

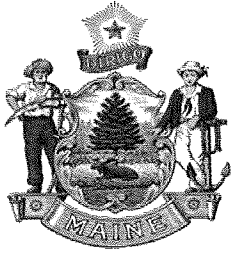


State of Maine
131st Legislature, First Regular and First Special Session

Criminal Records Review Committee

January 2024

Office of Policy and Legal Analysis



**STATE OF MAINE
131st LEGISLATURE
FIRST REGULAR AND FIRST SPECIAL SESSION**

**Criminal Records Review Committee
January 2024**

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Spkr. Rachel Talbot Ross, Chair
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Rep. Erin Sheehan
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Executive Summary

The Criminal Records Review Committee (the “Committee”) was established during the 131st Maine Legislature for two years, 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. 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, L.D.s 848, 1550, 1646 and 1789.

A previous iteration of the Criminal Records Review Committee met in the interim of 2021 and this Committee builds upon their the work. The Committee met three times in the legislative interim in 2023 and plans to meet five times in the legislative interim in 2024. The resolve

requires the Committee to provide two reports to the Joint Standing Committee on Judiciary. This is the first interim report.

In the interim report the resolve requires the Committee to focus on the expungement (permanent deletion), 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. Maine has enacted two citizen initiatives relating to the use of marijuana, one approving and regulating its medical use, and one establishing an adult recreational use system, which have been amended over time. These initiatives have changed the legal and criminal landscape so that activities that were once considered illegal in the state are no longer considered so.

The bulk of Committee conversations regarding treating marijuana differently revolved around a person's criminal history record information related to marijuana. The Committee discussed adding certain marijuana convictions to the list of "eligible criminal convictions" for which a person may petition the court to have their criminal history related to that conviction sealed. The Committee also considered establishing a "clean slate" law, which would create a process whereby a person's criminal history record information is automatically sealed for certain marijuana convictions.

The majority of additional discussion by the Committee concerned the post-judgment motion to seal criminal history record process in general. The Committee, dissatisfied with the low number of motions filed since the law's enactment, explored ways to provide additional outreach to the public informing them of this process.

The Committee has an ambitious agenda as it continues to work in 2024 and prepares a final report. This work includes: (1) examining issues around separation of powers and where the line between authorized legislative activity and gubernatorial authority exists; (2) options for the expungement or permanent deleting of criminal history record information; and (3) policy options for mitigating the collateral impact of criminal records on a person's life after completing their sentence. The second and final report, due November 6, 2024, will include additional findings and recommendations.

Based on its work to date, the Committee makes the following recommendations to the Joint Standing Committee on Judiciary.

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

The permanent commission would have similar duties and membership as the current Committee. The permanent commission would not be staffed by the Legislative Council, but consideration should be made for the possibility that the permanent commission could raise funds for staffing. The membership of the commission would continue to have legislators appointed, understanding that this generates a cost and a determination consideration by the Legislative Council annually when it takes up the Special Study Table. The commission would also have the authority to introduce legislation in each legislative session.

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.

Automatic sealing would be made applicable to convictions that are contained in electronic records (beginning in 2001 for most convictions) for crimes committed up to the effective date of the ballot initiative establishing the adult recreational use cannabis, January 30, 2017.

Minority position

A minority report vote was cast by Judy Meyer and Dan MacLeod, members representing public records access and the press, respectively. The minority report states that automatic sealing of records is a First Amendment violation of the public's right to access to records of criminal proceedings.

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.

Most records became electronic in 2001 and this recommendation would allow an individual whose convictions were prior to electronic records being kept, or were not electronic for any other reason, to petition to have their criminal history record information related to this conviction sealed. Eligible Class D convictions would be for crimes that were committed up to the effective date of the ballot initiative establishing the adult recreational use cannabis, January 30, 2017.

Minority position

A minority report vote was cast by Senator Donna Bailey and Andrea Mancuso, adding a qualifier to the recommendation to clarify that the recommendation applies only to convictions for acts that are no longer crimes as a result of Maine's legalization of medical and adult recreational use cannabis.

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

Ten motions have been filed since the post-judgment motions to seal criminal history record law went into effect. The Committee recommends updating websites and forms used by the Maine Judicial Branch and State Bureau of Identification to reflect that existence of the process. The committee sent letters to the Maine Judicial Branch and State Bureau of Identification requesting their assistance in updating forms, materials and webpages to increase public knowledge of this process.

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 current statutory prerequisites in the post-judgment motion to seal criminal history record limits the chapter's applicability to individuals aged 18-27 years of age when they committed the underlying crime. A majority of the Committee voted to remove this age restriction and allow anyone who fulfils the other criteria under the current petition process to be eligible.

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. The membership list is included as Appendix B.

The Committee is tasked with the following duties:

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, L.D.s 848, 1550, 1646 and 1789.

The resolve requires the Committee to provide two reports to the Joint Standing Committee on Judiciary. The first interim report, due December 6, 2023,¹ is to include 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. The second and final report, due November 6, 2024, is to include the Committee’s findings and recommendations not included in the interim report.

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 the first interim and five times during the second interim. Meetings for the first interim were held on November 13, 2023, November 22, 2023, and December 11, 2023. Materials from each of the meetings is available at the committee’s website at <https://legislature.maine.gov/criminal-records-review-committee-131st-legislature>. Archived videos of the meetings are also available on the Maine Legislature’s website. Meeting agendas are included in Appendix C.

The Committee would like to note that throughout this report, the terms “marijuana” and “cannabis” are used to refer to the same substance. During both referendums and prior to 2021, the term “marijuana” was used exclusively to refer to the substance. However, in 2021 the Legislature enacted P.L. 2021, ch. 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 Maine law except for 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. BACKGROUND INFORMATION

A. Previous iteration of Criminal Records Review Committee

The 130th Legislature established the previous iteration of the Criminal Records Review Committee pursuant to Resolve 2021, chapter 121. The previous committee was structured similarly to this current Committee with substantial overlap of membership and duties. The previous committee met five times during the 2021 interim and submitted a report to the Legislature. The final report from the previous committee is available on the Maine Legislature’s website at <https://legislature.maine.gov/criminal-records-review-committee>. The report also includes minority reports and opinions from certain members of the committee.

This Committee began its work by reviewing the findings and recommendations from the 2021 Criminal Records Review Committee. The recommendations and outcomes from those recommendations are as follows:

Recommendation 1: Reestablish the Criminal Records Review Committee. A majority of the previous committee recommended supporting LD 1818 from the 130th Legislature, “Resolve, To Reestablish and Continue the Work of the Criminal Records Review Committee.” This bill was

¹ This deadline was extended to December 15, 2023, with permission of the Presiding Officers.

passed by the House and Senate, but died on adjournment after not being enacted off the Study Table. This recommendation was eventually supported by the 131st Legislature with the creation of this two-year Committee.

Recommendation 2: Consider options to address the Separation of Powers doctrine limitation on legislative authority to enact record clearing legislation. The previous committee discussed at length whether actions of the Legislature in sealing and therefore limiting public access to criminal records would encroach on the Governor’s plenary pardon and commutation authority under the Maine Constitution and render those actions unconstitutional. The committee recommended that the Judiciary Committee review options and report out legislation to address this issue.

Recommendation 3: Consider proposals for petition-based records sealing as proposed by LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking to Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions, and associated suggestions. This bill would have made permanent Title 15, chapter 310, which established a court process for obtaining special restrictions on the dissemination and use of public criminal history record information. While LD 1459 was reported out Ought Not to Pass, the 130th Legislature enacted Public Law 2021, chapter 674, using LD 1310 as a vehicle, which established the current criminal history record information sealing process discussed throughout this report.²

B. Proposed legislation tabled to consider recommendations from this report

The duties in the 2023 resolve establishing the Committee are similar to those in Resolve 2021, chapter 121. However, section 5 of the resolve establishes an additional duty in subsection 10 requiring the Committee to review four specific bills from the First Regular/Special Session of the 131st Legislature. Two of these bills were carried over into the Second Regular Session of the 131st Legislature. Committee members noted that two bills were voted Ought Not to Pass by the Judiciary Committee with the understanding that this Committee would be able to recommend legislation containing similar policy options in its report.

The following is a list of the four bills plus a brief summary:

LD 848, An Act to Expunge Certain Nonviolent Drug Crimes

This bill would have allowed a person convicted of violating Title 17-A, section 1107-A (unlawful possession of scheduled drugs) to petition the court where the person was convicted to expunge all records of the crime five years after the completion of the person's sentence. Expungement would not be available for persons who have subsequent convictions or pending criminal charges. Expungement would require the State Bureau of Identification to arrange with the Federal Bureau of Investigation to have all references to the expunged crime deleted from FBI records. This bill was voted unanimously Ought Not to Pass by the Judiciary Committee.

² See 15 M.R.S.A. §§ 2261 to 69; P.L. 2021, ch. 674.

LD 1550, An Act to Authorize the Expungement of Records of Nonviolent Crimes

This bill would allow a person convicted of a Class E, Class D or Class C crime to petition the court where the person was convicted to expunge all records of the crime five years after the completion of the person's sentence. Expungement would not be available for persons who have subsequent convictions or pending criminal charges, for crimes involving violence or domestic violence or sex offenses, for crimes involving bribery or corrupt practices, or for crimes that had as an element of the offense victims who were minors or were 65 years of age or older. Expungement would require the State Bureau of Identification to arrange with the Federal Bureau of Investigation to have all references to the expunged crime deleted from FBI records. This bill was carried over to the Second Regular Session by the Judiciary Committee.

LD 1646, An Act to Vacate or Adjust Sentences and Expunge Arrests, Convictions and Adjudications for Cannabis-related Offenses

This bill would have provided that all arrests, convictions and adjudications for crimes or civil violations for possession of cannabis are vacated and require the records of those arrests, convictions and adjudications to be expunged (permanently deleted) in accordance with a process established in the bill. This bill also would have allowed for an individual who has been convicted of a cannabis-related offense and who is still serving a sentence, including incarceration or supervised release, probation or administrative release, for that crime to petition the original sentencing court to resentence that individual. This bill was voted unanimously Ought Not to Pass by the Judiciary Committee.

LD 1789, An Act to Remove All Marijuana-related Provisions from the Maine Criminal Code and Expunge All Convictions Involving Marijuana

This bill would remove marijuana from the Maine Criminal Code by doing the following: removing marijuana being listed as a scheduled drug; eliminating the crime of unlawful trafficking in marijuana; eliminating the crime of aggravated trafficking of marijuana; eliminating the crime of aggravated cultivating of marijuana; removing the permissible inference under the Maine Rules of Evidence, Rule 303 that a person who intentionally or knowingly possesses a certain quantity, state or concentration of marijuana is unlawfully furnishing marijuana; eliminating the crime of unlawful possession of marijuana; removing drug paraphernalia related to marijuana from the definition of "drug paraphernalia"; eliminating the crime of cultivating marijuana; and eliminating any mandatory minimum term of imprisonment for marijuana-related drug offenses. The bill also directs the Department of Public Safety to review all criminal records possessed by any state criminal justice or law enforcement agency and to expunge all records that relate to criminal convictions and civil violations for conduct involving marijuana or that are otherwise authorized under

Maine's adult use cannabis laws. This bill was initially referred to the Judiciary committee but was re-referred to the Criminal Justice and Public Safety Committee, which carried the bill over to the Second Regular Session.

The subject matter and proposals in these bills were considered during the Committee's three meetings, and are discussed in this report.

C. Separation of powers

A significant amount of discussion in the previous iteration of the Criminal Records Review Committee, as well as in this Committee, revolved around how the separation of powers doctrine enshrined in the Maine Constitution impacts the Legislature's ability to enact laws affecting a persons' criminal sentence. The relevant provisions of the Maine Constitution are as follows:

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.

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 resentencing 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.³ 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.⁴ 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

³ *State v. Hunter*, 447 A.2d 797 (Me. 1982).

⁴ *Bossie v. State*, 488 A.2d 477 (Me. 1985).

parole could not be applied to a person required to serve a full life sentence, because it effectively commuted that person's sentence.⁵

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.

D. Criminal History Record Information and the State Bureau of Identification

The Committee's primary focus during this interim's three meetings was how criminal record history record information is maintained and made available to the public, including what information is confidential, and what might be recommended for change especially with respect to convictions for marijuana possession and cultivation, as required in Section 7 of the Resolve. The State Bureau of Identification ("SBI"), housed within the Department of Public Safety, Bureau of State Police,⁶ functions as the central repository of criminal history record information and tracks a person's progress through the justice system. SBI is responsible for maintaining criminal history record information and disseminating that information to law enforcement agencies, the Federal Bureau of Investigation, and the public.

The Criminal History Record Information Act and "public" vs. "confidential" information

The Committee had a presentation from Committee members Laura Yustak, representing the Office of the Attorney General, and Amy McCollett from SBI to provide an overview of the Criminal History Record Information Act, explain the differences between "public" and "confidential" criminal history record information, and describe how criminal history information is maintained and used within Maine's criminal justice system. Slides from the presentation are available at Appendix D.

The Criminal History Record Information Act, Title 16, chapter 7 of the Maine Revised Statutes,⁷ concerns the dissemination of criminal history record information by Maine criminal justice agencies. Criminal history record information is defined, generally, as a summary of information regarding an identifiable person's passage of incident through the criminal justice system. This summary begins typically when a prosecutor decides to move forward with criminal charges. This information includes only criminal history, and does not include police reports, civil violations, protection orders, warrants, bail conditions, mental health orders, and weapons restrictions orders. The information is tracked using the SBI's arrest tracking system, which assigns a unique number to an event that follows that event from start to finish.

Criminal history is placed into two categories, "public" and "confidential." Confidential criminal history record information includes, for example, information for which a grand jury chose not to indict, information disclosing that a prosecutor elected not to initiate or approve criminal proceedings, and information on a case that a law enforcement agency elected not to refer to the prosecutor. Pardons and the relevant portions of conditional pardons are also treated

⁵ *Gilbert v. State*, 505 A.2d 1326 (Me. 1986).

⁶ <https://www.maine.gov/dps/msp/about/sbi>

⁷ 16 M.R.S.A. §§ 701 to 10 (appended in Appendix E).

as confidential criminal history record information. Confidential criminal history information also includes records that have been sealed pursuant to a motion to seal criminal history record information, discussed in further detail below. Confidential information is not available to the public and can only be disseminated to authorized people and organizations.

