

## CHAPTER 305-A

### POST-CONVICTION REVIEW

#### §2121. Definitions

As used in this chapter, the following terms have the following meanings. [PL 1979, c. 701, §15 (NEW).]

**1. Criminal judgment.** "Criminal judgment" means a judgment of conviction of a crime, the orders of adjudication and disposition in a juvenile case and a judgment of not criminally responsible by reason of insanity.

[PL 2011, c. 601, §1 (AMD).]

**1-A. Assigned justice or judge.** "Assigned justice or judge" means the Justice or Active Retired Justice of the Supreme Judicial Court, the Justice or Active Retired Justice of the Superior Court or the judge authorized to sit in the Superior Court on post-conviction review cases who is assigned the post-conviction review proceeding when a special assignment has been made. It means any justice, active retired justice or authorized judge attending to the regular criminal calendar when the post-conviction review proceeding is assigned to the regular criminal calendar.

[PL 2011, c. 601, §2 (AMD).]

**2. Post-sentencing proceeding.** "Post-sentencing proceeding" means a court proceeding or administrative action occurring during the course of and pursuant to the operation of a sentence that affects whether there is incarceration or its length, including revocation of parole, failure to grant parole, an error of law in the computation of a sentence including administrative calculations of deductions relative to time detained pursuant to Title 17-A, section 2305 and default in payment of a fine or restitution. It does not include the following Title 17-A, Part 6 court proceedings: revocation of probation, revocation of supervised release for sex offenders or revocation of administrative release. It does not include the following administrative actions: calculations of deductions pursuant to Title 17-A, section 2307, subsections 2, 3 and 4; section 2308, subsection 2; section 2309, subsection 2; section 2310, subsections 3, 6 and 7; and section 2311; disciplinary proceedings resulting in a withdrawal of deductions under Title 17-A, section 2307, subsection 5; section 2308, subsection 3; section 2309, subsection 3; section 2310, subsection 4; and section 2311; cancellation of furlough or other rehabilitative programs authorized under Title 30-A, sections 1556, 1605 and 1606 or Title 34-A, section 3035; cancellation of a supervised community confinement program granted pursuant to Title 34-A, section 3036-A; cancellation of a community confinement monitoring program granted pursuant to Title 30-A, section 1659-A; or cancellation of placement on community reintegration status granted pursuant to Title 34-A, section 3810 or former section 4112.

[PL 2019, c. 113, Pt. C, §37 (AMD).]

**3. Sentence.** "Sentence" means the punishment imposed in a criminal proceeding or the disposition imposed in a juvenile proceeding.

[PL 1983, c. 235, §2 (RPR).]

#### SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §1 (AMD). PL 1983, c. 235, §§1,2 (AMD). PL 1985, c. 209, §1 (AMD). PL 1985, c. 556, §1 (AMD). PL 1995, c. 286, §2 (AMD). PL 1997, c. 464, §1 (AMD). PL 2003, c. 29, §1 (AMD). PL 2011, c. 601, §§1-3 (AMD). PL 2013, c. 133, §3 (AMD). PL 2017, c. 148, §2 (AMD). PL 2019, c. 113, Pt. C, §37 (AMD).

#### §2122. Purpose

This chapter provides a comprehensive and, except for direct appeals from a criminal judgment, exclusive method of review of those criminal judgments and of post-sentencing proceedings occurring during the course of sentences. It is a remedy for illegal restraint and other impediments specified in section 2124 that have occurred directly or indirectly as a result of an illegal criminal judgment or post-sentencing proceeding. It replaces the remedies available pursuant to post-conviction habeas corpus, to the extent that review of a criminal conviction or proceedings were reviewable, the remedies available pursuant to common law habeas corpus, including habeas corpus as recognized in Title 14, sections 5501 and 5509 to 5546, coram nobis, audita querela, writ of error, declaratory judgment and any other previous common law or statutory method of review, except appeal of a judgment of conviction or juvenile adjudication and remedies that are incidental to proceedings in the trial court. The substantive extent of the remedy of post-conviction review is defined in this chapter and not defined in the remedies that it replaces; provided that this chapter provides and is construed to provide relief for those persons required to use this chapter as required by the Constitution of Maine, Article I, Section 10. [PL 2011, c. 601, §4 (AMD).]

#### SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1997, c. 399, §1 (AMD). PL 2011, c. 601, §4 (AMD).

#### §2123. Jurisdiction and venue

**1. Jurisdiction.** Jurisdiction shall be in the Superior Court.  
[PL 1979, c. 701, §15 (NEW).]

**1-A. Supreme Court Justice or authorized Judge of the District Court.** A single Justice of the Supreme Judicial Court, an Active Retired Justice of the Supreme Judicial Court or a judge authorized to sit in the Superior Court on post-conviction review cases has and shall exercise jurisdiction and has and shall exercise all of the powers, duties and authority necessary for exercising the same jurisdiction as the Superior Court relative to a post-conviction review proceeding.  
[PL 2003, c. 29, §2 (AMD).]

**2. Venue.** Venue must be in the county in which the criminal judgment was entered. Venue may be transferred by the assigned justice or judge at that assigned justice's or judge's discretion.  
[RR 2011, c. 2, §13 (COR).]

#### SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1983, c. 235, §3 (AMD). PL 1983, c. 816, §B4 (AMD). PL 1985, c. 209, §2 (AMD). PL 2003, c. 29, §2 (AMD). PL 2011, c. 601, §5 (AMD). RR 2011, c. 2, §13 (COR).

#### §2123-A. Method of review for administrative actions not included in the definition of "post-sentencing proceeding"

Remedial relief from administrative actions occurring during the course of and pursuant to the operation of a sentence that affects whether there is incarceration or its length that are not included in the definition of "post-sentencing proceeding" in section 2121, subsection 2 is exclusively provided by Title 5, chapter 375, subchapter 7. [PL 2011, c. 601, §6 (NEW).]

#### SECTION HISTORY

PL 2011, c. 601, §6 (NEW).

#### §2124. Jurisdictional prerequisites of restraint or impediment

An action for post-conviction review of a criminal judgment of this State or of a post-sentencing proceeding following the criminal judgment may be brought if the person seeking relief demonstrates that the challenged criminal judgment or post-sentencing proceeding is causing a present restraint or other specified impediment as described in subsections 1 to 3: [PL 1997, c. 399, §2 (AMD).]

**1. Present restraint or impediment by criminal judgment being challenged.** Present restraint or impediment as a direct result of the challenged criminal judgment:

- A. Incarceration imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (AMD).]
  - B. Other restraint, including probation, parole or other conditional release imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (AMD).]
  - C. Unconditional discharge imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (AMD).]
  - C-1. Incarceration imposed by the challenged criminal judgment that is wholly satisfied at the time of sentence imposition due to detention time credits earned under Title 17-A, section 2305; [PL 2019, c. 113, Pt. C, §38 (AMD).]
  - D. Incarceration, other restraint or an impediment specified in paragraphs A and B that is to be served in the future, although the convicted or adjudicated person is not in execution of the sentence either because of release on bail pending appeal of the criminal judgment or because another sentence must be served first; [PL 2011, c. 601, §7 (AMD).]
  - E. A fine imposed by the challenged criminal judgment that has not been paid and in a case when a person has not inexcusably violated Title 17-A, section 1710 or inexcusably defaulted in payment of any portion. A fine includes any imposed monetary fees, surcharges and assessments, however designated; [PL 2019, c. 113, Pt. C, §39 (AMD).]
  - F. Restitution imposed by the challenged criminal judgment that has not been paid and in a case when a person has not inexcusably violated Title 17-A, section 2014 or inexcusably defaulted in payment of any portion. Any challenge as to the amount of restitution ordered is further limited by Title 17-A, section 2017; [PL 2019, c. 113, Pt. C, §40 (AMD).]
  - F-1. Community service work imposed by the challenged criminal judgment that has not been fully performed and in a case when a person has not inexcusably failed to complete the work within the time specified by the court; or [PL 2013, c. 266, §3 (NEW).]
  - G. Any other juvenile disposition imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (NEW).]
- [PL 2019, c. 113, Pt. C, §§38-40 (AMD).]

**1-A. Present or future restraint by commitment to the Commissioner of Health and Human Services.** Present restraint or impediment as a direct result of commitment to the custody of the Commissioner of Health and Human Services pursuant to section 103 imposed as a result of being found not criminally responsible by reason of insanity that is challenged or future restraint or impediment as a result of such an order of commitment that is challenged when a sentence involving imprisonment is or will be served first.

A claim for postconviction review is not allowed under this subsection relative to any court proceeding or administrative action that affects release or discharge pursuant to section 104-A; [PL 2011, c. 601, §7 (AMD).]

**2. Post-sentencing proceeding.** Incarceration or increased incarceration imposed pursuant to a post-sentencing proceeding following a criminal judgment, although the criminal judgment itself is not challenged; or [PL 1979, c. 701, §15 (NEW).]

