§2264. Motion and hearing; process

1. Filing motion. A motion filed pursuant to section 2263 must be filed in the underlying criminal proceeding. After the motion is filed, the clerk shall set the motion for hearing.
[PL 2021, c. 674, §1 (NEW).]

2. Counsel. The person filing a motion pursuant to section 2263 has the right to be represented by counsel but is not entitled to assignment of counsel at state expense.
[PL 2021, c. 674, §1 (NEW).]

3. Representation of State. The prosecutorial office that represented the State in the underlying criminal proceeding may 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 2021, c. 674, §1 (NEW).]

4. Evidence. The Maine Rules of Evidence do not apply to a hearing on a motion under this section. Evidence presented by the participants at the hearing may include testimony, affidavits and other reliable hearsay evidence as permitted by the court.
[PL 2021, c. 674, §1 (NEW).]

5. Hearing; order; written findings. The court shall hold a hearing on a motion filed under this section. At the conclusion of the hearing, if the court determines that the person who filed the motion has established by a preponderance of the evidence each of the statutory prerequisites specified in section 2262 or 2262-A, the court shall grant the motion and shall issue a written order sealing the criminal history record information of the eligible criminal conviction that was the subject of the motion. If, at the conclusion of the hearing, the court determines that the person has not established one or more of the statutory prerequisites specified in section 2262 or 2262-A, the court shall issue a written order denying the motion. The order must contain written findings of fact supporting the court's determination. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State pursuant to subsection 3.
[PL 2023, c. 409, §4 (AMD).]

6. Notice to State Bureau of Identification. If the court issues an order under subsection 5 that includes the sealing of a criminal conviction maintained by the State Bureau of Identification pursuant to Title 25, section 1541 and previously transmitted by the court pursuant to Title 25, section 1547, the court shall electronically transmit notice of the court's order to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. Upon receipt of the notice, the State Bureau of Identification shall promptly amend its records relating to the person's eligible criminal conviction to reflect that the criminal history record information relating to that criminal conviction is sealed and that dissemination is governed by section 2265. The State Bureau of Identification shall send notification of compliance with this subsection to the person's last known address.
[PL 2021, c. 674, §1 (NEW).]

7. Subsequent new criminal conviction; automatic loss of eligibility; person's duty to notify. Notwithstanding a court order sealing the criminal history record information pursuant to subsection 5, if at any time subsequent to the court's order the person is convicted of a new crime in this State or in another jurisdiction, the criminal history record information must be unsealed.

A. In the event of a new criminal conviction, the person shall promptly file a written notice in the underlying criminal proceeding of the person's disqualification from eligibility, identifying the new conviction, including the jurisdiction, court and docket number of the new criminal proceeding. If the person fails to file the required written notice and the court learns of the existence of the new criminal conviction, the court shall notify the person of the apparent existence of the new conviction and offer the person an opportunity to request a hearing to contest the fact of a new conviction. [PL 2021, c. 674, §1 (NEW).]

B. If the person requests a hearing under paragraph A, the court shall, after giving notice to the person and the appropriate prosecutorial office, hold a hearing. At the hearing, the person has the burden of proving by clear and convincing evidence that the person has not been convicted of a crime subsequent to issuance of the sealing order. At the conclusion of the hearing, if the court determines that the person has not satisfied the burden of proof, it shall find that the person has been newly convicted of the crime and as a consequence is no longer eligible for the sealing order and shall issue a written order unsealing the criminal history record information, with written findings of fact. If, at the conclusion of the hearing, the court determines that the person has satisfied the burden of proof, it shall find that the person has not been convicted of the new crime and issue a written order certifying this determination. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State. [PL 2021, c. 674, §1 (NEW).]

C. If the person does not request a hearing under paragraph A, the court shall determine that the person has not satisfied the burden of proof and the court shall find that the person has been convicted of the new crime and as a consequence is no longer eligible for the sealing order and shall issue a written order unsealing the criminal history record information, with written findings of fact. A copy of the court's written order must be provided to the person and the prosecutorial office that represented the State. [PL 2021, c. 674, §1 (NEW).]

[PL 2021, c. 674, §1 (NEW).]

8. Notice of new crime. If the court orders the unsealing of the record under this section, the court shall electronically transmit notice of the court's order to the Department of Public Safety, Bureau of State Police, State Bureau of Identification. The State Bureau of Identification upon receipt of the notice shall promptly amend its records relating to the person's criminal history record information relating to that criminal conviction to unseal the record. The State Bureau of Identification shall send notification of compliance with that requirement to the person's last known address.
[PL 2021, c. 674, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 674, §1 (NEW). PL 2023, c. 409, §4 (AMD).

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