



Sen. Carney, Rep. Kuhn, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer.

I offer this testimony on behalf of the Maine Press Association in opposition to LD 1911, An Act to Automatically Seal Criminal History Record Information for Certain Crimes.

* * *

The Maine Press Association has consistently opposed bills calling for the automatic sealing or automatic expungement of criminal records, including most recently in 2023 against LD 2269 to seal certain Class D and Class E crimes relating to marijuana possession and cultivation and LD 1550 to authorize the expungement of records of nonviolent crimes, based almost entirely on First Amendment grounds.

When the Criminal Records Review Committee was established during the 131st Legislature, on which a representative of the Maine Press Association served, we were tasked with coming forward with a recommendation on what criminal records, if any, might qualify for expungement and/or sealing, and whether those actions could be automated or whether the *current* petition process to seal records – which includes involvement of district attorneys in a balancing test – could be expanded.

That committee – which included more than two dozen stakeholders in law enforcement, prison reform, public access, victim advocacy groups and other interested parties – met for two years and came forward with a number of recommendations, but could not settle the question of how automatic sealing of criminal records would work or whether the current petition process could be or should be expanded to include higher level crimes.

The bill before you in its original form called for automatic sealing of certain Class D and E crimes, which the Maine Press Association opposes based on constitutional grounds. But, in this now amended form the Press Association expresses even greater opposition on those same grounds and points to the most recent recommendations of the Criminal Records Review Committee.

During that committee's work, there was great unease about sealing any felony-level crimes, including Class C crimes, which are now included in the bill before you. Class C crimes in Maine include aggravated operating under the influence, felony theft, and aggravated criminal mischief, among other significant crimes, like assault.

This bill also now includes certain Class B crimes, like gross sexual assault of an unconscious person under MRSA 17-A §252, aggravated assault under Section §207-A, kidnapping if the person is released alive under §301, robbery with bodily injury under §609, I could go on.

It is also important to recognize that felony convictions can be, and often are, the result of a plea agreement in which a defendant pleads down from a higher-level felony.

There was robust debate during the Criminal Records Review Committee work surrounding these and other issues, including whether sealing should be crime-specific rather than crime classification specific and, while there was some agreement on some issues, members of the committee ultimately and overwhelmingly recommended additional study regarding administrative difficulties and cost of automatically sealing certain records and vulnerability of an automatic record-sealing process to a challenge on constitutional grounds. (See second paragraph on page 41 of the December 2024 CRRC report included with this testimony.)

That recommendation did not reflect overwhelming support for the concept, only overwhelming support for continued study. (See last paragraph on page 40 of the CRRC December 2024 report.)

The bill before you also allows for sealing of non-conviction data, which also carries potential constitutional challenges.

In 2016, the Judicial Branch began automatically sealing all dismissed court cases, a move that was done without public notice and which was challenged on constitutional grounds by the Maine Press Association, the Maine Association of Broadcasters, the American Civil Liberties Union of Maine Foundation, the Maine Freedom of Information Coalition, the New England First Amendment Coalition, the National Freedom of Information Coalition and a number of other press and public access advocates.

Based on that challenge, the court quickly reversed itself, acknowledging the clear constitutional argument that automatic seal of records is a First Amendment violation.

The federal courts of appeal, including the First Circuit, have uniformly held that the First Amendment guarantees to the public a right of access to records of criminal proceedings, something that the Maine Press Association brought up multiple times during Criminal Records Review Committee's work, but there was never full discussion of First Amendment concerns by the committee.

According to the First Circuit, in *Globe Newspaper Co. v. Pokaski*, the basis for this constitutional right is that without access to documents the public often would not have a "full understanding of the proceeding and therefore would not always be in a position to serve as an effective check on the system."

We could provide more citations in the First Circuit, along with a ruling in the D.C. Circuit that the "First Amendment guarantees the press and the public a general right of access to court proceedings and court documents unless there are compelling reasons demonstrating why it cannot be observed."

In addition, the Judicial Branch has a longstanding common law tradition of affording public access to court records. This common law right of access to both criminal and civil court records is well established in Maine and in all other state and federal courts in this country, and we would be happy to provide citations. Courts have, including here in Maine and under appropriate circumstances, sealed or otherwise impounded records when public access would impede the administration of justice, but those actions are done only through a clear showing of necessity on balance with the public's First Amendment right to access.

Maine has a very clear process now for someone to seal their case file. That process is not used often, but it is being used.

The Maine Press Association does not object to sealing court files with careful balance between privacy and public interests. **Automating** such a seal is the issue.

We urge the Judiciary Committee to hold robust discussion on the First Amendment implications of LD 1911, particularly with the expansion of eligible crimes set forth in this amendment, before considering any recommendation for automatic seal of any class of court records.

When the Criminal Records Review Committee recommended further study on sealing records, it did so with the hope that the committee, through LD 259, would become a permanent study committee and could continue its work. The status of that bill was still in question early this week, but if CRRC becomes a permanent committee the Maine Press Association recommends that this bill be sent back for further discussion.

* * *

The Maine Press Association (MPA), founded in 1864, is one of the oldest professional news organizations in the nation. Our goals, as spelled out in our charter and by-laws are to promote and foster high ethical standards and the best interests of the newspapers, journalists, and media organizations of the state of Maine that constitute its membership; to encourage improved business and editorial practices and better media environment in the state; and to improve the conditions of journalism and journalists by promoting and protecting the principles of freedom of speech and of the press and the public's right to know.



