



State of Maine  
130th Legislature, First Regular/Special Session

## Criminal Records Review Committee

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Office of Policy and Legal Analysis



**STATE OF MAINE  
130th LEGISLATURE  
FIRST REGULAR/SPECIAL SESSION**

**Criminal Records Review Committee  
December 2021**

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## **Executive Summary**

The Criminal Records Review Committee (the review committee) was established by Resolve 2021, chapter 121 to review the issues involved in sealing and expunging criminal records and to explore various options for assisting persons who have been convicted of crimes served their sentences to be productive members of the community without their convictions holding them back. The Joint Standing Committee on Judiciary supported the Resolve to take the place of six bills focused on criminal records. The Judiciary Committee has authority to report out a bill based on the review committee's recommendations. The membership of the review committee consists of 29 members representing a broad range of groups interested in civil rights, prisoner advocacy, victim's and survivor's rights and law enforcement, among others.

The review committee charge included a lengthy list of information to gather and review, and a directive to explore different approaches pursued by other states to restore rights and provide opportunities for people with criminal records.

The review committee received a "Resource Notebook" before the first meeting that detailed the record clearing laws and procedures in many states. The review committee accepted the term "record clearing" to cover the entire array of approaches to address the negative effect of bias against persons with criminal records, from limiting access of the public to criminal records to more thorough record clearing. "Record clearing" includes sealing records from the public – whether petition-based or automatic, the actual destruction of records so they are unavailable for all purposes going forward and vacatur (such as vacating a conviction). Some jurisdictions also offer "certificates of rehabilitation" or "certificates of employability" to eliminate or reduce the effect of a criminal record that is public. Laws that restrict the availability of criminal records – through sealing, destruction or other limitations – are often referred to as "clean slate" laws, although the approaches taken in different states' clean slate legislation vary widely.

The first three meetings of the review committee were focused entirely on collecting the broadest range of information about other record clearing programs, how criminal records are used by various licensing and credentialing authorities in Maine and the reliance by crime victims and survivors on the information that is available about convictions. In addition, the review committee received a detailed presentation about Maine's Criminal History Record Information Act, and the distinction between public criminal history record information and confidential criminal history record information. The fourth meeting included a presentation from a news media and journalist point of view, emphasizing the First Amendment perspective regarding continued access to accurate information and the right to publish accurate, newsworthy information that has been legally obtained.

During the fourth meeting the review committee began to develop recommendations and engaged in a brief discussion on the potential limitations on the Legislature's options to enact legislation that potentially encroach on the Governor's pardon and commutation powers. After a presentation on the logistics of sealing criminal records during the fifth meeting, the review committee resumed its discussion of recommendations. Review committee members recognized that there was not sufficient time to complete a full slate of recommendations to fulfill the responsibilities under the Resolve.

## **Recommendations**

The review committee, after five meetings, numerous presentations, testimony and serious discussion, makes the following recommendations.

**1. Reestablish the Criminal Records Review Committee**

A majority of the review committee recommends supporting LD 1818, Resolve, To Re-establish and Continue the Work of the Criminal Records Review Committee, to build on the progress made by the review committee in 2021 and move forward with additional legislation.

**2. Consider options to address questions of the Separation of Powers doctrine limitation on legislative authority to enact record clearing legislation**

A majority of the review committee recommends that the Judiciary Committee review options and report out legislation to address the Separation of Powers questions raised in *State v. Hunter*, 447 A.2d 797 (Me. 1982). It is unclear whether actions of the Legislature in sealing and therefore limiting public access to criminal records would encroach on the Governor's plenary pardon and commutation authority, rendering such actions unconstitutional. Removing or softening the barrier could give the Legislature options to provide opportunities for people who have been convicted of crimes.

**3. Consider proposals for petition-based records sealing as proposed by LD 1459, An Act Regarding a Post-judgement Motion by a Person Seeking To satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions, and associated suggestions**

A majority of the review committee recommends that the Judiciary Committee hold a public hearing on a process for sealing criminal history record information as proposed in LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking To Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions, with consideration of amendments proposed during the work of the Criminal Records Review Committee. In anticipation of the work of the review committee, the Judiciary Committee voted Ought Not To Pass on LD 1459 during the First Special Session without holding a public hearing on the legislation. A majority of the review committee believes a public hearing on the proposal, including presentation of the suggestions offered during the course of the review committee's meetings, would be very useful in developing comprehensive record clearing legislation.

Committee member Samantha Hogan, representing the Maine Press Association, submitted a minority report with regard to this recommendation.

Committee member Judith Meyers, representing the Maine Freedom of Information Coalition, submitted a minority report with regard to this recommendation.

## **I. Introduction**

### **Resolve 2021, chapter 121**

The Criminal Records Review Committee (the review committee) was established by Resolve 2021, chapter 121. The resolve is included as Appendix A. The membership of the review committee consists of 29 members. A membership list of the review committee is included as Appendix B.

The following are the duties of the review committee:

1. Review activities in other states that address the expungement, sealing, vacating of and otherwise limiting public access to criminal records;
2. Consider "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; and
  - B. 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; and
9. Develop options to manage criminal records.

The resolve also directs the review committee to submit to the Joint Standing Committee on Judiciary by December 3, 2021, a report that includes findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 130<sup>th</sup> Legislature.

### **Review Committee Resources**

The review committee held five meetings, summarized in Section II, of this report. The agendas are included in Appendix C-6. All meetings were streamed live on YouTube and the Legislature's audio streaming service.

The review committee's website, maintained by the Office of Policy and Legal Analysis, includes all the meeting dates, meeting materials, YouTube links and audio links: <https://legislature.maine.gov/criminal-records-review-committee> .

All the written materials presented to or distributed to the review committee have also been posted on the review committee's webpage, according to meeting date. The Resource Notebook, which is posted under committee materials, contains charts and detailed information about other states' records clearing laws.

## II. Review Committee Process

The review committee was authorized to meet four times and, pursuant to authorizing legislation, was required to submit a report by December 3, 2021. The review committee submitted a request to the Legislative Council seeking a fifth meeting and an extension to submit the report by December 15, 2021. The review committee met five times during the fall of 2021.

### October 18th Meeting

The first meeting of the review committee was held on October 18, 2021. Review committee members introduced themselves and, in a short sentence or two, stated what they understood to be the primary purpose of public access to criminal records.

Review committee member, Matthew Ruel, Director of the Maine State Police, State Bureau of Identification, and Anne Jordan, Manager of Criminal Process and Specialty Dockets, Maine Judicial Branch, spoke with the review committee about the management of criminal records in Maine. Review committee members learned that an understanding of Maine's criminal history record information system is foundational to considering and proposing a process for limiting public access to criminal records. Thus, they considered the following questions. What are criminal records? Who keeps them and where? What is the process for accessing criminal records? How are criminal records used? The review committee then discussed the terminology of clearing criminal records, including those listed below.

<b>Terminology of Clearing Criminal Records</b>	
Courtesy of Michael Hartman, National Conference of State Legislatures, 2021	
<b>Annulment</b>	The act of nullifying or making void.
<b>Destruction</b>	To damage (something) so thoroughly as to make it unusable, unreliable or nonexistent, to ruin.
<b>Dismissal</b>	Termination of an action, claim or charge without further hearing, especially before a trial; a judge's decision to stop a court case with an order or judgment that imposes no civil or criminal liability on the defendant with respect to the case.
<b>Erasure</b>	The removal of a conviction (especially for a first offense) from a person's criminal record.
<b>Expungement</b>	To remove from a record, list or book; to erase or destroy.
<b>Sealing</b>	To prevent access to (a document, record, etc.), especially by court order; to seal the record of the proceedings.
<b>Set-aside</b>	To annul or vacate (a judgment, order, etc.).
<b>Vacatur</b>	The act of annulling or setting aside.

### November 8th Meeting

The second meeting of the review committee was held on November 8, 2021. The meeting included a remembrance of dee Clarke, a review committee member who passed away prior to the meeting. Review committee members recognized her for her dedication to improving the lives of victims of human trafficking.

Matthew Ruel, Director of the Maine State Police, State Bureau of Identification, Assistant Attorney General Laura Yustak and Peggy Reinsch, Office of Policy and Legal Analysis, discussed with the review



committee criminal history record information and Title 15, Maine Revised Statutes, chapter 7 (the Criminal History Record Information Act, or CHRIA). See Appendix C-1. They discussed which criminal records are public criminal history record information and which are confidential criminal history record information. Equipped with this knowledge, review committee members could better understand record sealing laws in other states and consider options for Maine.

John Feeney, Chief Operating Officer, Department of Health and Human Services, Office of Child and Family Services, discussed with the review committee the use of criminal history record information in child welfare proceedings conducted by the department regarding abuse and neglect. Review committee members learned of the use of criminal history record information in child protective cases and in safety and permanency planning for families. Commissioner Anne Head, Department of Professional and Financial Regulation, discussed the use of criminal history record information in the department and in the Office of Professional and Occupational Regulation, and introduced the following persons to provide information about their offices' use of criminal history record information: Timothy Terranova, Assistant Executive Director of the Board of Licensure in Medicine; Judith Shaw, Administrator of the Office of Securities; and Kristine Fournier, Principal Consumer Credit Examiner, Bureau of Consumer Credit Protection. Commissioner Head stressed the importance of timely and accurate criminal history record information for licensing and regulating professions and occupations in order to ensure the protection of the public.

Tessa Mosher, Director of Victim Services, Department of Corrections, addressed the use of criminal history record information in the delivery of services to victims of crime. Review committee members learned that victims and survivors of crimes and their advocates rely on criminal history record information in safety planning. Michael Hartman, National Conference of State Legislators, presented information on record clearing and sealing laws in other states and their roles in relieving the negative consequences of having a criminal record that occur when a potential landlord, employer or educational institution learns of a person's past criminal record. Mr. Hartman highlighted laws in Arkansas, Colorado, Delaware, Indiana, Michigan and Nebraska. Materials regarding record sealing and laws to limit public access to criminal records, thereby reducing the possibility of negative consequences in Colorado, were prepared and distributed but there was not sufficient time for review committee discussion.

### **November 22nd Meeting**

The third meeting of the review committee was held on November 22, 2021. George Freeman, Executive Director, Media Law Resource Center, discussed media and journalist perspectives on clean slate and sealing laws and public access to criminal history record information. Mr. Freeman raised legal issues regarding public access and media reporting of criminal history record information and presented the position that prohibiting access and imposing criminal and civil penalties for reporting are unconstitutional restrictions on freedom of the press in violation of the First Amendment of the United States Constitution.

Catherine Moore, Lincoln County Register of Probate, provided information from the Maine Registers of Probate Association regarding the use in the Probate Courts of criminal history record information in name changes for adults and in adoption, guardianship and conservatorship matters.

Review committee members studied former Title 15, chapter 310, which provided a court process to restrict access to criminal records for certain persons and which was repealed by its own terms in 2019. Jonathan Sahrbeck, Cumberland County District Attorney, and Anne Jordan, Manager of Criminal Process and Specialty Dockets, Maine Judicial Branch, discussed with the committee the experience of

the courts with the chapter 310 motions and learned that the process is informally referred to as a pilot project. Chapter 310 provided a petition-based process for restricting access to criminal history record information regarding certain crimes committed by persons ages 18 through 20. See Appendix C-3. Information on the pilot project, which was repealed on October 1, 2019, is included under Recent Legislative History in this report.

Review committee member Jill Ward, Director, Maine Center for Juvenile Policy and Law, University of Maine School of Law, provided information to the review committee on Public Law 2021, chapter 365, An Act to Limit Access to Juvenile Case Records and Protect the Confidentiality of Juvenile History Record Information and on training that is now being provided with regard to implementation of the law. Jane Orbeton, Office of Policy and Legal Analysis, provided information on legislation that has been carried over from the First Regular Session and First Special Session of the 130th Maine Legislature to the Second Regular Session, and a listing of bill requests approved to date for introduction to the Second Regular Session. Peggy Reinsch, Office of Policy and Legal Analysis, presented information on the sealing of criminal records under former Title 15, Maine Revised Statutes, chapter 310 and the proposal for a petition-based process that is the subject of LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking to Satisfy the Requirements for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions. See Appendix C-4.

Review committee member Peter Lehman, Legislative Coordinator, Maine Prisoner Advocacy Coalition, presented perspectives on criminal history records following a person throughout life from an adult and juvenile prisoners' rights organization. Review committee member Michael Kebede, Policy Council, ACLU of Maine, provided perspectives from a civil liberties organization on the need for record clearing through expungement, vacatur or sealing of criminal records. Following these presentations, the review committee discussed the doctrine of Separation of Powers in the Maine Constitution and whether the review committee should recommend a Constitutional Resolution to grant authority to the Legislature to legislate regarding reprieves, commutations and pardons. The review committee discussed whether to recommend legislation to restrict dissemination and use of criminal history record information based wholly or in part on the provisions in LD 1459. A short discussion of the potential constitutional questions is included in Section III, of the report.

### **December 6th Meeting**

The fourth meeting of the review committee was held remotely on December 6, 2021. Anne Jordan, Manager of Criminal Process and Specialty Dockets, Maine Judicial Branch, and Matthew Ruel, Director of the Maine State Police, State Bureau of Identification, presented information on the mechanics of sealing criminal history record information, including notice from the courts to the State Bureau of Identification when a record is sealed.

Foster Bates, President, Maine State Prison Branch of the NAACP, provided information in response to the presentations of Peter Lehman and Michael Kebede at the November 22nd meeting. Mr. Bates emphasized the needs of persons being released from prison with regard to educational, housing and employment opportunities. Mr. Bates asked that attention be given to sealing or expunging convictions for marijuana offenses that have been decriminalized and to the possible use of certificates of employability, similar to those available in Michigan, for persons who complete a career or technical training program or educational degree while incarcerated. Jane Orbeton, Office of Policy and Legal Analysis, presented information on the Michigan Clean Slate laws passed in 2020 and the sealing and expungement laws in Massachusetts.

Prior to the meeting, the review committee received a letter from Timothy Feeley, Deputy Legal Counsel for Governor Janet Mills, providing the perspective of the Governor's Office on the proposals being considered by the review committee. The letter expressed concern over sweeping changes in the treatment of criminal history record information and urged the review committee to await the results of the recently enacted Fair Chance in Employment Act which is described in Section II. The letter from the Governor's Deputy Legal Counsel is included in Appendix C-8.

In advance of the meeting, the review committee also received a memorandum from retired Associate Justice Donald G. Alexander on criminal records review issues and information on the Uniform Criminal Records Accuracy Act. Justice Alexander described the use of criminal history record information in the courts, legal issues in limiting public access to criminal records and the possible interplay between confidential criminal history record information and criminal history record information that is subject to a court order limiting dissemination and use. See Appendix C-9.

The review committee then discussed the process and ideas for completing its duties and making recommendations. The following motions were made and recorded:

- To support re-establishing the Criminal Records Review Committee for 2022, to continue the progress made by the review committee in 2021 and to move forward with additional legislation. Motion by Michael Kebede, seconded by Courtney Allen. The vote was 21 members in favor, 2 abstentions, and 5 members absent. The voting sheet is included in Appendix C-10;
- To support presenting for a statewide referendum a Constitutional Resolution to amend Article V, Part First, Section 11 to grant to the Legislature authority to enact laws granting reprieves, commutations and pardons. Motion by Rep Harnett, seconded by Foster Bates. Motion tabled;
- To recommend to the Judiciary Committee that they hold a public hearing on the contents of LD 1459 and consider amendments proposed during the work of the Criminal Records Review Committee. Motion by Michael Kebede, seconded by Courtney Allen. Motion tabled.

