

AGENDA - CRIMINAL RECORDS REVIEW COMMITTEE

Meeting #4

Monday, December 6, 2021, 1:00 – 4:00 p.m.

The meeting will be held in person in Room 228 of the State House and via ZOOM.

The meeting may be watched on YouTube at: <https://youtu.be/iPobesPGe-w>.

I. Requested information

- **Anne Jordan, the Judicial Branch and Matthew Ruel, the Maine State Police, State Bureau of Identification**, will provide remarks on the mechanics of sealing criminal history record information; automatic and petition-based motion processes; automated notice by the court when special restrictions are ordered on the dissemination and use of criminal history record information.
- **Foster Bates, President of the Maine State Prison NAACP Prison Branch**, will provide remarks as follows: (1) responses to the presentations of Peter Lehman and Michael Kebede and any following discussion at the review committee meeting on November 22 and (2) perspectives on criminal record sealing and expungement from a civil rights organization whose primary mission includes the advancement of racial justice.

II. **Jane Orbeton, OPLA**, summary of Michigan Clean Slate package of laws from 2020 and Massachusetts sealing and expungement laws

III. Continuing review committee discussion of:

A. Whether to recommend re-establishment of the Criminal Records Review Committee in 2022 to report to the 131st Maine Legislature?

B. Whether to recommend a Constitutional Resolution to amend Article V of the Maine Constitution to give to the Legislature the power to grant reprieves, commutations and pardons of criminal convictions?

C. Whether to recommend a petition-initiated, court process for expunging, sealing or restricting access to criminal history record information?

IV. Planning for final meeting, Meeting #5 on December 13, 2021

V. Adjourn

Future Meeting:

- Monday, December 13, 2021, 1:00 p.m. – 4:00 p.m. (Hybrid, State House Room 228 and Zoom)

Massachusetts Sealing and Expungement of Adult Criminal Convictions (Jane Orbeton, OPLA, December 2, 2021)

1. Petition-based sealing.

Misdemeanors (up to 2 ½ yrs imprisonment). Waiting period 3 years after completion of sentence, with no new convictions. Decriminalized marijuana possession, no waiting period.

Felonies. Waiting period 7 years after completion of sentence, with no new convictions. For eligible sex offenses the waiting period is 15 years after completion of sentence or so long as registration is required, whichever is later.

Ineligible convictions: certain firearms offenses; crimes against public justice, perjury; crimes of prohibited conduct by a public official or public employee; sex offenses requiring registration as a Level 2 or 3 offender.

2. Expungement.

Expungement is available for criminal conduct that occurred prior to age 21. Permanently destroys a criminal record. Limited to 2 records, except for records arising out of the same incident.

- Non-time-based expungement requires a finding that expungement is in the interest of justice. Is available for:
 - ✓ A decriminalized offense; or
 - ✓ A fraudulent conviction. Fraudulent convictions include fraud upon the court, fraud by errors by law enforcement, court employees or witnesses, or a conviction that is based on theft of the identity of the person.
- Time-based expungement is available for misdemeanors and felonies.
 - ✓ Misdemeanors. Waiting period 3 years after completion of sentence
 - ✓ Felonies. Waiting period 7 years after completion of sentence.
 - ✓ Ineligible convictions: Sex offenses, OUI, firearms offenses, violation of a restraining or harassment prevention order, assault or assault and battery on a household member, offense against an elderly or disabled person, offense resulting in death or serious bodily injury or committed with intent to cause death or serious bodily injury.

3. Other.

- Sealed records are available to law enforcement and are limited in use in court proceedings and before boards and commissions.
- Person with a sealed record may say they have no record when applying for employment.
- With regard to applications used to screen applicants for employment, housing, or occupational or professional license:
 - ✓ If the application asks about prior arrests and convictions, the application must inform the applicant that if their record is sealed they may answer “no record.”
 - ✓ If the Commissioner of Probation Service is asked about a sealed record by a person other than a law enforcement agency, court or appointing authority, the Commissioner shall respond “no record” except if a case of delinquency or child in need of services resulted in criminal prosecution.
- Sealed records may not disqualify a person for examination, appointment or application for public service in Massachusetts or its political subdivisions.

Michigan Clean Slate Laws Applicable to Adult Convictions (Jane Orbeton, OPLA, December 2, 2021)

1. Petition set aside process, makes a conviction not a public record.

Set aside is a privilege and is discretionary with the court based on the circumstances and behavior of the person from the date of conviction and a finding that setting the conviction aside is consistent with the public welfare. Set aside is a right, not requiring those findings, for a victim of human trafficking with regard to a crime that was a direct result of being a victim of human trafficking.

