CRIMINAL RECORDS REVIEW COMMITTEE

Meeting Agenda

Tuesday, July 16, 2024
9:00a.m. – 4:00p.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 Committee Duties and Interim Study Process
   - Office of Policy and Legal Analysis, Staff

3. Update on Outcome of Interim Report Recommendations
   - Office of Policy and Legal Analysis, Staff
   - Amanda Doherty, Maine Judicial Branch
   - Amy McCollett, State Bureau of Identification, DPS

4. Summary of Current Process for Sealing Criminal Records
   - Office of Policy and Legal Analysis, Staff

5. Lunch

6. Separation of Powers Issues Related to Clean Slate Legislation
   - Derek P. Langhauser, Esq.

7. Requesting an Opinion of the Justices
   - Darek M. Grant, Secretary of the Senate
   - Robert B. Hunt, Clerk of the House

8. Discussion and Planning for Next Meeting

Future Meetings

- Tuesday, August 13, 9:00 a.m. (Hybrid: State House Room 228 and Zoom)
- Tuesday, September 24, (Hybrid: State House Room 228 and Zoom)
- Tuesday, October 8, (Hybrid: State House Room 228 and Zoom)
- Tuesday, November 19, (Hybrid: State House Room 228 and Zoom)

Additional information and materials are available on the Committee's webpage at:
https://legislature.maine.gov/criminal-records-review-committee-131st-legislature

CRIMINAL RECORDS REVIEW COMMITTEE

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

CRIMINAL RECORDS REVIEW COMMITTEE

Established by Resolve 2023, Chapter 103

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

CRIMINAL RECORDS REVIEW COMMITTEE
Member Introductions (2024)

Name	**Brief Introduction**
Senator Donna Bailey, Senate Chair	*Chair, Health Coverage, Insurance and Financial Services Committee and Member, Judiciary Committee.*
Speaker Rachel Talbot Ross, House Chair	*Speaker of the House.*
Senator Eric Brakey	*Member, Judiciary Committee.*
Representative David Boyer	*Member, Veterans and Legal Affairs Committee*. Previously served as the Marijuana Policy Project's Maine Director and the campaign manager of Yes on 1: Regulate and Tax Marijuana, which legalized cannabis in Maine in 2016.
Foster Bates	*President, MSP NAACP*.
Anna Welch	*Founding Director of Maine Law's Refugee and Human Rights Clinic and Managing Co-Director of the Cumberland Legal Aid Clinic.* Through our student attorneys, we engage in broader advocacy and direct representation of low-income individuals on criminal, youth, and civil (including immigration) matters.
Jason Parent	*Executive Director / Chief Executive Officer, Aroostook County Action Program (ACAP).* ACAP represents vulnerable populations in the rural rim counties of our state, specifically including customers both in the Aroostook County Jail and others incarcerated after release to assist with all facets of community re-integration.
Andrea Mancuso	*Public Policy Director, Maine Coalition to End Domestic Violence.*
Tess Parks	*Policy Organizer, Maine Recovery Advocacy Project (ME-RAP)*. ME-RAP is a bipartisan grassroots network dedicated to lifting the voices of people in recovery through community-driven and policy-based solutions.
Joseph Jackson	*Executive Director, Maine Prisoner Advocacy Coalition (MPAC).* MPAC engages in direct action and advocacy with the Maine Department of Corrections on behalf of incarcerated citizens and their families.
Dan MacLeod	*Executive Editor, Bangor Daily News.*
Tim Moore	*President / Chief Executive Officer of the Maine Association of Broadcasters*.
Melissa Martin	*Public Policy and Legal Director at the Maine Coalition Against Sexual Assault*. Represented survivors of sexual violence for many years in civil legal proceedings prior to joining MECASA.
Pedro Vasquez	*Pine Tree Legal Assistance.* Lifelong human rights defender; serving on this committee as a representative of an organization that provides free civil legal assistance to citizens of the State with low incomes.
Hannah Longley Devon Gross (when Hannah is unavailable)	*Director of Advocacy and Crisis Intervention, National Alliance on Mental Illness (NAMI) Maine*. Licensed Clinical Social Worker with over 15 years of clinical experience, collaborating across various facets of the mental health system, including the intersection of mental health and the criminal justice system. *Special Project and Data Specialist at NAMI Maine*. Devon collaborates with mental health providers, law enforcement, and community members, interacts with data related to the mental health system, and actively

CRIMINAL RECORDS REVIEW COMMITTEE
Member Introductions (2024)

	advocates for mental health through her involvement in the NAMI Maine policy team.
Michael Kebede	*Policy Counsel, ACLU Maine.*
Amanda Comeau	*Director, Survivor Speak USA*. Anti-trafficking facilitator, advocate and mentor who works with women to help them get treatment and find housing.
Jill Ward	*Director, Center for Youth Policy & Law at Maine Law.* Attorney and advocate with more than 25 years' experience in juvenile justice reform; contributed to recent changes to the Maine Juvenile Code around juvenile record confidentiality and sealing.
Judith Meyer	*Vice President, Maine Freedom of Information Coalition*, a nonprofit entity that advocates for and educates on public access.
Kent Avery	*Designee of Attorney General.* Assistant Attorney General, Criminal Division. Previously Assistant District Attorney for seven years and criminal defense attorney for three years. Currently represents Maine State Police and Fire Marshal's Office.
William "Bill" Montejo	*Director, Division of Licensing and Certification, Maine Department of Health and Human Services.*
Amy McCollett	*Business System Administrator, Department of Public Safety, Maine State Police, State Bureau of Identification*. Gathers and analyzes state and federal rules and laws in order to properly assist with building, testing and implementing computer system processes in order to supply Identity History information (criminal history checks or rap sheets) to the public and law enforcement communities as required by law.
Samuel Prawer	Sam Prawer is the *Director of Government Affairs at the Maine Department of Corrections*, serving on the Criminal Records Review Committee as the Commissioner's designee.
Maeghan Maloney	*President, Maine Prosecutors Association and District Attorney for Kennebec and Somerset counties*.
Matthew Morgan	*President-Elect, Maine Association of Criminal Defense Lawyers (MACDL)* and a practicing criminal defense attorney in both Maine state and federal courts.
Sheriff Joel Merry	*Past President, Maine Sheriffs Association and Sheriff of Sagadahoc County*. Has served as Sheriff for 16 years as well as on a number of committees that have provided reports to the Legislature. Has also worked with the Administrative Office of the Courts on the issue of fingerprint compliance for law enforcement agencies.
Chief Jason Moen	*President, Maine Chiefs of Police Association and Chief of the Auburn Police Department.* Chief Moen has served the City of Auburn for the past 29 years, 6 as Chief. He also serves on several MCOPA committees, including the Legislative Committee.
Representative Erin Sheehan	*Chair, Right to Know Advisory Committee and Member, Judiciary Committee.*
Amanda Doherty	*Manager of Criminal Process & Specialty Dockets, Maine Judicial Branch*. Prior to current position, served as a prosecutor for almost seven years and in criminal defense for almost a decade before that.

LAW WITHOUT GOVERNOR'S SIGNATURE

JULY 19, 2023

CHAPTER
103
RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 1047 - L.D. 1622

Resolve, to Reestablish the Criminal Records Review Committee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Consider so-called clean slate legislation options;

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

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

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

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

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

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

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

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

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

9. Develop options to manage criminal records; and

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

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

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

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

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

MAINE STATE LEGISLATURE

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Criminal Records Review Committee - 131st Legislature

(Resolve 2023, c. 103)

2024 Meeting Dates and Materials:

- **Tuesday, July 16, 2024 at 9:00 a.m., State House Room 228 (AFA)**
  - **Livestream available here: https://legislature.maine.gov/Audio/#228**
- **Tuesday, August 13, 2024 at 9:00 a.m., State House Room 228 (AFA)**
- **Tuesday, September 24, 2024 at 9:00 a.m., State House Room 228 (AFA)**
- **Tuesday, October 8, 2024 at 9:00 a.m., State House Room 228 (AFA)**
- **Tuesday, November 19, 2024 at 9:00 a.m., State House Room 228 (AFA)**

2023 Meeting Dates and Materials:

- **Monday, November 13, 2023 at 9:00 a.m., State House, Rm 228 (AFA)**
  - **Archived meeting video**
- **Wednesday, November 29, 2023 at 9:00 a.m., State House, Rm 228 (AFA)**
  - **Archived meeting video**
- **Monday, December 11, 2023 at 9:00 a.m., State House, Rm 228 (AFA)**
  - **Archived meeting video**
- **Interim Criminal Records Review Committee Report (January 2024)**
- **For reference, here is the link to the 2021 Criminal Records Review Committee website.**

Please use the following link to subscribe to the interested parties e-mail list for this study: criminal.records.review-ip@lists.legislature.maine.gov

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Other Committee Information:

- **Background Materials**
- **Committee Members (membership will be updated soon)**
- **Committee Staff**
  - **Janet Stocco, OPLA**
  - **Sophia Paddon, OPLA**

Janet Stocco and Sophia Paddon may be reached by phone at 207-287-1670 or or by email using the email addresses linked above.

CRIMINAL RECORDS REVIEW COMMITTEE
Update on Recommendations from January 2024 Interim Report

Recommendation	Outcome
Recommendation 1. **Establish a permanent commission based on the Criminal Records Review Committee.** (unanimous of CRRC members voting) Appendix J to the Interim Report proposed draft legislation to implement this recommendation by: • Establishing a permanent Criminal Records Review *Commission*, with similar membership to the current CRRC. • The permanent CRRC would have express authority to (a) submit legislation relating to criminal history record information at the start of each session and (b) make recommendations to the Department of Public Safety, Chief Justice and Advisory Committee on Maine Rules of Unified Criminal Procedure.	**Not Met.** The Judiciary Committee introduced and held a public hearing on L.D. 2252, *An Act to Establish the Criminal Records Review Commission,* which was based on the proposal in Appendix J. A majority of the Judiciary Committee voted in favor of the bill, which was amended to fund the cost of Legislators serving on the committee with an approx. $3,500 per year ongoing General Fund appropriation. LD 2252 remained on the Special Appropriations Table when the Second Regular Session of the Legislature adjourned on May 10, 2024.
Recommendation 2. **Establish a process to automatically seal criminal convictions for Class D and Class E crimes relating to marijuana possession and cultivation contained in electronic records.** (CRRC vote: 15-6; 4 abstained; 4 absent) Appendix K to the Interim Report proposed draft legislation to implement this recommendation by: • Establishing a process to automatically seal convictions for Class D and Class E crimes related to marijuana possession and cultivation for crimes committed after Jan. 1, 2001 (when electronic records were in use) but before Jan. 30, 2017 (the effective date of the State's adult recreational use of cannabis law). • Automatic sealing would only be available to a defendant not currently facing criminal charges and only if the defendant had not either been convicted of a crime or had a criminal charge dismissed as a result of deferred disposition after fully satisfying the sentence for the most recent conviction to be sealed. • SBI would be required to examine all criminal history record information in its files at least monthly to identify convictions potentially eligible for sealing and transmit that information to the Administrative Office of the Courts. The AOC would then gather all information in its files related to the identified convictions and transfer that information to the court of conviction for a judicial determination whether the conviction qualifies for automatic sealing.	**Not Met.** The Judiciary Committee introduced and held a public hearing on LD 2269, *An Act to Automatically Seal Criminal History Record Information for Class D and Class E Crimes Relating to Marijuana Possession and Cultivation ,* which was based on the proposal in Appendix K. A majority of the Judiciary Committee voted that LD 2269 "Ought Not to Pass." This recommendation was accepted by both the Senate and the House of Representatives. *Note*: A minority of the Judiciary Committee voted in favor of an amended version of LD 2269, which tweaked the definition of an "eligible criminal conviction" to ensure it includes only crimes no longer considered illegal under Maine's adult use cannabis laws. This amended version of the bill was accompanied by a fiscal note requiring approximately $150,000 in funding to the Department of Public Safety in the first fiscal year for a paralegal position and one-time programming costs and approximately $480,000 in funding to the Judicial Branch in the first fiscal year for 2 limited-period law clerk positions, active retired judge compensation and other temporary staffing. If this version of the bill had been enacted, a portion of these costs would have been ongoing.

• The automatic sealing order would have the same effect as an order sealing a record under the current motion to seal process: The conviction would be treated as confidential criminal history record information and defendant would be authorized by law to respond to inquiries from persons other than criminal justice agencies by not disclosing the existence of the conviction.	
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.** (CRRC vote: 17-3; 6 abstained; 3 absent) Appendix L to the Interim Report proposed draft legislation to implement this recommendation by: • Amending the definition of "eligible criminal conviction" in the law identifying the types of convictions for which a defendant may file a post-judgment motion to seal criminal history record information—to newly include any Class D crime related to unlawfully possessing or cultivating marijuana that were committed before Jan. 30, 2017, the effective date of the State's adult recreational use of cannabis law. • All other requirements under current law for filing a post-judgment motion to seal—*i.e.,* defendant has no current pending criminal charges and 4 years have passed since defendant was discharged with no subsequent criminal convictions or dismissals as a result of deferred disposition—would apply to these new Class D convictions.	**Met.** The Judiciary Committee introduced and held a public hearing on LD 2236, *An Act to Expand the List of Crimes Eligible for a Post-judgment Motion to Seal Criminal History Record Information to Include Convictions for Possession and Cultivation of Marijuana,* which was based on the proposal in Appendix L. A majority of the Judiciary Committee voted in favor of an amended version of LD 2236, which tweaked the definition of "eligible criminal conviction" to ensure the newly included Class D crimes include only those crimes no longer considered illegal under Maine's adult use cannabis laws. The amended bill was enacted as Public Law 2023, chapter 639.
Recommendation 4. **Increase public outreach and notifications to qualified persons for the current post-judgment motion to seal criminal history record information.** (unanimous of CRRC members voting) The CRRC sent a letter to Chief Justice Stanfill, which is included in Appendix M to the Interim Report, requesting that the Maine Judicial Branch: • Revise court form (CR-218), used by defendants filing a post-judgment motion to seal, to clarify that a defendant is not required to be represented by an attorney to file the motion. • Expand public outreach by (a) updating the criminal law and other relevant sections of the Judicial Branch website to provide information on the post-	*(Information on progress toward implementing this recommendation will be provided by the Maine Judicial Branch and Department of Public Safety.)*

judgment motion to seal process and (b) providing information on the process to criminal defendants and others involved in the judicial system through any other resources the branch feels appropriate and helpful. The CRRC sent a letter to Commissioner Sauschuck, which is included in Appendix N to the Interim Report, requesting that the Department of Public Safety expand public outreach on the post-judgment motion to seal process by: • Updating the SBI website to provide general information on the post-judgment motion to seal process; • Updating relevant forms and materials used by SBI and provided to convicted persons informing them of this process; and • Creating a system whereby individuals seeking their own criminal history record information (CHRI) are informed they may be eligible to have their CHRI sealed.	
Recommendation 5. **Remove the statutory prerequisite that a person must have been aged 18 to 27 years when they committed the underlying crime in order to be eligible to have the person's criminal history record information sealed.** (unanimous of CRRC members voting) Appendix O to the Interim Report proposed draft legislation to implement this recommendation by: • Repealing the requirement that a defendant convicted of a crime must have been at least 18 years of age but less than 28 years of age at the time the crime was committed to qualify to file a post-judgment motion to seal the criminal history record information related to the conviction.	**Met.** The Judiciary Committee introduced and held a public hearing on LD 2218, *An Act to Remove the Age-related Statutory Prerequisite for Sealing Criminal History Record Information,* which was based on the proposal in Appendix O. A majority of the Judiciary Committee voted in favor LD 2218 and the bill was enacted as Public Law 2023, chapter 666.

Recommendations for further CRRC discussion this year (*see* Interim Report pages 13-14):

- Examine potential separation of powers issues related to clean slate legislation
- Examine additional options for clean slate legislation, including:
    - Who should be eligible for record sealing or expungement—including the types of criminal convictions that may be sealed and other requirements defendants must meet to qualify for sealing. *See* Sections 5(3) & (4) of Resolve 2023, chapter 103 (CRRC duties).

- Consider Senator Brakey's suggestion to allow a person convicted of Class E and Class D marijuana possession or cultivation offenses that are no longer illegal in the State to petition for "expungement" of "personally identifiable information" related to these convictions.
- Clarify the intent of the CRRC with respect to what "sealing," "expungement" or the selected language means, given that the use of the term "expunge" in other states' clean slate laws may not match the layperson's understanding of these terms.
- Consider the mechanisms for sealing or expunging conviction records and where the relevant records are held—for example, conviction records may be held not only by SBI but also by courts, law enforcement agencies, licensing agencies and the Department of Corrections.
- Consider that, even if a government record of conviction is sealed or expunged, information regarding the underlying arrest or conviction often remains available through news media, social media and other sources.

- Examine the collateral consequences of criminal convictions, including, for example, the use (sometimes required by law) of CHRI when individuals apply for jobs, apartments, benefits or professional licenses.

Note: Additional Relevant Legislation Enacted in 2024.

Public Law 2023, chapter 560 (LD 747), *An Act Regarding the Reporting of Adult Name Changes by the Probate Courts to the State Bureau of Identification* (emergency effective March 25, 2024), establishes a uniform process for county probate courts to report adult name change orders to SBI.

- All adults seeking a name change in probate court must undergo a criminal history record check. If the adult is currently on probation, parole or supervised release or is required to register as a sex offender, there is a rebuttable presumption against granting the name change.
- A probate court may make the name change order confidential if the adult's interest in confidentiality outweighs the public interest in disclosure. There is a presumption against making the order confidential if the adult was convicted of a Class D or Class E crime in the past 5 years or a more serious crime within the past 10 years and the order may not be made confidential if the adult is currently on probation, parole or supervised release or is required to register as a sex offender.
- Beginning Jan. 1, 2025, probate courts must electronically transmit all adult name change orders to SBI, unless in a particular case the court finds extraordinary circumstances that a confidential adult name change order should not be transmitted to SBI.
- In response to a request for an adult's public CHRI, a Maine criminal justice agency may disseminate information associated with each of the adult's former and current legal names unless a name change order was made confidential (either through the process above or any other provision of law). If the name change order is confidential, a Maine criminal justice agency may not disclose to any requester who is not authorized to receive confidential CHRI either (a) the existence of the name change or(b) any CHRI associated with a legal name of the adult that is not included within the request.
- This law does not affect how an adult must respond to an inquiry about the adult's past criminal convictions.

Recommendation #1

Proposed Legislation
(still on Approps. Table)

131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document	**No. 2252**
H.P. 1444	House of Representatives, March 5, 2024

An Act to Establish the Criminal Records Review Commission

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to Resolve 2023, chapter 103, section 7.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

Robert B. Hunt

ROBERT B. HUNT
Clerk

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

Sec. 1. 5 MRSA §12004-I, sub-§52-D is enacted to read:

52-D.

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

Sec. 2. 16 MRSA c. 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 52-D and referred to in this chapter as "the commission," is established for the purpose of conducting a continuing review of laws, rules and procedures 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 members:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Terms. Members of the commission who are Legislators serve during the term of office for which they were elected. Other members of the commission serve for a term of

2 years and may be reappointed. Members may serve beyond their designated terms until their successors are appointed.

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

4. 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.

5. 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;

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 regular session, changes in the laws related to criminal history record information that 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 judicial branch's advisory committee on the Maine Rules of Unified Criminal Procedure and any other organization or committee whose affairs pertain to the use, maintenance or dissemination of criminal history record information.

§904. Consultation; outside funding

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

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

SUMMARY

This bill implements a recommendation of the Criminal Records Review Committee established pursuant to Resolve 2023, chapter 103. The bill establishes the Criminal Records Review Commission. The commission members include Legislators, Executive Department commissioners or their designees and leaders and representatives from various organizations. The commission's duties include 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 regular session and may also make recommendations to the Department of Public Safety, the Chief Justice of the Supreme Judicial Court, the judicial branch's advisory committee on the Maine Rules of Unified

Criminal Procedure and any other organization or committee whose affairs pertain to the use, maintenance or dissemination of criminal history record information. The commission may consult with outside experts in fields related to its duties and may seek funding to partially or fully fund its costs. Members, other than legislative members, are not entitled to receive a legislative per diem or reimbursement of expenses.

Recommendation #1 (on Approps. Table)

L.D. 2252

Date: Majority Committee Amendment (Filing No. H-973)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

131ST LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1444, L.D. 2252, "An Act to Establish the Criminal Records Review Commission"

Amend the bill in section 2 in c. 11 in §904 in subsection 2 in the 2nd line (page 3, line 30 in L.D.) by inserting after the following: "commission" the following: 'including staffing'

Amend the bill by inserting after section 2 the following:

'**Sec. 3. Appropriations and allocations.** The following appropriations and allocations are made.

LEGISLATURE

Legislature 0081

Initiative: Appropriates funds for the ongoing costs of Legislators serving on the Criminal Records Review Commission.

GENERAL FUND	**2023-24**	**2024-25**
Personal Services	$0	$1,100
All Other	$0	$2,400
GENERAL FUND TOTAL	$0	$3,500

Sec. 4. Effective date. This Act takes effect January 1, 2025.'

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

SUMMARY

This amendment adds to the bill an effective date of January 1, 2025. The amendment also adds an appropriations and allocations section and clarifies that costs associated with

staffing the Criminal Records Review Commission may be partially or fully funded by outside funding.

FISCAL NOTE REQUIRED

(See attached)

Recommendation #1

Approved: 04/12/24 mac

(still on Approps. Table)

Cost of bill

131st MAINE LEGISLATURE

LD 2252 **LR 3097(02)**

An Act to Establish the Criminal Records Review Commission

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

Legislative Cost/Study

	FY 2023-24	FY 2024-25	Projections FY 2025-26	Projections FY 2026-27
Net Cost (Savings)				
General Fund	$0	$3,500	$3,540	$3,581
Appropriations/Allocations				
General Fund	$0	$3,500	$3,540	$3,581

Legislative Cost/Study

The bill provides an ongoing appropriation of $3,500 to the Legislature for the costs of Legislators serving on the Criminal Records Review Commission.

