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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 626, L.D. 858, “An Act To Expand Recovery Services to Persons on Probation”

Amend the bill by striking out all of sections 8 to 11 and inserting the following:

Sec. 8. 17-A MRSA §1809, sub-§1, as enacted by PL 2019, c. 113, Pt. A, §2, is amended to read:

1. Authority of probation officer. If a probation officer has probable cause to believe that a person on probation has violated a condition of that person's probation, that officer may arrest the person or cause the person to be arrested for the alleged violation. If the probation officer cannot, with due diligence, locate the person, the officer shall file a written notice of this fact with the court that placed the person on probation. Upon the filing of that written notice, the court shall issue a warrant for the arrest of that person. This subsection does not apply to a violation of a condition of probation imposed pursuant to section 1807, subsection 2, paragraph I when there is no alleged violation that constitutes a crime, except as set out in section 1814.

Sec. 9. 17-A MRSA §1810, sub-§1, as enacted by PL 2019, c. 113, Pt. A, §2, is amended to read:

1. Authority of probation officer. If a probation officer has probable cause to believe that a person on probation has violated a condition of probation, that officer may deliver to that person, or cause to be delivered to that person, a summons ordering that person to appear for a court hearing on the alleged violation. This subsection does not apply to a violation of a condition of probation imposed pursuant to section 1807, subsection 2, paragraph I when there is no alleged violation that constitutes a crime, except as set out in section 1814.

Sec. 10. 17-A MRSA §1812, sub-§4, as enacted by PL 2019, c. 113, Pt. A, §2, is amended to read:

4. Failure to comply with requirement of probation. If the alleged violation does not constitute a crime and the court finds by a preponderance of the evidence that the person

COMMITTEE AMENDMENT

1 on probation has inexcusably failed to comply with a requirement imposed as a condition
2 of probation, it may revoke probation. This subsection does not apply to a violation of a
3 condition of probation imposed pursuant to section 1807, subsection 2, paragraph I when
4 there is no alleged violation that constitutes a crime, except as set out in section 1814.

5 **Sec. 11. 17-A MRSA §1812, sub-§6**, as enacted by PL 2019, c. 113, Pt. A, §2, is
6 amended to read:

7 **6. Authority of court finding violation of probation.** Upon a finding of a violation
8 of probation, the court may vacate all, part or none of the suspension of execution as to
9 imprisonment or fine specified when probation was granted, considering the nature of the
10 violation and the reasons for granting probation. The remaining portion of the sentence for
11 which suspension of execution is not vacated upon the revocation of probation remains
12 suspended and is subject to revocation at a later date. During the service of that portion of
13 the sentence imposed for which the suspension of execution was vacated upon revocation,
14 the running of the period of probation must be interrupted and resumes again upon release.
15 If the court finds a violation of probation but vacates none of the suspended sentence, the
16 running of the period of probation resumes upon entry of that final disposition. The court
17 may nevertheless revoke probation and vacate the suspension of execution as to the
18 remainder of the suspended sentence or a portion thereof for any criminal conduct
19 committed during the service of that portion of the sentence for which the suspension of
20 execution was vacated upon revocation. This subsection does not apply to a violation of a
21 condition of probation imposed pursuant to section 1807, subsection 2, paragraph I when
22 there is no alleged violation that constitutes a crime, except as set out in section 1814.

23 **Sec. 12. 17-A MRSA §1814**, as enacted by PL 2019, c. 113, Pt. A, §2, is amended
24 to read:

25 **§1814. Additional conditions in lieu of probation revocation proceedings**

26 Whenever a probation officer has probable cause to believe that a person under the
27 supervision of that probation officer has violated a condition of probation but the violation
28 does not constitute a crime, the probation officer, instead of commencing a probation
29 revocation proceeding under section 1809 or section 1810, may offer to the person the
30 option of adding one or more of the following conditions to the person's probation:

31 **1. Participation in public restitution program or treatment program.** The person
32 will participate in a public restitution program or treatment program ~~administered through~~
33 ~~a correctional facility or county jail in the community; or~~

