

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
S.P. 741 - L.D. 1871

**An Act to Permit Sealing Criminal History Record Information of Victims of
Sex Trafficking or Sexual Exploitation**

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

Sec. 1. 10 MRSA c. 239 is enacted to read:

CHAPTER 239

**REGULATION OF BUSINESS SCREENING SERVICES' HANDLING OF
CRIMINAL HISTORY RECORD INFORMATION**

§1500-AA. Definitions

For the purposes of this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Business screening service. "Business screening service" means a person regularly engaged in the business of collecting, assembling, evaluating or disseminating criminal history record information related to specific individuals for a fee. "Business screening service" does not include a government entity or the news media.

2. Conviction. "Conviction" means any of the following accepted and recorded by the court:

A. A plea of guilty; or

B. A verdict of guilty by a jury or a finding of guilty by the court.

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

§1500-BB. Criminal records

A business screening service may disseminate only criminal history record information that reflects the complete and accurate record provided by the source of the criminal history record information. A complete and accurate record is a record that has been updated within

30 days of its receipt or been verified with the source of the criminal history record information within the previous 90 days as being up-to-date.

§1500-CC. Correction and deletion of criminal history record information

If the completeness or accuracy of criminal history record information maintained by a business screening service is disputed by the individual who is the subject of the record, the business screening service shall, without charge, investigate the disputed record.

1. Investigations. In conducting an investigation, the business screening service shall review and consider all relevant information submitted by the subject of the criminal history record information with respect to the disputed record to determine whether the record maintained by the business screening service accurately reflects the content of the official record, as maintained by the Department of Public Safety, Bureau of State Police, State Bureau of Identification.

2. Correction and deletion of criminal history record information. If, upon investigation, the business screening service determines that the criminal history record information does not accurately reflect the content of the official record, the business screening service shall correct the disputed record so as to accurately reflect the content of the official record. If the disputed record is found to be sealed or the subject of a pardon, the business screening service shall promptly delete the record. A business screening service that complies with this subsection has satisfied its obligation to correct or delete records pursuant to this section.

3. Terminating frivolous investigations. A business screening service may terminate an investigation of disputed criminal history record information if the business screening agency reasonably determines that the dispute is frivolous, and that determination may be based on the failure of the subject of the record to provide sufficient information to investigate the disputed record. Upon making a determination that the dispute is frivolous, the business screening service shall inform the subject of the record of the specific reasons why it has determined that the dispute is frivolous and provide a description of any information required to investigate the disputed record.

4. Notice to subject of criminal history record information. Within 30 days from the date when the business screening service receives notice that the subject of a criminal history record information is disputing the record, the business screening service shall notify the subject of the record of the results of the investigation, including:

- A. Whether the investigation was completed or terminated; and
- B. Any records corrected or deleted as a result of the investigation.

§1500-DD. Date and notice required

A business screening service that disseminates criminal history record information that was collected on or after July 1, 2010, shall include the date when the record was collected by the business screening service and a notice that the information may include criminal history record information that has been sealed or otherwise has become inaccessible to the public since that date.

§1500-EE. Effect of Fair Credit Reporting Act; violation; jurisdiction; remedies

Violations of this chapter are governed by this section.

1. Violation. A business screening service is considered to be in compliance with this chapter if the business screening service is in compliance with those provisions of the federal Fair Credit Reporting Act, 15 United States Code, Chapter 41, Subchapter III that regulate maintaining accuracy of records; investigations of disputed records, including correction and deletion of records; and providing a notice with disseminated records similar to that required in section 1500-DD. If the conduct of a business screening service violates both the federal provisions described in this subsection and the provisions of this chapter, the business screening service is in violation of this chapter and is liable to the individual who is the subject of the criminal history record information in accordance with subsection 3.

2. Foreign corporations; service of process and jurisdiction. A business screening service, that is a foreign corporation, that disseminates criminal history record information in this State or that obtains a criminal record from a government entity or a court in this State is considered to have consented to service of process in this State for purposes of Title 13-B, sections 1212-A and 1213 or any other applicable law and to the jurisdiction of courts in this State for actions involving a violation of this chapter as described in subsection 1 or for the recovery of remedies under this chapter. For the purposes of this subsection, "foreign corporation" has the same meaning as in Title 13-B, section 102, subsection 6.

