

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

—
H.P. 966 - L.D. 1310

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

Be it enacted by the People of the State of Maine as follows:

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.

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.

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

§2262. Statutory prerequisites for sealing criminal history record information

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

1. Eligible criminal conviction. The criminal conviction is an eligible criminal conviction;

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

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

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

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

6. 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 had not attained 28 years of age.

§2263. Motion; persons who may file

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

§2264. Motion and hearing; process

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

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

3. Representation of State. The prosecutorial office that represented the State in the underlying criminal proceeding may 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. Evidence presented by the participants at the hearing may include testimony, affidavits and other reliable hearsay evidence as permitted by the court.

5. Hearing; order; written findings. The court shall hold a hearing on a motion filed 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 2262, the court shall grant the motion and shall issue a written order sealing the criminal history record information of the eligible criminal conviction that was the subject of the motion. 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 2262, the court shall issue a written order denying the motion. 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 issues an order under subsection 5 that includes the sealing of a criminal conviction maintained by the State Bureau of Identification pursuant to Title 25, section 1541 and previously transmitted by the court pursuant to Title 25, section 1547, the court shall electronically transmit notice of the court's order to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. Upon receipt of the notice, the State Bureau of Identification shall promptly amend its records relating to the person's eligible criminal conviction to reflect that the criminal history record information relating to that criminal conviction is sealed and that dissemination is governed by section 2265. The State Bureau of Identification shall send notification of compliance with this subsection to the person's last known address.

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

A. 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 eligibility, identifying the new conviction, including the jurisdiction, court and docket number of the new 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 the apparent existence of the new conviction and offer the person an opportunity to request a hearing to contest the fact of a new conviction.

B. If the person requests a hearing under paragraph A, 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 has not been convicted of a crime subsequent to issuance of the sealing order. 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 newly convicted of the crime and as a consequence is no longer eligible for the sealing order and shall issue a written order unsealing the criminal history record information, with written findings of fact. 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. A copy of the court's

written order must be provided to the person and the prosecutorial office that represented the State.

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

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

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

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

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

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

A. Dissemination and use of the criminal history record information relating to the sealed record 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; and

B. Dissemination and use of the criminal history record information relating to the sealed record as permitted by the Maine Rules of Evidence and to comply with discovery requirements of the Maine Rules of Civil Procedure and the Maine Rules of Unified Criminal Procedure;

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

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

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

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

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

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

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

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

§2266. Limited disclosure of eligible criminal conviction

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

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

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

1. Appeal by person. A person aggrieved by a written order under section 2264, 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 State. If the State is aggrieved by a written order under section 2264, 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.

§2268. Eligible criminal conviction sealed under former chapter 310

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 under former section 2254 is confidential and may not be disseminated by a criminal justice agency, whether directly or through any intermediary, except to the person who is the subject of the criminal conviction or that person's designee and 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.

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

§2269. Violation

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