Fiscal Detail and Notes

Additional costs to the Department of Health and Human Service, the Office of the Attorney General, the Judicial Department, the Department of Public Safety and the Department of Corrections associated with serving on the commission are expected to be minor and can be absorbed within existing budgeted resources.

Recommendation # 2

Proposed Legislation
(was not enacted)

131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document **No. 2269**

H.P. 1459 House of Representatives, March 14, 2024

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

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to Resolve 2023, chapter 103, section 7.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

Robert B. Hunt

ROBERT B. HUNT
Clerk

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

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

CHAPTER 313

AUTOMATIC SEALING OF CERTAIN CRIMINAL HISTORY RECORD INFORMATION

§2401. Definitions

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

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

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

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

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

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

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

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

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

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

D. Aggravated cultivating of marijuana under Title 17-A, section 1105-D, subsection 1, paragraph 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 Title 17-A, former section 1107 when that scheduled drug was marijuana and the underlying crime was a Class D or Class E crime;

G. Unlawful possession of scheduled drugs under Title 17-A, section 1107-A, subsection 1, paragraph F, subparagraph (1) or (2); or

would have been revised by minority committee amendment

H. Cultivating marijuana under Title 17-A, section 1117, subsection 1, paragraph B, subparagraph (3) or (4).

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

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

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

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

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

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

§2403. Automatic sealing of criminal history record information

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

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

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

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

and data received from the bureau and any additional supporting documents the Administrative Office of the Courts determines relevant to the court with jurisdiction in the underlying criminal proceeding.

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

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

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

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

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

§2404. Limited disclosure of eligible criminal conviction

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

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

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

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

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

SUMMARY

This bill implements a recommendation of the Criminal Records Review Committee. The bill creates a process to automatically seal or make confidential criminal history record information related to convictions for marijuana possession and cultivation related crimes committed on or after January 1, 2001 and prior to January 30, 2017. The process requires the Department of Public Safety, Bureau of State Police, State Bureau of Identification to review monthly the criminal history record information obtained in its files to determine if the underlying convictions for certain criminal history record information qualifies for automatic sealing. If it does, it must transfer that information to the Administrative Office of the Courts, which is required to do the same with its files for the corresponding underlying convictions.

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

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

Recommendation #2

(Not was enacted)

L.D. 2269

Date: Minority committee amendment (Filing No. H-972)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

131ST LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1459, L.D. 2269, "An Act to Automatically Seal Criminal History Record Information for Class D and Class E Crimes Relating to Marijuana Possession and Cultivation"

Amend the bill in section 1 in c. 313 in §2401 in subsection 6 by striking out all of paragraphs D to H (page 1, lines 30 to 38 and page 2, lines 1 and 2 in L.D.) and inserting the following:

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

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

Amend the bill by inserting after section 1 the following:

'**Sec. 2. Appropriations and allocations.** The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

Initiative: Provides All Other funding for contracted temporary staffing to assist with reviewing cases.

GENERAL FUND	**2023-24**	**2024-25**
All Other	$0	$232,800
GENERAL FUND TOTAL	$0	$232,800

Courts - Supreme, Superior and District 0063

Initiative: Establishes 2 limited-period Law Clerk positions through June 30, 2026 and provides funding for related All Other costs.

GENERAL FUND	**2023-24**	**2024-25**

Personal Services	$0	$216,000
All Other	$0	$8,000
GENERAL FUND TOTAL	$0	$224,000

Courts - Supreme, Superior and District 0063

Initiative: Provides one-time funding for compensation to active retired judges to review cases.

GENERAL FUND	**2023-24**	**2024-25**
All Other	$0	$25,375
GENERAL FUND TOTAL	$0	$25,375

JUDICIAL DEPARTMENT DEPARTMENT TOTALS	**2023-24**	**2024-25**
GENERAL FUND	**$0**	**$482,175**
DEPARTMENT TOTAL - ALL FUNDS	**$0**	**$482,175**

PUBLIC SAFETY, DEPARTMENT OF

State Police 0291

Initiative: Provides one-time funding for computer programming.

GENERAL FUND	**2023-24**	**2024-25**
All Other	$0	$32,500
GENERAL FUND TOTAL	$0	$32,500

HIGHWAY FUND	**2023-24**	**2024-25**
All Other	$0	$17,500
HIGHWAY FUND TOTAL	$0	$17,500

State Police 0291

Initiative: Provides funding for one Paralegal position and related All Other costs to identify and seal applicable crimes relating to marijuana possession and cultivation.

GENERAL FUND	**2023-24**	**2024-25**
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	$0	$60,374
All Other	$0	$3,358
GENERAL FUND TOTAL	$0	$63,732

HIGHWAY FUND	**2023-24**	**2024-25**

Personal Services	$0	$32,509
All Other	$0	$4,769
HIGHWAY FUND TOTAL	$0	$37,278

PUBLIC SAFETY, DEPARTMENT OF DEPARTMENT TOTALS	**2023-24**	**2024-25**
GENERAL FUND	**$0**	**$96,232**
HIGHWAY FUND	**$0**	**$54,778**
DEPARTMENT TOTAL - ALL FUNDS	**$0**	**$151,010**

SECTION TOTALS	**2023-24**	**2024-25**
GENERAL FUND	**$0**	**$578,407**
HIGHWAY FUND	**$0**	**$54,778**
SECTION TOTAL - ALL FUNDS	**$0**	**$633,185**

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

SUMMARY

This amendment clarifies the definition of "eligible criminal conviction" in the bill, which identifies what is considered an eligible crime for the automatic sealing of criminal history record information related to a conviction for that crime, to ensure that the definition includes only those crimes that are no longer considered illegal under Maine's adult use cannabis laws. The amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)

Recommendation #2

Approved: 04/11/24 mac

(Not enacted was)

Cost of bill with minority amendment

131st MAINE LEGISLATURE

LD 2269 **LR 3098(02)**

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

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Judiciary
Fiscal Note Required: Yes

Fiscal Note

	FY 2023-24	FY 2024-25	Projections FY 2025-26	Projections FY 2026-27
Net Cost (Savings)				
General Fund	$0	$578,407	$538,984	$68,549
Highway Fund	$0	$54,778	$37,475	$39,019
Appropriations/Allocations				
General Fund	$0	$578,407	$538,984	$68,549
Highway Fund	$0	$54,778	$37,475	$39,019

Fiscal Detail and Notes

The bill includes a General Fund appropriation of $96,232 and a Highway Fund allocation of $54,778 to the Department of Public Safety in fiscal year 2024-25 for one Paralegal position and related All Other costs, including one-time programming costs to identify and seal certain criminal history record information relating to cannabis possession and cultivation.

The bill also includes a one-time General Fund appropriation to the Judicial Department of $482,175 in fiscal year 2024-25 for 2 limited-period Law Clerk positions, contracted temporary staffing and payments to active retired judges to review criminal history record information to determine whether certain criminal convictions relating to cannabis possession and cultivation qualify to have the record sealed.

Recommendation #3

APPROVED
APRIL 16, 2024
BY GOVERNOR

CHAPTER
639
PUBLIC LAW

STATE OF MAINE

Enacted Legislation

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-FOUR

effective: August 9, 2024

H.P. 1435 - L.D. 2236

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

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

Sec. 1. 15 MRSA §2261, sub-§6, as enacted by PL 2021, c. 674, §1, is repealed and the following enacted in its place:

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

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

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

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

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

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

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

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

Recommendation #3

Approved: 04/11/24 mac

Fiscal Analysis of Enacted Law

131st MAINE LEGISLATURE

LD 2236 **LR 3099(03)**

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

Fiscal Note for Bill as Engrossed with:
C "A" (H-943)
Committee: Judiciary

Fiscal Note

Minor cost increase - General Fund

Correctional and Judicial Impact Statements

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

Recommendation #5

APPROVED
APRIL 22, 2024
BY GOVERNOR

CHAPTER
666
PUBLIC LAW

STATE OF MAINE

Enacted Legislation

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-FOUR

Effective: August 9, 2024

H.P. 1423 - L.D. 2218

An Act to Remove the Age-related Statutory Prerequisite for Sealing Criminal History Record Information

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

Sec. 1. 15 MRSA §2262, sub-§4, as enacted by PL 2021, c. 674, §1, 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, as enacted by PL 2021, c. 674, §1, 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, as enacted by PL 2021, c. 674, §1, is repealed.

↑ Repealing statutory language creating age requirement

Recommendation #5

Approved: 04/12/24 mac

Fiscal Analysis of Enacted Law

131st MAINE LEGISLATURE

LD 2218 **LR 3100(03)**

An Act to Remove the Age-related Statutory Prerequisite for Sealing Criminal History Record Information

Fiscal Note for Bill as Engrossed with:
No Amendments
Committee: Judiciary

Fiscal Note

Minor cost increase - General Fund

Correctional and Judicial Impact Statements

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

Additional Relevant Legislation

APPROVED
MARCH 25, 2024
BY GOVERNOR

CHAPTER
560
PUBLIC LAW

STATE OF MAINE

Enacted Legislation

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-FOUR

Effective: March 25, 2024 unless noted

S.P. 305 - L.D. 747

An Act Regarding the Reporting of Adult Name Changes by the Probate Courts to the State Bureau of Identification

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure; and

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, ensuring that the timely and accurate reporting of all name changes to the Department of Public Safety, Bureau of State Police, State Bureau of Identification is essential to the operations of the State Bureau of Identification; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 18-C MRSA §1-701, as amended by PL 2021, c. 559, §§1 to 3, is further amended to read:

§1-701. Process to change name

1. Petition, request; where filed. This section governs the process to change the name of a person.

A. A person may petition to change that person's name in the Probate Court in the county where the person resides.

B. A parent or guardian of a minor may petition to change a minor's name in the Probate Court in the county where the minor resides, unless the District Court has

exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A, in which case the petition must be filed in the District Court.

C. A parent or guardian may request to change a minor's name as part of a proceeding concerning parentage or other parental rights, including actions for divorce, parental rights and responsibilities, post-judgment motions and any other proceeding involving parental rights with respect to the minor, in the District Court without filing a separate petition if the parent or guardian asserts good cause.

D. A minor may petition for a name change through an emancipation proceeding without filing a separate petition if the minor asserts good cause.

E. A change of a minor's name may not be ordered pursuant to a protection from abuse order under Title 19-A, section 4007.

For purposes of this section, "parent" means a person who, with respect to the minor, has established parentage pursuant to Title 19-A, chapter 61 and whose parental rights have not been terminated.

For purposes of this section, "guardian" means a person appointed by a court to make decisions with respect to the personal affairs of an individual. "Guardian" includes a coguardian and a permanency guardian appointed under Title 22, section 4038-C but does not include a guardian ad litem.

For purposes of this section, "bureau" means the Department of Public Safety, Bureau of State Police, State Bureau of Identification.

2. Adult's name change. Upon receipt of a petition filed by an adult under subsection 1, paragraph A, the court may change the name of that adult. The court may not require public notice before approving the name change. Before approving the name change, the court shall notify the petitioner that:

A. The name change order will be public unless the court grants a request by the petitioner to make the name change order confidential as provided in subsection 3-A; and

B. An abstract of the name change order will be transmitted to the bureau unless the court grants a request by the petitioner not to transmit the abstract of the name change order to the bureau as provided in subsection 3-B, paragraph C.

2-A. Notice and name change; minors. A parent or guardian who has filed a petition under subsection 1, paragraph B or has requested a name change in a District Court proceeding under subsection 1, paragraph C shall provide notice pursuant to the applicable rules of procedure to any other parent, any guardian and any person or agency with legal custody of the minor; to the guardian ad litem if one is currently appointed; and to the minor if the minor is 14 years of age or older. To protect the safety of the minor for whom the name change is sought, the court may limit notice required under this subsection if the parent who has sole parental rights and responsibilities shows by a preponderance of the evidence that:

A. The minor is a victim of abuse; or

B. The minor or petitioner is currently in reasonable fear of the minor's or petitioner's safety.

2-B. Evaluation of minor's name change. Upon proof of service of the notice required under subsection 2-A and after providing an opportunity for those entitled to notice to respond to the petition:

A. The court shall change a minor's name by agreement of all parties, which a party may indicate by signing a waiver; or

B. In the event that not all parties agree to the name change, the court shall consider the following factors to assess whether the request or petition is in the best interest of the minor:

(1) The minor's expressed preference, if the minor is of sufficient age and maturity to articulate a basis for preferring a particular name;

(2) If the minor is 14 years of age or older, whether the minor consents or objects to the name change petition;

(3) The extent to which the minor uses a particular name;

(4) Whether the minor's name is different from any of the minor's siblings and the degree to which the minor associates and identifies with siblings on any side of the minor's family;

(5) The difficulties, harassment or embarrassment that the minor may experience by bearing the current or proposed name; and

(6) Any other factor the court considers relevant to the minor's best interests, including the factors outlined in Title 19-A, section 1653, subsection 3.

If the court finds that the name change is in the best interest of the minor by a preponderance of the evidence, the court shall change the minor's name.

3. ~~Record~~ Name change of minor; confidentiality. The court shall make and preserve a record of a name change of a minor. The court may make the ~~record of the~~ name change confidential ~~or not public~~.

3-A. Name change of adult; confidentiality. The court shall make and preserve a record of a name change of an adult. Upon request, the court may order that the name change be confidential if the court finds that, under the circumstances, the adult's interest in maintaining the confidentiality of the record outweighs the public interest in the disclosure of the record. In making this determination, the court shall consider the following factors:

A. Whether the adult is a victim of abuse;

B. Whether the adult is currently in reasonable fear of the adult's safety;

C. Whether the adult is a program participant in the Address Confidentiality Program pursuant to Title 5, section 90-B;

D. The results of the criminal history record check and any other background checks ordered under subsection 5. There is a rebuttable presumption that the public interest in the disclosure of the record outweighs the adult's interest in maintaining the confidentiality of the record if the adult was convicted of murder or a Class A, Class B or Class C crime within the 10 years immediately preceding the filing of the petition under subsection 1, paragraph A or was convicted of a Class D or Class E crime within the 5 years immediately preceding the filing of the petition; and

Factors court considers to make name change order confidential

presumption against confidentiality if recently convicted of a crime

E. Any other factor that the court considers relevant.

prohibition on confidential name change

The court may not order that the name change be confidential under this subsection if the adult is currently under official supervision as a probationer, a parolee or a sex offender on supervised release or is currently required to register as a sex offender.

3-B. Transmission of adult name change to bureau. This subsection governs transmission of adult name change orders to the bureau.

probate courts send to SBI beginning Jan. 1, 2025

A. Except as provided in paragraph C, the court shall electronically transmit to the bureau an abstract of any name change order of an adult issued on or after January 1, 2025 pursuant to this section. The abstract must include the adult's former name, new name and date of birth; whether the court ordered that the record of the name change be confidential under subsection 3-A; and, if known to the court and not otherwise confidential, the adult's physical address and the number associated with the adult's criminal history record information, as defined in Title 16, section 703, subsection 3 or other number assigned by the bureau.

B. Title 16, section 704, subsection 3 and Title 16, section 705, subsection 4 govern dissemination of criminal history record information by a Maine criminal justice agency for an adult whose name has been changed pursuant to an order made confidential under subsection 3-A.

extraordinary circumstances → can decide not to send to SBI

C. Upon request and upon a showing of extraordinary circumstances, the court may order that an abstract of a name change order of an adult made confidential under subsection 3-A not be transmitted to the bureau.

4. Filing fee. The fee for filing a name change petition is $75.

require criminal history check for adults

5. Background checks. The court ~~may~~ shall require ~~a person~~ an adult seeking a name change to undergo ~~one or more of the following background checks:~~ a criminal history record check~~;~~. The court may require a minor seeking a name change to undergo a criminal history record check and may require any person seeking a name change to undergo a motor vehicle record check~~;~~ or a credit check. The court may require the person to pay the cost of each background check required.

6. Denial of petition brought for improper purpose. The court may not change the name of a person if the court has reason to believe that the person is seeking the name change for purposes of defrauding another person or entity or for purposes otherwise contrary to the public interest. There is a rebuttable presumption that the name change is brought for purposes contrary to the public interest if the adult is currently under official supervision as a probationer, a parolee or a sex offender on supervised release or is currently required to register as a sex offender.

presumption against allowing name change

PART B

Sec. B-1. 16 MRSA §704, sub-§3 is enacted to read:

Effect of name change on criminal history access

3. Public criminal history record information of person whose legal name has been changed. Except as provided in this subsection, a Maine criminal justice agency may disseminate public criminal history record information associated with each former and current legal name of a person whose name has been changed to any person or public or private entity for any purpose. If an order changing the person's name was made

confidential under Title 18-C, section 1-701, subsection 3-A or any other provision of law, a Maine criminal justice agency:

A. May not disclose the existence or nonexistence of the person's legal name change to any person or public or private agency that is not authorized to receive confidential criminal history record information under section 705; and

B. In response to a request for public criminal history record information from any person or public or private agency that is not authorized to receive confidential criminal history record information under section 705, may not disseminate public criminal history record information about a person that is associated with any legal name of the person not included within the request.

Sec. B-2. 16 MRSA §705, sub-§4 is enacted to read:

4. Confidential criminal history record information of person whose legal name has been changed. Regardless of whether the order changing a person's name was made confidential under Title 18-C, section 1-701, subsection 3-A or any other provision of law, a Maine criminal justice agency may disseminate confidential criminal history record information associated with each former and current legal name of a person whose name has been changed to any person or public or private entity that is authorized to receive confidential criminal history record information under subsection 1-A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Additional Relevant Legislation

Revised: 03/13/24 mac

Fiscal Analysis of Enacted Law

131st MAINE LEGISLATURE

LD 747 **LR 664(03)**

An Act Regarding the Reporting of Adult Name Changes by the Probate Courts to the State Bureau of Identification

Fiscal Note for Bill as Engrossed with:
C "A" (S-559)
Committee: Judiciary

Fiscal Note

State Mandate - Exempted

State Mandates

Required Activity	Unit Affected	Local Cost
Requires probate courts to electronically transmit adult name change orders to the Department of Public Safety, State Bureau of Identification beginning January 1, 2025. Requires probate courts to notify an adult seeking a name change that the name change will be public and transmitted to the State Bureau of Identification unless granted an exception by the court.	County	Insignificant statewide

Pursuant to the Mandate Preamble, the two-thirds vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional costs.

Fiscal Detail and Notes

Additional costs to the Department of Public Safety associated with this legislation are expected to be minor and can be absorbed within existing budgeted resources.

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

For all Persons
see §2262

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

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

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

Motion and Hearing Process

1. Filing Motion

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

2. Hearing

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

3. Order & Written Findings

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

4. Notification to State Bureau of Investigation

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

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

After the Sealing of a CHRI

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

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

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

Loss of Eligibility

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

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

Notice of New Crime

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

MAINE JUDICIAL BRANCH

STATE OF MAINE

V.

_____ Defendant

"X" the court for filing:
☐ Superior Court ☐ District Court
☐ Unified Criminal Docket
County: _____
Location (Town): _____
Docket No.:

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 offence.

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.

Example Class E Crimes in Maine

Title 17-A – Maine Criminal Code

- § 151 – Criminal conspiracy
  - where most serious crime that is the object of the conspiracy is a Class E or Class D crime
- § 152 – Criminal attempt
  - where the crime is a Class E or Class D crime
- § 353(1)(A) – Theft by unauthorized taking or transfer
  - where the value of the property is less than or equal to $500, the person is unarmed, the property stolen is not a firearm or explosive device, and the person does not have 2 or more certain prior convictions
- § 354(1)(A) – Theft by deception
  - where the value of the property is less than or equal to $500, the person is unarmed, the property stolen is not a firearm or explosive device, and the person does not have 2 or more certain prior convictions
- § 354-A(1)(A) – Insurance deception
  - where the value of the property is less than or equal to $500, the person is unarmed, the property stolen is not a firearm or explosive device, and the person does not have 2 or more certain prior convictions
- § 356-A(1)(A) – Theft of lost, mislaid or mistakenly delivered property
  - where the value of the property is less than or equal to $500, the person is unarmed, the property stolen is not a firearm or explosive device, and the person does not have 2 or more certain prior convictions
- § 357(1)(A) – Theft of services
  - where the value of the services is less than or equal to $500, the person is unarmed, and the person does not have 2 or more certain prior convictions
- § 358(1)(A) – Theft by misapplication of property
  - where the value of the property is less than or equal to $500, the person is unarmed, the property stolen is not a firearm or explosive device, and the person does not have 2 or more certain prior convictions
- § 359(1)(A) – Receiving stolen property
  - where the value of the property is less than or equal to $500, the person is unarmed, the property stolen is not a firearm or explosive device, and the person does not have 2 or more certain prior convictions
- § 402(1)(B) – Criminal trespass
  - Unless the person enters any dwelling place (Class D)
- § 403(1)(A) – Possession or transfer of burglar's tools
- § 404 – Trespass by motor vehicle
- § 457 – Impersonating a public servant
- § 501-A – Disorderly conduct
- § 502(2)(B) – Failure to disperse
  - where person is in the immediate vicinity of, and not a participant in, disorderly conduct
- § 504 – Unlawful assembly

- § 505 – Obstructing public ways
- § 506 – Harassment by telephone or by electronic communication devices
    - Except in situations involving the sending of an image or video of a sexual act where the recipient is under 14, 14 or 15 and actor is at least 5 years older, or person called or contacted suffers from a mental disability known to the actor
- § 506-A(1)(A) – Harassment
    - Except where the person has two or more prior Maine convictions involving the same victim or the victim's family (Class C)
- § 512 – Failure to report treatment of a gunshot wound
- § 513 – Maintaining an unprotected well
- § 514 – Abandoning an airtight container
- § 515 – Unlawful prize fighting
- § 516 – Champerty
- § 517 – Creating a police standoff
- § 551 – Bigamy
- § 552 – Nonsupport of dependents
    - where the value of the property is less than or equal to $500, the person is unarmed, the property stolen is not a firearm or explosive device, and the person does not have 2 or more certain prior convictions
- § 605 – Improper gifts to public servants
- § 606 – Improper compensation for services
- § 608 – Official Oppression
- § 609 – Misuse of information
- § 704 – Possession of forgery devices
- § 705 – Criminal simulation
    - Except in certain situations involving altering the make, model or serial number of a firearm or transporting such firearm
- § 706 – Suppressing recordable instrument
- § 707 – Falsifying private records
- § 708(A)(1) – Negotiating a worthless instrument
    - Elevated to higher class crimes in certain situations
- § 751-B(1)(A) – Refusing to submit to arrest or detention
    - Refuses to stop on request or signal of a law enforcement officer.
- § 753 – Hindering apprehension or prosecution
    - When assisting person charged or liable to be charged with Class E or Class D crime
- § 757-A – Trafficking of tobacco in adult correctional facilities
- § 757-B – Trafficking of alcohol in adult correctional facilities
- § 760 – Failure to report sexual assault of person in custody
- § 853-B(1)(A) – Engaging person for prostitution
- § 854(1)(A)((1))-((2)) – Indecent conduct
- § 907(1)(A) – Possession or transfer of theft devices
- § 1002-A – Criminal use of laser pointers
    - When is causes a reasonable person to suffer intimidation, annoyance or alarm
- § 1003 – Criminal use of noxious substance
- § 1107(2)(E)-(F) – Unlawful possession of scheduled drugs

    - schedule Y and schedule Z drugs
- § 1111-A – Use of drug paraphernalia (trafficking or furnishing)
    - Trafficking or furnishing to a person who is at least 16 years of age, or advertising to promote the sale of drug paraphernalia
- § 1116 – Trafficking or furnishing imitation scheduled drugs
    - To a person at least 18 years of age
- § 1117 – Cultivating marijuana
    - Five or fewer plants, unless authorized under Title 22, chapter 558-C or Title 28-B

Title 29-A – Motor Vehicles and Traffic

- § 1954 – Failure to meet dump truck equipment standards
- § 2411 – Operating while license suspended or revoked (OAS)
    - Exception in certain circumstances depending on the underlying reason for the suspension (traffic infraction)
- § 2413(1) – Driving to endanger
- § 2414(2) – Refusing to stop for a law enforcement officer
- § 2415 – Operating under foreign license during suspension or revocation (commits OAS)
- § 2417 – Suspended registration

Sentencing Alternatives Imposed under 17-A M.R.S.A. § 1502(2)

- Split sentence of imprisonment with probation
- Fine
- Suspended term of imprisonment
- Term of imprisonment
- Fine in addition to other sentencing alternatives
- Community service
- Fine with administrative release
- Suspended term of imprisonment with administrative release
- Split sentence of imprisonment with administrative release
- Term of imprisonment followed by supervised release
- Deferred disposition
- Restitution
- Sanction (for organizations only)

Dissemination and Use of Confidential Criminal History Record Information

Title 15 §2265: Sealed Convictions.

