opposed; 4 abstained)

In its January 2024 interim report, a majority of this Committee recommended that the Legislature establish a process to automatically seal convictions for Class D and E crimes related to marijuana possession and cultivation. Legislation to implement this recommendation, LD 2269, was introduced in the 131st Legislature and supported by a minority of the Judiciary Committee but ultimately was not enacted.

A majority of the committee members voting continue to support creating an automatic process for sealing convictions for conduct involving marijuana that is no longer considered criminal in the State. Committee members acknowledge that the process will be challenging to implement, because many former marijuana possession and trafficking crimes were charged under statutes that criminalized possession or trafficking of not only marijuana but also any one of a number of other drugs that appear on Schedule Z in Title 17-A, Section 1102. *See, e.g.,* former 17-A M.R.S. §1105 (aggravated trafficking, furnishing or cultivating of scheduled drugs). To ensure that the automated sealing process works appropriately, it will be necessary for officials within the Executive Branch or the Judicial Branch to examine the underlying files when defendants were convicted of these types of offenses to determine whether the particular circumstances leading each defendant's conviction(s) involved marijuana and not a different Schedule Z drug. The committee members voting in favor of this recommendation understand the administrative and financial cost that this proposal entails, but nevertheless strongly believe that because the State has determined that certain types of conduct involving marijuana should not be considered criminal, all defendants convicted in the post for engaging in this conduct should be automatically relieved of the collateral consequences of their convictions.

Draft legislation to implement this recommendation, which is based on LD 2269 from the 131st Legislature as amended by the minority Judiciary Committee amendment, in included in Appendix O.

D. ***Enact legislation establishing a process for victims of sex trafficking and sexual exploitation to file post-judgment motions to have their convictions for any crime reversed if they demonstrate that the crime was a substantial result of the trafficking or exploitation.*** (15 in favor; 0 opposed; 7 abstained)

As is summarized in the discussion of Recommendation A(v), above, committee members learned that victims and survivors of sex trafficking and sexual exploitation are disproportionately burdened with criminal records that, in many instances, involve conduct directly or indirectly caused by their trafficking or exploitation.

In addition to recommending that the current post-judgment motion to seal process be expanded to provide relief for victims and survivors of trafficking and exploitation, the committee members voting also unanimously recommend that the Legislature establish a process for victims and survivors of trafficking and exploitation to file post-judgment motions to have their convictions reversed if they lacked the requisite culpability to support the underlying convictions. To prevail in such a motion, a victim or survivor of trafficking and exploitation must demonstrate by a preponderance of the evidence that they have experienced sex trafficking or sexual exploitation and that the crime or crimes for which they were convicted occurred as a substantial result of the trafficking or exploitation. Courts should be authorized to appoint counsel to represent individuals bringing these motions if they are indigent and, if the motion is properly supported by specific types of documentary evidence and unopposed by either the State or a victim of the offense, courts should be authorized to grant the motions without hearing. If a court grants a motion to reverse a conviction or convictions, it shall additionally determine what court records and records of other criminal justice agencies should be corrected to reflect reversal of the conviction or convictions. This process is designed to supplement, not to supplant, the post-judgment motion to seal process in Recommendation A(v).

Draft legislation to implement this recommendation is included in Appendix P.

E. ***Enact legislation amending the list of criminal convictions that disqualify an individual from employment as a direct access worker by removing convictions for the crimes of aggravated cultivation of marijuana, refusing to submit to arrest or detention and eluding or passing a roadblock.*** (12 in favor; 7 opposed, including 3 who support further study of the issue; 4 abstained)

A large proportion of the public comments and suggestions received by the Committee from stakeholders, residents of county jails and correctional facilities and other members of the public focused on the myriad collateral consequences imposed as a matter of state law or rule on individuals with criminal convictions. Included in these comments were concerns about the lengthy list of crimes within the Maine Background Check Center Rule, 10-144 C.M.R. ch. 60 (last amended Oct. 2018), that automatically disqualify an individual from being employed as a direct access worker for a period of 5, 10 or 30 years, depending on the offense.

Direct access workers are individuals who, by virtue of their employment, have direct contact with or access to the property, personally identifiable information, financial information and resources of an individual or physical access to an individual who is a Medicare or Medicaid beneficiary or other

protected individual.[66] This category of workers includes individuals working in a direct care capacity for the following providers: hospice providers, home health care providers, nursing facilities, personal care agencies and placement agencies, temporary nurse agencies, adult day care programs, assisted housing facilities, residential care facilities, intermediate care facilities for individuals with intellectual disabilities, mental health service facilities or providers, drug treatment centers, substance use disorder treatment agencies and hospitals.[67] While committee members certainly understand the importance of protecting individuals who receive services from these agencies from nefarious actors who may cause them harm, a majority of the committee members who voted believe that there are far too many offenses on the automatic disqualification list, which may be exacerbating the severe shortage of direct access workers across the State. These members of the Committee recommend that the Maine Background Check Center reexamine the list of disqualifying offenses, removing those offenses that do not implicate an individual's fitness to serve in a direct access worker capacity—at a minimum, the rule should be amended to remove reference to three offenses: refusing to submit to arrest or detention, aggravated cultivating of marijuana and eluding or passing a roadblock.

Draft legislation to implement this recommendation is included in Appendix Q.

F. Amend the Criminal History Record Information Act to clarify that, when a plea agreement results in the court dismissing all criminal charges and the defendant admitting only to having committed a civil violation, information about the dismissed criminal charges is confidential criminal history record information. (14 in favor; 5 opposed; 3 abstained)

Members of the criminal defense bar alerted the Committee to a provision of the Criminal History Record Information Act (CHIRA) that they believe has been interpreted in a manner both detrimental to defendants and not in accord with the design of CHIRA. As previous iterations of the Committee have detailed, the CHIRA establishes two tiers of criminal history record information held by criminal justice agencies across the State: confidential and public criminal history record information. Confidential criminal history record information includes, for example, information about potential charges for which a grand jury chose not to indict, information disclosing that a prosecutor elected not to initiate or approve criminal proceedings, information about pardoned and sealed convictions and information about most types of dismissed charges, including charges dismissed for lack of jurisdiction, due to the inability of the defendant to stand trial, after an acquittal or mistrial and after the charge was filed for more than one year. Confidential criminal history record information is not available to the public and may only be disseminated to specifically authorized recipients, including prosecutors and criminal justice agencies. Public criminal history, by contrast, includes all other information about a person's progress through the criminal justice system, for example, summons, arrests and bail conditions related to pending charges, convictions and sentencing information, and is available to members of the public.[68]

The current definition of "confidential criminal history record information," 16 M.R.S. §703(2(G), excludes "[i]nformation disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor *other than as part of a plea agreement*." Currently, as Assistant Attorney General Kent Avery explained, criminal justice agencies interpret this provision to mean that, if a defendant enters a plea agreement with a prosecutor in any case that originally included a

[66] *See* 22 M.R.S. §9053(12, 14) (2024).
[67] *See* 22 M.R.S. §9054(7) (2024).
[68] *See* Title 16, chapter 7 (§§701-710) of the Maine Revised Statutes.

criminal charge, then information about the outcome of that plea agreement is not confidential and therefore may be disclosed to the public. A majority of the committee members voting recommend that this provision of law be redrafted to clarify, however, that if a defendant enters an agreement with a prosecutor through which all criminal charges against the defendant are dismissed—even if the defendant admits to having committed a civil violation or a traffic infraction—then information about the dismissed criminal charges should be treated as confidential criminal history record information. In making this change, the Committee cautions the Legislature to ensure that it does not undermine the rule announced in *Gordon v. Cheskin*, 2013 ME 113, 82 A.3d 1221, that "[a]n admission to specific behavior" as part of a guilty plea entered in exchange for a deferred disposition "may be considered in a later proceeding, if that behavior is relevant to the matter before the court" even when criminal charges are ultimately dismissed at the end of the deferral period.

Draft legislation to implement this recommendation is included in Appendix R.

G. Enact legislation establishing a permanent criminal records review commission to conduct ongoing review of the laws, rules and procedures pertaining to criminal history record information in this State, using LD 2252 from the 131st Legislature as a model but further specifying that the issues studied by the commission shall include but are not limited to the topics for further study identified in other committee recommendations. (16 in favor, 2 opposed, 2 abstained)

Over the course of its two years of work, the Committee received a significant volume of information about the impact of criminal records on individuals in the State and simply did not have sufficient time to develop comprehensive recommendations on each topic raised in the materials presented. A majority of the committee members who voted reiterate the first recommendation made by this Committee in its January 2024 Interim Report: that the Legislature should establish a permanent criminal records review commission to enable continuous review of laws and rules regarding criminal records in the State. This permanent commission should have similar membership to the current Committee and should be charged with reviewing procedures for the collection, maintenance and dissemination of criminal history record information; the criteria and eligibility for sealing criminal history record information; public access to criminal history record information and whether to create processes for expunging or vacating criminal history record information. The permanent commission should also have authority to report out legislation at the start of each regular session and make recommendations to the Department of Public Safety and members of the Maine Judicial Branch regarding the use, maintenance or dissemination of criminal history record information. LD 2252, which was developed by the Judiciary Committee during the Second Regular Session of the 131st Legislature but ultimately not enacted, should serve as the foundation for implementing this recommendation.

In addition to identifying the need for a permanent commission, a majority of the committee members voting supported further study of several specific topics related to access to criminal history record information and to minimizing the collateral consequences and other consequences of having a criminal record in the State. Each of these recommendations for further study is identified below and the substance of each of these recommendations is included in the draft legislation to implement Recommendation G, which is included in Appendix S.

i. ***Whether Maine should adopt all or certain portions of the Model Collateral Consequences of Conviction Act and how the text of the Model Act should be amended to fit Maine law and practice.*** (18 in favor, 0 opposed, 5 abstained)

Committee members were intrigued by the goals of the Model Collateral Consequences of Conviction Act: ensuring that defendants are afforded notice of the collateral consequences attendant to their convictions prior to and during sentencing and providing processes for relieving defendants from some or all of these collateral consequences if the relief would not pose an unreasonable risk to the safety or welfare of any person or the public. The committee members voting unanimously suggest that the permanent commission examine whether it would be appropriate to adopt this model law in the State and, if so, whether to make any amendments to the model law to better suit Maine law and practice.

ii. ***How to establish an automatic record sealing process for adult criminal convictions, both which crimes should be eligible for automatic sealing and how to implement the process.*** (14 in favor, 1 opposed, 6 abstained)

This Committee and prior iterations of the Committee have repeatedly discussed the administrative difficulties and high cost attendant to the creation of a process for automatically sealing certain types of criminal history record information in the State as well as the potential increased vulnerability of an automatic record-sealing process to a challenge on constitutional separation of powers grounds. Nevertheless, a majority of the committee members voting believe that, without a true "clean slate" or automatic record-clearing process, most defendants who meet the criteria to have their records cleared will not benefit from the process. The statistics gathered by the Maine Judicial Branch demonstrate that very few post-judgment motions to seal criminal history record information have been filed in the State and the experience of other states similarly demonstrates that petition-based record clearing processes are far less effective than automatic record clearing processes. The Committee therefore recommends that the permanent commission develop an administratively feasible and economic automatic record-clearing process, identifying both what types of offenses that should be eligible for this relief and under what circumstances. At a minimum, the Committee strongly suggests that decriminalized offenses be eligible for automatic sealing but understands that creation of such a process will require a careful and detailed review of current and past criminal laws in the State to identify the specific types of conduct that was but is no longer subject to criminal sanctions.

iii. ***Whether and in what circumstances convictions for all Class A, B and C crimes, or a specific subset of Class A, B and C crimes, should be eligible for sealing.*** (14 in favor, 1 opposed, 6 abstained)

Under current law, only convictions for Class E crimes and a small subset of marijuana-related, decriminalized Class D crimes are eligible for sealing. In Recommendation A(iv), above, the Committee recommends that the Legislature expand the list of offenses eligible for record-sealing to include non-violent Class D crimes. If this recommendation is adopted, nearly all the so-called "misdemeanor" offenses—punishable by less than one year of imprisonment—will be eligible for relief. Yet, a majority of committee members believe that record sealing should also be made available for a subset of Class A, B, and C crimes, traditionally referred to as "felonies" because they are punishable by at least one year of imprisonment. Convictions for these, more serious offenses are likely to have more collateral consequences and other consequences than convictions for Class D and E crimes. Thus,

defendants with these convictions are likely to benefit more from record sealing than those whose convictions are eligible for sealing under current law.

Through this report, a majority of the Committee recommends that certain Class A, B and C crimes be made eligible for sealing through the post-judgment motion to seal criminal history record information process, including: decriminalized offenses (regardless of offense class); all drug possession offenses (regardless of offense class); all Class A, B and C drug offenses (other than Class A aggravated trafficking and any offense involving the use of a firearm); and all crimes committed by victims of sex trafficking and sexual exploitation that were a substantial result of the trafficking or exploitation (regardless of offense class). A majority of committee members voting recommend that the permanent commission examine other Class A, B and C crimes to determine whether the State would benefit from establishing a process for sealing convictions for certain of these offenses and, if so, under what circumstances—*i.e.*, should the statutory prerequisites for sealing these convictions differ in any way from the statutory prerequisites for filing post-judgment motions to seal under current law.

iv. ***Whether and in what circumstances to waive the statutorily required waiting period before a post-judgment motion to seal criminal history record information may be filed.*** (17 in favor, 3 opposed, 2 abstained)

Under current law, defendants with convictions for most eligible crimes must wait at least four years after completing all aspects of their sentence, without being convicted of any new crime, before filing post-judgment motions to seal the criminal history record information related to their convictions. The Committee was interested to learn that, in some states, courts may waive the record-clearing waiting period for defendants who successfully complete certain types of educational programming after being convicted. A majority of committee members voting believe that the permanent commission should explore whether it makes sense to create a similar incentive process in Maine, perhaps allowing waiver of all or a portion of the statutorily required waiting period before filing a post-judgment motion to seal if, for example, a defendant sentenced to imprisonment complies with the defendant's case plan while in the custody of the Department of Corrections; if a defendant completes evidence-based rehabilitation or treatment programs related to the offense for which they were convicted; or if a defendant completes an education program with an associate, bachelor's or higher-level degree after being convicted.

v. ***Whether to allow sealing of criminal records upon successful completion of or graduation from approved behavioral health treatment programs, including treatment courts.*** (17 in favor, 2 opposed, 3 abstained)

Similar to Recommendation (G)(iv), above, a majority of the committee members voting recommend that the permanent commission carefully consider whether to provide for waiver of the statutorily required waiting period before filing post-judgment motions to seal or whether to expand the types of offenses for which defendants may file post-judgment motions to seal for defendants who have successfully completed or graduated from approved behavioral health treatment programs, including mental health, drug treatment or co-occurring disorder court programs. While they were intrigued by

the prospect of this type of incentive program, committee members caution that it will be necessary to carefully consider what types of programs should qualify for this type of incentive program, who should determine program eligibility and whether the type of program should be tied in some way to the type of offense committed by the defendant. Victim advocates expressed concern, for example, that an individual convicted of a domestic violence offense not be deemed eligible to seal a domestic violence conviction merely by completing a substance use disorder treatment program that is not designed to address the underlying domestic violence issues.

vi. Whether and how to amend the laws governing consideration of criminal history record information by professional and occupational licensing agencies. *(*supported by a majority of committee members voting[69]*)*

At the final meeting, committee members discussed several proposals for amending Title 5, chapter 341, the law governing consideration of criminal convictions by professional and occupational licensing agencies in the State in deciding whether to grant new licenses or to suspend or revoke existing licenses, including by (a) reducing the period of time after a person's discharge from the sentence during which a licensing agency may consider a criminal conviction and (b) further reducing the period of time or allowing a convicted individual to petition for license reinstatement or initial license eligibility before the time has expired if the individual's only convictions involve conduct not directly or indirectly related to or committed while the individual was engaged in licensed conduct. A majority of committee members voting recommend that the permanent commission examine these and other ways to amend the statutory framework for the use of criminal history record information by the State's occupational licensing agencies as they make decisions governing licensure and professional discipline.

vii. Whether and how to establish a process for awarding a "certificate of rehabilitation" to individuals who have successfully completed or graduated from approved behavioral health or mental health treatment programs. (17 in favor, 3 opposed, 2 abstained)

Finally, similar to Recommendations G(iv) and (v) above, a majority of the committee members voting recommend that the permanent commission explore the creation of a "certificate of rehabilitation" for individuals with criminal convictions who have successfully completed or graduated from approved behavioral health or mental health treatment programs. In addition to examining the issues raised in the discussion of Recommendation G(v) above—what types of treatment programs should qualify, who should decide whether a particular program qualifies, and how to ensure that the type of treatment completed is tied to the type of conduct that led to a particular defendant's conviction—the permanent commission should explore how a certificate of rehabilitation should impact an individual with a

[69] A majority of the committee members present and voting opposed motions to adopt two related recommendations for amending 5 M.R.S. §5303(1) and (2) to reduce the lookback periods governing when state professional and occupational licensing agencies may consider past criminal convictions of licensees and applicants for licensure, with larger reductions in the lookback periods applicable to convictions based on conduct that has since been decriminalized in the State or convictions based on conduct that was neither directly nor indirectly related to the practice of the licensed profession.

The vote on the motion to amend §5303(1) was: 9 in favor, 10 opposed, and 3 abstained. The vote on the motion to amend §5303(2) was: 8 in favor, 13 opposed, and 3 abstained. A majority of committee members voting against each of these motions (7 and 9, respectively) supported further study of the issue raised by the motion.

Accordingly, a majority of all committee members who voted support either amending the laws governing consideration of criminal history record information by professional and occupational licensing agencies or further studying whether and how to amend these statutes (16 votes related to §5303(1) and 17 votes related to §5303(2)).

criminal conviction. For example, should the certificate eliminate certain or all collateral consequences prohibiting certain type of employment or licensure under state law; should the certificate provide protection from civil lawsuits for landlords or certain types of employers who accept applications from individuals possessing a certificate; or should an individual's possession of a certificate have additional or different legal effects?

APPENDIX A

Resolve 2023, chapter 103

LAW WITHOUT GOVERNOR'S SIGNATURE

JULY 19, 2023

CHAPTER

103

RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 1047 - L.D. 1622

Resolve, to Reestablish the Criminal Records Review Committee

Sec. 1. Review committee established. Resolved: That the Criminal Records Review Committee, referred to in this resolve as "the review committee," is established.

Sec. 2. Review committee membership. Resolved: That, notwithstanding Joint Rule 353, the review committee consists of the following members:

1. Two members of the Senate, appointed by the President of the Senate, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

2. Two members of the House of Representatives, appointed by the Speaker of the House of Representatives, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

3. The Attorney General or the Attorney General's designee;

4. The Commissioner of Health and Human Services or the commissioner's designee;

5. The Commissioner of Public Safety or the commissioner's designee;

6. The Commissioner of Corrections or the commissioner's designee;

7. The President of the Maine Prosecutors Association or the president's designee;

8. The President of the Maine Association of Criminal Defense Lawyers or the president's designee;

9. The President of the Maine Sheriffs' Association or the president's designee;

10. The President of the Maine Chiefs of Police Association or the president's designee;

11. The chair of the Right To Know Advisory Committee or the chair's designee;

12. A representative of a civil rights organization whose primary mission includes the advancement of racial justice, appointed by the President of the Senate;

13. A representative of an organization that provides legal assistance on immigration, appointed by the President of the Senate;

14. A representative of an organization whose primary mission is to address issues related to poverty, appointed by the President of the Senate;

15. A representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of domestic violence, appointed by the President of the Senate;

16. A representative of a substance use disorder treatment or recovery community, appointed by the President of the Senate;

17. A representative of an adult and juvenile prisoners' rights organization, appointed by the President of the Senate;

18. A representative of newspaper and other press interests, appointed by the President of the Senate;

19. A representative of broadcasting interests, appointed by the Speaker of the House of Representatives;

20. A representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of sexual assault, appointed by the Speaker of the House of Representatives;

21. A representative of an organization that provides free civil legal assistance to citizens of the State with low incomes, appointed by the Speaker of the House of Representatives;

22. A representative of a mental health advocacy organization, appointed by the Speaker of the House of Representatives;

23. A representative of a civil liberties organization whose primary mission is the protection of civil liberties, appointed by the Speaker of the House of Representatives;

24. A representative of a nonprofit organization whose primary mission is to advocate for victims and survivors of sexual exploitation and sex trafficking, appointed by the Speaker of the House of Representatives;

25. A representative of an organization involved in advocating for juvenile justice reform, appointed by the Speaker of the House of Representatives; and

26. A representative of a public records access advocacy organization, appointed by the Speaker of the House of Representatives.