For convictions prior to April 1, 2021:

- Misdemeanors (up to 2 yrs imprisonment): limit 2 misdemeanors, including OUI offense.
- Felonies: limit 1 felony, but may have 2 prior misdemeanors.

For convictions beginning April 1, 2021:

- Misdemeanors, unlimited number. Waiting period, with no charges or convictions, after completion of sentence is 3 years, but is 5 years for serious or assaultive misdemeanors.
- Felonies, limit of 3 felonies. Waiting period, with no charges or convictions, after completion of sentence is 5 years for 1 felony, 7 years for more than 1 felony.
 - ✓ Excluded crimes: offenses related to exploitation and delinquency of minors; life sentence crimes; sex offenses; repeat offenses of felony domestic violence; human trafficking; certain commercial driving offenses; repeat OUI offenses; traffic offenses involving injury or death; more than 2 assaultive felonies; more than 1 repeat offense for a felony punishable by more than 10 years.
- “One bad night” concept combines multiple crimes committed in 24-hour period arising from the same transaction into 1 offense, but excludes crimes of violence, crimes involving use or possession of a dangerous weapon and crimes punishable by 10 years or more.
- Marijuana convictions. Set aside available for conduct legal under adult use law using streamlined process and presumption in favor of set aside. Set aside does not result in return of fines, costs, fees, money or property forfeited or reverse decisions based on the set aside conviction or alter sentencing in another case.

2. Automatic expungement process, makes a conviction not a public record, beginning no earlier than April 2023.

- Misdemeanors: unlimited number of 93-day misdemeanors. Limit is 4 more serious misdemeanors. Waiting period is 7 years after imposition of sentence.
- Felonies: limit is 2 less serious, non-violent felonies. Waiting period is 10 years after imposition or completion of sentence, whichever is later.
- Excluded crimes: crimes of dishonesty; assaultive crimes; serious misdemeanors; crimes punishable by 10 years or more in prison; human trafficking; crimes with elements involving a minor, vulnerable adult, injury or serious impairment or death.

3. Other

- Application process: person must submit fingerprints to State Police, which must complete a record check and report to the court regarding its own and FBI records, pending charges, convictions and any set aside records.
- Set aside does not affect restitution obligations.
- A conviction that has been set aside may be reinstated by court for failure to make good faith effort to pay restitution.
- A person is guilty of a misdemeanor if the person knows that a conviction has been set aside and divulges, uses or publishes information concerning the conviction. Does not apply to:
 - ✓ The person, another person who has access to the set aside record or the victim.
 - ✓ A person reporting a set aside conviction if the conviction was a public record on the date of the report.
- Use of a set aside conviction by a licensing agency is limited.
- Use of a set aside conviction is prohibited in any action regarding negligent hiring, admission or licensure.
- Set aside records are maintained as nonpublic records by the arresting agency and State Police and may be used:
 - ✓ For administration of criminal justice.
 - ✓ By all state courts.
- Setting aside an OUI conviction does not affect motor vehicle driver records of the Secretary of State.
- Department of Corrections may issue Certificate of Employability to an incarcerated person who has completed career or technical education program and meets other requirements. The certificate may be used as evidence of due care in hiring, retaining, licensing, leasing to, admitting to a school or program or transacting business or engaging in activity with someone who has the certificate if the employer knew of the certificate.

COMPARISON OF TITLE 15, CHAPTER 310 (repealed October 1, 2019) WITH LD 1459 (PROPOSED CHAPTER 310-A)

| CHAPTER 310 SUNSETTED IN 2019 | LD 1459 PROPOSED CHAPTER 310-A | NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i> |
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| CHAPTER 310 | <u>CHAPTER 310-A</u> | |
| <p align="center">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</p> | <p align="center"><u>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</u></p> | |
| <p>§2251. Definitions</p> | <p><u>§2261. Definitions</u></p> | |
| <p>As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.</p> | <p><u>As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.</u></p> | |
| <p>1. Administration of criminal justice. "Administration of criminal justice" has the same meaning as in Title 16, section 703, subsection 1.</p> | <p><u>1. Administration of criminal justice.</u> <u>"Administration of criminal justice" has the same meaning as in Title 16, section 703, subsection 1.</u></p> | <p>16 §703 current law</p> <p>1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. "Administration of criminal justice" includes the collection, storage and dissemination of criminal history record information.</p> |

