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Legislative Document

No. 1202

S.P. 403

In Senate, March 28, 2017

An Act To Clear a Path to Employment

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VOLK of Cumberland.
Cosponsored by Representative WARREN of Hallowell and
Senator: BRAKEY of Androscoggin, Representative: VACHON of Scarborough.

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 **SEALING OF PUBLIC CRIMINAL RECORDS FOR CERTAIN OFFENSES**

5 **§2281. Definitions**

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

8 **1. Accredited educational institution.** "Accredited educational institution" means
9 an educational institution accredited by a national accrediting agency or association.

10 **2. Another jurisdiction.** "Another jurisdiction" has the same meaning as in Title
11 17-A, section 2, subsection 3-B.

12 **3. Bureau.** "Bureau" means the Department of Public Safety, Bureau of State
13 Police, State Bureau of Identification.

14 **4. Crime involving domestic violence.** "Crime involving domestic violence" has
15 the same meaning as in section 1003, subsection 3-A.

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

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

20 **7. Eligible criminal conviction.** "Eligible criminal conviction" means a conviction
21 for a current or former Class C, Class D or Class E crime, except a conviction for a crime
22 involving domestic violence or a conviction for a crime under Title 17-A, chapter 11.

23 **§2282. Requirements for sealing**

24 An individual is eligible to have all records of a criminal conviction sealed from
25 public inspection under this chapter if:

26 **1. Eligible criminal conviction; no other state convictions.** The individual has
27 been convicted of only a single eligible criminal conviction and does not have any other
28 criminal convictions in this State;

29 **2. No convictions in another jurisdiction.** The individual has no criminal
30 convictions from another jurisdiction; and

31 **3. Time since conviction.** Except as provided in section 2285, at least 7 years have
32 passed since the date of conviction.

1 **§2283. Automatic sealing of records; process**

2 **1. List of individuals.** On the first business day of each month, the Administrative
3 Office of the Courts shall prepare a list of individuals who it believes will meet the
4 requirements of section 2282 by the end of the month and shall submit the list to the
5 bureau for review.

6 **2. Objection by bureau.** Within 7 days of receiving a list described in subsection 1,
7 the bureau shall submit to the Administrative Office of the Courts an objection to any
8 individual on the list who it does not believe meets the requirements of section 2282
9 along with an explanation of the objection and supporting documentation. If the bureau
10 objects to the inclusion of an individual on the list, it shall send a written copy of the
11 objection and supporting documentation to that individual along with a notice of the
12 individual's right to file a motion for sealing of the records pursuant to section 2284.

13 **3. Sealing of records.** On the last business day of each month, a Judge of the
14 District Court or a Justice of the Superior Court shall enter an order sealing the criminal
15 records of all individuals whose names appeared on the monthly list prepared under
16 subsection 1 and for whom no objection was filed by the bureau under subsection 2. The
17 court shall submit a copy of the order to the bureau. The bureau shall promptly alter its
18 records relating to the eligible criminal convictions of the individuals in the order to
19 reflect that future dissemination of the criminal history record information relating to the
20 eligible criminal convictions must be pursuant to section 2286, subsection 1 rather than
21 pursuant to Title 16, section 704. The bureau shall notify each individual whose record is
22 sealed under this subsection and shall explain the effect of the sealing under this chapter.

23 **§2284. Motion for sealing after objection by bureau**

24 **1. Motion.** An individual whose eligible criminal conviction was not sealed due to
25 the objection of the bureau under section 2283, subsection 2 may file a motion to seal the
26 records of the individual's eligible criminal conviction in the underlying criminal
27 proceeding. After a motion has been filed under this subsection, the clerk shall set the
28 motion for hearing.

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

33 **3. Counsel.** The individual filing a motion under this section has the right to employ
34 counsel but is not entitled to counsel at state expense.

35 **4. Decision after hearing.** The court shall hold a hearing on a motion filed under
36 this section in accordance with this subsection. The Maine Rules of Evidence do not
37 apply to the hearing, and evidence presented at the hearing may include testimony,
38 affidavits and other reliable hearsay evidence as permitted by the court. At the
39 conclusion of the hearing, if the court determines that the individual who filed the motion
40 has established by a preponderance of the evidence each of the requirements set forth in
41 section 2282 for sealing of the individual's criminal record, the court shall grant the

1 motion and issue a written order sealing the individual's criminal record. If the court
2 grants the motion, it shall submit a copy of the order to the bureau, which shall promptly
3 alter its records relating to the eligible criminal conviction of the individual who filed the
4 motion to reflect that future dissemination of the criminal history record information
5 relating to the eligible criminal conviction must be pursuant to section 2286, subsection 1
6 rather than pursuant to Title 16, section 704. The bureau shall notify an individual whose
7 record is sealed under this subsection and shall explain the effect of the sealing under this
8 chapter.

9 **§2285. Motion for sealing based on reduced waiting period**

10 An individual with an eligible criminal conviction may file a written motion in the
11 underlying criminal proceeding seeking a court order sealing the records of that
12 conviction prior to the expiration of 7 years after the date of conviction if the individual
13 meets the requirements of subsection 1. The court shall decide the motion in accordance
14 with this section.