The review committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the review committee.

Sec. 4. Appointments; convening of review committee. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the review committee. If 30 days or more after the effective date of this resolve a majority of but not all appointments have

been made, the chairs may request authority and the Legislative Council may grant authority for the review committee to meet and conduct its business.

Sec. 5. Duties. Resolved: That the review committee shall:

1. Review activities in other states that address the expungement, sealing, vacating of and otherwise limiting public access to criminal records;

2. Consider so-called clean slate legislation options;

3. Consider whether the following convictions should be subject to different treatment:

A. Convictions for conduct that has been decriminalized in this State over the last 10 years and conduct that is currently under consideration for decriminalization;

B. Convictions for conduct that is nonviolent or involves the use of marijuana; and

C. Convictions for conduct that was committed by victims and survivors of sexual exploitation and sex trafficking;

4. Consider whether there is a time limit after which some or all criminal records should not be publicly available;

5. Invite comments and suggestions from interested parties, including but not limited to victim advocates and prison and correctional reform organizations;

6. Review existing information about the harms and benefits of making criminal records confidential, including the use and dissemination of those records;

7. Invite comments and suggestions concerning the procedures to limit public accessibility of criminal records;

8. Consider who, if anyone, should continue to have access to criminal records that are not publicly available;

9. Develop options to manage criminal records; and

10. Review and consider criminal records expungement legislation referred to the Joint Standing Committee on Judiciary during the 131st Legislature, including, but not limited to, legislative documents 848, 1550, 1646 and 1789.

Sec. 6. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the review committee, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session.

Sec. 7. Interim report. Resolved: That, no later than December 6, 2023, the review committee shall submit to the Joint Standing Committee on Judiciary an interim report that includes, but is not limited to, its findings and recommendations, including suggested legislation, regarding the expungement, sealing, vacating of and otherwise limiting public access to criminal records related to convictions for conduct that is nonviolent or involves the use of marijuana. The joint standing committee may report out legislation related to the report to the Second Regular Session of the 131st Legislature.

Sec. 8. Final report. Resolved: That, no later than November 6, 2024, the review committee shall submit to the joint standing committee of the Legislature having jurisdiction over judiciary matters a final report that includes its findings and recommendations not included in the interim report, including suggested legislation. The

joint standing committee may report out legislation related to the report to the 132nd Legislature in 2025.

APPENDIX B

2024 Membership List: Criminal Records Review Committee

CRIMINAL RECORDS REVIEW COMMITTEE

Established by Resolve 2023, Chapter 103

Membership List - 2024

Name	Representation
Senator Donna Bailey, Senate Chair	Senate member, appointed by the President of the Senate
Speaker Rachel Talbot Ross, House Chair	House member, appointed by the Speaker of the House
Senator Eric Brakey	Senate member, appointed by the President of the Senate
Representative David Boyer	House member, appointed by the Speaker of the House
Foster Bates	Representative of a civil right organization whose primary mission includes the advancement of racial justice, appointed by the President of the Senate
Anna Welch	Representative of an organization that provides legal assistance on immigration, appointed by the President of the Senate
Jason Parent	Representative of an organization whose primary mission is to address issues related to poverty, appointed by the President of the Senate
Andrea Mancuso	Representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors or domestic violence, appointed by the President of the Senate
Tess Parks	Representative of a substance use disorder treatment or recovery community, appointed by the President of the Senate
Joseph Jackson	Representative of an adult and juvenile prisoner's rights organization, appointed by the President of the Senate
Dan MacLeod	Representative of newspaper and other press interests, appointed by the President of the Senate
Tim Moore	Representative of broadcasting interests, appointed by the Speaker of the House
Melissa Martin	Representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors or sexual assault, appointed by the Speaker of the House
Pedro Vazquez	Representative of an organization that provides free civil legal assistance to citizens of the State with low incomes, appointed by the Speaker of the House
Hannah Longley	Representative of a mental health advocacy organization, appointed by the Speaker of the House
Michael Kebede	Representative of a civil liberties organization whose primary mission is the protection of civil liberties, appointed by the Speaker of the House

CRIMINAL RECORDS REVIEW COMMITTEE

Established by Resolve 2023, Chapter 103

Membership List - 2024

Amanda Comeau	Representative of a nonprofit organization whose primary mission is to advocate for victims and survivors of sexual exploitation and sex trafficking, appointed by the Speaker of the House
Jill Ward	Representative of an organization involved in advocating for juvenile justice reform, appointed by the Speaker of the House
Judith Meyer	Representative of a public records access advocacy organization, appointed by the Speaker of the House
Kent Avery	Attorney General or the Attorney General's designee
William Montejo	Commissioner of Health and Human Services or the commissioner's designee
Amy McCollett	Commissioner of Public Safety or the commissioner's designee
Samuel Prawer	Commissioner of Corrections or the commissioner's designee
Maeghan Maloney	President of the Maine Prosecutor's Association or the president's designee
Matthew Morgan	President of the Maine Association of Criminal Defense Lawyers or the president's designee
Sheriff Joel Merry	President of the Maine Sheriffs' Association or the president's designee
Chief Jason Moen	President of the Maine Chiefs of Police Association or the president's designee
Representative Erin Sheehan	Chair of the Right to Know Advisory Committee or the chair's designee
Amanda Doherty	Member of the Judicial Branch designated by the Chief Justice of the Supreme Judicial Court

APPENDIX C

Links to Committee Materials Referenced in Parts I, II and III of the Report

APPENDIX C
Links to Materials Referenced in Parts I, II and III of the Report

I. Introduction

- ***Materials related to the first year of this committee's work***:
  - The list of committee members appointed to serve in 2023, the first year of the study, is available at https://legislature.maine.gov/doc/10432.
  - Materials and archived video from the meetings held during the first year of the committee's work are available on the committee's website at: https://legislature.maine.gov/criminal-records-review-committee-131st-legislature.
  - The 2024 Interim Report is available at https://legislature.maine.gov/doc/10771.

II. Update on Recommendations included in the 2024 Interim Report

- ***Recommendation 1***: The text of LD 2252 and related legislative materials are available at https://legislature.maine.gov/billtracker/#Paper/2252?legislature=131.
- ***Recommendation 2***: The text of LD 2269 and related legislative materials are available at https://legislature.maine.gov/billtracker/#Paper/2269?legislature=131.
- ***Recommendation 3***: The text of LD 2236 and Public Law 2023, chapter 639 and related legislative materials are available at https://legislature.maine.gov/billtracker/#Paper/2236?legislature=131.
- ***Recommendation 4***: The Committee's letters are included in Appendices M and N to the 2024 Interim Report, which is available at https://legislature.maine.gov/doc/10771.
- ***Recommendation 5***: The text of LD 2218 and Public Law 2023, chapter 666 and related legislative materials are available at https://legislature.maine.gov/billtracker/#Paper/2218?legislature=131.

III. Committee Process

- ***July 16, 2024 Meeting***:
  - Materials distributed at this meeting are available at https://legislature.maine.gov/doc/11043.
  - The archived meeting video is available at https://legislature.maine.gov/audio/#228?event=91518&startDate=2024-07-16T09:00:00-04:00.
- ***August 13, 2024 Meeting***:
  - Materials distributed at this meeting are available at https://legislature.maine.gov/doc/11073.
  - The archived meeting video is available at https://legislature.maine.gov/Audio/#228?event=91519&startDate=2024-08-13T09:00:00-04:00.
- ***September 24, 2024 Meeting***:
  - Materials distributed at this meeting are available at https://legislature.maine.gov/doc/11136.
  - The archived meeting video is available at https://legislature.maine.gov/Audio/#228?event=91520&startDate=2024-09-24T09:00:00-04:00.

APPENDIX C
Links to Materials Referenced in Parts I, II and III of the Report

- ***October 8, 2024 Meeting***:
  - Materials distributed at this meeting are available at https://legislature.maine.gov/doc/11166.
  - The archived meeting video is available at https://legislature.maine.gov/Audio/#228?event=91521&startDate=2024-10-08T09:00:00-04:00.
  - The invitation for members of the public to provide comments during the October 8, 2024 meeting is available at https://legislature.maine.gov/crrc-public-comment-invitation. A link to the invitation also appeared at the top of the Committee's homepage. *See* https://legislature.maine.gov/criminal-records-review-committee-131st-legislature.
- ***November 19, 2024 Meeting***:
  - Materials distributed at this meeting are available at https://legislature.maine.gov/doc/11234.
  - The archived meeting video is available at https://legislature.maine.gov/Audio/#228?event=91522&startDate=2024-11-19T09:00:00-05:00.

APPENDIX D

Summary of Current Law: Post-judgment Motions to Seal Criminal History Record Information

Title 15 Chapter 310-A:
POST-JUDGMENT MOTION TO SEAL CRIMINAL HISTORY RECORD

For all Persons
see §2262

- The criminal conviction is an eligible criminal conviction
  (Class E crime other than a sexual assault under Title 17-A, ch 11; or Beginning 8/9/24 Class D Marijuana cultivation and possesion offenses that are no longer illegal)
- **4 years** have passed since the person has fully satisfied each of the sentencing alternatives imposed for the eligible criminal conviction
- Has not been convicted of another crime in ME or had a criminal charge dismissed as a result of a deferred disposition since the time the person fully satisfied all sentencing alternatives for the eligible conviction
- Has not been convicted of a crime in another jurisdiction since the time the person fully satisfied all sentencing alternatives for the eligible conviction
- Does not have any presently pending criminal charges
- Until 8/9/24, must have been between the ages 18-27 when crime was committed

For persons convicted of engaging in prostitution under former 17-A M.R.S.A. § 853-A
see §2262-A

- The criminal conviction is an eligible criminal conviction
  (Class E conviction of 17-A M.R.S.A. §853-A)
- At least **1 year** has passed since the person has fully satisfied each of the sentencing alternatives imposed for the eligible criminal conviction
- The person has not been convicted of a violation of Title 17-A, section 852, 853, 853-B or 855 or for engaging in substantially similar conduct in another jurisdiction.
  - §852: Aggravated Sex Trafficking
  - §853: Sex Trafficking
  - §853-B: Engaging person for prostituion
  - §855: Commercia Sexual exploitation of minor or person with mental disability

Motion and Hearing Process

1. Filing Motion

Motion filed in underlying criminal proceeding, then set for hearing by clerk

2. Hearing

- The person filing has the right to be represented by counsel but is not entitled to assignment of counsel at state expense
- State represented by prosecutorial office from the underlying proceeding, or different office under agreement
- Evidence may include testimony, affidavits and reliable hearsay permitted by the court. Maine Rules of Evidence do not apply.
- Burden on person filing motion to establish by a preponderance of the evidence they have met the requirements in section 2262 or 2262-A

3. Order & Written Findings

- If person filing motion meets burden, court issues a written order sealing the CHRI of the eligible criminal conviction that was the subject of the motion
- If person does not meet burden, court issues order denying motion; such order must contain written findings of fact supporting the court's determination
- A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State

4. Notification to State Bureau of Investigation

If the court orders the sealing of the CHRI for the eligible criminal conviction that was the subject of the motion, the court electronically transmits notice of the court's order to SBI.

Upon receipt, SBI must promptly amend its records marking the CHRI for that conviction as "confidential." SBI shall send notification of compliance with this subsection to the person's last known address.

After the Sealing of a CHRI

Sealed CHRI may not be disclosed by SBI to the public, but a criminal justice agency may, under the special restrictions in MRSA 15 §2265, disseminate the sealed CHRI to:

- The person who is the subject of the criminal conviction or their designee
- A criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment:
    - Use of the sealed CHRI by an attorney for the State or for another jurisdiction as part of a prosecution of the person for a new crime, including use in a charging instrument or other public court document and in open court
    - Use of the sealed CHRI as permitted by the Maine Rules of Evidence and to comply with discovery requirements of the Maine Rules of Civil Procedure and the Maine Rules of Unified Criminal Procedure
- Secretary of State to ensure compliance with state and federal motor vehicle laws
- The victim or victims of the crime related to the conviction or
    - If the victim is a minor, to the parent(s), guardian or legal custodian
    - Immediate family member, guardian, legal custodian or attorney representing the victim if they cannot act on their own behalf due to death, age, physical or mental disease or disorder, intellectual disability, etc.
- The Dept. of Professional and Financial Regulation, Bureau of Insurance, Bureau of Consumer Credit Protection, Bureau of Financial Institutions and Office of Securities to ensure compliance with applicable parts of the Maine Consumer Credit Code, and any state or federal requirement to perform criminal background checks by those agencies
- Licensing agencies conducting criminal history record checks for licensees, registrants and applicants for licensure or registration
- A financial institution if the financial institution is required by federal or state law, regulation or rule to conduct a criminal history record check for the position for which a prospective employee or prospective board member is applying
- An entity that is required by federal or state law to conduct a fingerprint-based criminal history record check

*For the terms of dissemination and use of **Confidential** Criminal History Record Information See pg. 10*

Loss of Eligibility

If a person is convicted of a new crime in Maine or in another jurisdiction, CHRI must be unsealed. In the event of a new criminal conviction, the person must promptly file a written notice in the underlying criminal proceeding of the person's disqualification from eligibility. If the person fails to file written notice and the court becomes aware of a new criminal conviction, the court must offer the person an opportunity to request hearing to contest fact of new conviction.

Requests a Hearing	Does Not Request a Hearing
The person has burden of proving by clear and convincing evidence that they have not been convicted of another crime since having CHRI sealed ➢ If burden satisfied, court issues written order certifying this determination. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State. ➢ If burden not met, court issues a written order unsealing the CHRI, with written findings of fact	Court shall determine that the person has not satisfied the burden of proof and shall find that the person has been convicted of the new crime and as a consequence is no longer eligible for the sealing order Court shall issue a written order unsealing the CHRI, with written findings of fact. A copy of the order must be provided to the person and the prosecutorial office that represented the State.

Notice of New Crime

If the court orders the unsealing of the record under this section, the court shall electronically transmit notice of the court's order to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification upon receipt of the notice shall promptly amend its records relating to the person's criminal history record information relating to that criminal conviction to unseal the record. The State Bureau of Identification shall send notification of compliance with that requirement to the person's last known address.

APPENDIX E

Summary of Record-sealing Laws in States that have Clean Slate Laws

State Adult Criminal Records Relief Laws
Provisions for Clean Slate and Petition Based Record Clearing

State/ Year Enacted	Eligibility for Automatic Record Relief (Clean Slate)	Eligibility for Relief through a Petition Process	Records Excluded	Definitions of Expungement/Sealing	Effect of the Record(s) Clearing
California 2019, AB1076; amended in 2022 by SB731 and SB1260 (CA. Penal Code §§1203.4, 1203.4a, 1203.42, 1203.425)	Automatic clearing of a record is referred to as "relief granted" in the form of a set-aside and dismissal of convictions and arrests that result in the sealing of a criminal record. A person eligible for automatic record clearing must not have an active record for local, state or federal supervision. Based on information in the DOJ record, the person may not be currently serving a sentence for any offense and may not have any pending criminal charges. **Arrests:** A person arrested on or after January 1, 1973 will be eligible for automatic relief if any of the following are true: • The arrest was for a misdemeanor and either the charge was dismissed, the person was acquitted of any charges, or **at least 1 year has elapsed since the arrest** and there is no indication that criminal proceedings have been initiated; • The arrest was for a felony punishable by imprisonment in county jail, and either the person was acquitted of any charges, or **at least 3 years have elapsed since the arrest** and there is no indication that criminal proceedings have been initiated; or • The person successfully completed one of various specified diversion programs	A person who was previously convicted of a qualifying misdemeanor or felony, and who has successfully completed their sentence, is usually eligible to petition the court to set-aside the conviction. Almost all misdemeanor convictions are eligible for set-aside, as are some felony convictions: • A person with a misdemeanor conviction who was under 18 at the time their crime was committed. • A marijuana conviction based on conduct that is no longer criminal. • A person with a misdemeanor not sentenced to probation, and infractions (including traffic infractions, possession of small amounts of marijuana), may apply for change of plea and dismissal of charges **one year from entry of judgment**, if the petitioner can show, in addition to successful completion of probation and no charges pending, that they have, "since the pronouncement of judgment, lived an honest and upright life and have conformed to and obeyed the laws of the land." • A person with a violent felony conviction who has fully served their sentence, including probation, and has gone four **years** without being convicted of a new felony offense. • A person with a minor felony offense sentenced to county jail (and those that would have been eligible for such a sentence if law has subsequently changed) **one or two years following**	Sex offenses or offenses requiring registering as a sex offender.	• Convictions and arrests that are eligible for a set-aside and dismissal (referred to as **expunged**) through the petition process are not sealed from public view and will still show up on a background check as dismissed. • Convictions and arrests that are eligible for a set-aside and dismissal through the automatic relief process are sealed from public view and should not show up on a background check. Certain law enforcement officials, the courts and the DA has access to the records. CA. Penal Code §1203.4	• All state summary criminal history information in all statewide criminal databases "include" next to or below the entry "relief granted" and the date. • A person can answer a question on an employment application or other document that they were never "convicted" of the crime. • A person granted relief "is released from all penalties and disabilities resulting from the offense of which the person was convicted," except that the relief does not affect: o the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer, public office, or for contracting with the California State Lottery Commission; o the ability of a criminal justice agency to access and use records; o the jurisdiction of the court over a subsequently filed motion to amend the record, petition or motion for postconviction relief, or collaterally attack a conviction; o a person's authorization to own or possess any firearm; o a prohibition from holding public office;

State Adult Criminal Records Relief Laws
Provisions for Clean Slate and Petition Based Record Clearing

State/ Year Enacted	Eligibility for Automatic Record Relief (Clean Slate)	Eligibility for Relief through a Petition Process	Records Excluded	Definitions of Expungement/Sealing	Effect of the Record(s) Clearing
	Convictions: A person convicted on or after January 1, 1973 will be eligible for automatic relief if any of the following are true: • The defendant was sentenced to probation and, based upon the disposition date and the term of probation specified in the department's records, appears to have completed their term of probation without revocation; or • The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the disposition date and the term specified in the department's records, the defendant appears to have completed their sentence, and **at least one calendar year has elapsed since the date of judgment**; or • The defendant was convicted of a non-violent or non-sexual felony and has finished serving their sentence and any required supervision and **at least four years have passed** and the person has not reoffended. • The person is not required to register under the Sex Offender Registration Act.	**the defendant's completion of the sentence**, provided that the defendant is not currently serving a sentence or charged with the commission of any offense.			o the authority to receive, or take adverse action based on, criminal history information or certified court records under various sections of the Health and Safety Code, or other provisions that incorporate those criteria; o eligibility to provide, or receive payment for providing, in-home supportive services; or o pleading and proof of the prior conviction in any subsequent prosecution of the defendant. o Any existing duty to register as a sex offender pursuant to CA. Penal Code §290 • Courts may not disclose information concerning the conviction to any person or entity, except to the person granted relief or a criminal justice agency. • The state records repository system is prohibited from disclosing conviction records that have been dismissed or set aside, whether automatically or by petition, in response to certain requests for background information to be used for employment, licensing or certification. • A person applying for teaching license, may not be disqualified for any

State Adult Criminal Records Relief Laws
Provisions for Clean Slate and Petition Based Record Clearing