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| CHAPTER 310 SUNSETTED IN 2019 | LD 1459 PROPOSED CHAPTER 310-A | NOTES <i>(Italics indicate member and presenter comments and technical issues.)</i> |
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| <p>2. Another jurisdiction. "Another jurisdiction" has the same meaning as in Title 17-A, section 2, subsection 3-B.</p> | <p><u>2. Another jurisdiction.</u> "Another jurisdiction" has the same meaning as in Title 17-A, section 2, subsection 3-B.</p> | |
| <p>3. Criminal history record information. "Criminal history record information" has the same meaning as in Title 16, section 703, subsection 3.</p> | <p><u>3. Criminal history record information.</u> "Criminal history record information" has the same meaning as in Title 16, section 703, subsection 3.</p> | <p>16 §703 current law</p> <p>3. Criminal history record information. "Criminal history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency that connects a specific, identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, informations and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties. "Criminal history record</p> |

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| | | <p>information" does not include: identification information such as fingerprints, palmprints, footprints or photographic records to the extent that the information does not indicate formal involvement of the specific individual in the criminal justice system; information of record of civil proceedings, including traffic infractions and other civil violations; intelligence and investigative record information as defined in section 803; or information of record of juvenile crime proceedings or their equivalent. Specific information regarding a juvenile crime proceeding is not criminal history record information notwithstanding that a juvenile has been bound over and treated as an adult or that by statute specific information regarding a juvenile crime proceeding is usable in a subsequent adult criminal proceeding. "Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means being within the jurisdiction of the criminal justice system commencing with arrest, summons or initiation of formal criminal charges and concluding with the completion of every sentencing alternative imposed as punishment or final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent.</p> |
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| <p>4. Criminal justice agency. "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.</p> | <p><u>4. Criminal justice agency.</u> "<u>Criminal justice agency</u>" has the same meaning as in Title 16, section 703, subsection 4.</p> | <p>16 §703 current law</p> <p>4. Criminal justice agency. "Criminal justice agency" means a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. "Criminal justice agency" includes federal courts, Maine courts, courts in any other state, the Department of the Attorney General, district attorneys' offices and the equivalent departments or offices in any federal or state jurisdiction. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe.</p> |
| <p>5. Dissemination. "Dissemination" has the same meaning as in Title 16, section 703, subsection 6.</p> | <p><u>5. Dissemination.</u> "<u>Dissemination</u>" has the same meaning as in Title 16, section 703, subsection 6.</p> | <p>16 §703 current law</p> <p>6. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or electronically, by or to anyone outside the criminal justice agency that maintains the information.</p> |
| <p>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</p> | <p><u>6. Eligible criminal conviction.</u> "<u>Eligible criminal conviction</u>" means a conviction for a <u>current or former Class D or Class E crime, except:</u></p> | <p>Chapter 310 (repealed) applied only to Class E crimes, and not to any crimes in 17-A, chapter 11 (Sexual assaults)</p> |

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| under Title 17-A, chapter 11. | | Chapter 310-A proposed to apply to Class D and Class E crimes, with several exceptions as follows |
| | <p><u>A. A conviction for a current or former Class D crime under Title 17-A, chapter 11 or 12 or Title 17-A, section 852, 853 or 855;</u></p> | <p>Title 17-A, chapter 11 (Sexual assaults = Class A, B, C, D and E crimes) Title 17-A, chapter 12 (Sexual exploitation of minors = Class A, B, C and D crimes) Title 17-A, §852 (Aggravated sex trafficking = Class B crime) Title 17-A, §853 (Sex trafficking = Class D and Class C crimes) Title 17-A, §855 (Patronizing prostitution of minor or person with mental disability = Class D and Class C crimes)</p> |
| | | <p><i>Anne Jordan:</i> <i>(1) suggests adding as an excluded crime endangering the welfare of a child by knowingly permitting the child to enter or remain in a house of prostitution (Class D) 17-A §554(1)(A).</i></p> |
| | <p><u>B. A conviction for stalking under Title 17-A, section 210-A or 210-C;</u></p> | <p>17-A §210-A (Stalking = Class B, C and D crimes) 17-A §210-C (Domestic violence stalking = Class C and D crimes)</p> |
| | <p><u>C. Unless a sentence has been commuted, any conviction involving a crime of domestic violence or any crime involving</u></p> | <p>Any crime of domestic violence or involving domestic violence</p> |

