

§2124. Jurisdictional prerequisites of restraint or impediment

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

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

A. Incarceration imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (AMD).]

B. Other restraint, including probation, parole or other conditional release imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (AMD).]

C. Unconditional discharge imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (AMD).]

C-1. Incarceration imposed by the challenged criminal judgment that is wholly satisfied at the time of sentence imposition due to detention time credits earned under Title 17-A, section 2305; [PL 2019, c. 113, Pt. C, §38 (AMD).]

D. Incarceration, other restraint or an impediment specified in paragraphs A and B that is to be served in the future, although the convicted or adjudicated person is not in execution of the sentence either because of release on bail pending appeal of the criminal judgment or because another sentence must be served first; [PL 2011, c. 601, §7 (AMD).]

E. A fine imposed by the challenged criminal judgment that has not been paid and in a case when a person has not inexcusably violated Title 17-A, section 1710 or inexcusably defaulted in payment of any portion. A fine includes any imposed monetary fees, surcharges and assessments, however designated; [PL 2019, c. 113, Pt. C, §39 (AMD).]

F. Restitution imposed by the challenged criminal judgment that has not been paid and in a case when a person has not inexcusably violated Title 17-A, section 2014 or inexcusably defaulted in payment of any portion. Any challenge as to the amount of restitution ordered is further limited by Title 17-A, section 2017; [PL 2019, c. 113, Pt. C, §40 (AMD).]

F-1. Community service work imposed by the challenged criminal judgment that has not been fully performed and in a case when a person has not inexcusably failed to complete the work within the time specified by the court; or [PL 2013, c. 266, §3 (NEW).]

G. Any other juvenile disposition imposed by the challenged criminal judgment; [PL 2011, c. 601, §7 (NEW).]

[PL 2019, c. 113, Pt. C, §§38-40 (AMD).]

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

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

2. Post-sentencing proceeding. Incarceration or increased incarceration imposed pursuant to a post-sentencing proceeding following a criminal judgment, although the criminal judgment itself is not challenged; or

[PL 1979, c. 701, §15 (NEW).]

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

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

B. [PL 2011, c. 601, §7 (RP).]

C. [PL 2011, c. 601, §7 (RP).]

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

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

[PL 2011, c. 601, §7 (AMD).]

SECTION HISTORY

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

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