3. Remedies. A business screening service considered in violation of this chapter as described in subsection 1 is liable to the individual who is the subject of the criminal history record information for a penalty of \$1,000 or actual damages caused by the violation, whichever is greater, plus costs and disbursements and reasonable attorney's fees.

Sec. 2. 15 MRSA §2261, sub-§6, ¶A, as enacted by PL 2023, c. 639, §1, is amended to read:

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~~

Sec. 3. 15 MRSA §2261, sub-§6, ¶B, as enacted by PL 2023, c. 639, §1, is amended by amending subparagraph (5) to read:

(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~~

Sec. 4. 15 MRSA §2261, sub-§6, ¶C is enacted to read:

C. For a motion under section 2262-B, a criminal conviction for any current or former crime.

Sec. 5. 15 MRSA §2261, sub-§8 is enacted to read:

8. Sex trafficking. "Sex trafficking" means:

A. Promoting sexual exploitation by compelling a person to enter into, engage in or remain in sexual exploitation;

B. Promoting the sexual exploitation of a person less than 18 years of age; or

C. 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.

Sec. 6. 15 MRSA §2261, sub-§9 is enacted to read:

9. 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. 7. 15 MRSA §2262, first ¶, as amended by PL 2023, c. 409, §1, is further amended to read:

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

Sec. 8. 15 MRSA §2262-A, sub-§1, as enacted by PL 2023, c. 409, §2, is repealed.

Sec. 9. 15 MRSA §2262-A, sub-§2, as enacted by PL 2023, c. 409, §2, is amended to read:

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 a~~ a criminal conviction; and

Sec. 10. 15 MRSA §2262-B is enacted to read:

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

Criminal history record information relating to an eligible criminal conviction, as described in section 2261, subsection 6, paragraph C, must be sealed under this chapter if the person filing the motion establishes:

1. Victim of sex trafficking or sexual exploitation. That the person has been a victim of sex trafficking or sexual exploitation; and

2. Commission of crime result of sex trafficking or sexual exploitation. That the commission of the crime for which the person was convicted was a substantial result of sex trafficking or sexual exploitation.

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

Sec. 11. 15 MRSA §2263, as amended by PL 2023, c. 409, §3, is further 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. 12. 15 MRSA §2264, sub-§1, as enacted by PL 2021, c. 674, §1, is amended to read:

1. Filing motion. A motion filed pursuant to section 2263 must be filed in the underlying criminal proceeding. 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.

Sec. 13. 15 MRSA §2264, sub-§4-A is enacted to read:

4-A. Motions under section 2262-B; witnesses; presumption. For motions filed under section 2262-B:

A. The person filing the motion and any witnesses may participate remotely, unless the court finds that the person filing the motion or a particular witness resides in this State and interests of justice require in-person participation;

B. Official documentation of a person's status as a victim of sexual exploitation or sex trafficking is not required to satisfy section 2262-B, subsection 1. If official documentation is presented, the official documentation creates a presumption that the person's participation in an offense was a substantial result of the sexual exploitation or sex trafficking; and

C. Official documentation of a person's status as a victim of sexual exploitation or sex trafficking includes, but is not limited to:

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

(2) 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; and

(3) Any other evidence the court determines is of sufficient credibility or probative value.

Sec. 14. 15 MRSA §2264, sub-§5, as amended by PL 2023, c. 409, §4, is further amended to read:

5. Hearing; order; written findings. The court shall hold a hearing on a motion filed under this section, except that for a motion filed under section 2262-B, the court may grant the motion without a hearing if the representative for the State consents to the motion. 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, 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, 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.

Sec. 15. 15 MRSA §2264, sub-§7, as enacted by PL 2021, c. 674, §1, is amended to read:

7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty to notify. 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. This subsection does not apply to records sealed pursuant to section 2262-A or 2262-B.

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.