

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.

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