Public criminal history information is all information that is not otherwise deemed confidential. When a person who is not authorized to receive confidential criminal history information contacts SBI to request a person's criminal record, they receive that person's public criminal history record information, but no information that is, or has been made, confidential. Public information includes pending charges that are still active for a 12-month period from date of arrest, convictions, certain dismissals that are part of a plea agreement, and sentences. Public information is maintained and made available when a person's criminal history is requested as a part of an employment application, license application, protection from abuse order, yellow flag indication, rental application, or other request from the general public for self-use.

Process for sealing criminal history record information

In certain circumstances, a person may petition the court to have their criminal history record information sealed or made confidential. This process is established in Title 15, chapter 310-A of the Maine Revised Statutes.⁸ It was enacted by the Legislature in 2022 in response to a recommendation from the prior Criminal Records Review Committee. Prior to the enactment of chapter 310-A, a similar process existed for four years from 2015-2019. That law, which was repealed pursuant to a sunset provision included in the law, applied only to certain individuals with certain criminal convictions who had been 18-21 years of age at the time they committed the crime.⁹

Chapter 310-A allows a person to petition the court to seal their criminal record history if the following prerequisites are met: (1) the person has been convicted of an "eligible criminal conviction," which is any Class E crime except for those related to sexual assault; (2) four years have passed since the person fully satisfied each of the sentencing alternatives for the eligible criminal conviction; (3) the person has not been convicted of another crime in Maine or had a criminal charge dismissed as the result of a deferred disposition; (4) the person has not been convicted of a crime in another jurisdiction; (5) the person does not have any presently pending criminal charges; and (6) the person was aged 18 through 27 at the time they committed the crime. The law was further amended in 2023 to allow a person convicted of engaging in prostitution under Title 17-A, former section 853-A, to file a petition to have their criminal history record information sealed after one year has passed since all sentencing alternatives were satisfied and the person has not been convicted of a crime involving substantially similar conduct.

To file the petition, the person must complete the Maine Judicial Branch's form CR-218, motion to seal criminal history, included in this report in Appendix G, and submit it to the court of the underlying jurisdiction. The court then schedules the motion for a hearing. At the hearing, the applicant may submit testimony, affidavits, and reliable hearsay and also may be represented by

⁸ 15 M.R.S.A. §§ 2261-69 (appended in Appendix F).

⁹ See the 2021 Criminal Records Review Committee report for statistics on the number of petitions filed 2015-2019.

counsel. The applicant carries the burden of establishing, by a preponderance of the evidence, that they have met the requirements in the law. If the court determines that the applicant has met the burden, the court submits a written order to seal that person’s criminal history record information for the eligible criminal conviction that was the subject of the motion, and notifies the SBI to have the record made “confidential.” If the court denies the motion, it must support that denial with written findings of fact supporting its decision.

Even after a person has had a conviction made confidential, if that person is convicted of another crime in Maine or another jurisdiction, the criminal history record information related to the conviction is unsealed. In this instance, the person must promptly file a written notice in the underlying criminal proceeding of the person’s disqualification from eligibility. If a 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 a hearing to contest the facts of the new conviction. If the person chooses to request a hearing, the person must show by clear and convincing evidence that they have not been convicted of another crime. If the person fails to request a hearing, the court must submit an order unsealing the original conviction and inform SBI to unseal the record.

Committee member Amanda Doherty representing the Maine Judicial Branch, provided data on the numbers of petitions filed since the current statute went into effect on August 8, 2022. As of Friday, November 17, 2023, there had been ten motions filed statewide—six of them were granted, two were denied, and two were pending. Members of the Committee expressed concern that this number is extremely low, given the length of time the statute has been in effect and the benefits to a person to having the record be made confidential. There was a significant amount of Committee discussion concerning ways to expand eligibility for the record sealing process and ways to increase outreach to inform people of their ability to petition to have their record sealed.

The Committee discussed options for expanding eligibility under the petition process. Suggestions included: (1) removing the age restriction on when the crime was committed; (2) expanding the list of eligible crimes, or categorizing certain crimes rather than designating them by their class; and (3) expanding to all eligible marijuana convictions for activities that are now legal. Regarding the third suggestion, the Committee spent a significant amount of time discussing sealing criminal records for marijuana. Citizen initiated referenda legalized cannabis for medical use in 2016.¹⁰ There appears to be some consensus among members that at least some prior marijuana-related convictions should be sealed.

When determining which crimes should be eligible under the expanded process, the Committee focused primarily on convictions concerning the cultivation and possession of marijuana. Because Maine has legalized medical and adult recreational use of cannabis, members speaking about the issue generally agreed that, if the State were to institute an automated process for sealing criminal history record information, persons with prior criminal convictions involving marijuana should be made eligible to have their records sealed. Members also generally agreed that were the list of current eligible criminal convictions expanded, it should include convictions for act involving marijuana. Committee member Amy McCollett from SBI cautioned that

¹⁰ See 22 M.R.S.A. §§ 2421 to 30-N (Maine Medical Use of Cannabis Act); 28-B M.R.S.A. §§ 101 to 1102 (Cannabis Legalization Act); 28-A M.R.S.A. §§ 1501 to 04 (Personal Adult Use of Cannabis Products; Home Cultivation of Cannabis for Personal Adult Use).

determining exactly which criminal histories contained convictions for marijuana related crimes would be challenging. In the Maine Criminal Code, drugs are divided into categories called schedules, designated as schedules W, X, Y, Z. In most cases these schedules are used to identify the level of the penalty of crime for which a person is charged or convicted, rather than identifying the drug itself. Marijuana, a schedule Z drug, is logged similarly in SBI files. Thus, there is no easy way to determine whether a conviction involving a schedule Z drug was a conviction for a marijuana related offense or another schedule Z drug. During the course of Committee meetings, SBI identified in their records 2,610 convictions listing marijuana, and more than 8,000 listing schedule Z drug only. In addition, Committee members noted that, while medical and adult use recreational cannabis are now legal in Maine, there are still crimes involving marijuana on the books, and thus not every conviction involving a schedule Z drug or marijuana in SBI records is for an act that is now legal.

E. Juvenile criminal history record information

Committee members Jill Ward, professor and Director of the Center for Youth Policy at the University of Maine School of Law and Laura Yustak, representing Office of the Attorney General, provided a brief overview of the similarities and differences between criminal history record information for adults and criminal history record information for juveniles, referred to as “juvenile history record information.”¹¹ Slides from Jill Ward’s presentation are available in Appendix H.

Juvenile records are maintained by the Maine Judicial Branch. Similar to adult records, juvenile history record information is deemed either “open for public inspection” or “confidential.” For adult records, records are confidential if the records were sealed; all others are public. For juvenile records, however, confidentiality is based on the most serious crime petitioned. There are also distinctions based on the age of the juvenile at the date of the crime, with some differences for Class A crimes, and murder, felony murder and manslaughter records for juveniles under the age of 13 years being more likely to be confidential. In addition, juvenile records, including public records, may not be disseminated by the court electronically or in paper form unless authorized by statute or court order. Public juvenile records may be inspected by a member of the public only at the courthouse.

Like adult records, there is a petition process for sealing some juvenile crimes. The list of eligible crimes is broader than for adults. Juveniles adjudicated of a juvenile crime that, if committed by an adult would be considered murder, a Class A, Class B, or Class C crime, or operating under the influence, may petition the juvenile court that handled the case to seal their record if they meet certain conditions. The conditions for qualifying are: (1) that at least three years have passed since the person’s discharge from the disposition ordered for the juvenile crime; (2) the person has not been adjudicated as committing a juvenile crime or been convicted of committing a crime since the date of the disposition; and (3) there are no current adjudicatory proceedings pending for the juvenile. If these conditions are met, the juvenile court may grant the sealing petition unless the court finds that the general public’s right to information substantially outweighs the juvenile’s interest in privacy. Notice of the court’s order certifying

¹¹ See 15 M.R.S.A. §§ 3308-C to 08-D.

its granting of the juvenile’s petition is provided to the SBI. There is an appeals process if the court denies the juvenile’s petition to seal the juvenile’s criminal history record information. Unlike the adult system which is based on motions to seal criminal history record information, the juvenile system has a process for automatically sealing certain juvenile records. For Class D and Class E crimes (with the exception of operating under the influence) juvenile records may be sealed from public inspection once the juvenile has been discharged from the disposition imposed for the crime. The court, upon receipt of a notice of discharge, must enter an order sealing all of the juvenile’s records from public inspection within five business days. Notice of discharge may be provided by the Department of Corrections if the juvenile’s disposition involved placement in Department of Corrections custody; by the prosecuting attorney if the disposition included restitution, community service, or a restorative justice event; or by the juvenile or their attorney.

F. “Clean slate” laws

Overview

The Committee continued conversations that began with the 2021 Criminal Records Review Committee concerning “clean slate” laws and the prospects of instituting a process for automatically sealing certain criminal history record information, including the idea of “expungement” and removing the records altogether. It became clear that “expungement” may not have a single clear meaning and involve a complex analysis, and the Committee plans to spend time delving into policy and legal definitions and the intent behind those definitions in 2024. Further, as noted earlier, discussions around expungement also need to carefully account for separation of powers issues around gubernatorial pardon power and legislative authority.

A summary of clean slate laws in different states is provided in Appendix I. The summary focuses on the general policy considerations that are necessary when enacting this type of law, such as who becomes eligible for automatic sealing and when. Legislatures in other states have generally considered the following in establishing clean slate laws: (1) the types of crimes eligible for sealing or expungement; (2) whether a person is required to have satisfied all elements of their sentence in order to become eligible; (3) the length of time after conviction or completion of sentence a person must wait before they become eligible; and (4) whether a person can become disqualified due to post sealing or expungement acts, such as being convicted of a new crime.

In addition to determining grounds for eligibility, legislatures must also create a mechanism and process to actually seal or delete the records. In most states, this is done through an executive agency, and prosecutors are often provided the opportunity to contest automatic sealing or expungement on certain grounds. California, for example, requires its Department of Justice to review criminal records in statewide databases, and every month it grants relief to eligible persons and notifies the courts of the granting of that relief. Prosecutors in California may file a petition to prohibit automatic relief based on showing that such relief would pose a substantial threat to public safety. If filed, a hearing is scheduled to determine whether sealing or expungement should be granted. In addition, if denied automatic sealing, a person may still petition to have their record sealed. New York, on the other hand, puts the onus on its

Department of Corrections and Community Supervision, which collects data on eligible convictions and provides that data to courts to seal the records.

First Amendment issues raised

Committee member Judith Meyer, serving as a representative of a public records access advocacy organization, raised several issues concerning whether automatically sealing criminal history record information violates the First Amendment to the United States Constitution. According to Ms. Meyer, in 2016 the judicial branch began automatically sealing dismissed case files. Several organizations objected to the automatic nature of the sealing process, citing a number of provisions of Federal case law that state that the automatic seal of cases violates the First Amendment. Those organizations were successful in stopping the judicial branch from continuing that process.

Ms. Meyer expressed the position that due to these concerns, rather than moving forward with an automatic sealing or clean slate law, the recommendation to the Legislature on this topic should instead be a low bar petition process for sealing these case files through the judicial system.

III. RECOMMENDATIONS

Resolve 2023, chapter 103, section 7 authorized the Committee to make recommendations to the Judiciary Committee that include, but are not limited to, recommendations regarding the expungement, sealing, vacating of and otherwise limiting public access to criminal records relating to convictions for conduct that is nonviolent or involves the use of marijuana. The Committee was established for two years and further recommendations will be made in 2024.

The recommendations for this interim report are as follows.

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

All members of the Committee voting recommended the establishment of a permanent Criminal Records Review Committee to enable continuous review of laws regarding criminal records in Maine. The permanent commission would have similar duties and membership as the current Committee. The permanent commission would not be staffed by the Legislative Council, but consideration should be made for the possibility that the permanent commission could raise funds for staffing. The membership of the commission would continue to have legislators appointed, understanding that this generates a cost and consideration by the Legislative Council annually when it takes up the Special Study Table. The commission would also have the authority to introduce legislation in each legislative session.

Draft legislation for this recommendation is included in Appendix J.

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 majority of the Committee voted to recommend the establishment of a process that would automatically seal convictions for Class D and Class E crimes related to marijuana possession

and cultivation. The automatic sealing would apply to convictions that are contained in electronic records, beginning in 2001 for most convictions and up to the effective date of the 2015 adult recreational use of cannabis law, January 30, 2017.

In 2022, the Legislature enacted the post-judgment motion to seal criminal history record to allow certain persons to petition the court to have their criminal history record information sealed. Between the effective date of this legislation, August 8, 2022, and just prior to the Committee's discussion of this topic, November 17, 2023, 10 motions had been filed statewide. This recommendation would establish an automatic sealing process that would operate in conjunction with the existing motion based process. The committee vote for this recommendation was: 15 in favor; 6 opposed; 4 abstained; 4 were not available or did not vote.

Draft legislation for this recommendation is included in Appendix K.

Minority position

A minority report vote was cast by Judith Meyer and Dan MacLeod, members representing public records access and the press, respectively. The minority report states that automatic sealing of records is a First Amendment violation of the public's right to access to records of criminal proceedings. The minority report requests that the Judiciary Committee considers first amendment implications prior to considering recommendations for automatic sealing of any class of criminal or civil records.

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

The majority of the Committee voted to recommend the establishment of a process that would allow for an individual with convictions for a Class D crime related to marijuana possession or cultivation to petition the court to seal the criminal history record information related to that conviction. During discussion, committee members learned that most records became electronic in 2001. This recommendation would allow an individual whose convictions were prior to electronic records being kept, or were not stored electronically for any other reason, to petition for sealing. As with the recommendation above, eligible Class D convictions are for crimes that were committed prior to the effective date of the adult recreational use of cannabis law, January 30, 2017. The Committee vote for this recommendation was: 17 in favor; 3 opposed; 6 abstained; 3 were not available or did not vote.

Draft legislation for this recommendation is included in Appendix L.

Minority position

A minority report vote was cast by Senator Donna Bailey and Andrea Mancuso, adding a qualifier to the recommendation to clarify that the recommendation

applies only to convictions for acts that are no longer crimes as a result of Maine's legalization of medical and adult recreational use cannabis.

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

The majority of the Committee voted to increase public outreach regarding the current petition process for sealing a person's criminal history record information. As noted above, only 10 petitions have been filed since the law went into effect. The Committee recommends updating websites and forms used by the Maine Judicial Branch and SBI to reflect that existence of the process. For example, the SBI should include alerts when criminal history is requested that state that the petition process may be an option for some individuals with certain criminal convictions. Additionally, the petition form itself created by the Maine Judicial Branch should clearly indicate that an attorney is optional, so that individuals are not deterred because they assume that an attorney not necessary to have a successful petition.

