

# **MAINE STATE LEGISLATURE**

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 278

H.P. 219

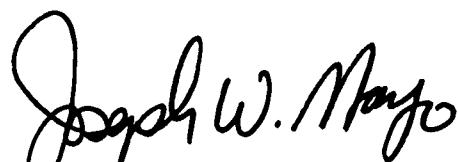
House of Representatives, January 27, 1995

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

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



The signature is written in cursive ink and appears to read "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.

10

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

14

16       3. As used in this section, "official custody" means  
arrest,; custody in, or on the way to or from a courthouse or a  
18 jail, police station, house of correction, or any institution or  
facility under the control of the Department of Corrections, or  
under contract with the department for the housing of persons  
20 sentenced to imprisonment,; the custody of any official of the  
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  
24 reason alone, in "official custody" for purposes of this section.

26

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

30

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

36

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

40

42       5. When the alleged violation constitutes a crime for which  
the person on probation has not been convicted, the court may  
revoke probation if it finds by a preponderance of the evidence  
44 that the person on probation committed the crime. If the person  
is subsequently convicted of the crime, or any other crime or  
crimes arising out of the same conduct, sentencing shall-be is  
46 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  
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  
8           person for the crime and revoke probation. If the person has  
10          been sentenced for the new crime and probation revocation  
12          proceedings are subsequently commenced, the court that conducts  
14          the revocation hearing may revoke probation. Sentencing for the  
multiple offenses is subject to 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-new-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  
PL 1985, c. 282, §6, is repealed.

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

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

24           **§1256-A. Multiple sentences of imprisonment**

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

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

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

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

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

44           D. Inconsistent findings of fact are required to establish  
46          commission of the crimes.

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

50

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.

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

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

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

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

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

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

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

## **STATEMENT OF FACT**

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