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House of Representatives, March 29, 2021

An Act To Establish Conviction Integrity Units in Maine

Received by the Clerk of the House on March 25, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative EVANGELOS of Friendship.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: HARNETT of Gardiner, O'NEIL of Saco, PLUECKER of Warren, WARREN
of Hallowell, Senator: MAXMIN of Lincoln.

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

2 **Sec. 1. 15 MRSA c. 301, sub-c. 5** is enacted to read:

3 **SUBCHAPTER 5**

4 **CONVICTION INTEGRITY UNITS**

5 **§1861. Conviction integrity units**

6 **1. Conviction integrity units.** The Attorney General and every district attorney under
7 Title 30-A, chapter 1, subchapter 5 shall maintain within their respective offices a
8 conviction integrity unit that timely reviews the convictions resulting in imprisonment of
9 criminal cases prosecuted by the Attorney General's or that district attorney's office to
10 determine whether errors were committed justifying a post-conviction review of the
11 conviction.

12 **2. Review.** A conviction integrity unit shall review a conviction in its office that
13 contains:

14 A. Facts that suggest a plausible claim of innocence;

15 B. Evidence of a constitutional violation or prosecutorial misconduct; or

16 C. Facts or circumstances requiring a review in the interests of fairness or justice.

17 That a person pleaded guilty or is no longer incarcerated is not an impediment to the
18 person's conviction being reviewed under this chapter. The conviction integrity unit may
19 conduct a review of a conviction upon its own initiative or upon a referral from another
20 person. The conviction integrity unit shall conduct a periodic audit of convictions
21 prosecuted by the unit's office to determine eligibility of review under this subsection.

22 **3. Investigation.** An investigation of a conviction under subsection 2 must include a
23 review of all files, evidence, work product, notes, laboratory records, personnel files and
24 other information possessed or obtained by the State in the course of or relevant to the
25 underlying case, any evidence proffered by the defendant or others and further facts or
26 evidence that may support a review under subsection 2 whether or not the facts or evidence
27 was available or proffered by the defense at the time of trial. An investigation may include
28 coordination and cooperation with defense counsel, the defendant, witnesses or others,
29 including documents, electronic files or laboratory or other records, to determine the facts
30 and circumstances supporting a review under subsection 2.

31 **4. Convictions involving allegations of prosecutorial misconduct.** A conviction
32 involving a substantial, nonconclusory allegation of prosecutorial misconduct by a present
33 or former member of the conviction integrity unit's office must be referred to an
34 independent authority for investigation and review. This referral must include both the
35 allegation of misconduct as well as any included claim of innocence, constitutional
36 violation or interests of fairness or justice.

37 **5. Certain individuals precluded from conducting review.** An attorney who
38 prosecuted or was substantially involved in a conviction may not participate in the
39 conviction integrity unit's review of that conviction.

1 **6. Recommendation; relief; petition.** If a conviction integrity unit determines
2 appropriate based upon the review and investigation, the unit shall make in a timely manner
3 a recommendation to the Attorney General or district attorney in whose office the
4 conviction integrity unit is located whether to petition for post-conviction review under
5 chapter 305-A and the relief to be sought. The relief must be by agreement with the
6 defendant and may include dismissal of the conviction, recharging the defendant and
7 conviction of a lesser charge, reduction or termination of a sentence or other disposition.
8 The Attorney General or district attorney may file a petition based upon the
9 recommendation.