A criminal justice agency may disseminate the sealed CHRI to:

- The person who is the subject of the criminal conviction or that person's designee
- A criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment
    - 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
    - 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
- Secretary of State to ensure compliance with state and federal motor vehicle laws
- The victim or victims of the crime related to the conviction or
    - If the victim is a minor, to the parent or parents, guardian or legal custodian of the victim
    - an immediate family member, guardian, legal custodian or attorney representing the victim if they 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
- 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 applicable parts of the Maine Consumer Credit Code, and any state or federal requirement to perform criminal background checks by those agencies
- Licensing agencies conducting criminal history record checks for licensees, registrants and applicants for licensure or registration by the agencies
- A financial institution if the financial institution is required by federal or state law, regulation or rule to conduct a criminal history record check for the position for which a prospective employee or prospective board member is applying
- An entity that is required by federal or state law to conduct a fingerprint-based criminal history record check

Title 16 §705: All Confidential CHRI.

A criminal justice agency may disseminate confidential CHRI to:

- Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment
- 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 CHRI

- 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 violation
- 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 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 violation
- 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.
- The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information 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
- A public entity for purposes of international travel, such as issuing visas and granting of citizenship

Updated to reflect legislation enacted in the Second Regular Session of the 131st Legislature

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 2023, c. 639, §1 (REPEALED & REPLACED).]

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

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

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

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

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

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

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

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

[PL 2023, c. 639, §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). PL 2023, c. 639, §1 (AMD).

§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; and
[PL 2021, c. 674, §1 (NEW); P.L. 2023, c. 666, §1 (AMD).]

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); P.L. 2023, c. 666, §2 (AMD).]

~~**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 2023, c. 666, §3 (REPEALED).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW). PL 2023, c. 409, §1 (AMD). PL 2023, c. 666, §§1 to 3 (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).

Updated to reflect legislation enacted in the Second Regular Session of the 131st Legislature

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 summonsing, 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).]

3. Public criminal history record information of person whose legal name has been changed. Except as provided in this subsection, a Maine criminal justice agency may disseminate public criminal history record information associated with each former and current legal name of a person whose name has been changed to any person or public or private entity for any purpose. If an order changing the person's name was made confidential under Title 18-C, section 1-701, subsection 3-A or any other provision of law, a Maine criminal justice agency:

A. May not disclose the existence or nonexistence of the person's legal name change to any person or public or private agency that is not authorized to receive confidential criminal history record information under section 705; and

B. In response to a request for public criminal history record information from any person or public or private agency that is not authorized to receive confidential criminal history record information under section 705, may not disseminate public criminal history record information about a person that is associated with any legal name of the person not included within the request.

[PL 2023, c. 560, §B-1 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW). PL 2023, c. 560, §B-1 (AMD).

§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).]

4. Confidential criminal history record information of person whose legal name has been changed. Regardless of whether the order changing a person's name was made confidential under Title 18-C, section 1-701, subsection 3-A or any other provision of law, a Maine criminal justice agency may disseminate confidential criminal history record information associated with each former and current legal name of a person whose name has been changed to any person or public or private entity that is authorized to receive confidential criminal history record information under subsection 1-A.
[PL 2023, c. 560, §B-2 (NEW).]

SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW). PL 2013, c. 507, §3 (AMD). PL 2023, c. 560, §B-2 (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).

CRIMINAL RECORDS REVIEW COMMITTEE

Excerpts from the Constitution of Maine related to Separation of Powers Issues

Article III.
Distribution of Powers.

Section 1. Powers distributed. The powers of this government shall be divided into 3 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.
Executive Power.

Section 1. Governor. The supreme executive power of this State shall be vested in a Governor.

…

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.

Article VI.
Judicial Power.

Section 1. Courts. The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish.

447 A.2d 797
Supreme Judicial Court of Maine.

STATE of Maine
v.
Gary HUNTER [1] .

[1] This case was prosecuted below and also appealed under the caption *In re Gary Hunter*. We have renamed the case to reflect the fact that this proceeding is conceptually a continuation of the prior criminal proceeding, *State of Maine v. Gary Hunter*, in which Gary Hunter was sentenced. If the statute under which the present petition was brought were constitutionally valid, any affirmative judicial action pursuant to it would be a resentencing of defendant and hence a modification of the judgment entered in the original criminal proceeding.

Argued May 6, 1982.
|
Decided July 14, 1982.

Synopsis

Department of Corrections petitioned for modification of prisoner's sentence. The Superior Court, Aroostook County, dismissed petition, and Department appealed. The Supreme Judicial Court, McKusick, C. J., held that resentencing statute, as sought to be applied on basis of inmate's "progress toward a noncriminal way of life," was unconstitutional attempt to invest judiciary with commutation power expressly and exclusively granted by State Constitution to Governor.

Affirmed.

Wathen, J., filed dissenting opinion.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

***797** Gail Ogilvie, Asst. Atty. Gen., Augusta (orally), Janet T. Mills, Dist. Atty., Auburn (orally), James E. Tierney, Atty. Gen., Rufus E. Brown, Deputy Atty. Gen., Pasquale Perrino, Asst. Atty. Gen., Augusta, for Dept. of Corrections.

Vafiades, Brountas & Kominsky, Marvin H. Glazier (orally), Bangor, for defendant.

***798** Before McKUSICK, C. J., and NICHOLS, ROBERTS, CARTER, VIOLETTE and WATHEN, JJ.

Opinion

McKUSICK, Chief Justice.

In this case the Law Court addresses for the first time the question whether section 1255 of the Criminal Code, providing for judicial resentencing on the basis of a previously convicted person's "progress toward a noncriminal way of life," passes muster with the separation of powers clauses of the Maine Constitution. We hold that, as sought to be applied here for the resentencing of Gary Hunter, section 1255 is an unconstitutional attempt to invest the judiciary with a power expressly and exclusively granted by the Maine Constitution to the Governor. We accordingly affirm the Superior Court's dismissal of the Department of Corrections' petition for modification of Gary Hunter's sentence.

The resentencing statute, 17–A M.R.S.A. § 1255 (Supp.1981), [2] reads in full as follows:

[2] With the rest of the Maine Criminal Code, the resentencing statute now numbered as section 1255 was enacted by the legislature in 1975, to be effective May 1, 1976. At that time, and until October, 1981, it appeared in identical form as section 1154 of the Code. This opinion will refer to the section by the current numbering.

Sentences in excess of one year deemed tentative

1. When a person has been sentenced to imprisonment for a term in excess of one year and such imprisonment has not been suspended, the sentence is deemed tentative, to the extent provided in this section.

2. If, as a result of the department's evaluation of such person's progress toward a noncriminal way of life, the department is satisfied that the sentence of the court may have been based upon a misapprehension as to the history, character or physical or mental condition of the offender, or as to the amount of time that would be necessary to provide for protection of the public from such offender, the department may file in the sentencing court a petition to resentence the offender. The petition shall set forth the information as to the offender that is deemed to warrant his resentence and shall include

a recommendation as to the sentence that should be imposed.

3. The court may, in its discretion, dismiss a petition filed under subsection 2 without a hearing if it deems the information set forth insufficient to warrant reconsideration of the sentence. If the court finds the petition warrants such reconsideration, it shall cause a copy of the petition to be served on the offender, the district attorney, the Attorney General and the victim of the crime or, in the case of a criminal homicide, on the victim's next of kin, all of whom shall have the right to be heard on the issue.

4. If the court grants a petition filed under subsection 2, it shall resentence the offender and may impose any sentence not exceeding the original sentence that was imposed. The period of his being in the custody of the department prior to resentence shall be applied in satisfaction of the revised sentence.

5. For all purposes other than this section, a sentence of imprisonment has the same finality when it is imposed that it would have if this section were not in force. Nothing in this section may alter the remedies provided by law for appealing a sentence, or for vacating or correcting an illegal sentence. As used in this section, "court" means the judge who imposed the original sentence, unless he is disabled or otherwise unavailable, in which case it means any judge exercising similar jurisdiction.

On March 14, 1978, in Superior Court (Aroostook County), Gary Hunter pleaded guilty to fourth degree homicide. The court sentenced him to imprisonment at the Maine State Prison for eight years.

Three years after Hunter began serving his term, the Department of Corrections filed a petition with the Superior Court, pursuant to section 1255, urging the court to reconsider Hunter's sentence for the following reasons:

> ***799** Gary Hunter has made substantial progress towards a noncriminal way of life since his imprisonment in March, 1978. Mr. Hunter has an exemplary prison record. In addition, he has participated in alcohol counseling, the Alcoholics Anonymous program and the Yokefellow spiritual growth group. He shows considerable insight into his prior alcoholic dependency which was the major factor in his criminal conduct. Currently he resides at the Bangor Pre-Release Center, is a full-time student at the Bangor Theological Seminary and works on a part-time basis at the Seminary in the maintenance department. In light of Mr. Hunter's performance and progress, the sentencing judge may have misapprehended the amount of time necessary to protect the public from him.

On the basis of those considerations, the department urged the court to resentence Hunter, placing him on probation for the remainder of his eight-year term on condition that he continue alcohol counseling.

The Superior Court dismissed the petition, holding that insofar as the statute attempted to give the court jurisdiction to "modify a sentence, after it had been imposed, on the ground of changes in the attitude or behavior of the offender," it usurped the executive power to grant pardons, reprieves, and commutations of sentences. The Department of Corrections has appealed. [3]

3 Appellee State of Maine was represented on this appeal by the former Assistant Attorney General who prosecuted Hunter in the proceeding in which he was originally sentenced. Hunter's appointed counsel who represented him in that original proceeding also represented him on this appeal, appearing at oral argument and joining the brief filed by appellant Department of Corrections.

The pertinent provisions of the Maine Constitution are explicit and restrictive. Article III, entitled "Distribution of Powers," commands separation of the powers of government among the three great branches with a double emphasis: section 1 declares that the governmental powers "shall be divided into three *distinct* departments, the legislative, executive and judicial"; and then section 2 expressly prohibits any person "belonging to one of these departments [from] exercis[ing] any of the powers properly belonging to either

of the others, except in the cases herein *expressly* directed or permitted." (Emphasis added)

Articles IV, V, and VI of the Maine Constitution specify the powers of the three distinct departments, legislative, executive and judicial, respectively. Article VI merely speaks of the "judicial power of this State" being vested in the Supreme Judicial Court and such other courts as the legislature may establish. As here relevant, Article V, which spells out in detail the powers of the executive branch, is very specific in vesting the Governor with comprehensive power to modify sentences:

> He [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 ....

(Emphasis added) *Me.Const.* art. V, pt. 1, § 11.

Because of article III, section 2, the separation of governmental powers mandated by the Maine Constitution is much more rigorous than the same principle as applied to the federal government. The United States Constitution has no provision corresponding to article III, section 2 of the Maine Constitution, explicitly requiring that no one person exercise the powers of more than one of the three branches of government. Rather, at the federal level the separation of powers principle is inferred from the overall constitutional structure. Because the federal principle is implicit only, rather than explicit, it may be appropriate in that governmental structure to take a functional rather than a formal approach to separation of powers questions: the inquiry is whether a given departure from strict separation has the effect of impairing the integrity or ability to function of the branch to which a power has ***800** been constitutionally granted, or the effect of vesting excessive or unchecked authority in the branch that has assumed the power. *See* L. Tribe, *American Constitutional Law*, § 2–2 at 15 (1978); 1 K. Davis, *Administrative Law*, § 2.6 at 81 (2d ed. 1978). Under the Maine Constitution, however, our inquiry is narrower: has the power in issue been explicitly granted to one branch of state government, and to no other branch? If so, article III, section 2 forbids another branch to exercise that power. [4] In *People v. Herrera*, 183 Colo. 155, 516 P.2d 626 (1973), the Colorado Supreme Court, interpreting constitutional language equivalent to the double emphasis of our own article III on separation of powers, held that a statute that attempted to give the courts power to reduce sentences after they had been imposed, was unconstitutional as an invasion of the executive power to grant commutations. In the case before us, our task is to determine whether the authority to revise sentences granted the courts by section 1255 falls within "the judicial power" envisioned by the Maine Constitution, article VI, section 1, or whether it falls within the commutation powers that the constitution has expressly granted only to the executive under article V, part 1, section 11.

4 Our approach is akin to one of the tests used by federal courts for determining whether an issue is nonjusticiable as a "political question": whether there is a "textually demonstrable constitutional commitment" of the issue to another branch of the government. *Baker v. Carr*, 369 U.S. 186, 217, 82 S.Ct. 691, 710, 7 L.Ed.2d 663 (1962) (explaining why the "guarantee clause," U.S.Const. art. IV § 4, is nonjusticiable).

In an analysis of section 1255, it is significant that subsection 2 on its face provides two different bases for judicial modification of a sentence previously imposed: it permits resentencing either (i) if the sentence was based on a "misapprehension as to the history, character or physical or mental condition of the offender"; or (ii) if the sentence was based on a misapprehension "as to the amount of time that would be necessary to provide for protection of the public from such offender." The first basis for resentencing appears to contemplate that it would be used only when the sentencing judge becomes aware that he was factually mistaken as to circumstances that existed at the time of the sentencing and were of some influence in his sentencing decision. On the other hand, the second basis for resentencing provided by section 1255(2) contemplates that the judge will change the sentence because he concludes, in view of the offender's good behavior while serving his sentence, that he no longer poses a threat to society. Plainly, the Department of Corrections seeks resentencing of Gary Hunter under the second basis specified by section 1255(2). In any event, either basis is by subsection 2 subject to being triggered only "as a result of the department's evaluation of [the offender's] progress toward a noncriminal way of life"; and the threshold summary dismissal by the sentencing judge occurs, by subsection

3, if he determines that the information provided by the department as to the offender's progress is "insufficient to warrant reconsideration of the sentence."

One's understanding of section 1255 [5] can be improved by examining the metamorphoses that the resentencing proposal went through during the course of the work of the Criminal Law Revision Commission. The draft of June 16, 1972, [6] presented by ***801** the Commission's Chief Counsel was radically different from section 1255 presented to and enacted by the legislature in 1975 as part of the Code. Sentences were open to be modified for only one year, only the first basis for resentencing now set forth in section 1255(2) was proposed, and the triggering event was the department's examination and classification of the prisoner "upon his arrival at a correctional facility, or shortly thereafter." [7] The Chief Counsel's comment accompanying that initial draft [8] identified its source as the Massachusetts Criminal Code, chapter 264, section 5. Its ancestry in section 7.08 of the Model Penal Code (1962) is also obvious. The resentencing section went through at least two intermediate drafts before it reached the form of present section 1255 in the draft of August 28, 1974. In the draft of May 28, 1974, any time restriction on resentencing was removed from subsection 1, and in subsection 2 there were two separate triggering events to correspond to the two separate bases for resentencing that had by then been injected. [9] The final Commission draft eliminated the separate trigger "as a result of examination and classification by the Department," which had been from the start matched up to the first basis for resentencing. Thus, one might well conclude that the Commission intended thereafter that only the inmate's "progress toward a noncriminal way of life" would trigger resentencing on either of the two bases provided in what is now section 1255(2). [10]

5 Section 1255 has been called "a masterpiece of breathtaking ambiguity." Zarr, *Sentencing*, 28 Me.L.Rev. 117, 144 (1976).

6 That June 16, 1972, draft read in part as follows:

> A. When a person has been sentenced to imprisonment for a term in excess of one year, the sentence shall be deemed tentative, to the extent provided in this section, for a period of one year following imposition of the sentence.
>
> B. If, as a result of examination and classification by the Department of Mental Health and Corrections of a person under sentence of imprisonment for a term in excess of one year, the Department is satisfied that the sentence of the court may have been based upon a misapprehension as to the history, character, or physical or mental condition of the offender, the Department, during the period specified in subsection A, may file in the sentencing court a petition to resentence the offender. The petition shall set forth the information as to the offender that is deemed to warrant his resentence and may include a recommendation as to the sentence that should be imposed.

The other three subsections of that draft read substantially the same as the present section 1255(3)–(5).

7 The language quoted in the text is from the Chief Counsel's comment that accompanied the June 16, 1972, draft.

8 The "Comment-1975" attached to section 1154 (the predecessor of section 1255) is an abridgment of that 1972 comment. The radical changes later made in the resentencing provision before the Criminal Law Revision Commission submitted it to the legislature render that comment nearly useless in explaining the present section 1255.

9 Subsection 2 of the May 28, 1974, draft read as follows:

> If, as a result of examination and classification by the Department of Mental Health and Corrections of a person under an imprisonment sentence, or as a result of the Department's subsequent evaluation of such person's progress toward a non-criminal way of life, the Department is satisfied that the sentence of the court may have been based upon a misapprehension as to the history, character, or physical or mental condition of the offender, or as to the amount of time that would be necessary to provide for protection of the public from such offender, the Department may file in the sentencing court a petition to resentence the offender. The petition shall set forth the information as to the offender that is deemed to warrant his resentence and may include a recommendation as to the sentence that should be imposed.

10 Since "a misapprehension as to the history, character or physical or mental condition of the offender" is not the basis on which the department seeks resentencing for Gary Hunter, we are not called upon to pass upon the constitutionality of that portion of section 1255. In any future case of resentencing sought under that first basis, two questions would have to be answered affirmatively before the constitutionality issue is even reached: (i) Is there any authorization in section 1255(2) for resentencing on the first basis when the misapprehension or mistake of fact comes to light otherwise than "as a result of the department's evaluation of [the inmate's] progress toward a noncriminal way of life"; and (ii) even if so, is the provision for resentencing on the first basis severable from the provision for resentencing on the second basis, which we in the instant case hold violates the Maine Constitution? *See* 1 M.R.S.A. § 71(8) (1979) (rule of statutory construction on severability).

Appellant Department of Corrections argues that the two bases for resentencing set forth in section 1255(2) are collapsed into one, for purposes of constitutional appraisal, by the statutory application of the term "misapprehension" to both. Because both bases for judicial action under section 1255 involve no more than correction of "misapprehension" or error at the time of sentencing, the statute grants, the Department urges, only powers that fall within the realm of traditional judicial activity.

We cannot agree. A trial judge's decision as to what sentence is necessary to protect the public from an offender is not a ***802** finding of fact, but a judgmental conclusion from facts. It is a prediction, the judge's best guess at the time, of the appropriate sentence in all the circumstances. Unlike the foundational or evidentiary facts on which the judge's conclusion rests, his sentencing decision cannot be said to be an objective "fact" having an existence independent of the judicial proceeding. Correction of error in the foundational facts found at the time of sentencing is qualitatively different from altering the sentence years later on the basis of the offender's subsequent behavior. In the latter situation, "misapprehension" means no more than misprediction; it has little or nothing to do with the traditional concept of the correction of judicial error.

