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GOVERNOR

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04333-0001

December 6, 2021

Rep. Rachel Talbot Ross, Chair
Sen. Donna Bailey, Chair
Criminal Records Review Committee
c/o Office of Policy and Legal Analysis
13 State House Station
Augusta, Maine 04333

Dear Senator Bailey, Representative Talbot Ross and Members of the Committee:

I am writing to provide the perspective of the Governor's Office on various proposals that the Criminal History Records Committee is considering. As we understand it, the Committee is working to minimize collateral consequences of a criminal conviction that stem not from any judicially imposed sentence, but nevertheless can follow a person after their sentence has been served.

Governor Mills has signed several bills sent to her by the Legislature that are meant to assist people as they reenter society after a criminal conviction. L.D. 1167, *An Act Relating to Fair Chance in Employment*, for instance, just became law on October 18, 2021 and prevents an employer from asking on an initial application form whether a person has a criminal conviction and at later stages of the hiring process provides the applicant an opportunity to explain any convictions.

The Department of Professional and Financial Regulation Commissioner Anne Head has told the Committee that Maine is a leader in providing second chances to people with criminal convictions by not using criminal convictions as automatic barriers to professional licensing. While a conviction may not be an automatic barrier, in some instances it is appropriate to know that someone had a prior conviction. For instance, that a person who wants to be a licensed financial planner was convicted of embezzlement raises questions that should at the very least be addressed before the State of Maine certifies them as being fit to serve the public in this capacity. If a pharmacist has been convicted of diverting drugs from their pharmacy, the Pharmacy Board should be able to consider if they have demonstrated a commitment to recovery before renewing their license. This is not to shame that person, but to ensure that those people who hold these positions of trust are operating responsibly in order to protect the public.

Governor Mills is sympathetic to people who have been rehabilitated and refrained from criminal activity and whose convictions pose a barrier to their future. Governor Mills has issued more than twenty pardons to people who have been convicted of many different kinds of crimes, including burglary, unlawful use of an identification card, unlawful trafficking in scheduled drugs, assault, eluding an officer, theft, criminal mischief, and others. These pardons are granted after the Department of Corrections contacts victims,



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conducts an investigation, and after the person demonstrates they have committed to a non-criminal way of life at a hearing before the Governor's Board on Executive Clemency.

The Committee should avoid simply declaring all of one class of crime automatically eligible for sealing. Often, a conviction appears either serious, like a Class B Burglary, or less serious, like a Class E theft, but after examining the record and hearing from the petitioner, you find, as they say, "there is more to the story."

Consider, for instance, two people convicted of the Class D crime of forgery. One was 18 and made the rash decision to write someone else's name on a summons when the officer handed them a ticket to sign. They got caught and were charged with felony Class B Aggravated Forgery for falsifying a public record. They recognized their mistake and took responsibility so the District Attorney dropped the charge to Class D forgery, and they paid a fine so they could move on with their life. The other is a recent college graduate who engaged in a scheme to alter documents at their workplace so that they could claim sales commissions that rightfully belonged to co-workers who earned them. This person was charged with felony Class B forgery because their criminal act involved the theft of more than \$10,000. However, they negotiated a plea agreement and were able to reduce the charge from the felony to the Class D misdemeanor after some time in jail, restitution paid, and a successful deferred disposition. While these are the same conviction – both are Class D Forgery – they arose from very different circumstances, and, like more than 90 percent of all dispositions, these convictions were the result of a plea bargain. Yet a proposal to seal all misdemeanor crimes would treat these very different cases the same.

The Governor would discourage the Committee from such sweeping changes or proposing any blanket policy that eliminates the dissemination of truthful records. The issue of a criminal conviction barring employment, she believes will be very effectively addressed as L.D. 1167 becomes fully implemented.

Sincerely,



Tim Feeley
Deputy Legal Counsel
Office of the Governor



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