### **December 13th Meeting**

The fifth meeting of the review committee was held on December 13, 2021. The meeting began with presentations of information requested during the fourth meeting. Anne Jordan, Manager of Criminal Process and Specialty Dockets, Maine Judicial Branch, provided information regarding denials of motions to seal criminal history under the pilot project on limiting access to certain criminal history record information, former Title 15, chapter 310. Matthew Ruel, Director of the Maine State Police, State Bureau of Identification, responding to inquiries from the December 6th meeting, provided information on criminal records of marijuana possession convictions, concluding that records of convictions after 1975 may indicate possession of a Schedule Z drug in violation of Title 17-A, section 1107-A, subsection 1 and may not indicate the name of the drug or the quantity. The lack of specificity in the records makes it difficult to sort out which convictions were based on marijuana, one of many Schedule Z drugs, without reviewing each charging instrument individually.

Jane Orbeton, Office of Policy and Legal Analysis, provided information requested by the review committee. Speaking in response to a question on whether Massachusetts law includes a process for revocation of a sealing order in the event of a new conviction, she stated that the office of the Massachusetts Commissioner of Probation Services confirmed that the state has no process for revocation if a person with a sealed conviction is convicted of a new crime. The pilot project in Maine pursuant to Title 15, chapter 310, did contain a process for revocation in the event of the person being convicted of a new crime, as did the proposed language in LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking to Satisfy the Requirements for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions. The review committee

learned of several states' use of certificates intended to discourage bias against a person with a criminal record in housing, employment and education. These certificates may be called, among other names, certificates of rehabilitation, certifications of employability or certificates of good conduct. They are intended to relieve potential negative consequences of having a criminal record. A person who is incarcerated may be required to complete an educational or training program while incarcerated. The law that establishes the certificate system may prohibit discrimination against a holder of such a certificate on the basis of a prior criminal record and may protect a landlord, employer or educational institution from civil liability arising from a claim of negligence in leasing, hiring or admission to the educational institution. The review committee proceeded into discussion and decision making, the substance of which is included in Section IV, of the report.

### **III. Background**

#### **A. Recent Legislative History**

##### **Legislation before the 130th Maine Legislature First Regular Session and First Special Session**

The Joint Standing Committee on Judiciary considered seven bills regarding public access to criminal history record information during the First Regular Session and the First Special Session of the 130th Legislature. In anticipation of the in-depth work of the Criminal Records Review Committee, the Judiciary Committee voted Ought Not to Pass on six bills. LD 1310, An Act Regarding Criminal Records, sponsored by Representative Rachel Talbot Ross, which is a concept draft to make changes to the laws regarding criminal records, was carried over pursuant to Joint Order H.P. 1302. The six bills that were voted Ought Not to Pass are the following:

- LD 216, An Act to Seal Marijuana Convictions and Civil Adjudications, sponsored by Representative Fecteau;
- LD 1055, Resolve, To Automatically Seal the Criminal Records Relating to Any Crimes Decriminalized in the 130th Legislature, sponsored by Representative Warren;
- LD 1210, An Act to Remove Barriers to Employment by Sealing the Records of Persons Convicted of Certain Nonviolent Crimes, sponsored by Representative Fecteau;
- LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking to Satisfy the Requirements for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions, sponsored by Representative Talbot Ross;
- LD 1465, An Act to Remove Barriers to Occupational Licensing Due to Criminal Records, sponsored by Representative O'Neil; and
- LD 1602, An Act Regarding Criminal Records, sponsored by Representative Talbot Ross.

##### **LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking to Satisfy the Requirements for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions**

The review committee studied in depth LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking to Satisfy the Requirements for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions. LD 1459 was of particular interest to the review committee because it proposed a court process for obtaining special restrictions on the dissemination and use of public criminal history record information.

- The bill proposed to establish a court process available to a person convicted of certain eligible Class D and E crimes for which the sentencing alternative had been completed 4 years previously as long as the person had no criminal convictions between the completion of the sentencing alternative and the filing of the motion.
- The bill proposed making eligible for the court order all Class D and Class E crimes except: sexual assaults; sexual exploitation of minors; sex trafficking, patronizing prostitution of a minor or a person with a mental disability; stalking or domestic violence stalking; crimes of domestic violence or involving domestic violence; certain crimes against a family or household member for which the person was convicted within the last 20 years; certain crimes of violation of a condition of release for which the person was convicted within the last 20 years; certain crimes of violations of a protective order; and the crime of cruelty to animals.
- The bill provided for a court hearing at which the person who filed the motion and that person's attorney and an attorney for the State could participate.
- The bill provided that the person who filed the motion would have the burden of showing by a preponderance of the evidence satisfaction of the requirements for the order.
- The bill provided that if the court issued an order restricting dissemination that the court would notify the Maine State Police, State Bureau of Identification, which would amend its records to ensure compliance and send notice of compliance to the person. The court would send a written copy of the order to the person, the prosecutor and the State Bureau of Identification.
- The bill provided a process for a court hearing and possible loss of eligibility for special restrictions on dissemination in the event of a subsequent criminal conviction.
- The bill provided exceptions to the special restrictions on dissemination and use of criminal history record information for the person who filed the motion for special restrictions, for a criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment, for the Secretary of State and the Department of Professional and Financial Regulation, Office of Securities, for financial institutions to comply with state or federal law, to victims of the crime and as provided by a court order on a finding of good cause.
- The bill designated as a Class E crime the intentional dissemination of criminal history record information by any person who knew the dissemination to be in violation of the law.
- The bill provided a process for appeal to the Supreme Judicial Court.
- The bill authorized a person whose criminal history record information had been approved for special restrictions on dissemination and use to respond to inquiries from other than criminal justice agencies by not disclosing the existence of the conviction.

#### **Public Law 2015, chapter 354**

The review committee also studied in depth Public Law 2015, chapter 354, An Act to Provide Special Restrictions on Dissemination and Use of Criminal History Record Information for Class E Crimes Committed by an Adult under 21 Years of Age. Public Law 2015, chapter 354 enacted Title 15, Maine Revised Statutes, chapter 310, which established a court process for obtaining special restrictions on the dissemination and use of public criminal history record information. The law contained an automatic repeal provision so that it expired by its own original terms on October 1, 2019. The law provided a process for motions to seal criminal history that was used in 2017, 2018, 2019 and 2020. The following chart shows data on the filing and disposition of motions to seal for the eight judicial regions of the state.

## Number of Motions Filed to Seal Criminal History

### 15 M.R.S. Chapter 310

Judicial Branch District Court Region*	2017					2018					2019					2020				
	Filed	G	D	W	P	Filed	G	D	W	P	Filed	G	D	W	P	Filed	G	D	W	P
1	1	0	1	0	0	0	0	0	0	0	3	0	3	0	0	3	0	0	0	3
2	0	0	0	0	0	0	0	0	0	0	7	2	5	0	0	2	1	1	0	0
3	1	1	0	0	0	7	1	5	1	0	3	3	0	0	0	1	0	1	0	0
4	1	0	1	0	0	1	1	0	0	0	3	3	0	0	0	1	0	1	0	0
5	7	6	0	0	1	4	3	1	0	0	6	3	2	1	0	0	0	0	0	0
6	2	1	1	0	0	1	1	0	0	0	1	0	1	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Statewide</b>	<b>12</b>	<b>8</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>13</b>	<b>6</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>23</b>	<b>11</b>	<b>11</b>	<b>1</b>	<b>0</b>	<b>7</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>3</b>

Key: G Granted D Denied W Withdrawn P Pending

\*Region 1 = York County; Region 2 = Cumberland County; Region 3 = Androscoggin, Franklin, Oxford Counties; Region 4 = Kennebec and Somerset Counties; Region 5 = Penobscot and Piscataquis Counties; Region 6 = Knox, Lincoln, Sagadahoc and Waldo Counties; Region 7 = Hancock and Washington Counties; and Region 8 = Aroostook County.

At the request of the review committee, Anne Jordan, Manager of Criminal and Specialty Dockets, Maine Judicial Branch, provided data on the reasons for denials of motions to seal criminal history record information filed under Title 15, chapter 310. A review of Judicial Branch records from 2017 to date reveals three petitions pending court action, two withdrawn by the petitioner, one on which no action has been taken, eight filed after the law had expired, twelve filed by a petitioner who was ineligible because of having more than one criminal conviction, one denied because the petitioner failed to appear at the hearing on the motion, twelve denied because the offense in question was not a Class E crime and four denied because the statutory waiting period after the date of conviction had not run. It was not possible to determine the reasons for denial on two additional petitions.

The provisions of Title 15 Maine Revised Statutes, chapter 310 are noted here because the chapter operated *de facto* as a pilot project and because of the close relationship between the provisions of chapter 310 and the provisions of LD 1459.

- Under chapter 310, a motion for special restrictions on dissemination and use was available to a person convicted of certain eligible Class E crimes committed while the person was between 18 and 21 years of age and for which the sentence had been completed 4 years previously. Other than sexual assaults, all Class E crimes were eligible crimes.
- The person must have had no other criminal convictions and no charges dismissed as a result of a deferred disposition and must not have been adjudicated as having committed a juvenile crime for which the hearing was open to the general public.
- The law provided for a court hearing at which the person who filed the motion and that person's attorney and an attorney for the State could participate.
- The person who filed the motion had the burden of showing by a preponderance of the evidence satisfaction of the requirements for the order.

- If the court issued such an order, it was required to provide a written copy of the order to the Maine State Police, State Bureau of Identification, which would amend its records to ensure compliance and send notice of compliance to the person. The court would then send a written copy of the order to the person, the prosecutor and the State Bureau of Identification.
- The law provided a process for a court hearing and possible loss of eligibility for special restrictions on dissemination in the event of a subsequent criminal conviction.
- The law provided exceptions to the special restrictions on dissemination and use of criminal history record information for the person who had filed the motion for special restrictions and for a criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment.
- It designated as a Class E crime the intentional dissemination of criminal history record information by any person who knew the dissemination to be in violation of the law.
- It provided a process for appeal to the Supreme Judicial Court.
- The law authorized a person whose criminal history record information had been approved for special restrictions on dissemination and use to respond to inquiries from other than criminal justice agencies by not disclosing its existence.
- The law provided an automatic repeal date of October 1, 2019.

#### **Public Law 2021, chapter 404**

The review committee reviewed Public Law 2021, chapter 404, An Act Relating to Fair Chance in Employment. Chapter 404 restricts the situations in which certain employers may inquire about a prospective employee's criminal history record information.

- The law applies to employers, including municipalities and political subdivisions but not including the legislative, executive or judicial branches of government and not including quasi-independent state entities and public instrumentalities of the State.
- The law prohibits an employer from requesting criminal history record information on an initial application form and prohibits pre-employment statements that a person with a criminal history may not apply or will not be considered.
- The law allows an employer to inquire about criminal history record information during an interview or once an employer has determined that the employee is qualified for the position. The law requires an employer that does inquire to offer a prospective employee the opportunity to explain the information and circumstances regarding any convictions, including post-conviction rehabilitation.
- The law contains exceptions for employment for which state or federal law creates a mandatory or presumptive disqualification based on criminal history and for employers who are prohibited by state or federal law from employing a person with a history of certain convictions if the questions asked are limited to those types of convictions.

#### **B. Separation of Powers**

An amendment to the Maine Constitution has been suggested as a way to ensure that legislation providing for the clearing of criminal records does not run afoul of the Separation of Powers clause as it applies to the Governor's exclusive authority in the area of pardons and commutations of sentences. That concern is based on a few Maine cases that addressed the exclusivity of the Governor's pardon and commutation power.

The Maine Supreme Judicial Court ruled in *State v. Hunter*, 447 A.2d 797 (Me. 1982) that the Judiciary does not have authority to resentence a person once the person has begun serving the sentence if the reduction is based on the person's postconviction behavior, even if the statute provides that authority.

Similarly, the Legislature's enactment of additional good time credit cannot be applied to those already in the custody of the Department of Corrections at the time of enactment, even if the statute explicitly applied the additional credit to those currently incarcerated. *Bossie v. State*, 488 A.2d 477 (Me. 1985). In addition, the Parole Board cannot grant a full discharge to a person sentenced to life once the person has successfully served a minimum amount of a life sentence, even if the statute authorizes that action. *Gilbert v. State*, 505 A.2d 1326 (Me. 1986). All three of these decisions were based on the language of the Maine Constitution that gives the Governor authority to grant pardons and commutations, with no similar pronouncements with regard to the Legislature. See Appendix C-2.

The Maine Constitution, Article V, Part First, Section 11 provides:

**Section 11. Power to pardon and remit penalties, etc.; conditions.** The Governor shall have power to remit after conviction all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. Such power to grant reprieves, commutations and pardons shall include offenses of juvenile delinquency.

The Maine Constitution, Article III provides:

**Section 1. Powers distributed.** The powers of this government shall be divided into three distinct departments, the legislative, executive and judicial.

**Section 2. To be kept separate.** No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

Although there are no cases directly addressing the sealing or expungement of criminal records, informal guidance to the review committee has suggested that any action that has the effect of a pardon or sentence commutation would be ruled unconstitutional by the Law Court.

### **C. Criminal History Record Information Act**

Resolve 2021, chapter 121, which established the Criminal Records Review Committee, directed the review committee to study the expungement, sealing, vacating of and otherwise limiting public access to criminal records, which takes place within the context of both the Criminal History Record Information Act ("CHRIA"), Title 16 Maine Revised Statutes, chapter 7, and the Freedom of Access Act ("FOAA"), Title 1 Maine Revised Statutes, chapter 13. From its first meeting to its last, the Criminal Record Review Committee studied CHRIA in depth. Central to the work of the review committee were the definitions in CHRIA, section 703 of administration of criminal justice, criminal justice agency, criminal history record information, confidential criminal history record information and public criminal history record information, and the provisions of the chapter that govern the dissemination of criminal history record information to the public and access to that information by the person who is the subject of the information. It is important to note that, unlike many states, Maine designates certain nonconviction information as confidential and prohibits its dissemination to the public.

The Criminal History Record Information Act governs the dissemination of criminal history record information by a Maine criminal justice agency. The following are important definitions in CHRIA that are central to understanding both the current treatment of criminal records and any proposals for changes to what information should be made available to the public.

- "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional



custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage and dissemination of criminal history record information. 16 §703, sub-§1.

- "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. 16 §703, sub-§4.
- "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. 16 §703, sub-§6.
- "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. 16 §703, sub-§3.

Criminal history record information is divided into public criminal history record information and confidential criminal history record information. Public criminal history record information is a public record as defined and for the purposes of the FOAA. As provided in Title 16, section 704, subsection 1, public criminal history record information may be disseminated by a criminal justice agency to any person, for any purpose and at any time. The dissemination of confidential criminal history record information by a criminal justice agency is limited by Title 16, section 705 and may occur only as authorized by statute.

- "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.
- "Confidential criminal history record information" means criminal history record information of the following types:
  - 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;
  - Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;
  - Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;
  - Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge;
  - 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;
  - Information disclosing that a criminal charge has been filed, if more than one year has elapsed since the date of the filing;
  - 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;
  - 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;
  - Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;
  - Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;
  - Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and
  - Information disclosing that a person has petitioned for and been granted a full and free pardon.