10 **7. Report.** The Attorney General and every district attorney shall submit an annual
11 report on the activities of the conviction integrity unit in the Attorney General's or that
12 district attorney's office, collected by the Attorney General and transmitted to the joint
13 standing committee of the Legislature having jurisdiction over criminal justice and public
14 safety matters. The report must include:

15 A. The number and nature of convictions reviewed, including:

16 (1) The total number of referrals received;

17 (2) The number of convictions in which trials had occurred;

18 (3) The number of convictions that had resulted in a plea;

19 (4) The number of convictions for which prior state or federal post-conviction
20 petitions had been filed and adjudicated; and

21 (5) The source of referrals, including from pro se defendants, innocence
22 organizations, the defense bar, news media or other persons or from office-initiated
23 investigations pursuant to audits arising from prior wrongful conviction matters
24 including audits involving individual prosecutors, police officers or forensic
25 techniques;

26 B. The outcomes of reviews, including:

27 (1) The number of convictions in which a decision was made not to undertake an
28 investigation;

29 (2) The number of convictions in which an investigation was undertaken;

30 (3) The number of convictions for which relief was granted, the nature of that
31 relief and the grounds for providing that relief;

32 (4) The number of convictions where an investigation was undertaken and no
33 agreement made between the parties resulting in continuing post-conviction
34 litigation and the status or result of that litigation; and

35 (5) The number of convictions referred for independent review and investigation
36 due to a substantial, nonconclusory allegation of misconduct by a prosecutor; and

37 C. An analysis of the lesson learned and solution recommended for an error identified
38 in the course of the activities of the conviction integrity unit, including identification
39 of the root cause of the error, the potential use of an independent external expert to
40 conduct a forensic review of the error, a reexamination of cases with similar or like
41 facts or root causes and recommended policy change and implementation.

1 **Sec. 2. 15 MRSA §2122**, as amended by PL 2011, c. 601, §4, is further amended to
2 read:

3 **§2122. Purpose**

4 This chapter provides a comprehensive and, except for direct appeals from a criminal
5 judgment, exclusive method of review of those criminal judgments and of post-sentencing
6 proceedings occurring during the course of and subsequent to sentences. It is a remedy for
7 unfair, unjust or illegal restraint and other impediments specified in section 2124 that have
8 occurred directly or indirectly as a result of an unfair, unjust or illegal criminal judgment
9 or post-sentencing proceeding. It replaces the remedies available pursuant to post-
10 conviction habeas corpus, to the extent that review of a criminal conviction or proceedings
11 were reviewable, the remedies available pursuant to common law habeas corpus, including
12 habeas corpus as recognized in Title 14, sections 5501 and 5509 to 5546, coram nobis,
13 audita querela, writ of error, declaratory judgment and any other previous common law or
14 statutory method of review, except appeal of a judgment of conviction or juvenile
15 adjudication and remedies that are incidental to proceedings in the trial court. The
16 substantive extent of the remedy of post-conviction review is defined in this chapter and
17 not defined in the remedies that it replaces; ~~provided that this~~. This chapter provides and
18 is must be construed to provide relief for those persons required to use this chapter as
19 required by the Constitution of Maine, Article I, Section 10.

20 **Sec. 3. 15 MRSA §2123, sub-§1-A**, as amended by PL 2003, c. 29, §2, is further
21 amended to read:

22 **1-A. Supreme Court Justice or authorized Judge of the District Court.** A single
23 Justice of the Supreme Judicial Court, an Active Retired Justice of the Supreme Judicial
24 Court or a judge authorized to sit in the Superior Court on post-conviction review cases has
25 and shall exercise jurisdiction and has and shall exercise all of the powers, duties and
26 authority necessary for exercising the same jurisdiction as the Superior Court relative to a
27 post-conviction review proceeding. If a petition is brought under section 1861, the justice
28 or judge who presided over the underlying conviction may not preside over the post-
29 conviction review of the case.

30 **Sec. 4. 15 MRSA §2125**, as amended by PL 2013, c. 266, §4, is further amended to
31 read:

32 **§2125. Ground for relief**

33 A person who satisfies the prerequisites of section 2124 may show that the challenged
34 criminal judgment or sentence is unlawful or unlawfully imposed; or unfair or unjust under
35 section 1861 or that the impediment resulting from the challenged post-sentencing
36 proceeding is unlawful, as a result of any error or ground for relief, whether or not of record,
37 unless the error is harmless or unless relief is unavailable for a reason provided in section
38 2126, section 2128 unless section 2128-A applies, or section 2128-B.

