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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 966, L.D. 1310, “An Act Regarding Criminal Records”

Amend the bill by striking out the title and substituting the following:

'An Act Regarding a Post-judgment Motion To Seal the Criminal History Record Information for Certain Criminal Convictions'

Amend the bill by striking out everything after the enacting clause and inserting the following:

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

CHAPTER 310-A

POST-JUDGMENT MOTION TO SEAL CRIMINAL HISTORY RECORD

§2261. 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.

COMMITTEE AMENDMENT

1 **6. Eligible criminal conviction.** "Eligible criminal conviction" means a conviction
2 for a current or former Class E crime, except a conviction for a current or former Class E
3 crime under Title 17-A, chapter 11.

4 **7. Sealed record.** "Sealed record" means the criminal history record information
5 relating to a specific criminal conviction that a court has ordered to be sealed under section
6 2264.

7 **§2262. Statutory prerequisites for sealing criminal history record information**

8 Criminal history record information relating to a specific criminal conviction may be
9 sealed under this chapter only if:

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

12 **2. Time since sentence fully satisfied.** At least 4 years have passed since the person
13 has fully satisfied each of the sentencing alternatives imposed under Title 17-A, section
14 1502, subsection 2 for the eligible criminal conviction;

15 **3. Other convictions in this State.** The person has not been convicted of another
16 crime in this State and has not had a criminal charge dismissed as a result of a deferred
17 disposition pursuant to Title 17-A, former chapter 54-F or Title 17-A, chapter 67,
18 subchapter 4 since the time at which the person fully satisfied each of the sentencing
19 alternatives imposed under Title 17-A, section 1502, subsection 2 for the person's most
20 recent eligible criminal conviction up until the time of the order;

21 **4. Convictions in another jurisdiction.** The person has not been convicted of a crime
22 in another jurisdiction since the time at which the person fully satisfied each of the
23 sentencing alternatives imposed under Title 17-A, section 1502, subsection 2 for the
24 person's most recent eligible criminal conviction up until the time of the order;

25 **5. Pending criminal charges.** The person does not have any presently pending
26 criminal charges in this State or in another jurisdiction; and

27 **6. Age of person at time of commission.** At the time of the commission of the crime
28 underlying the eligible criminal conviction, the person had in fact attained 18 years of age
29 but had not attained 28 years of age.

30 **§2263. Motion; persons who may file**

31 A person may file a written motion seeking a court order sealing the person's criminal
32 history record information relating to a specific criminal conviction in the underlying
33 criminal proceeding based on a court determination that the person satisfies the statutory
34 prerequisites specified in section 2262. The written motion must briefly address each of the
35 statutory prerequisites.

36 **§2264. Motion and hearing; process**

37 **1. Filing motion.** A motion filed pursuant to section 2263 must be filed in the
38 underlying criminal proceeding. After the motion is filed, the clerk shall set the motion for
39 hearing.

40 **2. Counsel.** The person filing a motion pursuant to section 2263 has the right to be
41 represented by counsel but is not entitled to assignment of counsel at state expense.

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

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

8 **5. Hearing; order; written findings.** The court shall hold a hearing on a motion filed
9 under this section. At the conclusion of the hearing, if the court determines that the person
10 who filed the motion has established by a preponderance of the evidence each of the
11 statutory prerequisites specified in section 2262, the court shall grant the motion and shall
12 issue a written order sealing the criminal history record information of the eligible criminal
13 conviction that was the subject of the motion. If, at the conclusion of the hearing, the court
14 determines that the person has not established one or more of the statutory prerequisites
15 specified in section 2262, the court shall issue a written order denying the motion. The
16 order must contain written findings of fact supporting the court's determination. A copy of
17 the court's written order must be provided to the person and the prosecutorial office that
18 represented the State pursuant to subsection 3.

19 **6. Notice to State Bureau of Identification.** If the court issues an order under
20 subsection 5 that includes the sealing of a criminal conviction maintained by the State
21 Bureau of Identification pursuant to Title 25, section 1541 and previously transmitted by
22 the court pursuant to Title 25, section 1547, the court shall electronically transmit notice of
23 the court's order to the Department of Public Safety, Bureau of State Police, State Bureau
24 of Identification. Upon receipt of the notice, the State Bureau of Identification shall
25 promptly amend its records relating to the person's eligible criminal conviction to reflect
26 that the criminal history record information relating to that criminal conviction is sealed
27 and that dissemination is governed by section 2265. The State Bureau of Identification
28 shall send notification of compliance with this subsection to the person's last known
29 address.