State/ Year Enacted	Eligibility for Automatic Record Relief (Clean Slate)	Eligibility for Relief through a Petition Process	Records Excluded	Definitions of Expungement/Sealing	Effect of the Record(s) Clearing
					expunged drug possession convictions more than five years old.
Colorado 2022, SB99	All offenses currently eligible for petition-based sealing, including records involved in diversion agreements and records associated with status as a victim of human trafficking are eligible for automatic record clearing. • **Waiting periods are 4 years** for civil infractions**, 7 years for misdemeanors and 10 years** for eligible felonies. • Payment of outstanding fees or fines is not a condition for automatic sealing. • Arrest records that did not result in a conviction may be sealed immediately. • Convictions which have been pardoned are automatically sealed. *Note: Automatic clearing of records for civil infractions and misdemeanors is scheduled to begin in July 2024, while automatic clearing of records of eligible felony offenses begin in July 2025.	• Convictions from petty offenses to certain less serious felonies, including but not limited to drug crimes, are eligible for sealing. Eligibility **waiting periods** range from **one year** in the case of petty offenses, to **three years** for misdemeanors and lower-level felonies, to **five years** for all other eligible felonies. • Municipal violations after a **three-year waiting period** during which the person has not been charged with or convicted of a felony or misdemeanor. Colo. Rev. Stat. §24-72-708 • Arrest records that did not result in a conviction may be sealed immediately	• Class 1, 2 and 3 felonies are ineligible for sealing (except for class 3 felony marijuana cultivation before Oct. 1, 2013), as are other specified crimes involving sexual offenses, traffic offenses, and a long list of other crimes involving violence or dangerous conduct. Colo. Rev. Stat. §24-72-706(2)(a)	• A record that is sealed is no longer accessible to the public. • The record is NOT destroyed and remains available to criminal justice agencies, the court and the District Attorney. • If an individual's record is sealed and the individual is convicted at a later date, the sealed record may be unsealed by the court and/or available to the court, probation and the District Attorney in sentencing. • Sealing a conviction does NOT vacate the conviction. Colo. Rev. Stat. §24-72-703	• Employers, landlords, and state and local government agencies are generally prohibited from requiring applicants to disclose any information contained in sealed records. • Upon the entry of an order to seal the conviction records, the defendant and all criminal justice agencies may properly reply, upon an inquiry in the matter, that public conviction records do not exist with respect to the defendant. • An order sealing conviction records does not deny access to courts and law enforcement agencies, or any "party or agency required by law to conduct a criminal history record check on an individual. • Sealing does not vacate the conviction, and it may be used in subsequent prosecutions • Some organizations, including the bar committee, the Department of Education, and criminal justice agencies, may still have access to some information in sealed records. • Requires consumer reporting agencies to exclude sealed records from their report.
Connecticut 2021, Public Act 21-42 (Conn. Gen Stat. §54-142a, §54-142c)	Establishes a process to automatically erase records of most misdemeanor convictions and certain less serious felony convictions entered after January 1, 2000, after a specified period following the person's most recent conviction for any crime.	• Convictions and other criminal records in cases where the charges resulted in conviction and the offense has subsequently been decriminalized. • A person who has been granted an absolute pardon. • Decriminalized marijuana convictions, including possession of a	• Class A, B or C felonies, certain unclassified felonies, domestic violence crimes or crimes requiring sex offender registration. • The state Department of Motor Vehicles is not	In Connecticut, erasure, sometimes called **expungement**, means that all records are sealed and the conviction is considered to have never existed. A person with an erasure may swear under oath that they have not been arrested or convicted for the crime. Conn. Gen. Stat. §54-142a	• If a case contained multiple charges and only some are entitled to erasure, electronic records released to the public must be erased to the extent they reference charges entitled to erasure. • Requires all purchasers of court records, including background

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	Eligible records include: • The conviction of a person convicted after January 1, 2020, of a Class D or E felony or an unclassified felony with prison time of five or fewer years will be erased after **10 years.** • The conviction of a person convicted after January 1, 2020, of a Class C felony or unclassified felonies with prison terms greater than five years, but no more than 10 years, will be erased after **15 years.** • Misdemeanor convictions after January 1, 2020 become eligible for erasure after **seven years.** • To be eligible, a person must also have finished serving the sentences for all crimes they have been convicted of committing. Conn. Gen. Stat. §54-142a *Note: As of January 2024, the state began automatically expunging eligible criminal records; the process was scheduled to begin in 2023, but was delayed due to technology upgrades required.	cannabis-type substance if the amount possessed was less than or equal to four ounces of such substance or manufacturing, distributing, selling, prescribing, compounding, transporting with the intent to sell or dispense, possessing with the intent to sell or dispense, offering, giving or administering to another person a cannabis-type substance if the amount involved was less than or equal to four ounces or six plants grown inside such person's own primary residence for personal use. • Beginning January 1, 2023, for offenses occurring before January 1, 2020, a person may file a petition on a form prescribed by the Office of the Chief Court Administrator to request record relief of a past conviction. **The same offenses are eligible and waiting periods are applicable as for the automatic record clearing process.**	required under law to erase criminal history records.		screening providers, to update their records on a regular basis. It extends these provisions to records of other agencies (State Police, DMV, Department of Correction). • Prohibits various forms of discrimination based on someone's erased criminal history record information, such as in employment, public accommodations, the sale or rental of housing, the granting of credit, and several other areas. • Prohibits employers from requiring a job applicant with erased criminal records to disclose those records, denying employment based on an applicant's erased criminal history record, or inquiring about an applicant's criminal history on a job application unless it contains, in a clear and conspicuous manner, a notice, in clear and conspicuous language, that the applicant is not required to disclose the existence of any erased arrest, criminal charge, or conviction.
Delaware 2021, SB 111, enacting Del. Code tit. 11, §4371 et. seq.	• All records eligible for **mandatory expungement** (see column to the right) are eligible for automatic record clearing after August 1, 2024. Other records eligible for automatic record clearing include: • An individual was arrested or charged with the commission of 1 or more crimes and the case is terminated in favor of the accused.	**Expungement** is separated into categories: mandatory and discretionary. The State Bureau of Investigation is responsible for expunging records in the mandatory category upon an individual's request and the courts are responsible for acting on petitions for discretionary **expungement**. Mandatory **expungement**: • An individual was arrested or charged with the commission of one or more	Misdemeanors involving domestic violence, offenses where the victim is a child, offenses where the victim is a "vulnerable adult, sexual harassment, and other crimes against persons are not eligible for mandatory expungement.	**"Expungement"** means that all law-enforcement agency records and court records relating to a case in which an **expungement** is granted, including any electronic records are segregated, or placed in the custody of the State Bureau of Identification, and are not released in conjunction with any inquiry beyond those specifically authorized under law. Del. Code tit. 11, §4372(c)(4)	• Law enforcement in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency and the courts may still have access to an **expunged** record. • A person is not required to disclose, nor should the person be asked to disclose, to anyone for any purpose that the person was arrested for,

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	• An individual was convicted of 1 or more violations relating to the same case; **3 years have passed since the date of conviction;** and the person has no prior or subsequent convictions. • An individual was convicted of 1 or more misdemeanors, or a combination of 1 or more misdemeanors and 1 or more violations, relating to the same case; **5 years have passed since the date of conviction;** and the person has no prior or subsequent convictions. • Felony drug possession convictions are eligible **five years after conviction**, and other minor felony convictions (including certain drug trafficking, forgery, and credit card fraud) are eligible **after 10 years**. • Dismissed cases that do not have a disposition **after 7 years are eligible for automatic clearing**, unless the case has an active warrant or there is documented case activity within the last 12 months.	crimes and the case is terminated in favor of the accused. • An individual was convicted of 1 or more violations relating to the same case; **3 years have passed since the date of conviction;** and the person has no prior or subsequent convictions. • An individual was convicted of 1 or more misdemeanors, or a combination of 1 or more misdemeanors and 1 or more violations, relating to the same case; **5 years have passed since the date of conviction;** and the individual has no prior or subsequent convictions. • Felony drug possession convictions are **eligible five years after conviction**, and other minor felony convictions (including certain drug trafficking, forgery, and credit card fraud) are eligible **after 10 years.** • Dismissed cases that do not have a disposition **after 7 years**, unless the case has an active warrant or there is documented case activity within the last 12 months. Discretionary **expungement** by petition: • A single non-violent felony after **a seven-year waiting period**, with no prior or subsequent convictions. • One or more misdemeanors relating to the same case (not under the mandatory umbrella) – less serious misdemeanors **after three years** and more serious misdemeanors **after seven years** (e.g. domestic violence),		Criminal records in the custody of the State Bureau of Identification may be destroyed 10 years after the person identified is known or reasonably believed to be dead, or once that person reaches age 80 or reaches age 75 with no criminal activity listed on the person's record in the past 40 years, whichever shall first occur. Del. Code Ann. tit. 11, §8506(c)	charged with, or convicted of an offense for which records have been **expunged.** • All criminal records related to the case must be removed from the court's files within 60 days of the order and placed in the control of the Supervisor of the State Bureau of Identification "or otherwise segregated and kept in a manner that ensures that they are not open to public inspection or disclosure." • The Bureau retains control over all **expunged** records and shall ensure that the records or information contained in the records are not released for any reason. • With the exception of the authorized law enforcement uses, it is unlawful (Class B misdemeanor) for any person having or acquiring access to an **expunged** court or police record to open or review it or to disclose to another person any information from it without an order from the court that ordered the record **expunged**. • State records repositories must respond to non-law enforcement requests for records "that there is no record."

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		with no prior or subsequent convictions. • Certain less serious misdemeanors in multiple cases after a **five-year waiting period,** so long as the individual has no other convictions that would not be eligible for **expungement.** • An individual convicted of a crime, other than those specifically excluded (murder and rape), who is thereafter unconditionally pardoned. Del. Code Ann. Tit. 11, § 4375			
Michigan 2020, HB 4980, HB 4981, HB 4983, HB 4984 and HB 4985; MCL §780.621 et. seq.	Authorizes the automatic set-aside of certain convictions that grants relief without a person having to file a petition for relief. Eligible records include: • An unlimited number of minor misdemeanors (punishable by less than 93 days in prison) are **set-aside** automatically **seven years** after imposition of sentence. • Up to four more serious misdemeanors are automatically **set-aside 7 years** after imposition of sentence or release from imprisonment. • Up to two less serious felonies are automatically **set-aside 10 years** after imposition of sentence or release from imprisonment. • There can be no pending charges in the state database nor any additional convictions occurring in the **waiting period** • Restitution and other court debt need not be paid for a conviction to be **set-**	• An unlimited number of misdemeanors and up to three felonies, provided that no more than two convictions for assaultive crimes may be set aside in a person's lifetime, and not more than one conviction for the same offense may be set aside if the offense is punishable by more than 10 years in prison. • When counting convictions, crimes in the same 24-hour period arising from the same transaction are counted as a single offense unless they involve violence, guns, or a maximum sentence of 10+ years in prison. • A conviction that has been previously set aside is counted for purposes of determining eligibility for later set-aside, but a conviction that has been the subject of a full and unconditional pardon does not count. **Waiting** periods:	Felonies punishable by life imprisonment; specified sex offenses; serious misdemeanors, "crimes of dishonesty" (such as forgery and counterfeiting); offenses punishable by 10 or more years in prison; and crimes that involve a minor, a vulnerable adult, human trafficking, injury or serious impairment or death and crimes involving driving while impaired.	**Expungement**, also referred to as a **set-aside**, removes the public record of a criminal conviction so that it does not appear in a background check or criminal record search. When a record is **expunged** or set aside it no longer becomes accessible to public records so employers and others cannot locate them, however, the records are still accessible in a non-public record which is available to law enforcement agencies.	• The department of state police retains a nonpublic record of the order setting aside a conviction, or other notification regarding a conviction that was automatically **set aside** and of the record of the arrest, fingerprints, conviction, and sentence of the person in the case to which the order or other notification applies • This **nonpublic** record can be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, the department of corrections, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request and only for the specific purposes • Some convictions that are **set aside** may be considered a prior conviction by court, law enforcement agency, prosecuting attorney, or the attorney general, as applicable, for purposes of charging a crime as a second or subsequent offense or for sentencing.

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	aside, but a court may reinstate a conviction if a person "has not made a good-faith effort to pay" restitution. *Note: The automatic **set-aside process** began in April of 2023.	• More than one felony conviction **requires 7 years**; one felony, or a serious or assaultive misdemeanor **requires 5 years**; other misdemeanors require **3 years.** • These waiting periods run from the latest of the following: imposition of sentence, completion of incarceration and completion of supervision.			
Minnesota 2023, SF 2909; Minn. Stat. § 609A.015	Authorizes the automatic clearing of non-conviction records, most misdemeanors and many non-violent felonies that are already eligible for petition-based **expungement**. Records eligible include: • Misdemeanors are eligible **two-years after sentencing.** • Gross misdemeanors are eligible after **three years** after sentencing. • Eligible felonies are eligible **five years after sentencing.** • Pardoned convictions are eligible with **no waiting period.** • Cases of mistaken identity with **no waiting period**. • Many "nonfelony cannabis offenses" involving the sale or possession of marijuana in the fourth and fifth degree after are eligible after a **four-year waiting period.** • Drug convictions, as well as felonies reduced to gross misdemeanors, and gross misdemeanors reduced to misdemeanors, are not eligible for automatic **expungement**. However, e**xpungement** by petition remains available in those cases.	A person petitioning for an **expungement** must establish that the need to **expunge** the record outweighs the risk to public safety. Minn. Stat. § 609A.01, et seq. Convictions eligible for **expungement** by petition include: • Misdemeanors, gross misdemeanors and most minor non-violent felony convictions **after waiting periods ranging from two to five years.** • Non-conviction records where all pending actions or proceedings were "resolved in favor of the petitioner." For dismissed charges and other favorable dispositions there is no **waiting period**; for diverted cases, there is a **one-year waiting period** after successful completion of conditions in which there may be no new charges; for cases involving deferred adjudication or deferred sentencing there is a conviction-free **waiting period of between two and five years** depending on the nature of the charges. • Fifth degree drug crimes were added to those eligible for **expungement** by	Felony Assault, Felony DUI, Felony Domestic Assault, Felony Burglary and any crime that requires registration on the state's sex offender list.	**Expungement** refers to sealing of the criminal record and prohibits the court and state agencies that hold criminal records from disclosing, acknowledging, or opening the criminal record except under court order or as permitted by law. An **expunged** criminal record will not be accessible to the public. Destruction of arrest records: In cases where no charges were filed or all changes were dismissed prior to a determination of probable cause, mandatory destruction of arrest records and certain identifying information by the Minnesota Bureau of Criminal Apprehension (BCA) and other state agencies (police departments, county attorneys) is required. In such cases, no petition is required if the person has not been convicted of any felony or gross misdemeanor, either within or without the state, within the period of ten years immediately preceding the determination of all pending criminal actions or proceedings in favor of the arrested person. Minn. Stat. § 299C.11	• Law enforcement agencies must maintain the data, but not disclose the records relating to an arrest, indictment or information, trial, verdict, or dismissal and discharge for any case in which **expungement** relief was granted. • In any subsequent prosecution of a person granted **expungement** relief, the expunged criminal record may be pleaded and has the same effect as if the relief had not been granted. • **Expunged** and sealed criminal records can still be accessed by the Court, prosecutors, and law enforcement agencies including police, FBI, immigration, and other agencies in a criminal investigation, prosecution, or for sentencing and probation purposes. • A sealed criminal record can also be accessed by criminal justice agencies and other state agencies for background checks for certain jobs or for certain types of occupational licenses.

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		petition, with a **waiting period of four years.**			
New Jersey 2019; P. L. 2019, c. 269 as amended by P.L 2021, c. 19 and P.L. 2023, c. 260 N.J. Stat. Ann. §§2C:52-1 et. seq.	Directs the State to develop and implement a "clean slate" process, by which all convictions (except certain ineligible crimes) will be automatically made inaccessible to the public by **expunging** criminal records Records eligible include: • Convictions of one or more crimes, one or more disorderly persons offenses or petty disorderly persons offenses, or a combination of one or more crimes and offenses upon the expiration of a period of **ten years from the date of the person's most recent conviction**, payment of any court-ordered financial assessment, satisfactory completion of probation or parole, or release from incarceration, whichever is later. • As of July 1, 2021, any prior conviction or adjudication of delinquency solely for one or more crimes or offenses involving the manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in small quantities will by operation of law, be **expunged** and any remaining sentence, ongoing supervision, or unpaid court-ordered financial will be vacated by operation of law. • Arrest records for a crime, disorderly persons offense, petty disorderly persons offense, or municipal	• Upon the expiration of a **period of five years from the most recent conviction**, payment of any court-ordered financial assessment, satisfactory completion of probation or parole or release from incarceration, whichever is later, the following convictions may be **expunged** by petition: o A single "indictable offense" (equivalent to felonies in other jurisdictions). o Up to four "disorderly persons offenses" (misdemeanors) or "petty disorderly persons" offenses. • No cap on the number of disorderly/petty disorderly persons offenses that may be **expunged** if the convictions were entered on the same day or were interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time. • **Expungement** of disorderly/petty disorderly persons is unavailable if a person has at any time been convicted of an indictable offense or more than four disorderly/petty disorderly persons offenses. • Prior convictions are not a bar to eligibility, although subsequent convictions are a bar. • An e-filing system is available for the filing of petitions for **expungement**.	Any criminal homicide (murder), kidnapping and related offenses, sexual offenses, robbery, arson and related offenses, and endangering the welfare of children, convictions for sale and distribution of marijuana or hashish are ineligible for **expungement**, except in cases involving small amounts of marijuana or hashish, and serious drug offenses.	**Expungement** means the extraction, sealing, and impounding or isolation of all records on file within any court, detention or correctional facility, law enforcement or criminal justice agency concerning a person's detection, apprehension, arrest, detention, trial or disposition of an offense within the criminal justice system. NJ Stat. Ann. § 2C:52-1	• Officers, departments and agencies notified of an **expungement** order are required to reply, when asked about records for the individual, that there is no record information. Persons who reveal **expunged** offenses are subject to a fine and potentially to six months' jail. • **Expunged** records are provided to any judge, county prosecutor, probation department or the Attorney General when same are requested for use in conjunction with a bail hearing or for the preparation of a presentence report or for purpose of sentencing. • **Expunged** records maybe disclosed to appropriate officials when a defendant in a subsequent criminal case is seeking admission to a diversionary program. • **Expungement** does not provide relief for a person seeking employment with the judicial branch or with law enforcement or corrections agencies. An applicant must reveal **expunged** records to those employers. • A person's convictions and other information contained in the person's criminal history record information files is restored if the person is subsequently convicted of a crime, for which the conviction is not subject to **expungement**.

