

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 278

H.P. 219

House of Representatives, January 27, 1995

**An Act to Require That a Person Convicted of More Than One Crime
Serve Each Sentence Consecutively.**

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative OTT of York.
Cosponsored by Senator HANLEY of Oxford.

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

2 **Sec. 1. 17-A MRSA §401, sub-§3**, as amended by PL 1985, c. 282,
4 §4, is further amended to read:

6 3. A person may be convicted both of burglary and of the
8 crime which he that person committed or attempted to commit after
entering or remaining in the structure, but sentencing for both
10 crimes ~~shall-be~~ is governed by section ~~1256~~ 1256-A.

12 **Sec. 2. 17-A MRSA §755, sub-§3**, as amended by PL 1985, c. 210,
is further amended to read:

14 3. As used in this section, "official custody" means
16 arrest, custody in, or on the way to or from a courthouse or a
jail, police station, house of correction, or any institution or
18 facility under the control of the Department of Corrections, or
under contract with the department for the housing of persons
sentenced to imprisonment, the custody of any official of the
20 department, ~~the custody of any institution in another~~
~~jurisdiction pursuant to a sentence imposed under the authority~~
~~of section 1253, subsection 1-A~~ or any custody pursuant to court
22 order. A person on a parole or probation status is not, for that
reason alone, in "official custody" for purposes of this section.

26 **Sec. 3. 17-A MRSA §1202, sub-§4**, as enacted by PL 1989, c.
28 739, §1, is amended to read:

30 4. Any justice, in order to comply with section ~~1256~~
1256-A, subsection 8 7, may terminate a period of probation that
32 would delay commencement of a consecutive unsuspended term of
imprisonment. Any judge may also do so if that judge has
jurisdiction over each of the sentences involved.

34 **Sec. 4. 17-A MRSA §1206, sub-§5**, as amended by PL 1983, c.
36 450, §5, is further amended to read:

38 5. When the alleged violation constitutes a crime for which
40 the person on probation has not been convicted, the court may
revoke probation if it finds by a preponderance of the evidence
42 that the person on probation committed the crime. If the person
is subsequently convicted of the crime, or any other crime or
44 crimes arising out of the same conduct, sentencing ~~shall-be~~ is
subject to the requirements of section ~~1256~~ 1256-A. ~~If concurrent~~
~~terms of imprisonment are imposed and the terms do not commence~~
~~on the same date, any time served as a result of the probation~~
~~revocation shall be deducted from the time the person is required~~
46 ~~to serve as a result of the new conviction.~~

2 **Sec. 5. 17-A MRSA §1206, sub-§7**, as amended by PL 1993, c.
234, §2, is further amended to read:

4 7. If a person on probation is convicted of a new crime
6 during the period of probation, the court may sentence that
7 person for the crime and revoke probation. If the person has
8 been sentenced for the new crime and probation revocation
9 proceedings are subsequently commenced, the court that conducts
10 the revocation hearing may revoke probation. Sentencing for the
11 multiple offenses is subject to section ~~1256~~ 1256-A. ~~If~~
12 ~~concurrent terms of imprisonment are imposed and the terms do not~~
13 ~~commence on the same date, any time served as a result of the new~~
14 ~~conviction must be deducted from the time the person is required~~
~~to serve as a result of the probation revocation.~~

16 **Sec. 6. 17-A MRSA §1253, sub-§1-A**, as repealed and replaced by
17 PL 1985, c. 282, §6, is repealed.

18 **Sec. 7. 17-A MRSA §1256**, as amended by PL 1993, c. 522, §1,
19 is repealed.

21 **Sec. 8. 17-A MRSA §1256-A** is enacted to read:

23 **§1256-A. Multiple sentences of imprisonment**

25 1. Except as provided in subsection 2, the court shall
26 order in a sentence of imprisonment that the sentence must be
27 served consecutively to any other sentence previously imposed or
28 to another sentence imposed on the same date.

29 2. The court may not sentence a defendant to consecutive
30 terms of imprisonment for crimes arising out of the same criminal
31 episode when:

32 A. One crime is included in the other crime;

33 B. One crime consists only of a conspiracy, attempt,
34 solicitation or other form of preparation to commit the
35 other crime, or a facilitation of the other crime;

36 C. The crimes differ only in that one is defined to
37 prohibit a designated kind of conduct generally and the
38 other to prohibit a specific instance of that conduct; or

39 D. Inconsistent findings of fact are required to establish
40 commission of the crimes.

41 If the court imposes concurrent sentences, it shall state its
42 reasons for doing so on the record or in the sentences.

2 3. If a person has been placed on probation pursuant to a
3 previously imposed sentence, the court shall revoke probation
4 pursuant to section 1206, subsections 7 and 7-A if imposing a new
5 sentence of imprisonment. The court may order that the sentence
6 that had been suspended be served at the same institution as that
7 which is specified by the new sentence.

8 4. When a person subject to an undischarged term of
9 imprisonment is convicted of a violation of section 752-A, 755 or
10 757 or of any other crime against the person of a member of the
11 staff of the institution in which the convicted person was
12 imprisoned, or of an attempt to commit any of the crimes
13 mentioned in this subsection, the court shall order that the
14 undischarged term of imprisonment be tolled and service of the
15 nonconcurrent sentence commence immediately. The court shall so
16 order if any undischarged term of imprisonment is a split
17 sentence. No portion of the nonconcurrent sentence may be
18 suspended. All sentences that a convicted person receives as a
19 result of the crimes mentioned in this subsection must be
20 nonconcurrent with all other sentences.

21 This subsection applies to prisoners on intensive supervision.
22 Other offenses committed by a prisoner on intensive supervision
23 who is committed to the Department of Corrections is governed by
24 section 1266.

25 5. If it is discovered subsequent to the imposition of a
26 sentence of imprisonment that the sentencing court was unaware of
27 a previously imposed sentence of imprisonment that had not been
28 fully discharged, the court shall resentence the defendant and
29 shall specify that the sentences must be served consecutively.

30 6. When a person who has been previously sentenced in
31 another jurisdiction has not commenced or completed that
32 sentence, the court shall order that any sentence of imprisonment
33 in this State that the person receives commences as provided in
34 section 1253, subsection 1 and runs consecutively to the sentence
35 of the other jurisdiction.

36 7. A court may not impose a sentence of imprisonment that
37 is not wholly suspended to be served consecutively to any split
38 sentence previously imposed or imposed on the same date if the
39 net result would be to have the person released from physical
40 confinement to be on probation for the first sentence and
41 thereafter be required to serve an unsuspended term of
42 imprisonment on the 2nd sentence.

43 8. Any justice imposing a sentence of imprisonment to be
44 served consecutively to any other previously imposed sentence
45 that the person has not yet commenced, in order to comply with
46

2 subsection 7, may rearrange the order in which the sentences must
3 be served. Any judge may rearrange the order of the sentences
4 under the same circumstances if that judge has jurisdiction over
5 each of the sentences involved.

6 **Sec. 8. Application.** This Act applies to all sentences
7 imposed after the effective date of this Act.
8

10 **STATEMENT OF FACT**

12 This bill amends the Maine Criminal Code to require the
13 court, when imposing multiple terms of imprisonment for multiple
14 crimes, to sentence the defendant to serve the terms
consecutively, rather than concurrently, in almost all cases.