30 **7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty**
31 **to notify.** Notwithstanding a court order sealing the criminal history record information
32 pursuant to subsection 5, if at any time subsequent to the court's order the person is
33 convicted of a new crime in this State or in another jurisdiction, the criminal history record
34 information must be unsealed.

35 A. In the event of a new criminal conviction, the person shall promptly file a written
36 notice in the underlying criminal proceeding of the person's disqualification from
37 eligibility, identifying the new conviction, including the jurisdiction, court and docket
38 number of the new criminal proceeding. If the person fails to file the required written
39 notice and the court learns of the existence of the new criminal conviction, the court
40 shall notify the person of the apparent existence of the new conviction and offer the
41 person an opportunity to request a hearing to contest the fact of a new conviction.

42 B. If the person requests a hearing under paragraph A, the court shall, after giving
43 notice to the person and the appropriate prosecutorial office, hold a hearing. At the
44 hearing, the person has the burden of proving by clear and convincing evidence that
45 the person has not been convicted of a crime subsequent to issuance of the sealing

1 order. At the conclusion of the hearing, if the court determines that the person has not
2 satisfied the burden of proof, it shall find that the person has been newly convicted of
3 the crime and as a consequence is no longer eligible for the sealing order and shall issue
4 a written order unsealing the criminal history record information, with written findings
5 of fact. If, at the conclusion of the hearing, the court determines that the person has
6 satisfied the burden of proof, it shall find that the person has not been convicted of the
7 new crime and issue a written order certifying this determination. A copy of the court's
8 written order must be provided to the person and the prosecutorial office that
9 represented the State.

10 C. If the person does not request a hearing under paragraph A, the court shall determine
11 that the person has not satisfied the burden of proof and the court shall find that the
12 person has been convicted of the new crime and as a consequence is no longer eligible
13 for the sealing order and shall issue a written order unsealing the criminal history record
14 information, with written findings of fact. A copy of the court's written order must be
15 provided to the person and the prosecutorial office that represented the State.

16 **8. Notice of new crime.** If the court orders the unsealing of the record under this
17 section, the court shall electronically transmit notice of the court's order to the Department
18 of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau
19 of Identification upon receipt of the notice shall promptly amend its records relating to the
20 person's criminal history record information relating to that criminal conviction to unseal
21 the record. The State Bureau of Identification shall send notification of compliance with
22 that requirement to the person's last known address.

23 **§2265. Special restrictions on dissemination and use of criminal history record**
24 **information**

25 Notwithstanding Title 16, section 704, the criminal history record information relating
26 to a criminal conviction sealed under section 2264 is confidential, must be treated as
27 confidential criminal history record information for the purposes of dissemination to the
28 public under Title 16, section 705 and may not be disseminated by a criminal justice
29 agency, whether directly or through any intermediary, except as provided in Title 16,
30 section 705 and as set out in this section. In addition to the dissemination authorized by
31 Title 16, section 705, a criminal justice agency may disseminate the sealed criminal history
32 record information to:

33 **1. Subject of conviction.** The person who is the subject of the criminal conviction or
34 that person's designee;

35 **2. Criminal justice agency.** A criminal justice agency for the purpose of the
36 administration of criminal justice and criminal justice agency employment. For the
37 purposes of this subsection, dissemination to a criminal justice agency for the purpose of
38 the administration of criminal justice includes:

39 A. Dissemination and use of the criminal history record information relating to the
40 sealed record by an attorney for the State or for another jurisdiction as part of a
41 prosecution of the person for a new crime, including use in a charging instrument or
42 other public court document and in open court; and

43 B. Dissemination and use of the criminal history record information relating to the
44 sealed record as permitted by the Maine Rules of Evidence and to comply with

1 discovery requirements of the Maine Rules of Civil Procedure and the Maine Rules of
2 Unified Criminal Procedure;