The Committee sent letters to the Judicial Branch and the State Bureau of Identification urging such action. The letter to the Maine Judicial Branch is included in Appendix M, and the letter to the State Bureau of Identification is included in Appendix N. The Committee also recommends that the Judiciary Committee take whatever action it thinks is appropriate to implement the recommendation.

The Committee vote for this recommendation was: 22 in favor; 3 abstained; 4 were not available or did not vote.

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 current statutory prerequisites in the post-judgement motion to seal criminal history record limits the chapter's applicability to individuals aged 18-27 years of age at the time they committed the underlying crime. A majority of the Committee voted to remove this age restriction and allow anyone who fulfils the other criteria under the current petition process to be eligible. The Committee vote for this recommendation was: 19 in favor, 5 abstained; 5 were not available or did not vote.

Draft legislation for this recommendation is included in Appendix O.

IV. FUTURE DISCUSSIONS

During the Committee's three meetings, various issues emerged as topics of discussion for next year. As noted above, discussions around separation of powers issues will be further delved into in 2024. The Committee will also discuss additional options for clean slate laws, including ideas for expungement or the permanent deleting of records. At its third meeting while making recommendations, the Committee discussed a motion, moved by Senator Brakey, to establish a process to allow for a person convicted of a Class D or Class E crime related to marijuana

possession or cultivation to petition the court for the expungement of the personally identifying information for charges and convictions while maintaining the records themselves. As with the recommendations above with majority of support from committee members, the convictions would relate to crimes that were committed prior to the effective date of the adult recreational cannabis referendum, January 30, 2017. Senator Brakey stated that such a process would allow for individuals who had been convicted for certain marijuana-related crimes could choose to remove the criminal record while statistical information associated with those convictions is maintained. He also stated that the process should be at the discretion of the person with the criminal record given that the committee heard that sometimes there could be a need for an individual to be able to prove their identity and status of charges. This motion did not garner a majority of the committee's votes, resulting in a tie along with 2 abstentions and 3 members who were not available or did not vote. But committee members felt that the motion crystalized future topics for discussion in 2024.

Future discussion on the meaning of certain terms as they are used when referring to criminal history record information is also required in any consideration of clean slate laws. The use of the term "expunge" in state laws may not match a dictionary definition that envisions records being erased and no longer existing. Therefore, the committee intends to take up this issue in the second interim. This will include: (1) further discussion on the intent of the Committee with respect to what expungement, or other selected language, actually means, and what it means in other states who have laws regarding criminal records using the term "expungement"; and (2) clearly determining what exactly is the personally identifiable information being removed.

In addition to considering what expungement should mean, who should be eligible to have their records sealed or expunged, and for which crimes, it is also necessary to consider where those records are held and the mechanisms for sealing or expunging. The current petition-based sealing process involves court and SBI records, but there are also records held by different governmental, county and local entities as well as licensing agencies and the Department of Corrections. In addition, arrest and conviction records are public records that would continue to exist in media or social media environments. Committee members representing the press spoke about how, even if a record is sealed, information regarding that arrest or conviction is still often readily available on search engines or news media although newspapers have developed their own procedures to remove records from their sites.

A different type of focus on criminal records was suggested by some Committee members who suggested an alternative lens to concentrate on the collateral consequences of convictions. Criminal history information can be used (and may be required, by law, to be used) when individuals are applying for jobs, apartments, benefits, or professional licenses.

The Committee will plan discussions on these topics in 2024.

APPENDIX A

Resolve 2023, ch. 103

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

Membership List: Criminal Records Review Committee

Criminal Records Review Committee
Enabling Legislation Resolve 2023, Chapter 103

Membership List

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 rights organization whose primary mission includes the advancement of racial justice
Dan MacLeod	Representative of newspaper and other press interests
Andrea Mancuso	Representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of domestic violence
Courtney Gary-Allen	Representative of a substance use disorder treatment or recovery community
Joseph Jackson	Representative of an adult and juvenile prisoners' rights organization
Anna Welch	Representative of an organization that provides legal assistance on immigration
Jason Parent	Representative of an organization whose primary mission is to address issues related to poverty
Hannah Longley	Representative of a mental health advocacy organization
Amanda Comeau	Representative of a nonprofit organization whose primary mission is to advocate for victims and survivors of sexual exploitation and sex trafficking
Judith Meyer	Representative of a public records access advocacy organization
Melissa Martin	Representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of sexual assault
Jill Ward	Representative of an organization involved in advocating for juvenile justice reform
Pedro Vasquez	Representative of an organization that provides free civil legal assistance to citizens of the State with low incomes
Tim Moore	Representative of broadcasting interests
Michael Kebede	Representative of a civil liberties organization whose primary mission is the protection of civil liberties
Laura Yustak	The Attorney General or the Attorney General's Designee
John Feeny	Commissioner of Health and Human Services or the commissioner's designee

Criminal Records Review Committee
Enabling Legislation Resolve 2023, Chapter 103

Amy McCollett	Commissioner of Public Safety or the commissioner's designee
Sam Prawer	Commissioner of Corrections or the commissioner's designee
Amanda Doherty	Member of the Judicial Branch
Maeghan Maloney	President of the Maine Prosecutor's Association or the president's designee
Matt Morgan	President of the Maine Association of Criminal Defense Lawyers or the president's designee
Sheriff Joel Merry	President of the Maine Sheriff's Association or the president's designee
Glenn Moshier	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

APPENDIX C

Meeting Agendas

CRIMINAL RECORDS REVIEW COMMITTEE

Meeting Agenda

Monday, November 13, 2023

9:00a.m. – 12:00p.m.

Maine State House, Room 228 (AFA) and via Zoom

Streaming: <https://legislature.maine.gov/Audio/#228>

1. Welcome and Introductions
 - Senator Donna Bailey, Senate Chair
 - Speaker Rachel Talbot Ross, House Chair
2. Review of Interim Study Process
 - Office of Policy and Legal Analysis, Staff
3. Findings and Recommendations from Previous Criminal Records Review Committee
 - Office of Policy and Legal Analysis, Staff
4. Overview of Committee's Duties and Expectations
 - Senator Donna Bailey, Senate Chair
 - Speaker Rachel Talbot Ross, House Chair
5. Criminal Record History Information and how the Information is Used
 - Laura Yustak, AAG
6. Overview of Criminal History Records Related to Marijuana
 - Any McCollett, Business Systems Administrator
State Bureau of Investigation, Maine Department of Public Safety
7. Discussion and Planning for Next Meeting
8. Adjourn

Future Meetings

- Wednesday, November 29, 9:00a.m. – 12:00p.m. (Hybrid: State House Room 228 and Zoom)
- Monday, December 11, 9:00a.m. – 12:00p.m. (Hybrid: State House Room 228 and Zoom)

CRIMINAL RECORDS REVIEW COMMITTEE

Meeting Agenda

Wednesday, November 29, 2023

9:00a.m. – 12:00p.m.

Maine State House, Room 228 (AFA) and via Zoom

Streaming: <https://legislature.maine.gov/Audio/#228>

1. Welcome and Introductions
 - Senator Donna Bailey, Senate Chair
 - Speaker Rachel Talbot Ross, House Chair
2. Overview of Interim Report Process
 - Office of Policy and Legal Analysis, Staff
3. Responses to Information Requests from Previous Meeting
 - Amanda Doherty, Maine Judicial Branch
 - Numbers of motions to seal records
 - Form: Motion to Seal Criminal History
 - Amy McCollett, State Bureau of Investigation
 - Public outreach regarding availability of sealing of criminal records
 - Form: Criminal History Record Review Request
 - Schedule Z Drugs
 - Office of Policy and Legal Analysis, Staff
 - Overview of “Clean Slate” Laws in Other Jurisdictions
 - Office of Policy and Legal Analysis, Staff
4. Overview of Post Judgement Motion to Seal Criminal History Record Process
 - Office of Policy and Legal Analysis, Staff
5. Comparison of Criminal History Record Information for Juveniles and Adults
 - Jill Ward, Director of the Center for Youth Policy and Law
 - Laura Yustak, AAG
6. Discussion and Planning for Next Meeting
7. Adjourn

Future Meetings

- Monday, December 11, 9:00a.m. – 12:00p.m. (Hybrid: State House Room 228 and Zoom)

CRIMINAL RECORDS REVIEW COMMITTEE

Meeting Agenda, Meeting #3

Monday, December 11, 2023

9:00a.m. – 12:00p.m.

Maine State House, Room 228 (AFA) and via Zoom

Streaming: <https://legislature.maine.gov/Audio/#228>

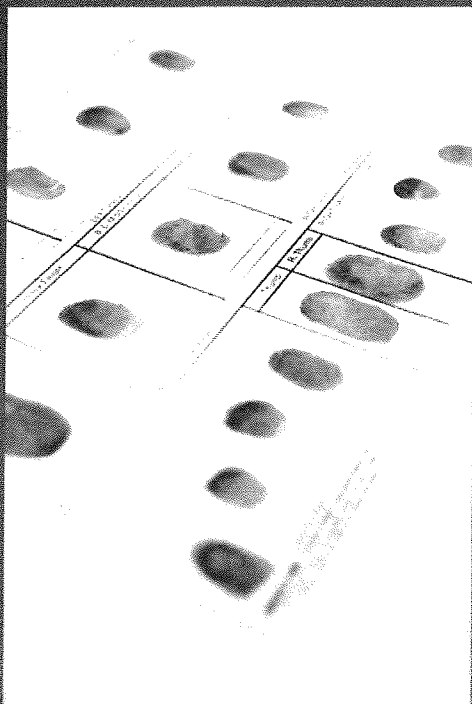
1. Welcome and Introductions
 - Senator Donna Bailey, Senate Chair
 - Speaker Rachel Talbot Ross, House Chair
2. Information Requests from Previous Meeting
 - States currently considering “clean slate” legislation - OPLA Staff
3. Overview of Committee Member Recommendations
 - Senator Donna Bailey, Senate Chair
 - Speaker Rachel Talbot Ross, House Chair
4. Committee discussion and recommendation voting
5. Adjourn

Future Meetings

- Interim 2024

APPENDIX D

Overview of Maine's Criminal History Record Reporting System



An Overview of Maine's Criminal History Record Reporting System

State Bureau of Identification

State Bureau of Identification (SBI) Purpose

- SBI's Criminal History Record Information system (CHRI) is the State's official central repository for criminal history
- CHRI collects, preserves, files, and distributes criminal history based on State of Maine and Federal laws
- Tri-State ABIS
- Maine Sex Offender Registry



Information NOT maintained by CHRI?

- Police reports
- Protection orders (abuse/harassment)
- Warrants
- Bail Conditions
- Civil violations ,traffic infractions, local ordinance violations, civil possession of marijuana, Title 12 and Title 29A prior to 09/01/2000
- Mental Health Orders
- Weapons Restriction Order



CHRI maintained crimes

- Any offense by statute labeled as 'criminal' offense
- Title 12 and 29-A crimes involving drugs or alcohol after 09/01/00
- Any felony-level Title 29-A offense after 09/01/00
- Juvenile criminal offenses after 09/01/00



Maintain ≠ Disseminate

- CHRI maintains adult criminal history and juvenile history
- TWO types of criminal history - public and confidential
- SBI disseminates public criminal history based on Maine law Title 16, Ch 7 §704...
- Confidential dissemination based on Title 16, Ch 7 §705...
- Juvenile adjudication dissemination based on Title 15, Ch 507 §3308-A...



What makes up criminal history?

- Summary information regarding an identifiable person's passage of an incident through the criminal justice system
- Some examples:
 - Arrest or summons (may include fingerprints)
 - Prosecutors complaint or decision not to prosecute
 - Indictment or no bill (GJ declines to indict)
 - Acquittal or dismissal
 - Conviction with sentence
 - Juvenile adjudication
 - Prison intake from MCC and MSP

Arrest Tracking Number (ATN) Charge Tracking Number (CTN)

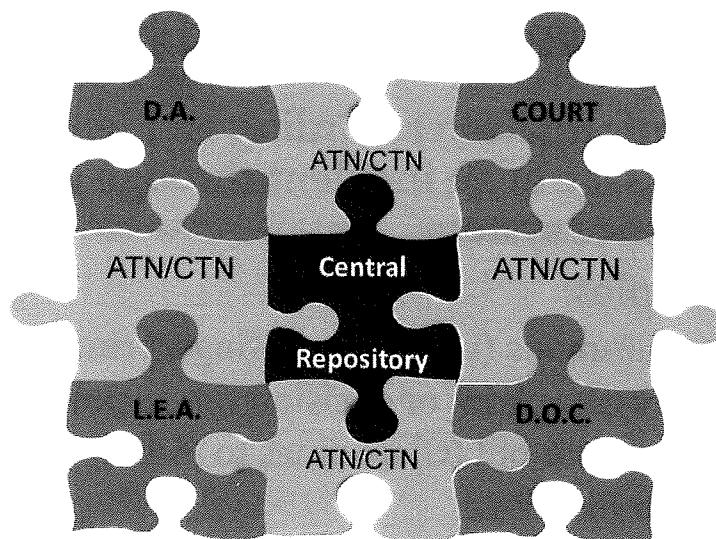
Use of ATN/CTN

- Cornerstone of Maine's Criminal History Record Information System
- Unique identifier among multiple agencies
- Allows information from one incident to be linked together from arrest through prosecution, court disposition and corrections

Non-use of ATN/CTN

- There is no record of the incident
- Officer and public safety may be jeopardized
- Criminal justice agencies and public consumers cannot make sound judgments based on incomplete criminal history

Connecting Together...





Public Criminal History

- Adult convictions including disposition, sentencing and correctional (prison) information
- Adult pending charges, if active and within one year, and received prosecutor information
- **Felony** juvenile adjudications
 - Starting in 09/01/2000
 - Significant changes as of 10/18/21



Confidential Criminal History

- Not all criminal history is public.
Examples:
 - Acquittals
 - No bills (GJ declines to indict)
 - Most types of dismissals
 - Full and free pardons
 - Pending matters over 1 year without disposition
 - Juvenile misdemeanor history (through 10/18/21; this is now more restrictive)
 - Sealed record by court (adult and juvenile)



Fingerprint Based Record Checks

- Public or confidential records could contain FP based data
 - Every FP based record gives another level of identification to the CHRI records
- Maine submits criminal history information to the FBI for inclusion by law enforcement nationwide
 - Information is only accepted if supported by a biometric
- Information is available for certain State and Federal law enforcement purposes
- Federally maintained criminal history is accessible for certain licensing and certification purposes with appropriate state legislative approval as found in (federal PL. 92-544)



Record Check Results

Public

- Everyone has access with our online service for Name and DOB searches
 - Hundreds of thousands of checks are done each year
- Checks completed for housing, employment, certificates and licensing, etc.