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	ordinance offense where proceedings against the person were dismissed, the person was acquitted, or the person was discharged without a conviction or finding of guilt, the Superior Court will at the time of dismissal, acquittal, or discharge order the **expungement** of all records and information relating to the arrest. *Note: While the petition-based "clean slate" **expungement** law went into effect in June 2020, there is no deadline for implementation of the automated system authorized by the law, but an e-filing system for **expungement** petitions has been implemented in the interim. NJ Rev Stat § 2C:52-5.4	Other eligible convictions: • A person guilty of violating a municipal ordinance may petition for an **expungement after 2 years** from the date of the conviction, payment of fine, satisfactory completion of probation or release from incarceration, whichever is later. • Persons convicted of low-level drug offenses at age 21 or younger may petition for **expungement one year** after the date of conviction, termination of probation or discharge from custody, whichever is later.			
New York 2023, A1029C	Authorizes the automatic sealing of most criminal conviction records after a graduated waiting period without further conviction. Records eligible include: • For a misdemeanor conviction, **at least three years have passed** from the defendant's release from incarceration or the imposition of sentence if there was no sentence of incarceration. If the defendant is subsequently convicted of a crime before a prior conviction is sealed, the calculation of time for such prior conviction shall start upon the same date as the time calculation starts for the subsequent criminal conviction. • For a felony conviction**, at least eight years have passed** from the date the defendant was last released from	• Individuals with up to two convictions, only one of which may be a felony, after a **10-year waiting period**. N.Y. Crim. Proc. Law §160.59(2)(a) • Multiple eligible convictions "committed as part of the same criminal transaction" are considered a single conviction.	Registrable sex offenses, violent felonies and Class A felonies subject to a life sentence are ineligible.	The sealing of a criminal record hides the record from public access, but the record remains accessible to law enforcement and for other relevant and necessary purposes. N.Y. Crim. Proc. Law §160.57	• After sealing, records will remain available for a variety of specified purposes, including for determining suitability for "licensing, employment and similar activities where federal or state law requires a criminal background check be performed prior to granting licenses to or employing individuals in certain jobs, such as employment with children, elderly populations, or other vulnerable populations, as well as where federal or state law authorizes a criminal background check to be performed prior to the same type of employment or similar activity." • A conviction sealed under this law is included within the definition of a conviction for the purposes of any criminal proceeding in which the fact of a prior conviction would enhance a

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	incarceration for the sentence of the conviction eligible for sealing or from the imposition of sentence if there was no sentence of incarceration. A defendant's detention for an alleged violation of parole or post-release supervision shall not interfere with the time calculation prescribed herein unless and until supervision is revoked resulting in the defendant's reincarceration. • No new convictions may have been entered during the **waiting period;** no charges may be pending; and the person may not be under supervision for parole or probation N.Y. Crim. Proc. Law §160.57 *Note: The law is effective in November of 2024. The law provides the New York State Office of Court Administration up to three years to implement the processes necessary to identify and seal all eligible records.				penalty or is an element of the offense charged. N.Y. Crim. Proc. Law §160.57
Oklahoma 2022, HB 3316, enacting 22 Okla. Stat. Ann. 18(C)	Authorizes automatic **expungement** for certain records defined as "clean slate eligible". Eligible records include: • misdemeanor charges and convictions, cases where all charges were dismissed and a person has no prior felony conviction, acquittals, convictions reversed on appeal, cases involving factual innocence and uncharged arrests. • Pardoned adult convictions. • Deferred adjudication for individuals with first-time drug offenses allows for automatic **expungement** upon discharge of the conviction.	The following convictions are eligible for **expungement** by petition: • Up to two nonviolent felony convictions may **10 years after completion of the last sentence,** if no charges are pending. • One nonviolent felony may be **expunged** after **5 years if no priors.** • Two felonies **after 10 years.** • Non-violent felonies reclassified as misdemeanors may be **expunged** after **30 days.** • Misdemeanors may be **expunged after 5 years** if no prior felonies and no charges pending, except that the	Violent felony offenses	• **"Expungement"** means the sealing of criminal records, as well as any public civil record, involving actions brought by and against the State of Oklahoma arising from the same arrest, transaction or occurrence. A fully sealed **expunged** record shall not be available to the public or to law enforcement. Such records may be retained in the state criminal history repository but shall only be accessible to designated employees of the Oklahoma State Bureau of Investigation for research and statistical purposes. Okla. Stat. tit. 22 §18	• Records **expunged** are sealed to the public but not to law enforcement agencies for law enforcement purposes • Records **expunged** are admissible in any subsequent criminal prosecution to prove the existence of a prior conviction or prior deferred judgment without the necessity of a court order requesting the unsealing of the records • Upon the entry of an order to seal the records, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply,

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	*Note: The law was effective November 1, 2022, and the **expungement** of "clean slate eligible" cases will begin three years after that date, in 2025.	**waiting period** is waived if the sentence involves a fine less than $500 and no (or suspended) prison term, upon satisfaction of fine. • Pardoned offenses and prostitution convictions of victims of human trafficking may be **expunged** with **no waiting period.** • Deferred adjudication and probation are available for misdemeanors and first-time minor felony offenses, with **expungement after a waiting period (5 years for felonies, one year for misdemeanors).** In addition, non-conviction records may be **expunged** in case of acquittal or if no charges are filed; dismissed charges may be **expunged** only if the person has no felony convictions and the limitations period has passed. 22 OK Stat § 18v2		• The records to be "fully sealed" after **expungement** are acquittals, convictions reversed on appeal, cases involving factual innocence, uncharged arrests and cases where all charges were dismissed and the person has no prior felony conviction. • All other **expunged** records (including those for pardoned offenses) are to be "partially sealed" so that they remain available to law enforcement and may be used in subsequent prosecutions. 22 OK Stat §18v2 Any record ordered to be sealed under the law, if not unsealed within ten (10) years of the **expungement** order, may be obliterated or destroyed at the end of the ten-year period. 22 OK Stat §19(N)	upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person. • Inspection of sealed records will be permitted by the court only upon petition by the person in interest who is the subject of such records, the Attorney General, the prosecuting attorney, and only to those persons and for such purposes named in such petition. • Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records, provide information that has been sealed, including any reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.
Pennsylvania 2018, 18 Pa. C.S. §9122.2, as amended by Act 36, 2023	"Clean slate" sealing is considered an "order for limited access" and is automatically available for: • A single less serious drug felony **after a 10-year conviction-free waiting period** and full payment of restitution. • 2nd and 3rd degree misdemeanors and ungraded offenses after a **7-year conviction-free waiting period,** with	Sealed records: • 1st degree misdemeanors carrying a potential penalty of two years or less, and ungraded offenses carrying a penalty of up to five years, are eligible for sealing by petition after a **10-year waiting period** in which the individual must have been free of	• Convictions of 1st degree felonies punishable by imprisonment of 20 years. • Felonies punishable by seven or more years in prison that involve crimes against the person or against the family, firearms or sexual offenses requiring registration.	Clean slate sealing is defined as "limited access." 18 Pa. C.S. §9122.2 **Expungement** is requested through a petition process, not through the automatic "clean slate" process. **Expunged** records are destroyed, except that the prosecuting attorney and the central repository must, and the court	Sealed records: • Sealed records are not available to public or private employers, or landlords, but remain available to licensing agencies and other state and criminal justice agencies. • A record subject to limited access remains part of a person's criminal history record information and maybe

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	certain disqualifying priors (including any prior felony conviction), and full payment of restitution. • Any first-degree misdemeanor punishable by imprisonment for no more than two years and full payment of restitution. • "Clean slate" sealing is mandated for non-conviction records **within 30 days of disposition**, with the additional remedy of **expungement** by petition in cases where no disposition is indicated after 18 months. *Note: Automatic sealing of eligible records began in December 2023 (for summary offenses, automatic sealing began June 2024)	conviction for an offense carrying a prison term of one year or more. • All court-ordered financial obligations of the sentence must have been satisfied. **Expunged** records: • Courts may **expunge** records of "summary offenses" (minor criminal offenses) if the individual who is the subject of the record petitions the court, and has been free of arrest or prosecution for **five years following the conviction for that offense.** • The court may order that conviction records be **expunged** where a person has reached age 70 and been arrest-free for 10 years following final release from confinement or supervision, or when the person has been dead for three years. • **Expungement** is mandatory in summary convictions for underage drinking if the applicant is over 21 at the time of asking for **expungement.** • **Expungement** is mandatory for pardoned offenses.	• Convictions of four or more offenses punishable by imprisonment of two or more years. • A conviction that occurs within 15 years of a prior conviction of two or more offenses punishable by more than two years in prison, or a number of specific offenses, including indecent exposure, crime involving weapons or implements for escape, sex with animals or failure to comply with registration requirements.	may, maintain a list of the names and other criminal history record information of persons whose records are **expunged** after the individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program	disclosed to a court for any relevant purpose in accordance with law, including sentencing. • May not be considered a conviction that would prohibit the employment of a person under any law in Pennsylvania or under Federal laws that prohibit employment based on State convictions to the extent permitted by Federal law. Expunged records: • Except if requested or required by a criminal justice agency, or if disclosure to noncriminal justice agencies is authorized or required by law, an individual may not be required or requested to disclose information about the individual's criminal history record that has been **expunged.** • Does not apply if Federal law, including rules and regulations promulgated by a self-regulatory organization that has been created under Federal law, requires the consideration of an applicant's criminal history for purposes of employment. • The Pennsylvania Commission on Sentencing may maintain a list of the names and other criminal history record information of persons whose records are required by law, court rule or court order to be **expunged** or subject to limited access under this chapter. The information can be used solely for the purposes of conducting research and collecting and reporting statistical data 18 Pa. C.S. §9122.5

State Adult Criminal Records Relief Laws
Provisions for Clean Slate and Petition Based Record Clearing

State/ Year Enacted	Eligibility for Automatic Record Relief (Clean Slate)	Eligibility for Relief through a Petition Process	Records Excluded	Definitions of Expungement/Sealing	Effect of the Record(s) Clearing
Utah 2019, HB 431, amended in 2022, S 35; 2024, c. 194 Utah Code Ann. §77-40a-101 et seq.	Authorizes the automatic expungement of certain non-conviction, infraction, and misdemeanor records. Eligible records include: • Non-conviction records. • Most class B and class C misdemeanor convictions. • Class A drug possession convictions. Waiting periods: • Conviction records will be automatically **expunged** after a **waiting period of 3-7 years**, depending on the severity level of the offense. • A person must be crime-free **for five years** for a class C misdemeanor, **six years** for a class B misdemeanor, **seven years** for drug possession and **three years** for an infraction or traffic related offense • **Waiting periods** begin from the date of adjudication • For non-conviction cases adjudicated on or after May 1, 2020, the goal is to **expunge** a case that resulted in an acquittal on all charges 60 days after the acquittal, and to **expunge** a case that resulted in a dismissal with prejudice (other than a case dismissed with prejudice as a result of successful completion of a plea in abeyance agreement) 180 days after either the day on which the entire case against the individual is dismissed with prejudice if no appeal was filed, or the date of a final non-appealable order.	• A person convicted of no more than one felony, or up to two Class A misdemeanors (in separate criminal episodes), or up to three Class B misdemeanors, or up to four non-felony convictions of any degree, excluding infractions and any traffic offenses, is eligible to apply to the Department of Public Safety for a certificate of eligibility to **expunge** the record of conviction. • A person convicted of up to two drug felonies and three drug misdemeanors is eligible, each of which is contained in "a separate criminal episode." If it has been **10 years** since the petitioner was convicted or released from incarceration, probation or parole, this numerical limit is increased by one. • An eligibility determination includes considering prior **expungement**s, including those from out of state. Infractions, traffic offenses and "minor regulatory offenses"' and any local ordinance offenses or Class B or C misdemeanor offenses *not* contained within the Criminal Code, (with exceptions including drug possession and DUI offenses) do not count against **expungement** eligibility. • Fines and restitution must be paid before **expungement** may be ordered. **Waiting Periods**: • **Seven years** in the case of a felony; • **Ten years** in the case of a misdemeanor DUI offense or felony drug trafficking offense;	Automatic record clearing: • All felonies, all Class A misdemeanor offenses other than drug possession, as well as the following convictions that are also excluded under petition-based expungement: • Certain person on person crimes (due to victim notification requirements.) • Sex offenses requiring registration. • Weapons offenses. • Driving Under the Influence (DUI). • Reckless driving offenses. • Domestic violence cases Any person that who owes fines, fees or restitution is ineligible for record clearing through both the automatic clearing process, as well as the petition-based clearing process.	**"Expunge"** means to seal or otherwise restrict access to the individual's record held by an agency when the record includes a criminal investigation, detention, arrest or conviction. Utah Code §77-40a-101 Exception: Traffic records eligible for clean slate relief are deleted without notice to the court or prosecuting attorney. Utah Code §77-40a-202	• A prosecuting attorney may not use an **expunged** record for the purpose of a sentencing enhancement or as a basis for charging an individual with an offense that requires a prior conviction," except with leave of court. • An **expunged** conviction may not be accessed by the Department of Professional Licensing for licensing purposes. • The Bureau of Criminal Identification must notify all criminal justice agencies of an **expunged** criminal record so that the criminal justice agencies will also **expunge** their records of the conviction. • **Expungement** entitles a person to deny that the arrest or conviction occurred; public employers and licensing boards may not ask about or consider expunged convictions.

State Adult Criminal Records Relief Laws
Provisions for Clean Slate and Petition Based Record Clearing

State/ Year Enacted	Eligibility for Automatic Record Relief (Clean Slate)	Eligibility for Relief through a Petition Process	Records Excluded	Definitions of Expungement/Sealing	Effect of the Record(s) Clearing
	*Note: The automated **expungement** system came online in February 2022. An online portal will be available to individuals to determine their eligibility and as a way to check to ensure that the record has in fact been cleared.	• **Five years** in the case of a Class A misdemeanor, or felony drug possession offense; • **Four years** in the case of a Class B misdemeanor; or • **Three years** in the case of any other misdemeanor or infraction. • Non-conviction records are eligible for **expungement** by petition after **30 days** if no charges are filed, the charges are dismissed and the limitations period has expired on all charges, or the person is acquitted.			

Virginia
2021, S.B. 1339 and H.B. 2113; Va. Code § 19.2-392.1. et. seq.; §19.2-392.5 et. seq.
	Establishes a system of automatic sealing for misdemeanor non-convictions and specific types of misdemeanor convictions.
	
	Eligible records include:
	• Convictions for the following misdemeanors: underage possession of alcohol, petit larceny, concealment, trespass after having been forbidden, instigating others to trespass, trespass on posted property, possession with the intent to distribute marijuana, possession of marijuana, and disorderly conduct.
	• Misdemeanor non-convictions (excluding traffic infractions) unless the Commonwealth's attorney objects on one of five specific grounds. There are some exceptions for non-convictions, such as when the charge is dropped as part of a plea agreement. Non-convictions that do not qualify for automatic sealing can still go through the petition-based process.
		Beginning January 1, 2025, provides for the sealing of a broad range of misdemeanor and low-level felony convictions and deferred dismissals through a petition-based court process.
		
		• Nearly all misdemeanor convictions, except DUI and domestic assault, are eligible if the person was not convicted of a new crime for a **seven-year period** after conviction or release from incarceration.
		• Class 5 felonies (1–10 years in prison), Class 6 felonies (1–5 years in prison) and felony larceny convictions (except certain DUI offenses) are eligible for petition-based sealing if the person has not been convicted of any offense for **a ten-year period** after the conviction or release from incarceration, whichever is later.
		• There is a lifetime limit of two on the number of sentencing events that an individual can have sealed.
		• A person must also never have been convicted of an offense that carries a
			Class 1, 2, 3 or 4 felonies, Vehicular Involuntary Manslaughter and Maiming, Watercraft Involuntary Manslaughter and Maiming, Assault & Battery of a Family Member (Domestic Assault) Driving While Intoxicated or Driving Under the Influence.	Sealing means to (a) restrict dissemination of criminal history record information contained in the Central Criminal Records Exchange, including any records relating to an arrest, charge or conviction and (b) to prohibit dissemination of court records related to an arrest, charge or conviction, unless such dissemination is authorized by a court order for one or more required purposes. Va. Code §9.1-101	• Upon entry of an order for sealing, the person who was arrested, charged, or convicted of the offense that was ordered to be sealed may deny or not disclose to any state or local government agency or to any private employer in the Commonwealth that such an arrest, charge, or conviction occurred.
					• A person who is the subject of the order of may not deny or fail to disclose information to any employer or prospective employer about an offense that has been ordered to be sealed if:
					  • The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;
					  • Virginia law requires the employer to make such an inquiry;

State Adult Criminal Records Relief Laws
Provisions for Clean Slate and Petition Based Record Clearing

State/ Year Enacted	Eligibility for Automatic Record Relief (Clean Slate)	Eligibility for Relief through a Petition Process	Records Excluded	Definitions of Expungement/Sealing	Effect of the Record(s) Clearing
	• To qualify for automatic sealing, **seven years must have passed since the conviction or deferred dismissal**, the person must not have any new convictions during that time, and on the date of disposition, the person must not have been convicted of another offense that is ineligible for automatic sealing. *Note: Automatic sealing will begin October 1, 2025. The General Assembly delayed the effective date of the new law to give courts and the Virginia State Police time to upgrade their computer systems.	maximum of life in prison if they want another low-level felony or misdemeanor conviction sealed. • Marijuana-related misdemeanors not eligible for automatic **sealing,** as well as many marijuana-related felonies. A system of court-appointed counsel for individuals who cannot afford an attorney for the petition-based sealing process will be established with a Sealing Fee Fund, which will collect filing fees from individuals who can afford them and use that money to pay court-appointed attorneys.			• Federal law requires the employer to make such an inquiry. Va. Code §19.2-392.5 • Does not prohibit the disclosure of sealed criminal history record information or any information from such records among law-enforcement officers and attorneys when such disclosures are made by such officers or attorneys while engaged in the performance of their duties for purposes solely relating to the disclosure or use of exculpatory, mitigating, and impeachment evidence or between attorneys for the Commonwealth when related to the prosecution of a separate crime. Va. Code §19.2-392.13(I)

Note:

- South Dakota has a process for the automatic sealing of certain minor misdemeanors only.
- Eight states (Alaska, Indiana, Kentucky, Maryland, Nebraska, New Hampshire, North Carolina and South Carolina) have a process for the automatic clearing of a range of non-convictions.
- Vermont has authorized automatic relief for non-convictions and certain motor vehicle-related violations.
- Four states (GA, FL, ME, MT) have authorized automatic sealing, expungement, or confidentiality for non-conviction records held by state criminal justice agencies, but not the corresponding court records.

APPENDIX F

Criminal Records Review Committee Request for Comments from Facility Residents

Provide Your Comments on Limiting Public Access to Certain Conviction Records

The Maine Legislature created the Criminal Records Review Committee to consider both the harms and benefits of limiting public access to certain criminal conviction records, especially records of convictions (a) for conduct that is no longer criminal in Maine; (b) for nonviolent crimes; or (c) for conduct committed by victims and survivors of sexual exploitation and sex trafficking through a sealing process.

What is Sealing? Under Maine law, a person convicted of certain low-level crimes may file a motion in court to "seal" their conviction. If the person meets all of the requirements (*for example, they have waited the required number of years after finishing their sentence without being convicted of a new crime*) the court will order that the conviction be "sealed" from the public. This means that most employers, lenders, landlords, school admissions officers, and others won't learn about the conviction if they request a background check from the State. However, certain people including law enforcement, prosecutors and courts will still have access to the "sealed" conviction record.

The Committee invites residents of state correctional facilities and county jails to provide their thoughts on these issues. If you are interested in helping the committee with its work, please consider answering one, a few or all of the following questions in writing and mailing your response to:

Criminal Records Review Committee
c/o Legislative Information Office
100 State House Station
Augusta, Me 04330

Deadline for mailing your answers to these questions: September 30, 2024

Our Questions to You:

*Note: You are **not** required to answer all of these questions.*

1. Do you already know that Maine has a process motion to seal process? How much do you know about this process?
2. How would you feel if you had an opportunity to request that your criminal conviction be sealed as long as you aren't convicted of any new crimes for a certain number of years after you are released? Would this knowledge impact the choices you make while you're incarcerated or after you are released?
3. The current sealing law in Maine applies only to (a) Class E crimes, (b) Class D Marijuana cultivation and possession offenses that are no longer illegal in Maine and (c) convictions of engaging in prostitution. Do you think the law should remain this way or be expanded to allow the sealing of other types of crimes? **Why?**
4. What types of incentives should the law for sealing criminal convictions include? *(For example: What if a court could waive the waiting period for applying to seal your conviction if you decide to get your G.E.D., associate degree or other college degree after you are convicted)* Do you think incentives would be helpful?
5. What are the biggest challenges you expect to face when you finish your sentence? *(For example: difficulty finding housing, employment, or a professional license)* How does your criminal record impact these challenges?
6. **If you've previously been incarcerated**, what were the biggest challenges you faced when you were released and how did your criminal record impact these challenges?
7. What opportunities would you like to have while you are preparing for your release that would address some of the challenges you anticipate facing and how does your criminal record history impact the opportunities available to you? *(For example, are there education programs, apprenticeships, or other types of programs to help you prepare for life after release that would be helpful? If so, does how does your criminal record affect whether you have access to these programs now?)*

If you have any questions about this poster, please speak to:

_____

APPENDIX G

Summary of Current Law:
Access to Sealed Criminal History Records Information

Access to Sealed Criminal History Record Information – 15 M.R.S. §2265

General Rule: Criminal history record information relating to a sealed criminal conviction "must be treated as confidential criminal history record information for the purposes of dissemination to the public under" the Criminal History Record Information Act (the CHIRA) in Title 16, chapter 7. *See* 15 M.R.S. §2265.

Under the CHIRA, 16 M.R.S. §705, confidential criminal history record information, including information about a sealed criminal conviction, **may be disseminated** by a Maine criminal justice agency **only**:

- To another criminal justice agency (or to a contractor required to follow the confidentiality provisions of the CHIRA) for purposes of administration of criminal justice and criminal justice agency employment;
- When specifically authorized by statute, executive order, court rule or decision;
- For the research, evaluation or statistical purposes under an agreement requiring the recipient to follow the confidentiality provisions of the CHIRA;
- To any person who specifically inquires "whether a named individual was summonsed, arrested or detained or had formal criminal charges initiated on a specific date";
- To the public for the purpose of announcing the fact of a specific disposition within 30 days of the occurrence of that disposition;
- To the public at any time ***if*** the person to whom the disposition relates specifically authorizes that the information be made public; and
- To a public entity for purposes of international travel, such as issuing visas and granting citizenship.