State of Maine
131st Legislature, Second Regular Session

Criminal Records Review Committee

December 2024

Office of Policy and Legal Analysis

criminal charge, then information about the outcome of that plea agreement is not confidential and therefore may be disclosed to the public. A majority of the committee members voting recommend that this provision of law be redrafted to clarify, however, that if a defendant enters an agreement with a prosecutor through which all criminal charges against the defendant are dismissed—even if the defendant admits to having committed a civil violation or a traffic infraction—then information about the dismissed criminal charges should be treated as confidential criminal history record information. In making this change, the Committee cautions the Legislature to ensure that it does not undermine the rule announced in *Gordon v. Cheskin*, 2013 ME 113, 82 A.3d 1221, that “[a]n admission to specific behavior” as part of a guilty plea entered in exchange for a deferred disposition “may be considered in a later proceeding, if that behavior is relevant to the matter before the court” even when criminal charges are ultimately dismissed at the end of the deferral period.

Draft legislation to implement this recommendation is included in Appendix R.

- ✓ **G. Enact legislation establishing a permanent criminal records review commission to conduct ongoing review of the laws, rules and procedures pertaining to criminal history record information in this State, using LD 2252 from the 131st Legislature as a model but further specifying that the issues studied by the commission shall include but are not limited to the topics for further study identified in other committee recommendations.** (16 in favor, 2 opposed, 2 abstained)

Over the course of its two years of work, the Committee received a significant volume of information about the impact of criminal records on individuals in the State and simply did not have sufficient time to develop comprehensive recommendations on each topic raised in the materials presented. A majority of the committee members who voted reiterate the first recommendation made by this Committee in its January 2024 Interim Report: that the Legislature should establish a permanent criminal records review commission to enable continuous review of laws and rules regarding criminal records in the State. This permanent commission should have similar membership to the current Committee and should be charged with reviewing procedures for the collection, maintenance and dissemination of criminal history record information; the criteria and eligibility for sealing criminal history record information; public access to criminal history record information and whether to create processes for expunging or vacating criminal history record information. The permanent commission should also have authority to report out legislation at the start of each regular session and make recommendations to the Department of Public Safety and members of the Maine Judicial Branch regarding the use, maintenance or dissemination of criminal history record information. LD 2252, which was developed by the Judiciary Committee during the Second Regular Session of the 131st Legislature but ultimately not enacted, should serve as the foundation for implementing this recommendation.

In addition to identifying the need for a permanent commission, a majority of the committee members voting supported further study of several specific topics related to access to criminal history record information and to minimizing the collateral consequences and other consequences of having a criminal record in the State. Each of these recommendations for further study is identified below and the substance of each of these recommendations is included in the draft legislation to implement Recommendation G, which is included in Appendix S.

- i. ***Whether Maine should adopt all or certain portions of the Model Collateral Consequences of Conviction Act and how the text of the Model Act should be amended to fit Maine law and practice.*** (18 in favor, 0 opposed, 5 abstained)

Committee members were intrigued by the goals of the Model Collateral Consequences of Conviction Act: ensuring that defendants are afforded notice of the collateral consequences attendant to their convictions prior to and during sentencing and providing processes for relieving defendants from some or all of these collateral consequences if the relief would not pose an unreasonable risk to the safety or welfare of any person or the public. The committee members voting unanimously suggest that the permanent commission examine whether it would be appropriate to adopt this model law in the State and, if so, whether to make any amendments to the model law to better suit Maine law and practice.

- ii. ***How to establish an automatic record sealing process for adult criminal convictions, both which crimes should be eligible for automatic sealing and how to implement the process.*** (14 in favor, 1 opposed, 6 abstained)

This Committee and prior iterations of the Committee have repeatedly discussed the administrative difficulties and high cost attendant to the creation of a process for automatically sealing certain types of criminal history record information in the State as well as the potential increased vulnerability of an automatic record-sealing process to a challenge on constitutional separation of powers grounds. Nevertheless, a majority of the committee members voting believe that, without a true "clean slate" or automatic record-clearing process, most defendants who meet the criteria to have their records cleared will not benefit from the process. The statistics gathered by the Maine Judicial Branch demonstrate that very few post-judgment motions to seal criminal history record information have been filed in the State and the experience of other states similarly demonstrates that petition-based record clearing processes are far less effective than automatic record clearing processes. The Committee therefore recommends that the permanent commission develop an administratively feasible and economic automatic record-clearing process, identifying both what types of offenses that should be eligible for this relief and under what circumstances. At a minimum, the Committee strongly suggests that decriminalized offenses be eligible for automatic sealing but understands that creation of such a process will require a careful and detailed review of current and past criminal laws in the State to identify the specific types of conduct that was but is no longer subject to criminal sanctions.

- iii. ***Whether and in what circumstances convictions for all Class A, B and C crimes, or a specific subset of Class A, B and C crimes, should be eligible for sealing.*** (14 in favor, 1 opposed, 6 abstained)

Under current law, only convictions for Class E crimes and a small subset of marijuana-related, decriminalized Class D crimes are eligible for sealing. In Recommendation A(iv), above, the Committee recommends that the Legislature expand the list of offenses eligible for record-sealing to include non-violent Class D crimes. If this recommendation is adopted, nearly all the so-called "misdemeanor" offenses—punishable by less than one year of imprisonment—will be eligible for relief. Yet, a majority of committee members believe that record sealing should also be made available for a subset of Class A, B, and C crimes, traditionally referred to as "felonies" because they are punishable by at least one year of imprisonment. Convictions for these, more serious offenses are likely to have more collateral consequences and other consequences than convictions for Class D and E crimes. Thus,