16 §703, sub-§2.

The dissemination of confidential criminal history record information by a criminal justice agency is very limited. Title 16, section 705 limits dissemination by a Maine criminal justice agency, whether directly or through any intermediary, only 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 criminal history record information or one or more of the types of confidential criminal history record information;
- 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;

- 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;
- 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, 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
- A public entity for purposes of international travel, such as issuing visas and granting of citizenship.

16 §705, sub-§1.

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. 16 §705, sub-§2.

In the interests of ensuring the most accurate record is provided, a Maine criminal justice agency, other than a court, must query the Department of Public Safety, State Bureau of Identification before disseminating any confidential criminal history record information for a noncriminal justice purpose. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency employment. 16 §705, sub-§3.

CHRIA provides that a person who intentionally disseminates confidential criminal history information knowing it to be in violation of any of the provisions of CHRIA commits the Class E crime of "unlawful dissemination of confidential criminal history record information." 16 §707.

The Criminal History Record Information Act does not apply to, and therefore does not address the dissemination of or access to, the following information:

- Posters, announcements or lists used for identifying or apprehending fugitives from justice or wanted persons;
- 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;
- Records of public judicial proceedings:
  - 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
  - From federal courts and courts of other states;
- Published court or administrative opinions not impounded or otherwise declared confidential;

- Records of public administrative or legislative proceedings;
- 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
- 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. (Note that “confidential criminal history record information includes information that a person has petitioned for and been granted a full and free pardon. 16 §703, sub-§2, ¶L.)

16 §708.

The Criminal History Record Information Act provides that 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 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 must 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. 16 §709.

#### **IV. Recommendations**

The members of the Criminal Records Review Committee recognized at the first meeting that because Resolve 2021, chapter 78 took effect on October 18th, it would be difficult to complete all the required responsibilities before the scheduled reporting date of December 3, 2021. The chairs requested and received approval from the Legislative Council to extend the reporting date and to add an additional meeting. Though pressed for time, the review committee identified resources, scheduled presentations and discussions to ensure that the foundational understanding of the members was accomplished. The review committee agreed to seek the reestablishment of the review committee in 2022 to complete the remaining discussions and continue the development of recommendations. Representative Talbot Ross has sponsored a new bill, LD 1818, Resolve, To Reestablish and Continue the Work of the Criminal Records Review Committee, for consideration during into the Second Regular Session of the 130th Legislature.

With the understanding that additional recommendations might be possible in 2022, the review committee focused its work this year on the idea of a petition-based system to restrict public access to criminal history record information related to most Class E and Class D crimes for which the person has completed the imposed sentence and a specified period of time has passed, using the language of LD 1459 as a starting point. LD 1459 was the product of an informal working group on criminal records that met in 2019 and 2020. The existing Criminal Records Review Committee’s membership is based on the participants in the informal working group.

##### **1. Reestablish the Criminal Records Review Committee**

The members of the review committee were provided a significant volume of information in electronic format and in presentations and question and answer sessions, but did not have sufficient time to fully

review all materials and make comprehensive recommendations. A majority of review committee members voted to support LD 1818, Resolve, To Reestablish and Continue the Work of the Criminal Records Review Committee, in the Second Regular Session. If the Judiciary Committee votes favorably and the resolve is finally passed during the Second Regular Session, the review committee can reconvene after the Second Regular Session adjourns in 2022.

A majority of the review committee supports this recommendation. Two members abstained from voting and five members were absent. The vote sheet is included in Appendix C-10.

## **2. Consider options to address questions of the Separation of Powers doctrine limitation on legislative authority to enact record clearing legislation**

A constant undercurrent to the review committee's discussion about possible legislation concerning record clearing – whether it be sealing, expungement, set-aside or vacatur – has been the Law Court's decision in *State v. Hunter*, 447 A.2d 797 (Me. 1982). Although that case, and cases that followed *Bossie v. State*, 488 A.2d 477 (Me. 1985) and *Gilbert v. State*, 505 A.2d 1326 (Me. 1986) do not apply directly to record clearing, there is significant concern that the Legislature's authority to make changes will be limited if the changes are interpreted to infringe on the Governor's pardon and commutation powers granted exclusively to that office under Article V, Part First, Section 11 of the Maine Constitution. It is not clear where the line is between authorized legislative activity and purely gubernatorial action. Would expungement's effects be so close to the effect of a pardon that it will be considered an encroachment on executive power? Would a person whose record is sealed have the same benefit as if pardoned if the statute authorizes that person to assert, without penalty, that the person has no criminal record?

To avoid this confusion and uncertainty going forward, the review committee discussed various possibilities to propose to the Judiciary Committee. After examining different constitutional amendment language, the review committee settled on a proposal that provides to the Judiciary Committee the final determination of language and methods to ensure the legislative authority to go forward. The review committee considered the following recommendation: That the Judiciary Committee review options and report out legislation to address the Separation of Powers questions raised in *State v. Hunter*, 447 A.2d 797 (Me. 1982).

A majority of the review committee supports this recommendation. Four members oppose the recommendation, six members abstained from voting and three members were absent. The vote sheet is included in Appendix C-10.

## **3. Consider proposals for petition-based records sealing as proposed by LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking To Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions, and associated suggestions**

The members of the review committee were disappointed that when it came time to discuss recommendations about legislation to start addressing the clearing of criminal records, there was insufficient time to recommend specific statutory language. In fact, the review committee was unable to thoroughly review the starting point, LD 1459, An Act Regarding a Post-judgment Motion by a Person Seeking To Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions, as well as all the considerations and proposed changes raised during the review committee's meetings. Although it is not clear to the review committee if the language of LD 1459 is the best way to approach record sealing, the review

committee recognizes that it represents a large volume of work by a range of participants and is worthy of a public hearing, especially if the concepts and language to be commented on include the considerations and proposed amendments raised during the review committee's work.

Several members noted that the language of LD 1459 and the proposed changes need thorough review and discussion and feel that supporting this recommendation was shifting responsibility to the Judiciary Committee. The review committee considered the following recommendation: That the Judiciary Committee hold a public hearing on a process for sealing criminal history record information as proposed in LD 1459, with consideration of amendments proposed during the work of the Criminal Records Review Committee.

A majority of the review committee supports the recommendation. Two members oppose the recommendation and submitted minority reports as explained below, seven members abstained from voting and three members were absent. The vote sheet is included in Appendix C-10.

### **Minority positions**

- Maine Press Association minority report: Committee member Samantha Hogan, representing the Maine Press Association, submitted a minority report with regard to the motion as follows.

The Maine Press Association opposes the motion to move forward with a public hearing on LD 1459 because the bill as drafted does not address concerns that it would infringe upon the First Amendment freedom of the press and its right to inform on matters of public interest. As written, LD 1459 would cut off public access to records about true, newsworthy convictions and make it a crime to disseminate information sealed through a process outlined in the bill. This bill strays too far in limiting the free exercise of the press and infringes on the public's right to know. The Maine Press Association proposed three amendments to begin to correct what MPA defects in the bill, which are restated again here:

Proposed text amendments to LD 1459, adding:

§2267. Unlawful Dissemination:

“An entity is not liable for damages or subject to criminal penalties under this section for reporting a public record of conviction that has been sealed by court order or operation of law, if that record was lawfully obtained.”

§2265 Special restrictions on dissemination and use of criminal history record information relating to criminal conviction:

“The press and public may petition the court to review records of a conviction sealed through this process.”

§2265 Special restrictions on dissemination and use of criminal history record information relating to criminal conviction:

“It is not a violation of this statute to report or publish information about a sealed conviction that is already in the public domain or was lawfully obtained.”

- Maine Freedom of Information Coalition minority report: Review Committee member Judith Meyers, representing the Maine Freedom of Information Coalition, submitted a minority report with regard to the motion as follows.

The Maine Freedom of Information Coalition opposes the motion to move forward with a public hearing on LD 1459 because it doesn't believe work on the draft bill is complete, or that all recommendations made to the Criminal Records Review Committee were considered, or that there was adequate discussion of language and processes contained in the proposed bill.

When the CRRC was formed, its members were given nine very specific duties, and while members invited comments and suggestions from interested parties, and reviewed activities in other states and reviewed "clean slate options" used in other states, these were informational presentations, and very few of the presentations resulted in consequential committee discussion.

Our ultimate task was to submit to the Joint Standing Committee on Judiciary a report that includes CRRC findings and recommendations, including suggested legislation.

The proposed legislation, LD 1459, which is the subject of the motion, is no different than the bill that was before Judiciary in June, despite concerns raised during CRRC meetings and recommendations submitted for consideration.

Over the length of five meetings the CRRC sat audience to multiple presentations and received volumes of additional information via email in between meetings. However, the committee did not discuss the contents of LD 1459 in detail, nor did it revisit the language contained in a comprehensive schematic prepared by OPLA staff with concerns and proposals for needed revisions to the bill.

The entire purpose of this review of criminal records and consideration of seal, expungement, vacating or otherwise limiting public access to criminal records was to give people who have been convicted of Class D and E crimes an opportunity to distance themselves from those convictions and start anew. While there seemed to be CRRC consensus on that notion, legislative language to reach that goal was not discussed in any depth.

MFOIC concerns with the proposal are below, none of which were discussed by the CRRC despite MFOIC raising these concerns during committee work.

- LD 1459, as proposed, requires anyone requesting to seal a criminal conviction to make a motion before the court, which would be set for hearing. A person has the right to have an attorney, but one will not be provided by the state. This introduces a startling inequity to the process of sealing, and creates an enormous obstacle for low-income Mainers to hire their own attorney while those with financial means would have relatively easy access. MFOIC does not support a tier of access to seal based on ability to pay. MFOIC recommends this language be removed and replaced with a manageable option for economically disadvantaged Mainers.
- Despite a request from MFOIC to examine precisely what Class D and E crimes would be included in the option to seal, no discussion was held on exactly what those crimes are and what precisely is being proposed for seal. This greatly limited MFOIC's ability to make an informed decision about the scope of conviction records that might be eligible for seal. Lists of Class E, D and C crimes were provided to committee members by email, but the contents of that mail were not discussed. Members merely remarked at times that it would be nice to extend the right to seal a conviction to higher-level crimes, such as felony OUIs. A general sentiment among members appeared to be that there was no clear rationale for why some crimes were included or excluded from the proposed sealing process outlined in LD 1459. How are we to recommend what records to seal if we don't discuss what those records are?

- Justice Alexander provided the CRRC with a lengthy and thoughtful memo that set forth a large number of concerns about the need to maintain public access and what he recognizes as Judicial Branch hurdles to seal, and he detailed recommendations for the committee to consider. The committee never reviewed that memo or considered his recommendations. Given the proposed bill would seal the very documents produced by the Judicial Branch, MFOIC believes Justice Alexander's memo should have been discussed and digested before any proposal was recommended to the Judiciary Committee, particularly when we invited comments and recommendations. To ignore the learned communication of a retired associate justice of the Maine Supreme Judicial Court was improper.
- CRRC member Matthew Ruel of the Maine State Police, State Bureau of Identification, brought forward very real concerns about how to identify and manage records, particularly older records, but his concerns around recordkeeping were not discussed in any depth and CRRC did not make any recommendations on managing that critical recordkeeping process if LD 1459 were to be enacted by the Legislature.
- Lastly, Governor Mills provided comments to CRRC just prior to its fourth meeting raising concerns about the committee's work, specifically about automatic eligibility for sealing based on the class of crime. The governor reminded CRRC members that legislation passed earlier this year addresses many of the concerns raised about collateral consequences of criminal convictions, and she discouraged sweeping changes until those measures are fully implemented and tried. Her comments were sent to committee members, but the committee did not discuss them. As with comments provided by Justice Alexander, MFOIC believes the governor's viewpoint ought to have at least seen the sunlight of a discussion, even if out of courtesy to the executive branch. Far too often, the members of CRRC were simply told there was "not enough time" to discuss recommendations in any depth.

When the Judiciary Committee passed the bill creating the CRRC last session, there were significant concerns raised about the short period of time in which CRRC would be given to do its work, concerns that indeed manifested. Repeatedly, members were told that previous iterations of the CRRC had worked hard to find consensus, yet with new stakeholders at the table there was an unwillingness to address their concerns and find new common ground. To put forward LD 1459 again without deep discussions of the proposed amendments is an abdication of the CRRC's responsibilities.

MFOIC does not support moving the proposed LD 1459 forward to public hearing without addressing significant concerns that were raised, and taking up recommendations -- made verbally and in writing -- during the course of five CRRC meetings. We recommend that CRRC retain the bill to work for further review and additional work in earnest prior to public hearing.

Committee members have already expressed a willingness to continue work, and the shared sense of commitment to the concept of sealing certain records to ease collateral consequences is true.



**APPENDIX A**

**Resolve 2021 chapter 121**

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

H.P. 408 - L.D. 563

**Resolve, To Create 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 members appointed as follows:

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 "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; and
  - B. 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; and
9. Develop options to manage criminal records.

**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. Report. Resolved:** That, no later than December 3, 2021, the review committee shall submit to the Joint Standing Committee on Judiciary a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 130th Legislature.

## **APPENDIX B**

### **Membership list, The Criminal Records Review Committee**

# Criminal Records Review Committee

## Resolve 2021, 121

### Membership List

<b>Name</b>	<b>Representation</b>
Senator Donna Bailey – Chair	Member of the Senate, appointed by the President of the Senate
Representative Rachel Talbot Ross – Chair	Member of the House, appointed by the Speaker of the House of Representatives
Senator Kimberley Rosen	Member of the Senate, appointed by the President of the Senate
Representative Richard Pickett	Member of the House, appointed by the Speaker of the House of Representatives
Courtney Allen	Representative of a substance use disorder treatment or recovery community
Foster Bates	Representative of a civil rights organization whose primary mission includes the advancement of racial justice
Frank D’Alessandro	Representative of an organization whose primary mission is to address issues related to poverty
Samantha Hogan	Representative of newspaper and other press interests
Peter Lehman	Representative of an adult and juvenile prisoners’ rights organization
Andrea Mancuso	Representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of domestic violence
Barbara Taylor	Representative of an organization that provides legal assistance on immigration
Marissa Bodnar	Representative of broadcasting interests
dee Clarke	Representative of a nonprofit organization whose primary mission is to advocate for victims and survivors of sexual exploitation and sex trafficking
Emma Halas-O’Connor	Representative of an organization that provides free civil legal assistance to citizens of the State with low incomes
Michael Kebede	Representative of a civil liberties organization whose primary mission is the protection of civil liberties
Hannah Longley	Representative of a mental health advocacy organization

Judith Meyer	Representative of a public records access advocacy organization
Elizabeth Ward Saxl	Representative of a statewide nonprofit organization whose mission includes advocating for victims and survivors of sexual assault
Jill Ward	Representative of an organization involved in advocating for juvenile justice reform
Honorable Brent Davis	Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member
Laura Yustak, Esq.	Attorney General or Attorney General's designee
Scott Landry	Commissioner of Dept. of Corrections or commissioner's designee
John Feeney	Commissioner of Dept. of Health and Human Services or commissioner's designee
Matthew Ruel	Commissioner of Dept. of Public Safety or commissioner's designee
Rep. Thomas Harnett	Chair of the Right to Know Advisory Committee or chair's designee
Chief Jared Mills	President Maine Chiefs of Police Association or president's designee
District Attorney Jonathan Sahrbeck	President of the Maine Prosecutors Association or the president's designee
Matthew Morgan, Esq	President of the Maine Association of Criminal Defense Lawyers or the president's designee
Sheriff Robert Young	President Maine Sheriffs' Association or president's designee

**APPENDIX C – 1**

**Criminal History Record Information Act, Title 16, chapter 7**



## CHAPTER 7

### CRIMINAL HISTORY RECORD INFORMATION ACT

#### §701. Short title

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

#### SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

#### §702. Scope; application

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

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

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

#### SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

#### §703. Definitions

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

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

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

A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summonsed or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is pending; [PL 2013, c. 267, Pt. A, §2 (NEW).]