39 **Sec. 5. 15 MRSA §2126**, as amended by PL 2013, c. 266, §5, is further amended to
40 read:

41 **§2126. Exhaustion**

42 A Except for a proceeding brought under section 1861, a person under restraint or
43 impediment specified in section 2124 must also demonstrate that the person has previously

1 exhausted remedies incidental to proceedings in the trial court, on appeal or administrative
2 remedies. A person who has taken an appeal from a judgment of conviction, a juvenile
3 adjudication or a judgment of not criminally responsible by reason of insanity is not
4 precluded from utilizing the remedy of this chapter while the appeal is pending. The post-
5 conviction review proceeding is automatically stayed pending resolution of the appeal
6 unless the Appellate Court on motion and for good cause otherwise directs.

7 **Sec. 6. 15 MRSA §2128, first ¶**, as amended by PL 2011, c. 601, §9, is further
8 amended to read:

9 A Except for a proceeding brought under section 1861, a person under restraint or
10 impediment specified in section 2124 shall demonstrate that any ground of relief has not
11 been waived. The bases of waiver are as follows.

12 **Sec. 7. 15 MRSA §2128-B, sub-§4** is enacted to read:

13 **4. Filing deadline for resentencing review.** A petition filed pursuant to section 1861
14 may be brought at any time after the issuance of conviction.

15 **Sec. 8. 15 MRSA §2129, sub-§1**, as amended by PL 2003, c. 29, §3, is further
16 amended to read:

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

18 A. A proceeding for post-conviction review ~~shall~~ must be commenced by filing a
19 petition in the Superior Court in the county specified in section 2123.

20 B. ~~If~~ Except for a petition brought pursuant to section 1861, if the petitioner desires to
21 have counsel appointed, ~~he~~ the petitioner shall file an affidavit of indigency in the form
22 prescribed by the Supreme Judicial Court. If the petitioner is incarcerated, the affidavit
23 ~~shall~~ must be accompanied by a certificate of the appropriate officer of the institution
24 in which the petitioner is incarcerated as to the amount of money or securities on
25 deposit to the petitioner's credit in any account in the institution. The failure to include
26 an affidavit of indigency with the petition does not bar the court from appointing
27 counsel upon a subsequent filing of an affidavit of indigency.

28 C. Once the petition has been filed, the clerk shall forward a copy of the petition and
29 any separate documents filed with it to the Chief Justice of the Superior Court and to
30 the prosecutorial office that earlier represented the State in the underlying criminal or
31 juvenile proceeding or, for a petition brought under section 1861, to the person whose
32 conviction is being reviewed.

33 **Sec. 9. 15 MRSA §2129, sub-§12** is enacted to read:

34 **12. Standard of proof for claims of innocence.** The standard of review for a petition
35 filed under section 1861 claiming innocence is by clear and convincing evidence.

36 SUMMARY

37 This bill requires the Attorney General and every district attorney to maintain a
38 conviction integrity unit to review convictions in cases they prosecuted to determine
39 whether there is plausible evidence of innocence, a constitutional violation or prosecutorial
40 misconduct or when the facts and circumstances require a review in the interests of fairness
41 and justice. A conviction integrity unit may recommend that a conviction be dismissed or

1 replaced with a lesser charge or may recommend a reduction or termination of a sentence
2 or other disposition upon agreement with the defendant. The Attorney General or district
3 attorney may file a petition for post-conviction review based upon that recommendation.
4 Prosecutors are prohibited from participating in the review of cases that they prosecuted
5 and justices and judges are prohibited from presiding over the post-conviction review of
6 cases over which they presided. Cases of prosecutorial misconduct must be reviewed by
7 an independent authority. The standard of review for petitions claiming innocence is by
8 clear and convincing evidence.