Both in Maine and in other jurisdictions, trial courts have been recognized as having certain limited authority to correct errors in the foundational facts on which the sentence was based. Even in the absence of statutes, courts have exercised an inherent power to correct a sentence within a short time after its entry. A criminal judgment at common law was said to be still "in the bosom of the court" and modifiable, so long as the offender had not begun to serve his sentence and the term of court in which the judgment had been entered had not yet expired. *See State v. Blanchard*, 156 Me. 30, 52, 159 A.2d 304, 316 (1960). With adoption of our Rules of Criminal Procedure in 1965, terms of court ceased to have any significance in cutting off the jurisdiction of a sentencing court, M.R.Crim.P. 45(c); and thereafter M.R.Crim.P. 35 has expressly permitted a justice to correct a sentence he had entered at any time prior to commencement of its execution. In other jurisdictions, courts have by judicial decision relaxed one or both of the traditional time limits on the inherent judicial power to revise sentences. *See, e.g., State v. Thomson*, 110 N.H. 190, 263 A.2d 675 (1970) (court may review sentence after term of court in which it was imposed has expired, if defendant has not yet begun to serve his sentence); *United States v. Benz*, 282 U.S. 304, 51 S.Ct. 113, 75 L.Ed. 354 (1931) (court may review sentence after defendant has begun serving his sentence, as long as the term of court in which the sentence was imposed has not expired); *State v. White*, 71 N.M. 342, 378 P.2d 379 (1963) (same); *Hayes v. State*, 46 Wis.2d 93, 175 N.W.2d 625 (1970) (court may review sentence within a year after it is imposed —subsequently modified to 90 days—even though defendant has begun serving the sentence and the term of court has expired).

Those authorities, however, provide no support for the validity under the Maine Constitution of the use of section 1255 to modify a sentence based on the behavior of the offender during incarceration. Such application of the statute duplicates a part of the Governor's power to commute a criminal sentence. The power of commutation is a companion of the executive's pardoning power; it differs from his pardoning power in that it leaves the judgment of guilt intact, only substituting a less severe punishment for the punishment originally decreed. In exercising any power of clemency, the Governor is not limited to the considerations that are permitted to the courts by section 1255(2). Rather, the chief executive, acting for the public welfare and the benefit of the convict, has complete discretion and may exercise his power for whatever reasons he thinks appropriate. *See* 59 Am.Jur.2d *Pardon & Parole* §§ 7, 13, 65 (1971); *Baston v. Robbins*, 153 Me. 128, 135 A.2d 279 (1957); *Hoffa v. Saxbe*, 378 F.Supp. 1221 (D.D.C.1974); *State v.*

Chase, 329 So.2d 434, 437 (La.1976); *People v. Herrera, supra; Commonwealth v. Arsenault*, 361 Mass. 287, 291–92, 280 N.E.2d 129, 132 (1972). The court in *Hoffa v. Saxbe* undertook an extensive review of the historical development of the executive clemency power, which was first developed in England. The court noted that

> the King's pardon was the sole device for altering punishment according to "the situation and circumstances of the offender" [quoting W. Blackstone, *Commentaries*, book IV at 397 (Cooley, 4th ed. 1899)]. As such the royal pardoning power was in fact a predecessor of the ***803** modern criminal justice devices of probation and parole.

378 F.Supp. at 1228.

The power granted by section 1255(2) is not as broad as the executive commutation power, because the court is restricted in the factors that it may consider. Nonetheless, the power to reduce an offender's sentence on the basis of his post-conviction behavior is not part of the traditional judicial power; rather, it is encompassed within the executive commutation power. *See Doyon v. State*, 158 Me. 190, 198–99, 181 A.2d 586, 590, *cert. denied*, 371 U.S. 849, 83 S.Ct. 85, 9 L.Ed.2d 84 (1962) (distinguishing correction of error in trial and sentence, properly within the jurisdiction of the courts, from the executive power of commutation). The Maine Constitution in article V, part 1, section 11, has expressly given the commutation power to the executive, and not to the judiciary. Under article III of the Maine Constitution, that power may be exercised only by the executive branch.

The entry must be:

Superior Court's dismissal of the Department of Corrections' petition for resentencing of Gary Hunter under 17–A M.R.S.A. § 1255 affirmed.

NICHOLS, ROBERTS, CARTER and VIOLETTE, JJ., concurring.

WATHEN, J., dissenting.

WATHEN, Justice, dissenting.

I must respectfully dissent. In delivering a fatal blow to the second branch of 17–A M.R.S.A. § 1255(2), the majority repeats the error of the Superior Court justice by violating the most basic principle of statutory construction and ignoring the unique characteristics of a protective sentence. Stated simply, the statute has been misinterpreted to create, rather than avoid, constitutional confrontation.

In numerous opinions, this Court has affirmed the obligation to construe and interpret a statute so as to sustain it rather than defeat it. As was stated most recently:

> We start from the fundamental precepts that courts will, if possible "construe legislative enactments so as to avoid a danger of unconstitutionality" and that the central purpose of statutory construction is "to save, not destroy." *State v. Davenport*, Me., 326 A.2d 1, 5–6 (1974).

State v. Crocker, Me., 435 A.2d 58, 63 (1981). The same fundamental precept has been stated even more explicitly:

> The duty of this Court is to determine if these provisions of the Act are susceptible of a reasonable interpretation which would satisfy constitutional requirements. If there is such an interpretation, we are bound to adopt that interpretation as it sustains the statute.

Portland Pipe Line Corp. v. Environmental Improvement Comm'n, Me., 307 A.2d 1, 15 (1973). This Court must assume that the legislature, in enacting any law, does so with full knowledge of constitutional restrictions and with an intent to act within those restrictions. *See Martin v. Maine Savings Bank*, 154 Me. 259, 147 A.2d 131 (1958). The presumption which attaches to legislative enactments should lead the judiciary inexorably to accept the reasonable interpretation of an enactment which will uphold the legislative act. The statute presented in the instant case lends itself to such a reasonable interpretation within the bounds of the constitution.

The majority adopts as the only possible interpretation of section 1255(2) that interpretation stated by the Superior Court, namely, the authority to "modify a sentence, after it had been imposed, on the ground of changes in the attitude or behavior of the offender." Such a conclusion overlooks and disregards an alternative "reasonable interpretation" which in my judgment is even more consonant with the express language of the statute and which presents no constitutional infirmity.

One must approach section 1255(2) with an understanding that it was developed as an integral part of a total revision of the laws relating to crime and punishment which resulted in the adoption of the Maine Criminal Code. The advent of determinate ***804** sentencing and the abolition of parole presented the likelihood of longer sentences involving substantially more actual confinement. For the first time the Code identified the goals of sentencing and specifically included protection of the public in addition to factors reflecting the aims of deterrence, rehabilitation and punishment. [1] Since the so-called protective sentence forms the basis for any authority which a court might have under the second branch of section 1255(2), it is necessary to understand how it differs from a sentence designed to serve other aims.

[1] 17–A M.R.S.A. § 1151(1) speaks of "the restraint of convicted persons when required in the interest of public safety."

One will not find any comprehensive discussion of protective sentences in the case law of Maine or most other states because of the absence of a system for effective appellate review of sentencing. One of the benefits of full appellate scrutiny would be a decisional discourse and an evolving body of law dealing with the principles of sentencing. *See* M. Frankel, *Criminal Sentences* 75–85 (1973). There is, however, a body of literature in the area of criminal sentencing which provides substantial information concerning the type of sentence referred to in section 1255(2). A protective sentence is defined as serving the aim of incapacitation. The length of the sentence alone incapacitates the defendant from committing any further criminal acts.

> To the extent that the intent of the sentence is purely incapacitative, 'attention is not focused on the reduction of the offender's propensity for future criminal acts; rather the offender is controlled so as to preclude his opportunity for such behavior at least while under the authority of the state.'

M. Gottfredson, D. Gottfredson *Decisionmaking in Criminal Justice*, p. 174 (1980).

A comparative view of the use of this principle of sentencing may be found in N. Walker, *Sentencing In A Rational Society* (1971). The author recounts that at one point in the history of Germany and Britain, certain offenders first served a term of detention appropriate to accomplish retribution for the crime and then went on to serve the prophylactic portion of the sentence designed to incapacitate. The author points out that the common element in most penal codes which provide for such prophylactic sentences is the requirement that there be evidence that the offender is unlikely to respond to ordinary penal measures. The Criminal Justice Act of 1967 in England is summarized by the author and is identified as the latest and most elaborate definition of a class of offenders subject to protective sentencing:

> (i) the offender must have been convicted on at least four separate occasions of any offence punishable with two or more years' imprisonment;
>
> (ii) the convictions must have occurred since his twenty-first birthday;
>
> (iii) they must have taken place in a higher court;
>
> (iv) the custodial sentences imposed must have added up to not less than five years, and included at least one of three years or more or at least two of two years or more;
>
> (v) the offence for which the precautionary sentence is imposed must have been committed within three years of his last conviction or release from custody for an offence punishable with at least two years' imprisonment.

Supra, at 133. The author's description of the path leading to increased prominence of protection as a justification for sentencing may aptly describe the experience in Maine:

> As retribution and general deterrence become unfashionable justifications for imprisonment, the emphasis shifts to correction and protection. And when the corrective efficacy—at least of long sentences—begins to be questioned, the only safe ground left is protection. Parallel with these trends can be seen a change in the conception of protective sentences. In the nineteenth century, when most prison sentences were by our standards ***805** very long, it was unnecessary to devise special precautionary sentences. As they shortened, a demand was created for longer ones in the case of certain offenders, who were defined either

> as habitual criminals or as being likely to commit certain particularly objectionable crimes.

Supra, at 132.

Unlike the English Parliament, the Maine legislature chose not to specify the precise factual basis upon which a prophylactic or protective sentence should be considered. However, the existence and importance of the concept is demonstrated by its prominent inclusion in the general aims of sentencing, and there is no doubt that such prophylactic sentences are imposed by the Superior Court in appropriate circumstances.

Review of authoritative writings on the subject of criminal sentencing and the language of the statute lead me firmly to the opinion that the Maine legislature focused strictly upon the protective sentence in enacting the second branch of section 1255(2). The legislature authorized resentencing only if the sentencing judge found that he had misapprehended the amount of time incapacity was required for societal protection. Such authority would not extend to every criminal sentence of incarceration but would be confined to those sentences which were truly prophylactic. The absence of statutory definition increases the difficulty in objectively identifying such a sentence but does not render it impossible. The offender is one who is deemed to be incorrigible or at least unlikely to respond to ordinary penal measures. His sentence is longer in duration than would be necessary to serve the purposes of deterrence, rehabilitation or punishment. The sentencing judge, to some extent, ignores the needs of the individual defendant and measures the need of society to be protected. The resulting sentence is for a substantial number of years, usually in excess of five, since any shorter period would hardly serve any legitimate need for protection.[2] It is important to note that since the determination of incorrigibility and the need for protection rests exclusively with the sentencing judge, unguided by statute, only he may know whether protection entered the sentencing equation.

2 It is not certain that the sentence involved in the instant case is protective or prophylactic. Since the Superior Court dismissed the petition, that issue was not aired.

Three factors give rise to the need for a means of error correction: (1) the specific inclusion of societal protection in the general aims of sentencing; (2) determinate sentencing ranging from one day to twenty years for certain offenses; and (3) the abolition of parole. Section 1255(2) is the sole legislative response to what would otherwise be a fertile field for egregious injustice. The almost boundless discretion granted to the sentencing judge in imposing a protective sentence is checked only by that judge's ability and authority to correct errors. This slim thread the majority now removes.

One must look at criminal sentencing as a fluid process encompassing both sentence imposition and correction rather than as a series of independent static events. Such a view not only fulfills the intent of the legislature to provide a means of relief from injustice, it avoids constitutional confrontation. While the majority acknowledges that the legislature may authorize the courts to correct factual errors, it concludes that section 1255(2) cannot reasonably be interpreted to achieve that result. Rather, it is concluded that the statute can only be interpreted as an impermissible attempt to invade the pardon power of the executive branch of government.[3] In my judgment the error in such a construction arises from overreading the following language of the statute: "If, as a result of the department's evaluation of such person's progress toward ***806** a noncriminal way of life, the department is satisfied that the sentence of the court may have been based upon a misapprehension," it may file a petition. This provision prescribes the administrative preconditions to the filing of a petition but does not describe the factual basis upon which relief could be predicated. The import of the statute is clear. If a defendant's conduct in prison suggests to the satisfaction of the department that the court *may* have misapprehended the necessity for a prophylactic sentence, then a petition may be filed. At that point the sentencing judge, under the terms of the statute, is entitled to consider whether he was acting on the basis of a misapprehension at the time of sentencing. Significantly, the judge is not called upon to consider whether the good conduct of the defendant entitled him to relief from the sentence previously imposed. Rather, he is required to consider once again the decision to impose a prophylactic sentence and determine whether he misapprehended the factual basis upon which it rested. The defendant's "progress toward a noncriminal way of life," having triggered the filing of the petition, does not enter into the determination of error correction.

3 Given the interpretation espoused herein, the issue of separation of powers does not arise. There is authority to support the proposition that sentence modification does not impinge upon the pardoning

power. *See State v. Nardini*, 21 Cr.L.Rep. 2194, Conn.Sup.Ct., 445 A.2d 304 (1982).

Finally, the majority rules that there could be no factual error to correct. I would agree that the judge's decision to impose a prophylactic sentence is not itself a finding of fact, but rather a judgmental conclusion based upon facts. I do not agree that the "misapprehension" referred to in section 1255(2) therefore means no more than misprediction. Since the sentencing provisions of Maine law afford the judge substantial latitude in considering which facts may persuade him to impose a prophylactic sentence, it is axiomatic that the provision for error correction concerning those foundational facts must be of equal latitude.

I would reverse the Superior Court's dismissal of the petition for modification of Gary Hunter's sentence and remand for the sentencing judge to determine whether the sentence imposed was protective, and if so, whether his decision was based upon factual misapprehension.

All Citations

447 A.2d 797

488 A.2d 477
Supreme Judicial Court of Maine.

David BOSSIE, et al.
v.
STATE of Maine.

Argued Sept. 17, 1984.
|
Decided Feb. 27, 1985.

Synopsis

Prisoners' petitions for postconviction review were denied by the Superior Court, Penobscot, Aroostook, Washington, York, and Cumberland Counties, and they appealed. The Supreme Judicial Court, Wathen, J., held that statute increasing "good-time" reductions available to prisoners, which is expressly applicable to persons committed to custody before its effective date as to portions of sentence remaining to be served after effective date, had effect of commuting lengths of existing sentences and did not merely change computation of sentences to be imposes; therefore, such statute was an exercise by legislature of power, granted to governor, to commute sentences, in violation of separation of powers provision of State Constitution.

Affirmed.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

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Charles K. Leadbetter (orally), Anita M. St. Onge, Asst. Attys. Gen., Augusta, for defendant.

Before McKUSICK, C.J., and ROBERTS, VIOLETTE, WATHEN, GLASSMAN and SCOLNIK, JJ.

Opinion

WATHEN, Justice.

On this consolidated appeal arising from an order of the Superior Court (Kennebec County) denying six consolidated Petitions for Post-Conviction Review, three of the six defendants below appeal to the Law Court pursuant to 15 M.R.S.A. § 2131 (Supp.1983–1984) and M.R.Crim.P. 76. On appeal, petitioners contend that the Superior Court erred in deciding that a recently enacted statutory formula for the calculation of good-time reductions in prior sentences is an unconstitutional exercise of legislative power in conflict with the exclusive power of the executive to commute sentences. We agree with the order of the Superior Court and deny the appeal.

The three petitioners, David Bossie, Matthew R. Downing, and Kenneth D. Rancourt were convicted and placed in custody when the calculation of "good-time" reductions (for faithfully observing rules and requirements) in their sentences was controlled by 17–A M.R.S.A. § 1253(3–A) (as last amended by P.L.1977, ch. 510, § 81).[1] Under this section, each defendant received credit for good-time at the end of each thirty day period of incarceration. The effect of the method of calculation under section 1253(3–A) was potentially to reduce a prisoner's total sentence by ¼, 40 days credit for 30 days served. Section 1253(3–A) was repealed and replaced by 17–A M.R.S.A. § 1253(3) (Supp.1983–1984) (as amended ***479** by P.L.1983, ch. 456).[2] Under the new method of calculating good-time, 10 days per month is credited up front before the time is actually served. The effect of section 1253(3) is potentially to reduce sentences by about ⅓, 30 days credit for every 20 days served. Although the effective date of amended section 1253(3) was October 1, 1983, the final sentence of section 1253(3) makes the subsection applicable to persons committed to the custody of the Department of Corrections before the effective date, as to the portions of their sentences remaining to be served after the effective date.

1 17–A M.R.S.A. § 1253(3–A) (as last amended by P.L.1977, ch. 510, § 81) provides:

> Each person sentenced, on or after January 1, 1978, to imprisonment for more than 6 months shall earn a reduction of 10 days from his sentence for each month during which he has faithfully observed all the rules and requirements of the institution in which he has been imprisoned. Each month the supervising officer of each institution shall cause to be posted a list of all such persons who have earned reductions from their sentences during the previous month. If any such person does not earn all of his reduction from his sentence in any month, a notation of such action shall be entered on a cumulative record of such actions in the person's permanent file.

[2] 17–A M.R.S.A. § 1253(3) (Supp.1983–1984) (as amended by P.L.1983, ch. 456) provides:

> Beginning October 1, 1983, each person sentenced, to imprisonment for more than 6 months shall be entitled to receive a deduction of 10 days per month calculated from the first day of his delivery into the custody of the department, to include the full length of the unsuspended portion of his sentence, for observing all the rules of the department and institution, except this provision shall not apply to the suspended portion of a person's sentence pursuant to split sentences under section 1203. All persons committed to the custody of the Department of Corrections prior to the effective date of this subsection shall have these provisions applied prospectively to the portion of their sentences remaining to be served.

Petitioners initiated post-conviction review proceedings claiming that they were entitled to good-time reductions calculated in accord with section 1253(3) from the commencement date of their sentences. They alleged that the method used by the Maine Department of Corrections to calculate their good-time credits pursuant to section 1253(3) violated their rights to equal protection of the laws under both the United States and Maine Constitutions.[3] The Superior Court declined to address the merits of petitioners' contentions and held that the last sentence of section 1253(3) (making the section applicable to the portion of sentences remaining to be served after the effective date) was an unconstitutional legislative encroachment on the executive's commutation power. The Superior Court held that section 1253(3–A) remained in effect for all persons sentenced before October 1, 1983.

[3] The Department of Corrections interprets the phrase "the portion of their sentence remaining to be served" to mean the portion of their sentence remaining to be served after deducting tentative good-time credits assigned under pre-October 1, 1983 law.

I.

Our analysis begins with the basic principle of statutory construction that this Court is bound to avoid an unconstitutional interpretation of a statute if a reasonable interpretation of the statute would satisfy constitutional requirements. *See State v. Crocker,* 435 A.2d 58, 63 (Me.1981); *State v. Davenport,* 326 A.2d 1, 5–6 (Me.1974); *Portland Pipe Line Corp. v. Environmental Improvement Comm'n,* 307 A.2d 1, 15 (Me.1973). The petitioners assert that the last sentence of section 1253(3) reasonably could be interpreted to be a mere exercise of the legislature's traditional power to compute the length of sentences prospectively rather than a commutation of sentences already imposed. The petitioners take an overly technical approach to statutory construction.

As a practical matter, good-time credits have the undeniable effect of reducing the length of sentences. *See Weaver v. Graham,* 450 U.S. 24, 31–32, 101 S.Ct. 960, 965–966, 67 L.Ed.2d 17 (1981). Thus, good-time credits are an integral part of the sentence, and changing the calculation of good-time changes the effective length of a sentence.[4] *See id* at 32, 101 S.Ct. at 966; *State v. Blanchard,* 156 Me. 30, 50–51, 159 A.2d 304, 315 (1960). Because good-time credits affect the lengths of sentences and because the legislature purported to increase the amount of good-time credits available for prisoners already in the custody ***480** of the Department of Corrections at the effective date of the statute, section 1253(3) shortened (commuted) the lengths of existing sentences and did not merely change the computation of sentences to be imposed.

[4] 17–A M.R.S.A. § 1254(1) (1983) provides:

> An imprisoned person shall be unconditionally released and discharged upon the expiration of his sentence, minus the deductions authorized under section 1253.

Article V, part 1, section 11 of the Maine Constitution grants the Governor the power to commute sentences. The legislature has no explicit constitutional authority in this area. Although the petitioners recognize that article III, section 2 of the Maine Constitution provides for a strict separation of powers between the three branches of government, the petitioners contend that even if section 1253(3) constitutes a legislative commutation of sentences, the separation of powers provisions of the Maine Constitution do not preclude the legislature from acting in this area.

In *State v. Hunter,* 447 A.2d 797, 803 (Me.1982), a case declaring unconstitutional a statute providing for judicial resentencing, we said "that the power to reduce an offender's sentence on the basis of his post-conviction behavior ... is

encompassed within the executive's commutation power." Furthermore, the *Hunter* Court explained that because article III, section 2 explicitly requires that no one person exercise the powers of more than one of the three branches of government, separation of powers issues must be dealt with in a formal rather than functional manner. The resulting test under the Maine Constitution is a narrow one: "has the power in issue been explicitly granted to one branch of state government, and to no other branch? If so, article III, section 2 forbids another branch to exercise that power." *State v. Hunter,* 447 A.2d at 800. The statute before us violates the constitutional prohibition.

Petitioners seek to distinguish *State v. Hunter* on the ground that the judiciary's power to commute sentences was there involved, while this case concerns the legislature's power to commute sentences. Because of the legislature's traditional authority to establish the length of sentences for offenses committed in the future and because legislative power is defined by limitation and not by grant, the petitioners contend that the constitutional grant of the power to commute to the executive does not eliminate the legislature's residual amnesty power. Petitioners argue that because of the absence of an explicit restriction on the legislature's general amnesty power, such power may be exercised by the legislature as long as its exercise does not interfere with the executive's commutation power. *See Baston v. Robbins,* 153 Me. 128, 129, 135 A.2d 279, 281 (1957) (art. V, pt. 1, § 11 prevents the legislature from controlling, regulating, or interfering with Governor's pardoning powers).

Even if the legislature does have a general amnesty power, something we do not decide, the legislature's power could not extend to the commutation of sentences, an area explicitly and exclusively granted to the executive. *See* Me. Const. art. V, pt. 1, § 11; *State v. Hunter,* 447 A.2d at 800, 803. The very fact of a branch other than the executive branch acting to commute sentences is an interference with the executive's explicit and exclusive grant of the commutation power. *See* Me. Const. art. III, § 2.

II.