3 **3. Secretary of State.** The Secretary of State to ensure compliance with state and
4 federal motor vehicle laws;

5 **4. Victims.** The victim or victims of the crime related to the conviction or:

6 A. If the victim is a minor, to the parent or parents, guardian or legal custodian of the
7 victim; or

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

12 **5. Financial services regulatory agencies.** The Department of Professional and
13 Financial Regulation, Bureau of Insurance, Bureau of Consumer Credit Protection, Bureau
14 of Financial Institutions and Office of Securities to ensure compliance with Titles 9-A, 9-B,
15 10, 24, 24-A and 32, as applicable, and any state or federal requirement to perform criminal
16 background checks by those agencies;

17 **6. Professional licensing agencies.** Licensing agencies conducting criminal history
18 record checks for licensees, registrants and applicants for licensure or registration by the
19 agencies; licensing agencies performing regulatory functions enumerated in Title 5, section
20 5303, subsection 2; and the State Board of Veterinary Medicine pursuant to Title 32,
21 chapter 71-A to conduct a background check for a licensee;

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

25 **8. Subject to fingerprinting.** An entity that is required by federal or state law to
26 conduct a fingerprint-based criminal history record check pursuant to Title 25, section
27 1542-A.

28 **§2266. Limited disclosure of eligible criminal conviction**

29 A person whose eligible criminal conviction is the subject of a sealing order under
30 section 2264 may respond to inquiries from persons other than criminal justice agencies
31 and other than entities that are authorized to obtain the sealed criminal history record
32 information under section 2265 by not disclosing the existence of the eligible criminal
33 conviction without being subject to any sanctions under the laws of this State. Other than
34 when responding to criminal justice agencies or when under oath while being prosecuted
35 for a subsequent crime, a person whose criminal conviction is sealed does not violate Title
36 17-A, section 451, 452 or 453 by not disclosing the sealed criminal conviction.

37 **§2267. Review of determination of eligibility; review of determination of subsequent**
38 **criminal conviction**

39 A written order entered under section 2264, subsection 5 or 7 may be reviewed by the
40 Supreme Judicial Court.

41 **1. Appeal by person.** A person aggrieved by a written order under section 2264,
42 subsection 5 or 7 may not appeal as of right. The time for taking the appeal and the manner

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

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

7 **§2268. Eligible criminal conviction sealed under former chapter 310**

8 Notwithstanding Title 16, section 704, the criminal history record information relating
9 to a criminal conviction for which the court has determined the person is entitled to special
10 restrictions on dissemination and use under former section 2254 is confidential and may
11 not be disseminated by a criminal justice agency, whether directly or through any
12 intermediary, except to the person who is the subject of the criminal conviction or that
13 person's designee and to a criminal justice agency for the purpose of the administration of
14 criminal justice and criminal justice agency employment. For the purposes of this section,
15 dissemination to a criminal justice agency for the purpose of the administration of criminal
16 justice includes dissemination and use of the criminal history record information relating
17 to the qualifying criminal conviction by an attorney for the State or for another jurisdiction
18 as part of a prosecution of the person for a new crime, including use in a charging
19 instrument or other public court document and in open court.

20 Section 2264, subsection 7 applies to a criminal conviction for which the court has
21 determined the person is entitled to special restrictions on dissemination and use under
22 former section 2254 if the person is convicted of a new crime.

23 **§2269. Violation**

24 A person who, in violation of section 2265 or 2268, intentionally disseminates sealed
25 criminal history record information relating to a criminal conviction knowing it to be in
26 violation of section 2265 or 2268 is guilty of unlawful dissemination of sealed records.
27 Violation of this section is a Class E crime.'

28 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
29 number to read consecutively.

30 **SUMMARY**

31 This amendment replaces the bill, which is a concept draft.

32 The amendment reestablishes a special process to seal certain criminal records that was
33 created by Public Law 2015, chapter 354 in a statute that was repealed by its own terms on
34 October 1, 2019.

35 The amendment uses the same process to seal criminal records of an eligible criminal
36 conviction as in the repealed law but expands the eligibility for record sealing by increasing
37 the age at which the crime was committed.