34 ~~**2. Residence at correctional facility or county jail.** The person will reside at a~~
35 ~~correctional facility or county jail for a period of time not to exceed 90 days.~~

36 **3. Graduated sanction.** The person will comply with a graduated sanction, which
37 may not consist of incarceration; and

38 **4. Referral.** If the condition of probation that the probation officer has probable cause
39 to believe was violated is a condition imposed pursuant to section 1807, subsection 2,
40 paragraph I, the person will participate in recovery work provided by a certified recovery
41 coach, a certified intentional peer support specialist or a qualified recovery support service
42 if participating in recovery work is determined by the probation officer to be likely to be
43 appropriate and of positive value to the person.

1 Notwithstanding other provisions in this subchapter, a probation officer may arrest a
 2 person for a violation of a condition imposed pursuant to section 1807, subsection 2,
 3 paragraph I and may commence probation revocation proceedings if that officer has
 4 probable cause to believe that the person has committed a violation of the condition and an
 5 assessment by a qualified professional determines there is a significant risk to the safety of
 6 others or the person that cannot be managed through a noncustodial response. For the
 7 purposes of this section, "qualified professional" means a licensed physician, licensed
 8 physician assistant, certified psychiatric clinical nurse specialist, certified nurse
 9 practitioner, licensed clinical psychologist, licensed clinical social worker or licensed
 10 clinical professional counselor.

11 If the person agrees in writing to the additional conditions under subsection 1 or 2 3,
 12 the conditions must be implemented. If the person does not agree or if the person fails to
 13 fulfill the additional conditions to the satisfaction of the probation officer, the probation
 14 officer may commence probation revocation proceedings under section 1809 or 1810 for
 15 the violation that the probation officer had probable cause to believe occurred. If the person
 16 fulfills the additional conditions to the satisfaction of the probation officer, the probation
 17 officer shall so notify the person in writing and the probation officer may not commence
 18 probation revocation proceedings for the violation that the probation officer had probable
 19 cause to believe occurred.

20 **Sec. 13. Appropriations and allocations.** The following appropriations and
 21 allocations are made.

22 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**
 23 **Office of Substance Abuse and Mental Health Services Z199**

24 Initiative: Provides funding for additional referrals to a certified recovery coach, a certified
 25 intentional peer support specialist or a qualified recovery support service as a condition of
 26 probation.

27 GENERAL FUND	2021-22	2022-23
28 All Other	\$595,329	\$595,329
29		
30 GENERAL FUND TOTAL	<u>\$595,329</u>	<u>\$595,329</u>

31 '
 32 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 33 number to read consecutively.

34 **SUMMARY**

35 This amendment is the majority report. It revises the new language in the bill to clarify
 36 the limitation on arrests for probation violations based on drug and alcohol use and the
 37 authorization for probation officers to impose additional conditions in lieu of probation
 38 revocation. It provides for graduated sanctions that do not include incarceration and
 39 specifies that the probation officer may offer to the person the option of adding the
 40 condition that the person will participate in recovery work provided by a certified recovery
 41 coach, a certified intentional peer support specialist or a qualified recovery support service.
 42 If the person agrees to the conditions of graduated sanctions, the conditions must be

1 implemented and if the person doesn't agree or fails to fulfill the additional conditions, the
2 probation officer may commence probation revocation proceedings.

3 This amendment provides that a probation officer may arrest a person for a violation
4 of a condition requiring the person to refrain from drug use and excessive use of alcohol
5 and may commence probation revocation proceedings if that officer has probable cause to
6 believe that the person has committed a violation of the condition and an assessment by a
7 qualified professional determines there is a significant risk to the safety of others or the
8 person that cannot be managed through a noncustodial response. "Qualified professional"
9 is defined for these purposes as a licensed physician, licensed physician assistant, certified
10 psychiatric clinical nurse specialist, certified nurse practitioner, licensed clinical
11 psychologist, licensed clinical social worker or licensed clinical professional counselor.

12 The amendment also adds an appropriations and allocations section.

13 **FISCAL NOTE REQUIRED**

14 **(See attached)**