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

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

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

E. Information disclosing that a criminal proceeding has been postponed for a period of more than one year or dismissed because the person charged is found by the court to be mentally incompetent to stand trial or to be sentenced; [PL 2013, c. 507, §1 (AMD).]

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

G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement; [PL 2013, c. 267, Pt. A, §2 (NEW).]

H. Information disclosing that a person has been acquitted of a criminal charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge; [PL 2013, c. 267, Pt. A, §2 (NEW).]

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

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

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

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

[PL 2017, c. 432, Pt. B, §1 (AMD).]

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

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

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

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

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

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

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

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

## SECTION HISTORY

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

#### §704. Dissemination of public criminal history record information

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

#### §705. Dissemination of confidential criminal history record information

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

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

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

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

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

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

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

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

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

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

**3. Required inquiry to State Bureau of Identification.** A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any confidential criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. "Noncriminal justice purpose" means a purpose other than for the administration of criminal justice or criminal justice agency employment. [PL 2013, c. 507, §3 (AMD).]

#### SECTION HISTORY

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

#### §706. Public information about persons detained following arrest

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

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

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

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

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

**2. Time and method of recording.** A Maine criminal justice agency shall record the information under subsection 1 immediately upon delivery of an arrested person to the criminal justice agency for detention. The criminal justice agency shall record and maintain the information in chronological order and keep the information in a suitable, permanent record. The information required by this section may be combined by a sheriff with the record required by Title 30-A, section 1505. [PL 2013, c. 267, Pt. A, §2 (NEW).]

**3. Information public.** The information required to be recorded and maintained by this section is public criminal history record information. [PL 2013, c. 267, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

**§707. Unlawful dissemination of confidential criminal history record information**

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

[PL 2021, c. 293, Pt. B, §4 (AMD).]

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

**SECTION HISTORY**

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

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

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

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

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

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

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

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

[PL 2017, c. 432, Pt. B, §2 (AMD).]

**SECTION HISTORY**

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

**§709. Right to access and review**

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

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

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

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the criminal justice agency shall notify the requesting person in writing either that the criminal justice agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal must include the reasons for the refusal, the procedure established by the criminal justice agency for requesting a review by the head of the criminal justice agency of that refusal and the name and business address of that official. [PL 2013, c. 267, Pt. A, §2 (NEW).]

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

Disputed criminal history record information disseminated by the criminal justice agency with which the requesting person has filed a statement of disagreement must clearly reflect notice of the dispute after the filing of such a statement. A copy of the statement must be included, along with, if the criminal justice agency determines it appropriate, a copy of a concise statement of the criminal justice agency's reasons for not making the amendment or correction requested. [PL 2013, c. 267, Pt. A, §2 (NEW).]

**4. Judicial review.** If an administrative appeal brought pursuant to subsection 3 is denied by the head of the criminal justice agency, that decision is final agency action subject to appeal to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. [PL 2013, c. 267, Pt. A, §2 (NEW).]

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

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

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

[PL 2013, c. 267, Pt. A, §2 (NEW).]

#### SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

#### **§710. Application to prior Maine criminal history record information**

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

#### SECTION HISTORY

PL 2013, c. 267, Pt. A, §2 (NEW).

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**APPENDIX C - 2**

**Maine Constitution –  
Article III and Article V, Part First, Section 11**

# CONSTITUTION OF THE STATE OF MAINE

## 2013 ARRANGEMENT

### 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 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.

**APPENDIX C – 3**

**Title 15, chapter 310 (repealed)**

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND FIFTEEN

—  
S.P. 79 - L.D. 210

**An Act To Provide for Special Restrictions on Dissemination and Use of  
Criminal History Record Information for Class E Crimes Committed by an  
Adult under 21 Years of Age**

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

Sec. 1. 15 MRSA c. 310 is enacted to read:

**CHAPTER 310**

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

**§2251. Definitions**

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

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

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

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

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

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

**§2252. Statutory prerequisites for obtaining special restrictions on dissemination and use of criminal history record information for a criminal conviction**

The special restrictions on dissemination and use of criminal history record information for a criminal conviction specified in section 2255 apply only if:

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

**2. 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 not 21 years of age;

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

**4. Other state convictions.** The eligible criminal conviction is the only criminal conviction of the person in this State, and the person has not had a criminal charge dismissed as a result of a deferred disposition pursuant to Title 17-A, chapter 54-F and has not been adjudicated as having committed a juvenile crime for which the hearing was open to the general public under section 3307;

**5. Convictions in another jurisdiction.** The person has no criminal convictions from another jurisdiction; and

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

**§2253. Motion; persons who may file**

A person may file a written motion in the underlying criminal proceeding seeking a court determination that the person satisfies the statutory prerequisites specified in section 2252 for obtaining the special restrictions on dissemination and use of criminal history record information relating to a criminal conviction as specified in section 2255. The written motion must briefly address each of the statutory prerequisites.

**§2254. Motion and hearing; process**

**1. Filing motion.** A motion filed pursuant to section 2253 must be filed in the underlying criminal proceeding. After a motion has been filed, the clerk shall set the motion for hearing.

**2. Counsel.** The person filing a motion pursuant to section 2253 has the right to employ counsel but is not entitled to assignment of counsel at state expense.

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

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

**5. Hearing; certification of results.** The judge or justice shall hold a hearing on the motion 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 2252, the court shall find the person entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2255 and shall issue a written order certifying this determination. 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 2252, the court shall deny the motion and issue a written order certifying this determination. The order must contain written findings of fact supporting the court's determination. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State pursuant to subsection 3.

**6. Notice to State Bureau of Identification.** If the court determines pursuant to subsection 5 that a person has established by a preponderance of the evidence each of the statutory prerequisites specified in section 2252, a copy of the court's written order certifying its determination must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification upon receipt of the order shall promptly alter its records relating to the person's eligible criminal conviction to reflect that future dissemination of this criminal history record information must be pursuant to section 2255 rather than pursuant to Title 16, section 704. The State Bureau of Identification shall notify the person of compliance with that requirement.

**7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty to notify.** Notwithstanding that a person has been determined by a court pursuant to subsection 5 to be entitled to the special restrictions on dissemination and use of criminal history record information relating to a criminal conviction specified in section 2255, if at any time subsequent to the court's determination the person is convicted of a new crime in this State or in another jurisdiction, the new conviction extinguishes that entitlement. 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 entitlement identifying the new conviction, including the jurisdiction, court and docket number of the 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 its apparent existence and offer the person an opportunity at a hearing to contest the fact of a new conviction. If a hearing is requested by the person, 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 does not have the new conviction. 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 convicted of the new crime and as a consequence is no longer entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2255 and shall issue a written order certifying this determination. 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. 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.

8. Notice to State Bureau of Identification of new crime. If the court determines under subsection 7 that a person has been convicted of a new crime and as a consequence is no longer eligible for the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2255, a copy of the court's written order certifying its determination must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification upon receipt of the order shall alter its records relating to the person's criminal conviction to reflect that dissemination of this criminal history record information is pursuant to Title 16, section 704 rather than pursuant to section 2255. It shall notify the person of compliance with that requirement.

**§2255. Special restrictions on dissemination and use of criminal history record information relating to criminal conviction**

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 is confidential and may not be disseminated by a criminal justice agency, whether directly or through any intermediary, except:

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

2. Criminal justice agency. 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.

**§2256. Limited disclosure of eligible criminal conviction**

A person who has a criminal conviction eligible for the special restrictions on dissemination and use of criminal history record information under section 2255 may

respond to inquiries from other than criminal justice agencies by not disclosing its existence without being subject to any sanctions.

**§2257. Unlawful dissemination**

A person who intentionally disseminates criminal history record information relating to a criminal conviction in violation of section 2255 knowing it to be in violation is guilty of unlawful dissemination as provided in Title 16, section 707.

**§2258. Review of determination of eligibility; review of determination of subsequent criminal conviction**

A final judgment entered under section 2254, subsection 5 or 7 may be reviewed by the Supreme Judicial Court.

**1. Appeal by the person.** A person aggrieved by the final judgment under section 2254, 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.

**2. Appeal by the State.** If the State is aggrieved by the final judgment under section 2254, 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.

**§2259. Repeal**

This chapter is repealed October 1, 2019.

**Sec. 2. 16 MRSA §707, sub-§1**, as enacted by PL 2013, c. 267, Pt. A, §2, is amended to read:

**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 or if the person intentionally disseminates criminal history record information relating to a criminal conviction in violation of Title 15, section 2255 knowing it to be in violation.

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

**JUDICIAL DEPARTMENT**

**Courts - Supreme, Superior and District 0063**

Initiative: Provides funds for an anticipated increase in the number of motions filed, including funds for judge and clerk services and one-time computer programming costs.



<b>GENERAL FUND</b>	<b>2015-16</b>	<b>2016-17</b>
Personal Services	\$7,290	\$7,290
All Other	\$14,706	\$3,706
<b>GENERAL FUND TOTAL</b>	<u>\$21,996</u>	<u>\$10,996</u>

**APPENDIX C – 4**

**LD 1459 An Act Regarding a Post-judgement Motion by Person  
Seeking to Satisfy the Prerequisites for Obtaining Special  
Restrictions on the Dissemination and Use of Criminal History  
Record Information for Certain Criminal Convictions**



# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1459

H.P. 1075

House of Representatives, April 12, 2021

**An Act Regarding a Post-judgment Motion by a Person Seeking To Satisfy the Prerequisites for Obtaining Special Restrictions on the Dissemination and Use of Criminal History Record Information for Certain Criminal Convictions**

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

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

ROBERT B. HUNT

Clerk

Presented by Representative TALBOT ROSS of Portland.

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

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

3 CHAPTER 310-A

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

8 §2261. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **§2263. Motion; persons who may file**

27 A person may file a written motion in the underlying criminal proceeding seeking a  
28 court determination that the person satisfies the statutory prerequisites specified in section  
29 2262 for obtaining the special restrictions on dissemination and use of criminal history  
30 record information relating to a criminal conviction as specified in section 2265. The  
31 written motion must briefly address each of the statutory prerequisites.

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

33 **1. Filing motion.** A motion filed pursuant to section 2263 must be filed in the  
34 underlying criminal proceeding. After a motion has been filed, the clerk shall set the  
35 motion for hearing.

36 **2. Counsel.** The person filing a motion pursuant to section 2263 has the right to  
37 employ counsel but is not entitled to assignment of counsel at state expense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **§2267. Unlawful dissemination**

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

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

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

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

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

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

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



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## SUMMARY

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

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

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

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

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

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

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

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

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

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

**APPENDIX C – 5**

**Side-by-side comparison of chapter 310 and  
proposed chapter 310-A, with comments**

COMPARISON OF TITLE 15, CHAPTER 310 (repealed October 1, 2019) WITH LD 1459 (PROPOSED CHAPTER 310-A)

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
<p>CHAPTER 310</p> <p>POST-JUDGMENT MOTION BY PERSON SEEKING TO SATISFY THE PREREQUISITES FOR OBTAINING SPECIAL RESTRICTIONS ON DISSEMINATION AND USE OF CRIMINAL HISTORY RECORD INFORMATION FOR CERTAIN CRIMINAL CONVICTIONS</p>	<p>CHAPTER 310-A</p> <p>POST-JUDGMENT MOTION BY PERSON SEEKING TO SATISFY THE PREREQUISITES FOR OBTAINING SPECIAL RESTRICTIONS ON DISSEMINATION AND USE OF CRIMINAL HISTORY RECORD INFORMATION FOR CERTAIN CRIMINAL CONVICTIONS</p>	
<p>§225L. Definitions</p> <p>As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.</p>	<p>§2261. Definitions</p> <p>As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.</p>	
<p>1. Administration of criminal justice.</p> <p>"Administration of criminal justice" has the same meaning as in Title 16, section 703, subsection 1.</p>	<p>1. Administration of criminal justice.</p> <p>"Administration of criminal justice" has the same meaning as in Title 16, section 703, subsection 1.</p>	<p>16 §703 current law</p> <p>1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage and dissemination of criminal history record information.</p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
<p>2. <b>Another jurisdiction.</b> "Another jurisdiction" has the same meaning as in Title 17-A, section 2, subsection 3-B.</p>	<p>2. <b>Another jurisdiction.</b> "<u>Another jurisdiction</u>" has the same meaning as in <u>Title 17-A, section 2, subsection 3-B.</u></p>	
<p>3. <b>Criminal history record information.</b> "Criminal history record information" has the same meaning as in Title 16, section 703, subsection 3.</p>	<p>3. <b>Criminal history record information.</b> "<u>Criminal history record information</u>" has the same meaning as in <u>Title 16, section 703, subsection 3.</u></p>	<p>16 §703 current law</p> <p>3. <b>Criminal history record information.</b> "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:</p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
		<p>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.</p>
<p>4. Criminal justice agency. "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.</p>	<p>4. Criminal justice agency. "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.</p>	<p>16 §703 current law 4. Criminal justice agency. "Criminal justice agency" means a federal, state or State of Maine</p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
		<p>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.</p>
	<p><b>5. Dissemination.</b> "Dissemination" has the same meaning as in Title 16, section 703, subsection 6.</p>	<p><b>16 §703 current law</b></p> <p><b>6. Dissemination.</b> "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.</p>
<p><b>6. Eligible criminal conviction.</b> "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.</p>	<p><b>6. Eligible criminal conviction.</b> "<u>Eligible criminal conviction</u>" means a conviction for a current or former Class D or Class E crime, except:</p>	<p>Chapter 310 (repealed) applied only to Class E crimes, and not to any crimes in 17-A, chapter 11 (Sexual assaults)</p> <p>Chapter 310-A proposed to apply to Class D and Class E crimes, with several exceptions as follows</p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
	<p>A. <u>A conviction for a current or former Class D crime under Title 17-A, chapter 11 or 12 or Title 17-A, section 852, 853 or 855:</u></p>	<p>Title 17-A, chapter 11 (Sexual assaults = Class A, B, C, D and E crimes)  Title 17-A, chapter 12 (Sexual exploitation of minors = Class A, B, C and D crimes)  Title 17-A, §852 (Aggravated sex trafficking = Class B crime)  Title 17-A, §853 (Sex trafficking = Class D and Class C crimes)  Title 17-A, §855 (Patronizing prostitution of minor or person with mental disability = Class D and Class C crimes)</p>
		<p><i>Anne Jordan:  (1) suggests adding as an excluded crime endangering the welfare of a child by knowingly permitting the child to enter or remain in a house of prostitution (Class D) 17-A §554(1)(A).</i></p>
	<p>B. <u>A conviction for stalking under Title 17-A, section 210-A or 210-C:</u></p>	<p>17-A §210-A (Stalking = Class B, C and D crimes)  17-A §210-C (Domestic violence stalking = Class C and D crimes)</p>
	<p>C. <u>Unless a sentence has been commuted, any conviction involving a crime of domestic violence or any crime involving domestic violence, as defined in section 1003, subsection 3-A:</u></p>	<p>Any crime of domestic violence or involving domestic violence.   <i>Drafting note: ¶C makes a DV crime for which the sentence has been commuted eligible for special restrictions. Why is commutation (setting aside or modifying a sentence by the Governor) a basis for including certain crimes in eligible convictions? A commutation is currently</i></p>