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| | <p><u>domestic violence, as defined in section 1003, subsection 3-A;</u></p> | <p><i>Drafting note: ¶C makes a DV crime for which the sentence has been commuted eligible for special restrictions. Paragraphs A and B do not contain this language. Should A, B and C be consistent?</i></p> <p>15 §1003, sub-§3-A: current law</p> <p>3-A. Crime involving domestic violence. "Crime involving domestic violence" means:</p> <p>A. As defined in Title 17-A, a crime of domestic violence assault (§207-A = <i>Class C and D crimes</i>), domestic violence criminal threatening (§209-A = <i>Class C and D crimes</i>), domestic violence terrorizing (§210-B = <i>Class C and D crimes</i>), domestic violence stalking (§210-C = <i>Class C and D crimes</i>) or domestic violence reckless conduct (§211-A = <i>Class C and D crimes</i>); and</p> <p>B. A violation of a protective order under Title 19-A, section 4011 (= <i>Class C and D crimes</i>), the alleged victim of which is a family or household member as defined in Title 19-A, section 4002, subsection 4.</p> |

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| | | <p>19-A §4002, sub-§4 current law</p> <p>4. Family or household members. "Family or household members" means spouses or domestic partners or former spouses or former domestic partners, individuals presently or formerly living together as spouses, parents of the same child, adult household members related by consanguinity or affinity or minor children of a household member when the defendant is an adult household member and, for the purposes of Title 15, section 1023, subsection 4, paragraph B-1 and Title 15, section 1094-B, this chapter and Title 17-A, sections 15, 207-A, 208-D, 208-E, 208-F, 209-A, 210-B, 210-C, 211-A, 1802, 1804 and 2301, subsection 1 only, includes individuals presently or formerly living together and individuals who are or were sexual partners. Holding oneself out to be a spouse is not necessary to constitute "living as spouses." For purposes of this subsection, "domestic partners" means 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.</p> |
| | <p><u>D. If 20 years have not yet passed since the judgment of conviction was entered, a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4, regardless of whether</u></p> | <p>Any crime against a family or household member within 20 years after conviction.</p> <p><i>Laura Yustak: What is the rationale for using different starting points to measure</i></p> |

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| | <u>the relationship was an element of that crime;</u> | <i>certain time periods – date of conviction in ¶¶D and E vs date of completion of sentence in §2262, sub-§2 for time elapsed since completion of sentence?</i> |
| | <u>E. If 20 years have not yet passed since the judgment of conviction was entered, a violation of a condition of release, pursuant to section 1092, committed while the defendant is released on preconviction or post-conviction bail for a charge that involves a crime against a family or household member, as defined in Title 19-A, section 4002, subsection 4, regardless of whether the relationship was an element of that crime;</u> | A violation of release (preconviction or post-conviction) when the underlying charge involves a crime against a family or household member within 20 years of conviction. <i>Laura Yustak: What is the rationale for using different starting points to measure certain time periods – date of conviction in ¶¶D and E vs date of completion of sentence in §2262, sub-§2 for time elapsed since completion of sentence?</i> |
| | <u>F. A violation of a protective order, as specified in section 321, subsection 6; Title 5, section 4659, subsection 2; Title 17-A, section 506-B; Title 19-A, section 4011, subsection 3; or Title 19-A, section 4012, subsection 5; and</u> | Protective orders: <ul style="list-style-type: none"> • 15 §321 (Protective orders in crimes between family members) • 5 §4659 (Protection from harassment orders) • 17-A §506-B (Violation of protective order, cross-references protection from harassment orders, protective orders in crimes between family members and protection from abuse orders) • 19-A §4011, sub-§3 (warrantless arrest for criminal violation of a protection from abuse order) |

