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Legislative Document

No. 210

S.P. 79

In Senate, February 3, 2015

**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**

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VALENTINO of York.
Cosponsored by Representative WELSH of Rockport and
Senators: BURNS of Washington, JOHNSON of Lincoln, KATZ of Kennebec,
Representatives: CHENETTE of Saco, FREY of Bangor, HOBBS of Saco, MONAGHAN
of Cape Elizabeth, RUSSELL of Portland.

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

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

3 **CHAPTER 310**

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 **§2251. 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
20 703, subsection 6.

21 **6. Eligible criminal conviction.** "Eligible criminal conviction" means a conviction
22 for a Class E crime under Title 17-A, chapter 15.

23 **§2252. Statutory prerequisites for obtaining special restrictions on dissemination**
24 **and use of criminal history record information for a criminal conviction**

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

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

29 **2. Age of person at time of commission.** At the time of the commission of the
30 crime underlying the eligible criminal conviction, the person had in fact attained 18 years
31 of age but not 21 years of age;

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

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

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

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

10 **§2253. Motion; persons who may file**

11 A person may file a written motion in the underlying criminal proceeding seeking a
12 court determination that the person satisfies the statutory prerequisites specified in section
13 2252 for obtaining the special restrictions on dissemination and use of criminal history
14 record information relating to a criminal conviction as specified in section 2255. The
15 written motion must briefly address each of the statutory prerequisites.

16 **§2254. Motion and hearing; process**

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

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

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

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

29 **5. Hearing; certification of results.** The judge or justice shall hold a hearing on the
30 motion under this section. At the conclusion of the hearing, if the court determines that
31 the person who filed the motion has established by a preponderance of the evidence each
32 of the statutory prerequisites specified in section 2252, the court shall find the person
33 entitled to the special restrictions on dissemination and use of the criminal history record
34 information relating to the criminal conviction as specified in section 2255 and shall issue
35 a written order certifying this determination. If, at the conclusion of the hearing, the court
36 determines that the person has not established one or more of the statutory prerequisites
37 specified in section 2252, the court shall deny the motion and issue a written order
38 certifying this determination. The order must contain written findings of fact supporting
39 the court's determination. A copy of the court's written order must be provided to the
40 person and the prosecutorial office that represented the State pursuant to subsection 3.

1 **6. Notice to State Bureau of Identification; responsibility to inform.** If the court
2 determines pursuant to subsection 5 that a person has established by a preponderance of
3 the evidence each of the statutory prerequisites specified in section 2252, a copy of the
4 court's written order certifying its determination must be provided to the Department of
5 Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of
6 Identification upon receipt of the order shall promptly alter its records relating to the
7 person's eligible criminal conviction to reflect that future dissemination of this criminal
8 history record information must be pursuant to section 2255 rather than pursuant to Title
9 16, section 704 and shall advise all prior recipients who have received that information
10 within the year prior to the court's written order under subsection 5 of the change. The
11 State Bureau of Identification shall also notify the person of compliance with that
12 requirement and of the prior recipients notified.

13 **7. Subsequent new criminal conviction; automatic loss of eligibility; person's**
14 **duty to notify.** Notwithstanding that a person has been determined by a court pursuant to
15 subsection 5 to be entitled to the special restrictions on dissemination and use of criminal
16 history record information relating to a criminal conviction specified in section 2255, if at
17 any time subsequent to the court's determination the person is convicted of a new crime in
18 this State or in another jurisdiction, the new conviction extinguishes that entitlement. In
19 the event of a new criminal conviction, the person shall promptly file a written notice in
20 the underlying criminal proceeding of the person's disqualification from entitlement
21 identifying the new conviction, including the jurisdiction, court and docket number of the
22 criminal proceeding. If the person fails to file the required written notice and the court
23 learns of the existence of the new criminal conviction, the court shall notify the person of
24 its apparent existence and offer the person an opportunity at a hearing to contest the fact
25 of a new conviction. If a hearing is requested by the person, the court shall, after giving
26 notice to the person and the appropriate prosecutorial office, hold a hearing. At the
27 hearing, the person has the burden of proving by clear and convincing evidence that the
28 person does not have the new conviction. At the conclusion of the hearing, if the court
29 determines that the person has not satisfied the burden of proof, it shall find that the
30 person has been convicted of the new crime and as a consequence is no longer entitled to
31 the special restrictions on dissemination and use of the criminal history record
32 information relating to the criminal conviction as specified in section 2255 and shall issue
33 a written order certifying this determination. If, at the conclusion of the hearing, the court
34 determines that the person has satisfied the burden of proof, it shall find that the person
35 has not been convicted of the new crime and issue a written order certifying this
36 determination. The order must contain written findings of fact supporting the court's
37 determination. A copy of the court's written order must be provided to the person and the
38 prosecutorial office that represented the State.