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		<p><i>within the definition of public criminal history.</i></p> <p><b>15 §1003, sub-§3-A: current law</b></p> <p><b>3-A. Crime involving domestic violence.</b> "Crime involving domestic violence" means:</p> <p>A. As defined in Title 17-A, a crime of domestic violence assault (§207-A = <i>Class C and D crimes</i>), domestic violence criminal threatening (§209-A = <i>Class C and D crimes</i>), domestic violence terrorizing (§210-B = <i>Class C and D crimes</i>), domestic violence stalking (§210-C = <i>Class C and D crimes</i>) or domestic violence reckless conduct (§211-A = <i>Class C and D crimes</i>); and</p> <p>B. A violation of a protective order under Title 19-A, section 4011 (= <i>Class C and D crimes</i>), the alleged victim of which is a family or household member as defined in Title 19-A, section 4002, subsection 4.</p>
		<p><b>19-A §4002, sub-§4 current law</b></p> <p><b>4. Family or household members.</b> "Family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses,</p>

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		<p>parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of Title 15, section 1023, subsection 4, paragraph B-1 and Title 15, section 1094-B, this chapter and Title 17-A, sections 15, 207-A, 208-D, 208-E, 208-F, 209-A, 210-B, 210-C, 211-A, 1802, 1804 and 2301, subsection 1 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For purposes of this subsection, "domestic partners" means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.</p>
	<p><u>D. If 20 years have not yet passed since the judgment of conviction was entered, a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4, regardless of whether the relationship was an element of that crime.</u></p>	<p>Any crime against a family or household member within 20 years after conviction.</p> <p><i>Drafting note: What is the rationale for using different starting points to measure certain time periods – date of conviction in ¶¶D and E vs date of completion of sentence in §2262, sub-§2 for time elapsed since completion of sentence?</i></p>
	<p><u>E. If 20 years have not yet passed since the judgment of conviction was entered, a</u></p>	<p>A violation of release (preconviction or post-conviction) when the underlying charge involves a crime against a family or</p>

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	<p><u>violation of a condition of release, pursuant to section 1092, committed while the defendant is released on preconviction or post-conviction bail for a charge that involves a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4, regardless of whether the relationship was an element of that crime;</u></p>	<p>household member within 20 years of conviction.</p> <p><i>Drafting note: What is the rationale for using different starting points to measure certain time periods – date of conviction in 11D and E vs date of completion of sentence in §2262, sub-§2 for time elapsed since completion of sentence?</i></p>
	<p>F. <u>A violation of a protective order, as specified in section 321, subsection 6; Title 5, section 4659, subsection 2; Title 17-A, section 506-B; Title 19-A, section 4011, subsection 3; or Title 19-A, section 4012, subsection 5; and</u></p>	<p>Protective orders:</p> <ul style="list-style-type: none"> <li>• 15 §321 (Protective orders in crimes between family members)</li> <li>• 5 §4659 (Protection from harassment orders)</li> <li>• 17-A §506-B (Violation of protective order; cross-references protection from harassment orders, protective orders in crimes between family members and protection from abuse orders)</li> <li>• 19-A §4011, sub-§3 (warrantless arrest for criminal violation of a protection from abuse order)</li> </ul> <p><i>Drafting note: §4011, sub-§3 is not a crime - remove?</i></p> <ul style="list-style-type: none"> <li>• 19-A §4012, sub-§5 (required arrest by law enforcement office when criminal violation under 4011 or 15 c. 12-A or a violation of 17-A §§208-D, 208-E, 208-F)</li> </ul> <p><i>Drafting note: §4012, sub-§5 is not a crime – remove?</i></p>

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	<p><u>G. A conviction for cruelty to animals under Title 17, section 1031.</u></p>	<p>17 §1031 Cruelty to animals (Class D and Class C crimes)</p> <p><i>Drafting note: language throughout bill could be simplified by defining "sealed record" as a record for which the court has issued a written order certifying that the person is entitled to special restrictions on dissemination and use of criminal history record information under §2264.</i></p>
<p><b>§2252. Statutory prerequisites for obtaining special restrictions on dissemination and use of criminal history record information for a criminal conviction</b></p> <p>The special restrictions on dissemination and use of criminal history record information for a criminal conviction specified in section 2255 apply only if:</p> <p><b>1. Eligible criminal conviction.</b> The criminal conviction is an eligible criminal conviction;</p> <p><b>2. Age of person at time of commission.</b> 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 not 21 years of age;</p>	<p><b>§2262. Statutory prerequisites for obtaining special restrictions on dissemination and use of criminal history record information for a criminal conviction</b></p> <p><u>The special restrictions on dissemination and use of criminal history record information for a criminal conviction specified in section 2265 apply only if:</u></p> <p><b>1. Eligible criminal conviction.</b> <u>The criminal conviction is an eligible criminal conviction;</u></p>	
		<p>Chapter 310 was limited to those who were at least 18 (so out of the juvenile system) but under 21 years of age when the crime was committed.</p> <p>Chapter 310-A proposed no age range, so applies to all</p>

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<p><b>3. Time since sentence fully satisfied.</b> At least 4 years have passed since the person has fully satisfied each of the sentencing alternatives imposed for the eligible criminal conviction;</p>	<p><b>2. Time since sentence fully satisfied.</b> At least 4 years have passed since the person has fully satisfied each of the sentencing alternatives imposed for the eligible criminal conviction;</p>	<p>Waiting period once whole sentence completed = 4 years. <i>Drafting note: May need to add, "convictions listed in §2261, sub-§6, ¶¶D and E must also satisfy the waiting period of 20 years after conviction."</i></p> <p><i>Suggestions made to change time period, possibly different for different crimes.</i></p>
<p><b>4. Other state convictions.</b> The eligible criminal conviction is the only criminal conviction of the person in this State, and the person has not had a criminal charge dismissed as a result of a deferred disposition pursuant to Title 17-A, chapter 54-F and has not been adjudicated as having committed a juvenile crime for which the hearing was open to the general public under section 3307;</p>	<p><b>3. Other state convictions.</b> The person has not been convicted of another criminal violation 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 between the time at which the person fully satisfied each of the sentencing alternatives imposed for the most recent eligible criminal conviction and the filing of the motion under this chapter;</p>	<p>Chapter 310 provided that the person is not eligible if they have any other criminal convictions in this State or if they had a criminal charge dismissed as a result of a deferred disposition, or if they had been adjudicated as committing a juvenile offense for which the hearing was open (equivalent of murder, Class A, Class B, Class C and some Class D)</p> <p>Chapter 310-A proposed that the person is not eligible if they have any other criminal convictions in this State or if they had a criminal charge dismissed as a result of a deferred disposition – and specifies that that happened after the sentence was completed for the most recent eligible conviction and the filing of the motion to seal. This clearly indicates that multiple convictions could be eligible to be sealed.</p>
		<p><i>Note requirements:</i> <i>(1) eligible criminal conviction;</i></p>

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		<p>(2) 4 years passed after completing sentencing alternatives;</p> <p>(3) no other Maine criminal convictions;</p> <p>(4) no deferred disposition dismissals between completion of sentencing alternatives and filing of motion for sealing.</p>
<p><b>5. Convictions in another jurisdiction.</b> The person has no criminal convictions from another jurisdiction; and</p>	<p><b>4. Convictions in another jurisdiction.</b> <u>The person has no criminal convictions from another jurisdiction between the time at which the person fully satisfied each of the sentencing alternatives imposed for the most recent eligible criminal conviction and the filing of the motion under this chapter; and</u></p>	<p>Chapter 310 provided that a person was not eligible to have a Maine conviction sealed if the person had any convictions in another jurisdiction.</p> <p>Chapter 310-A proposed to allow sealing if there were no convictions in other jurisdictions in the time since the Maine sentence was completed and the filing of the petition.</p> <p><i>Question: Are prior convictions from other jurisdictions intended to be disqualifying under Chapter 310-A?</i></p>
<p><b>6. Pending criminal charges.</b> The person has no presently pending criminal charges in this State or in another jurisdiction.</p>	<p><b>5. Pending criminal charges.</b> The person has no presently pending criminal charges in this State or in another jurisdiction.</p>	<p>No pending charges</p>
<p><b>§2253. Motion; persons who may file</b> A person may file a written motion in the underlying criminal proceeding seeking a court determination that the person satisfies the statutory prerequisites specified in section 2252</p>	<p><b>§2263. Motion; persons who may file</b> A person may file a written motion in the underlying criminal proceeding seeking a court determination that the person satisfies the statutory prerequisites specified in section 2262</p>	<p>This would be considered a “petition-based” (rather than “automatic” record sealing process.</p> <ul style="list-style-type: none"> <li>It is up to the person to file a motion to request sealing</li> </ul>

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<p>for obtaining the special restrictions on dissemination and use of criminal history record information relating to a criminal conviction as specified in section 2255. The written motion must briefly address each of the statutory prerequisites.</p>	<p>for obtaining the special restrictions on dissemination and use of criminal history record information relating to a criminal conviction as specified in section 2265. The written motion must briefly address each of the statutory prerequisites.</p>	<ul style="list-style-type: none"> <li>The motion must be filed in the underlying criminal proceeding (the one in which the person was convicted).</li> </ul>
<p><b>§2254. Motion and hearing; process</b></p> <p><b>1. Filing motion.</b> A motion filed pursuant to section 2253 must be filed in the underlying criminal proceeding. After a motion has been filed, the clerk shall set the motion for hearing.</p>	<p><b>§2264. Motion and hearing; process</b></p> <p><b>1. Filing motion.</b> A motion filed pursuant to section 2263 must be filed in the underlying criminal proceeding. After a motion has been filed, the clerk shall set the motion for hearing.</p>	<p>Once the motion is filed, the clerk schedules a hearing before the court.</p>
<p><b>2. Counsel.</b> The person filing a motion pursuant to section 2253 has the right to employ counsel but is not entitled to assignment of counsel at state expense.</p>	<p><b>2. Counsel.</b> The person filing a motion pursuant to section 2263 has the right to employ counsel but is not entitled to assignment of counsel at state expense.</p>	<p>The person filing has the right to have an attorney, but one is not provided by the State.</p>
<p><b>3. Representation of the State.</b> The prosecutorial office that represented the State in the underlying criminal proceeding shall 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.</p>	<p><b>3. Representation of the State.</b> 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.</p>	<p>The State is represented by the prosecutorial office that prosecuted the person resulting in the conviction (most likely a DA's office, but could be the AG)</p>
<p><b>4. Evidence.</b> The Maine Rules of Evidence do not apply to a hearing on a motion under this section, and evidence presented at a</p>	<p><b>4. Evidence.</b> The Maine Rules of Evidence do not apply to a hearing on a motion under this section, and evidence presented at a</p>	<p>Trying to make this process easy to navigate, the Rules of Evidence do not</p>

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<p>hearing by the participants may include testimony, affidavits and other reliable hearsay evidence as permitted by the court.</p>	<p>hearing by the participants may include testimony, affidavits and other reliable hearsay evidence as permitted by the court.</p>	<p>apply, and the court may admit reliable hearsay.</p>
<p><b>5. Hearing; certification of results.</b> The judge or justice shall hold a hearing on the motion 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 2252, the court shall find the person entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2255 and shall issue a written order certifying this determination. 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 2252, the court shall deny the motion and issue a written order certifying this determination. 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.</p>	<p><b>5. Hearing; certification of results.</b> <u>The judge or justice shall hold a hearing on the motion 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, the court shall find the person entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2265 and shall issue a written order certifying this determination. 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, the court shall deny the motion and issue a written order certifying this determination. 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.</u></p>	<p>If, after the hearing, the court determines that the person meets all the requirements, the court shall find the person entitled to the sealing action and issues an order stating that.</p> <p>If the court finds the person does <u>not</u> meet the requirements, then the court must deny the motion.</p> <p>The order must contain written findings of fact supporting the determination.</p> <p><i>Drafting note: should the order designate the record as "confidential criminal history" under CHR/IA rather than create a different set of rules under 2265? If there is a different set of rules, potential conflicts need to be identified and resolved. See comment under §2265.</i></p>
		<p><i>George Freeman stated that sealing as in LD 1459 violates US Supreme Court rulings protecting freedom of the press to report newsworthy, accurate and legally</i></p>



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<p><b>6. Notice to State Bureau of Identification.</b> If the court determines pursuant to subsection 5 that a person has established by a preponderance of the evidence each of the statutory prerequisites specified in section 2252, a copy of the court's written order certifying its determination must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification upon receipt of the order shall promptly alter its records relating to the person's eligible criminal conviction to reflect that future dissemination of this criminal history record information must be pursuant to section 2255 rather than pursuant to Title 16, section 704. The State Bureau of Identification shall notify the person of compliance with that requirement.</p>	<p><b>6. Notice to State Bureau of Identification.</b> If the court determines pursuant to subsection 5 that a person has established by a preponderance of the evidence each of the statutory prerequisites specified in section 2262, a copy of the court's written order certifying its determination must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification for all criminal offenses deemed retainable pursuant to Title 25, section 1547. The State Bureau of Identification upon receipt of the order shall promptly amend its records relating to the person's eligible criminal conviction to reflect that future dissemination of this criminal history record information must be pursuant to section 2265 rather than pursuant to Title 16, section 704. The State Bureau of Identification shall send notification of compliance with that requirement to the person's last known address.</p>	<p>obtained information.</p> <p>The court sends an order certifying the determination to SBI and SBI must change its records accordingly <u>not to</u> release the information of that conviction.</p> <p><i>Matthew Ruel:</i> <i>(1) suggests requiring electronic transmittal of the order certifying its determination to seal records instead of a copy of the court's written order.</i></p>
<p><b>7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty to notify.</b> Notwithstanding that a person has been determined by a court pursuant to subsection 5 to be entitled to the special restrictions on dissemination and use of criminal history record information relating to a criminal conviction specified in section 2255, if at any time</p>	<p><b>7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty to notify.</b> Notwithstanding that a person has been determined by a court pursuant to subsection 5 to be entitled to the special restrictions on dissemination and use of criminal history record information relating to a criminal conviction specified in section 2265, if at any time</p>	<p>If the person is convicted of a new crime in Maine or another jurisdiction, the person must file a written notice with the court.</p> <p>If the person fails to file the notice and the court finds out about the conviction, the court will hold a hearing to give the</p>

