

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2296

S.P. 902

In Senate, February 7, 1990

Submitted by the Department of the Attorney General pursuant to Joint Rule 24.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.

Cosponsored by Representative COTE of Auburn, Representative FARNSWORTH of Hallowell and Representative HASTINGS of Fryeburg.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act Addressing Consecutive Terms of Imprisonment Involving Probation.



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

4 Sec. 1. 17-A MRSA §1202, sub-§4 is enacted to read:

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

16 Sec. 2. 17-A MRSA §1256, sub-§§8 and 9 are enacted to read:

18 8. No court may impose a sentence of imprisonment, not
20 wholly suspended, to be served consecutively to any split
22 sentence previously imposed or imposed on the same date, if the
24 net result, even with the options made available by subsections 5
26 and 9 of this section and section 1202, subsection 4, would be to
28 have the person released from physical confinement on probation
30 on the first sentence and thereafter be required to serve an
32 unsuspended term of imprisonment on the 2nd sentence.

34 9. Any justice imposing a sentence of imprisonment to be
36 served consecutively to any other previously imposed sentence
38 that the person has not yet commenced, in order to comply with
40 subsection 8, may rearrange the order in which the sentences are
42 to be served. Any judge may also do so if that judge has
44 jurisdiction over each of the sentences involved.

32 STATEMENT OF FACT

34 This bill clarifies present law by prohibiting any court
36 from imposing consecutive sentence combinations involving
38 probation that would result in a person at liberty on probation
40 having to serve a consecutive term of imprisonment. Under
42 existing language the court has inferred the prohibition in the
44 following cases and statutes: State v. Parks, 544 A.2d 1269,
1271-1272 (Me. 1988); State v. Whitmore, 540 A.2d 465, 467 (Me.
1988); and the Maine Revised Statutes, Title 17-A, section 1256,
subsection 5. A sentence of actual incarceration with concurrent
probation is not illegal and may well be appropriate to encourage
participation in treatment programs, for example, or to
discourage behavior problems during incarceration.

46 In addition, this bill expressly provides for 2 new devices
48 that, along with current law, give the sentencing court greater
50 flexibility to avoid the imposition of consecutive sentences
involving probation that would otherwise violate the prohibition
in section 2 of the bill. The 2 new devices are particularly
useful in the situation when the new conviction is for criminal

2 conduct that did not occur during the period of probation on the
 previously imposed sentence.

4 Finally, this bill gives the sentencing court the authority
6 to terminate the probation imposed on a previous sentence. The
 termination does not relieve the person of the obligation to
8 perform or complete any aspect of the previously imposed sentence
 except probation. For example, a requirement to make
10 restitution, pay a fine or pay a county jail reimbursement fee
 imposed as part of a sentence, exists independently of the term
12 of probation and can be enforced independently.