39 **8. Notice to State Bureau of Identification of new crime; responsibility to**
40 **inform.** If the court determines under subsection 7 that a person has been convicted of a
41 new crime and as a consequence is no longer eligible for the special restrictions on
42 dissemination and use of the criminal history record information relating to the criminal
43 conviction as specified in section 2255, a copy of the court's written order certifying its
44 determination must be provided to the Department of Public Safety, Bureau of State
45 Police, State Bureau of Identification. The State Bureau of Identification upon receipt of
46 the order shall alter its records relating to the person's criminal conviction to reflect that

1 dissemination of this criminal history record information is pursuant to Title 16, section
2 704 rather than pursuant to section 2255 and shall advise all prior recipients who have
3 received that information within the year prior to the court's written order under
4 subsection 5 of the change. It shall also notify the person of compliance with that
5 requirement and of the prior recipients notified.

6 **§2255. Special restrictions on dissemination and use of criminal history record**
7 **information relating to criminal conviction**

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

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

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

17 For the purposes of this section, dissemination to a criminal justice agency for the
18 purpose of the administration of criminal justice includes dissemination and use of the
19 criminal history record information relating to the qualifying criminal conviction by an
20 attorney for the State or for another jurisdiction as part of a prosecution of the person for
21 a new crime, including use in a charging instrument or other public court document and
22 in open court.

23 **§2256. Limited disclosure of eligible criminal conviction**

24 A person who has a criminal conviction eligible for the special restrictions on
25 dissemination and use of criminal history record information under section 2255 may
26 respond to inquiries from other than criminal justice agencies by not disclosing its
27 existence without being subject to any sanctions.

28 **§2257. Unlawful dissemination**

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

32 **§2258. Review of determination of eligibility; review of determination of subsequent**
33 **criminal conviction**

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

36 **1. Appeal by the person.** A person aggrieved by the final judgment under section
37 2254, subsection 5 or 7 may not appeal as of right. The time for taking the appeal and the

1 manner and any conditions for the taking of the appeal are as the Supreme Judicial Court
2 provides by rule.

3 **2. Appeal by the State.** If the State is aggrieved by the final judgment under section
4 2254, subsection 5 or 7, it may appeal as of right, and a certificate of approval by the
5 Attorney General is not required. The time for taking the appeal and the manner and any
6 conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.

7 **§2259. Repeal**

8 This chapter is repealed October 1, 2019.

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

11 **1. Offense.** A person is guilty of unlawful dissemination of confidential criminal
12 history record information if the person intentionally disseminates confidential criminal
13 history record information knowing it to be in violation of any of the provisions of this
14 chapter or if the person intentionally disseminates criminal history record information
15 relating to a criminal conviction in violation of Title 15, section 2255 knowing it to be in
16 violation.

17 **SUMMARY**

18 This bill establishes a process to apply special restrictions on the dissemination and
19 use of criminal history record information about an eligible criminal conviction. To be
20 eligible for the special restrictions, a person must file a motion with the court in the
21 underlying criminal proceeding.

22 The Department of Public Safety, Bureau of State Police, State Bureau of
23 Identification upon receipt of a court order must promptly alter its records relating to the
24 person's qualifying criminal conviction to reflect that future dissemination of this criminal
25 history record information must be pursuant to the new procedure and is required to
26 notify all prior recipients who have received that information within the year prior to the
27 court order of the change. It must also notify the person of compliance with that
28 requirement and of the prior recipients notified.

29 If the person is convicted of a subsequent crime, the person is required to file a
30 written notice in the underlying criminal proceeding.

31 The criminal history record information relating to the eligible criminal conviction is
32 confidential and may not be disseminated by a criminal justice agency, whether directly
33 or through any intermediary, except to the person and to a criminal justice agency for the
34 purpose of the administration of criminal justice and criminal justice agency employment.
35 Unlawfully releasing the restricted information is a violation of the release of confidential
36 information under the criminal history record information laws.

1 The provisions establishing the process to apply special restrictions on the
2 dissemination and use of criminal history record information about an eligible criminal
3 conviction are repealed October 1, 2019.