Confidential

- Completed through electronic mechanism for certified personnel
 - Checks completed by dispatch centers, officers, prosecutor and court staff
- Regulated by SBI's Access Integrity Unit (AIU) to maintain State and Federal protocols



Importance of maintaining CHRI

- Vital for law enforcement to have any and all information to properly access and react to situation at hand
- Needs of the public have grown exponentially over the last 10 years
- The State CHRI has the most complete record and needs to be available to the public, or decisions are made with incomplete information
- Failure to provide timely, accurate, complete records negatively impacts users/consumers/business. (Inability to get licenses/certifications, impact on reciprocity agreements for certain jobs, liability, delays in international travel, prohibits federal reimbursements in some cases, impacts public safety).



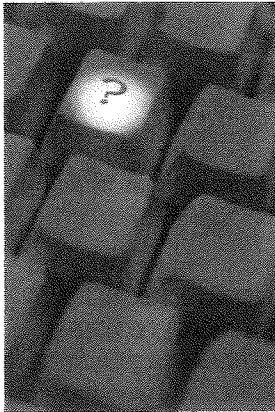
Marijuana

- Pre 10/01/2002, CHRI records were ALL received via paper from the courts. There was no ATN/CTN and no standardization of statute information
- Hand written offenses for marijuana could have language: cannabis, MJ, hashish, Mary Jane, drug (not specific at all)
- Since 2002 standardization of drug statutes became “scheduled drug W, X, Y, or Z” submitted to SBI.
- An ask for SBI to remove marijuana offense/convictions will be an intense and very complicated task. SBI receives basic data to ingest into system and the actual named drug, weight, etc. is not a piece of this. Staff would have to request each and every docket record for reviewal.
 - Suggest it be up to individual to have court review and make determination to sealing

Sealed vs. Expungement

- Sealed will NOT be seen on the public criminal history record
- Sealed WILL be seen on confidential criminal history by certified staff
- Sealed WILL be seen on Federal based rap sheets unless State law specifically deems removal at FBI level
- Expunged offense(s) are never seen...ever again
- No way to determine repeat behaviors if completely deleted from systems
- No real statistical data of offenses/convictions if expunged and never seen again in any system

Contact Information



Matthew Ruel, Director
State Bureau of Identification
matthew.r.ruel@maine.gov
Main line: 624-7240

Amy McCollett
State Bureau of Identification
amy.mccollett@maine.gov
Office: 207-530-2002

State Bureau of Identification (SBI) - Criminal History Record Information (CHRI)

- Summary information regarding passage of an adult through the criminal justice system
- Information supplied by law enforcement agencies, prosecutors, courts and correctional facilities and tied together by Arrest Tracking Number/Charge Tracking Number (ATN/CTN)

Maintained criminal offenses:

- Juvenile crimes on or after 09/01/2000
- Motor Vehicle or Inland Fisheries & Wildlife felony offenses on or after 09/01/2000
- Motor Vehicle or Inland Fisheries & Wildlife misdemeanor offenses involving drugs or alcohol after 09/01/2000
- All other criminal offenses

Statutes for maintaining and dissemination of data

- Governed by Title 16, Ch 7 MRSA §704 & 705
- Juvenile Crime Information defined by Title 15, Ch 507 MRSA §3308-A

Public Criminal History

- Adult offenses
 - Pending arrest within a year of offense date IF CHRI has received pros information.
 - Conviction only offenses OR dismissed-pled other charges
- Juvenile adjudications
 - Offenses after 09/01/2000
 - Only felony adjudications

Confidential Criminal History

- Adult offenses
 - Any Pending arrest information
 - Conviction and non-conviction information
 - Any Sealed, pardoned, continued information
- Juvenile offenses
 - Offenses after 09/01/2000
 - All classes of charges – with adjudication or not

Marijuana

- Prior to standardization of statutes, many names and abbreviates for marijuana used. Difficult task for SBI staff to dig back and obtain information from courts or archives to determine exact drug, weight, etc.
- Suggest that the legal system with courts assistance determine whether these offenses are to become sealed/expunged

Sealed vs. Expunge

- Sealed cases will NOT be seen by Public yet WILL be seen in confidential criminal history
- Expunged cases will **NEVER** be seen by anyone once removed from all systems

APPENDIX E

**Criminal History Record Information Act
Maine Revised Statutes, Title 16, chapter 7**

CHAPTER 7

CRIMINAL HISTORY RECORD INFORMATION ACT

§701. Short title

This chapter may be known and cited as "the Criminal History Record Information Act." [PL 2013, c. 267, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

§702. Scope; application

This chapter governs the dissemination of criminal history record information by a Maine criminal justice agency. This chapter establishes 2 distinct categories of criminal history record information and provides for the dissemination of each: [PL 2013, c. 267, Pt. A, §2 (NEW).]

1. Public criminal history record information. Public criminal history record information, the dissemination of which is governed by section 704; and [PL 2013, c. 267, Pt. A, §2 (NEW).]

2. Confidential criminal history record information. Confidential criminal history record information, the dissemination of which is governed by section 705. [PL 2013, c. 267, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

§703. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2013, c. 267, Pt. A, §2 (NEW).]

1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage and dissemination of criminal history record information. [PL 2013, c. 267, Pt. A, §2 (NEW).]

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; [PL 2013, c. 267, Pt. A, §2 (NEW).]

B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor; [PL 2013, c. 267, Pt. A, §2 (NEW).]

C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings; [PL 2013, c. 267, Pt. A, §2 (NEW).]

D. Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge; [PL 2013, c. 267, Pt. A, §2 (NEW).]

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; [PL 2013, c. 507, §1 (AMD).]

F. Information disclosing that a criminal charge has been filed, if more than one year has elapsed since the date of the filing; [PL 2013, c. 507, §2 (AMD).]

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; [PL 2013, c. 267, Pt. A, §2 (NEW).]

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; [PL 2013, c. 267, Pt. A, §2 (NEW).]

I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice; [PL 2013, c. 267, Pt. A, §2 (NEW).]

J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction; [PL 2013, c. 267, Pt. A, §2 (NEW).]

K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and [PL 2013, c. 267, Pt. A, §2 (NEW).]

L. Information disclosing that a person has petitioned for and been granted a full and free pardon. [PL 2017, c. 432, Pt. B, §1 (AMD).]

[PL 2017, c. 432, Pt. B, §1 (AMD).]

3. Criminal history record information. "Criminal history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency that connects a specific, identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, informations and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties. "Criminal history record information" does not include: identification information such as fingerprints, palmprints, footprints or photographic records to the extent that the information does not indicate formal involvement of the specific individual in the criminal justice system; information of record of civil proceedings, including traffic infractions and other civil violations; intelligence and investigative record information as defined in section 803; or information of record of juvenile crime proceedings or their equivalent. Specific information regarding a juvenile crime proceeding is not criminal history record information notwithstanding that a juvenile has been bound over and treated as an adult or that by statute specific information regarding a juvenile crime proceeding is usable in a subsequent adult criminal proceeding. "Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means being within the jurisdiction of the criminal justice system commencing with arrest, summons or initiation of formal criminal charges and concluding with the completion of every sentencing alternative imposed as punishment or final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent. [PL 2013, c. 267, Pt. A, §2 (NEW).]

4. Criminal justice agency. "Criminal justice agency" means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. "Criminal justice agency" includes federal courts, Maine courts, courts in any other state, the Department of the Attorney General, district attorneys' offices and the equivalent departments or offices in any federal or state jurisdiction. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe.
[PL 2013, c. 267, Pt. A, §2 (NEW).]

5. Disposition. "Disposition" means information of record disclosing that a criminal proceeding has been concluded, although not necessarily finalized, and the specific nature of the concluding event. "Disposition" includes, but is not limited to: an acquittal; a dismissal, with or without prejudice; the filing of a charge by agreement of the parties or by a court; the determination that a defendant is currently a fugitive from justice; a conviction, including the acceptance by a court of a plea of guilty or nolo contendere; a deferred disposition; a proceeding indefinitely continued or dismissed due to a defendant's incompetence; a finding of not criminally responsible by reason of insanity or its equivalent; a mistrial, with or without prejudice; a new trial ordered; an arrest of judgment; a sentence imposition; a resentencing ordered; an execution of and completion of any sentence alternatives imposed, including but not limited to fines, restitution, correctional custody and supervision, and administrative release; a release or discharge from a commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent; the death of the defendant; any related pretrial and post-trial appeals, collateral attacks and petitions; a pardon, commutation, reprieve or amnesty; and extradition. "Disposition" also includes information of record disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor, that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings or that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge.
[PL 2013, c. 267, Pt. A, §2 (NEW).]

6. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or electronically, by or to anyone outside the criminal justice agency that maintains the information.
[PL 2013, c. 267, Pt. A, §2 (NEW).]

7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access.
[PL 2013, c. 267, Pt. A, §2 (NEW).]

8. Public criminal history record information. "Public criminal history record information" means criminal history record information that is not confidential criminal history record information, including information recorded pursuant to section 706.
[PL 2013, c. 267, Pt. A, §2 (NEW).]

9. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and American Samoa. "State" also includes the federal government of Canada and any provincial government of Canada and the government of any federally recognized Indian tribe.
[PL 2013, c. 267, Pt. A, §2 (NEW).]

10. Statute. "Statute" means an Act of Congress or an act of a state legislature or a provision of the Constitution of the United States or the constitution of a state.
[PL 2013, c. 267, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW). PL 2013, c. 507, §§1, 2 (AMD). PL 2017, c. 432, Pt. B, §1 (AMD).

§704. Dissemination of public criminal history record information

1. Generally. Public criminal history record information is public for purposes of Title 1, chapter 13. Public criminal history record information may be disseminated by a Maine criminal justice agency to any person or public or private entity for any purpose. Public criminal history record information is public whether it relates to a crime for which a person is currently within the jurisdiction of the criminal justice system or it relates to a crime for which a person is no longer within that jurisdiction. There is no time limitation on dissemination of public criminal history record information.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

2. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any public criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency employment.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

§705. Dissemination of confidential criminal history record information

1. Generally. A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential criminal history record information only to:

A. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment; [PL 2013, c. 267, Pt. A, §2 (NEW).]

B. Any person for any purpose when expressly authorized by a statute, executive order, court rule, court decision or court order containing language specifically referring to confidential criminal history record information or one or more of the types of confidential criminal history record information; [PL 2013, c. 267, Pt. A, §2 (NEW).]

C. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement must specifically authorize access to data, limit the use of the data to purposes for which given, ensure security and confidentiality of the data consistent with this chapter and provide sanctions for any violations; [PL 2013, c. 267, Pt. A, §2 (NEW).]

D. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement must specifically authorize access to confidential criminal history record information, limit the use of the information to research, evaluation or statistical purposes, ensure the confidentiality and security of the information consistent with this chapter and provide sanctions for any violations; [PL 2013, c. 267, Pt. A, §2 (NEW).]

E. Any person who makes a specific inquiry to the criminal justice agency as to whether a named individual was summonsed, arrested or detained or had formal criminal charges initiated on a specific date; [PL 2013, c. 267, Pt. A, §2 (NEW).]

F. The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information, other than that described in section 703, subsection 2, paragraph A, within 30 days of the date of occurrence of that disposition or at any point in time if

the person to whom the disposition relates specifically authorizes that it be made public; and [PL 2013, c. 267, Pt. A, §2 (NEW).]

G. A public entity for purposes of international travel, such as issuing visas and granting of citizenship. [PL 2013, c. 267, Pt. A, §2 (NEW).]
[PL 2013, c. 267, Pt. A, §2 (NEW).]

2. Confirming existence or nonexistence of information. A Maine criminal justice agency may not confirm the existence or nonexistence of confidential criminal history record information to any person or public or private entity that would not be eligible to receive the information itself.
[PL 2013, c. 267, Pt. A, §2 (NEW).]

3. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any confidential criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency employment.

[PL 2013, c. 507, §3 (AMD).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW). PL 2013, c. 507, §3 (AMD).

§706. Public information about persons detained following arrest

1. Requirement of record. A Maine criminal justice agency that maintains a holding facility, as defined in Title 34-A, section 1001, subsection 9, or other facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

A. The identity of the arrested person, including the person's name, year of birth, residence and occupation, if any; [PL 2013, c. 267, Pt. A, §2 (NEW).]

B. The statutory or customary description of the crime or crimes for which the person was arrested including the date and geographic location where the crime is alleged to have occurred; [PL 2013, c. 267, Pt. A, §2 (NEW).]

C. The date, time and place of the arrest; and [PL 2013, c. 267, Pt. A, §2 (NEW).]

D. The circumstances of the arrest including, when applicable, the physical force used in making the arrest, the resistance made to the arrest, what weapons were involved, the arrested person's refusal to submit and the pursuit by the arresting officers. [PL 2013, c. 267, Pt. A, §2 (NEW).]
[PL 2013, c. 267, Pt. A, §2 (NEW).]

2. Time and method of recording. A Maine criminal justice agency shall record the information under subsection 1 immediately upon delivery of an arrested person to the criminal justice agency for detention. The criminal justice agency shall record and maintain the information in chronological order and keep the information in a suitable, permanent record. The information required by this section may be combined by a sheriff with the record required by Title 30-A, section 1505.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

3. Information public. The information required to be recorded and maintained by this section is public criminal history record information.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

§707. Unlawful dissemination of confidential criminal history record information

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

[PL 2021, c. 293, Pt. B, §4 (AMD).]

2. Classification. Unlawful dissemination of confidential criminal history record information is a Class E crime.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW). PL 2015, c. 354, §2 (AMD). PL 2021, c. 293, Pt. B, §4 (AMD).

§708. Inapplicability of this chapter to criminal history record information contained in certain records

This chapter does not apply to criminal history record information contained in: [PL 2013, c. 267, Pt. A, §2 (NEW).]

1. Posters, announcements, lists. Posters, announcements or lists used for identifying or apprehending fugitives from justice or wanted persons;

[PL 2013, c. 267, Pt. A, §2 (NEW).]

2. Records of entry. Records of entry, such as calls for service, formerly known as "police blotters," that are maintained by criminal justice agencies, that are compiled and organized chronologically and that are required by law or long-standing custom to be made public;

[PL 2013, c. 267, Pt. A, §2 (NEW).]

3. Records of public judicial proceedings. Records of public judicial proceedings:

A. Retained at or by the District Court, Superior Court or Supreme Judicial Court. Public access to and dissemination of such records for inspection and copying are as provided by rule or administrative order of the Supreme Judicial Court; and [PL 2013, c. 267, Pt. A, §2 (NEW).]