**3. Present indirect impediment.** Present restraint or impediment resulting indirectly from the challenged criminal judgment of this State:

- A. Incarceration pursuant to a sentence imposed in this State, in another state or in a Federal Court for a crime punishable by incarceration for a year or more, if the length of the incarceration is

greater than it would otherwise have been in the absence of the challenged criminal judgment of this State. The prior criminal judgment that is challenged must be for a crime punishable by incarceration for a year or more. This requirement is not satisfied by a showing only that the court imposing the present sentence was aware of the challenged criminal judgment or if it appears from the length or seriousness of the person's total criminal record that the challenged criminal judgment, taking into account its seriousness and date, could have little or no effect on the length of incarceration under the subsequent sentence; [PL 2011, c. 601, §7 (AMD).]

B. [PL 2011, c. 601, §7 (RP).]

C. [PL 2011, c. 601, §7 (RP).]

D. Incarceration pursuant to a sentence imposed in this State, in another state or in a Federal Court for a crime for which proof of the criminal judgment of this State that is challenged is an element of, or must constitutionally be treated as an element of, the new crime. This requirement is not satisfied unless the new crime is, in the case of a crime in this State, punishable by incarceration of one year or more or, in the case of a crime in another jurisdiction, a felony or an infamous crime; or [PL 2011, c. 601, §7 (NEW).]

E. A criminal judgment in this State pursuant to a plea of guilty or nolo contendere accepted by a trial court on or after March 31, 2010 by a represented defendant who is not a United States citizen and who under federal immigration law, as a consequence of the particular plea, is subject to a pending deportation proceeding. [PL 2011, c. 601, §7 (NEW).]

[PL 2011, c. 601, §7 (AMD).]

#### SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1983, c. 235, §§4,5 (AMD). PL 1985, c. 209, §3 (AMD). RR 1995, c. 2, §32 (COR). PL 1995, c. 286, §3 (AMD). PL 1997, c. 399, §2 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B7 (REV). PL 2011, c. 601, §7 (AMD). PL 2013, c. 266, §§2, 3 (AMD). PL 2019, c. 113, Pt. C, §§38-40 (AMD).

#### §2125. Ground for relief

A person who satisfies the prerequisites of section 2124 may show that the challenged criminal judgment or sentence is unlawful or unlawfully imposed, or that the impediment resulting from the challenged post-sentencing proceeding is unlawful, as a result of any error or ground for relief, whether or not of record, unless the error is harmless or unless relief is unavailable for a reason provided in section 2126, section 2128 unless section 2128-A applies, or section 2128-B. [PL 2013, c. 266, §4 (AMD).]

#### SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §2 (AMD). PL 2011, c. 601, §8 (AMD). PL 2013, c. 266, §4 (AMD).

#### §2126. Exhaustion

A person under restraint or impediment specified in section 2124 must also demonstrate that the person has previously exhausted remedies incidental to proceedings in the trial court, on appeal or administrative remedies. A person who has taken an appeal from a judgment of conviction, a juvenile adjudication or a judgment of not criminally responsible by reason of insanity is not precluded from utilizing the remedy of this chapter while the appeal is pending. The post-conviction review proceeding is automatically stayed pending resolution of the appeal unless the Appellate Court on motion and for good cause otherwise directs. [PL 2013, c. 266, §5 (AMD).]

#### SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §3 (AMD). PL 1985, c. 556, §2 (AMD). PL 2013, c. 266, §5 (AMD).

**§2127. Mootness**

**(REPEALED)**

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §4 (RP).

**§2128. Waiver of grounds for relief**

A person under restraint or impediment specified in section 2124 shall demonstrate that any ground of relief has not been waived. The bases of waiver are as follows. [PL 2011, c. 601, §9 (AMD).]

**1. Errors claimable on direct appeal.** Errors at the trial that have been or could have been raised on a direct appeal, whether or not such an appeal was taken, may not be raised in an action for post-conviction review under this chapter, except that if the failure of the convicted or adjudicated person to take an appeal or to raise certain issues on appeal is excusable and the errors not appealed may result in reversal of the criminal judgment, the court may order that an appeal be taken as provided in section 2130.

[PL 2011, c. 601, §9 (AMD).]

**2. Errors claimable in federal habeas corpus.**

[PL 2011, c. 601, §9 (RP).]

**3. Waiver of grounds not raised in prior post-conviction review action.** All grounds for relief from a criminal judgment or from a post-sentencing proceeding must be raised in a single post-conviction review action and any grounds not so raised are waived unless the Constitution of Maine or the Constitution of the United States otherwise requires or unless the court determines that the ground could not reasonably have been raised in an earlier action.