The petitioners next argue that section 1253(3) does not interfere with the Governor's exclusive power to commute sentences because the Governor's signature on the legislation constituted a general commutation rather than the ultimate step in the legislative process. The legislative history of section 1253(3) reveals, however, that the legislature never intended the statute to be an alternative method of applying to the Governor for a reduction in sentence. Nor is there any evidence that the Governor intended that his signature would be a blanket exercise of his commutation power, rather than an exercise of his duty under article IV, part 3, section 2 either to sign into law or to veto legislation presented to him from both houses of the legislature. A ***481** statutory enactment does not lose its status as an act of the legislature merely because the Governor signs the bill into law.

III.

Finally, the petitioners assert that the state is estopped from challenging the constitutionality of section 1253(3). Their contention is without merit. The law of Maine is in accord with the general rule that when the legislature acts in its governmental or sovereign capacity, the doctrine of estoppel does not apply. *John Donnelly & Sons v. Maller,* 453 F.Supp. 1272 (D.Me.), *rev'd on other grounds* 639 F.2d 6, *aff'd* 453 U.S. 916, 101 S.Ct. 3151, 69 L.Ed.2d 999 (1981).

The entry must be:

Judgment affirmed.

All concurring.

All Citations

488 A.2d 477

505 A.2d 1326
Supreme Judicial Court of Maine.

Andre Roger GILBERT
v.
STATE of Maine.

Argued Nov. 19, 1985.
|
Decided Feb. 28, 1986.

Synopsis

Prisoner brought petition for postconviction relief. The Superior Court, Cumberland County, dismissed petition, and prisoner appealed. The Supreme Judicial Court, McKusick, C.J., held that: (1) statutory amendments, providing that parole board could grant full discharge to prisoner if he successfully served ten years of parole, could not constitutionally be applied to prisoner who was required to serve full life sentence at time of conviction, and (2) parole provisions, which would have allowed parole board to grant defendant parole after 15 years in prison, could be severed from unconstitutional portions of statutory amendments and constitutionally applied to prisoner.

Vacated and remanded.

Procedural Posture(s): On Appeal.

Attorneys and Law Firms

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Before McKUSICK, C.J., and NICHOLS, ROBERTS, WATHEN and SCOLNIK, JJ.

Opinion

McKUSICK, Chief Justice.

In his petition for post-conviction relief, Andre Roger Gilbert, who in 1951 was sentenced ***1327** for life to Maine State Prison, contends that the Parole Board erred in 1975 in revoking his prior parole and in consistently denying him parole ever since. On the authority of *Bossie v. State,* 488 A.2d 477 (Me.1985), the Superior Court (Cumberland County) dismissed Gilbert's petition on the ground that the relief he seeks, parole and ultimate discharge, is of the type that neither the court nor the Parole Board has any power to grant to him because he was sentenced to life imprisonment at a time when the applicable statutes denied parole to a "lifer." On Gilbert's appeal, we vacate that dismissal, holding that parole, without discharge, of a lifer pursuant to a parole statute enacted subsequent to his sentencing does not constitute an unconstitutional encroachment on the Governor's exclusive power of commutation.

I.

On June 29, 1951, Gilbert was convicted of murder and given the life sentence then mandated by R.S. ch. 117, § 1 (1944). In addition, the statute governing parole in 1951, R.S. ch. 136, § 12 (1944), made Gilbert ineligible for parole at any time.

After Gilbert's imprisonment, however, the legislature passed a succession of amendments that extended parole eligibility to persons serving life sentences. In 1953 a lifer was made eligible for parole after 30 years of imprisonment. P.L. 1953, ch. 382. In 1959, further revisions allowed a lifer to reduce that 30-year minimum by good behavior, and also vested the Parole Board with discretionary authority to give him a full discharge from his life sentence after he had successfully completed 10 years of parole. P.L. 1959, ch. 312, §§ 6, 13. Moreover, in 1969 the 30-year minimum was cut to 15 years, and that new minimum could be further reduced by good behavior. P.L. 1969, ch. 280. [1]

[1] The substance of the post-1951 amendments as applicable to a person in Gilbert's circumstance is encompassed within 34–A M.R.S.A. §§ 5801–5810 (Supp.1985–1986). *See id.* § 5803(3) (lifer eligible for parole board hearing prior to expiration of 15 years of imprisonment, less deduction for good behavior), and § 5809 (no discharge for lifer in less than 10 years after release on parole).

By the terms of these amendments to the parole statute, all enacted after his 1951 mandatory sentence for life, Gilbert, having served 18 years in prison, became in 1969 eligible for parole and eventual discharge. In fact, Gilbert was paroled several times between 1969 and 1973. In 1975, however, Gilbert pleaded guilty to aggravated assault and battery,

committed while he was on parole, and was given a sentence of 2 ½ to 5 years to be served consecutively with his life sentence. Because of the new crime, the Parole Board revoked Gilbert's parole. At all times since, the Parole Board has denied his repeated requests to be paroled.

On March 5, 1984, Gilbert filed in the Superior Court the petition for post-conviction review that is the subject of this appeal. He challenged, *inter alia,* the validity of the Parole Board's revocation of his parole and the legality of his 1975 sentence. The Superior Court refused to reach the substantive issues that Gilbert attempted to raise. Instead, the court held that he should never have been granted parole, and never hereafter may be granted parole, because application of the post-1951 parole statute amendments to Gilbert, who was sentenced to a mandatory life imprisonment without the possibility of parole, infringes upon the Governor's exclusive constitutional power to commute sentences after conviction. In light of that holding, the Superior Court dismissed Gilbert's petition.

II.

The Maine Constitution explicitly vests the Governor with the exclusive power to reduce criminal sentences after conviction ***1328** through the use of reprieves, commutations, and pardons. Me.Const. art. V, pt. 1, § 11 (1985).[2] Article III, section 2 of the Maine Constitution, moreover, provides for the strict separation of powers between the three branches. *State v. Hunter,* 447 A.2d 797, 799–800 (Me.1982). As a result, a legislative enactment that works a sentence reduction equivalent to a commutation will be viewed as an unconstitutional violation of the separation of powers. *Bossie v. State,* 488 A.2d at 480.

2 Me.Const.art V, pt. 1, § 11 (1985) provides:

> [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.

In *Bossie,* for example, we struck down as unconstitutional a statute increasing "good time" deductions available to prisoners committed to custody before its effective date. The new statute violated the separation of powers between the legislature and the Governor because when applied to inmates sentenced before its enactment, it acted to commute the length of existing sentences. In this case, therefore, we must address the question whether the amendments in the parole scheme made after Gilbert's 1951 sentencing and incarceration act as a commutation of his sentence.

As we noted in *Bossie,* legislative acts that "commute" sentences are those that shorten the length of time a previously convicted and sentenced inmate must serve. 488 A.2d at 479–80. Parole, however, does not shorten the length of a sentence. Instead, parole is a change in the *manner* in which a sentence is served in that the parolee remains under the custody of the institution from which he is released but executes the unexpired portion of his sentence outside of confinement. *Collins v. State,* 161 Me. 445, 451, 213 A.2d 835, 838 (1965). *See also Hartley v. State,* 249 A.2d 38, 39–40 (Me.1969); *see generally* 59 Am.Jur.2d *Pardon and Parole* §§ 78–81 (1971). Unlike a commutation, the release on parole is conditional, and the parolee is subject both to the continuing supervision of his parole officer and to the threat of return to prison to serve out his sentence there if he violates a condition of parole. *Collins,* 161 Me. at 451, 213 A.2d at 838. As we explained in *Mottram v. State,* 232 A.2d 809, 813–14 (Me.1967):

> Parole ... is a legislative program of rehabilitation and restoration of persons convicted of crime to useful membership in society. The purpose of the law is to offer the institutionalized convict the opportunity to make good on his own outside the prison walls but under the immediate supervision of the probation-parole officer to whom the parolee must report and whose guidance he may seek at all times. ... To the extent that the parolee must strictly observe all the conditions of his parole and remain within the area of permitted enlargement of the prison walls consistent with effective supervision, he is not a totally free man.

See also Morrissey v. Brewer, 408 U.S. 471, 477–78 (1972), 92 S.Ct. 2593, 2598, 33 L.Ed.2d 484; *Davidson v. United States,* 598 F.Supp. 926, 928 (N.D.Ind.1984); *see generally* Note, *Parole Revocation in the Federal System,* 56 Geo.L.J. 705 (1968). Because of the inherent differences between parole and commutation, a grant of parole to Gilbert on the authority of amendments passed after his conviction would not amount to a commutation of his sentence in violation of the constitutional demands of separation of powers.

III.

We cannot, however, reach the same conclusion as to the constitutionality ***1329** of applying to Gilbert the discharge provision of the post-1951 amendments. In 1959, the legislature enacted a discharge provision permitting the Parole Board to make a complete and unequivocal reduction in a lifer's sentence after 10 years of parole.[3] P.L. 1959, ch. 312, § 13; now 34–A M.R.S.A. § 5809 (Supp.1985–1986). Once the Parole Board discharges a lifer, he is no longer subject to any of the conditions that attach to parole; he becomes a totally free man. If applied to Gilbert, who was convicted and sentenced to life imprisonment before the 1959 amendments took effect, the 10-year discharge provision would act to release him completely from his sentence, which when imposed in 1951 was by law to terminate only on his death. Like the "good time" law in *Bossie,* therefore, the discharge provision would act as a commutation of Gilbert's sentence and thereby usurp a power that the Maine Constitution vests exclusively in the Governor. *Cf. Kent County Prosecutor v. Kent County Sheriff,* 350 N.W.2d 298, 301, 133 Mich.App. 611 (1984) (Michigan jail overcrowding act, which allowed county sheriff to reduce sentences of inmates already convicted, held to contravene the governor's exclusive commutation power); *Boston v. Black,* 340 N.W.2d 401, 408, 215 Neb. 701 (1983) (application of legislatively created good time sentence reduction provisions to inmates sentenced previously acts to interfere with separation of powers in violation of the Nebraska constitution).

3 Between 1953 and 1959, lifers were entitled to the same maximum parole period as all other inmates, i.e., 4 years, and were eligible for automatic discharge thereafter. R.S. ch. 136, §§ 17, 24 (1944). This situation came about when the legislature amended R.S. ch. 136, § 12 (1944) so that the general parole provisions would apply, after 30 years of imprisonment, to any lifer who had never been convicted of any other capital crime. P.L. 1953, ch. 382. See part I of this opinion.

IV.

Even if application of the 10-year discharge provision to Gilbert would be unconstitutional, the Parole Board is not for that reason barred from granting Gilbert parole. The discharge provision is severable from the rest of the parole amendments, and the application of the discharge provision to Gilbert may be declared unconstitutional without affecting the validity of applying the parole provisions to him. *See, e.g., State v. Norton,* 335 A.2d 607, 617 (Me.1975). In 1959, the year in which the 10-year discharge provision was enacted, the legislature also passed a severability clause stating:

> The provisions of the statutes are severable. The provisions of any session law are severable. If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

P.L. 1959, ch. 363, § 4.[4] The legislature codified the longstanding common law rule of severability which held that " '[w]here an unconstitutional and invalid portion of a statute is separable from and independent of a part which is valid the former may be rejected and the latter may stand.' " *LaFleur ex rel. Anderson v. Frost,* 146 Me. 270, 289, 80 A.2d 407, 416 (1951) (quoting *Hamilton v. Portland Pier Site District,* 120 Me. 15, 24, 112 A. 836, 840 (1921)). Under the common law rule of severability and its codification in 1959, the post-1951 parole provisions can be validly applied to Gilbert even though the discharge provisions were declared null and void as to him.

4 Both the discharge provision and the severability clause became effective on September 12, 1959. P.L. 1959, ch. 363, § 4 is now codified at 1 M.R.S.A. § 71(8) (1979).

The entry is:

Judgment vacated.

Remanded to the Superior Court for further proceedings consistent with the opinion herein.

All concurring.

All Citations

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An Extraordinary Pardon

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An Extraordinary Pardon

by Derek P. Langhauser

INTRODUCTION

When Janet T. Mills first began serving as governor of Maine in 2019, her Board on Executive Clemency received an unusual petition for a pardon. The brother of a tribal advocate who died in 2014 requested a posthumous pardon for a conviction for a seemingly insignificant crime that his brother received in 1969. A like petition filed with the preceding governor was denied without a hearing.

To Governor Mills and her Clemency Board, the petition raised several provocative questions. Why seek redemption posthumously after 50 years? What happened in the offender's life during all that time? Why was his modest offense met with such severe consequences back then? Why was a seemingly minor case pursued by the state's highest law enforcement officials?

To answer these questions, the board granted a hearing. Thereafter, the governor asked me, as her chief legal counsel, to look into the matter more closely. What the governor concluded in the end is set forth and explained in this commentary. The fact that the governor has her own extensive prosecutorial experience, including serving as the state's attorney general, made her conclusions all the more interesting.

More broadly, this pardon raised the profile of the little-noticed clemency powers. Even though the clemency power dates back to the original version of the Maine State Constitution and is among the most discretionary powers that a governor has, there has been little caselaw, scholarship, or commentary on its use.[1] Unlike legislation, which is inherently conceptual, a pardon is highly personal. A pardon is not the making of a law, it is an act that judges the prior application of the law. Because it is highly personal, it is therefore much more connective, especially when granted as a matter of principle to rectify a wrong with an impact still resonating after the passage of 50 years. Pardons such as these have the ability to fuel policy discussion and progress. Indeed, since this pardon was issued the governor and legislature have enacted no fewer than five statutes to address a variety of issues that affect tribal/state relations.

The purpose of this commentary is threefold. First, it describes the theory, origin, purpose, and process of the pardon power generally. Second, it discusses the story behind this particular pardon. Third, it explains how this pardon helped advance subsequent policy actions.

THE PARDON POWER

The Maine Constitution confers upon the governor the authority 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."[2]

These four powers—remit, reprieve, commute, and pardon—are collectively known as the clemency powers. Pardons are by far the most commonly used of these powers. Details about the pardon power and process are generally not well known. While very little Maine caselaw interprets this power, a meaningful number of federal cases interpret the analogous federal power of the president.[3] Indeed, in the first case to be decided concerning the federal pardoning power, Chief Justice Marshall, speaking for the Supreme Court of the United States, said, "[T]his power had been exercised from time immemorial [as] an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed."[4]

In perhaps its most basic terms, a pardon is a formal expression of forgiveness.[5] A pardon typically says that the positive things that a person has done since the time of their conviction deserve recognition from the government that convicted them. As a matter of law, a pardon relieves a person of any legal penalties or restrictions that are attached to or flow from the conviction. For example, in many states, certain criminal convictions can restrict a person's ability to vote, hold office, serve on a jury, testify in court, hold certain jobs, or possess a firearm.[6] Pardons help people clear these and related obstacles to adoption, housing, school admissions, immigration status, volunteering, and occupational licenses.

Pardons apply only to criminal, not civil, offenses. They apply to misdemeanor, felony, adult, and juvenile offenses alike. State pardons only apply to state, not federal, offenses; a state pardon does not immunize (but may help) a person facing a federal proceeding (such as deportation). Pardons can only be given once the acts constituting the crime have been committed. They

cannot be given proactively before the commission of such acts because that would constitute an exemption from or dispensation of the laws in violation of a separate constitutional provision expressly prohibiting such suspension by the executive.[7]

That said, a pardon can be issued any time after the criminal act is committed, but the effect of a pardon depends upon when thereafter it is issued. If a pardon is issued before the person is arrested, the pardon preempts any arrest and charges. If it is after an arrest, it frees the person if they are held. If it is after charges are filed, it effectively dismisses the charges. If it is otherwise given before conviction, it ends the prosecution. If it is after conviction, the pardon eliminates the penalties, such as fines, forfeitures, probation, or incarceration. Finally, pardons can be absolute or contain conditions (precedent or subsequent), or other restrictions and limitations, so the recipient may still be bound to comply with any of the above or other restrictions that the governor preserves.[8]

Judicial interpretation of the legal significance of pardons has shifted over time, shaping the contours of the law in interesting and unexpected ways. For example, a pardon does not expunge a record of a conviction, cancel the underlying finding of guilt, eradicate any moral turpitude involved in such guilt, or create any factual fiction that conviction did not occur. It does not wipe out the lack of honesty or irresponsibility inherent in the factual predicates that supported the conviction. A pardon does not prevent the pardoned offense from being counted as a prior offense in future charges or sentences. After a pardon, the fact of conviction cannot be taken into account in subsequent proceedings, but the fact that the crime was committed may still be considered. A pardon does not imply that a person was wrongfully convicted by the justice system or otherwise proclaim their innocence. On the contrary, acceptance of a pardon is regarded as a confession of guilt, or at least acceptance of the existence of facts from which a judgment of guilt would follow.[9]

One interesting and recurring question where opinions divide is the effect of a pardon on a person's answer to the question, typically on an employment application, of whether the person has ever been convicted of a crime. As a matter of law, the answer is "no" because the pardon vitiates the conviction. But morally, which is how, for example, a prospective employer may be judging it, the better answer might be "yes," continuing with "I was convicted but pardoned because of how insignificant my crime was and/or how many great things I have done since."

The power to pardon is currently delegated exclusively to the governor. The original 1820 version shared the power "with the advice and consent of the (Governor's) council," but that requirement was eliminated in 1977 when the governor's council was eliminated.[10] Maine is among the minority of states (joined by two other states and the District of Columbia) that align with the United States in having no statutorily required advisory process such that the locus of the power to pardon rests exclusively with the executive. Twenty-two states share power between the governor and a board, nineteen require a consulting relationship, and six states have an independent board.[11]

Because the power in Maine is now exclusive to the executive, the doctrine of separation of powers prevents the legislature and judiciary from taking any action that effectively usurps the power by limiting, conditioning, or blocking its use. For this same reason, there is very little room for judicial review of the pardon process or its decisions.[12] Accordingly, a governor's discretion in deciding whether or not to pardon has few recognized limits. One limit is that a conditional pardon cannot impose a condition that is "illegal, immoral or impossible to perform."[13] As second limit may be that a governor cannot pardon him or herself (for other than impeachment, which is already expressly excluded by the Constitution). Such self-dealing may violate the governor's duty to faithfully execute the laws because the very concept of faithfulness includes a fiduciary duty that by definition excludes tolerance for self-dealing.

Other than that, executive discretion of whether and, if so, how to issue a pardon is very broad. As a practical matter, pardons are relatively infrequent and the standard of persuasion is high. A governor typically must be persuaded to a degree of meaningful certainty that the offense was modest enough to be forgivable and that the individual has the maturity, character, and discipline to behave well indefinitely so that the decision will reflect well on society, the individual, and the governor alike. For these reasons, pardons are typically not given for violent, sexual, abusive, OUI, or other egregious or dangerous offenses, and they are typically not given if a desired purpose is to restore the right to possess a firearm.

Decisions therefore typically focus on the demonstrated character of the person as weighed against the age and severity of their offense. Pardons are most often given as recognition of rehabilitation for good deeds done since conviction. They are also given for mercy, to clear criminal records and restore the pardoned individual's good name, for favor to political or personal associates, or for citizen or governmental healing, as with President Ford's pardon of Richard Nixon. A pardon is ultimately a determination that the public welfare will be better served by

inflicting less than what the conviction originally fixed.[14]

It is common for certain types of presidential or gubernatorial pardons to trigger related policy debates and changes in related law. Grants, and perhaps more aptly, denials of pardons often trigger policy discussions about the proper balance of the roles of punishment, deterrence, and rehabilitation in criminal justice system, particularly sentencing. This is to be expected. The concepts of grace, favor, forgiveness, reformation, and mercy as part of the criminal justice ambit have deep historical roots that date back to Mosaic, Greek, and Roman laws. Indeed, it was English law that adopted and refined these ancient concepts and applied them to the American colonies before the Revolutionary War in 1776. In 1791, the Framers of the US Constitution then incorporated for the president a clemency clause based largely on this English model.[15]

There was little debate at the federal Constitutional Convention of the pardon power. The Framers primarily discussed three issues: whether to share the executive's power with the legislative branch, and whether to exclude treason and impeachment as pardonable offenses. For the reasons explained by Alexander Hamilton in *Federalist No. 74,* the power was given solely to the executive, treason was included, and impeachment was excluded.[16] While Maine followed these leads as well as other principles of the English tradition, the Framers of the Maine Constitution were not, as Maine's leading state constitutional scholar observed, "mere copyists" (Tinkle 2013), so they chose a clemency clause that was more explicit and detailed than its federal counterparts.[17]

The process for requesting and considering pardons in Maine is established by statute, executive order, and agency procedures.[18] It starts with a person submitting a petition form to the Department of Corrections (Maine GBEC 2019). Approximately four times per year, the Governor's Board on Executive Clemency reviews these petitions along with the department's personal and professional background reports, selects cases for hearings, holds hearings, and makes recommendations to the governor. Granted pardons are memorialized on a warrant that is filed with various governmental and law enforcement agencies around the state. The whole process typically takes about a year, and persons denied a pardon must wait one year before reapplying. Over the last 20 years, annual clemency petition rates have varied from a low of about 60 to a high of over 200, with the boards commonly granting hearings to approximately 10 petitions per meeting. Despite these fluctuations, recent Maine governors have been relatively consistent in how often they grant pardons, as their grant rates do not vary appreciably.[19]

PARDON OF DONALD GELLERS

In 2019, a family attorney filed a pardon petition for Donald C. Gellers, also known as Tuvia Ben-Shmul Yosef, for his 1969 conviction for the constructive possession of six marijuana cigarettes (Office of the Governor 2020). The case was extraordinary for several reasons. First, it was a posthumous pardon; Mr. Gellers passed away in 2014 at age 78. It was clear that the governor had the authority to issue a posthumous pardon, but it did not appear that a posthumous pardon had ever been issued in Maine before. Second, it had been over 50 years since Mr. Gellers was convicted, a much longer time than that for which pardons are typically granted. Finally, because so much time had passed, the file consisted of hundreds of pages of court documents, court opinions, news accounts, letters, and statutes for review.