B. From federal courts and courts of other states; [PL 2013, c. 267, Pt. A, §2 (NEW).]

[PL 2013, c. 267, Pt. A, §2 (NEW).]

4. Published opinions. Published court or administrative opinions not impounded or otherwise declared confidential;

[PL 2013, c. 267, Pt. A, §2 (NEW).]

5. Records of public proceedings. Records of public administrative or legislative proceedings;

[PL 2013, c. 267, Pt. A, §2 (NEW).]

6. Records of traffic crimes. Records of traffic crimes maintained by the Secretary of State or by a state department of transportation or motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation or renewal of a driver's, pilot's or other operator's license; and

[PL 2013, c. 267, Pt. A, §2 (NEW).]

7. Pardons, other than full and free pardons, commutations, reprieves and amnesties. Petitions for and warrants of pardons, commutations, reprieves and amnesties other than warrants of full and free pardons and their respective petitions.

[PL 2017, c. 432, Pt. B, §2 (AMD).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW). PL 2017, c. 432, Pt. B, §2 (AMD).

§709. Right to access and review

1. Inspection. If a Maine criminal justice agency maintains criminal history record information about a person, the person or the person's attorney may inspect the criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary to ensure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The criminal justice agency shall supply the person or the person's attorney with a copy of the criminal history record information pertaining to the person on request and payment of a reasonable fee. [PL 2013, c. 267, Pt. A, §2 (NEW).]

2. Review. A person or the person's attorney may request amendment or correction of criminal history record information concerning the person by addressing, either in person or in writing, the request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the amendment or correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned criminal history record information is accurate and complete. If investigation reveals that the questioned criminal history record information is inaccurate or incomplete, the criminal justice agency shall immediately correct the error or deficiency.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the criminal justice agency shall notify the requesting person in writing either that the criminal justice agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal must include the reasons for the refusal, the procedure established by the criminal justice agency for requesting a review by the head of the criminal justice agency of that refusal and the name and business address of that official.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

3. Administrative appeal. If there is a request for review, the head of the criminal justice agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the criminal justice agency refuses to make the requested amendment or correction, the head of the criminal justice agency shall permit the requesting person to file with the criminal justice agency a concise statement setting forth the reasons for the disagreement with the refusal. The head of the criminal justice agency shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Disputed criminal history record information disseminated by the criminal justice agency with which the requesting person has filed a statement of disagreement must clearly reflect notice of the dispute after the filing of such a statement. A copy of the statement must be included, along with, if the criminal justice agency determines it appropriate, a copy of a concise statement of the criminal justice agency's reasons for not making the amendment or correction requested.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the criminal justice agency, that decision is final agency action subject to appeal to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to a written request as provided in subsection 2 or a court order, the criminal justice agency shall, within 30 days thereof, advise all prior recipients who have received

that information within the year prior to the amendment or correction that the amendment or correction has been made. The criminal justice agency shall also notify the person who is the subject of the amended or corrected criminal history record information of compliance with this subsection and the prior recipients notified.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

6. Right of access and review of court records. This section does not apply to the right of access and review by a person or the person's attorney of criminal history record information about that person retained at or by the District Court, Superior Court or Supreme Judicial Court. Access and review of court records retained by the District Court, Superior Court or Supreme Judicial Court are as provided by rule or administrative order of the Supreme Judicial Court.

[PL 2013, c. 267, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

§710. Application to prior Maine criminal history record information

The provisions of this chapter apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter. [PL 2013, c. 267, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

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APPENDIX F

**Post Judgment Motion to Seal Criminal History Record
Maine Revised Statutes, Title 15, chapter 310-A**

CHAPTER 310-A

POST-JUDGMENT MOTION TO SEAL CRIMINAL HISTORY RECORD

§2261. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2021, c. 674, §1 (NEW).]

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

[PL 2021, c. 674, §1 (NEW).]

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

[PL 2021, c. 674, §1 (NEW).]

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

[PL 2021, c. 674, §1 (NEW).]

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

[PL 2021, c. 674, §1 (NEW).]

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

[PL 2021, c. 674, §1 (NEW).]

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

[PL 2021, c. 674, §1 (NEW).]

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.

[PL 2021, c. 674, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW).

§2262. Statutory prerequisites for sealing criminal history record information

Except as provided in section 2262-A, criminal history record information relating to a specific criminal conviction may be sealed under this chapter only if: [PL 2023, c. 409, §1 (AMD).]

1. Eligible criminal conviction. The criminal conviction is an eligible criminal conviction; [PL 2021, c. 674, §1 (NEW).]

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;

[PL 2021, c. 674, §1 (NEW).]

3. Other convictions in this State. The person has not been convicted of another 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 of the order; [PL 2021, c. 674, §1 (NEW).]

4. 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 of the order; [PL 2021, c. 674, §1 (NEW).]

5. Pending criminal charges. The person does not have any presently pending criminal charges in this State or in another jurisdiction; and [PL 2021, c. 674, §1 (NEW).]

6. Age of person at time of commission. At the time of the commission of the crime underlying the eligible criminal conviction, the person had in fact attained 18 years of age but had not attained 28 years of age. [PL 2021, c. 674, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW). PL 2023, c. 409, §1 (AMD).

§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: [PL 2023, c. 409, §2 (NEW).]

1. Eligible criminal conviction. The criminal conviction is an eligible criminal conviction; [PL 2023, c. 409, §2 (NEW).]

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 [PL 2023, c. 409, §2 (NEW).]

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. [PL 2023, c. 409, §2 (NEW).]

SECTION HISTORY

PL 2023, c. 409, §2 (NEW).

§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. The written motion must briefly address each of the statutory prerequisites. [PL 2023, c. 409, §3 (AMD).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW). PL 2023, c. 409, §3 (AMD).

§2264. Motion and hearing; process

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.

[PL 2021, c. 674, §1 (NEW).]

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.

[PL 2021, c. 674, §1 (NEW).]

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.

[PL 2021, c. 674, §1 (NEW).]

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.

[PL 2021, c. 674, §1 (NEW).]

5. Hearing; order; written findings. 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, 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, 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.

[PL 2023, c. 409, §4 (AMD).]

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.

[PL 2021, c. 674, §1 (NEW).]

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.

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. [PL 2021, c. 674, §1 (NEW).]

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. [PL 2021, c. 674, §1 (NEW).]

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. [PL 2021, c. 674, §1 (NEW).]

[PL 2021, c. 674, §1 (NEW).]

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.

[PL 2021, c. 674, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW). PL 2023, c. 409, §4 (AMD).

§2265. Special restrictions on dissemination and use of criminal history record information

Notwithstanding Title 16, section 704, the criminal history record information relating to a criminal conviction sealed under section 2264 is confidential, must be treated as confidential criminal history record information for the purposes of dissemination to the public under Title 16, section 705 and may not be disseminated by a criminal justice agency, whether directly or through any intermediary, except as provided in Title 16, section 705 and as set out in this section. In addition to the dissemination authorized by Title 16, section 705, a criminal justice agency may disseminate the sealed criminal history record information to: [PL 2021, c. 674, §1 (NEW).]

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

[PL 2021, c. 674, §1 (NEW).]

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 [PL 2021, c. 674, §1 (NEW).]

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; [PL 2021, c. 674, §1 (NEW).]

[PL 2021, c. 674, §1 (NEW).]

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

[PL 2021, c. 674, §1 (NEW).]

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
[PL 2021, c. 674, §1 (NEW).]

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; [PL 2021, c. 674, §1 (NEW).]

[PL 2021, c. 674, §1 (NEW).]

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;

[PL 2021, c. 674, §1 (NEW).]

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; [PL 2021, c. 674, §1 (NEW).]

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

[PL 2021, c. 674, §1 (NEW).]

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.

[PL 2021, c. 674, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW).

§2266. Limited disclosure of eligible criminal conviction

A person whose eligible criminal conviction is the subject of a sealing order under section 2264 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. Other than when responding to criminal justice agencies or when under oath while being prosecuted for a subsequent crime, a person whose criminal conviction is sealed does not violate Title 17-A, section 451, 452 or 453 by not disclosing the sealed criminal conviction. [PL 2021, c. 674, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW).

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

A written order entered under section 2264, subsection 5 or 7 may be reviewed by the Supreme Judicial Court. [PL 2021, c. 674, §1 (NEW).]

1. Appeal by person. A person aggrieved by a written order under section 2264, subsection 5 or 7 may not appeal 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. [PL 2021, c. 674, §1 (NEW).]

2. Appeal by State. If the State is aggrieved by a written order under section 2264, subsection 5 or 7, it may appeal as of right, and a certificate of approval by the Attorney General is not required. 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. [PL 2021, c. 674, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW).

§2268. Eligible criminal conviction sealed under former chapter 310

Notwithstanding Title 16, section 704, the criminal history record information relating to a criminal conviction for which the court has determined the person is entitled to special restrictions on dissemination and use under former section 2254 is confidential and may not be disseminated by a criminal justice agency, whether directly or through any intermediary, except to the person who is the subject of the criminal conviction or that person's designee and to a criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment. For the purposes of this section, dissemination to a criminal justice agency for the purpose of the administration of criminal justice includes dissemination and use of the criminal history record information relating to the qualifying criminal conviction 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. [PL 2021, c. 674, §1 (NEW).]

Section 2264, subsection 7 applies to a criminal conviction for which the court has determined the person is entitled to special restrictions on dissemination and use under former section 2254 if the person is convicted of a new crime. [PL 2021, c. 674, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW).

§2269. Violation

A person who, in violation of section 2265 or 2268, intentionally disseminates sealed criminal history record information relating to a criminal conviction knowing it to be in violation of section 2265 or 2268 is guilty of unlawful dissemination of sealed records. Violation of this section is a Class E crime. [PL 2021, c. 674, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW).

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APPENDIX G

**Maine Judicial Branch: Form CR-218
Motion to Seal Criminal History**

MAINE JUDICIAL BRANCH

STATE OF MAINE

"X" the court for filing:

Superior Court District Court

Unified Criminal Docket

County: _____

Location (Town): _____

Docket No.: _____

V.

Defendant

Defendant's DOB (mm/dd/yyyy): _____

MOTION TO SEAL CRIMINAL HISTORY
(CRIME COMMITTED BETWEEN AGES 18-27)
15 M.R.S. §§ 2263-2264

Now comes the defendant and moves, pursuant to 15 M.R.S. § 2263, to seal Defendant's criminal history. In support of this motion, Defendant states:

- 1. Defendant was convicted of the Class E crime of (name of crime) _____ on (mm/dd/yyyy) _____. This crime is eligible for sealing under 15 M.R.S. § 2261(6).
- 2. Defendant's date of birth is (mm/dd/yyyy) _____ and Defendant's age at time of commission of crime was 18-27 years old.
- 3. It has been at least 4 years since Defendant fully completed the sentence imposed, including any incarceration, probation, administrative release, license suspension, fine payments, restitution and/or community service.
- 4. Defendant has no other adult criminal convictions in Maine and has not had a case dismissed as the result of a deferred disposition since completing their sentence for this offense.
- 5. Defendant has no other criminal convictions in another state or jurisdiction since completing their sentence for this offense.
- 6. Defendant has no pending criminal charges in Maine or in another jurisdiction.

Defendant moves this Court to order special restrictions on dissemination and use of Defendant's criminal history record information relating to Defendant's prior criminal conviction in this matter.

Date (mm/dd/yyyy): _____



Defendant's Signature

Defendant's Attorney and Maine Bar No.

Defendant's Mailing Address

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation, contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.

Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

APPENDIX H

Presentation on Juvenile Case Records

Juvenile Case Records

15 M.R.S. § 3308

All records contained within an individual Juvenile Court case file, maintained by the Maine Judicial Branch. Such records may also contain Juvenile Intelligence & Investigative Record Information (JIIRI) and Juvenile History Record Information (JHRI).

Accessibility of Juvenile Case Records

Records are either “open for public inspection” or “confidential.” Determination of whether Juvenile Case Records are “open for public inspection” or “confidential” will depend on the most serious juvenile crime petitioned.

Juvenile Case Records (regardless of classification) **may never be disseminated by the court electronically or in paper form** except as authorized by statute or court order.

See 15 M.R.S. §§ 3308-C(1) and (2).

Policy Rationale:

This statute is designed to balance juvenile and victim privacy and the rehabilitative purposes of the Juvenile Code with public safety concerns and the public's right to know.

Classification of Juvenile Case Records

Charge Petitioned	Juveniles age 13 or older (at date of juvenile crime)	Juveniles under age 13 (at date of juvenile crime)
Murder Felony Murder Manslaughter	Always OPEN to the public	Presumptively CONFIDENTIAL – may be OPEN to the public by court order
Class A crimes	Presumptively OPEN – may be CONFIDENTIAL by court order	Presumptively CONFIDENTIAL – may be OPEN to the public by court order
Class B and C crimes	Presumptively CONFIDENTIAL – may be OPEN to the public by court order	Presumptively CONFIDENTIAL - may be OPEN to the public by court order
Class D and E crimes	Always CONFIDENTIAL	Always CONFIDENTIAL
Civil Violations	Always CONFIDENTIAL	Always CONFIDENTIAL
Competence determination pending (regardless of charge)	Always CONFIDENTIAL	Always CONFIDENTIAL
Bind-over hearings	Always OPEN to the public	Always OPEN to the public

“Public” Juvenile Case Records

Juvenile petitions that are deemed “open to public inspection” may be **inspected** by any member of the public at the courthouse.

See 15 M.R.S. § 3308-C (1)

The public may also attend any Juvenile Court hearing on a petition that is open to public inspection unless Juvenile Court proceedings have been suspended pending a competency determination (see slides 6-10).

See 15 M.R.S. § 3308-D (2)

If the court is required to make a determination on the accessibility of juvenile case records, the Juvenile Court shall:

- Enter an order specifying which juvenile case records may be inspected, disclosed, or disseminated; and
- Identify the individual or agency granted access to those juvenile case records.

See 15 M.R.S. § 3308-C (7)

Requests to Open or Close Juvenile Case Records

Whenever a written request is made to prohibit or allow the public to inspect a juvenile petition, **the court must determine whether “the general public’s right to information substantially outweighs the juvenile’s interest in privacy or the alleged victim’s interests in privacy.”**

See 15 M.R.S. § 3308-C (2)(B)

In order to make this determination, the Court must hold a hearing and must consider the following factors:

- The purposes of the Maine Juvenile Code;
- The juvenile’s interest in privacy;
- The alleged victim’s interest in privacy;
- The nature of the juvenile crime alleged, as outlined in the bind-over statute 15 M.R.S. § 3101 (4)(D);
- Characteristics of the juvenile, as outlined in the bind-over statute 15 M.R.S. § 3101 (4)(D); and
- Public safety concerns, as outlined in the bind-over statute 15 M.R.S. § 3101 (4)(D).