15 **1. Reduction in waiting period based upon educational attainment.** An
16 individual is eligible to have all records of an eligible criminal conviction sealed from
17 public inspection under this chapter if the individual meets the requirements of section
18 2282, subsections 1 and 2; at least 3 1/2 years have passed since the date of conviction;
19 and, since the date of conviction, the individual has been awarded a high school diploma,
20 high school equivalency diploma or a certificate, associate degree, bachelor's degree or
21 graduate degree from an accredited educational institution.

22 **2. Notification of the State; opportunity to object.** Upon receipt of a motion under
23 this section, the court shall send a copy of the motion and supporting documentation, if
24 any, to the prosecutorial office that represented the State in the underlying criminal
25 proceeding. That prosecutorial office may file a written objection to the motion within 21
26 days of receiving the copy of the motion.

27 **3. Counsel.** The individual filing a motion under this section has the right to employ
28 counsel but is not entitled to counsel at state expense.

29 **4. Decision without hearing.** If no objection is filed pursuant to subsection 2, the
30 court shall enter an order sealing the criminal record of the individual who filed the
31 motion under this section. A copy of the order must be submitted to the bureau, which
32 shall promptly alter its records relating to the eligible criminal conviction of the
33 individual who filed the motion to reflect that future dissemination of the criminal history
34 record information relating to the eligible criminal conviction must be pursuant to section
35 2286, subsection 1 rather than pursuant to Title 16, section 704. The bureau shall notify
36 an individual whose record is sealed under this subsection and shall explain the effect of
37 the sealing under this chapter.

38 **5. Decision after hearing.** If an objection is filed pursuant to subsection 2, the clerk
39 shall set the motion for a hearing. The Maine Rules of Evidence do not apply to the
40 hearing, and evidence presented at the hearing may include testimony, affidavits and
41 other reliable hearsay evidence as permitted by the court. At the conclusion of the
42 hearing, if the court determines that the individual who filed the motion has established

1 by a preponderance of the evidence each of the requirements set forth in subsection 1 for
2 sealing of the individual's criminal record, the court shall grant the motion and issue a
3 written order sealing the individual's criminal record. If the court grants the motion, it
4 shall submit a copy of the order to the bureau, which shall promptly alter its records
5 relating to the eligible criminal conviction of the individual who filed the motion to
6 reflect that future dissemination of the criminal history record information relating to the
7 eligible criminal conviction must be pursuant to section 2286, subsection 1 rather than
8 pursuant to Title 16, section 704. The bureau shall notify an individual whose record is
9 sealed under this subsection and shall explain the effect of the sealing under this chapter.

10 **§2286. Effect of sealing**

11 **1. Restrictions on dissemination and use of sealed conviction information.**
12 Notwithstanding Title 16, section 704, the criminal history record information relating to
13 a criminal conviction that the court has sealed under this chapter is confidential and may
14 not be disseminated by a criminal justice agency, whether directly or through any
15 intermediary, except:

16 A. To the individual who is the subject of the criminal conviction or that individual's
17 designee; and

18 B. To a criminal justice agency for the purpose of the administration of criminal
19 justice and criminal justice agency employment. For the purposes of this paragraph,
20 dissemination to a criminal justice agency for the purpose of the administration of
21 criminal justice includes dissemination and use of the criminal history record
22 information relating to the sealed criminal conviction by an attorney for the State or
23 for another jurisdiction as part of a prosecution of the individual for a new crime,
24 including use in a charging instrument or other public court document and in open
25 court.

26 **2. Prohibition on use of sealed conviction information for employment purposes.**
27 An employer that is not a criminal justice agency may not discriminate against an
28 employee or prospective employee based on the fact of a criminal conviction that has
29 been sealed under this chapter. An individual whose criminal conviction has been sealed
30 under this chapter and who has not been convicted of another crime in this State or
31 another jurisdiction may answer "no" with respect to an inquiry from an employer or
32 prospective employer that is not a criminal justice agency inquiring whether the
33 individual has any criminal convictions.

34 **3. Inquiries made of individual whose record is sealed.** An individual whose
35 record of a criminal conviction has been sealed under this chapter may, in response to
36 inquiries other than inquiries from a criminal justice agency about the crime contained in
37 the sealed record, respond as if the crime and conviction had never occurred without
38 being subject to any sanctions.

39 **SUMMARY**

40 This bill establishes an automatic process for an individual who has been convicted of
41 a Class C, Class D or Class E crime to have the records of that conviction sealed if the

1 crime does not involve domestic violence or sexual assault; the individual has not been
2 convicted of any other crime in this State or another jurisdiction; and at least 7 years have
3 passed since the date of conviction. If the Department of Public Safety, Bureau of State
4 Police, State Bureau of Identification objects to the automatic sealing of an individual's
5 criminal conviction records, the individual may file a motion in the underlying criminal
6 proceeding requesting that the records be sealed.

7 The bill provides for a reduction in the 7-year waiting period for the sealing of
8 records of an eligible criminal conviction if a convicted individual files a motion with the
9 court demonstrating that the individual obtained a high school diploma or postsecondary
10 certificate or degree after the date of conviction.

11 The bill prohibits the use of sealed criminal conviction information by all employers
12 that are not criminal justice agencies. The bill also authorizes individuals whose
13 conviction records have been sealed to respond to inquiries, other than inquiries from a
14 criminal justice agency, as if the sealed conviction and underlying crime had never
15 occurred.