Exceptions: In addition to the authority of a criminal justice agency under the CHIRA to disseminate information about all confidential criminal history (including sealed convictions), 15 M.R.S. §2265 **also authorizes a criminal justice agency to disseminate** information about sealed criminal convictions to:

"1. Subject of conviction. The person who is the subject of the criminal conviction or that person's designee"

"**2. Criminal justice agency.** A criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment. For the purposes of this subsection, dissemination to a criminal justice agency for the purpose of the administration of criminal justice includes:

A. Dissemination and use of the criminal history record information relating to the sealed record by an attorney for the State or for another jurisdiction as part of a prosecution of the person for a new crime, including use in a charging instrument or other public court document and in open court; and

B. Dissemination and use of the criminal history record information relating to the sealed record as permitted by the Maine Rules of Evidence and to comply with discovery requirements of the Maine Rules of Civil Procedure and the Maine Rules of Unified Criminal Procedure;"

"3. Secretary of State. The Secretary of State to ensure compliance with state and federal motor vehicle laws;"

- Unlike conviction records possessed by criminal justice agencies, "records of traffic crimes maintained by the Secretary of State" are **not governed by the CHIRA**. 16 M.R.S. §708(6). [In fact, state courts do not transmit abstracts of convictions for Class D or Class E crimes under Title 29-A, the motor vehicle laws, to the State Bureau of Identification (SBI). 25 M.R.S. §1547.] In addition, the Secretary of State is not a "criminal justice agency" as that phrase is defined for purposes of the CHIRA or the laws governing the sealing of criminal records. *See* 16 M.R.S. §703(4); 15 M.R.S. §2261(4).
- Accordingly, regardless of whether the criminal history record information for a traffic crime conviction has been sealed under Title 15, chapter 310-A neither the CHIRA nor Title 15, chapter 310-A restrict the persons to whom the Secretary of State may disseminate information about the traffic crime conviction.

- Maine law instead provides that, when a court transmits an abstract of a conviction for a motor vehicle crime to the Secretary of State, the abstract is a public record. 29-A M.R.S. §2607(3). Maine law also directs the Secretary of State to create a database of driver history records, including records of conviction for motor vehicle crimes, and to make driver history records available to members of the public upon payment of the required fee. 29-A M.R.S. §252(1), (1-A).
- The Secretary of State explained that, in certain circumstances, federal law prohibits states from removing information about pardoned or sealed criminal convictions from a person's driving history record. For example, federal regulations prohibit the State from "masking" a person's conviction for violation of a traffic control law—other than convictions for parking, vehicle weight or vehicle defect offenses—on the Commercial Driver's License Information System (CDILS), which must be checked before a person may be issued a Commercial Driver's License. 49 C.F.R. §384.226; 49 C.F.R. §384.205. For purposes of this regulation, a "conviction" includes any "unvacated adjudication of guilt … in a court of original jurisdiction or by an authorized administrative tribunal." *See* 49 C.F.R. §384.105(a) (providing that the definitions in Title 49, part 383 if the Code of Federal Regulations apply to Part 384); 49 C.F.R. §383.5 (defining "conviction"). Thus, while federal law authorizes removal from the CDILS of a conviction for a traffic crime that has been vacated by the court, the State lacks authority to remove from the CDILS a conviction for a traffic crime that has been pardoned by the Governor or sealed by the court.

4. Victims. The victim or victims of the crime related to the conviction or:

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

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

5. Financial services regulatory agencies. The Department of Professional and Financial Regulation, Bureau of Insurance, Bureau of Consumer Credit Protection, Bureau of Financial Institutions and Office of Securities to ensure compliance with Titles 9-A, 9-B, 10, 24, 24-A and 32, as applicable, and any state or federal requirement to perform criminal background checks by those agencies;

Note: The CRRC has not explored the use of sealed criminal records by DPFR under state and federal law.

6. Professional licensing agencies. Licensing agencies conducting criminal history record checks for licensees, registrants and applicants for licensure or registration by the agencies; licensing agencies performing regulatory functions enumerated in Title 5, section 5303, subsection 2; and the State Board of Veterinary Medicine pursuant to Title 32, chapter 71-A to conduct a background check for a licensee;"

Title 5, chapter 341 governs occupational license disqualification based on a criminal record:

Types of criminal convictions that may be considered by licensing agencies:

When deciding whether to deny, revoke or suspend professional licenses, registrations or permits, state licensing agencies may consider **only** the following types of criminal convictions—unless the conviction has been set aside or pardoned or the convicted person demonstrates they have "been sufficiently rehabilitated to warrant the public trust," in which case the conviction may not be considered:

- Crimes punishable by < 1 year of incarceration that:
  - involve dishonesty or false statement;
  - directly relate to the trade or occupation; or
  - involve sexual misconduct ***if*** the applicant is seeking any of the licenses (listed on the next page) for which there is a 10-year lookback period, other than hemp-related licenses issued by DACF.

Note: some of these convictions may be eligible for sealing under current law

- All crimes punishable by ≥ 1 year of incarceration

Note: none of these convictions are eligible for sealing under current law

Time limit for consideration of criminal conviction by licensing agency:

- The following specific licensing agencies may deny, suspend, revoke or impose other discipline on licensees or applicants for licensure or registration based on a criminal conviction within **10 years** of the applicant's or licensee's final discharge, if any, from the correctional system for that conviction:

  ** Given the 10-year lookback period, it is possible that some of the criminal convictions considered by these licensing agencies may have been sealed under Title 15, chapter 310-A **

  - The Board of Licensure in Medicine,
  - The Board of Osteopathic Licensure,
  - The Board of Dental Practice,
  - The State Board of Examiners of Psychologists,
  - The State Board of Social Worker Licensure,
  - The State Board of Nursing,
  - The Board of Chiropractic Licensure,
  - The Board of Trustees of the Maine Criminal Justice Academy,
  - The State Board of Examiners in Physical Therapy,
  - The State Board of Alcohol and Drug Counselors,
  - The Board of Respiratory Care Practitioners,
  - The Board of Counseling Professionals Licensure,
  - The Board of Occupational Therapy Practice,
  - The Board of Speech, Audiology and Hearing,
  - The Radiologic Technology Board of Examiners,
  - The Nursing Home Administrators Licensing Board,
  - The Board of Licensure of Podiatric Medicine,
  - The Board of Complementary Health Care Providers,
  - The Maine Board of Pharmacy,
  - The Emergency Medical Services' Board,
  - The Department of Agriculture, Conservation and Forestry (DACF) re: hemp licenses, and
  - Applicants for massage therapy licensure or licensed massage therapists.

- All other licensing agencies may only deny, suspend, revoke or impose other discipline on licensees or applicants for licensure or registration based on a criminal conviction within **3 years** of the applicant's or licensee's final discharge, if any, from the correctional system for that conviction

  ** Given the 3-year lookback period, it is possible that these licensing agencies could consider sealed convictions for the Class E crime of engaging in prostitution; however, it is not possible for these agencies to consider any other convictions sealed under Title 15, chapter 310-A, since those convictions are not eligible for sealing until at least 4 years after the person fully satisfies each of the sentencing alternatives imposed **

No time limit for considering the conduct underlying criminal conviction:

- Regardless of the 3-year and 10-year limitations on considering criminal convictions, described above, there is "**no time limitation** for consideration of an applicant's or licensee's **conduct** which gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action."

  ** Recall that the licensing agency has access to conviction records, including sealed conviction records, and the agency could choose to inquire about the conduct underlying those convictions regardless of the time that has elapsed since the convictions were imposed (or sealed) **

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

Note: The CRRC has not explored the use of sealed records by financial institutions under state and federal law.

8. Subject to fingerprinting. An entity that is required by federal or state law to conduct a fingerprint-based criminal history record check pursuant to Title 25, section 1542-A.

Title 25, section 1542-A cross-references statutory requirements to conduct fingerprint-based criminal history record checks for the following non-law-enforcement-related purposes:

- Applicant for credentialing as a teacher or education professional subject to 20-A M.R.S. §6103;
- Prospective adoptive parents who are not the biological parents, as required by 18-C M.R.S. 9-304(1);
  - *Exception:* background checks may not be required by the court for prospective adoptive parents seeking a confirmatory adoption following assisted reproduction under 18-C M.R.S. §9-316.
- Applicants for licensure as a Maine guide, under 12 M.R.S. §12853;
- Applicants for expedited M.D. or D.O. licensure under the Interstate Medical Licensure Compact, under 32 M.R.S. §18506;
- Applicants for licensure from the following professional licensing boards:
  - The State Board of Nursing, under 32 M.R.S. §2111(1);
  - The State Board of Examiners of Psychologists, under 32 M.R.S. §3833-B; and
  - The Board of Examiners in Physical Therapy, under 32 M.R.S. §3114-D;
- Applicants for licensure or registration from the Office of Cannabis Policy as follows:
  - Applicants for licensure under the adult-use cannabis laws, pursuant to 28-B M.R.S. §204; and
  - Applicants for registration as a caregiver or as an officer, director or assistant of a dispensary or registered caregiver under the Maine Medical Use of Cannabis Act, 22 M.R.S. §2425-A;
- Applicants for licensure or authority to work from the Department of Health and Human Services as:
  - Licensed family child care providers or child care staff members, pursuant to 22 M.R.S. §8302-A;
  - Unlicensed persons who provide day care in their own home for 1 to 2 children whose care is paid by state or federal funds, pursuant to 22 M.R.S. §8302-B; and
  - Employees of a children's residential care facility, emergency children's shelter, shelter for homeless children or a transitional living program, pursuant to 22 M.R.S. §8110;
- Employees / applicants for employment by the Maine Bureau of Revenue Services and certain bureau contractors, subcontractors and their employees, pursuant to 36 M.R.S. §194-D;
- Employees / applicants for employment by the following—for purposes of complying with the IRS's tax information and security guidelines because the person has or will have access to federal tax information:
  - Bureau of Unemployment Compensation, its contractors and subcontractors, under 26 M.R.S. §1085;
  - Office of the State Auditor, under 5 M.R.S. §247;
  - Department of Health and Human Services, its contractors and subcontractors (for example, in child support enforcement positions), under 19-A M.R.S. §2111; and
  - Office of Information Technology, its contractors or subcontractors, under 5 M.R.S. §1986;
- The following MaineCare provider applicants, under 22 M.R.S. 5307:
  - Providers in high-risk categories (for example, home health agencies; durable medical equipment, providers; diabetes prevention program providers; hospices; and certain opioid treatment programs);
  - High-risk providers (providers subject to previous discipline for fraud, waste, abuse, etc.); and
  - Individuals who maintain at least a 5% direct or indirect ownership interest in one of the above; and
- Licensees / applicants for licenses issued by the Gambling Control Board or Gambling Control Unit for sports wagering, casinos and related entities, and advance deposit wagering, including occupational licenses for certain employees of these licensees, under 8 M.R.S. §1204 and Title 8, Chapter 31.

** Recall that 15 M.R.S. §2265, which is summarized in this handout, specifies only when a Maine criminal justice agency (like SBI) may disclose sealed criminal history record information. This Maine statute does not govern whether the Federal Bureau of Investigation may disclose sealed criminal history record information on the basis of background checks (including fingerprint checks) not listed in 25 M.R.S. §1542-A.*

APPENDIX H

Example Laws and Rules Disqualifying Individuals based on Substantiated Abuse or Neglect

A. Example laws and rules disqualifying individuals based on substantiations for abuse or neglect

- Individuals are ineligible for employment as certified nursing assistants (CNAs), direct care workers or immediate supervisors if they have been substantiated on the CNA and Direct Care registry for abuse, neglect or misappropriation of property of a client, patient or resident. *See* 22 M.R.S. §1812-G; 42 U.S.C. §1395i-3 & §13964 (regarding CNAs); 10-144 C.M.R. ch. 128.

- Employers may not employ direct access workers if a comprehensive background check conducted by the Maine Background Check Center—including checks of child protective services records and the CNA/direct care worker registry—reveals a substantiated finding of patient or resident abuse, neglect or exploitation or misappropriation of patient or resident property. *See* 22 M.R.S. ch. 1691; 10-144 C.M.R. ch. 60.

- An individual with a substantiated finding of child abuse or neglect from DHHS or a comparable department in another state where the individual resided within the previous 5 years may not be (a) employed by or a volunteer at a children's residential care facility or (b) employed at an emergency children's shelter, shelter for homeless children or a transitional living program that is a children's home. 22 M.R.S. §8110; 10-148 C.M.R. ch. 35, §6(B), (C) (children's residential care facilities); 10-148 C.M.R. ch. 37, §8(B), (C) (emergency children's shelters, shelters for homeless children, and transitional living programs that are children's homes).
    - *Additional discretionary consideration*: if an individual has been substantiated by the DHHS Office of Aging and Disability Services for abuse, neglect or exploitation of an incapacitated or dependent adult, then the facility may only employ the person if it concludes the facility's residents would not be endangered by the individual's employment.

- An individual with a substantiated finding of child abuse or neglect from DHHS or a comparable department in another state where the individual resided within the previous 5 years:
    - Is ineligible for licensure as a child care provider—*i.e.,* a child care facility, family child care provider or nursery school. In addition, if any of the adult household members of an applicant for licensure as a family child care provider has such a substantiation, the license may not be granted.
    - Is ineligible for employment by a child care provider in a position involving the care or supervision of children or in a position with unsupervised access to children.

  22 M.R.S. §8302-A, 22 M.R.S. §8302-B; 10-148 C.M.R. ch. 34.

- Organizations (except certain legal aid or hospital nonprofit organizations) that assist parents or guardians with the process of executing powers of attorney for the temporary care of a minor must conduct background checks for the prospective agent and any adult member of the agent's household. The organizations may not continue to assist the prospective agent if these background checks reveal a substantiated allegation of child abuse, neglect or exploitation. 18-C M.R.S. §5-127.

The statutes and rules governing the underlying abuse and neglect registries establish processes for individuals to request administrative appeals from substantiation findings and, if unsuccessful, to appeal those findings in court. The timelines for those appeals are generally based on the date of the substantiation, not on the later date that the person discovers their ineligibility for a particular type of employment based on the substantiation. However, the rules governing the CNA and Direct Care Worker Registry additionally establish a process for individuals to petition for removal of certain non-abuse substantiated findings on the registry no sooner than 12 months after the substantiation.

B. Example laws and rules authorizing consideration of substantiations for abuse or neglect

- A court conducting an adoption proceeding is required to conduct a background check—including a screening of Department of Health and Human Services (DHHS) records "for child abuse cases"—for each prospective adoptive parent who is not a parent of the child. The information received from the background check "may be used by the court for the purpose of screening prospective adoptive parents in determining whether the adoption is in the best interest of the child." 18-C M.R.S. §9-304(1)(B).
    - *Note:* this background check process does not apply in the context of confirmatory adoptions following assisted reproduction. 18-C M.R.S. §9-316(6)(B).

- DHHS has discretion to deny a license to operate a family foster home to a person who has an open, substantiated, or indicated child protective services case. 10-148 C.M.R. ch. 16, §9.

- DHHS is not required to consider an adult relative for placement of a child who has been removed from the child's home if DHHS has "substantiated any report of child abuse or neglect regarding that relative or a substantially equivalent determination . . . has been made in another state." 22 M.R.S. §4005-G(5).

- An individual who is rostered to serve as a children's guardian *ad litem—i.e.,* who may be appointed as a guardian *ad litem* in child protection proceedings, divorce and parental rights and responsibilities proceedings, minor guardianship proceedings or adoption proceedings—may be reprimanded or removed from the guardian *ad litem* roster if DHHS has substantiated an allegation of abuse or neglect against that individual. Maine Rules for Guardians Ad Litem, Rule 9.

APPENDIX I

Maine Judicial Branch Data on Convictions by Class of Crime (2019-2023)

Maine Judicial Branch

Number of Individuals Convicted of Criminal Offenses, 2019 - 2023

Class/Severity of Offense	2019	2020	2021	2022	2023
Murder	**18**	**5**	**5**	**7**	**6**
Any Felony	**2,484**	**1,496**	**1,792**	**2,077**	**2,417**
Class A	140	92	158	177	212
Class B	715	424	557	643	730
Class C	1,952	1,199	1,405	1,628	1,914
Any Misdemeanor	**20,173**	**11,559**	**12,133**	**13,409**	**14,300**
Class D	9,160	5,482	6,499	7,227	7,763
Class E	14,128	7,931	7,954	8,754	9,479
Any Conviction (Total)	**21,333**	**12,190**	**12,864**	**14,140**	**15,203**

The counts above show the number of unique defendants who were convicted of a criminal offense during the calendar year indicated in each column. To be counted in a category, the defendant must have a conviction for at least one offense of that type during the indicated year.

Please note that the categories above **cannot** be summed. Defendants can be charged with and convicted of multiple offenses of different classes, both within a single case and across multiple cases. Because of this overlap, a defendant may be counted in multiple categories and across multiple years in the counts above.

APPENDIX J

Final Vote Tally for each
Criminal Records Review Committee Recommendation

CRIMINAL RECORDS REVIEW COMMITEE
Final Tally of Votes

Proposal Number	Content of Recommendation Motion: (as modified during the 11/19/24 CRRC Meeting before voting)	Vote (final)	Outcome – Report Recommendation ID
1	Establish a permanent Criminal Records Review Commission – using LD 2252, as amended, from the 131st Legislature as the model — but further specifying that the topics to be studied "include but are not limited to" the topics identified in other CRRC recommendations.	**Yes: 16** No: 2 Abstain: 3	**Recommendation G** *Note: Speaker Talbot Ross would have voted yes*
2	The permanent CRRC should study/consider: • Whether Maine should adopt all or certain portions of the Model Collateral Consequences of Conviction Act and how the text of the Model Law should be amended to fit Maine law and practice.	**Yes: 18** No: 0 Abstain: 5	**Recommendation G(i)** *Note: Speaker Talbot Ross would have voted yes*
3	The permanent CRRC should study/consider: • How to establish an automatic record sealing process for adult criminal convictions, both which crimes should be eligible for automatic sealing and how to implement the process.	**Yes: 14** No: 1 Abstain: 6	**Recommendation G(ii)** *Note: Speaker Talbot Ross would have voted yes*
5	The permanent CRRC should study/consider: • Whether convictions for some or all Class A, B, and C Crimes should be eligible for sealing and under what circumstances.	**Yes: 14** No: 1 Abstain: 6	**Recommendation G(iii)** *Note: Speaker Talbot Ross would have voted yes*
6	Amend Title 15, chapter 310-A, the law governing post-judgment motions to seal criminal history record information, to: • Eliminate the waiting period before motions may be filed to seal convictions for the subset of "eligible crimes" involving decriminalized conduct (*i.e.,* convictions for decriminalized conduct involving marijuana and for Class E engaging in prostitution); and • Allow the sealing, with no required waiting period, of convictions for ***any*** conduct that has been decriminalized in the State.	**Yes: 20** No: 0 Abstain: 5	**Recommendation A(i)** *Note: Speaker Talbot Ross would have voted yes*
7	Amend Title 15, chapter 310-A, the law governing post-judgment motions to seal criminal history record information, to: • Expand the list of crimes eligible for sealing to include convictions for any ***drug possession*** crime in 17-A M.R.S. §1107-A; and • Clarify that a person may request that ***more than one conviction***—for ***any eligible crime***—be sealed, if the person has satisfied all of the requirements for sealing after the date of the last conviction.	**Yes: 19** No: 3 Abstain: 3	**Recommendation A(ii)** *Note: Speaker Talbot Ross would have voted yes*
8	Amend Title 15, chapter 310-A, the law governing post-judgment motions to seal criminal history record information, to: • Expand the list of crimes eligible for sealing to include convictions for all Class A, B and C drug offenses (for example, furnishing and trafficking) except convictions for Class A aggravated trafficking and convictions involving the use of a firearm.	**Yes: 14** No: 4 No (but study the issue): 4 Abstain: 2	**Recommendation A(iii)** *Note: Speaker Talbot Ross would have voted yes*

