

**§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.

[PL 2009, c. 287, §1 (NEW).]

**2. Counsel.** In cases involving a criminal conviction, 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.

[PL 2009, c. 287, §1 (NEW).]

**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.

[PL 2009, c. 287, §1 (NEW).]

**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.

[PL 2009, c. 287, §1 (NEW).]

**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.

[PL 2009, c. 287, §1 (NEW).]

**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.

[PL 2009, c. 287, §1 (NEW).]

**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.

[PL 2009, c. 287, §1 (NEW).]

## SECTION HISTORY

PL 2009, c. 287, §1 (NEW).

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