In 1963 after being honorably discharged from the New York National Guard, Mr. Gellers came to Maine to live and practice law. He settled in Eastport where he opened his law office. He soon came to represent the Native American tribal leaders and tribal members who "could not find counsel elsewhere during a time of great prejudice and discrimination; a time when few if any others were willing to help the tribal members with their legal problems" (Office of Governor 2020). During his eight years in Eastport, Mr. Gellers worked tirelessly for the Native American people, often for little or no pay.

In 1968, Mr. Gellers filed what was the beginning of the momentous land claims suit on behalf of the Passamaquoddy tribe. By 1975, the subject matter of this claim would be decided in a landmark opinion by the federal appeals court in Boston in a related case that led to an $81.5 million settlement codified by Congress in 1980.[20] Before that would come to pass, between 1968 and 1971, Mr. Gellers worked on local tribal matters of all kinds. He represented peaceful protesters, helped rehome native children from non-native homes, and challenged state jurisdiction of minor offenses committed on a reservation. He advocated for state officials to repair leaking sewage systems and implored Princeton barbers to cut tribal members' hair. He lobbied to repeal laws prohibiting tribal members from hunting on their own land and advocated for the state to create a new Indian Affairs Department. He also helped prompt an investigation of an "unscrupulous state official who had effective powers of life and death over tribal members through his control of access to food, medical care, and fuel" (Office of Governor 2020).[21]

In 1969, Mr. Gellers was convicted and subsequently disbarred from practicing law in Maine for unlawful constructive possession of six marijuana cigarettes that were found in his home. Thereafter, he emigrated to Israel where he was admitted without reservation to practicing law after a personal review of the circumstances surrounding his Maine conviction by the Principal Legal Assistant to the Attorney General of Israel. Mr. Gellers also studied to become a rabbi and later moved back to New York. In 1989, after disclosing all the circumstances of his Maine conviction, the United States Court of Appeals for the First Circuit issued him a certificate of good standing. By then, though, his work had moved from attorney to rabbi, and up until his death in 2014, Mr. Gellers used his faith to continue to help "people without means; people without ready access to help; people seeking the solace of faith from the burdens of their lives" (Office of the Governor 2020).

It was in part for all these "tireless efforts to help others the whole of his life–both for his eight years in Maine and in the 35 years since his conviction" that Governor Mills pardoned Mr. Gellers (Office of the Governor 2020). But there was also another reason, and the governor spoke directly to it:

> Many have long claimed that a motivation to arrest Mr. Gellers was not just to enforce the state's criminal laws, but also to thwart his outspoken political and legal advocacy. After reviewing the historic record of this case, I find that there is merit to this claim.
>
> Mr. Gellers and his houseguest, Alfred Cox, were arrested immediately after Mr. Gellers filed the original land claims lawsuit on behalf of the Passamaquoddy Tribe. The charge was unlawful constructive possession of six marijuana cigarettes that were found in Mr. Gellers' home. Mr. Gellers was convicted on only one of his three counts, sentenced to two to four years imprisonment and, because he now had a felony conviction, he was disbarred from practicing law in Maine.
>
> Even the chief of the State Police in public comments at the time recognized that a felony charge for small personal possession was "so severe" that it was "difficult to get proper adjudication[s]." This is why, even before Mr. Gellers' trial started, the legislature was working on a bill to downgrade the offense to a misdemeanor. This new law, PL 1969, c. 443, took effect *two years before* [emphasis added] Mr. Gellers' appeal was decided and *three years before* [emphasis added] his disbarment was ordered. It is not clear why this significant and timely change in the law did not temper the state's discretion in prosecuting and disbarring Mr. Gellers.
>
> Three additional facts inform our observations in this case. First, Mr. Gellers' arrest, trial and appellate oral argument were all handled by the State's top officials; a unique level of attention to a small personal possession case.
>
> Second, although the State consistently defended at both trial and on appeal its decision to charge Mr. Gellers as a felon, it did not in the end insist that he serve his two to four-year felony sentence. Mr. Gellers instead left the country without the State either trying to stop or extradite him back. It would have been only the felony conviction, regardless of time served, that was needed, and was in fact used, to disbar Mr. Gellers and thereby end his advocacy in Maine.
>
> Finally, the penalty for the co-defendant, Mr. Cox, was only to forfeit the $500 bail that had been posted for him. So, in the end, Mr. Cox simply forfeited that minimal bail while Mr. Gellers was deprived of his entire livelihood. This is true even though Mr. Cox was the one who was in actual possession of the six marijuana cigarettes. But Mr. Cox was also not the legal and social advocate that Mr. Gellers was. (Office of the Governor 2020)

Legal professionals no less prominent than the US Court of Appeals for the First Circuit and the principal legal assistant to a national attorney general could agree in seeing that Mr. Gellers' Maine offense was insignificant and not worthy of any profound permanent punishment as felony conviction and ongoing disbarment. Mindful of this and all of the above, the governor came to this principled conclusion:

> While this pardon cannot undo the many adverse consequences that this conviction had upon Mr. Gellers' life, it can bestow formal forgiveness for his violation of law and remove the stigma of that conviction. Let it also remind us of these guiding truths: That, when enforcing the law, proportionality is an essential component of fundamental fairness, and that fundamental fairness is the essential moral and legal promise that a thoughtful government makes to its people. And that history will long judge whether and how that promise is kept. (Office of the Governor 2020)

POLICY DEVELOPMENTS SINCE THE GELLERS' PARDON

Presidential and gubernatorial pardons often trigger related policy debates and changes in policy or law. For example, federal pardons for offenses by draftees have often been regarded as policy statements on the war the draftees were conscripted to support.[22] State pardons for immigrants have recently been viewed as statements on federal enforcement actions at the border. Federal pardons of offenses related to highly charged political times have been viewed as salves for old wounds. State pardons of juvenile offenses may be regarded as bellwethers for larger policy issues regarding juvenile justice. And pardons for many types of offenses, or more aptly denial of such pardons, often trigger policy debates about the proper balance of the roles of punishment, deterrence, and rehabilitation in criminal sentencing.

The Gellers' pardon was issued in January 2020, just before the pandemic started. In Governor Mills' first

legislative session in 2019, two tribal-related measures became law with her active support: an act banning Native American mascots in schools and an act governing water quality standards to protect sustenance fishing ("Sustenance Fishing Act"). The Sustenance Fishing Act was highly substantive, an accomplishment of national significance that was the product of months of intense negotiations. Then, in her second session in 2020 when the Gellers' pardon was being issued, the governor drew on her deep criminal law expertise to draft legislation extending jurisdiction of tribal courts to prosecutions of domestic violence offenders.[23]

The pandemic in 2020 brought a prompt end to the regular process of lawmaking. It was in this space that perhaps the Gellers' pardon helped continue the momentum of the previous sessions. Unlike legislation, which is inherently conceptual, a pardon is highly personal and therefore much more connective, especially when granted as a matter of principle to rectify a wrong with an impact still resonating after the passage of 50 years.

The first regular session of 130th Maine State Legislature in January 2022 marked the legislature's return to more regular lawmaking activities. In that session, the governor, legislature, and tribes worked to enact an important law that addressed drinking water issues on the Pleasant Point Reservation. They also collaborated to enact a law that gave certain tax benefits to tribal communities and an opportunity to benefit from online sports wagering and other benefits.[24] This legislation was lengthy and the result of extended negotiation. It provided the four tribes exclusive rights to operate online sports wagering in Maine and established a nationally unique tribal-state collaboration process that requires state agencies to collaborate with the tribes on issues in which the tribes have a unique and substantial interest. Maine is now the only state in the country that has codified such a process beyond mere policy.

In the following session in 2023, the governor, legislature, and tribes again worked together. Although agreement was not reached on one bill,[25] three other measures did become law. The first improved the functioning of the Maine Indian Tribal-State Commission. A second extended to the Mi'kmaq Nation the same rights and benefits enjoyed by other Wabanaki Nations in Maine. This too was substantial legislation that also applied to the Houlton Band of Maliseet Indians. Those tribes had limited jurisdictional authority previously, and this bill put them on equal footing with the Penobscot Nation and Passamaquoddy Tribe. Finally, a third enactor, the Maine Indian Child Welfare Act, preserved the rights of Indian families during custody and child welfare proceedings involving Indian children.[26]

In the 2024 legislative session, collaborative work on other issues continued. The First Annual State and Tribal Summit on November 17, 2023, hosted by the governor at the Blaine House helped continue the dialogue between the state and the tribes. And at the time this article was printed, the Tribes, Governor, and Judiciary Committee agreed to recommend to the House and Senate a measure that would authorize tribal courts to prosecute certain crimes committed on tribal land involving, in most cases, at least one member of a federally recognized tribe.[27] Work on matters with complex legal consequences is always iterative, but the clear progress since 2019 continues.

CONCLUSION

Unlike legislation, which is inherently conceptual, a pardon is highly personal and therefore often much more connective, especially when granted as a matter of principle to rectify a wrong with an impact still resonating after the passage of 50 years. The governor's posthumous pardon in 2020 for the 1969 offense involving tribal advocate Donald Gellers was an important statement of principles that were both personal to Mr. Gellers and broader to tribal/state relations. Since then, the governor, the tribes, and the legislature have in relatively short order enacted at least five noteworthy tribal/state measures. Perhaps it was that pardon, a historical act of principle and grace, that contributed to the worthy progress in tribal/state relations.

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NOTES

1 There is still reason to agree with the conclusion of a 1939 report by the US Attorney General that there has "never been an adequate treatment of the subject of pardon. [It] has been a neglected orphan, allowed to grow without benefit of careful grooming which has been accorded other branches of law" (Ruckman 1995: 2).

2 Me. Const. art. V, pt. 1, §11.

3 To *remit* means to cancel or refrain from exacting or inflicting a debt or other punishment. These requests are rare. To *reprieve* means to cancel or postpone a punishment. This power was designed primarily for application to death penalty sentences, which Maine authorized when the Constitution was adopted in 1820. This provision was effectively mooted when the death penalty was finally abolished (after a preceding repeal and restoration) in 1887. Only the remaining two are active today. A *commutation* is a reduction of a judicial sentence to one less severe. These requests are relatively few, and a grant is very rare. *Pardons* represent the vast majority of petitions.

U.S. Const. art. II, § 2 provides that the president "shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment."

4 *U.S. v. Wilson,* 32 U.S. 150, 160 (1833).

5 The related concept of amnesty is essentially identical to pardon in ultimate effect. The principal distinction is that amnesty typically is extended to classes of persons instead of single individuals (*Brown v. Walker,* 161 U.S. 591, 601–02 [1896]; *Knote v. United States,* 95 U.S. 149, 152–53 [1877]).

6 The only of these restrictions that Maine has is firearm dispossession (15 MRS § 393).

7 Sources for this paragraph are (in order of appearance) found in *Angle v. Chicago, St. P., M. & O. Ry. Co.,* 151 U.S. 1, 19 (1894) ("An executive may pardon and thus relieve a wrongdoer from the punishment the public exacts for the wrong, but neither executive nor legislature can pardon a private wrong, or relieve the wrongdoer from civil liability to the individual he has wronged."); *In re Bocchiaro,* 49 F. Supp. 37, 38 (W.D.N.Y. 1943); *Ex parte Garland,* 71 U.S. 333, 380 (1866); and Me. Const. art. I, § 13.

8 The Maine Constitution expressly limits remissions to "after conviction," but that limitation does not appear to apply to pardons (art. V, pt. 1, § 11). The express authority to issue conditional pardons was added by constitutional Amendment XV in 1876 (*Accord U.S. v. Wilson,* 32 U.S. 150, 161 [1833]; *Kavalin v. White,* 44 F.2d 49, 51 [10th Cir. 1930]). Note that a person who objects to a condition can reject the pardon (*Hoffa v. Saxbe,* 378 F. Supp. 1221, 1241-42 [D.D.C. 1974]).

9 Sources for this paragraph are (in order of appearance) found in *Pardoning Power,* 11 Op. Atty. Gen. 228 (1865); *Hirschberg v. Commodity Futures Trading,* 414 F.3d 679, 682 (7th Cir. 2006) (denying a commodity futures trading license for that reason); *Carlesi v. New York,* 233 U.S. 51, 59 (1914) (pardoned offense could still be considered as an aggravating circumstance under a state habitual-offender law); *Grossgold v. Supreme Court of Illinois,* 557 F.2d 122 (7th Cir. 1977) (denying a law license for that reason). See also *United States v. Flynn,* 507 F. Supp. 3d 116, 136 (D.D.C. 2020).

10 Me. Const. amend. CXXIX. A related provision requiring the governor to provide the legislature with certain information about acts of clemency was eliminated by Amendment XC in 1964.

11 See Restoration of Rights Project, "50-State Comparison: Pardon Policy & Practice." https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncharacteristics-of-pardon-authorities-2/.

12 The Maine Constitution expressly provides that the legislature can only regulate the manner of applying for a pardon (Me. Const. art. V, pt. 1, § 11). To that end, the legislature has enacted 15 MRS §§ 2161-67. Otherwise, because the power flows from the Constitution, it can only be altered by constitutional amendment (*Schick v. Reed,* 419 U.S. 256, 266 [1974]). For case examples of usurpations regarding the related commutation power, see *Bossie v. State,* 488 A.2d 477 (Me. 1985); *Baston v. Robbins,* 153 Me. 128 (1957) (intrusion by the legislature); *State v. Hunter,* 447 Me. 797 (1982) (intrusion by the legislature and the courts); *State v. Sturgis,* 110 Me. 96 (1912) (intrusion by the courts); *Austin v. State,* 663 A.2d 62 (Me. 1995) (intrusion by the parole board); *Solesbee v. Balkcom,* 339 U.S. 9, 12 (1950) (judicial review).

13 See Tinkle (2013) and *Accord, Conditional Pardons,* 1 Op. Atty. Gen. 482 (1821).

14 For example, Governor LePage reportedly granted late pardons—without public hearings—to his late mentor's grandson and a former friendly lawmaker (Villenueve 2019a).

In declining to overturn President Ford's pardon of former President Nixon, a federal judge made this observation:

> In view of fact that public clamor over former President's alleged misdeeds in office had not immediately subsided on his resignation and that at the same time the country was in grips of apparently uncontrollable inflationary spiral and an energy crisis of unprecedented proportions, it was not unreasonable for the successor to the office to conclude that the public interest required that positive steps be taken to end the division caused by the scandal and to shift the focus of attention to the more pressing social and economic problems [by] taking steps to restore the tranquility of the commonwealth by a well-timed offer of pardon (*Murphy v. Ford,* 390 F. Supp. 1372, 1374 [W.D. Mich. 1975]).

Biddle v. Perovich, 274 U.S. 480, 486 (1927).

15 For an excellent if not seminal historical account of the development of clemency powers, see US DOJ (1939). See also, U.S. Const. art. II, § 2. For federal clemency procedural rules, see 28 C.F.R. pt. 1, §§ 1.1-.11.

16 *Federalist No. 74.* As regards which branch should have the power, those against giving the legislature a role in the pardon process argued that a body "governed too much by the passions of the moment" was "utterly unfit for the purpose" and that such individualized determinations would be inconsistent with the legislative role (Farrand 1911: 626). Executive-held power was desirable because such a power "should be as little as possible fettered or embarrassed" to ensure "easy access to exceptions in favour of unfortunate guilt;" that a single person would be "a more eligible dispenser of the mercy of the government than a body of men" who "might often encourage each other in an act of obduracy, and might be less sensible to the apprehension of suspicion or censure for an injudicious or affected clemency" (Farrand 1911: 626).

17 *State v. Hunter,* 447 Me. 797, 802-03 (1982) (English tradition). Tinkle (2013: 9) also noted Thomas Jefferson's praise of the Maine Constitution for its tight language and "wisdom in every point."

18 See 15 MRS §§ 2161-67, Me. Exec. Order No. 6 FY 19/20 (Mar. 6, 2019); https://www.maine.gov/corrections/pardonboard.

19 Maine governors have a long tradition of using advisory panels to review and make recommendations on petitions for pardon or clemency. The current board consists of five persons appointed by the governor who are "Maine citizens who have knowledge of the criminal justice system and the interests served by conferring clemency in appropriate cases" (Me. Exec. Order No. 6 FY 19/20). The petitions selected for hearing, the hearing, and the warrant for any pardons granted by a governor are public records and meetings. The other petitions, board deliberations and recommendations, the governor's deliberations, and all other related records are confidential by law (Me. Exec. Order No. 6 FY 19/20; 1 MRS § 402(2)(F) and (3)(J) and § 403(6)). This approach is designed to respect the legitimate privacy interests of the petitioners. For example, during their respective eight years, Republican Governor LePage issued at least 240 pardons to 112 people. Democratic Governor Baldacci issued approximately 218 pardons to 141 people. Independent Governor King issued 154 pardons to 100 people. See Villeneuve (2019b).

20 Litigated in *Joint Tribal Council of the Passamaquoddy Tribe v. Morton,* 528 F.2d 370 (1st Cir. 1975) and codified by Congress in 25 U.S.C. §§ 1721-25.

21 Of these experiences Mr. Gellers wrote to friends:

> I was dealing with a people [who] had known so many defeats that hope, itself, was a victory.…Before I came, Indians died of malnutrition, and burned up in their shacks. Getting arrested for anything meant getting convicted. Living meant begging the Welfare

Indian Agent for groceries and clothes, having children taken from parents and placed for adoption in non-Indian homes, not voting for the Legislature or serving on juries, and [only] occasionally talking about treaty rights no one ever respected. I [helped stop] all that, and [I did] it peacefully (Office of Governor 2020).

22 For example, general war-related amnesties were issued by Presidents Washington, Adams, Madison, Lincoln, Andrew Johnson, and Theodore Roosevelt.

23 PL 2019 Ch. 123 (mascots); PL 2019, Ch. 463 (fishing); PL 2020, Ch. 621 (tribal court jurisdiction).

24 PL 2022, Ch. 650 (drinking water); PL 2022, Ch. 681 (sports betting).

25 LD 2004 (proposing a variety of complex measures); objections stated in Governor Mills's veto letter and in her radio address: https://www.maine.gov/governor/mills/news/radio_address/why-i-vetoed-ld-2004-2023-07-07; the legislature sustained the objections.

26 PL 2023, Ch. 370 (Maine Indian Tribal-State Commission); PL 2023, Ch. 369 (Mi'kmaq Nation); PL 2023, Ch. 359 (child custody).

27 Committee Amendment (Majority Ought to Pass as Amended Report in 2024) to LD 2007 (carried over from 2023).

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Clemency Provisions in State Constitutions and Statutes

In six states (AL, CT, GA, ID, SC and UT), clemency power resides solely with an independent board. In 4 states (FL, MN, NE, NV), the Governor shares clemency power with a board, whose membership includes the Governor. In 10 states (AZ, DE, LA, MA, NH, OK, PA, RI, SD and TX) the board acts as a gatekeeper on the Governor's clemency decisions. In 8 states (AK, AR, KS, MI, MO, MT, OH and WA), the Governor is required to consult with the board on clemency decisions. In 19 states (CA, CO, HI, IL, IN, IA, KY, MD, MI, NJ, NM, NY, NC, ND, TN, VT, VA, WV and WY) the Governor may consult with a board on clemency decisions. In 2 states (OR and WI), there is no board advisory process.