CRIMINAL RECORDS REVIEW COMMITEE
Final Tally of Votes

Proposal Number	Content of Recommendation Motion: (as modified during the 11/19/24 CRRC Meeting before voting)	Vote (final)	Outcome – Report Recommendation ID
10	Amend Title 15, chapter 310-A, the law governing post-judgment motions to seal criminal history record information, to: • Allow, without a waiting period, a motion to seal a conviction for any ***crime committed by a victim/survivor of sex trafficking or sexual exploitation*** if the crime was committed as a substantial result of the trafficking or exploitation; • Clarify that the existing process for sealing convictions for the former Class E crime of engaging in prostitution also applies to convictions for the Class D crime of engaging in prostitution; and • Require businesses that assemble and sell criminal records to update their records to remove records of sealed or pardoned offenses. *Draft legislation for this recommendation was presented at the CRRC meeting on Sept. 24, 2024. (See p. 21 of the meeting materials PDF)*	**Yes: 18** No: 0 Abstain: 7	**Recommendation A(v)** *Note: Speaker Talbot Ross would have voted yes*
11	Amend Title 15, chapter 310-A, the law governing post-judgment motions to seal criminal history record information, to: • Allow—if the other requirements for sealing under current law, including the 4-year waiting period, are met—the sealing of convictions for most Class D crimes except: (a) Any offense that would not have been eligible for sealing under LD 1459 from the 130th Legislature, *i.e.*, certain sex offenses, domestic violence offenses, and cruelty to animals; (b) Class D assault if the defendant was also charged or could have also been charged with a crime under Title 17-A, chapter 11 (sexual assaults) or chapter 12 (sexual exploitation of minors) arising out of the same conduct; and (c) Violation of condition of release committed while the defendant was released on pre-conviction or post-conviction bail for a charge under Title 17-A chapter 11 or chapter 12.	**Yes: 15** No: 4 Abstain: 6	**Recommendation A(iv)** *Note: Speaker Talbot Ross would have voted yes*
12	Amend Title 15, chapter 310-A, the law governing post-judgment motions to seal criminal history record information, to: • Eliminate the waiting period before motions to seal may be filed if an individual remained case plan complaint while in DOC custody, or completed evidence-base rehabilitation, treatment programs, or vocational training; or completed a post-secondary education and achieved associate, bachelor's or higher-level degree.	Yes: 0 No: 3 **No (but study the issue): 17** Abstain: 2	Recommendation fails as stated; but, a majority support further study *Note: Speaker Talbot Ross supports further study* **Recommendation G(iv)** ★As a recommendation for further study the revised votes are: Yes – 17; No – 3; Abstain – 2

CRIMINAL RECORDS REVIEW COMMITEE
Final Tally of Votes

Proposal Number	Content of Recommendation Motion: (as modified during the 11/19/24 CRRC Meeting before voting)	Vote (final)	Outcome – Report Recommendation ID
13	The permanent CRRC should study/consider: • Whether to allow sealing of criminal records upon successful completion of or graduation from approved behavioral health treatment programs, including treatment courts.	**Yes: 17** No: 2 Abstain: 3	**Recommendation G(v)** *Note: Speaker Talbot Ross would have voted yes*
14	Enact legislation requiring the Maine Commission on Public Defense Services (formerly MCILS) to establish a mechanism to *assist* individuals with filing post-judgment motions to seal criminal history record information. Note: the term "assist" is used intentionally—it will be up to MCPDS to determine what form the assistance should take: helping fill out forms or direct representation or another approach.	**Yes: 14** No: 4 Abstain: 2	**Recommendation B** *Note: Speaker Talbot Ross would have voted yes*
18	Enact legislation that provides for automatic sealing of convictions for conduct involving marijuana that has since been decriminalized in the State—based on the text of LD 2269 from the 131st Legislature, as amended by the minority committee amendment.	**Yes: 11** No: 7 Abstain: 4	**Recommendation C** *Note: Speaker Talbot Ross would have voted yes*
21	*Background:* Current law, 15 M.R.S. §3308-C(10)(C), provides for automatic sealing of juvenile records of adjudications for committing juvenile crimes that, if the juvenile were an adult, would constitute a Class D or E Crime (other than OUI) after the juvenile is finally discharged from the disposition imposed for that juvenile crime. *Recommendation*: Expand the process for automatic sealing of juvenile records to include adjudications for having committed juvenile crimes that, if the juvenile were an adult, would constitute OUI, murder or a Class A, B or C crime if committed by an adult. This process would only apply prospectively to adjudications after the law's effective date.	Yes: 7 **No: 10** Abstain: 5	**Recommendation fails** *Note: Speaker Talbot Ross would have voted yes*
22	Enact legislation establishing a process for victims of sex trafficking and sexual exploitation to file a post-judgment motion to have their convictions ***reversed*** if they demonstrate, by a preponderance of the evidence, that they experienced sex trafficking or sexual exploitation and the conduct for which they were convicted was a substantial result of the sex trafficking or sexual exploitation. If the court grants the motion, it must specify which court records and criminal justice agency records should be corrected to reflect reversal of the conviction(s). *Draft legislation for this recommendation was presented at the CRRC meeting on Sept. 24, 2024. (See p. 29 of the meeting materials PDF)*	**Yes: 15** No: 0 Abstain: 7	**Recommendation D** *Note: Speaker Talbot Ross would have voted yes*
24	Enact legislation removing 3 crimes — aggravated cultivation of marijuana; refusing to submit to arrest or detention; and eluding or passing a roadblock — from the "matrix" of crimes that disqualify an individual (for certain time periods) from seeking employment as a Direct Access Worker under the Maine Background Check Center Rule, 10-144 C.M.R. ch. 60 (last amended Oct. 2018).	**Yes: 12** No: 4 No (but study the issue): 3 Abstain: 4	**Recommendation E** *Note: Speaker Talbot Ross would have voted yes*

CRIMINAL RECORDS REVIEW COMMITEE
Final Tally of Votes

Proposal Number	Content of Recommendation Motion: (as modified during the 11/19/24 CRRC Meeting before voting)	Vote (final)	Outcome – Report Recommendation ID
25	Amend the law, 5 M.R.S. §5303(1), governing when most state occupational licensing agencies may consider past criminal convictions of a licensee or of an applicant for licensure by: • Reducing the lookback period from 3 years to 6 months after the individual's final discharge, if any, from a correctional facility; • Prohibiting consideration of convictions for conduct that has been decriminalized; • Allowing a licensee to petition for reinstatement of a license upon release from a correctional facility if the conviction causing the disqualification was not committed while the individual was licensed & performing under the license; and • Allowing a licensee to petition for reinstatement of a license at least 2 years after release from a correctional facility if the conviction was committed while the individual was licensed and performing under that license.	**Yes: 9** No: 3 **No (but study the issue): 7** Abstain: 3	Both recommendations fail as stated; however, a majority support ***at least*** further study of the issues *Note: Speaker Talbot Ross would have voted yes on both proposals* **Recommendation G(vi)** ★As a recommendation for further study of amending §5303(1) the revised votes are: Yes – 16; No – 3; Abstain – 3 ★ As a recommendation for further study of amending §5303(2) the revised votes are: Yes – 17; No – 4; Abstain – 3
26	Amend the law, 5 M.R.S. §5303(2), governing when certain state licensing agencies (primarily health care related licensing agencies) may consider past criminal convictions of a licensee or of an applicant for licensure by reducing the current 10-year lookback period to a 2-year lookback period if the person's conduct was not directly or indirectly related to the person's licensure.	Yes: 8 No: 4 **No (but study the issue): 9** Abstain: 3	
27	Amend the law, 16 M.R.S. §703(2)(G), within the definition of "confidential criminal history record information" to read: "Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement where the defendant pleads guilty and is convicted of a criminal offense in exchange for the dismissal." *Note:* This recommendation would clarify that, when a defendant enters a plea agreement that results in the court dismissing ***all*** criminal charges while the defendant only admits to a civil violation, information about the dismissed criminal charges is confidential. By contrast, if a plea agreement results in a defendant pleading guilty to at least one criminal charge, information about any criminal charges dismissed as part of that plea agreement is not confidential.	**Yes: 14** No: 5 Abstain: 3	**Recommendation F** *Note: Speaker Talbot Ross would have voted yes*
28	The permanent CRRC should study/consider: • Whether and how to establish a process for awarding a "certificate of rehabilitation" to individuals who have successfully completed or graduated from approved behavioral health or mental health treatment programs. *Note:* Questions to study include: (a) what types of programs qualify; (b) who issues the certificate; and (c) what is the legal effect of the certificate—*for example,* does it eliminate employment/licensing prohibitions; provide protection from civil lawsuits for employers/landlords; etc.?	**Yes: 17** No: 3 Abstain: 2	**Recommendation G(vii)** *Note: Speaker Talbot Ross would have voted yes*

APPENDIX K

Draft Legislation Recommendation A(i):
An Act to Allow the Sealing of Criminal History Record Information Related to Convictions for Conduct that has been Decriminalized in the State

An Act to Allow the Sealing of Criminal History Record Information Related to Convictions for Conduct that has been Decriminalized in the State

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

Sec. 1. 15 MRSA §2261, sub-§6 is amended to read:

6. Eligible criminal conviction. "Eligible criminal conviction" means:

A. A conviction for a current or former Class E crime, except a conviction for a current or former Class E crime under Title 17-A, chapter 11; and

B. A conviction for a crime when the crime was committed prior to January 30, 2017 for:

(1) Aggravated trafficking, furnishing or cultivation of scheduled drugs under Title 17-A, former section 1105 when the person was convicted of cultivating scheduled drugs, the scheduled drug was marijuana and the crime committed was a Class D crime;

(2) Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph A, subparagraph (4);

(3) Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph B-1, subparagraph (4);

(4) Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph D, subparagraph (4); ~~and~~

(5) Unlawful possession of a scheduled drug under Title 17-A, former section 1107 when that drug was marijuana and the underlying crime was a Class D crime~~.~~; and

C. A conviction for conduct that has been decriminalized by the State.

Sec. 2. 15 MRSA §2262, sub-§2 is amended to read:

2. Time since sentence fully satisfied. At least 4 years have passed since the person has fully satisfied each of the sentencing alternatives imposed under Title 17-A, section 1502, subsection 2 for the eligible criminal conviction, except that a post-judgment motion to seal criminal history record information may be filed immediately upon fully satisfying each sentencing alternative for any conviction for conduct that has been decriminalized by the State;

SUMMARY

This bill allows a person to file a post-judgment motion to seal criminal history record information related to a conviction for conduct that has been decriminalized by the State. This bill also eliminates the waiting period required before a person may file a post-judgment motion to seal criminal history record information for any conviction for conduct that has been decriminalized by the State.

APPENDIX L

Draft Legislation Recommendation A(ii), (iii) & (iv):
An Act to Expand the Types of Convictions Eligible for Sealing Through a Post-judgment Motion to Seal Criminal History Record Information

An Act to Expand the Types of Convictions Eligible for Sealing Through a Post-judgment Motion to Seal Criminal History Record Information

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

Sec. 1. 15 MRSA §2261, sub-§6, is amended to read:

6. Eligible criminal conviction. "Eligible criminal conviction" means:

A. A conviction for a current or former Class E crime, except a conviction for a current or former Class E crime under Title 17-A, chapter 11; ~~and~~

B. A conviction for a crime when the crime was committed prior to January 30, 2017 for:

(1) Aggravated trafficking, furnishing or cultivation of scheduled drugs under Title 17-A, former section 1105 when the person was convicted of cultivating scheduled drugs, the scheduled drug was marijuana and the crime committed was a Class D crime;

(2) Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph A, subparagraph (4);

(3) Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph B-1, subparagraph (4);

(4) Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph D, subparagraph (4); and

(5) Unlawful possession of a scheduled drug under Title 17-A, former section 1107 when that drug was marijuana and the underlying crime was a Class D crime~~.~~ ; and

C. A conviction for unlawful possession of scheduled drugs under Title 17-A, section 1107-A or former section 1107;

D. A conviction for a crime under Title 17-A, chapter 45, except for a conviction for a Class A crime under section 1105-A or a conviction for a crime that involved the use of a firearm; and

E. A conviction for a current or former Class D crime, except:

(1) A conviction for a current or former Class D crime under Title 17-A, chapter 11 or 12;

(2) A conviction for violation of condition of release under Title 15, section 1092, committed while the defendant was on preconviction or post-conviction bail for a crime under Title 17-A, chapter 11 or 12;

(3) A conviction for a current or former Class D crime under Title 17-A, section 852, 853 or 855;

(4) A conviction for assault under Title 17-A, section 207 if the defendant was or could have been charged with a crime under Title 17-A, chapter 11 or 12 arising out of the same course of conduct;

(5) A conviction for stalking under Title 17-A, section 210-A or 210-C;

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

(7) A violation of a protective order, as specified in section 321, subsection 6; Title 5, section 4659, subsection 2; Title 17-A, section 506-B; Title 19-A, former section 4011, subsection 3; Title 19-A, former section 4012, subsection 5; or Title 19-A, section 4113, subsection 1;

(8) A conviction for cruelty to animals under Title 17, section 1031;

(9) A conviction for a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4, regardless of whether the relationship was an element of that crime, if 20 years have passed since the judgment of conviction was entered; or

(10) A conviction for the crime of violation of a condition of release, pursuant to section 1092, committed while the defendant is released on preconviction or post-conviction bail for a charge that involves a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4, regardless of whether the relationship was an element of that crime, if 20 years have passed since the judgment of conviction was entered.

Sec. 2. 15 MRSA §2262, first ¶ is amended to read:

Except as provided in section 2262-A, criminal history record information relating to ~~a~~ one or more specific criminal ~~conviction~~ convictions may be sealed under this chapter only if:

Sec. 3. 15 MRSA §2262-A, first ¶ is amended to read:

Criminal history record information relating to ~~a~~ one or more specific criminal ~~conviction~~ convictions for engaging in prostitution under Title 17-A, former section 853-A must be sealed under this chapter if:

Sec. 5. 15 MRSA §2263 is amended to read:

§2263. Motion; persons who may file

A person may file a written motion seeking a court order sealing the person's criminal history record information relating to ~~a~~ one or more specific criminal ~~conviction~~ convictions in the underlying criminal proceeding based on a court determination that the person satisfies the statutory prerequisites specified in section 2262 or 2262-A. The written motion must briefly address each of the statutory prerequisites.

SUMMARY

This bill implements several recommendations of the Criminal Records Review Committee. The bill amends the laws governing the filing post-judgment motions to seal criminal history information by:

1. Allowing the sealing of criminal history record information related to convictions for unlawful possession of scheduled drugs, regardless of the class of the offenses;

2. Allowing the sealing of criminal history record information related to convictions for any violation of the criminal laws governing drugs, except a conviction for the Class A crime of aggravated trafficking or any conviction for a crime that involved the use of a firearm;

3. Allowing the sealing of convictions for all current and former Class D crimes, except specifically enumerated crimes involving violence; and

4. Clarifying that a person may file a motion to seal the criminal history record information for more than one criminal conviction as long as the person satisfies the statutory prerequisites for each conviction to be sealed.

APPENDIX M

Draft Legislation Recommendation A(v):
An Act to Allow Sealing of Criminal History Record Information Related to Conduct Committed by Victims of Sex Trafficking and Sexual Exploitation

An Act to Allow Sealing of Criminal History Record Information Related to Conduct Committed by Victims of Sex Trafficking and Sexual Exploitation

Be it enacted by the people of the State of Maine as follows:

PART A

Sec. A-1. 15 MRSA §2261, is amended to read:

§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.

4-A. Compelling. "Compelling" includes but is not limited to:

A. The use of a drug or intoxicating substance to render a person incapable of controlling that person's conduct or appreciating its nature;

B. Withholding or threatening to withhold a scheduled drug or alcohol from a drug-dependent or alcohol-dependent person. "Drug-dependent or alcohol-dependent person" means a person who is using scheduled drugs or alcohol and who is in a state of psychic or physical dependence, or both, arising from the use of the drugs or alcohol on a continuing basis;

C. Making material false statements, misstatements or omissions;

D. Withholding, destroying or confiscating an actual or purported passport or other immigration document or other actual or purported government identification document with the intent to impair a person's freedom of movement;

E. Requiring the sexual exploitation of a person to retire, repay or service an actual or purported debt; and

F. Using force or engaging in any scheme, plan or pattern to instill in a person a fear that, if the person does not engage or continue to engage in sexual exploitation, the actor or another person will:

(1) Cause physical injury or death to a person;
(2) Cause damage to property, other than property of the actor;
(3) Engage in other conduct constituting a Class A, Class B or Class C crime or criminal restraint;
(4) Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person;

(5) Expose a secret or publicize an asserted fact, regardless of veracity, tending to subject some person, except the actor, to hatred, contempt or ridicule;
(6) Testify or provide information or withhold testimony or information regarding another person's legal claim or defense;
(7) Use a position as a public servant to perform some act related to that person's official duties or fail or refuse to perform an official duty in a manner that adversely affects some other person; or
(8) Perform any other act that would not in itself materially benefit the actor but that is calculated to harm the person being compelled with respect to that person's health, safety or immigration status.

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

6. Eligible criminal conviction. "Eligible criminal conviction" means:

A. A conviction for a current or former Class E crime, except a conviction for a current or former Class E crime under Title 17-A, chapter 11; and

B. A conviction for a crime when the crime was committed prior to January 30, 2017 for:

(1) Aggravated trafficking, furnishing or cultivation of scheduled drugs under Title 17-A, former section 1105 when the person was convicted of cultivating scheduled drugs, the scheduled drug was marijuana and the crime committed was a Class D crime;
(2) Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph A, subparagraph (4);
(3) Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph B-1, subparagraph (4);
(4) Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph D, subparagraph (4); and
(5) Unlawful possession of a scheduled drug under Title 17-A, former section 1107 when that drug was marijuana and the underlying crime was a Class D crime.

7. Sealed record. "Sealed record" means the criminal history record information relating to a specific criminal conviction that a court has ordered to be sealed under section 2264.

8. Sex trafficking. "Sex trafficking" means promoting sexual exploitation by compelling a person to enter into, engage in or remain in sexual exploitation, promoting the sexual exploitation of a person less than 18 years of age or promoting the sexual exploitation of a person who suffers from a mental disability that is reasonably apparent or known to the actor and that in fact renders the other person substantially incapable of appraising the nature of the conduct involved.

8. Sexual exploitation. "Sexual exploitation" means engaging in the exchange of sex for money or resources because of a person's history of trauma, adverse childhood experiences, substance use disorder or other circumstances of victimization, exploitation or oppression.

Sec. A-2. 15 MRSA, §2262-A, is amended to read:

§2262-A. Special statutory prerequisites for sealing criminal history record information related to engaging in prostitution

Criminal history record information relating to a criminal conviction for engaging in prostitution under Title 17-A, former section 853-A must be sealed under this chapter if:

~~**1. Eligible criminal conviction.** The criminal conviction is an eligible criminal conviction;~~

2. Time since sentence fully satisfied. At least one year has passed since the person has fully satisfied each of the sentencing alternatives imposed under Title 17-A, section 1502, subsection 2 for the ~~eligible criminal~~ conviction; and

3. Other convictions. The person has not been convicted of a violation of Title 17-A, section 852, 853, 853-B or 855 or for engaging in substantially similar conduct in another jurisdiction.

Sec. A-3. 15 MRSA, §2262-B, is enacted to read:

§2262-B. Sealing criminal history record information of victims of sex trafficking or sexual exploitation.

1. Special statutory prerequisites for sealing. Criminal history record information relating to a criminal conviction must be sealed under this chapter if:

A. The person has been a victim of sex trafficking or sexual exploitation; and

B. The commission of the crime for which the person was convicted was a substantial result of sex trafficking or sexual exploitation.

2. Timing of motion. A motion may be filed under this section at any time after the criminal conviction is entered.

3. Place of Filing. Notwithstanding section 2264, subsection 1, if a person files multiple motions in different courts under this section, the motions shall be consolidated for hearing or judgment.

4. Remote testimony. Notwithstanding section 2264, subsection 3, the person who files the motion and any witnesses may participate in the hearing remotely, unless the court finds that the person filing the motion or a specific witness resides in this State and that the interest of justice require the person's or the witness's participation at the hearing in person.

5. Rebuttable presumption. Official documentation of a person's status as a victim of sex trafficking or sexual exploitation creates a rebuttable presumption that the person's participation in a crime was a result of the person's having been a victim of sex trafficking or sexual exploitation. Nothing in this section imposes a requirement that a person filing a motion under this section provide official documentation of the person's status as a victim of sex trafficking or sexual exploitation.

For purposes of this subsection "official documentation of a person's status as a victim of sex trafficking or sexual exploitation" includes, but is not limited to:

A. A copy of an official record, certification, or eligibility letter from a federal, state, tribal or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that reflects that the person filing the motion was a victim of sex trafficking or sexual exploitation;

B. An affidavit or sworn testimony from a member of the clergy, a medical professional, a staff member of a victim services organization or other professional from whom the person filing the motion has sought legal counsel or other assistance in addressing the trauma and other challenges associated with being a victim of sex trafficking or sexual exploitation; or

C. Any other evidence the court determines is of sufficient credibility or probative value to establish a rebuttable presumption that the person filing a motion under this section was a victim of sex trafficking or sexual exploitation.