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| | | <ul style="list-style-type: none"> • 19-A §4012, sub-§5 (required arrest by law enforcement office when criminal violation under 4011 or 15 c. 12-A or a violation of 17-A §§208-D, 208-E, 208-F) |
| | <p><u>G. A conviction for cruelty to animals under Title 17, section 1031.</u></p> | <p>17 §1031 Cruelty to animals (Class D and Class C crimes)</p> |
| | | <p><i>Drafting note: language throughout bill could be simplified by defining “sealed record” as a record for which the court has issued a written order certifying that the person is entitled to special restrictions on dissemination and use of criminal history record information under §2264.</i></p> |
| <p>§2252. Statutory prerequisites for obtaining special restrictions on dissemination and use of criminal history record information for a criminal conviction</p> | <p><u>§2262. Statutory prerequisites for obtaining special restrictions on dissemination and use of criminal history record information for a criminal conviction</u></p> | |
| <p>The special restrictions on dissemination and use of criminal history record information for a criminal conviction specified in section 2255 apply only if:</p> | <p><u>The special restrictions on dissemination and use of criminal history record information for a criminal conviction specified in section 2265 apply only if:</u></p> | |
| <p>1. Eligible criminal conviction. The criminal conviction is an eligible criminal conviction;</p> | <p><u>1. Eligible criminal conviction.</u> <u>The criminal conviction is an eligible criminal conviction;</u></p> | |
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| <p>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;</p> | | <p>Chapter 310 was limited to those who were at least 18 (so out of the juvenile system) but under 21 years of age when the crime was committed.</p> <p>Chapter 310-A proposed no age range, so applies to all</p> |
| <p>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;</p> | <p><u>2. 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;</u></p> | <p>Waiting period once whole sentence completed = 4 years.</p> <p><i>Suggestions made to change time period, possibly different for different crimes.</i></p> |
| <p>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;</p> | <p><u>3. Other state convictions. The person has not been convicted of another criminal violation 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 between the time at which the person fully satisfied each of the sentencing alternatives imposed for the most recent eligible criminal conviction and the filing of the motion under this chapter;</u></p> | <p>Chapter 310 provided that the person is not eligible if they have any other criminal convictions in this State or if they had a criminal charge dismissed as a result of a deferred disposition, or if they had been adjudicated as committing a juvenile offense for which the hearing was open (equivalent of murder, Class A, Class B, Class C and some Class D)</p> <p>Chapter 310-A proposed that the person is not eligible if they have any other criminal convictions in this State or if they had a criminal charge dismissed as a result of a deferred disposition – and specifies that that happened after the sentence was completed for the most recent eligible conviction and the filing of the motion to seal. This clearly indicates</p> |

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| | | that multiple convictions could be eligible to be sealed. |
| | | <i>Note requirements: (1) eligible criminal conviction; (2) 4 years passed after completing sentencing alternatives; (3) no other Maine criminal convictions; (4) no deferred disposition dismissals between completion of sentencing alternatives and filing of motion for sealing.</i> |
| <p>5. Convictions in another jurisdiction. The person has no criminal convictions from another jurisdiction; and</p> | <p><u>4. Convictions in another jurisdiction.</u> <u>The person has no criminal convictions from another jurisdiction between the time at which the person fully satisfied each of the sentencing alternatives imposed for the most recent eligible criminal conviction and the filing of the motion under this chapter; and</u></p> | <p>Chapter 310 provided that a person was not eligible to have a Maine conviction sealed if the person had any convictions in another jurisdiction.</p> <p>Chapter 310-A proposed to allow sealing if there were no convictions in other jurisdictions in the time since the Maine sentence was completed and the filing of the petition.</p> |
| <p>6. Pending criminal charges. The person has no presently pending criminal charges in this State or in another jurisdiction.</p> | <p><u>5. Pending criminal charges.</u> <u>The person has no presently pending criminal charges in this State or in another jurisdiction.</u></p> | <p>No pending charges</p> |
| <p>§2253. Motion; persons who may file</p> | <p><u>§2263. Motion; persons who may file</u></p> | |
| <p>A person may file a written motion in the underlying criminal proceeding seeking a court determination that the person satisfies the</p> | <p><u>A person may file a written motion in the underlying criminal proceeding seeking a court determination that the person satisfies the</u></p> | <p>This would be considered a “petition-based” (rather than “automatic” record sealing process.</p> |

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| <p>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.</p> | <p><u>statutory prerequisites specified in section 2262 for obtaining the special restrictions on dissemination and use of criminal history record information relating to a criminal conviction as specified in section 2265. The written motion must briefly address each of the statutory prerequisites.</u></p> | <ul style="list-style-type: none"> • It is up to the person to file a motion to request sealing • The motion must be filed in the underlying criminal proceeding (the one in which the person was convicted). |
| <p>§2254. Motion and hearing; process</p> | <p><u>§2264. Motion and hearing; process</u></p> | |
| <p>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.</p> | <p><u>1. Filing motion.</u> A motion filed pursuant to section 2263 must be filed in the underlying criminal proceeding. After a motion has been filed, the clerk shall set the motion for hearing.</p> | <p>Once the motion is filed, the clerk schedules a hearing before the court.</p> |
| <p>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.</p> | <p><u>2. Counsel.</u> The person filing a motion pursuant to section 2263 has the right to employ counsel but is not entitled to assignment of counsel at state expense.</p> | <p>The person filing has the right to have an attorney, but one is not provided by the State.</p> |
| <p>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.</p> | <p><u>3. Representation of the State.</u> 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.</p> | <p>The State is represented by the prosecutorial office that prosecuted the person resulting in the conviction (mostly likely a DA's office, but could be the AG)</p> |