[PL 2011, c. 601, §9 (AMD).]

**4. Prior challenges.** A person who has previously challenged a criminal judgment or a post-sentencing proceeding under former Title 14, sections 5502 to 5508 or its predecessors may not challenge the criminal judgment or post-sentencing proceeding by post-conviction review unless the court determines that a ground claimed in the action for post-conviction review could not reasonably have been raised in the earlier action.

[PL 2011, c. 601, §9 (AMD).]

**5. Filing deadline for direct impediment.**

[PL 2011, c. 601, §9 (RP).]

**6. Filing deadline for indirect impediment.**

[PL 2011, c. 601, §9 (RP).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1983, c. 235, §6 (AMD). PL 1987, c. 402, §A110 (AMD). PL 1995, c. 286, §4 (AMD). PL 1997, c. 399, §§3,4 (AMD). PL 1997, c. 399, §5 (AFF). PL 2011, c. 601, §9 (AMD).

**§2128-A. Exceptions to waiver**

The assertion of a right under the Constitution of the United States may not be held waived by its nonassertion at trial or on appeal if the assertion of the right would be held not waived in a federal habeas corpus proceeding brought by the convicted or adjudicated person pursuant to 28 United States Code, Sections 2241 to 2254. [PL 2011, c. 601, §10 (NEW).]

SECTION HISTORY

PL 2011, c. 601, §10 (NEW).

**§2128-B. Time for filing**

The following filing deadlines apply. [PL 2011, c. 601, §11 (NEW).]

**1. Filing deadline for direct impediment.** A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 1 or 1-A. The limitation period runs from the latest of the following:

- A. The date of final disposition of the direct appeal from the underlying criminal judgment or the expiration of the time for seeking the appeal; [PL 2011, c. 601, §11 (NEW).]
- B. The date on which the constitutional right, state or federal, asserted was initially recognized by the Law Court or the Supreme Court of the United States if the right has been newly recognized by that highest court and made retroactively applicable to cases on collateral review; or [PL 2011, c. 601, §11 (NEW).]
- C. The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence. [PL 2011, c. 601, §11 (NEW).]

The time during which a properly filed petition for writ of certiorari to the Supreme Court of the United States with respect to the same criminal judgment is pending is not counted toward any period of limitation under this subsection.

[PL 2011, c. 601, §11 (NEW).]

**2. Filing deadline for post-sentencing proceedings.** A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a post-sentencing proceeding under section 2124, subsection 2. The limitation period runs from the later of the following:

- A. The date of filing of the final judgment in the court proceeding occurring during the course of and pursuant to the operation of the underlying sentence that results in incarceration or increased incarceration; or [PL 2011, c. 601, §11 (NEW).]
- B. The date of the final administrative action occurring during the course of and pursuant to the operation of the underlying sentence that results in incarceration or increased incarceration. [PL 2011, c. 601, §11 (NEW).]

[PL 2011, c. 601, §11 (NEW).]

**3. Filing deadline for indirect impediment.** A one-year period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraphs A and D. The one-year limitation period runs from the date of imposition of a sentence for the new crime resulting in the indirect impediment. A 60-day period of limitation applies to initiating a petition for post-conviction review seeking relief from a criminal judgment under section 2124, subsection 3, paragraph E. The 60-day limitation period runs from the date the noncitizen becomes aware, or should have become aware, that under federal immigration law, as a consequence of the particular plea, a deportation proceeding has been initiated against the noncitizen.

[PL 2011, c. 601, §11 (NEW); PL 2011, c. 601, §14, 15 (AFF).]

**SECTION HISTORY**

PL 2011, c. 601, §11 (NEW). PL 2011, c. 601, §§14, 15 (AFF).

**§2129. Petition and procedure**

**1. Filing of petition.** Petitions shall be filed as follows.

- A. A proceeding for post-conviction review shall be commenced by filing a petition in the Superior Court in the county specified in section 2123. [PL 1981, c. 238, §5 (NEW).]

B. If the petitioner desires to have counsel appointed, he shall file an affidavit of indigency in the form prescribed by the Supreme Judicial Court. If the petitioner is incarcerated, the affidavit shall be accompanied by a certificate of the appropriate officer of the institution in which the petitioner is incarcerated as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution. The failure to include an affidavit of indigency with the petition does not bar the court from appointing counsel upon a subsequent filing of an affidavit of indigency. [PL 1981, c. 238, §5 (NEW).]