See 15 M.R.S. § 3308-C (3)

Sealing of Juvenile Case Records

15 M.R.S. § 3308-C (10)

Juveniles adjudicated of a juvenile crime that would constitute murder or a Class A, B, or C crime if the juvenile adjudicated were an adult or operating under the influence can petition the Juvenile Court that handled the case to seal the juvenile's record if they meet certain conditions.

The Court must automatically seal records of all other crimes once the juvenile is discharged from disposition.

Petition for Juvenile Case Record Sealing Requirements

A person adjudicated as having committed a juvenile crime that, if the juvenile were an adult, would constitute murder or a Class A, B or C crime or operating under the influence as defined in 29-A M.R.S. § 2411, may petition the Juvenile Court to seal from public inspection all juvenile case records pertaining to the crime and its disposition and any prior juvenile case records and their dispositions if:

1. At least three years have passed since the person's discharge from the disposition ordered for the juvenile crime;
2. Since the date of the disposition, the person has not been adjudicated as having committed a juvenile crime and has not been convicted of committing a crime; and
3. There are no current adjudicatory proceedings pending for a juvenile or other crime.

See 15 M.R.S. § 3308-C (10)(A)

If the requirements are satisfied, the Juvenile Court **may** grant the petition *unless* the court finds that the general public's right to information substantially outweighs the juvenile's interest in privacy.

The juvenile has a right to appeal the Court's denial of the juvenile's petition to seal as provided in chapter 509. 15 M.R.S. §§ 3401-3405.

See 15 M.R.S. § 3308-C (10)(B)

Automatic Sealing of Juvenile Case Records*

At the time a person adjudicated as having committed a juvenile crime (other than a crime that, were a juvenile were an adult, would constitute murder or a Class A, B or C crime or operating under the influence) is finally discharged from the disposition imposed for that juvenile crime, the court, upon receipt of appropriate **notice of the discharge** shall, within five business days, enter an order sealing from public inspection all records pertaining to the juvenile crime and its disposition.

See 15 M.R.S. § 3308-C (10)(C)

**This section takes effect on January 1, 2022.*

Notice For Automatic Sealing of Juvenile Case Records

To automatically seal a juvenile case record, appropriate notice that the juvenile is discharged from the disposition **must** be provided to the

Court:

- By the Department of Corrections if the juvenile's disposition involved either commitment to custody of the Department of Corrections or a juvenile correction facility for less than 30 days or any suspended disposition with a period of probation.
- By the Office of the prosecuting attorney if disposition included restitution, community service, or a restorative justice event and the Court ordered that proof of completion of the obligation be so provided.

Appropriate notice **may** be provided to the Court by the juvenile or the juvenile's attorney, who shall serve a copy of the notice on the office of the prosecuting attorney before the court may enter the order sealing the juvenile case record.

In juvenile cases adjudicated after January 1, 2000, but before January 1, 2022, the Juvenile Court may grant the request of the juvenile or the juvenile's attorney for automatic sealing of all juvenile case records pertaining to the juvenile crime and its disposition when notice is provided to the court and the prosecuting attorney pursuant to this subparagraph.

See 15 M.R.S. § 3308-C (10)(C)

Access to Sealed Juvenile Case Records

If the court orders the sealing of juvenile case records, only the following persons have access to the sealed records:

- The courts and criminal justice agencies; and
- The person whose juvenile case records are sealed or that person's designee.

See 15 M.R.S. § 3308-C (10)(D)

Notice of the court's order certifying its granting of the juvenile's petition to seal juvenile case records must be provided to:

- The Department of Public Safety; and
- The State Bureau of Identification.

The State Bureau of Identification or the appropriate agency upon receipt of the order shall promptly update its records relating to each of the juvenile adjudications included in the order.

See 15 M.R.S. § 3308-C (10)(E)

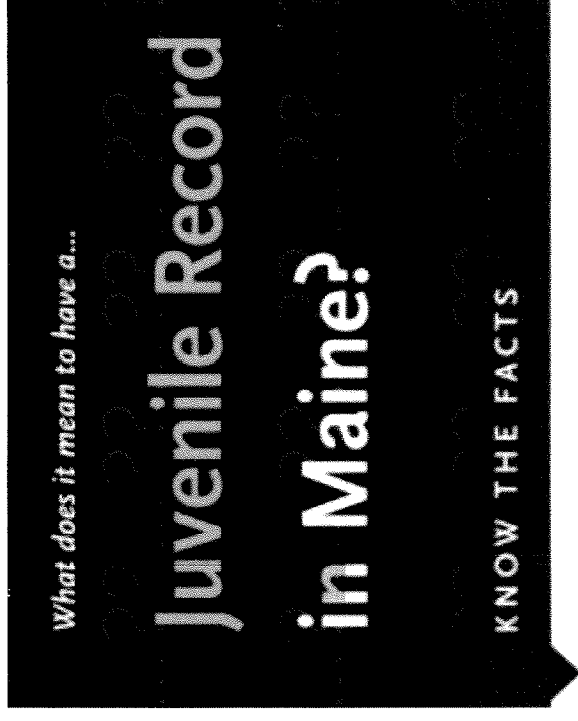
Response to Inquiries after a Juvenile Case Record is Sealed

With the exception of inquiries from the Courts and criminal justice agencies, a person whose juvenile case records are sealed may respond to inquiries regarding their juvenile crimes as if the juvenile crimes had never occurred, without being subject to any sanctions.

See M.R.S. § 3308-C (10)(F)

Information and Resources on Juvenile Records

- **Juvenile Record Information Brochure**
 - Updated in January 2022
- **2021-2022 Changes to the Maine Juvenile Code**
 - [Plenary Presentation](#) (October 2021)
 - [Slide Deck](#) (December 2021)
 - **Download at:**
<https://mainelaw.maine.edu/academics/clinics-and-centers/maine-center-juvenile-policy-law/>
- **Youth Justice Clinic Templates**
 - [Petition to Seal Juvenile Records](#)
 - [Order to Seal Juvenile Records](#)
 - **Download at:**
<https://mainelaw.maine.edu/academics/clinics-and-centers/clac/juvenile-justice/>



Download “Know the Facts: What does it mean to have a Juvenile Record in Maine?” at:
<https://mainelaw.maine.edu/academics/clinics-and-centers/maine-center-juvenile-policy-law/>

APPENDIX I

Clean Slate Law Summaries

State Clean Slate Records Law Automatic Clearing of Adult Criminal Records Provisions

State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
California	<ul style="list-style-type: none"> Beginning July 1, 2022, the DOJ will be required to review the records in the statewide criminal justice databases on a monthly basis to identify persons with arrest records that are eligible for relief, and “shall grant relief” if such information is present in the records. On a monthly basis, the DOJ must submit to the superior court a notice of all cases in that jurisdiction for which relief was granted. The DOJ must annually publish statistics for each county regarding the total number of arrests granted relief and the percentage of arrests for which the state summary criminal history information does not include a disposition 	<p>October 2019 (AB1076); amended in 2022 (SB 721 and SB1260) to expand the clean slate law to apply to more persons and situations</p>	<p>Automatic relief provisions began in July 2022; amended provisions began in July of 2023</p> <p>(The law is subject to an appropriation in the Annual Budget Act)</p>	<p>Authorizes automatic record relief in the form sealing of convictions and arrests (originally it covered convictions and arrests occurring on or after January 1, 2021; <u>AB 145 (2021)</u> extended eligibility to convictions and arrests on or after January 1, 1973)</p> <p>Arrests:</p> <ul style="list-style-type: none"> A person arrested on or after January 1, 1973 will be eligible for automatic relief if any of the following is true: <ul style="list-style-type: none"> The arrest was for a misdemeanor and either the charge was dismissed, the person was acquitted of any charges, or at least 1 	<p>Serious violent felonies, sex offenses, or offenses requiring registering as a sex offender</p>	<ul style="list-style-type: none"> Following relief, all state summary criminal history information in all statewide criminal databases “shall include” next to or below the entry “relief granted” and the date <ul style="list-style-type: none"> A person granted relief “shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted,” except that the relief does not affect: <ul style="list-style-type: none"> 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 officer, or for contracting with the California

State Clean Slate Records Law Automatic Clearing of Adult Criminal Records Provisions

State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
	<ul style="list-style-type: none"> • Even if a person is eligible, the prosecutor or probation department may file a petition to prohibit automatic relief "based on a showing that granting such relief would pose a substantial threat to the public safety." The petition must be filed by 90 days before eligibility, and the court must give notice to the defendant and conduct a hearing within 45 days. (A person denied automatic relief can still petition for relief under existing law.) • Department of Justice (DOJ) to review the master criminal justice database monthly to identify those individuals eligible for automatic relief • DOJ to provide electronic notice to 			<ul style="list-style-type: none"> • 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 		<ul style="list-style-type: none"> ○ State Lottery Commission; ○ the ability of a criminal justice agency to access and use records; ○ 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; ○ a person's authorization to own or possess any firearm; ○ a prohibition from holding public office; ○ the authority to receive, or take adverse action based on, criminal history

State Clean Slate Records Law Automatic Clearing of Adult Criminal Records Provisions

State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
	<p>the superior court having jurisdiction over the matter informing the court relief was granted and prohibiting the court from disclosing any information concerning the covered arrest or conviction, with certain exceptions</p>			<p>diversion programs</p> <p>Convictions: A person convicted on or after January 1, 1973 will be eligible for automatic relief if either of the following is true (prior to the enactment of a 2021 bill, only convictions on or after January 1, 2021 would have been eligible):</p> <ul style="list-style-type: none"> • 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 • The defendant was convicted of an infraction or misdemeanor, was not granted probation, and, based upon the 		<p>information or certified court records under various sections of the Health and Safety Code, or other provisions that incorporate those criteria;</p> <ul style="list-style-type: none"> ○ eligibility to provide, or receive payment for providing, in-home supportive services; or ○ pleading and proof of the prior conviction in any subsequent prosecution of the defendant. • Courts may not disclose information concerning the conviction to any person or entity, except to the person granted relief or a criminal justice agency

State Clean Slate Records Law Automatic Clearing of Adult Criminal Records Provisions

State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
				<p>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</p> <ul style="list-style-type: none"> • The defendant was convicted of a 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 person does not have an active record for local, state, or federal supervision • Based on information in the 		<ul style="list-style-type: none"> • 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

State Clean Slate Records Law Automatic Clearing of Adult Criminal Records Provisions

State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
Colorado	<ul style="list-style-type: none"> • Expands automatic sealing (previously applicable only to certain drug offenses) to all offenses currently eligible for petition-based sealing • Allows for the immediate automatic sealing of eligible non-conviction records. • Allows district attorney 45 days to object to the sealing of a non-drug related eligible 	2022 (SB99)	Beginning in July 2024, the state court administrator must compile lists of eligible records except eligible felonies, and on a quarterly basis thereafter. Automatic clearance of eligible felonies begins in July 2025	<p>DOJ record, it does not appear that the person is currently serving a sentence for any offense and there is no indication of pending criminal charges</p> <ul style="list-style-type: none"> • Waiting periods are 4 years for civil infractions, 7 years for petty misdemeanors, and 10 years for eligible felonies • Payment of outstanding fees or fines is not a condition for automatic sealing 	<ul style="list-style-type: none"> • Violent crimes 	<ul style="list-style-type: none"> • 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

State Clean Slate Records Law Automatic Clearing of Adult Criminal Records Provisions

State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
	<p>felony conviction based on “reasonable belief” that “public interest and public safety” requires continued public access to record, and defendant will be subsequently informed of their right to a hearing on this objection. Beginning in July 2024, the state court administrator must compile lists of eligible records except eligible felonies, and on a quarterly basis thereafter. Automatic clearance of eligible felonies begins in July 2025. The state court</p>					<p>used in subsequent prosecutions</p> <ul style="list-style-type: none"> • Some organizations, including the bar committee, the Department of Education, and criminal justice agencies, may still have access to some information in records sealed • Requires consumer reporting agencies to exclude sealed or expunged records from their report.

State Clean Slate Records Law Automatic Clearing of Adult Criminal Records Provisions

State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
Connecticut	<p>administrator must report annually to the House Judiciary Committee on statistics of sealed/objected records</p> <p>Establishes a process to automatically erase records of most misdemeanor convictions and certain felony convictions entered after January 1, 2000, after a specified period following the person's most recent conviction for any crime</p>	June 10, 2021 (Public Act 21-42)	January 1, 2023	<ul style="list-style-type: none"> 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 can be erased after 10 years 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, are eligible after 15 years Misdemeanor convictions after January 1, 2020 become eligible for 	<ul style="list-style-type: none"> Class A, B or C felonies, certain unclassified felonies, domestic violence crimes or crimes requiring sex offender registration For offenses before January 1, 2000, the records are erased when the person files a petition on a form prescribed by the Office of the Chief Court Administrator Does not require the state Department of Motor Vehicles to erase criminal history records 	<ul style="list-style-type: none"> 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 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

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Delaware	<ul style="list-style-type: none"> Following the completion of an individual's case or sentence, Delaware will automatically expunge cases terminated in one's favor, all violation convictions, certain misdemeanor convictions, and certain felony cases with a single conviction after a set period The Bureau is required to promptly notify all courts and law-enforcement agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of, or concluded A court or law-enforcement agency which receives a notice of expungement from 	After August 1, 2024, every record eligible for mandatory expungement is also eligible for Clean Slate. (See SB 111, enacting Del. Code tit. 11, §4373)	After August 1, 2024	<p>erasure after seven years</p> <ul style="list-style-type: none"> The person was arrested or charged with the commission of 1 or more crimes and the case is terminated in favor of the accused The person 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 The person 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 	<p>Misdemeanors involving domestic violence, offenses where the victim is a child, offenses where the victim is a "vulnerable adult, Sexual harassment, and other various crimes against persons</p>	<ul style="list-style-type: none"> 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 destroyed, 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 These exceptions essentially involve law enforcement and the courts In addition, "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, 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