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| <p>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.</p> | <p><u>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.</u></p> | <p>Trying to make this process easy to navigate, the Rules of Evidence do not apply, and the court may admit reliable hearsay.</p> |
| <p>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.</p> | <p><u>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 2262, 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 2265 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 2262, 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.</u></p> | <p>If, after the hearing, the court determines that the person meets all the requirements, the court shall find the person entitled to the sealing action and issues an order stating that.</p> <p>If the court finds the person does <u>not</u> meet the requirements, then the court must deny the motion.</p> <p>The order must contain written findings of fact supporting the determination.</p> <p><i>Question: should the order designate the record as "confidential criminal history" under CHRIA? See comment from Laura Yustak listed under §2265.</i></p> |

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| | | <p><i>George Freeman:</i> <i>(1) stated sealing as in LD 1459 violates US Supreme Court rulings protecting freedom of the press to report newsworthy, accurate and legally obtained information.</i></p> |
| <p>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.</p> | <p><u>6. Notice to State Bureau of Identification.</u> <u>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 2262, 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 for all criminal offenses deemed retainable pursuant to Title 25, section 1547. The State Bureau of Identification upon receipt of the order shall promptly amend 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 2265 rather than pursuant to Title 16, section 704. The State Bureau of Identification shall send notification of compliance with that requirement to the person's last known address.</u></p> | <p>The court sends an order certifying the determination to SBI and SBI must change its records accordingly <u>not</u> to release the information of that conviction.</p> <p><i>Matthew Ruel:</i> <i>(1) suggests requiring electronic transmittal of the order certifying its determination to seal records instead of a copy of the court's written order.</i></p> |

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

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 2265, 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

If the person is convicted of a new crime in Maine or another jurisdiction, the person must file a written notice with the court.

If the person fails to file the notice and the court finds out about the conviction, the court will hold a hearing to give the person a chance to prove the person does not have a new conviction.

A new conviction means the person loses the special restriction on the dissemination of the person's criminal record.

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| <p>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.</p> | <p><u>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 2265 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.</u></p> | |
| | | <p><i>Matthew Morgan; (1) suggested that at sentencing the Court could provide information about sealing.</i></p> <p><i>Anne Jordan has asked the Judicial Branch Office of Information Technology about automatic sealing when the Odyssey system is functional.</i></p> |
| <p>8. Notice to State Bureau of Identification of new crime. If the court determines under subsection 7 that a person has</p> | <p><u>8. Notice to State Bureau of Identification of new crime.</u> If the court determines under subsection 7 that a person has</p> | <p>If the court determines that the person has been convicted of a new crime, the court issues an order that “unseals” the record.</p> |

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| <p>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.</p> | <p><u>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 2265, 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 amend 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 2265. The State Bureau of Identification shall send notification of compliance with that requirement to the person's last known address.</u></p> | <p>SBI must promptly amend its records to make the public information available again.</p> |
| <p>§2255. Special restrictions on dissemination and use of criminal history record information relating to criminal conviction</p> | <p><u>§2265. Special restrictions on dissemination and use of criminal history record information relating to criminal conviction</u></p> | |
| <p>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:</p> | <p><u>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:</u></p> | <p>The court order to restrict dissemination and use overrides the designation of the conviction information as <u>public</u>. Criminal justice agencies are prohibited from disseminating it directly or through any intermediary – with the listed exceptions.</p> |