6. Hearing. Notwithstanding section 2264 subsections 1 and 5, the court may grant a motion under this section without a hearing if the representative for the State consents in writing. If the representative for the State does not consent to granting the motion without a hearing, the court shall hold a hearing on the motion.

Sec. A-4. 15 MRSA, §2263, is amended to read:

§2263. Motion; persons who may file

A person may file a written motion seeking a court order sealing the person's criminal history record information relating to a specific criminal conviction in the underlying criminal proceeding based on a court determination that the person satisfies the statutory prerequisites specified in section 2262~~, or~~ 2262-A or 2262-B. The written motion must briefly address each of the statutory prerequisites.

Sec. A-5. 15 MRSA, §2264, is amended to read:

§2264. Motion and hearing; process

1. Filing motion. A motion filed pursuant to section 2263 must be filed in the underlying criminal proceeding. Except as provided in section 2262-B, ~~After~~ after the motion is filed, the clerk shall set the motion for hearing. If multiple motions are filed, the court shall consolidate the motions to one location.

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

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

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

5. Hearing; order; written findings. Except as provided in section 2262-B, ~~The~~ the court shall hold a hearing on a motion filed under this section. At the conclusion of the hearing, if the court determines that the person who filed the motion has established by a preponderance of the evidence each of the statutory prerequisites specified in section 2262~~, or~~ 2262-A, or 2262-B, subsection 1, the court shall grant the motion and shall issue a written order sealing the criminal history record information of the eligible criminal conviction that was the subject of the motion. If, at the conclusion of the hearing, the court determines that the person has not established one or more of the statutory prerequisites specified in section 2262~~, or~~ 2262-A, or 2262-B, subsection 1, the court shall issue a written order denying the motion. The order must contain written findings of fact supporting the court's determination. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State pursuant to subsection 3.

6. Notice to State Bureau of Identification. If the court issues an order under subsection 5 that includes the sealing of a criminal conviction maintained by the State Bureau of Identification pursuant to Title 25, section 1541 and previously transmitted by the court pursuant to Title 25, section 1547, the court shall electronically transmit notice of the court's order to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. Upon receipt of the notice, the State Bureau of Identification shall promptly amend its records relating to the person's eligible criminal conviction to

reflect that the criminal history record information relating to that criminal conviction is sealed and that dissemination is governed by section 2265. The State Bureau of Identification shall send notification of compliance with this subsection to the person's last known address.

7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty to notify. Except for records sealed under section 2262-A or 2262-B, ~~Notwithstanding~~ notwithstanding a court order sealing the criminal history record information pursuant to subsection 5, if at any time subsequent to the court's order the person is convicted of a new crime in this State or in another jurisdiction, the criminal history record information must be unsealed.

A. In the event of a new criminal conviction, the person shall promptly file a written notice in the underlying criminal proceeding of the person's disqualification from eligibility, identifying the new conviction, including the jurisdiction, court and docket number of the new criminal proceeding. If the person fails to file the required written notice and the court learns of the existence of the new criminal conviction, the court shall notify the person of the apparent existence of the new conviction and offer the person an opportunity to request a hearing to contest the fact of a new conviction.

B. If the person requests a hearing under paragraph A, the court shall, after giving notice to the person and the appropriate prosecutorial office, hold a hearing. At the hearing, the person has the burden of proving by clear and convincing evidence that the person has not been convicted of a crime subsequent to issuance of the sealing order. At the conclusion of the hearing, if the court determines that the person has not satisfied the burden of proof, it shall find that the person has been newly convicted of the crime and as a consequence is no longer eligible for the sealing order and shall issue a written order unsealing the criminal history record information, with written findings of fact. If, at the conclusion of the hearing, the court determines that the person has satisfied the burden of proof, it shall find that the person has not been convicted of the new crime and issue a written order certifying this determination. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State.

C. If the person does not request a hearing under paragraph A, the court shall determine that the person has not satisfied the burden of proof and the court shall find that the person has been convicted of the new crime and as a consequence is no longer eligible for the sealing order and shall issue a written order unsealing the criminal history record information, with written findings of fact. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State.

8. Notice of new crime. If the court orders the unsealing of the record under this section, the court shall electronically transmit notice of the court's order to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification upon receipt of the notice shall promptly amend its records relating to the person's criminal history record information relating to that criminal conviction to unseal the record. The State Bureau of Identification shall send notification of compliance with that requirement to the person's last known address.

PART B

Sec. B-1. 10 MRSA ch. 238 is enacted to read:

CHAPTER 238

BUSINESS SCREENING SERVICES

§ 1500-W. Business Screening Services

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Business screening service" means a person regularly engaged in the business of collecting, assembling, evaluating or disseminating the criminal records of individuals for a fee. "Business screening service" does not include a government entity or the news media.

B. "Conviction" means any of the following accepted by the court, entered in the docket and not vacated:

(1) A guilty plea; or
(2) A guilty verdict by a jury or by the court.

C. "Criminal record" includes a record of an arrest, citation, prosecution, criminal proceeding or conviction.

2. Prohibition on dissemination of inaccurate criminal records. A business screening service may not disseminate a criminal record, unless the criminal record reflects the complete and accurate record provided by the source of the data. For purposes of this subsection, "a complete and accurate record" is a criminal record that has been verified within the previous 90 days by the source of the criminal record as being up-to-date and accurate.

3.Correction and deletion of criminal records. A business screening service shall comply with the requirements of this subsection for the correction and deletion of criminal records.

A. If the completeness or accuracy of a criminal record maintained by a business screening service is disputed by the individual who is the subject of the record, the screening service shall, without charging a fee, investigate the accuracy of the disputed criminal record. In conducting an investigation under this paragraph, the business screening service shall review and consider all relevant information submitted by the individual who is the subject of the criminal record to determine whether the criminal record maintained by the screening service accurately reflects the content of the criminal record maintained by the official government custodian of that criminal record.

B. After conducting an investigation under paragraph A, if a business screening service determines that the criminal record does not accurately reflect the content the criminal record maintained by the official government custodian of that criminal record, the business screening service shall correct the criminal record. If the investigation under paragraph A reveals that the criminal record involves a conviction that was sealed or the subject of a pardon, the business screening service shall promptly delete the criminal record of that conviction from its files. A business screening service that complies with this paragraph is deemed to be in compliance with all of the requirements of this section.

C. A business screening service may terminate an investigation under paragraph A only if the business screening service reasonably determines that the dispute is frivolous based on the failure of individual who is the subject of the record to provide sufficient information to challenge the accuracy of the criminal record. If a business screening service determines that a dispute is frivolous, it shall inform the individual who is the subject of the record in writing of its reasons for determining

that the dispute is frivolous and provide a description of the type of information required to trigger a non-frivolous investigation of the accuracy of the criminal record.

D. Within 30 days of the date when a dispute is filed under paragraph A, the business screening service shall notify an individual who is the subject of a criminal record in writing of the outcome of the investigation, including whether the business screening service determined that the criminal record is accurate, corrected or deleted the disputed criminal record or determined that the dispute was frivolous.

4. Deletion of sealed records. If a business screening service knows that a criminal record of a conviction involves a conviction that has been sealed or is the subject of a pardon, the screening service shall promptly delete the criminal record and may not disseminate the criminal record.

5. Date and notice required. A business screening service that disseminates a criminal record that was collected on or after the effective date of this section must include a notice in writing specifying the date when the criminal record was last verified as up-to-date by the business screening service and informing the recipient that records of conviction included in the criminal record may include convictions that have been sealed, have been the subject of a pardon or that have otherwise become confidential.

6. Remedies; relationship to Fair Credit Reporting Act. The remedies in this subsection govern violations of the provisions of this section.

A. A business screening service that violates this section is liable to the individual who is the subject of the record for a penalty of $1,000 or actual damages caused by the violation, whichever is greater, plus reasonable attorney's fees and costs.

B. A business screening service that is in compliance with the applicable provisions of the federal Fair Credit Reporting Act, Title 15 United States Code section 1681, et seq., is deemed to be in compliance with this section.

7. Service of process; jurisdiction. A business screening service that disseminates a criminal record for a fee to a recipient in this State or that obtains a criminal record from a government entity, including a court, in this State is deemed to have consented to service of process in this State for purposes of Title 13-B, sections 1212-A and 1213, or other applicable law and to the jurisdiction of courts in this State for actions involving a violation of this section.

SUMMARY

This bill implements a recommendation of the Criminal Records Review Committee. Part A of the bill amends the laws governing post-judgment motions to seal criminal history record information:

1. To clarify that the existing process for sealing convictions for the former Class E crime of engaging in prostitution also applies to convictions for the former Class D crime of engaging in prostitution.

2. To establish a process for sealing convictions for any crime committed by a victim of sex trafficking or sexual exploitation if the victim demonstrates that the crime was committed as a substantial result of the sex trafficking or sexual exploitation.

Part B of the bill requires "business screening services," defined in Part B as persons regularly engaged in the business of collecting, assembling, evaluating or disseminating the criminal records of

individuals for a fee, to disseminate only accurate criminal records, including by updating their criminal records to remove records related to convictions for sealed or pardoned offenses.

APPENDIX N

Draft Legislation Recommendation B:
An Act Directing the Maine Commission on Public Defense Services to Assist Persons Filing Post-judgment Motions to Seal Criminal History Record Information

An Act Directing the Maine Commission on Public Defense Services to Assist Persons Filing Post-Judgment Motions to Seal Criminal History Record Information

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

Sec. 1. 4 MRSA §1804, sub-§3 is amended to read:

3. Duties. The commission shall:

A. Develop and maintain a system that employs employed counsel and public defenders, uses appointed private attorneys and contracts with individual attorneys or groups of attorneys. The commission shall consider other programs necessary to provide high-quality, effective and efficient indigent legal services;

B. Develop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information;

C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and indigent legal services caseload data are accurately collected, recorded and reported;

D. To ensure an adequate pool of qualified attorneys, develop training and evaluation programs for attorneys throughout the State to provide representation in criminal, juvenile, child protective, involuntary commitment and all other types of proceedings for which parties may be eligible to receive indigent legal services;

E. Establish minimum eligibility standards to ensure that attorneys who provide indigent legal services are capable of providing high-quality, effective and efficient representation in the case types to which they are assigned, recognizing that high-quality, effective and efficient representation in each of these types of cases requires counsel with experience and specialized training in that field;

F. Establish rates of compensation for assigned counsel and contract counsel;

G. Establish a method for accurately tracking, monitoring and enforcing caseload standards for assigned counsel, contract counsel, employed counsel and public defenders;

H. By January 15th of each year, submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:

(1) An evaluation of contracts; services provided by contract counsel, assigned counsel, employed counsel and public defenders; any contracted professional services; and cost containment measures; and

(2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation on matters related to the report;

I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary;

J. Develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director, or the executive director's designee, determining:

(1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;

(2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and

(3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

All decisions of the commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action;

K. Pay appellate counsel;

L. Establish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services;

M. Establish procedures for handling complaints about the performance of counsel providing indigent legal services;

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D;

O. Establish a system to audit financial requests and payments that includes the authority to recoup payments when necessary. The commission may summon persons and subpoena witnesses and compel their attendance, require production of evidence, administer oaths and examine any person under oath as part of an audit. Any summons or subpoena may be served by registered mail with return receipt. Subpoenas issued under this paragraph may be enforced by the Superior Court; ~~and~~

P. Develop and maintain a registry of names, telephone numbers and other contact information for attorneys who provide legal services to persons who are incarcerated. The commission shall on a weekly basis provide these names, telephone numbers and other contact information to all sheriffs' offices and to the Department of Corrections. On the Monday following transmission of the information, the sheriffs' offices and the Department of Corrections have constructive notice that communications to and from these attorneys by residents of jails and correctional facilities are subject to the attorney-client privilege. The attorneys' names, telephone numbers and other contact information are confidential~~.~~ ; and

Q. Develop a procedure for assisting persons who file post-judgment motions to seal criminal history record information under Title 15, chapter 310-A.

SUMMARY

This bill implements a recommendation of the Criminal Records Review Committee. The bill requires the Maine Commission on Public Defense Services to develop a procedure for assisting persons who file post-judgment motions to seal their criminal history record information under Title 15, chapter 310-A of the Maine Revised Statutes.

APPENDIX O

Draft Legislation Recommendation C:
An Act to Automatically Seal Criminal History Record Information for Class D and Class E Crimes Relating to Marijuana Possession and Cultivation

An Act to Automatically Seal Criminal History Record Information for Class D and Class E Crimes Relating to Marijuana Possession and Cultivation

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

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

CHAPTER 313

AUTOMATIC SEALING OF CERTAIN CRIMINAL HISTORY RECORD INFORMATION

§2401. Definitions

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

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

2. Bureau. "Bureau" means the Department of Public Safety, Bureau of State Police, State Bureau of Identification.

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.

6. Eligible criminal conviction. "Eligible criminal conviction" means a conviction for a crime committed on or after January 1, 2001 and prior to January 30, 2017 for the following:

A. Aggravated trafficking, furnishing or cultivation of scheduled drugs under Title 17-A, former section 1105 when the person was convicted of cultivating scheduled drugs, that scheduled drug was marijuana and the underlying crime was a Class D or Class E crime;

B. Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph A, subparagraph (4);

C. Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph B-1, subparagraph (4);

D. Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph D, subparagraph (4); or

E. Unlawful possession of scheduled drugs under Title 17-A, former section 1107 when that scheduled drug was marijuana and the underlying crime was a Class D or Class E crime.

§2402. Statutory prerequisites for automatic sealing of criminal history record information

Criminal history record information relating to a specific criminal conviction may be sealed under this chapter only if:

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

2. Other convictions in this State. The person has not been convicted of a crime in this State and has not had a criminal charge dismissed as a result of a deferred disposition pursuant to Title 17-A, former chapter 54-F or Title 17-A, chapter 67, subchapter 4 since the time at which the person fully satisfied each of the sentencing alternatives imposed under Title 17-A, section 1502, subsection 2 for the person's most recent eligible criminal conviction up until the time the bureau submits the criminal history record information related to that eligible criminal conviction to the Administrative Office of the Courts under section 2403, subsection 2;

3. Convictions in another jurisdiction. The person has not been convicted of a crime in another jurisdiction since the time at which the person fully satisfied each of the sentencing alternatives imposed under Title 17-A, section 1502, subsection 2 for the person's most recent eligible criminal conviction up until the time the bureau transfers the criminal history record information related to that eligible criminal conviction to the Administrative Office of the Courts under section 2403, subsection 2; and

4. Pending criminal charges. The person does not have any pending criminal charges in this State or in another jurisdiction.

§2403. Automatic sealing of criminal history record information

Criminal history record information for an eligible criminal conviction in which the person convicted meets the requirements of section 2402 must be sealed in accordance with this section.

1. Monthly examination of records. The bureau shall at least once a month examine criminal history record information collected and maintained by the bureau pursuant to Title 25, section 1541, subsection 4-A to identify criminal history record information that may meet the requirements of section 2402.

The Commissioner of Public Safety may adopt rules to carry out the purposes of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Transfer of records; records review. If the bureau determines that any criminal history record information examined pursuant to subsection 1 meets the requirements of section 2402, the bureau shall transfer that criminal history record information, along with any supporting documents or data, to the Administrative Office of the Courts. Upon receipt, the Administrative Office of the Courts shall review its files to determine whether it has in its possession any criminal history record information or other information related to the criminal history record information submitted to it by the bureau. The Administrative Office of the Courts shall transfer any information or data found along with the information and data received from the bureau and any additional supporting documents the Administrative Office of the Courts determines relevant to the court with jurisdiction in the underlying criminal proceeding.

3. Review; written findings. Upon receipt of criminal history record information, along with any supporting documents or data, and information under subsection 2, the court with jurisdiction in the underlying criminal proceeding shall review those records, data and information to determine if the records, data and information meet the requirements of subsection 2402.

A. If the court determines that the records under this subsection meet the requirements of section 2402, the court shall issue an order sealing the criminal history record information of the eligible criminal conviction that was the subject of the records reviewed.

B. If the court determines that the records under this subsection do not establish one or more of the requirements of section 2402, the court shall issue a written order containing findings of fact supporting the court's determination that the records are not subject to automatic sealing.

4. Notice to the bureau. The court shall electronically transmit notice of the court's order under subsection 3 to the bureau. If the court issues an order sealing the criminal history record information under subsection 3, paragraph A, the bureau shall promptly amend its records relating to the person's eligible criminal conviction for automatic sealing to reflect that the criminal history record information relating to that criminal conviction is sealed and that dissemination is governed by section 2265, and the bureau shall send notification of compliance with this subsection to the person's last known address. If the court issues an order denying the sealing of criminal history record information under subsection 3, paragraph B, the bureau shall file that order with the corresponding criminal history record information.

5. Cooperation. The Department of Public Safety, Bureau of State Police; Department of Corrections; judicial branch; and criminal justice agencies that collect, maintain or disseminate criminal history record information shall cooperate with the bureau and assist it with carrying out the purposes and duties of this section.

§2404. Limited disclosure of eligible criminal conviction

A person whose eligible criminal conviction is the subject of a sealing order under section 2403, subsection 3, paragraph A may respond to inquiries from persons other than criminal justice agencies and other entities that are authorized to obtain the sealed criminal history record information under section 2265 by not disclosing the existence of the eligible criminal conviction without being subject to any sanctions under the laws of this State. Other than when responding to criminal justice agencies or when under oath while being prosecuted for a subsequent crime, a person whose eligible criminal conviction is the subject of a sealing order does not violate Title 17-A, section 451, 452 or 453 by not disclosing the eligible criminal conviction.

§2405. Review of determination of eligibility; motion to seal criminal history record information

1. Appeal by person. A person aggrieved by a written order under section 2403, subsection 3, paragraph B may not appeal as a matter of right. The manner for a person to file a motion to appeal must be determined by rule of the Supreme Judicial Court.

2. Appeal by State. If the State is aggrieved by an order under section 2403, subsection 3, paragraph A, the State may appeal as a matter of right, and a certificate of approval by the Attorney General is not required. The manner and any conditions for an appeal by the Attorney General must be determined by rule of the Supreme Judicial Court.

3. Motion to seal criminal history record information; alternative to automatic sealing. This chapter may not be construed to prevent a person from filing a written motion seeking a court order sealing the person's criminal history record information relating to a specific criminal conviction in accordance with section 2263.

SUMMARY

This bill implements a recommendation of the Criminal Records Review Committee. The bill creates a process to automatically seal or make confidential criminal history record information related to convictions for marijuana possession and cultivation related crimes committed on or after

January 1, 2001 and prior to January 30, 2017 for engaging in conduct that is no longer illegal under Maine's adult use cannabis laws. The process requires the Department of Public Safety, Bureau of State Police, State Bureau of Identification to review monthly the criminal history record information obtained in its files to determine if the underlying convictions for certain criminal history record information qualifies for automatic sealing. If it does, it must transfer that information to the Administrative Office of the Courts, which is required to do the same with its files for the corresponding underlying convictions.

Once the Administrative Office of the Courts has compiled all of the relevant information, the bill requires the Administrative Office of the Courts to submit that information to the Superior Court or District Court in the underlying criminal proceeding. That court is required to determine whether the underlying criminal conviction qualifies to have the criminal history record information related to the conviction sealed. If it does qualify, the court is required to send notice to the State Bureau of Identification to make that criminal history record information confidential. If it does not qualify, the court is required to send the order denying seal to the State Bureau of Identification to be filed with the criminal history record information for that underlying conviction.

The bill provides that a person aggrieved by a finding that the person's conviction does not qualify for automatic sealing does not have a right to appeal, but the Supreme Judicial Court may make rules for the manner for taking appeal. Regardless of a finding that a person's conviction does not qualify for automatic sealing, the person is still permitted to file a motion to seal the criminal history record information for that conviction. The State may appeal a decision granting automatic sealing of an eligible criminal conviction as a matter of right.