<p style="text-align: center;"><b>CHAPTER 310 SUNSETTED IN 2019</b></p>	<p style="text-align: center;"><b>LD 1459</b> <b>PROPOSED CHAPTER 310-A</b></p>	<p style="text-align: center;"><b>NOTES</b> <i>(Italics indicate member and presenter comments and technical issues.)</i></p>
<p>subsequent to the court's determination the person is convicted of a new crime in this State or in another jurisdiction, the new conviction extinguishes that entitlement. 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 entitlement identifying the new conviction, including the jurisdiction, court and docket number of the 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 its apparent existence and offer the person an opportunity at a hearing to contest the fact of a new conviction. If a hearing is requested by the person, 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 does not have the new conviction. 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 convicted of the new crime and as a consequence is no longer entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2255 and shall issue a written order certifying this determination. If, at the conclusion of the hearing, the court determines that the person has</p>	<p>subsequent to the court's determination the person is convicted of a new crime in this State or in another jurisdiction, the new conviction extinguishes that entitlement. 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 entitlement identifying the new conviction, including the jurisdiction, court and docket number of the 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 its apparent existence and offer the person an opportunity at a hearing to contest the fact of a new conviction. If a hearing is requested by the person, 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 does not have the new conviction. 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 convicted of the new crime and as a consequence is no longer entitled to the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2265 and shall issue a written order certifying this determination. If, at the conclusion of the hearing, the court determines that the person has</p>	<p>person a chance to prove the person does not have a new conviction.</p> <p>A new conviction means the person loses the special restriction on the dissemination of the person's criminal record.</p>

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<p>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. 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.</p>	<p><u>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. 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.</u></p>	<p><i>Matthew Morgan;</i> <i>(1) suggested that at sentencing the Court could provide information about sealing.</i></p> <p><i>Anne Jordan asked the Judicial Branch Office of Information Technology for information about automatic sealing when the Odyssey system is functional.</i></p>
<p><b>8. Notice to State Bureau of Identification of new crime.</b> If the court determines under subsection 7 that a person has been convicted of a new crime and as a consequence is no longer eligible for the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2255, a copy of the court's written order certifying its determination must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification upon receipt of the order shall alter its records relating to the person's</p>	<p><b><u>8. Notice to State Bureau of Identification of new crime.</u></b> <u>If the court determines under subsection 7 that a person has been convicted of a new crime and as a consequence is no longer eligible for the special restrictions on dissemination and use of the criminal history record information relating to the criminal conviction as specified in section 2265, a copy of the court's written order certifying its determination must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification upon receipt of the order shall promptly amend its records relating to the</u></p>	<p>If the court determines that the person has been convicted of a new crime, the court issues an order that "unseals" the record.</p> <p>SBI must promptly amend its records to make the public information available again.</p>

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<p>criminal conviction to reflect that dissemination of this criminal history record information is pursuant to Title 16, section 704 rather than pursuant to section 2255. It shall notify the person of compliance with that requirement.</p>	<p><u>person's criminal conviction to reflect that dissemination of this criminal history record information is pursuant to Title 16, section 704 rather than pursuant to section 2265. The State Bureau of Identification shall send notification of compliance with that requirement to the person's last known address.</u></p>	
<p><b>§2255. Special restrictions on dissemination and use of criminal history record information relating to criminal conviction</b></p> <p>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 is confidential and may not be disseminated by a criminal justice agency, whether directly or through any intermediary, except:</p>	<p><b>§2265. Special restrictions on dissemination and use of criminal history record information relating to criminal conviction</b></p> <p><u>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 is confidential and may not be disseminated by a criminal justice agency, whether directly or through any intermediary, except:</u></p>	<p>The court order to restrict dissemination and use overrides the designation of the conviction information as <u>public</u>. Criminal justice agencies are prohibited from disseminating it directly or through any intermediary -- with the listed exceptions.</p>
		<p><i>Drafting note: What is the rationale for creating two types of nonpublic criminal history information (confidential CHRI under CHRI Act and records subject to the special restrictions in §2265) with different exceptions allowing release?</i></p> <p><i>This creates a conflict regarding public access. For example: as written DHHS child welfare services will have access to confidential history for purposes of abuse and neglect investigations but not have access to records sealed under §2264.</i></p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
		<p><i>If separate treatment is created for this category of convictions, potential conflicts should be identified and addressed.</i></p> <p><i>Suggestion: Use the CHRIA as a baseline – Designate records sealed under §2264 as confidential criminal history record information under 16 MRS 703, and, in addition, any additional restrictions created by §2265, and any additional exceptions allowing dissemination as allowed under 2265.</i></p>
<p><b>1. Subject of conviction.</b> To the person who is the subject of the criminal conviction or that person's designee; and</p>	<p><b>1. Subject of conviction.</b> To the person who is the subject of the criminal conviction or that person's designee;</p>	<p>The person always has access to the information.</p> <p><i>Barbara Taylor:</i> <i>(1) it is critical to retain the ability of a person to access their own criminal record (need for immigration purposes).</i></p>
<p><b>2. Criminal justice agency.</b> To a criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment.</p>	<p><b>2. Criminal justice agency.</b> To a criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment.</p>	<p>Criminal justice agencies always have access for the purposes of:</p> <ul style="list-style-type: none"> <li>• the administration of criminal justice and</li> <li>• criminal justice agency employment.</li> </ul>
<p>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</p>	<p>For the purposes of this subsection, 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 eligible criminal</p>	<p>The sealed record can be used by a prosecuting attorney for the prosecution of the person for a NEW crime, even if documents involved are or become public.</p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
<p>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.</p>	<p>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;</p>	
	<p><b>3. Secretary of State.</b> To the Secretary of State to ensure compliance with federal motor vehicle law;</p>	<p>The Secretary of State has access to the sealed record to ensure compliance with federal motor vehicle law.</p> <p><i>Drafting note: Should the Secretary of State have access to these records for purposes of complying with and implementing state, as well as federal motor vehicle laws?</i></p>
	<p><b>4. Victims.</b> To the victim or victims of the crime related to the conviction or:</p>	<p>The victim of the crime or the victim's agent or family has access to the sealed record.</p>
	<p>A. If the victim is a minor, to the parent or parents, guardian or legal custodian of the victim; or</p>	
	<p>B. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, to an immediate family member, guardian, legal custodian or attorney representing the victim;</p>	

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
		<p><i>Tessa Mosher, Director of Victims Services, DOC:</i></p> <p><i>(1) The Office of Victims Services and victim advocates need criminal record information for safety planning before and after conviction and service of sentence.</i></p>
	<p><u>5. Office of Securities. To the Department of Professional and Financial Regulation, Office of Securities to ensure compliance with securities laws pursuant to Title 32, section 16412, subsection 4, paragraph C:</u></p>	<p>The Office of Securities has access to the sealed record to ensure compliance with securities laws.</p> <p><b>32 §16412, sub-§4, ¶C current law</b></p> <p><b>4. Grounds for discipline. A</b> person may be disciplined under subsections 1 to 3 if the person or, in the case of a broker-dealer or investment adviser, the broker-dealer or investment adviser, a partner, officer or director of the broker-dealer or investment adviser, a person occupying a similar status or performing similar functions or a person directly or indirectly controlling the broker-dealer or investment adviser:</p> <p>...</p> <p>C. Has pleaded guilty or nolo contendere to or been convicted of murder or a Class A, B or C crime or a felony or within the previous 10 years has pleaded guilty or nolo contendere to or been convicted of a Class D or E crime or a misdemeanor involving a security, a commodity future or option contract or an aspect of a business involving securities,</p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
		<p>commodities, investments, franchises, insurance, banking or finance or any crime indicating a lack of fitness to engage in the securities business;</p>
		<p><i>Catherine Moore, Maine Assoc. of Registers of Probate:</i></p> <p><i>(1) Probate Courts need access to criminal records for adult name changes, adoptions, guardianships and conservatorships.</i></p> <p><i>Anne Head, Commissioner DPFR:</i></p> <p><i>(1) 5 agencies in DPFR and 6 affiliated licensing boards use criminal record information as required by state and federal law and national standards for certain professions.</i></p>
	<p><u>6. Financial institutions. To 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</u></p>	<p>Financial institutions (banks, credit unions) can access the sealed record if required by federal or state law for the position of employment or board.</p>
	<p><u>7. Pursuant to court order. In accordance with an order issued on a finding of good cause by a court of competent jurisdiction. Good cause includes a finding that access to the criminal history record information may be necessary for the determination of any issue before the court.</u></p>	<p>A court – in Maine or another jurisdiction – can order access to the sealed record based on good cause. “Good cause” includes a finding that the sealed record may be necessary to determine an issue before the court.</p>



CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
		<p><i>Samantha Hogan, Maine Press Assoc suggested:</i></p> <p><i>1) Add that the press and public may petition the court to review records of a conviction sealed through this process;</i></p> <p><i>(2) Add "it is not a violation of this statute to report or publish information about a sealed conviction that is already in the public domain or was lawfully obtained."</i></p>
<p><b>§2256. Limited disclosure of eligible criminal conviction</b></p> <p>A person who has a criminal conviction eligible for the special restrictions on dissemination and use of criminal history record information under section 2255 may respond to inquiries from other than criminal justice agencies by not disclosing its existence without being subject to any sanctions.</p>	<p><b>§2266. Limited disclosure of eligible criminal conviction</b></p> <p><u>A person who has a criminal conviction eligible for the special restrictions on dissemination and use of criminal history record information under section 2265 for which the court has determined the person is entitled to special restrictions on dissemination may respond to inquiries from other than criminal justice agencies by not disclosing its existence without being subject to any sanctions.</u></p>	<p>The person whose record is sealed may respond to inquiries – other than inquiries from criminal justice agencies – by not disclosing the existence of the record, and will not be subject to sanctions.</p>
<p><b>§2257. Unlawful dissemination</b></p> <p>A person who intentionally disseminates criminal history record information relating to a criminal conviction in violation of section 2255 knowing it to be in violation is guilty of unlawful dissemination as provided in Title 16, section 707.</p>	<p><b>§2267. Unlawful dissemination</b></p> <p><u>A person who intentionally disseminates criminal history record information relating to a criminal conviction in violation of section 2265 knowing it to be in violation is guilty of unlawful dissemination as provided in Title 16, section 707.</u></p>	<p>Intentionally sharing a sealed record is the crime of unlawful dissemination. (Class E crime)</p> <p><b>16 §707 current law</b></p> <p><b>§707. Unlawful dissemination of confidential criminal history record information</b></p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
		<p>1. <b>Offense.</b> 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 or if the person intentionally disseminates criminal history record information relating to a criminal conviction in violation of Title 15, section 2255 knowing it to be in violation.</p> <p>2. <b>Classification.</b> Unlawful dissemination of confidential criminal history record information is a Class E crime.</p>
		<p><i>Samantha Hogan, Maine Press Assoc suggested.</i></p> <p><i>(1) An entity is not liable for damages or subject to criminal penalties under this section for reporting a public record of conviction that has been sealed by court order or operation of law if that record was lawfully obtained.</i></p> <p><i>Drafting note: Clarify to whom the dissemination penalty applies. The criminal justice agency providing the information initially? Anyone who is in possession of the information? Does it matter how the person came into possession of the information?</i></p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
<p><b>§2258. Review of determination of eligibility; review of determination of subsequent criminal conviction</b></p> <p>A final judgment entered under section 2254, subsection 5 or 7 may be reviewed by the Supreme Judicial Court.</p>	<p><b>§2268. Review of determination of eligibility; review of determination of subsequent criminal conviction</b></p> <p><u>A final judgment entered under section 2264, subsection 5 or 7 may be reviewed by the Supreme Judicial Court.</u></p>	<p>A final judgment to seal or not seal, or to unseal may be reviewed by the Supreme Judicial Court.</p>
<p><b>1. Appeal by the person.</b> A person aggrieved by the final judgment under section 2254, 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.</p>	<p><b>1. Appeal by the person.</b> A person aggrieved by the final judgment under section 2264, subsection 5 or 7 may not appeal as of right. <u>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.</u></p>	<p>A person aggrieved by a sealing decision may appeal, but it is discretionary (the Court does not have to hear the appeal).</p>
<p><b>2. Appeal by the State.</b> If the State is aggrieved by the final judgment under section 2254, 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.</p>	<p><b>2. Appeal by the State.</b> <u>If the State is aggrieved by the final judgment 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.</u></p>	<p>The State has a right to appeal, and the Attorney General is not required to weigh in before the appeal is filed.</p>
<p><b>§2259. Repeal</b></p> <p>This chapter is repealed October 1, 2019.</p>		

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
<p><b>Sec. 2. 16 MRSA §707, sub-§1</b>, as enacted by PL 2013, c. 267, Pt. A, §2, is amended to read:</p> <p><b>1. Offense.</b> 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 or if the person intentionally disseminates criminal history record information relating to a criminal conviction in violation of Title 15, section 2255 knowing it to be in violation.</p>	<p><b>Sec. 2. 16 MRSA §707, sub-§1</b>, as amended by PL 2015, c. 354, §2, is further amended to read:</p> <p><b>1. Offense.</b> A person other than a person receiving confidential criminal history record information pursuant to section 2265, subsection 4 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 or if the person intentionally disseminates criminal history record information relating to a criminal conviction in violation of Title 15, section 2255 knowing it to be in violation.</p>	<p>Title 16, §707 is amended to provide that victim (or victim's family or agent) who properly receives the sealed criminal record is not subject to penalties for sharing the record.</p>
		<p><i>Emma Halas-O'Connor and George Freeman suggest:</i></p> <p><i>(1) Add to Maine Human Rights Act protection against discrimination based on criminal record.</i></p> <p><i>Michael Kebede suggests:</i></p> <p><i>(1) Constitutional Resolution giving power to grant reprieves, commutations and pardons to Legislature;</i></p> <p><i>(2) Provide expungement and await legal challenge based on separation of powers.</i></p> <p><i>George Freeman suggests:</i></p> <p><i>(1) Prohibit employer asking about arrest record and ban discrimination based on arrest record;</i></p>

CHAPTER 310 SUNSETTED IN 2019	LD 1459 PROPOSED CHAPTER 310-A	NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i>
		<p><i>(2) Issue Certificate of Good Standing and prohibit discrimination based on criminal record.</i></p> <p><i>Rep Talbot Ross suggests:</i></p> <p><i>(1) A 1-yr time period for record of summons or arrest to become confidential under CHRJ Title 16§703(2)(A).</i></p>

**APPENDIX C – 6**

**Meeting Agendas**

## CRIMINAL RECORDS REVIEW COMMITTEE

**Remote Meeting**  
**Monday, October 18, 2021**  
**1:00 – 4:00 p.m.**  
**Via ZOOM**  
Streaming on YouTube

- I Welcome – Chairs, Senator Donna Bailey and Representative Rachel Talbot Ross  
Individual introductions: In one or two words or a short sentence, what is the primary purpose of public access to criminal records?  
Resource notebook
- II Overview of Review Committee’s responsibilities under Resolve 2021, chapter 121  
Expectations to achieve by December 15th  
Expectations for this meeting
- III Presentation: Records landscape in Maine  
*Invited: Matthew Ruel, Director, State Bureau of Identification, Maine Department of Public Safety*  
*Invited: Anne Jordan, Criminal Process & Specialty Dockets Manager, Maine Judicial Branch*
- What are criminal records?
  - What criminal records are kept, who keeps criminal records, where are criminal records kept, what is the process for accessing criminal records?
  - How are criminal records used?
  - What happens to records of noncriminal adjudications?
  - Nonconviction information related to alleged crimes
- IV What is “Clearing of criminal records”?  
Glossary  
Options in Maine
- V Planning for Meeting #2 on November 8, 2021
- VI Adjourn

### Future Meetings:

- Monday, November 8, 2021, 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)
- Monday, November 22, 2021, 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)
- Monday, December 6, 2021 (if extension approved), 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)
- Monday, December 13, 2021 (if extension and additional meeting approved), 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)

## CRIMINAL RECORDS REVIEW COMMITTEE

### Meeting #2

Monday, November 8, 2021, 1:00 – 4:00 p.m.

