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Legislative Document

No. 1674

S.P. 686

In Senate, March 23, 2016

An Act To Create Community Substance Abuse Programs

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

HEATHER J.R. PRIEST Secretary of the Senate

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Presented by Senator ROSEN of Hancock. (GOVERNOR'S BILL)

2	Sec. 1. 17-A MRSA §1107-A, sub-§6 is enacted to read:
3 4 5 6	6. Notwithstanding any provision of this Title to the contrary, the court shall sentence a person convicted under this section to a term of imprisonment of 364 days for a Class D or Class E crime and to not less than one year for a Class B or Class C crime, not to exceed the maximum sentence authorized for the crime, as long as:
7 8	A. The person has not been previously convicted of a crime under this chapter, with the exception of sections 1108, 1109, 1111 and 1111-A; and
9 10	B. The person has not been previously convicted of a crime under chapter 9, 11, 12, 13, 27, 31, 33 or 41 or section 852 or 853.
11 12 13	For a person sentenced under this subsection, the court shall suspend the entire term of imprisonment and sentence the person to a period of probation of not less than one year but no more than the maximum sentence authorized for the crime.
14 15	Sec. 2. 17-A MRSA §1201, sub-§1, ¶A-1, as amended by PL 2013, c. 194, §11, is further amended to read:
16	A-1. The conviction is for a Class D or Class E crime other than:
17 18 19 20 21 22 23 24	(1) A Class D or Class E crime relative to which, based upon both the written agreement of the parties and a court finding, the facts and circumstances of the underlying criminal episode giving rise to the conviction generated probable cause to believe the defendant had committed a Class A, Class B or Class C crime in the course of that criminal episode and, as agreed upon in writing by the parties and found by the court, the defendant has no prior conviction for murder or for a Class A, Class B or Class C crime and has not been placed on probation pursuant to this subparagraph on any prior occasion;
25 26 27 28 29	(2) A Class D crime that the State pleads and proves was committed against a family or household member or a dating partner under chapter 9 or 13 or section 554, 555 or 758. As used in this subparagraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4; "dating partner" has the same meaning as in Title 19-A, section 4002, subsection 3-A;
30 31	(2-A) A Class D crime under Title 5, section 4659, subsection 1, Title 15, section 321, subsection 6 or Title 19-A, section 4011, subsection 1;
32	(3) A Class D or Class E crime in chapter 11 or 12;
33	(4) A Class D crime under section 210-A;
34	(4-A) A Class E crime under section 552;
35 36	(5) A Class D or Class E crime under section 556, section 854, excluding subsection 1, paragraph A, subparagraph (1), or section 855;
37	(6) A Class D crime in chapter 45 relating to a schedule W drug;

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

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1 (7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A, 2 paragraph B; 3 (8) A Class D crime under Title 17, section 1031; or 4 (10) A Class E crime under Title 15, section 1092, subsection 1, paragraph A, if 5 the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) and the underlying crime involved 6 domestic violence-; or 7 8 (11) A Class D or Class E crime under section 1107-A. 9 Sec. 3. 17-A MRSA §1204, sub-§2-B is enacted to read: 10 **2-B.** Notwithstanding any provision of this chapter to the contrary, in addition to 11 any other conditions of probation, the court shall require a person sentenced under section 1107-A, subsection 6, as a condition of probation, to complete a certified community 12 substance abuse program established pursuant to Title 30-A, section 1659-B and certified 13 14 pursuant to Title 34-A, section 1206-B. If the person fails to successfully complete the 15 community substance abuse program, as described in Title 30-A, section 1659-B, subsection 3, the court shall revoke the probation of the person, vacate the suspension of 16 17 the term of imprisonment in whole and commit the person to the Department of Corrections. Failure to successfully complete the community substance abuse program is 18 19 considered only as a violation of probation and may not, in itself, authorize involuntary 20 treatment or hospitalization. 21 Sec. 4. 30-A MRSA §1659-B is enacted to read: 22 §1659-B. Community substance abuse program 23 1. Establishment and certification of program. The sheriff in charge of a county 24 jail or the sheriffs of counties that share a regional jail shall establish at that sheriffs 25 county jail or those sheriffs' regional jail a community substance abuse program, referred to in this section as "the program." The program must be administered by the county or, 26 27 in the case of a regional jail, the counties sharing that regional jail and must meet the 28 certification requirements of the Department of Corrections adopted by rule pursuant to 29 Title 34-A, section 1206-B. The program is for a person sentenced under Title 17-A, 30 section 1107-A, subsection 6 and required to participate as a condition of probation 31 pursuant to Title 17-A, section 1204, subsection 2-B. 32 2. Program participant requirements. The requirements of this subsection apply 33 to a person participating in the program. 34 A. The person must be electronically monitored. 35 B. The person may not use alcohol or illegal drugs or other illegal substances and

C. The person shall submit to daily urinalysis, breath testing or other chemical tests

may not abuse any legal substance.

at the regional or county jail.

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3. Successful completion of program. A person who abides by the requirements of subsection 2 for 12 months is considered to have successfully completed the program.

Sec. 5. 34-A MRSA §1206-B is enacted to read:

§1206-B. Certification of community substance abuse program

- 1. Standards for certification. The department shall establish standards and procedures for certification of a community substance abuse program established pursuant to Title 30-A, section 1659-B and referred to in this section as "the program." The standards must include the provisions and requirements described in Title 30-A, section 1659-B, subsections 2 and 3. The department shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
- **2.** Review and certification. The department shall review and certify programs that meet the standards established by rule by the department pursuant to subsection 1.
- 3. Community Substance Abuse Fund. The Community Substance Abuse Fund, referred to in this subsection as "the fund," is established within the department. The fund must be used for reimbursing counties the reasonable costs of establishing and operating a program that meets the certification standards established by rule by the department pursuant to subsection 1. The department shall administer the fund and distribute the funds on an annual basis. Before distributing any funds to a county, the department shall require that county to submit appropriate documentation verifying the county's costs and may at any time require the county to provide documentation as to the reasonableness of those costs. If the county fails to provide such documentation to the satisfaction of the department, the department may not distribute funds to that county. Any funds not distributed do not lapse but must be carried forward and used to reimburse the reasonable costs of establishing and operating community substance abuse programs in subsequent years.

27 SUMMARY

This bill requires a court to sentence a person who is convicted of unlawful possession of a scheduled drug to a definite term of imprisonment but suspend all of the sentence if the person has no prior convictions for certain drug-related offenses or other specified crimes, such as assault or sexual assault. The person must be sentenced to a definite term of probation with the condition that the person successfully complete a community substance abuse program.

This bill specifies that probation may be imposed for a Class D or Class E crime of unlawful possession of a scheduled drug.

This bill requires each county sheriff to establish a community substance abuse program at that sheriff's regional or county jail. Programs are administered by the counties and must meet certification standards established by the Department of Corrections by rule. The bill establishes the Community Substance Abuse Fund to

annually reimburse counties for the cost of the community substance abuse programs that meet the department's certification requirements.

 A person participating in a program must comply with certain requirements in order to successfully complete the program, including submitting to electronic monitoring and daily testing for illegal drug and alcohol use, and must participate in the program for 12 months. If a person fails to successfully complete the program, the court is required to revoke the probation for that person and that person must serve the unsuspended portion of the sentence in the custody of the Department of Corrections.