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Michigan	<p>the Bureau shall provide the Bureau with written confirmation of the completion of the expungement</p> <ul style="list-style-type: none"> Where an expungement of a conviction is granted, all arrest records associated with any charge in that case must also be expunge 	October 12, 2020 (HB 4980)	Automatic expungement began in April of 2023	<ul style="list-style-type: none"> or subsequent convictions 	<p>The following will not be eligible for automatic expungement: assaultive crimes, serious misdemeanors, “crimes</p>	<p>Bureau of Identification “or otherwise segregated and kept in a manner that ensures that they are not open to public inspection or disclosure.”</p> <ul style="list-style-type: none"> 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” The department of state police retains a nonpublic record of the order setting aside a conviction, or other notification regarding a

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State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
Minnesota	conviction-free for a period of time (seven years for misdemeanors; 10 years for felonies)	In 2023 (SF 2909)	<ul style="list-style-type: none"> January 1, 2025. See 	<p>years after imposition of sentence; and, up to four more serious misdemeanors and up to two less serious felonies would be automatically expunged 7 or 10 years after imposition of sentence or release from imprisonment, respectively</p> <ul style="list-style-type: none"> There can be no pending charges in the state database Restitution and other court debt need not be paid for a conviction to be expunged, but a court may reinstate a conviction if a person "has not made a good-faith effort to pay" restitution. 	<p>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</p>	<p>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</p> <ul style="list-style-type: none"> 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
	<ul style="list-style-type: none"> Authorizes automatic expungement of non-conviction records, 		<ul style="list-style-type: none"> January 1, 2025. See 	<ul style="list-style-type: none"> Non-conviction records, most misdemeanors, and 	<ul style="list-style-type: none"> Drug convictions, as well as felonies reduced to gross 	<ul style="list-style-type: none"> Law enforcement agencies must not disclose records relating to an arrest,

State Clean Slate Records Law Automatic Clearing of Adult Criminal Records Provisions

State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
	<p>most misdemeanors, and many non-violent felonies already eligible for petition-based expungement</p> <ul style="list-style-type: none"> The courts are responsible for informing defendants in cases before them of their eligibility for automatic expungement, and the Bureau of Criminal Adjudication is responsible for identifying eligible cases and expunging its records, and informing the courts and law enforcement agencies so that they may expunge/seal their records 		<p><u>Minn. Stat. § 609A.015</u></p>	<p>many non-violent felonies already eligible for petition-based expungement</p> <ul style="list-style-type: none"> Pardoned convictions Cases of mistaken identity 	<p>misdemeanors, and gross misdemeanors reduced to misdemeanors, are not eligible for automatic expungement</p> <ul style="list-style-type: none"> Expungement by petition remains available in those cases 	<p>indictment or information, trial, verdict, or dismissal and discharge for any case in which expungement relief was granted and must maintain the data</p> <ul style="list-style-type: none"> 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
<p>New Jersey</p>	<ul style="list-style-type: none"> A task force was established to implement the automated features of the new law. Pending that implementation, and as an interim measure, the law provides that 	<p>December 18, 2019 (P. L. 2019, c. 269 as amended by P.L. 2021, c. 19)</p>	<ul style="list-style-type: none"> June 15, 2020 for the development of an automatic expungement of conviction records 	<ul style="list-style-type: none"> Convictions of one or more crimes, one or more disorderly persons or petty disorderly persons offenses, or a combination of one or more crimes and offenses 	<ul style="list-style-type: none"> Any criminal homicide (murder), kidnapping and related offenses, sexual offenses, robbery, arson and related offenses, and endangering the welfare of children 	<ul style="list-style-type: none"> A person's convictions and other information contained in the person's criminal history record information is restored if the person is subsequently convicted of a crime, for which the conviction is not subject to expungement

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	<p>individuals eligible for relief under the “clean slate” provision may petition the court for relief beginning in June 2020. If the person is determined by the court to be eligible, expungement* is mandatory</p> <ul style="list-style-type: none"> • After the automated expungement system is in place, NJ clean slate expungements will be handled by the courts, eliminating the need to petition the court <p>*Expungement means the extraction, sealing, 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</p>		<ul style="list-style-type: none"> • February 22, 2021 for expungement of arrest and non-conviction records • July 1, 2021 for expungement of marijuana offenses <p>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</p>	<ul style="list-style-type: none"> • 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 manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish will be expunged by operation of law, 		

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New York	<ul style="list-style-type: none"> Automates the sealing of most criminal conviction 	In June 2023, the New York legislature	<ul style="list-style-type: none"> The law is effective in 	<p>and any remaining sentence, ongoing supervision, or unpaid court-ordered financial will be vacated by operation of law</p> <ul style="list-style-type: none"> Arrest records for a crime, disorderly persons offense, petty disorderly persons offense, or municipal 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 For a misdemeanor conviction, at least three years have 	Registrable sex offenses and Class A felonies	<ul style="list-style-type: none"> After sealing, records will remain available for a variety of specified purposes,

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State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
	<p>records after a waiting period that is without further convictions. <u>N.Y. Crim. Proc. Law § 160.57.</u></p> <ul style="list-style-type: none"> The department of corrections and community supervision, in coordination with the division of criminal justice services, and the chief administrative officer of each local correctional facility, must provide the office of court administration with the data necessary to determine appropriate records to be sealed including but not limited to (i) the date or dates of release from state incarceration of individuals who have a sentence of incarceration for a felony conviction, and (ii) the date or 	<p>passed <u>A1029C</u>, the New York Clean Slate Act, which was signed into law by the Governor in November of 2023.</p>	<p>November of 2024.</p> <ul style="list-style-type: none"> 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. 	<p>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, at least eight years have passed from the date the defendant was last released from incarceration for the sentence of the conviction eligible for sealing or from the imposition of sentence if there was no sentence of</p> <ul style="list-style-type: none"> For a felony conviction, at least eight years have passed from the date the defendant was last released from incarceration for the sentence of the conviction eligible for sealing or from the imposition of sentence if there was no sentence of 	<p>subject to a life sentence are ineligible</p>	<p>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."</p> <ul style="list-style-type: none"> A conviction which is sealed pursuant to this section 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 penalty or is an element of the offense charged

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	<p>dates of initial parole or post-release supervision and corresponding date or dates of discharge, as applicable</p> <ul style="list-style-type: none"> Upon the sealing of a conviction pursuant to the law, the office of court administration is required to immediately notify the division of criminal justice services, the court of conviction, county clerks and the heads of all appropriate police and sheriff departments, prosecutors' offices and law enforcement agencies that the conviction is sealed. Upon receipt of such notification, records of or relating to such conviction must be immediately sealed, including photographs, fingerprints, retina scans and every 			<p>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.</p> <ul style="list-style-type: none"> No new convictions may have been entered during the waiting period and no charges may be pending, and the person may not be under supervision for parole or probation 		

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Oklahoma	<p>official record and paper and duplicates and copies</p> <ul style="list-style-type: none"> Includes a process for identifying eligible convictions, a 45-day period for the prosecutor to object (including based on failure to pay restitution), and expungement by the court without requiring an individual petition No provision is made in the law for notifying individuals whose records have been expunged, though the court is also authorized to make rules for the process which may address the notice issue 	On May 2, 2022, (HB 3316, enacting 22 Okla. Stat. Ann. § 18(C))	The law is effective November 1, 2022, and the expungement of “clean slate eligible” cases will begin three years after that date, in 2025	<ul style="list-style-type: none"> Non-conviction records and misdemeanors already eligible under existing law through the petition process 	<ul style="list-style-type: none"> Eligible felonies available for relief through the petition process, including pardoned felonies Deferred dispositions 	<ul style="list-style-type: none"> 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
Pennsylvania	<p>Criminal history record information pertaining to eligible criminal and summary offense records, and non-conviction records will be automatically sealed from public view when</p>	June 2018 (Act 56, which was amended by Act 83 of 2020, to eliminate the barrier of unpaid fines and costs, but not restitution,	Automatic sealing of eligible records began in June 2019	<ul style="list-style-type: none"> All non-convictions are eligible for automatic sealing with no waiting period Third- and second-degree misdemeanors, 	<ul style="list-style-type: none"> Crimes involving danger to persons Crimes against families Crimes involving sexual misconduct Firearm offenses Felonies 	<ul style="list-style-type: none"> 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

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	<p>individuals have been free from conviction of offenses punishable by a year or more in prison and have completed all court-ordered obligations for 10 years</p>	<p>from preventing sealing of criminal cases) <u>Title 18 §9122.2</u></p>		<p>first-degree misdemeanors that carry a sentence of two years or less in prison, and summary convictions are eligible for automatic sealing with record access limited to judicial officers and law enforcement</p> <ul style="list-style-type: none"> • Payment of court-ordered restitution is required • Eligible individuals must be free of conviction charges that carry a sentence of one or more years in prison and have fulfilled all court-ordered obligations for at least 10 years prior to record sealing. 	<ul style="list-style-type: none"> • Two or more offenses punishable by more than two years in prison • Four or more offenses punishable by one or more years in prison • Indecent exposure, sexual intercourse with animals, failure to register upon conviction of certain sexual offenses, weapons or implements for escape, abuse of a corpse and unlawful paramilitary training 	<p>the individual's criminal history record that has been expurgated or provided limited access</p> <ul style="list-style-type: none"> • 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 • May not be considered a conviction that would prohibit the employment of a person under any law of this Commonwealth or under Federal laws that prohibit employment based on State convictions to the extent permitted by Federal law • A record subject to limited access remains part of a person's criminal history record information and maybe disclosed to a court for any relevant purpose in accordance with law, including sentencing. • The Pennsylvania Commission on Sentencing may maintain a list of the names and other criminal

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Utah	<ul style="list-style-type: none"> Automates the criminal record expungement* process, meaning that an individual with a qualifying record will no longer have to petition the court for relief The Utah Administrative Office of the Courts and the Utah Department of Public Safety work together to identify eligible records and expunge them automatically Prosecuting agencies will receive on a monthly basis notice of any case prosecuted by that 	2019 (<u>HB 431</u>); In 2022, <u>S 35</u> made a number of amendments to Utah's expungement laws	<ul style="list-style-type: none"> The automated expungement system came online in February 2022 An online portal will be available to individuals to determine their eligibility, which will serve as notice of expungement pending records check to ensure that the record has in fact been cleared 	<ul style="list-style-type: none"> Automated relief applies both to cases adjudicated on or after May 1, 2020, and to cases adjudicated before that date. Applies to non-conviction records, most class B and class C misdemeanor offenses and class A drug possession Records will be automatically expunged after a waiting period of 3-7 years, depending on the severity level of the offense 	<ul style="list-style-type: none"> Any cases ineligible for expungement under the petition-based process All felonies All Class A misdemeanor offenses other than drug possession 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 	<p>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</p> <ul style="list-style-type: none"> Prior to enactment of the 2022 law, an expunged conviction could be used for various law enforcement-related purposes, such as in subsequent sentencing, or eligibility for expungement of a future conviction, but now “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.

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	<p>agency that appears to be a clean slate eligible case.</p> <ul style="list-style-type: none"> Within 35 days, the prosecuting agency must provide written notice if the agency objects to automatic expungement because the case is not clean slate eligible, including because the individual has not paid court-ordered restitution, or because the agency has “a reasonable belief, grounded in supporting facts,” that the individual “is continuing to engage in criminal activity within or outside of the state <ul style="list-style-type: none"> *Expungement means to seal or otherwise restrict the access to the petitioner’s record of arrest, investigation, 			<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> Anyone who owes fines, fees or restitution 	<ul style="list-style-type: none"> Requires the Bureau of Criminal Identification to notify all criminal justice agencies of an expunged criminal record

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	detention, or conviction held by an agency			<p>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</p> <ul style="list-style-type: none"> • For “clean slate eligible cases” adjudicated on or after May 1, 2020, the goal is to delete a traffic clean slate eligible case upon identification, and to expunge a non-traffic clean slate eligible case within 30 days of the court determining that the requirements for expungement have been satisfied • For cases adjudicated prior to May 1, 2020, the goal is to expunge or delete a case within one year of the day on which the case is identified 		

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State	Summary of the Law	Year Enacted	Effective Date	Records Included	Records Excluded	Effect of the Record Clearing
Virginia	<ul style="list-style-type: none"> Establishes automatic sealing for non-conviction records as well as nine misdemeanor offenses, including marijuana possession, after seven years without a subsequent conviction On at least a monthly basis, the Department of State Police is required to determine which offenses in the Central Criminal Records Exchange meet the criteria for automatic sealing After reviewing the offenses under, the Department of State Police is required to provide an electronic list of all offenses that meet the criteria for automatic sealing to the Executive Secretary of the 	2021 (<u>S.B. 1339</u> and <u>H.B. 2113</u>)	<p>July 1, 2025; Automatic sealing will begin October 1, 2025</p> <p>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</p>	<p>as eligible for automatic expungement or deletion</p> <ul style="list-style-type: none"> Convictions for the following misdemeanors: <ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 1. 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;

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	<p>Supreme Court and to any circuit court clerk who maintains a case management system that interfaces with the Department of State Police.</p> <ul style="list-style-type: none"> Upon receipt of the electronic list from the Department of State Police, on at least a monthly basis the Executive Secretary of the Supreme Court shall provide an electronic list of all offenses that meet the criteria for automatic to the clerk of each circuit court in the jurisdiction where the case was finalized, if such circuit court clerk participates in the case management system maintained by the Executive Secretary Upon receipt of the electronic list, on at least a monthly basis the clerk of each circuit court must 			<p>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</p> <ul style="list-style-type: none"> 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 		<ul style="list-style-type: none"> 2. Virginia law requires the employer to make such an inquiry; 3. Federal law requires the employer to make such an inquiry; 4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; or 5. Virginia rules and regulations allow the employer to access such sealed records

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	prepare an order and the chief judge of that circuit court must enter such order directing that the offenses that meet the criteria for automatic sealing					

Note: South Dakota has a process for automatic clearing of certain minor misdemeanors only; Eight states (Alaska, Indiana, Kentucky, Maryland, Nebraska, New Hampshire, North Carolina) 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 expungement, or confidentiality for non-conviction records held by state criminal justice agencies, but not the corresponding court records

APPENDIX J

Draft Legislation: Recommendation 1 An Act to Establish the Criminal Records Review Commission

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

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.