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| | | <p><i>Laura Yustak: What is the rationale for creating two types of nonpublic criminal history information (confidential CHRI under CHRI Act and records subject to the special restrictions in §2265) with different exceptions allowing release?</i></p> <p><i>This creates a conflict regarding public access. For example: as written DHHS child welfare services will have access to confidential history for purposes of abuse and neglect investigations but not have access to records sealed under §2264.</i></p> <p><i>This could be resolved legislatively.</i></p> <p><i>(1) Designate records sealed under § 2264 as subject to the special restrictions and exceptions in §2265 and as confidential CHRI; or</i></p> <p><i>(2) State that records sealed under §2264 are subject to the special restrictions and their exceptions in §2265 but are not confidential CHRI.</i></p> |
| <p>1. Subject of conviction. To the person who is the subject of the criminal conviction or that person's designee; and</p> | <p><u>1. Subject of conviction.</u> To the person <u>who is the subject of the criminal conviction or that person's designee;</u></p> | <p>The person always has access to the information.</p> |
| | | <p><i>Barbara Taylor:</i></p> <p><i>(1) it is critical to retain the ability of a person to access their own criminal record (need for immigration purposes).</i></p> |
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| <p>2. Criminal justice agency. To a criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment.</p> | <p><u>2. Criminal justice agency. To a criminal justice agency for the purpose of the administration of criminal justice and criminal justice agency employment.</u></p> | <p>Criminal justice agencies always have access for the purposes of:</p> <ul style="list-style-type: none"> • the administration of criminal justice and • criminal justice agency employment. |
| <p>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.</p> | <p><u>For the purposes of this subsection, 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 eligible 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;</u></p> | <p>The sealed record can be used by a prosecuting attorney for the prosecution of the person for a NEW crime, even if documents involved are or become public.</p> |
| | <p><u>3. Secretary of State. To the Secretary of State to ensure compliance with federal motor vehicle law;</u></p> | <p>The Secretary of State has access to the sealed record to ensure compliance with federal motor vehicle law.</p> <p><i>Laura Yustak: Should the Secretary of State have access to these records for purposes of complying with and implementing state, as well as federal motor vehicle laws?</i></p> |
| | <p><u>4. Victims. To the victim or victims of the crime related to the conviction or;</u></p> | <p>The victim of the crime or the victim's agent or family has access to the sealed record.</p> |

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| | <p><u>A. If the victim is a minor, to the parent or parents, guardian or legal custodian of the victim; or</u></p> | |
| | <p><u>B. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, to an immediate family member, guardian, legal custodian or attorney representing the victim;</u></p> | |
| | | <p><i>Tessa Mosher, Director of Victims Services, DOC:</i> <i>(1) The Office of Victims Services and victim advocates need criminal record information for safety planning before and after conviction and service of sentence.</i></p> |
| | <p><u>5. Office of Securities. To the Department of Professional and Financial Regulation, Office of Securities to ensure compliance with securities laws pursuant to Title 32, section 16412, subsection 4, paragraph C;</u></p> | <p>The Office of Securities has access to the sealed record to ensure compliance with securities laws</p> <p>32 §16412, sub-§4, ¶C current law 4. Grounds for discipline. A person may be disciplined under subsections 1 to 3 if the person or, in the case of a broker-dealer or investment adviser, the broker-dealer or investment adviser, a partner, officer or director of</p> |

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| | | <p>the broker-dealer or investment adviser, a person occupying a similar status or performing similar functions or a person directly or indirectly controlling the broker-dealer or investment adviser:</p> <p>...</p> <p>C. Has pleaded guilty or nolo contendere to or been convicted of murder or a Class A, B or C crime or a felony or within the previous 10 years has pleaded guilty or nolo contendere to or been convicted of a Class D or E crime or a misdemeanor involving a security, a commodity future or option contract or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance or any crime indicating a lack of fitness to engage in the securities business;</p> |
| | | <p><i>Catherine Moore, Maine Assoc. of Registers of Probate:</i></p> <p><i>(1) Probate Courts need access to criminal records for adult name changes, adoptions, guardianships and conservatorships.</i></p> <p><i>Anne Head, Commissioner DPFR:</i></p> <p><i>(1) 5 agencies in DPFR and 6 affiliated licensing boards use criminal record information as required by state and federal law and national standards for the profession.</i></p> |