In person in State House Room 228, via ZOOM and Streaming on YouTube

I Presentations on Maine law on criminal history record information and current uses of criminal history record information

- **Matthew Ruel, SBI, Laura Yustak, AAG, and Peggy Reinsch, OPLA**, discussion of criminal history record information:
  - What criminal history record information is public and what is confidential?
  - Use of criminal history record information in occupational and professional credentialing, licensing, employment and in contracting and administering grants with federal funds
- **John Feeney, DHHS**, discussion of the use of criminal history record information in DHHS child welfare proceedings regarding abuse and neglect
- **Catherine Moore, Register of Probate, Lincoln County**, discussion on use of criminal history record information in Maine Probate Court proceedings
- **Anne Head, Commissioner of Department of Professional and Financial Regulation and Director of the Office of Professional and Occupational Regulation, Tim Terranova, Assistant Executive Director of Board of Licensure in Medicine, Judy Shaw, Administrator of the Office of Securities and Kristine Fournier, Principal Consumer Credit Examiner, Bureau of Consumer Credit Protection**, discussion of the use of criminal history record information in the Department of Professional and Financial Regulation. See also the letter submitted to the Criminal Records Review Committee by the Bureau of Insurance.
- **Tessa Mosher, Director of Victims Services, Department of Corrections**, discussion of victims' perspectives on record clearing and sealing laws

II Presentations of information on clean slate/record sealing laws in other states

- **Michael Hartman, National Conference of State Legislatures**, discussion of effective elements of record clearing and sealing laws from other states
- **Peggy Reinsch, OPLA**, discussion of Colorado constitutional limitations, record sealing law and collateral consequences law

III Committee discussion of whether to enact criminal history record clearing or sealing legislation

IV Planning for Meeting #3 on November 22, 2021

V Adjourn

#### Future Meetings:

- Monday, November 22, 2021, 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)
- Monday, December 6, 2021, 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)
- Monday, December 13, 2021, 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)



## AGENDA - CRIMINAL RECORDS REVIEW COMMITTEE

### Meeting #3

Monday, November 22, 2021, 1:00 – 4:00 p.m.

Meeting will be held via ZOOM and Streaming on YouTube

I. Issues regarding media and journalist perspectives on clean slate and sealing laws and public access to criminal history record information

- **George Freeman, Esq., Executive Director, Media Law Resource Center**

II. Public and private criminal history record information in Maine

- **Catherine Moore, Register of Probate, Lincoln County**, discussion of the use of criminal history record information in Maine Probate Court proceedings
- **DA Jonathan Sahrbeck and Anne Jordan, Maine Judicial Branch**, discussion of Maine pilot project special restrictions on the dissemination of criminal history record information, former 15 MRSA chapter 310
- **Jill Ward, Maine Center for Juvenile Policy and Law**, discussion of PL 2021, chapter 365 on juvenile justice records
- **Jane Orbeton, OPLA**, discussion of carried over and pending legislation regarding confidentiality/use of criminal history record information
- **Peggy Reinsch, OPLA**, discussion of sealing criminal history records under former Title 15, chapter 310 and proposed Title 15, chapter 310-A (as presented in LD 1459).

III. Requested information

- **Peter Lehman**, Maine Prisoner Advocacy Coalition, perspectives from a representative of an adult and juvenile prisoners' rights organization
- **Michael Kebede**, American Civil Liberties Union, perspectives from a representative of a civil liberties organization

IV. Beginning committee discussion of whether to enact criminal history record clearing or sealing legislation, including whether to recommend legislation containing the provisions of LD 1459 and any amendments to those provisions and legislation to amend the Maine Constitution to enable expungement of criminal history record information

V. Planning for Meeting #4 on December 6, 2021

VI. Adjourn

#### Future Meetings:

- Monday, December 6, 2021, 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)
- Monday, December 13, 2021, 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)

## AGENDA - CRIMINAL RECORDS REVIEW COMMITTEE

### Meeting #4

Monday, December 6, 2021, 1:00 – 4:00 p.m.

The meeting will be held via ZOOM.

The meeting may be watched on YouTube at: <https://youtu.be/iPobesPGe-w>.

#### I. Requested information

- **Anne Jordan, the Judicial Branch and Matthew Ruel, the Maine State Police, State Bureau of Identification**, will provide remarks on the mechanics of sealing criminal history record information; automatic and petition-based motion processes; automated notice by the court when special restrictions are ordered on the dissemination and use of criminal history record information.
- **Foster Bates, President of the Maine State Prison NAACP Prison Branch**, will provide remarks as follows: (1) responses to the presentations of Peter Lehman and Michael Kebede and any following discussion at the review committee meeting on November 22 and (2) perspectives on criminal record sealing and expungement from a civil rights organization whose primary mission includes the advancement of racial justice.

#### II. **Jane Orbeton, OPLA**, summary of Michigan Clean Slate package of laws from 2020 and Massachusetts sealing and expungement laws

#### III. Continuing review committee discussion of:

A. Whether to recommend re-establishment of the Criminal Records Review Committee in 2022 to report to the 131<sup>st</sup> Maine Legislature?

B. Whether to recommend a Constitutional Resolution to amend Article V of the Maine Constitution to give to the Legislature the power to grant reprieves, commutations and pardons of criminal convictions?

C. Whether to recommend a petition-initiated, court process for expunging, sealing or restricting access to criminal history record information?

#### IV. Planning for final meeting, Meeting #5 on December 13, 2021

#### V. Adjourn

#### Future Meeting:

- Monday, December 13, 2021, 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)

## AGENDA - CRIMINAL RECORDS REVIEW COMMITTEE

### Meeting #5

Monday, December 13, 2021, 1:00 – 4:00 p.m.

The meeting will be held via ZOOM.

The meeting will be broadcast on YouTube at: <https://youtu.be/iPobesPGe-w> and through the Legislature's live audio broadcast at <https://legislature.maine.gov/Audio/#436>.

#### I. Requested information

- **Anne Jordan, the Judicial Branch**, information requested on:
  - (1) Class C felonies.
  - (2) Reasons for denials of the motions for restricted access under the pilot project.
- **Matthew Ruel, the Maine State Police, State Bureau of Identification**, information requested on:
  - (1) With regard to convictions for possession of marijuana, whether the criminal history record of the conviction shows that the drug was marijuana and the amount?
  - (2) Can criminal history record information that has been sealed be later released by the SBI or FBI?
- **Jane Orbeton, OPLA**, information requested on:
  - (1) Various types of rehabilitation certificates in use in other states, including data on use and effectiveness.
  - (2) Laws on unsealing convictions in Maine (Title 15, former chapter 310 and proposed chapter 310-A) and Massachusetts.
  - (3) Legal requirements and process for unsealing in Massachusetts.

#### II. Continuing review committee discussion of:

A. Whether to recommend a Constitutional Resolution to amend the Maine Constitution to grant to the Legislature the authority to enact laws granting reprieves, commutations and pardons of criminal convictions that would be concurrent with the Governor's powers?

B. Whether to recommend to the Judiciary Committee that they hold a public hearing on a process for sealing criminal history record information as proposed in LD 1459, with consideration of amendments proposed during the work of the Criminal Records Review Committee?

#### III. Review and discussion of preliminary draft report

#### IV. Adjourn

**APPENDIX C – 7**

**An Act Relating to Fair Chance in Employment  
Public Law 2021, chapter 404**

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

H.P. 845 - L.D. 1167

An Act Relating to Fair Chance in Employment

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

Sec. 1. 26 MRSA §600-A is enacted to read:

**§600-A. Criminal history record information; employment application**

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

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

B. "Employer" means a person in this State who employs individuals. "Employer" includes municipalities and political subdivisions of the State, but does not include an employer of an individual who holds a position in the legislative, executive or judicial branch of State Government or a position with a quasi-independent state entity or public instrumentality of the State. "Employer" includes a person acting in the interest of an employer directly or indirectly.

**2. Initial employee application form.** Except as provided in subsection 4, an employer may not:

A. Request criminal history record information on the employer's initial employee application form; or

B. State on an initial employee application form or advertisement or specify prior to determining a person is otherwise qualified for the position that a person with a criminal history may not apply or will not be considered for a position.

**3. Interviews.** An employer may inquire about a prospective employee's criminal history record information during an interview or once the prospective employee has been determined otherwise qualified for the position. An employer that inquires about a prospective employee's criminal history record information shall afford to the prospective employee the opportunity to explain the information and the circumstances regarding any convictions, including post-conviction rehabilitation.

**4. Exceptions for initial employee application form.** An employer may inquire about criminal convictions on an initial employee application form or state on an initial

employee application form or advertisement or otherwise assert that a person with a criminal history may not apply or will not be considered for a position if:

A. The position is one for which a federal or state law or regulation or rule creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses, and the questions on the initial employee application form are limited to the types of criminal offenses creating the disqualification; or

B. The employer is subject to an obligation imposed by a federal or state law or regulation or rule not to employ in a position a person who has been convicted of one or more types of criminal offenses, and the questions on the initial employee application form are limited to the types of criminal offenses creating the obligation.

**5. Penalty.** This section must be enforced pursuant to section 626-A.

**Sec. 2. 26 MRSA §626-A, first ¶**, as amended by PL 2019, c. 35, §2, is further amended to read:

Whoever violates any of the provisions of section 600-A, sections 621-A to 623 or section 626, 628, 628-A, 629 or 629-B is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation.

**APPENDIX C – 8**

**Letter from Timothy Feeley, Deputy Legal Counsel  
Office of the Governor**



Janet T. Mills  
GOVERNOR

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

December 6, 2021

Rep. Rachel Talbot Ross, Chair  
Sen. Donna Bailey, Chair  
Criminal Records Review Committee  
c/o Office of Policy and Legal Analysis  
13 State House Station  
Augusta, Maine 04333

Dear Senator Bailey, Representative Talbot Ross and Members of the Committee:

I am writing to provide the perspective of the Governor's Office on various proposals that the Criminal History Records Committee is considering. As we understand it, the Committee is working to minimize collateral consequences of a criminal conviction that stem not from any judicially imposed sentence, but nevertheless can follow a person after their sentence has been served.

Governor Mills has signed several bills sent to her by the Legislature that are meant to assist people as they reenter society after a criminal conviction. L.D. 1167, *An Act Relating to Fair Chance in Employment*, for instance, just became law on October 18, 2021 and prevents an employer from asking on an initial application form whether a person has a criminal conviction and at later stages of the hiring process provides the applicant an opportunity to explain any convictions.

The Department of Professional and Financial Regulation Commissioner Anne Head has told the Committee that Maine is a leader in providing second chances to people with criminal convictions by not using criminal convictions as automatic barriers to professional licensing. While a conviction may not be an automatic barrier, in some instances it is appropriate to know that someone had a prior conviction. For instance, that a person who wants to be a licensed financial planner was convicted of embezzlement raises questions that should at the very least be addressed before the State of Maine certifies them as being fit to serve the public in this capacity. If a pharmacist has been convicted of diverting drugs from their pharmacy, the Pharmacy Board should be able to consider if they have demonstrated a commitment to recovery before renewing their license. This is not to shame that person, but to ensure that those people who hold these positions of trust are operating responsibly in order to protect the public.

Governor Mills is sympathetic to people who have been rehabilitated and refrained from criminal activity and whose convictions pose a barrier to their future. Governor Mills has issued more than twenty pardons to people who have been convicted of many different kinds of crimes, including burglary, unlawful use of an identification card, unlawful trafficking in scheduled drugs, assault, eluding an officer, theft, criminal mischief, and others. These pardons are granted after the Department of Corrections contacts victims,



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conducts an investigation, and after the person demonstrates they have committed to a non-criminal way of life at a hearing before the Governor's Board on Executive Clemency.

The Committee should avoid simply declaring all of one class of crime automatically eligible for sealing. Often, a conviction appears either serious, like a Class B Burglary, or less serious, like a Class E theft, but after examining the record and hearing from the petitioner, you find, as they say, "there is more to the story."

Consider, for instance, two people convicted of the Class D crime of forgery. One was 18 and made the rash decision to write someone else's name on a summons when the officer handed them a ticket to sign. They got caught and were charged with felony Class B Aggravated Forgery for falsifying a public record. They recognized their mistake and took responsibility so the District Attorney dropped the charge to Class D forgery, and they paid a fine so they could move on with their life. The other is a recent college graduate who engaged in a scheme to alter documents at their workplace so that they could claim sales commissions that rightfully belonged to co-workers who earned them. This person was charged with felony Class B forgery because their criminal act involved the theft of more than \$10,000. However, they negotiated a plea agreement and were able to reduce the charge from the felony to the Class D misdemeanor after some time in jail, restitution paid, and a successful deferred disposition. While these are the same conviction – both are Class D Forgery – they arose from very different circumstances, and, like more than 90 percent of all dispositions, these convictions were the result of a plea bargain. Yet a proposal to seal all misdemeanor crimes would treat these very different cases the same.

The Governor would discourage the Committee from such sweeping changes or proposing any blanket policy that eliminates the dissemination of truthful records. The issue of a criminal conviction barring employment, she believes will be very effectively addressed as L.D. 1167 becomes fully implemented.

Sincerely,



Tim Feeley

Deputy Legal Counsel

Office of the Governor



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**APPENDIX C – 9**

**Memorandum from retired Associate Justice Donald G. Alexander**

## Memorandum: Criminal Records Review Issues

To: Senator Donna Bailey  
Representative Rachel Talbot Ross  
Criminal Records Review Committee  
c/o [Jane.Orbeton@legislature.maine.gov](mailto:Jane.Orbeton@legislature.maine.gov)

From: Donald G. Alexander<sup>1</sup>

Date: December 6, 2021

Re: Issues Before the Criminal Records Review Committee

Pursuant to Resolves 2021, ch. 121, the Criminal Records Review Committee has objectives to consider (i) options for expungement, sealing, vacating or otherwise limiting or barring public access to criminal records; (ii) “clean slate” legislation; (iii) whether, after some time limit, “some or all criminal records should not be publicly available;” (iv) information “about the harms and benefits of making criminal records confidential;” and (v) “who, if anyone, should continue to have access to criminal records that are not publicly available.”

Viewing the materials provided for the Committee meetings and some discussions at Committee meetings to date, the principal objectives of the Committee appear to be identification of ways that limiting access to criminal history records may assist individuals with criminal records to move toward full participation in society by improving their access to employment, credit, housing, security clearances, professional licensing, education, and opportunities to participate in adult guardianships or conservatorships, or become adoptive or foster parents where criminal records now pose a bar or at least a challenge to consideration of individuals’ applications in these areas.

The proposals before the Committee to achieve these objectives focus primarily on amendment of the criminal records statutes, though the Committee materials also suggest the Committee may propose amendments to professional licensing or housing access statutes to limit criminal records

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<sup>1</sup> Associate Justice (Retired), Maine Supreme Judicial Court; Member, Maine Commission on Indigent Legal Services; Member Maine Uniform Law Commission. The observations in this memorandum are personal and do not represent the position of any Court, the MCILS, or any other agency or organization.

barriers and perhaps a constitutional amendment of some purpose, possibly to have some legislative involvement in pardoning or commutation decisions.<sup>2</sup> Pending proposals address both adult and juvenile criminal record history. However, this memo does not separately address juvenile records proposals in any detail, as access to juvenile records is already significantly limited. P.L. 2021, ch. 365, enacted significant amendments to clarify and limit access to juvenile court proceedings and case records.