C. Once the petition has been filed, the clerk shall forward a copy of the petition and any separate documents filed with it to the Chief Justice of the Superior Court and to the prosecutorial office that earlier represented the State in the underlying criminal or juvenile proceeding. [PL 2003, c. 29, §3 (AMD).]

[PL 2003, c. 29, §3 (AMD).]

**2. Assignment of case.**

[PL 2003, c. 29, §4 (RP).]

**3. Representation of respondent.** In all proceedings for postconviction review, the State may be represented by the prosecutorial office that earlier represented the State in the underlying criminal or juvenile proceeding. On a case-by-case basis, a different prosecutorial office may represent the State on agreement between the 2 prosecutorial offices.

[PL 1991, c. 622, Pt. D (RPR).]

**4. Bail pending disposition of petition.** Pending final disposition, the assigned justice or judge may order the release of the petitioner on bail at such time and under such circumstances and conditions as the Supreme Judicial Court provides by rule.

[PL 2011, c. 601, §12 (AMD).]

**5. Procedure in proceedings pursuant to this chapter.** In all respects not covered by statute, the procedure in proceedings under this chapter is as the Supreme Judicial Court provides by rule.

[PL 2003, c. 29, §5 (AMD).]

**6. Amendment to petition.**

[PL 1981, c. 238, §5 (RP).]

**7. Representation of respondent.**

[PL 1981, c. 238, §5 (RP).]

**8. Response.**

[PL 1981, c. 238, §5 (RP).]

**9. Discovery.**

[PL 1981, c. 238, §5 (RP).]

**10. Determination by court; hearing.**

[PL 1981, c. 238, §5 (RP).]

**11. Bail pending disposition of petition.**

[PL 1981, c. 238, §5 (RP).]

SECTION HISTORY

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §5 (RPR). PL 1983, c. 688, §9 (AMD). PL 1985, c. 209, §4 (AMD). PL 1985, c. 556, §3 (AMD). PL 1991, c. 622, §D (AMD). PL 2003, c. 29, §§3-5 (AMD). PL 2011, c. 601, §12 (AMD).

**§2130. Relief**

If the court determines that relief should be granted, it shall order appropriate relief, including: Release from incarceration or other restraint; reversal of the criminal judgment, including one entered upon a plea of guilty or nolo contendere; entry of judgment for a lesser included offense; reversal of another order or decision, with or without affording the State or other party a new hearing; granting the right to take an appeal from the criminal judgment; correction of errors appearing as a matter of record; resentencing or a new sentence; and entry of an order altering the amount of time that a person incarcerated under a sentence has served or must serve. The judgment making final disposition is a final judgment for purposes of review by the Law Court. When relief is granted to the petitioner and release is appropriate, the justice may release a petitioner on bail pending appeal. [RR 2009, c. 2, §32 (COR).]

**SECTION HISTORY**

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §6 (AMD). RR 2009, c. 2, §32 (COR).

**§2131. Review of final judgment**

A final judgment entered under section 2130 may be reviewed by the Supreme Judicial Court sitting as the Law Court. [PL 2003, c. 17, §4 (RPR).]

**1. Appeal by petitioner.** A petitioner aggrieved by the final judgment 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. [PL 2003, c. 17, §4 (RPR).]

**2. Appeal by State.** The State aggrieved by the final judgment may appeal as of right and no certificate of approval by the Attorney General is required. The time for taking the appeal and the manner and any conditions for the taking of an appeal are as the Supreme Judicial Court provides by rule. [PL 2003, c. 17, §4 (RPR).]

**3. Procedure on appeal.**

[PL 2003, c. 17, §4 (RP).]

**SECTION HISTORY**

PL 1979, c. 701, §15 (NEW). PL 1981, c. 238, §§7,8 (AMD). PL 2003, c. 17, §4 (RPR).

**§2132. Applicability**

Both the substantive and procedural provisions of this chapter shall apply to any action for post-conviction review commenced after the effective date of this chapter. In the case of any action under former Title 14, sections 5502 to 5508 or any other action for collateral review of a conviction or of consequences resulting from a criminal judgment which was commenced prior to the effective date of this chapter and which is pending on the effective date, the petition may be amended to assert any basis for jurisdiction under section 2124 or any grounds for relief not available under prior law; provided that failure to do so shall not constitute waiver pursuant to section 2128, subsection 3. In any pending action brought under prior law, the court in its discretion may apply any of the procedural provisions of this chapter. [PL 1987, c. 402, Pt. A, §111 (AMD).]

**SECTION HISTORY**

PL 1979, c. 701, §15 (NEW). PL 1987, c. 402, §A111 (AMD).



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