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TESTIMONY OF

**JILL O'BRIEN, DIRECTOR OF GOVERNMENT AFFAIRS
MAINE DEPARTMENT OF CORRECTIONS**

February 9, 2025

In Support of:

LD 2161, An Act to Modify Certain Statutes Governing Revocation of Probation, Victim Confidentiality and the Commissioner of Corrections

Senator Beebe-Center, Representative Hasenfus, and distinguished members of the Criminal Justice and Public Safety Committee, my name is Jill O'Brien, and I am the Director of Government Affairs for the Maine Department of Corrections.

I am testifying in support of LD 2161, a Department bill that changes language in the probation statutes with respect to certain motions, clarifies the confidentiality statutes covering information that victims provide to the Department, and authorizes the deputy commissioner to act when the Commissioner is not able.

Probation Motions:

Specifically, Sections 1 through 3 of LD 2161 codify current practice regarding probation motions and correct an oversight.

In Section 1, we add that a prosecutor must approve before a probation officer can file a motion to revoke probation to match that requirement elsewhere in statute. 17-A MRS § 1811(1) already requires prosecutor approval for a probation officer to file a motion for probation revocation. 17-A MRS § 1810 only states that the probation officer should file the motion and summons the person to court, but section 1810 is silent on whether the prosecutor has to approve. With the change, the two statutes match, both stating the need for prosecutor approval. The Maine Prosecutors' Association is in support of this bill and is submitting written testimony.

Sections 1 and 2 also add language that the motion to revoke probation may be withdrawn by either the probation officer or the prosecutor. This codifies what is currently done in practice and how the Department trains probation officers. Probation officers file motions to withdraw revocation motions (in other words, motions to stop probation revocation) in several different scenarios.

One straightforward scenario is when a probation client passes away. If there was a revocation motion pending with the court, the probation officer would file a motion to withdraw to end the proceedings, given the client's death. The probation officers are the ones who file these motions, not the prosecutors. The probation officers send the prosecutors a copy. Ultimately, the judge decides the motion.

A more complicated and frequent scenario occurs when a probation client fails to comply with the terms of probation by not paying restitution or failing to complete a domestic violence intervention program. Often these probation requirements are not met, and when a client is nearing the end of the probation term, probation officers often file a motion to revoke probation for these unmet requirements, and issue a summons for a court date a few months in the future. This

incentivizes fulfillment of these requirements and avoids having to extend probation or find the client in violation. With the court date a few months in the future, if the client completes the program or pays the restitution before that date, the probation officer will move to withdraw the revocation motion. The probation officers try to ascertain the prosecutor's position on the motion and includes the prosecutor's position on the motion. The judge then decides whether the motion to terminate probation is withdrawn.

Section 3 addresses motions to transfer probation proceedings filed by the probation officer. The bill clarifies that either the prosecutor or the probation officer may file a motion to transfer the hearing to another court. Probation officers regularly file motions to transfer when the client violates probation in a different county than the county in which the underlying crime occurred, so that the victim, law enforcement, and other witnesses do not need to travel to court in the county in which probation was initially imposed. Probation officers include the position of both prosecutors (from both counties) on the motion to transfer and send the prosecutors a copy. Regardless of who files the motion to transfer, the judge ultimately decides whether to transfer the proceeding.

It is the practice of the probation officers to try to ascertain the prosecutor's position on all of these motions. That position is typed into the form motions. The prosecutors receive a copy of all of these motions. Ultimately, the judge decides whether to grant the motions.

Victim Confidentiality:

In sections 4 to 6 of the bill, the Department adds a cross-reference in a victims' rights statute to the Department of Corrections confidentiality provision. This change makes the two statutes match and eliminates ambiguity on what communications by victims are confidential. This provision makes it clear that information obtained from victims by the Department for evaluating a client's ability to participate in a community-based program is confidential under 34-A MRS § 1216 and also under 17-A MRS § 2109 (which lists out the types of victim communications and information that are confidential). These statutes should match, and this bill would make that change.

Deputy Commissioner Language:

Section 7 of the bill is a terminology change. It adds that the Deputy Commissioner of the Department of Corrections may exercise the powers of the Commissioner when the Commissioner is absent or disabled. Without the change, the statute gave that power to "associate commissioners" but not to a "deputy commissioner." The structure in the Department includes a Commissioner, Deputy Commissioner, and a number of Associate Commissioners who report to the Deputy Commissioner.

Thus, I urge you to vote Ought to Pass on LD 2161. I am happy to answer any questions. Thank you.

Jill O'Brien
Director of Government Affairs, Maine Department of Corrections