One proposal meriting particularly serious consideration appears to be LD 1459 which would adopt 15 M.R.S.A. ch. 310-A to allow persons to petition the court to limit or bar dissemination of their criminal history record, subject to detailed conditions and limitations. This legislation would apply statewide and replace a pilot program, applicable in only a few courts, that expired in 2019. Other proposals being considered include: LD 473 to condition landlords' participation in the rental assistance program on their agreement not to consider potential tenants' criminal history, credit score, or rental history; and LR 2503 to limit consideration of prior convictions for drug offenses in licensing to grow or sell marijuana and related products.

### *Current Law*

The Criminal History Record Information Act, 16 M.R.S.A. §§ 701 – 710, addresses criminal history records and access to those records in considerable detail. In § 703(2) it specifies what criminal records are confidential, meaning public access to such records is limited. Sub-§ 2 states:

**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;

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<sup>2</sup> The Committee materials include a provision from the Colorado Constitution, but that provision only requires that the Legislature receive notice of and explanation of pardon or commutation decisions. It does not appear to give the Legislature pardon or commutation authority or require legislative approval. In Maine the Governor's exclusive authority to pardon individuals or commute sentences is stated in Art. V. Pt. 1, § 11 of the Maine Constitution and 15 M.R.S.A. §§ 2161-2163.

- B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;
- C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;
- D. Information disclosing that a grand jury has determined that there is insufficient evidence to warrant the return of a formal charge;
- E. Information disclosing that a criminal proceeding has been postponed for a period of more than one year or dismissed because the person charged is found by the court to be mentally incompetent to stand trial or to be sentenced;
- F. Information disclosing that a criminal charge has been filed, if more than one year has elapsed since the date of the filing;
- G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;
- H. Information disclosing that a person has been acquitted of a criminal charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge;
- I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;
- J. Information disclosing that a criminal proceeding has terminated based on lack of subject matter jurisdiction;
- K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and
- L. Information disclosing that a person has petitioned for and been granted a full and free pardon.

Section 703(3) then provides a 28-line definition of what is and is not “Criminal history record information.”

Section 705 states many exceptions to the confidentiality requirements for law enforcement and other statutorily authorized agencies and purposes, and even for public dissemination of information indicating a dismissal, acquittal, or other final termination of a proceeding.

A criminal records review would do well to clarify the definition of “Criminal history record information” and the exceptions to the confidentiality requirement, particularly as the courts and the State move more towards a

digital record keeping system that may make identification and separation of individual items in a court docket, file, or registry of actions more challenging.

Many other statutes also address access to and use of criminal records. For example, 5 M.R.S.A. § 5301 addresses how the many State professional licensing boards may disqualify an applicant for a professional license because of a criminal record. The criminal records which may be considered in deciding whether or not to issue a professional license include:

A. Convictions for which incarceration for less than one year may be imposed and which involve dishonesty or false statement;

B. Convictions for which incarceration for less than one year may be imposed and which directly relate to the trade or occupation for which the license or permit is sought;

C. Convictions for which no incarceration can be imposed and which directly relate to the trade or occupation for which the license or permit is sought;

D. Convictions for which incarceration for one year or more may be imposed; or

E. Convictions for which incarceration for less than one year may be imposed and that involve sexual misconduct by an applicant for [a long list of health, personal care, and counselling related licenses, and also the Board of Trustees of the Maine Criminal Justice Academy.]”

Beyond these general statutes, many statutes relate to individual licensing, employment, or assistance decisions that require some criminal history record check and mandate some disqualifications from eligibility. The Committee has already received from the Director of the State Bureau of Identification a substantial list of Maine statutes authorizing national criminal history records checks through the FBI, followed by a list of federal statutes authorizing or requiring such records checks for various federally supported activities. Significant alteration of these criminal records check and qualification requirements may be a bit of a challenge, particularly when federal requirements are involved.

The challenges to limiting access to criminal records have been addressed in detail in written documents and appearances before the Committee by the Commissioner of the Department of Professional and Financial Regulation, the Director of the State Bureau of Identification in the Maine Department of Public Safety, the Director of the Office of Child and

Family Services in the Department of Health and Human Services, and the Superintendent of the Bureau of Insurance in the DPFR. These materials demonstrate the importance of criminal records checks and qualification limits based on criminal records to protect integrity and public safety in many programs.

### *Issues for a Maine Criminal Records Program*

#### A. Information in the Public Domain

Solutions to concerns about criminal records (or other records of court actions) limiting one's ability to fully participate in society must recognize the capacity of any individual to use digital technology to find information that is a matter of public record. Potential employers, credit bureaus, security clearance investigations, lending institutions, landlords, even potential dating partners, may conduct digital and social media records searches to see what they can learn about a person before entering or approving a professional license, security clearance, or a business or personal relationship. Access to and use of such information, once it is in the public domain, cannot be limited by access and confidentiality requirements applicable only to records in court or government agency files or data bases.

In Maine, much information identifying individual encounters with law enforcement and the justice system is published in local newspapers and on news websites before the matter reaches the courts and, sometimes, before final decisions to prosecute or not prosecute have been made. *See, for example*, the following from Central Maine Newspapers: (1) Dec. 4, 2021, p. B3, "Police" report indicating four persons arrested for specified reasons, and including the person's name, age, and place of residence; (2) Dec. 3, 2021, p. B3, "Police" report indicating six persons arrested for specified reasons, and including the person's name, age, and place of residence; (3) Dec. 2, 2021, p. B3, item headed "Somerset County Grand Jury Indicts 30 People on 86 Counts," beginning with a report about an individual indicted for calling in bomb threats, then listing all 30 individuals indicted with their name, age, place of residence and the charge or charges against them, and concluding with a statement: "An indictment is not a finding of guilt, but an indication there is enough evidence to move forward with a trial." Print and online news in Maine regularly includes reports of particular events that result in individuals being charged with a crime or require other police involvement.

In this public reporting, identifying individuals charged with even minor crimes, Maine, and other states with similar demographics, may differ from large metropolitan areas where public news reporting identifying individuals charged with minor crimes is rare, if it occurs at all. That difference may need to be recognized in developing ideas to accomplish the Committee's objectives. Google searches of the publicly identified individuals today or 10 years from now may indicate the names and criminal charges of those individuals, even if the charge was dismissed or had a final resolution that would render the criminal record of that individual confidential under the current CHRIA.

If a criminal record is made private or is expunged, a person doing a digital records check may be left with what was in the newspaper, social media, or online information source, and may not learn of a perhaps lesser offense, or decision not to prosecute, that would have been reflected in the expunged record. Some potential employers, licensing authorities, or others seeking records of one's past, seeing a Google search report of an arrest or indictment, and having a choice to interview several applicants for a job or to rent an apartment, may not consider the applicant with the criminal record further.

The present confidentiality exception in CHIRA to allow disclosure that an action was finally dismissed, or resulted in an acquittal, allows a member of the public with a legitimate need to know to learn how a charge against an individual resolved, but only if the person elects to check.

An example of an issue once a record becomes part of the public domain: In 2008 or 2009, the Law Court vacated a conviction for a sex offense. At a retrial, the person charged was acquitted. Reading CHIRA indicating that criminal records resulting in an acquittal are confidential, the person or his representative asked that the Law Court opinion vacating the conviction after the first trial be removed from the public record on the Court's website and in the many legal publications circulating broadly. Because the opinion was in the published public record, the person was advised that the opinion could not be removed from the websites, electronic research services, and books where it was available for research.

Records of filings and adjudications of civil actions such as debt collections, foreclosures, evictions, and damages judgments similarly become part of the public record once they are reported in the press or online or are



collected from the courts by credit bureaus, landlord organizations, or other entities outside the control of the courts and government agencies.

## B. Employment, Credit, Licensing, and Other Application Forms.

Present or proposed laws making criminal records confidential with a goal of improving opportunities to be considered for employment, credit, professional licensing, education or other matters do not reach the job, credit, education, or licensing application process. Such applications regularly ask about arrests or charges, not convictions, with the applicant then invited to provide any explanation about the arrest or charge. Some application forms ask broader questions covering participation in any civil or criminal action. Following is a question from the Legislative Staff Questionnaire for Gubernatorial Nominees that was used in early 2021

ARE YOU OR HAVE YOU EVER BEEN A PARTY OF CIVIL OR CRIMINAL COURT LITIGATION EITHER PERSONALLY OR AS AN OFFICER OR A CORPORATION, ASSOCIATION, OR OTHER LEGAL ENTITY? DESCRIBE THE CIRCUMSTANCES OF ANY SUCH LITIGATION?

Such questionnaires require an honest applicant to disclose prior encounters with the criminal justice system, even if the official court or SBI record is confidential or expunged – and even if there has been a pardon. The pardon or case dismissal may be part of an explanation of the event, but the event must be disclosed.

## C. Alternatives to Consider

(1) If the goal of legislation is to limit consideration of a prior criminal record after passage of a certain amount of time and with an appropriate demonstration of rehabilitation or change in life, one alternative would be to legislate to bar consideration of the record of a particular crime in consideration of an application for employment, credit, security clearance, housing, professional licensing, education, or other activity where the criminal record might be considered.

That is the approach suggested in LD 473, proposing to bar consideration of criminal records in rental assistance applications, or LR 2503, proposing to limit consideration of prior drug conviction records in applications for licenses to grow or sell marijuana. Such limitations are likely to work only in

government administered programs or licensing activities, and even in such programs, the limitations may prove problematic when there are several applicants for a position and discretionary choices must be made.

(2) An alternative might be to create a State program that would allow persons, after passage of a certain amount of time after conviction for certain crimes, to participate in a program leading to a certificate of rehabilitation or change of life from the circumstances that led to commission of the crime. This could be disclosed on applications and let the issue be considered by the potential employer or other person or entity considering the application for employment, licensing, credit, security clearance, housing, education or other activity. Such a rehabilitation or qualification certificate might be addressed as part of consideration of LD 1459, that would authorize persons to petition to limit public access to criminal records. Such early disclosure, and with a certificate of rehabilitation or qualification, would likely promote more favorable consideration than would be the case when a potential employer, landlord or other person later learns of a charge or conviction for the first time in a Google search.

(3) The accuracy of criminal records and whether they are up to date is a continuing problem. A criminal record for a single charge may be reviewed and adjusted by local police, county corrections officials, District Attorneys, courts, the State Bureau of Identification, the Department of Corrections and others. The Criminal Records Review Committee may want to consider whether to take some action to improve criminal record accuracy and currency. The Uniform Law Commission has proposed a Uniform Criminal Records Accuracy Act. Attachment 1 is a summary of that Act. A copy of the draft Act can also be provided if consideration of the Act is deemed appropriate, although the draft appears a little more complicated than may be needed for Maine.

**APPENDIX C – 10**

**Vote Sheets for December 6<sup>th</sup> and 13<sup>th</sup> Meetings**

# VOTE SHEET

## Criminal Records Review Committee – December 6, 2021

Motion: Motion to support re-establishing the Criminal Records Review Committee for a second year.

Member	Motion Made	YEA	NAY	NOTES
Sen. Donna Bailey		x		
Sen. Kimberley C. Rosen				Absent
Rep. Rachel Talbot-Ross		x		
Rep. Richard A. Pickett		x		
Rep. Thomas Harnett		x		
Courtney Allen	X Second	x		
Foster Bates		x		Absent
Frank D'Alessandro		x		
Samantha Hogan		x		
Peter Lehman	X Motion	x		
Andrea Mancuso		x		
Barbara Taylor		x		
Marissa Bodnar		x		
Dee Clarke				Not voting
Emma Halas-O'Connor		x		
Michael Kebede		x		
Hannah Longley		x		
Judith Meyer		x		
Elizabeth Ward Saxl		x		
Jill Ward		x		
Laura Yustak		x		
John Feeney				Abstain
Matthew Ruel				Abstain
Scott Landry				Absent

<b>Matthew Morgan</b>				<b>Absent</b>
<b>Robert Young</b>				<b>Absent</b>
<b>Jared Mills</b>		x		
<b>Honorable Brent Davis</b>		x		
<b>Jonathan Sahrbeck</b>		x		

# VOTE SHEET

## Criminal Records Review Committee December 13, 2021

Motion: To ask the Judiciary Committee to review options and report out legislation to address the Separation of Powers questions raised by State v. Hunter.

Member	Motion Made	YEA	NAY	NOTES
Sen. Donna Bailey		x		
Sen. Kimberley C. Rosen				Absent
Rep. Rachel Talbot-Ross		x		
Rep. Richard A. Pickett		x		
Rep. Thomas Harnett	X Motion	x		
Courtney Allen		x		
Foster Bates		x		
Frank D'Alessandro				Absent
Samantha Hogan			x	
Peter Lehman	X Second	x		
Andrea Mancuso		x		
Barbara Taylor		x		
Marissa Bodnar			x	
Dee Clarke				Not voting
Emma Halas-O'Connor		x		
Michael Kebede		x		
Hannah Longley				Abstain
Judith Meyer		x		
Elizabeth Ward Saxl		x		
Jill Ward		x		
Laura Yustak				Abstain
John Feeney			x	
Matthew Ruel			x	

<b>Scott Landry</b>					<b>Absent</b>
<b>Matthew Morgan</b>			<b>x</b>		
<b>Robert Young</b>					<b>Abstain</b>
<b>Jared Mills</b>					<b>Abstain</b>
<b>Honorable Brent Davis</b>					<b>Abstain</b>
<b>Jonathan Sahrbeck</b>					<b>Abstain</b>

# VOTE SHEET

## Criminal Records Review Committee – December 13, 2021

Motion: To recommend to the Judiciary Committee that they hold a public hearing on a process for sealing criminal History Record Information as proposed in LD 1459, with consideration of amendments proposed during the work of the Criminal Records Review Committee.

Member	Motion Made	YEA	NAY	NOTES
Sen. Donna Bailey		x		
Sen. Kimberley C. Rosen				Absent
Rep. Rachel Talbot-Ross		x		
Rep. Richard A. Pickett		x		
Rep. Thomas Harnett		x		
Courtney Allen	X Second	x		
Foster Bates		x		
Frank D'Alessandro				Absent
Samantha Hogan			x	
Peter Lehman		x		
Andrea Mancuso		x		
Barbara Taylor		x		
Marissa Bodnar		x		
Dee Clarke				Not voting
Emma Halas-O'Connor		x		
Michael Kebede	X Motion	x		
Hannah Longley		x		
Judith Meyer			x	
Elizabeth Ward Saxl		x		
Jill Ward		x		
Laura Yustak				Abstain
John Feeney				Abstain
Matthew Ruel				Abstain



<b>Scott Landry</b>				<b>Absent</b>
<b>Matthew Morgan</b>		<b>x</b>		
<b>Robert Young</b>				<b>Abstain</b>
<b>Jared Mills</b>				<b>Abstain</b>
<b>Honorable Brent Davis</b>				<b>Abstain</b>
<b>Jonathan Sahrbeck</b>				<b>Abstain</b>