

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Create a Post-judgment Mechanism To Provide Relief for a Person Whose Identity Has Been Stolen and Falsely Used in Court Proceedings**

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

**Sec. 1. 15 MRSA c. 308** is enacted to read:

### **CHAPTER 308**

#### **POST-JUDGMENT MOTION WHEN PERSON'S IDENTITY HAS BEEN STOLEN AND USED IN A CRIMINAL, CIVIL VIOLATION OR TRAFFIC INFRACTION PROCEEDING**

##### **§ 2181. Application**

This chapter is not intended to and may not be used to provide relief to a person who has stolen another person's identity and falsely used the identity in a criminal, civil violation or traffic infraction proceeding.

##### **§ 2182. Post-judgment motion for determination of factual innocence and correction of record**

**1. Motion; persons who may file.** A person who reasonably believes that the person's identity has been stolen and falsely used by another in a criminal, civil violation or traffic infraction proceeding in which a final judgment has been entered may file a written motion in the underlying criminal, civil violation or traffic infraction proceeding seeking a court determination of factual innocence and correction of the court records and related criminal justice agency records. The same motion may also be filed on behalf of such a person by an attorney for the State or by the court.

**2. Time for filing.** A motion for determination of factual innocence and correction of record must be filed:

A. By June 1, 2010 for a criminal, civil violation or traffic infraction proceeding finalized prior to the effective date of this section in which the person is aware that the person's identity had been stolen and falsely used by another; and

B. One year from the date the person becomes aware that the person's identity has been stolen and falsely used by another in a criminal, civil violation or traffic infraction proceeding finalized after the effective date of this section.

##### **§ 2183. Motion and hearing; process**

**1. Filing motion.** A motion filed pursuant to section 2182 must be filed in the underlying criminal, civil violation or traffic infraction proceeding. The appropriate chief judge or justice shall specially assign the motion. The judge or justice to whom the motion is assigned shall determine upon whom and how service of the motion is to be made and enter an order in this regard.

**2. Counsel.** If the court finds that the person who files the motion under section 2182 or on whose behalf the motion is filed is indigent, the court may appoint counsel for the person at any time during the proceedings under this chapter.

**3. Representation of the State.** The prosecutorial office that represented the State in the underlying criminal, civil violation or traffic infraction proceeding shall represent the State for purposes of this chapter. If the underlying criminal, civil violation or traffic infraction proceeding was disposed of without the appearance of an attorney for the State, the office of the District Attorney in whose district the crime, civil violation or traffic infraction was committed 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.

**4. Evidence.** The Maine Rules of Evidence do not apply to the hearing on the motion under this section, and evidence presented at the hearing by the participants may include testimony, affidavits and other reliable hearsay evidence as permitted by the court.

**5. Hearing; certification of results.** The judge or justice to whom the motion was assigned pursuant to subsection 1 shall hold a hearing on the motion under this section. At the conclusion of the hearing, if the court finds that the person who filed the motion under section 2182 has established by clear and convincing evidence relative to a criminal proceeding or by a preponderance of the evidence relative to a civil violation or traffic infraction proceeding that the person is not the person who committed the crime, civil violation or traffic infraction, the court shall find the person factually innocent of that crime, civil violation or traffic infraction and shall issue a written order certifying this determination. If at the conclusion of the hearing the court finds otherwise as to the motion, the court shall deny the motion and shall issue a written order certifying this determination. The order must contain written findings of fact supporting the court's decision granting or denying the motion. A copy of the court's written order granting or denying the motion must be provided to the person.

**6. Correction of the record.** If the court grants the motion following the hearing in subsection 5, it shall additionally determine what court records and related criminal justice records require correction and shall enter a written order specifying the corrections to be made in the court records and the records of each of the appropriate criminal justice agencies.

**7. Subsequent discovery of fraud or misrepresentation.** If the court that has issued an order certifying a determination of factual innocence pursuant to subsection 5 subsequently discovers that the motion or information submitted in support of the motion may contain material misrepresentation or fraud, the court may, after giving notice to the participants, hold a hearing. At the conclusion of the hearing, if the court finds by a preponderance of the evidence the existence of material misrepresentation

or fraud, it may, by written order, vacate its earlier order certifying a determination of factual innocence and modify accordingly any record correction earlier made pursuant to subsection 6. The written order must contain findings of fact supporting its decision to vacate or not to vacate.

### **§ 2184. Review of determination of factual innocence; review of subsequent vacating of determination**

A final judgment entered under section 2183, subsection 5 or 7 may be reviewed by the Supreme Judicial Court sitting as the Law Court.

**1. Appeal by the person.** A person aggrieved by the final judgment under section 2183, 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 the State.** If the State is aggrieved by the final judgment under section 2183, 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.

## **SUMMARY**

This bill is proposed by the Criminal Law Advisory Commission.

This bill provides for a comprehensive post-judgment method of relief when a person's identity has been stolen and falsely used by another person in a criminal, civil violation or traffic infraction proceeding. The final outcome in that proceeding is immaterial. The relief offered is a court determination of factual innocence and the correction of the court records and related criminal justice agency records. This bill does not provide relief to a person who has stolen another person's identity and falsely used it in a criminal, civil violation or traffic infraction proceeding.

The relief process commences with the filing of a post-judgment motion in the underlying proceeding seeking a court determination of factual innocence and the correction of the court records and related criminal justice agency records. A person who reasonably believes that the person's identity has been stolen and falsely used by another person may file the post-judgment motion, or an attorney for the State or the court may file the motion on the person's behalf. There is a one-year statute of limitations on the filing of a motion. Once the motion is filed, it must be specially assigned to a judge or justice who shall determine upon whom and how service of the motion is to be made and enter an order in this regard. If the judge or justice finds the person to be indigent, the court may appoint counsel for the person at any time during the proceedings. A hearing on a timely motion must be held by the judge or justice. The Maine Rules of Evidence do not apply, and evidence presented at the hearing may include testimony, affidavits and other reliable hearsay evidence as permitted by the judge or justice. At the hearing the burden is on the movant to establish by clear and convincing evidence relative to a criminal proceeding or by a preponderance of the evidence relative to a civil violation or traffic infraction proceeding that the person is factually innocent of that crime, civil violation or traffic infraction. If the movant satisfies the appropriate burden of proof, the judge or justice must find the person factually innocent of that crime, civil

violation or traffic infraction and issue an order certifying this determination. If the movant fails to satisfy the appropriate burden of proof, the judge or justice must deny the motion and issue an order certifying this determination. Under either outcome, the order must be in writing and must contain findings of fact supporting the judge's or justice's decision granting or denying the motion. A copy of that written order must be provided to the person. If the judge or justice grants the motion, the judge or justice must additionally determine what court records and related criminal justice records require correction and enter a written order specifying the corrections to be made in the court records and the records of each of the related criminal justice agencies.

If, subsequent to granting relief, a judge or justice learns that the motion or information submitted in support of the motion may contain material misrepresentation or fraud, the judge or justice may, after proper notice, hold a hearing. At the conclusion of the hearing, if the judge or justice finds by a preponderance of the evidence the existence of material misrepresentation or fraud, the judge or justice may, by written order, vacate the earlier order certifying a determination of factual innocence and modify accordingly any record correction made earlier. The written order must contain findings of fact supporting the judge's or justice's decision to vacate or not to vacate.

If the person or the State is aggrieved by a final judgment, the person or the State may appeal to the law court. The person's appeal, unlike that of the State, is not of right.