38 The amendment defines "eligible criminal conviction" to include all current and former
39 Class E crimes except for sexual assault crimes contained in the Maine Revised Statutes,
40 Title 17-A, chapter 11.

41 A person with an eligible criminal conviction may file a motion to seal the criminal
42 history record information for the eligible criminal conviction if at least 4 years have passed

1 since the person fully satisfied each of the sentencing alternatives imposed for the
2 conviction; the person has not been convicted of another crime in this State and has not had
3 a criminal charge dismissed as a result of a deferred disposition since satisfying the
4 sentencing alternatives; the person has not been convicted of a crime in another jurisdiction
5 since satisfying the sentencing alternatives; the person does not have any presently pending
6 criminal charges in this State or in another jurisdiction; and the person was at least 18 years
7 of age but less than 28 years of age at the time of the commission of the underlying crime.

8 The court must hold a hearing on the motion and, if the court determines all the
9 requirements have been met, the court must issue an order sealing the criminal history
10 record information. Notice of the order must be provided to the person, the prosecutorial
11 office that prosecuted the person and the Department of Public Safety, Bureau of State
12 Police, State Bureau of Identification, which must promptly amend its records relating to
13 the sealed criminal history record information.

14 If the person is convicted of a crime after the court's order, the person's criminal history
15 record information must be unsealed. The person is required to notify the court of the new
16 conviction, but if the person does not do so, the court must notify the person of the new
17 conviction and offer the person an opportunity to request a hearing to contest the fact of
18 the new conviction. If the court determines that there is a new criminal conviction or if the
19 person fails to request a hearing, the court must issue an order unsealing the person's
20 criminal history record information and notify the State Bureau of Identification.

21 When a person's criminal history record information related to the eligible conviction
22 is sealed, the sealed criminal history record information must be treated as confidential
23 criminal history record information for the purposes of dissemination to the public under
24 Title 16, section 705 and may not be disseminated by a criminal justice agency, whether
25 directly or through any intermediary, except as provided in Title 16, section 705. A
26 criminal justice agency may also disseminate information to the person; a criminal justice
27 agency for the administration of criminal justice; the Secretary of State to ensure
28 compliance with motor vehicle laws; victims; certain professional licensing agencies;
29 financial institutions that are required to conduct criminal history record checks; and others
30 required to conduct fingerprint-based background checks.

31 Dissemination of sealed criminal history record information to a criminal justice
32 agency for the purpose of the administration of criminal justice includes dissemination and
33 use of the criminal history record information relating to the criminal history record
34 information by an attorney for the State or for another jurisdiction as part of a prosecution
35 of the person for a new crime, including use in a charging instrument or other public court
36 document and in open court. Dissemination of sealed criminal history record information
37 to a criminal justice agency for the purpose of the administration of criminal justice also
38 includes dissemination and use of the criminal history record information as permitted by
39 the Maine Rules of Evidence and as required by discovery requirements of the Maine Rules
40 of Civil Procedure and the Maine Rules of Unified Criminal Procedure.

41 A person whose criminal conviction is sealed may respond to inquiries, other than from
42 criminal justice agencies and those authorized to obtain the sealed criminal history record
43 information, by not disclosing the existence of the sealed criminal history record
44 information without being subject to any state sanctions. Not disclosing the existence of
45 the sealed criminal history record information is not perjury, false swearing or unsworn

1 falsification except if not disclosed to a criminal justice agency or those authorized to obtain
2 the sealed record.

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

5 The amendment provides that the restrictions on the dissemination of records under
6 Title 15, former chapter 310 under orders issued before October 1, 2019 continue to apply
7 to the relevant criminal history records and that the process for unsealing a record based on
8 a subsequent criminal conviction created in this legislation applies when a person for whom
9 the dissemination of the record was restricted under former chapter 310 is subsequently
10 convicted of a crime.

11 Finally, the amendment provides that a person who intentionally disseminates criminal
12 history record information that has been sealed under this legislation in violation of the
13 confidentiality provisions of this legislation, knowing it to be in violation, is guilty of
14 unlawful dissemination as provided in Title 16, section 707, which is a Class E crime.

15 **FISCAL NOTE REQUIRED**

16 **(See attached)**