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| | <p><u>6. Financial institutions.</u> To 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</p> | <p>Financial institutions (banks, credit unions) can access the sealed record if required by federal or state law for the position of employment or board.</p> |
| | <p><u>7. Pursuant to court order.</u> In accordance with an order issued on a finding of good cause by a court of competent jurisdiction. Good cause includes a finding that access to the criminal history record information may be necessary for the determination of any issue before the court.</p> | <p>A court – in Maine or another jurisdiction – can order access to the sealed record based on good cause. “Good cause” includes a finding that the sealed record may be necessary to determine an issue before the court.</p> |
| | | <p><i>Samantha Hogan: (1) suggested adding a provision for petition by the press and public to review sealed records for legitimate public interest.</i></p> |
| <p>§2256. Limited disclosure of eligible criminal conviction</p> | <p><u>§2266. Limited disclosure of eligible criminal conviction</u></p> | |
| <p>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</p> | <p><u>A person who has a criminal conviction eligible for the special restrictions on dissemination and use of criminal history record information under section 2265 for which the court has determined the person is entitled to special restrictions on dissemination may respond</u></p> | <p>The person whose record is sealed may respond to inquiries – other than inquiries from criminal justice agencies – by not disclosing the existence of the record, and will not be subject to sanctions.</p> |

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| subject to any sanctions. | <u>to inquiries from other than criminal justice agencies by not disclosing its existence without being subject to any sanctions.</u> | |
| §2257. Unlawful dissemination | <u>§2267. Unlawful dissemination</u> | |
| <p>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.</p> | <p><u>A person who intentionally disseminates criminal history record information relating to a criminal conviction in violation of section 2265 knowing it to be in violation is guilty of unlawful dissemination as provided in Title 16, section 707.</u></p> | <p>Intentionally sharing a sealed record is the crime of unlawful dissemination. (Class E crime)</p> <p>16 §707 current law §707. Unlawful dissemination of confidential criminal history record information</p> <p>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.</p> <p>2. Classification. Unlawful dissemination of confidential criminal history record information is a Class E crime.</p> |
| | | <p><i>Laura Yustak:</i> <i>(1) To whom should dissemination penalty apply? The criminal justice</i></p> |

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| | | <i>agency providing the information initially? Anyone who is in possession of the information? Does it matter how the person came into possession of the information?</i> |
| §2258. Review of determination of eligibility; review of determination of subsequent criminal conviction | <u>§2268. Review of determination of eligibility; review of determination of subsequent criminal conviction</u> | |
| A final judgment entered under section 2254, subsection 5 or 7 may be reviewed by the Supreme Judicial Court. | <u>A final judgment entered under section 2264, subsection 5 or 7 may be reviewed by the Supreme Judicial Court.</u> | A final judgment to seal or not seal, or to unseal 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. | <u>1. Appeal by the person.</u> <u>A person aggrieved by the final judgment 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.</u> | A person aggrieved by a sealing decision may appeal, but it is discretionary (the Court does not have to hear the appeal). |
| 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. | <u>2. Appeal by the State.</u> <u>If the State is aggrieved by the final judgment 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.</u> | The State has a right to appeal, and the Attorney General is not required to weigh in before the appeal is filed. |
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| §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: | Sec. 2. 16 MRSA §707, sub-§1 , as amended by PL 2015, c. 354, §2, is further 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. | 1. Offense. A person <u>other than a person receiving confidential criminal history record information pursuant to section 2265, subsection 4</u> 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 <u>2265</u> knowing it to be in violation. | Title 16, §707 is amended to provide that victim (or victim’s family or agent) who properly receives the sealed criminal record is not subject to penalties for sharing the record. |
| | | <i>Samantha Hogan:</i> <i>(1) suggests adding provision that it is not a violation to report or publish information that is already in the public domain; and</i> <i>(2) suggests adding provision that an entity is not liable for civil or criminal penalties for reporting a public record of conviction that has been set aside by court order or operation of law if the</i> |

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| | | <p><i>record was available as a public record on the date of the report.</i></p> <p><i>Emma Halas-O'Connor:</i></p> <p><i>(1) suggests adding to Maine Human Rights Act protection against discrimination based on criminal record.</i></p> <p><i>Michael Kebede:</i></p> <p><i>(1) suggests Constitutional Resolution giving power to grant reprieves, commutations and pardons to Legislature;</i></p> <p><i>(2) suggests provide for expungement and await legal challenge based on separation of powers.</i></p> <p><i>George Freeman:</i></p> <p><i>(1) suggests prohibit employer asking about arrest record and ban discrimination based on arrest record;</i></p> <p><i>(2) suggests issue Certificate of Good Standing and prohibit discrimination based on criminal record;</i></p> <p><i>(3) suggests adding to Maine Human Rights Act protection against discrimination based on criminal record.</i></p> <p><i>Rep Talbot Ross:</i></p> <p><i>(1) suggests examining a 1-yr time period for record of summons or arrest to become confidential under CHRI Title 16§703(2)(A).</i></p> |

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