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
Maine	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. Me. Const. Art. V, pt. 1, §11	• The Probation and Parole Board is authorized, "when requested by the Governor," to investigate pardon cases, and to make recommendations to the Governor. All information gathered by the Division is confidential. Me. Rev. Stat. Ann. tit. 34-A, 5210 (4) • The Governor is assisted by the non-statutory Governor's Board on Executive Clemency, composed of three members appointed by the Governor. The Board is tasked with making recommendations to the governor on each pardon petition, and by executive order is charged with holding public hearings on such petitions. The final decision on a clemency petition rests solely with the Governor. Me. Exec. Order 25 FY 11/12 (Nov. 1, 2011); DOC Pardon Board and Executive Clemency website Criminal justice agency records concerning a pardoned conviction are considered confidential and are available only under certain conditions. 16 MRSA §705. Ten years after the final discharge of sentence, a pardoned person may apply to the State Bureau of Identification to have all references to the pardoned crime deleted from the Federal Bureau of Investigation's identification record. M.R.S.A. 15 §2167	
Alabama	The Governor shall have power to grant reprieves and commutations to persons under sentence of death. Ala. Const. Amendment 38	• The Legislature created the Board of Pardon and Parole to administer pardons and parole, remission of fines and forfeitures and make decisions on probation. The Board is composed of three members appointed by the Governor with confirmation by the state senate. The chairperson is designated by the governor. Ala. Code §§15-22-20 et seq. • The Board must make a full annual report to the Governor. Ala. Code §15-22-24(b)	The Legislature shall have power to provide for and to regulate the administration of pardons, paroles, remission of fines and forfeitures and may authorize the courts having criminal jurisdiction to suspend sentence and to order probation. Ala. Const. Amendment 38

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
		A person who been granted a certificate of pardon with restoration of civil and political rights for a conviction from the Board of Pardons and Paroles may apply to have conviction records expunged 180 days after a pardon was granted. Ala. Code §15-27-2 (c)	
Alaska	Subject to procedure prescribed by law, the Governor may grant pardons, commutations and reprieves, and may suspend and remit fines and forfeitures. AK Const. Art. 3, § 21	The Governor may not grant executive clemency to a person unless the governor has first provided notice of consideration of executive clemency to the board of parole for investigation and at least 120 days have elapsed since the notice. Alaska Stat. Ann. §33.20.080	
Arizona	The Governor shall have power to grant reprieves, commutation and pardons, after convictions, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as may be provided by law. AZ Const. Art. 5 §5	No reprieve, commutation or pardon may be granted by the governor unless it has first been recommended by the Board of Executive Clemency. A.R.S. §31-402	
Arkansas	In all criminal and penal cases, except in those of treason and impeachment, the Governor shall have power to grant reprieves, commutations of sentence and pardons, after conviction. AR Const. Art. 6, §18	The Post-Prison Transfer Board is required to conduct an investigation on an application for a pardon, commutation of sentence, reprieve, respite or remission of fine or forfeiture and make a recommendation to the Governor. Ark. Code Ann. §16-93-204 Most pardoned offenses are sealed immediately, but certain serious offenses may not be sealed even if pardoned. Ark. Code Ann. §16-90-1411	
California	Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon and commutation, after sentence, except in case of impeachment. The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring. CA Const. Art. 5, §8	**(a)**Upon request of the Governor, the Board of Parole Hearings shall investigate and report on all applications for reprieves, pardons and commutations of sentence and shall make such recommendations to the Governor with reference thereto as it may seem advisable. **(b)**The Board may make recommendations to the Governor at any time regarding applications for pardon or commutation, and the Governor may request investigation into candidates for pardon or commutation at any time. Ca. Pen. Code §4812	The Governor shall report to the Legislature each reprieve, pardon and commutation granted, stating the pertinent facts and the reasons for granting it. CA Const. Art. 5, §8
Colorado	The Governor shall have power to grant reprieves, commutations and pardons after conviction, for all offenses except treason, and except in case of impeachment, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons, but the Governor shall in every case where he may exercise this power, send to the general assembly at its first session thereafter, a transcript of the petition, all proceedings, and the reasons for his action. Colo. Const. Art. IV, §7	**(1)** Before the Governor approves an application, it must be first submitted to the present district attorney of the district in which the applicant was convicted and to the judge who sentenced and the attorney who prosecuted at the trial of the applicant, if available, for such comment as they may deem proper concerning the merits of the application, so as to provide the Governor with information upon which to base the Governor's action. The Governor shall make reasonable efforts to locate the	The Governor must send to the general assembly at its first session after a reprieve, commutation or pardon is issued, a transcript of the petition, all proceedings, and the reasons for the action. Colo. Const. Art. IV, §7

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
		judge who sentenced and the attorney who prosecuted at the trial of the applicant and shall afford them a reasonable time, not less than fourteen days, to comment on such applications. The Governor has sole discretion in evaluating said comments and in soliciting other comments the Governor deems appropriate. **(2)** The Governor may grant pardons to a class of defendants who were convicted of the possession of up to two ounces of marijuana. The requirements of subsection (1) of this section do not apply to defendants who were convicted of the possession of up to two ounces of marijuana, but the Governor may make any inquiry as deemed appropriate to seek any relevant information necessary from any person or agency to reach an informed decision. C.R.S. 16-17-102 A pardoned conviction may be sealed by the court. Colo. Rev. Stat. §16-17-103; §24-72-710	
Connecticut	An independent board appointed by Governor exercises pardon power. CT Gen Stat § 54-124a.	The Board of Pardons and Paroles shall have independent decision-making authority to (1) grant or deny parole, (2) establish conditions of parole or special parole supervision, (3) rescind or revoke parole or special parole in accordance, (4) grant commutations of punishment or releases, conditioned or absolute, in the case of any person convicted of any offense against the state and commutations from the penalty of death, (5) discharge any person on parole or inmate eligible for parole from the custody of the Commissioner of Correction, and (6) terminate special parole in accordance with section 54-129. CT Gen Stat §54-124a. When an individual is granted an "Absolute Pardon", an "erasure" of court records relating to the offense is the result. Conn. Gen. Stat. §§ 54-142a(d)	
Delaware	The Governor shall have power to remit fines and forfeitures and to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon, or reprieve for more than six months, shall be granted, nor sentence commuted, except upon the recommendation in writing of a majority of the Board of Pardons after full hearing; and such recommendation, with the reasons	The Governor cannot grant a pardon or commutation in the absence of an affirmative recommendation of a majority of the Board of Pardons after a full hearing, but the Governor is not bound to accept the Board's affirmative recommendation, and exercises independent judgment in all cases submitted to him or her following	The Governor shall fully set forth in writing the grounds of all reprieves, pardons and remissions, to be entered in the register of his or her official acts and laid before the General Assembly at its next session. DE Const. Art. 7, §1

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	therefore at length, shall be filed and recorded in the office of the Secretary of State, who shall forthwith notify the Governor thereof. DE Const. Art. 7, §1	an affirmative recommendation by the Board. DE Const. Art. 7, §1 A person convicted of a crime, other than those specifically excluded involving serious violence, who is thereafter unconditionally pardoned may request a discretionary expungement pursuant to Del. Code Ann. Tit. 11, §4375	
Florida	Except in cases of treason and in cases where impeachment results in conviction, the Governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses. FL Const. Art. 4 §8(a); Fla. Stat. §§940.01	The Governor and two members of the Cabinet are constituted as a Clemency Board. FL Const. Art. 4 §8(a); Fla. Stat. §§940.01	• In cases of treason the Governor may grant reprieves until adjournment of the regular session of the Legislature convening next after the conviction, at which session the Legislature may grant a pardon or further reprieve; otherwise, the sentence shall be executed. FL Const. Art. 4 §8(b) • The Governor must report to the Legislature each restoration and pardon granted at the beginning of each legislative session. Fla. Stat. §940.01
Georgia	An independent board appointed by the Governor exercises pardon power. Ga. Code Ann. §42-9-56	The State Board of Pardons and Paroles shall be vested with the power of executive clemency, including the powers to grant reprieves, pardons and paroles; to commute penalties; to remove disabilities imposed by law; and to remit any part of a sentence for any offense against the state after conviction. GA Const. Art. 4, §2, ¶II Felony convictions that have been pardoned are eligible for "record restriction," except for serious violent felonies or sexual offenses, as long as there have been no convictions since the pardon and no charges are pending. Ga. Code Ann. §35-3-37(j)(7) Individuals whose records are "restricted" may petition for the sealing of court records. Ga. Code Ann. §35-3-37 (m)	• The Board of Pardons and Paroles may be prohibited from issuing a pardon for offenses superseded by the Legislature in cases involving recidivists and persons serving life sentences. GA Const. Art. 4, §2, ¶II • The Board must annually report to the Legislature, the Attorney General and the Governor. Ga. Code Ann. §42-9-19
Hawaii	The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses, subject to regulation by law as to the manner of applying for the same. The Legislature may, by general	The Governor may seek the recommendation of the director of public safety and the Hawaii State Paroling	

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	law, authorize the Governor to grant pardons before conviction. HI Const. Art. 5, §5	Authority, but the Governor's pardon power is independent. Haw. Rev. Stat. §353-72	
Idaho	The Governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. Idaho Const. Art. IV, § 7; Idaho Code Ann. §20-1015	Such board (the Idaho Commission for Pardons and Parole) as may hereafter be created or provided by legislative enactment shall constitute a board to be known as the board of pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and, only as provided by statute, to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. Idaho Const. Art. IV, §7	The Legislature shall by law prescribe the sessions of said board and the manner in which application shall be made, and regulated proceedings thereon, but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state. Idaho Code Ann. §20-1004, §20-1016
Illinois	The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as the Governor thinks proper. The manner of applying therefore may be regulated by law. IL Const. Art. 5, §12	• The Prisoner Review Board (PRB) makes recommendations to the Governor with respect to pardon, reprieve or commutations. 730 Ill. Comp. Stat. Ann. 5/3-3-1(a)(3) • The PRB hears all requests for pardon, reprieve or commutation, and makes confidential recommendations to the Governor. 730 Ill. Comp. Stat. Ann. 5/3-3-2(6) A pardon authorizes judicial expungement, if provided in the terms of the pardon. 20 Ill. Comp. Stat. Ann. 2630/5.2 (16)(e)	

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
Indiana	The Governor shall have the power to grant reprieves, commutations and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law. Ind. Const. Art. 5, §17	• The Parole Board submits to the Governor its recommendation regarding an application for commutation of sentence, pardon, reprieve or remission of fine or forfeiture. Ind. Code § 11-9-2-2 • This does not limit the constitutional power of the Governor to grant pardons, reprieves, commutations or remissions of fines and forfeitures. Ind. Code §11-9-2-3 The Indiana Supreme Court has held that a pardon essentially wipes out both the punishment prescribed for the offense and the guilt of the offender. Kelley v. State, 185 N.E. 453, 458-59 (Ind. 1933).	• Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence, until the case shall be reported to the General Assembly, at its next meeting; when the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. • The General Assembly may, by law, constitute a council, to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power. • The Governor is required to report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted. Ind Const. Art. 5, §17
Iowa	• The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law. The Governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law. Iowa Const. Art. IV, §16 • The power of the Governor under the Constitution of the State of Iowa to grant a reprieve, pardon, commutation of sentence, remission of fines and forfeitures or restoration of the rights of citizenship shall not be impaired. Iowa Code §914.1	• The Board of Parole shall periodically review all applications by persons convicted of criminal offenses and shall recommend to the Governor the reprieve, pardon, commutation of sentence, remission of fines or forfeitures or restoration of the rights of citizenship for persons who have by their conduct given satisfactory evidence that they will become or continue to be law-abiding citizens. • The Board of Parole shall, upon request of the Governor, take charge of all correspondence in reference to an application filed with the Governor	• Governor reports to Legislature on pardons issued and reasons. Iowa Const. Art. IV, §16 • Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the General Assembly at its next meeting, when the

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
		and shall, after careful investigation, provide the Governor with the board's advice and recommendation concerning any person for whom the board has not previously issued a recommendation. Iowa Code §914.3 • The Governor shall respond to all recommendations made by the board of parole within ninety days of the receipt of the recommendation. The response shall state whether or not the recommendation will be granted and shall specifically set out the reasons for such action. If the Governor does not grant the recommendation, the recommendation shall be returned to the board of parole and may be refiled with the Governor at any time. Any recommendation may be withdrawn by the board of parole at any time prior to its being granted. However, if the board withdraws a recommendation, a statement of the withdrawal, and the reasons upon which it was based, shall be entered in the proper records of the board. Iowa Code §914.4	General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence or grant a further reprieve. Iowa Const. Art. IV, §16
Kansas	The pardoning power shall be vested in the Governor, under regulations and restrictions prescribed by law. Kan. Const. Art. I, §7	All applications for pardon or commutation of sentence shall be referred to the Kansas Prisoner Review Board. The board shall examine each case and submit a report, together with such information as the Board may have concerning the applicant, to the Governor within 120 days after referral to the board. The Governor shall not grant or deny any such application until the Governor has received the report of the Board or until 120 days after the referral to the Board, whichever time is the shorter. Kan. Stat. Ann. §22 3701(d)	The Governor at each regular session of the Legislature, shall communicate to both houses of the Legislature a list of all persons pardoned during the preceding year, with a statement of the offense of which each was convicted, the time of imprisonment or amount of fine, and the condition, if any, upon which such pardon was granted. Kan. Stat. Ann. §22-3703.
Kentucky	The Governor shall have power to remit fines and forfeitures, commute sentences, grant reprieves and pardons, except in case of impeachment, and the Governor shall file with each application therefore a statement of the reasons for his decision thereon, which application and statement shall always be open to public inspection.	On request of the Governor, the Kentucky Parole Board shall investigate and report to the Governor with respect to any case of pardon, commutation of sentence, reprieve or remission of fine or forfeiture. Ky. Rev. Stat. Ann. § 439.450 A full pardon is now grounds for vacatur and expungement. Ky. Rev. Stat. Ann. §431.073(1)(c)	The General Assembly has the power to grant a pardon in cases of treason. Ky. Const. §77

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
Louisiana	The Governor may grant reprieves to persons convicted of offenses against the state and, upon favorable recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses. However, a first offender convicted of a non-violent crime, or convicted of aggravated battery, second degree battery, aggravated assault, mingling harmful substances, aggravated criminal damage to property, purse snatching, extortion, or illegal use of weapons or dangerous instrumentalities never previously convicted of a felony shall be pardoned automatically upon completion of the sentence, without a recommendation of the Board of Pardons and without action by the Governor. La. Const. Art. IV, § 5(E)(1); La. Rev. Stat. Ann. § 15:572(A)	The Governor's constitutional power to pardon depends upon prior favorable recommendation of the Board of Pardons. The Governor appoints the five board members, with confirmation by the state senate. The Governor choses the chair of the Board. La. Const. Art. IV, § 5(E)(1); La. Rev. Stat. Ann. § 15:572(A) An individual receiving a first offender pardon may file a motion for expungement, except for crimes of violence or of a sexual nature, without waiting 10 years LA Code Crim. Pro. Art. 978 (A)(3) and (B)(3)(e)	
Maryland	The Governor shall have the power to grant reprieves and pardons, except in cases of impeachment, and in cases, in which the Governor is prohibited by other Articles of this Constitution; and to remit fines and forfeitures for offences against the State; but shall not remit the principal or interest of any debt due the State, except in cases of fines and forfeitures; and before granting a nolle prosequi, or pardon, the Governor shall give notice, in one or more newspapers, of the application made for it, and of the day on, or after which, his decision will be given; and in every case, in which the Governor exercises this power, the Governor shall report to either Branch of the Legislature, whenever required, the petitions, recommendations and reasons, which influenced the Governor's decision. Md. Const. Art. II, §20; Md. Code Ann., Correctional Services §7-601	A court may expunge the record if the person has been convicted of only one criminal act and that act is not a crime of violence; and is granted a full and unconditional pardon by the Governor. Md. Code Crim. Proc. §10-105(8)	The Governor reports to either Branch of the Legislature, whenever required, the petitions, recommendations and reasons which influenced the Governor's decision. Md. Const. Art. II, §20
Massachusetts	The power of pardoning offences, except such as persons may be convicted of before the Senate by an impeachment of the House, shall be in the Governor, by and with the advice of the council, provided, that if the offence is a felony the General Court shall have power to prescribe the terms and conditions upon which a pardon may be granted; but no charter of pardon, granted by the Governor, with advice of the council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned. Mass. Const. pt. 2, ch. II, sec. I, Art. VIII, as amended by Article LXXIII	• The Governor's Council, also known as the Executive Council, provides advice and consent on pardons to the Governor. Mass. Const. pt. 2, ch. II, sec. I, Art. VIII, as amended by Article LXXIII • The Parole Board acts as an advisory board of pardons in a case in which the petitioner is confined in a correctional institution of the commonwealth and makes recommendations on a pardon to the Governor. Mass. Gen. Laws ch. 127, §154 The Governor, upon granting a pardon, orders the records of a state conviction sealed; thereafter, the records of the conviction may not be accessed by the public, and its existence may be denied for most purposes. Mass. Gen. Laws ch. 127, §152.	• The General Court has pardoning power over impeachment and felony offenses. Mass. Const. pt. 2, ch. II, sec. I, Art. VIII, as amended by Article LXXIII • The Governor shall, at the end of each calendar year, transmit to the General Court, by filing with the clerk of either branch, a list of pardons granted with the advice and consent of the council during such calendar year, together with action of the advisory board of pardons concerning each such pardon, and together with a list of any

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			revocations of pardons made under this section. Mass. Gen. Laws ch. 127, §152
Michigan	The Governor shall have power to grant reprieves, commutations and pardons after convictions for all offenses, except cases of impeachment, upon such conditions and limitations as the Governor may direct, subject to procedures and regulations prescribed by law. Mich. Const. Art. 5, §14	One member of the Parole Board may interview a prisoner serving a sentence for murder in the first degree or a sentence of imprisonment for life without parole at the conclusion of 10 calendar years and make a recommendation to the Governor on a reprieve, commutation or pardon. Mich. Comp. Laws §791.244	The Governor is required to inform the Legislature annually of each reprieve, commutation and pardon granted, with reasons. Mich. Const. Art. 5, §14
Minnesota	The Governor, the Attorney General and the Chief Justice of the Supreme Court constitute a Board of Pardons. The Board's powers and duties shall be defined and regulated by law. The Governor in conjunction with the Board of Pardons has power to grant reprieves and pardons after conviction for an offense against the state, except in cases of impeachment. Minn. Const. Art. V, §7	The Clemency Review Commission reviews each eligible clemency application and waiver request that it receives and recommends to the board, in writing, whether to grant or deny the application or waiver request, with each member's vote reported. Minn. Stat. § 638.09 When a pardon has been granted by the state Board of Pardons, all records relating to the case are automatically expunged, without the need to file a petition. Minn. Stat. §609A.035	
Mississippi	In all criminal and penal cases, excepting those of treason and impeachment, the Governor shall have power to grant reprieves and pardons, to remit fines, and in cases of forfeiture, to stay the collection until the end of the next session of the Legislature, and by and with the consent of the Senate to remit forfeitures. In cases of treason the Governor shall have power to grant reprieves, and by and with consent of the Senate, but may respite the sentence until the end of the next session of the Legislature; but no pardon shall be granted before conviction; and in cases of felony, after conviction no pardon shall be granted until the applicant therefore shall have published for thirty days, in some newspaper in the county where the crime was committed, and in case there be no newspaper published in said county, then in an adjoining county, the petition for pardon, setting forth therein the reasons why such pardon should be granted. Mississippi Constitution Art. 5, §124	The State Parole Board has exclusive responsibility for investigating clemency recommendations upon request of the Governor. Miss. Code §47-7-5 (3)	The Senate must consent to remittal of forfeitures and pardons in the cases of treason. Mississippi Constitution Art. 5, §124
Missouri	The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to provisions of law as to the manner of applying for pardons. The power to pardon shall not include the power to parole. Mo. Const. Art. IV, § 7	Parole board must be consulted, but the Board's advice is not binding on the Governor, and the Governor's pardon power is not dependent upon a favorable Board recommendation. Mo. Rev. Stat. §217.800.2	

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Montana	The Governor may grant reprieves, commutations and pardons, restore citizenship and suspend and remit fines and forfeitures subject to procedures provided by law. Mont. Const. Art. VI, §12	The Governor may grant pardons and commutations, and must consult with the Board of Pardons and Parole, but the Governor may grant clemency even if the Board recommends denial. The Governor may also direct the Board to conduct an investigation on application for clemency when it has declined to do so. Mont. Code Ann. §§46-23-104(4), 46-23-301(4)	The Governor reports to the Legislature each case of remission of fine or forfeiture, respite, commutation or pardon granted since the previous report, stating the name of the convict, the crime of which the convict was convicted, the sentence and its date, the date of remission, commutation, pardon, or respite, with the reason for granting the same, and the objection, if any, of any of the members of the board made to the action. Mont. Code Ann. §46-23-316.
Nebraska	The Governor, Attorney General and Secretary of State, sitting as a board, shall have power to remit fines and forfeitures and to grant respites, reprieves, pardons or commutations in all cases of conviction for offenses against the laws of the state, except treason and cases of impeachment. Neb. Const. Art. IV, §13	• The Governor acts as chair of the Board of Pardons. Neb. Rev. Stat. §83-1,126 • The Board of Pardons is not subject to the Nebraska Administrative Procedure Act, and its constitutional powers cannot be limited or modified by any act of the Legislature or of the Nebraska courts. Neb. Rev. Stat. §83-1,134 • The Board of Parole may advise the Governor, Attorney General and Secretary of State on the merits of any application for remission, respite, reprieve, pardon or commutation, but such advice shall not be binding on them. Neb. Const. Art. IV, §13 Any person who has received a pardon may file a motion with the sentencing court for an order to seal the record. Neb. Rev. Stat. §29-3523(5)	The Governor shall have power to suspend the execution of the sentence imposed for treason until the case can be reported to the Legislature at its next session, when the Legislature shall either grant a pardon, or commute the sentence or direct the execution, or grant a further reprieve. Neb. Const. Art. IV, §13
Nevada	• The Governor shall have the power to suspend the collection of fines and forfeitures and grant reprieves for a period not exceeding sixty days dating from the time of conviction, for all offenses, except in cases of impeachment. Nev. Const. Art. 5, §13 • The Governor, Justices of the Supreme Court, and Attorney General shall constitute the State Board of Pardons Commissioners; The State Board of Pardons Commissioners may, upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments and grant pardons, after convictions, in all cases, except treason and impeachments, subject to such regulations as	A majority of the members of the State Board of Pardons Commissioners is sufficient for any action taken by the State Board of Pardons Commissioners. Nev. Const. Art. 5, §14 1. If a court and the Central Repository for Nevada Records of Criminal History receive a certified copy of an unconditional pardon from the State Board of Pardons Commissioners, the court and the Central Repository for Nevada Records of Criminal History shall seal all records	• Upon conviction for treason the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence or grant a further reprieve. And if the Legislature should fail or

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
	may be provided by law relative to the manner of applying for pardons; Except as may be provided by law, a sentence of death or a sentence of life imprisonment without possibility of parole may not be commuted to a sentence which would allow parole. Nev. Const. Art. 5, §14; Nev. Rev. Stat. §213.010	of criminal history subject to the pardon. 2. If a person receives a pardon from the State Board of Pardons Commissioners, the person may submit a written petition, accompanied by proof of the pardon, to any court in which the person was convicted for the sealing of all records of criminal history in its possession and in the possession of any agency of criminal justice relating to the charges for which the person received the pardon. Nev. Rev. Stat. §179.273	refuse to make final disposition of such case, the sentence shall be enforced at such time and place as the Governor by order may direct. Nev. Const. Art. 5, §13 • The Governor shall communicate to the Legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon or commutation granted, stating the name of the convict, the crime of which the individual was convicted, the sentence, its date and the date of the remission, commutation, pardon or reprieve. Nev. Const. Art. 5, §13 • The Legislature is authorized to pass laws conferring upon the district courts authority to suspend the execution of sentences, fix the conditions for, and to grant probation, and within the minimum and maximum periods authorized by law, fix the sentence to be served by the person convicted of crime in said courts. Nev. Const. Art. 5, §14
New Hampshire	The power of pardoning offenses, except such as persons may be convicted of before the Senate, by impeachment of the House, shall be in the Governor, by and with the advice of council: But no charter of pardon, granted by the Governor, with advice of the council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offense or offenses intended to be pardoned. N.H. Const. pt. 2, Art. 52	The Executive Council is composed of five members, biennially elected from each of five counties of the state, "for advising the governor in the executive part of government." N.H. Const. pt. 2, Art. 60	The Legislature has pardon power in cases of impeachment. N.H. Const. pt. 2, Art. 52

