

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill in section 7 in §2124 in subsection 3 in paragraph A in the last line (page 4, line 9 in L.D.) by striking out the following: "or"

Amend the bill in section 7 in §2124 in subsection 3 in paragraph D in the last line (page 4, line 30 in L.D.) by striking out the following: "crime." and inserting the following: 'crime; or'

Amend the bill in section 7 in §2124 in subsection 3 by inserting at the end after paragraph D the following:

'E. A criminal judgment in this State pursuant to a plea of guilty or nolo contendere accepted by a trial court on or after March 31, 2010 by a represented defendant who is not a United States citizen and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding.'

Amend the bill in section 11 in §2128-B by striking out all of subsection 3 (page 7, lines 4 to 7 in L.D.) and inserting the following:

'3. **Filing deadline for indirect impediment.** A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraphs A and D. The one-year limitation period runs from the date of imposition of a sentence for the new crime resulting in the indirect impediment. A 60-day period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraph E. The 60-day limitation period runs from the date the noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against the noncitizen.'

Amend the bill by adding after section 14 the following:

'**Sec. 15. Application.** If the date a noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against that noncitizen is on or after March 31, 2010, but prior to the effective date of this Act, the 60-day limitation period under the Maine Revised Statutes, Title 15, section 2128-B, subsection 3 runs from the effective date of this Act.'

SUMMARY

This amendment provides to a noncitizen who, in the context of a plea in which the noncitizen was represented by counsel and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding a jurisdictional avenue independent of that already provided by the Maine Revised Statutes, Title 15, section 2124, subsection 1. This jurisdictional avenue provides a means by which to initiate a post-conviction review proceeding to test the effective-assistance-of-counsel guarantee under the United States Constitution, Amendment VI as reflected in the United States Supreme

Court decision of Padilla v. Kentucky, 559 U.S. ___, 130 S.Ct. 1473 (2010). To qualify, the plea must also be accepted by a trial court on or after March 31, 2010.

The amendment also provides a different filing deadline for Title 15, section 2124, subsection 3, paragraph E than that provided for in paragraphs A and D of the same section. The 60-day limitation period runs from the date the noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against the noncitizen.

The amendment also adds an application section to provide a grace period of the same length as the new 60-day filing deadline for this indirect impediment.

FISCAL NOTE REQUIRED
(See attached)