APPENDIX P

Draft Legislation Recommendation D:
An Act to Establish Post-conviction Review for Victims of Sex Trafficking and Sexual Exploitation

An Act to Establish Post-Conviction Review for Victims of Sex Trafficking and Sexual Exploitation

Be it enacted by the people of the State of Maine as follows:

Sec. 1. Title 15, Chapter 312 is enacted to read:

CHAPTER 312

POST-CONVICTION REVIEW FOR VICTIMS OF SEX TRAFFICKING AND SEXUAL EXPLOITATION

§2401. Definitions

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

1. Criminal judgment. "Criminal judgment" has the same meaning as in section 2121, subsection 1.

2. Assigned justice or judge. "Assigned justice or judge" has the same meaning as in section 2121, subsection 1-A.

3. Compelling. "Compelling" includes but is not limited to:

A. The use of a drug or intoxicating substance to render a person incapable of controlling that person's conduct or appreciating its nature;

B. Withholding or threatening to withhold a scheduled drug or alcohol from a drug-dependent or alcohol-dependent person. "Drug-dependent or alcohol-dependent person" means a person who is using scheduled drugs or alcohol and who is in a state of psychic or physical dependence, or both, arising from the use of the drugs or alcohol on a continuing basis;

C. Making material false statements, misstatements or omissions;

D. Withholding, destroying or confiscating an actual or purported passport or other immigration document or other actual or purported government identification document with the intent to impair a person's freedom of movement;

E. Requiring the sexual exploitation of a person to retire, repay or service an actual or purported debt; and

F. Using force or engaging in any scheme, plan or pattern to instill in a person a fear that, if the person does not engage or continue to engage in sexual exploitation, the actor or another person will:

(1) Cause physical injury or death to a person;
(2) Cause damage to property, other than property of the actor;
(3) Engage in other conduct constituting a Class A, Class B or Class C crime or criminal restraint;
(4) Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person;
(5) Expose a secret or publicize an asserted fact, regardless of veracity, tending to subject some person, except the actor, to hatred, contempt or ridicule;

(6) Testify or provide information or withhold testimony or information regarding another person's legal claim or defense;

(7) Use a position as a public servant to perform some act related to that person's official duties or fail or refuse to perform an official duty in a manner that adversely affects some other person; or

(8) Perform any other act that would not in itself materially benefit the actor but that is calculated to harm the person being compelled with respect to that person's health, safety or immigration status.

4. Sentence. "Sentence" has the same meaning as in section 2121, subsection 3.

5. Sex Trafficking. "Sex trafficking" means promoting sexual exploitation by compelling a person to enter into, engage in or remain in sexual exploitation, promoting the sexual exploitation of a person less than 18 years of age or promoting the sexual exploitation of a person who suffers from a mental disability that is reasonably apparent or known to the actor and that in fact renders the other person substantially incapable of appraising the nature of the conduct involved.

6. Sexual Exploitation. "Sexual exploitation" means engaging in the exchange of sex for money or resources because of a person's history of trauma, adverse childhood experiences, substance use disorder or other circumstances of victimization, exploitation or oppression.

§2402. Legislative findings; purpose

1. Findings. The Legislature finds that victims of sex trafficking and sexual exploitation may commit a variety of criminal acts as a substantial result of manipulation, intimidation or compulsion by the person committing sex trafficking or sexual exploitation. Victims of sex trafficking or sexual exploitation who committed crimes under such circumstances did not have the requisite culpability to justify a criminal judgment or sentence and permitting the conviction and sentence to remain intact further contributes to the harm and trauma experienced by these crime victims.

2. Purpose; liberal construction. The purpose of this chapter is to provide a mechanism for reversing criminal judgments entered against victims of sex trafficking and sexual exploitation when the criminal acts committed were a substantial result of the trafficking or exploitation and should be liberally construed to effectuate this purpose.

§2403. Jurisdiction and venue

1. Jurisdiction. Jurisdiction shall be in the Superior Court.

2. Supreme Court Justice or authorized Judge of the District Court. A single Justice of the Supreme Judicial Court, an Active Retired Justice of the Supreme Judicial Court or a judge authorized to sit in the Superior Court on post-conviction review cases has and shall exercise jurisdiction and has and shall exercise all of the powers, duties and authority necessary for exercising the same jurisdiction as the Superior Court relative to a proceeding under this chapter.

3. Venue. Venue must be in the county in which the criminal judgment was entered. Venue may be transferred by the assigned justice or judge at that assigned justice's or judge's discretion, except that, if multiple post-conviction review motions are filed under this chapter by the same person, they shall be consolidated to one location and assigned to a single justice or judge.

§2404. Petition and procedure

1. Motion; persons who may file. A person for whom one or more criminal convictions in which a final criminal judgment has been entered were the substantial result of the person's sexual exploitation or being subjected to sex trafficking may file a written motion in the underlying criminal proceeding seeking to have the criminal judgment reversed and to correct the court records and related criminal justice agency records. The same motion may also be filed on behalf of such a person by an attorney for the State or by the court. The court may not assess fees for the filing or service of a motion under this chapter.

2. Timing of motion. A motion under this section to reverse the criminal judgment and correct the record may be filed at any time after a final criminal judgment has been entered.

3. Service of motion. The assigned justice or judge shall determine which representative of the State shall be served with the motion and how service of the motion is to be made and enter an order in this regard. The order shall direct the appropriate representative for the State to make all reasonable attempts to notify all crime victims in the underlying matter about the motion.

4. Representation of the State. The prosecutorial office that represented the State in the underlying criminal proceeding shall represent the State for the purposes of this chapter. If underlying matters involving multiple prosecutorial offices are consolidated to a single location, a different prosecutorial office may represent the State on any matter where there is agreement between the 2 prosecutorial offices.

5. Counsel. If the court finds that the person who files the motion or on whose behalf the motion is filed is indigent, the court may appoint counsel for the person at any time during the proceedings.

6. Remote testimony. The person who files the motion or on whose behalf the motion is filed and any witnesses may participate in the hearing remotely, unless the assigned justice or judge finds that the person or a specific witness resides in this State and that the interest of justice require the person's or the witness's participation at the hearing in person.

7. Evidence; rebuttable presumption. The Maine Rules of Evidence do not apply to the hearing on the motion filed under this chapter, and evidence presented at the hearing by the participants may include testimony, affidavits and other reliable hearsay evidence as permitted by the assigned justice or judge. Official documentation of a person's status as a victim of sex trafficking or sexual exploitation creates a rebuttable presumption that the person's participation in a crime was a result of the person's having been a victim of sex trafficking or sexual exploitation. Nothing in this section imposes a requirement that a person filing a motion under this section provide official documentation of the person's status as a victim of sex trafficking or sexual exploitation.

For purposes of this subsection "official documentation of a person's status as a victim of sex trafficking or sexual exploitation" includes, but is not limited to:

A. A copy of an official record, certification, or eligibility letter from a federal, state, tribal or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that reflects that the person filing the motion was a victim of sex trafficking or sexual exploitation;

B. An affidavit or sworn testimony from a member of the clergy, a medical professional, a staff member of a victim services organization or other professional from whom the person filing the motion has sought legal counsel or other assistance in addressing the trauma and other challenges associated with being a victim of sex trafficking or sexual exploitation; or

C. Any other evidence the assigned justice or judge determines is of sufficient credibility or probative value to establish a rebuttable presumption that the person filing a motion under this section was a victim of sex trafficking or sexual exploitation.

8. Hearing. The assigned justice or judge shall hold a hearing on the motion, except that the assigned justice or judge may grant a motion for relief under this chapter without a hearing if:

A. The representative of the State consents in writing to the motion;

B. At least 60 days have elapsed since service of the motion on the representative of the State and all reasonable attempts by the State to notify all victims have concluded; and

C. No objection to the relief requested has been filed by a victim or victim's representative.

9. Procedure in proceedings pursuant to this chapter. In all respects not covered by statute, the procedure in proceedings under this chapter is as the Supreme Judicial Court provides by rule.

§2405. Relief; order

1. Relief. If the assigned justice or judge finds that the person who filed the motion or on whose behalf the motion was filed has established by a preponderance of the evidence that the person has been a victim of sex trafficking or sexual exploitation and that the commission of the crime for which relief is sought under this chapter was a substantial result of the sex trafficking or sexual exploitation, the assigned justice or judge shall issue a written order reversing the judgment of conviction. If the assigned justice or judge grants the motion, the assigned justice or judge shall additionally determine what court records and related records held by criminal justice agencies require correction and shall enter a written order specifying the corrections to be made in the court records and the records of each of the appropriate criminal justice agencies.

2. Notice. A copy of the written order granting or denying the motion must be provided to the person.

§2406. Review of final judgment

A written order granting or denying a motion under this chapter may be reviewed by the Supreme Judicial Court sitting as the Law Court.

1. Appeal by petitioner. The person who filed the motion or on whose behalf the motion was filed may appeal an order denying the motion as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

2. Appeal by State. The representative of the State may appeal an order granting the motion as of right and no certificate of approval by the Attorney General is required. The time for taking the appeal and the manner and any conditions for the taking of an appeal are as the Supreme Judicial Court provides by rule.

SUMMARY

This bill allows a victim of sex trafficking or sexual exploitation to file a post-judgment motion to reverse a criminal conviction if the victim demonstrates, by a preponderance of evidence, that they experienced sex trafficking or sexual exploitation and that the conduct underlying the criminal conviction was a substantial result of the trafficking or exploitation.

APPENDIX Q

Draft Legislation Recommendation E:
An Act to Reduce the Number of Crimes that Disqualify an Individual for Employment as a Direct Access Worker

An Act to Reduce the Number of Crimes that Disqualify an Individual for Employment as a Direct Access Worker

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

Sec. 1. 22 MRSA §9054, sub-§11, ¶F is amended to read:

F. Convictions for a Class A, B or C crime in this State or similar crime in another jurisdiction for an offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance, except convictions for aggravated cultivation of marijuana under Title 17-A, Section 1105-D; and

Sec. 2. Department of Health and Human Services to amend rules. The Department of Health and Human Services shall amend its rule under 10-144 C.M.R Chapter 60, Maine Background Check Center Rule, to remove the crimes of aggravated cultivation of marijuana, refusing to submit to arrest or detention and eluding or passing a roadblock from the table of crimes that disqualify an individual from seeking employment as a direct access worker for certain periods of time.

SUMMARY

This bill removes convictions for aggravated cultivation of marijuana from the statutory list of disqualifying offenses that adversely affect an individual's eligibility for employment as a direct access worker. The bill also directs the Department of Health and Human Services to amend the rules governing disqualifying offenses that adversely affect an individual's eligibility for employment as a direct access worker.

APPENDIX R

Draft Legislation Recommendation F:
An Act to Clarify the Criminal History Record Information Act with Respect to Criminal Charges Dismissed as the Result of a Plea Agreement

An Act to Clarify the Criminal History Record Information Act with Respect to Criminal Charges Dismissed as the Result of a Plea Agreement

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

Sec. 1. 16 MRSA §702, sub-§1 is amended to read:

2. Confidential criminal history record information. "Confidential criminal history record information" means criminal history record information of the following types:

A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summonsed or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is pending;

B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;

C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;

D. Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge;

E. Information disclosing that a criminal proceeding has been postponed for a period of more than one year or dismissed because the person charged is found by the court to be mentally incompetent to stand trial or to be sentenced;

F. Information disclosing that a criminal charge has been filed, if more than one year has elapsed since the date of the filing;

G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement <u>where the defendant pleads guilty to and is convicted of another criminal charge. If a defendant admits to and is adjudicated as having committed a civil violation or a traffic infraction as part of a plea agreement, but does not also plead guilty to and is not also convicted of a criminal charge as part of that agreement, then information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor as part of that agreement is confidential criminal history record information</u>;

H. Information disclosing that a person has been acquitted of a criminal charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge;

I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;

J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;

K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and

L. Information disclosing that a person has petitioned for and been granted a full and free pardon.

Sec. 2. 16 MRSA §705, sub-§5 is enacted to read:

5. Charges dismissed as a result of a deferred disposition. Notwithstanding any other provision of this chapter to the contrary and subject to the Maine Rules of Evidence, including rules regarding relevancy, a party may introduce in any civil or criminal proceeding evidence that a defendant pled guilty to a crime as part of a deferred disposition for purposes of establishing that the defendant admitted committing that crime, even if, after the defendant complied with the court-imposed deferment requirements, the defendant's guilty plea was later withdrawn and the underlying criminal charge was later dismissed by the court with prejudice.

SUMMARY

This bill implements a recommendation of the Criminal Records Review Committee. The bill clarifies that information disclosing that a criminal charge has been dismissed as part of a plea agreement is not confidential criminal history record information if the defendant pleads guilty to and is convicted of another criminal charge as part of the plea agreement. By contrast, if, as a result of a plea agreement, a defendant admits to and is adjudicated as having committed a civil violation or a traffic infraction but does not also plead guilty to and become convicted of a criminal charge, then information disclosing that a criminal charge has been dismissed as part of the plea agreement is confidential criminal history record information.

The bill also codifies the rule set forth in *Gordon v. Cheskin*, 2013 ME 113, that "the dismissal of [a] criminal charge after completion of a deferred disposition does not cast a blanket of confidentiality over the course of the proceedings up to that point." Instead, "a court in a later proceeding is not precluded from considering the defendant's admission of guilt in open court. An admission to specific behavior may be considered in a later proceeding, if that behavior is relevant to the matter before the court."

APPENDIX S

Draft Legislation Recommendation G:
An Act to Establish the Criminal Records Review Commission

An Act to Establish the Criminal Records Review Commission

Be it enacted by the people of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-I, sub-§54-D is enacted to read.

Judiciary: Criminal Records	Criminal Records Review Commission	Legislative Per Diem and Expenses for Legislators	16 MRSA §901

Sec. 2. 16 MRSA, chapter 11, is enacted to read:

CHAPTER 11

CRIMINAL RECORDS REVIEW COMMISSION

§ 901. Establishment

The Criminal Records Review Commission, established by Title 5, section 12004-I, subsection 54-D and referred to in this chapter as "the commission," is established for the purpose of conducting a continuing study of laws, procedures and policy related to criminal history record information and reporting to the Legislature its findings and recommendations on an annual basis.

§ 902. Membership; terms; chair; vacancies; quorum.

1. Membership. The commission consists of the following 29 members:

A. Two members of the Senate, appointed by the President of the Senate, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

B. Two members of the House of Representatives, appointed by the Speaker of the House of Representatives, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

C. The Attorney General or the Attorney General's designee;

D. The Commissioner of Health and Human Services or the commissioner's designee;

E. The Commissioner of Public Safety or the commissioner's designee;

F. The Commissioner of Corrections or the commissioner's designee;

G. The chair of the Right To Know Advisory Committee, established in Title 1, section 411, or the chair's designee;

H. The president of an organization representing the interests of prosecutors in the State, or the president's designee, appointed by the President of the Senate;

I. The president of an organization representing criminal defense lawyers in the State, or the president's designee, appointed by the President of the Senate;

J. A representative of a civil rights organization whose primary mission includes the advancement of racial justice, appointed by the President of the Senate;

K. A representative of an organization that provides legal assistance on immigration, appointed by the President of the Senate;

L. A representative of an organization whose primary mission is to address issues related to poverty, appointed by the President of the Senate;

M. A representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of domestic violence, appointed by the President of the Senate;

N. A representative of a substance use disorder treatment or recovery community, appointed by the President of the Senate;

O. A representative of an adult and juvenile prisoners' rights organization, appointed by the President of the Senate;

P. A representative of newspaper and other press interests, appointed by the President of the Senate;

Q. The president of an organization representing county sheriffs, or the president's designee, appointed by the Speaker of the House of Representatives;

R. The president of an organization representing municipal police chiefs, or the president's designee, appointed by the Speaker of the House of Representatives;

S. A representative of broadcasting interests, appointed by the Speaker of the House of Representatives;

T. A representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of sexual assault, appointed by the Speaker of the House of Representatives;

U. A representative of an organization that provides free civil legal assistance to citizens of the State with low incomes, appointed by the Speaker of the House of Representatives;

V. A representative of a mental health advocacy organization, appointed by the Speaker of the House of Representatives;

W. A representative of a civil liberties organization whose primary mission is the protection of civil liberties, appointed by the Speaker of the House of Representatives;

X. A representative of a nonprofit organization whose primary mission is to advocate for victims and survivors of sexual exploitation and sex trafficking, appointed by the Speaker of the House of Representatives;

Y. A representative of an organization involved in advocating for juvenile justice reform, appointed by the Speaker of the House of Representatives; and

Z. A representative of a public records access advocacy organization, appointed by the Speaker of the House of Representatives.

The commission shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the commission.

3. Terms. Members of the commission who are Legislators serve during the term of office for which they were elected. Other members of the commission serve for a term of 2 years and may be reappointed. Members may serve beyond their designated terms until their successors are appointed.

4. Chair. The first-named Senate member is the Senate chair and the first-named House member is the House chair of the commission.

5. Vacancies. In the event of a vacancy on the commission, the member's unexpired term must be filled through appointment by the appointing authority for the vacant seat.

6. Quorum. A quorum of the commission consists of 15 members.

§903. Duties and Powers.

1. General review of laws, rules and procedures. The commission shall review laws, rules and procedures pertaining to criminal history record information in this State, including but not limited to:

A. Procedures within the Department of Public Safety regarding the collection, maintenance and dissemination of criminal history record information;

B. The criteria and eligibility for sealing criminal history record information;

C. Public access to criminal history record information; and

D. The expungement, sealing and vacating of criminal history record information.

2. Review of specific topics. In exercising its duties under subsection 1, the commission shall, at a minimum, review the following:

A. Whether the State should adopt all or portions of the Model Collateral Consequences of Conviction Act and, if so, how the Act should be amended to best fit state law and practice;

B. How to establish an automatic sealing process for criminal history record information related to adult criminal convictions, including by identifying the types of convictions eligible for automatic sealing;

C. Whether and in what circumstances criminal history record information related to adult convictions for all or specific Class A, Class B and Class C crimes should be eligible for sealing;

D. Whether and in what circumstances to waive the statutorily required waiting period before a post-judgment motion to seal criminal history record information may be filed under Title 15, chapter 310-A;

E. Whether to allow sealing of criminal history record information upon a defendant's successful completion of or graduation from an approved behavioral health treatment program, including successful completion of or graduation from a mental health, substance use disorder, veterans treatment or co-occurring disorder treatment court program.

F. Whether and how to amend Title 5, chapter 341 to limit the ways in which professional and occupational licensing agencies in the State may consider the criminal history record information of an applicant for a license, registration or permit and may consider the criminal history record information when imposing discipline on a current licensee, registrant or permit holder; and

G. Whether and how to establish an administrative procedure to award a certificate of rehabilitation to an individual who has been convicted of a crime as an adult and who subsequently successfully completes or graduates from an approved behavioral health or mental health treatment program, including by specifying the legal effect of the certificate of rehabilitation.

3. Recommendations; legislation. The commission may submit to the Legislature, at the start of each session, such changes in the laws related to criminal history record information as the commission determines appropriate. The commission may also make recommendations to the Department of Public Safety, the Chief Justice of the Supreme Judicial Court, the Advisory Committee on Criminal Rules and any other organization or committee whose affairs pertain to the use, maintenance or dissemination of criminal history record information.

§904. Organization; consultation; outside funding.

1. Consultation. At the commission's discretion, the commission may seek the advice of consultants or experts, including representatives of the executive and judicial branches of State Government and representatives of public interest organizations, in fields related to its duties.

2. Outside funding. The commission may seek funding contributions to partially or fully fund the costs of the study including staffing. All funding is subject to approval by the Legislative Council in accordance with its policies.

SUMMARY

This bill implements a recommendation of the Criminal Records Review Committee established pursuant to Resolve 2023, chapter 103. The bill establishes the Criminal Records Review Commission. The commission members include Legislators, Executive Department commissioners or their designees and leaders and representatives from various organizations. The commission's duties include periodically reviewing laws, rules, and procedures pertaining to criminal history record information in this State and focusing on the specific topics for further study identified by the Criminal Records Review Committee in its final report issued in January of 2025.

This bill also provides that the commission may submit legislation to the Legislature at the start of each regular session and may also make recommendations to the Department of Public Safety, the Chief Justice of the Supreme Judicial Court, the judicial branch's advisory committee on the Maine Rules of Unified Criminal Procedure and any other organization or committee whose affairs pertain to the use, maintenance or dissemination of criminal history record information. The commission may consult with outside experts in fields related to its duties and may seek funding to partially or fully fund its costs, including staffing. Members, other than legislative members, are not entitled to receive a legislative per diem or reimbursement of expenses.