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
New Jersey	• The Governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures. A commission or other body may be established by law to aid and advise the Governor in the exercise of executive clemency. N.J. Const. Art. V, §2, ¶1 • The Governor may also act to restore civil and all other rights, except the right to hold office. N.J. Stat. Ann. §2A:167-5	The Constitution allows for the creation of a commission to assist and advise the Governor on pardons, but such a commission has not been created.	On or before March 1 of each year, the Governor shall report to the Legislature each reprieve, pardon and commutation granted, stating the name of the convicted person, the crime for which the person was convicted, the sentence imposed, its date, the date of the pardon, reprieve or commutation and the reasons for granting the same. N.J. Stat. §2A:167-3.1
New Mexico	Subject to such regulations as may be prescribed by law, the Governor shall have power to grant reprieves and pardons, after conviction for all offenses except treason and in cases of impeachment. N.M. Const. Art. V, §6	On request of the Governor, the Parole Board shall investigate and report to the Governor with respect to any case of pardon, commutation of sentence or reprieve. N.M. Stat. Ann. §31-21-17	
New York	• The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as the Governor may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. N.Y. Const. Art 4, §4 • Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. N.Y. Const. Art 4, §4	The Board of Parole must advise the Governor on clemency cases if requested by the Governor. N.Y. § Exec. Law 259-c	• The Legislature shall either pardon, or commute the sentence, direct the execution of the sentence or grant a further reprieve in convictions for treason. N.Y. Const. Art 4, §4 • The Governor shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which the convict was convicted, the sentence and its date and the date of the commutation, pardon or reprieve. N.Y. Const. Art 4, §4
North Carolina	The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as the Governor may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles. N.C. Const. Art. III, 5(6)	The Post Release Supervision and Parole Committee has authority to assist the Governor in exercising the authority in granting reprieves, commutations and pardons, and shall perform such other services as may be required by the Governor in exercising the powers of executive clemency. N.C. Gen. Stat. §143B-1490(a)	

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
		A person who receives a pardon of innocence may petition the court in which he was convicted for an expunction of records. N.C. Gen. Stat. §15A-149	
North Dakota	The Governor may grant reprieves, commutations and pardons. The Governor may delegate this power in a manner provided by law. N.D. Const. Art. 5, §7	The Governor may (but is not required to) appoint a "pardon advisory board," consisting of the state Attorney General, two members of the Parole Board, and two citizens. N.D. Cent. Code § 12-55.1-02.	
Ohio	The Governor shall have power, after conviction, to grant reprieves, commutations and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as the Governor may think proper; subject, however, to such regulations, as to the manner of applying for commutations and pardons, as may be prescribed by law. Ohio Const. Art. III, §11	All applications for pardon or other clemency be made in writing to the Adult Parole Authority (part of the Parole and Community Services Division of the Department of Rehabilitation and Correction), which is required by law to investigate and make a recommendation to the Governor on every application. Those recommendations are advisory only. Ohio Rev. Code Ann. §2967.07 Any person who is granted by the Governor under an absolute and entire pardon, a partial pardon or a pardon upon conditions precedent or subsequent may apply to the court for an order to seal the person's official records in the case in which the person was convicted of the offense for which any of those types of pardons are granted. The application may be filed at any time after an absolute and entire pardon or a partial pardon is granted or at any time after all of the conditions precedent or subsequent to the pardon are met. Ohio Rev. Code §2953.33 (A)(3)	• Upon conviction for treason, the Governor may suspend the execution of the sentence, and report the case to the General Assembly, at its next meeting, when the General Assembly shall either pardon, commute the sentence, direct its execution or grant a further reprieve. Ohio Const. Art. III, §11 • The Governor shall communicate to the General Assembly, at every regular session, each case of reprieve, commutation or pardon granted, stating the name and crime of the convict, the sentence, its date and the date of the commutation, pardon, or reprieve, with the Governor's reasons therefore. Ohio Const. Art. III, §11
Oklahoma	• The Governor shall have the power to grant, after conviction and after favorable recommendation by a majority vote of the Pardon and Parole Board, commutations, pardons and paroles for all offenses, except cases of impeachment, upon such conditions and with such restrictions and limitations as the Governor may deem proper, subject to such regulations as may be prescribed by law. Provided, the Governor shall not have the power to grant paroles if a person has been sentenced to death or sentenced to life imprisonment without parole. Okla. Const. Art. VI, §10	The Governor may not grant a commutation, pardon or parole without an affirmative vote of the Pardon and Parole Board. Okla. Const. Art. VI, §10 Anyone pardoned may file a motion of expungement of their criminal record. 22 Okla. Stat. Ann. §18(A)(4). A person who was under 18 at the time of conviction who is	The Governor shall communicate to the Legislature, at each regular session, each case of reprieve, commutation, parole or pardon granted, stating the name of the person receiving clemency, the crime of which the person was convicted, the date and place of conviction, and the date of

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
	• The Governor shall have power to grant after conviction, reprieves or leaves of absence not to exceed sixty (60) days, without the action of the Pardon and Parole Board. Okla. Const. Art. VI, §10	pardoned may also have their conviction expunged. 22 Okla. Stat. §18(A)(6)	commutation, pardon, parole or reprieve. Okla. Const. Art. VI, §10
Oregon	• The Governor shall have power to grant reprieves, commutations, and pardons, after conviction, for all offences (sic) except treason, subject to such regulations as may be provided by law. • Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislative Assembly, at its next meeting, when the Legislative Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence or grant a farther (sic) reprieve. • The Governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law. Or. Const. Art. V, §14; Or. Rev. Stat. §144.649	An individual who has been granted a pardon automatically has their criminal conviction sealed. ORS §144.653 The Governor is required to inform courts when a pardon is granted so the court may seal the record; the Governor must inform the courts of pardons granted in the previous five years to enable them to seal a conviction record and individuals convicted before that time are authorized to apply to the court for sealing of a record. ORS §144.654	• The Legislative Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence or grant a farther (sic) reprieve for convictions for treason. • The Governor shall report to the Legislative Assembly at its next meeting each case of reprieve, commutation or pardon granted, and the reasons for granting the same; and also, the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted. Or. Const. Art. V, §14

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
Pennsylvania	(a)In all criminal cases except impeachment the Governor shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefore at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose. Pa. Const. Art IV, §9	• The Governor may not grant a pardon nor commute a sentence without a recommendation in writing of the majority of the Board of Pardons. • The Governor may not grant a pardon nor commute a sentence of death or life without a unanimous recommendation in writing of the Board of Pardons. Pa. Const. Art IV, §9 Pardoned convictions are automatically expunged. 18 PA. C.S. §9122(a)(2.1), (a.1)	
Rhode Island	The Governor, by and with the advice and consent of the Senate, shall hereafter exclusively exercise the pardoning power, except in case of impeachment, to the same extent as such power is now exercised by the General Assembly. R.I. Const. Art. IX, §13; RI Gen L § 13-10-1		Consent of the state Senate is required for the Governor to issue a pardon. R.I. Const. Art. IX, §13
South Carolina	With respect to clemency, the Governor shall have the power only to grant reprieves and to commute a sentence of death to that of life imprisonment. The granting of all other clemency shall be regulated and provided for by law. S.C. Const. Art. IV, §14	The Governor has the authority to grant reprieves and commute death sentences, but all other clemency authority is vested by statute in the Probation, Parole, and Pardon Board. S.C. Code Ann. §24-21-920 et. seq.	
South Dakota	The Governor may, except as to convictions on impeachment, grant pardons, commutations and reprieves, and may suspend and remit fines and forfeitures. S.D. Const. Article IV, § 3	• According to the Supreme Court of South Dakota, there are two legally distinct types of pardons in South Dakota. Doe v. Nelson, 680 N.W.2d 302, 313 (S.D. 2004). Under the first type of pardon, the Governor may act independently and privately. S.D. Const. Article IV, § 3 Under the second type, the Governor may pursue the public route recognized in the South Dakota Code and delegate, by executive order, authority to make pardon recommendations to the Board of Pardons and Paroles. S.D. Codified Laws § 24-14-1 et seq. Only pardons granted by this second route result in sealing of the record of the	

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
		conviction and, after an additional five years, the pardon itself. • The Board may also recommend to the Governor first offender "exceptional pardons." S.D. Codified Laws §24-14-8. When a person has been pardoned, all official records relating to the pardoned person's arrest, indictment or information, trial, finding of guilt, application for a pardon, and the proceedings of the Board of Pardons and Paroles are sealed. S.D. Codified Laws §24-14-11	
Tennessee	The Governor shall have power to grant reprieves and pardons, after conviction, except in cases of impeachment. Tennessee Constitution Art. III, §6; Tenn. Code § 40-27-101	• The Governor may be advised by Board of Probation and Parole, but its role does not limit the pardoning power of the Governor. Tenn. Code Ann. §§ 40-28-104(a)(10), 40-28-128. • The Governor is required to notify the Attorney General and relevant district attorney before any grant of executive clemency is made public, and they in turn are required to notify the victim. Tenn. Code Ann. §40-27-110 A person who was convicted of a nonviolent crime after January 1, 1980 and received a pardon may petition for expungement of their criminal record. TN Code §40-32-101	The Governor is required to keep a record of the reasons for each clemency grant and associated documents, and "submit the same to the General Assembly when requested." Tenn. Code Ann. §40-27-107
Texas	• In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction or successful completion of a term of deferred adjudication community supervision, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, the Governor shall have the power to remit fines and forfeitures. Tex. Const. Art. 4, §11; Chapter 48 of the Texas Code of Criminal Procedure • The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days; and he shall have power to revoke conditional pardons. Tex. Const. Art. 4, §11; Chapter 48 of the Texas Code of Criminal Procedure	The Governor may not issue a pardon except upon affirmative written recommendation from a majority of the members of the Board of Pardons and Paroles, except for a one-time 30-day reprieve in a capital case. Tex. Const. Art. 4, §11; Chapter 48 of the Texas Code of Criminal Procedure A pardon is grounds for an expungement order. Tex. Code Crim. Proc. Art. 55.01(a)(1)B)(i). A person receiving a full pardon after a conviction is entitled to an expunction of all arrest records relating to the conviction. An applicant is required to request an expunction from the appropriate state court.	With the advice and consent of the Legislature, the Governor may grant reprieves, commutations of punishment and pardons in cases of treason. Tex. Const. Art. 4, §11

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
Utah	The Governor may grant respites or reprieves in all cases of convictions for offenses against the state except treason or conviction on impeachment. These respites or reprieves may not extend beyond the next session of the board. At that session, the board shall continue or determine the respite or reprieve, commute the punishment or pardon the offense as provided in this section. Utah Const. Art. VII, §12(3)(a)	(1) There is created a Board of Pardons and Parole. The Governor shall appoint the members of the board with the consent of the Senate. The terms of office shall be as provided by statute. (2) (a) The Board of Pardons and Parole, by majority vote and upon other conditions as provided by statute, may grant parole, remit fines, forfeitures, and restitution orders, commute punishments and grant pardons after convictions, in all cases except treason and impeachments, subject to regulations as provided by statute. (b) A fine, forfeiture or restitution order may not be remitted and a commutation, parole or pardon may not be granted except after a full hearing before the board, in open session, and after previous notice of the time and place of the hearing has been given. (c) The proceedings and decisions of the board, the reasons therefore in each case, and the dissent of any member who may disagree shall be recorded and filed as provided by statute with all papers used upon the hearing. Utah Const. Art. VII, §12 Upon granting a pardon, the board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records. Utah Code Ann. §77-27-5.1	In cases of conviction for treason, the Governor may suspend execution of the sentence until the case is reported to the Legislature at its next annual general session, when the Legislature shall pardon or commute the sentence, or direct its execution. If the Legislature takes no action on the case before adjournment of that session, the sentence shall be executed. Utah Const. Art. VII, §12

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
Vermont	The Governor shall have power to grant pardons and remit fines in all cases whatsoever, except in treason, in which the Governor shall have power to grant reprieves, but not to pardon, until after the end of the next session of the General Assembly; and except in cases of impeachment, in which the Governor shall not grant reprieve or pardon, and there shall be no remission, or mitigation of punishment, but by act of legislation. Vt. Const. CH. II, §20	On request of the Governor, the Parole Board acts as an advisory board to assist or act for the Governor in investigating or hearing matters pertaining to pardons, and may make recommendations the Governor regarding such matters. Vt. Stat. Ann. tit. 28, §453	The Legislature has the power to grant a pardon in cases of impeachment and approve a Governor's pardon in cases of treason. Vt. Const. CH. II, §20
Virginia	The Governor shall have power to remit fines and penalties under such rules and regulations as may be prescribed by law; to grant reprieves and pardons after conviction except when the prosecution has been carried on by the House of Delegates; to remove political disabilities consequent upon conviction for offenses committed prior or subsequent to the adoption of this Constitution; and to commute capital punishment. Va. Const. Art. V, §12; Va. Code §53.1-229	An "absolute" pardon is generally granted only for innocence. An "absolute" pardon entitles a person to automatic judicial expungement of police and court records related to the charge and conviction without a petition required to be filed with the court. Va. Code Ann. §19.2-392.2(I)	• The Legislature has pardoning power in cases where prosecution has been carried on by the House of Delegates. • The Governor is required to "communicate to the General Assembly, at each regular session, particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same." Va. Const. Art. V, §12
Washington	The pardoning power shall be vested in the Governor under such regulations and restrictions as may be prescribed by law. Wash. Const. Art. III, §9	The Clemency and Pardons Board receives petitions from individuals, organizations and the Department of Corrections for review and commutation of sentences and pardoning of offenders in extraordinary cases, and then makes recommendations to the Governor. Wash. Rev. Code §§ 9.94A.885 (1) A pardon has the effect of vacating the conviction and limiting public access to the record. Wash. Rev. Code § 9.94A.030(11)(b)	The Governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the Legislature at its next meeting each case of reprieve, commutation or pardon granted, and the reasons for granting the same, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted and the reasons for the remission. Wash. Const. Art. III, §11, Wash. Rev. Code §10.01.12
West Virginia	The Governor shall have power to remit fines and penalties in such cases and under such regulations as may be prescribed by law; to commute capital punishment and, except where the prosecution has been carried on by the House of Delegates to grant reprieves and pardons after conviction; but the Governor shall communicate to the	The Parole Board has authority, if requested by the Governor, to investigate and consider all applications for pardon, reprieve or commutation and to make recommendations thereon to the Governor. W. Va. Code §62-12-13 (o) and (p)	• The Legislature has pardoning power in cases where prosecution has been carried on by the House of Delegates. W.Va. Const. Art. 7, §11

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
	Legislature at each session the particulars of every case of fine or penalty remitted, or punishment commuted and of reprieve or pardon granted, with reasons. W.Va. Const. Art. 7, §11	Persons granted a full and unconditional pardon may apply for expungement from the circuit court in which they were convicted one year after the pardon was granted and at least five years after discharge from sentence, with certain exceptions for violent crimes. W. Va. Code §5-1-16a(a)	• The Governor is required to report the particulars of every clemency grant to the Legislature, with reasons for the grant. W. Va. Code § 5-1-16.
Wisconsin	The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as the Governor may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Wis. Const. art V, § 6	.	• Upon conviction for treason, the Governor shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. • The Governor shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which the individual was convicted, the sentence and its date and the date of the commutation, pardon or reprieve, with reasons for granting the same. Wis. Const. Art V, § 6 • The Legislature has enacted statutory requirements as to notice and publication of applications for pardons. Wis. Stat. § 304.09(3)
Wyoming	The Governor shall have power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; but the Legislature may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Wyo. Const. Art. IV, §5		• Upon conviction for treason the Governor shall have power to suspend the execution of sentence until the case is reported to the Legislature at its next regular session, when the Legislature shall either pardon, or commute the

State	Constitutional Provisions Regarding Clemency	Statutory Provisions Regarding Clemency and the Effect of a Pardon on a Criminal Record	Clemency Provisions Involving the Legislature
			sentence, direct the execution of the sentence or grant further reprieve. Wyo. Const. Art. IV, §5 • The Legislature may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Wyo. Const. Art. IV, §5 • The Legislature may by law create a penalty of life imprisonment without parole for specified crimes which sentence shall not be subject to commutation by the Governor. Wyo. Const. Art. IV, §5 • The Legislature may in addition limit commutation of a death sentence to a sentence of life imprisonment without parole which sentence shall not be subject to further commutation. In no event shall the inherent power of the Governor to grant a pardon be limited or curtailed. Wyo. Const. Art. 3, §53 • The Governor shall communicate to the Legislature at each regular session each case of remission of fine, reprieve, commutation or pardon granted, stating the name of the convict, the crime for which the individual was convicted, the sentence and its date and the date of the remission, commutation, pardon or reprieve with reasons for granting the same. Wyo. Const. Art. IV, §5

CRIMINAL RECORDS REVIEW COMMITTEE

Excerpt from the Constitution of Maine: Authority to Request an Opinion of the Justices

Article VI.
Judicial Power.

Section 3. To give opinion when required by Governor or either Branch of the Legislature. The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives.

Excerpts from recent Opinions of the Justice

A. Authority to Issue an Advisory Opinion

[¶9] The Maine Constitution places limitations on the authority of the Justices to provide advisory opinions, which represent the advice of the participating individual Justices. *Opinion of the Justices*, 2017 ME 100, ¶ 9, 162 A.3d 188; *see* Me. Const. art. VI, § 3. Such opinions are not binding in future cases and have no conclusive effect. *Opinion of the Justices*, 2017 ME 100, ¶ 9, 162 A.3d 188. They may, however, provide necessary guidance and analysis for decision-making by the other branches of government. *Id.* "The tension between the constitutionally required separation of powers and the constitutionally provided authority of the Justices of the Maine Supreme Judicial Court to provide official but nonbinding advice to the other Branches is addressed through the balance articulated in the requirements (1) setting out who may seek the Justices' advice, (2) inquiring whether that advice is sought as to important questions of law, and (3) providing that a solemn occasion must exist for the Justices' provision of such advice." *Id.* ¶ 17; *see* Me. Const. art. VI, § 3. The Justices must strictly observe these limitations on their authority. *Opinion of the Justices*, 2017 ME 100, ¶ 17, 162 A.3d 188.

Opinion of the Justices, 2023 ME 34, ¶¶ 8-9, 295 A.3d 1212, 1218–19.

c. Solemn Occasion

[¶ 21] … Over time … several guideposts have emerged to inform the Justices' exercise of their constitutionally provided authority to offer non-binding advice. These guideposts are judge-made parameters, not articulated in the Constitution. They each spring from a judicial effort to assure that we do not overstep our bounds with an unconstitutional foray into the clearly defined territory of the Legislative or Executive Branch.

i. Unusual Exigency

[¶ 22] We have determined that a solemn occasion is one that "arises when questions are of a serious and immediate nature, and the situation presents an unusual exigency."[8] There must, in other words, be some urgency that requires the Justices to provide advice to the other Branches. This aspect of the solemn occasion analysis is similar to the next element—that the issue be one of live gravity—but is subtly distinct in that it also addresses the requirement of a serious and unusual situation and infuses an element of temporal consideration.

ii. Live Gravity

[¶ 23] The question presented must be one of "live gravity," that is, one "of instant, not past nor future, concern."[9] The live gravity requirement precludes us from providing advice that "would relate to matters merely tentative, hypothetical and abstract."[10] The questioning Branch must be faced with the current need to

act.[11] For example, we declined to answer questions propounded by the House regarding the Governor's authority to override a veto when the Governor had not yet purported to veto any legislation.[12] Similarly, we have declined to answer when the questioning body adjourned and therefore was unable to receive the answer[13] and when the proposed legislation at issue had already expired and was therefore no longer before the Legislature for consideration.[14] To do so "would be an unwarrantable interference with the duties and functions of such future [Legislature or Governor]."[15]

iii. A Branch Must Ask for Itself

[¶ 24] A questioning entity may not seek an Advisory Opinion relating to the power, duty, or authority of another Branch of government because the body presenting the question has no ability to act in response to the Advisory Opinion.[16] We will therefore decline to answer a question when one Branch of government seeks our advice regarding the authority of another Branch to undertake an action.[17]

iv. Not Tentative, Hypothetical, or Remote

[¶ 25] Questions that "relate to matters merely tentative [or] hypothetical" present no solemn occasion.[18] Similarly, the question cannot be based on a contingency "so extremely remote that it need hardly be taken into consideration."[19]

v. Specific and Limited

[¶ 26] The questions presented must be "sufficiently precise that we can determine the exact nature of the inquiry."[20] The Justices must understand from the question presented what provisions of law they are being asked to examine.[21] Abstract or generalized questions about the constitutionality of a provision pursuant to the Maine or United States Constitution are not appropriate subjects for an Advisory Opinion.[22] The question also must be based on clear and compelling facts as established only in the order or record provided by the questioning body; otherwise, the question implicates too broad a range of potential factual and legal possibilities.[23] Justices will decline to answer questions when their resolution involves the determination of facts and the application of other provisions of law beyond those that have generated the inquiry.[24]

vi. Not Overly Complex

[¶ 27] Similarly, the Justices do not answer questions that are too complex to be answered in the absence of a case or controversy. In one matter, for example, the Justices opined, "The questions presented here require an analysis of intersecting laws, constitutional provisions, and facts. The complexity of the varying considerations renders it impossible for us to be confident of the law and other circumstances to such a degree as to leave no room for reasonable doubt."[25]

vii. Not Subject to the Tug of Litigation

[¶ 28] The question presented must be a matter applicable to the general public rather than private parties; it is "inexpedient to prejudice the question before any occasion has arisen calling for its legal determination."[26] Similarly, the question presents no solemn occasion when it inquires whether the Law Court will overrule a prior decision.[27]

viii. Doubt as to the Body's Authority

[¶ 29] A question presents a solemn occasion when the questioning body—the House, the Senate, or the Governor—"has serious doubts" as to its own authority to take some action pursuant to the Maine Constitution or existing statutes.[28] Exemplifying this principle, we have provided Advisory Opinions when the House, Senate, or Governor seeks an opinion as to the constitutionality of legislation currently pending before that body because, in those instances, the questioner seeks our guidance in determining its authority to approve the pending bill.[29]

Opinion of the Justices, 2017 ME 100, ¶¶ 20-31, 162 A.3d 188, 201–04, as revised (Sept. 19, 2017) (footnotes omitted).