<u>Judiciary:</u>	<u>Criminal Records Review</u>	<u>Legislative Per</u>	<u>16 MRSA §901</u>
<u>Criminal Records</u>	<u>Commission</u>	<u>Diem</u>	

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 President of an organization representing the interests of prosecutors in the State, or the president's designee;

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

- H. The President of an organization representing criminal defense lawyers in the State, or the president's designee;
- I. The President of an organization representing county sheriffs, or the president's designee;
- J. The President of an organization representing municipal police chiefs, or the president's designee;
- K. The chair of the Right To Know Advisory Committee established in Title 1, section 411, or the chair's designee;
- L. A representative of a civil rights organization whose primary mission includes the advancement of racial justice, appointed by the President of the Senate;
- M. A representative of an organization that provides legal assistance on immigration, appointed by the President of the Senate;
- N. A representative of an organization whose primary mission is to address issues related to poverty, appointed by the President of the Senate;
- O. 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;
- P. A representative of a substance use disorder treatment or recovery community, appointed by the President of the Senate;
- Q. A representative of an adult and juvenile prisoners' rights organization, appointed by the President of the Senate;
- R. A representative of newspaper and other press interests, appointed by the President of the Senate;
- 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;

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

- 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 advisory 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.

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.

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. 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;

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

- C. Public access to criminal history record information; and
- D. The expungement, sealing and vacating of criminal history record information.

2. 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. Whenever the commission considers it appropriate, it 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. All funding is subject to approval by the Legislative Council in accordance with its policies.

§905. Reimbursement of expenses.

Members of the commission must be compensated in accordance with Title 5, chapter 379.

SUMMARY

This bill establishes the Criminal Records Review Commission. The commission consists of 29 members, including legislators, executive department commissioners or their designees, and leaders and representatives from various interest organizations. The commission's duties include reviewing laws, rules and procedures pertaining to criminal history record information in this State. The commission may submit legislation to the Legislature at the start of each session, and 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. The commission may consult with outside experts in fields related to its duties. may seek funding to partially or fully fund its costs. Members are not entitled to reimbursement of expenses, except for legislative members who may receive a legislative per diem.

APPENDIX K

Draft Legislation: Recommendation 2 An Act to Automatically Seal Criminal History Record Information For Class D and Class E Crimes Relating to Marijuana Possession and Cultivation

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

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

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

Sec. 1. 15 MRSA c. 312 is enacted to read:

CHAPTER 312
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. Criminal history record information. "Criminal history record information" has the same meaning as in Title 16, section 703, subsection 3.

3. 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 after January 1, 2001 and prior to January 30, 2017 for the following:

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

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

- D. Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph C, subparagraph (4);
- E. Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph D, subparagraph (4);
- F. Unlawful possession of scheduled drugs under former Title 17-A, section 1107 when that drug was marijuana and the underlying crime was a Class E or Class D crime;
- G. Unlawful possession of scheduled drugs under Title 17-A, section 1107-A, subsection 1, paragraph F, subparagraphs (1) or (2); or
- H. Cultivating marijuana under Title 17-A, section 1117, subsection 1, paragraph B, subparagraphs (3) or (4).

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 2403, subsection 3, paragraph A.

§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 another 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 State Bureau of Identification 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 State Bureau of Identification submits the

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

criminal history record information related to that eligible criminal conviction to the Administrative Office of the Courts under section 2403, subsection 2;

4. Pending criminal charges. The person does not have any presently 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 where the person convicted meets the requirements of section 2402 shall be sealed in accordance with this section.

1. Periodic examination of records; transfer to court. The State Bureau of Identification shall periodically, but at a least once a month, examine criminal history record information collected and maintained by it 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 or records; records review. If the State Bureau of Identification determines that any criminal history record information examined in subsection 1 meets the requirements in section 2402, the State Bureau of Investigation shall forward 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 State Bureau of Identification. The Administrative Office of the Courts shall forward any information or data found, along with the information and data received from the State Bureau of Identification and any additional supporting documents it deems relevant to the court with jurisdiction in the underlying criminal proceeding.

3. Review; written findings. Upon receipt of records, data and information under subsection 2, the court shall review the 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 meet the statutory prerequisites in section 2402, the court shall issue an order sealing the criminal history record information of the eligible criminal conviction for automatic seal that was the subject of the records reviewed.

B. If the court determines that the records do not establish one or more of the statutory prerequisites in section 2402, the court shall issue a written order containing findings of fact supporting the court's determination.

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

4. Notice to State Bureau of Identification. The court shall electronically transmit notice of the court's order in subsection 3 to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. If the court issues an order sealing the criminal history record information under subsection 3, paragraph A, the State Bureau of Identification shall promptly amend its records relating to the person's eligible criminal conviction for automatic seal 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 State Bureau of Identification 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 State Bureau of Identification 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; Maine Judicial Branch; and criminal justice agencies that collect, maintain or disseminate criminal history record information shall cooperate with the State Bureau of Identification and assist it with carrying out the purposes and duties of this section.

§2403. Limited disclosure of eligible criminal conviction

A person whose eligible criminal conviction is the subject of a sealing order under section 2402, subsection 3, paragraph A 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. Other than when responding to criminal justice agencies or when under oath while being prosecuted for a subsequent crime, a person whose criminal conviction is sealed does not violate Title 17-A, section 451, 452 or 453 by not disclosing the sealed criminal conviction.

§2404. Review of determination of eligibility; motion to seal criminal history record

1. Appeal by person. A person aggrieved by a written order under section 2402, subsection 3, paragraph B may not appeal 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. If the State is aggrieved by a written order under section 2402, subsection 3, paragraph A it may appeal as of right, and a certificate of approval by the Attorney General is not required. 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.

3. Motion to seal criminal history record; alternative to automatic seal. Nothing in this chapter shall be interpreted 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.

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

SUMMARY

This bill creates a process to automatically seal or make confidential criminal history record information related to conviction for a marijuana possession and cultivation related crimes committed after January 1, 2001 and prior to January 30, 2017. The process requires the State Bureau of Identification within the Department of Public Safety, Bureau of State Police to periodically review the criminal history record information obtained in its files to determine if the underlying convictions for certain criminal history record information qualifies for automatic seal. If it does, it forwards that information to the Administrative Office of the Courts who 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, it then submits that information to the superior court or district court in the underlying criminal proceeding. That court must then determine whether the underlying criminal convictions qualifies to have the criminal history record information related to the conviction sealed. If it does qualify, the court sends notice to the State Bureau of Identification to make that criminal history record information confidential. If it does not qualify, the court sends the order denying seal to the State Bureau of Identification to be filed with the criminal history record information for that underlying conviction.

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

APPENDIX L

**Draft Legislation: Recommendation 3
An Act to Expand the List of Eligible Crimes for
Post-judgment Motion to Seal Criminal Records
to Include Convictions For Class D Crimes Related to
Possession and Cultivation of Marijuana**

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.

An Act to Expand the List of Eligible Crimes for Post-judgment Motion to Seal Criminal Record to Include Convictions for Possession and Cultivation of Marijuana

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

Sec. 1. 15 MRSA §2261, sub-§6 is amended as follows:

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

- 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 former Title 17-A, section 1105 when the individual was convicted of cultivating scheduled drugs, that 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 cultivation of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph B-1, subparagraph (4);
 - (4) Aggravated cultivation of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph C, subparagraph (4);
 - (5) Aggravated cultivation of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph D, subparagraph (4);
 - (6) Unlawful possession of a scheduled drug under former Title 17-A, section 1107 when that drug was marijuana and the underlying crime was a Class D crime;
 - (7) Unlawful possession of a scheduled drug under Title 17-A, section 1107-A, subsection 1, paragraph F, subparagraph 2; or

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.

- (8) Cultivating marijuana under Title 17-A, section 1117, subsection 1, paragraph B, subparagraph (3).

SUMMARY

This bill adds to the definition of “eligible criminal conviction” in Title 15, section 2261, subsection 6, which defines what is considered an eligible underlying crime for an individual to file a post-judgement motion to seal criminal history record related to the conviction for that crime, all Class D crimes related to unlawfully possessing or cultivating marijuana when that crime was committed prior to January 30, 2017, the enactment of Maine’s adult use cannabis laws.

APPENDIX M

Letter to Maine Judicial Branch



**STATE OF MAINE
ONE HUNDRED AND THIRTY-FIRST LEGISLATURE
CRIMINAL RECORDS REVIEW COMMITTEE**

January 25, 2024

Hon. Valerie Stanfill
Chief Justice, Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine 04101

Re: Request from Maine Legislature Criminal Records Review Committee to update Maine Judicial Branch forms related to Maine Revised Statutes, Title 15, chapter 310-A, Post-Judgment Motion to Seal Criminal History Record.

Dear Chief Justice Stanfill and members of the Maine Judicial Branch,

We are writing to request the assistance of the Maine Judicial Branch in publicizing and improving the process under Title 15, chapter 310-A, that allows certain individuals to petition for the sealing of their criminal history records information (CHRI). This is a recommendation of the Criminal Records Review Committee that was established, pursuant to Resolve 2023, chapter 103, to review several practices and policies relating to criminal records.

As you know, Title 15, chapter 310-A allows people who meet certain prerequisites to petition to have their CHRI related to the underlying conviction that is the subject of the petition to be sealed, or made “confidential.” The Maine Judicial Branch informed the committee that, between the current statute going into effect on August 8, 2022 and November 17, 2023, only 10 of these motions have been filed—6 of them granted, 2 denied and 2 pending. The committee believed that these numbers were alarmingly low, considering the benefits provided to a person who seals their CHRI and reveal a lack of awareness about the process.

The committee discussed the Maine Judicial Branch form, CR-218, “Motion to Seal Criminal History,” used by people petitioning to have their CHRI sealed. Committee members commented that, while overall simple and straightforward, the form lacks essential information and clarity regarding whether a person is required to have an attorney to submit this form and file this motion. At the bottom of the form, there is a line for the signature of “Defendant’s Attorney and Maine Bar No.” Several committee members argued that the form does not clearly indicate that an attorney is not required in order to submit the motion, and could be perceived to indicate that an attorney is required. This could deter people from submitting the form given the potential costs to engaging an attorney as well as the defendant’s general disinterest in reengaging with the court system after a criminal conviction.

It is also our understanding that the judicial branch does not conduct any type of outreach or provide any public notice regarding the existence of the process to seal CHRI. We acknowledge

that there is only so much the judicial branch can do in its position, however, additional information about the petition to seal CHRI could be made available on its website and other printed materials, communicated directly by judicial branch personnel, and communicated through any other resources the judicial branch feels appropriate and helpful.

The committee voted to respectfully request that the Maine Judicial Branch takes the following measures to alleviate issues that have resulted in a lack of public participation in the motion to seal CHRI process:


1. Update form CR-218 to indicate that a defendant submitting a motion to seal their criminal records is not required to have an attorney, or otherwise indicated that an attorney is optional.
2. Expand its public outreach regarding this process. This should include, but not be limited to, updating the criminal law section and other relevant sections of its website to provide information on this process, and updating relevant forms and materials used by the judicial branch and provided to defendant's and others involved in the judicial system informing them of this process.
3. All other steps it sees fit to increase public awareness about the process to seal CHRI.

We thank you for your careful consideration of these requests.

Respectfully submitted:



Senator Donna Bailey
Senate Chair



Speaker Rachel Talbot Ross
House Chair

cc: Members of the Criminal Records Review Committee

APPENDIX N

Letter to State Bureau of Identification



**STATE OF MAINE
ONE HUNDRED AND THIRTY-FIRST LEGISLATURE
CRIMINAL RECORDS REVIEW COMMITTEE**

January 25, 2024

Michael Sauschuck
Commissioner, Department of Public Safety
45 Commerce Drive, Suite 1
104 State House Station
Augusta, Maine 04333

Re: Request from Maine Legislature Criminal Records Review Committee for the State Bureau of Identification to increase its public outreach regarding sealing of criminal history record information.

Dear Commissioner Sauschuck:

We are writing to request the assistance of the Department of Public Safety in publicizing and improving the process under Title 15, chapter 310-A, that allows certain individuals to petition for the sealing of their criminal history records information (CHRI). This is a recommendation of the Criminal Records Review Committee that was established, pursuant to Resolve 2023, chapter 103, to review several practices and policies relating to criminal records.

As you know, Title 15, chapter 310-A allows people who meet certain prerequisites to petition to have their CHRI related to the underlying conviction that is the subject of the petition to be sealed, or made “confidential.” The Maine Judicial Branch informed the committee that, between the current statute going into effect on August 8, 2022 and November 17, 2023, only 10 of these motions have been filed—6 of them granted, 2 denied and 2 pending. The committee believed that these numbers were alarmingly low, considering the benefits provided to a person who seals their CHRI and reveal a lack of awareness about the process.

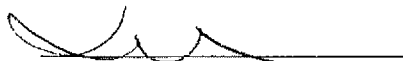
The State Bureau of Identification (SBI), as the central repository for CHRI responsible for maintaining and disseminating CHRI, was at the center of these discussions. The committee reached a general consensus that the low number of motions filed is least partially due to the lack of information made available by SBI to the public regarding this process. Committee members argued that SBI should be partially responsible for notifying the individuals in the applicable records that they may have an opportunity to seal them. At a minimum, SBI should update its website and forms and notify people, at the point of contact requesting their CHRI, of the existence of the process in Title 15, chapter 310-A.

The committee voted to respectfully request that SBI takes measures to expand public outreach regarding this process. This should include, but not be limited to: (1) updating its website to provide general information on this process; (2) updating relevant forms and materials used by

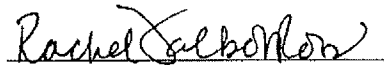
SBI and provided to convicted persons informing them of this process; and (3) creating a notification system whereby individuals seeking their CHRI are informed that they may be eligible to have their CHRI sealed.

We thank you for your careful consideration of this request.

Respectfully,



Senator Donna Bailey
Senate Chair



Speaker Rachel Talbot Ross
House Chair

cc: Colonel William Ross, Chief, Maine State Police
Matthew Ruel, Director, State Bureau of Identification
Members of the Criminal Records Review Committee

APPENDIX O

**Draft Legislation: Recommendation 5
Remove Age From Statutory Prerequisites for
Post Judgment Motion to Seal Criminal History Record**

Recommendation 5: Remove the current age requirement of 18-27 years of age for applying for a petition to seal criminal history record information.

An Act to Remove the Prerequisite for Sealing Criminal History Record Information That the Person Must Have Been 18 to 27 Years of Age at the Time of Commission of the Underlying Crime.

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

Sec. 1. 15 MRSA §2262, sub-§4 is amended to read:

4. 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 of the order; and

Sec. 2. 15 MRSA §2262, sub-§5 is amended to read:

5. Pending criminal charges. The person does not have any presently pending criminal charges in this State or in another jurisdiction; and

Sec. 3. 15 MRSA §2262, sub-§6 is repealed.

SUMMARY

This bill removes the requirement that a person had in fact attained 18 years of age but had not attained 28 years of age at the time of commission of the crime underlying the eligible criminal conviction from the list of statutory prerequisites for a person to qualify to have their criminal history record information sealed under the post-judgement motion to seal criminal history record.