ACLU
AMERICAN CIVIL LIBERTIES UNION
Maine

PO Box 7860
Portland, ME 04112
(207) 774-5444
www.aclumaine.org

TESTIMONY OF MICHAEL KEBEDE, ESQ.

**LD 536 – Ought to Pass as Amended**

**An Act To Amend the Maine Criminal Code**

Joint Standing Committee on
Criminal Justice and Public Safety

March 22, 2021

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Michael Kebede, and I am policy counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I am here to oppose Section A-1 because it would unnecessarily hamstring judicial discretion and swell our prisons. I am also here to support Section E-1 of this bill because it would remove an outdated risk assessment from criminal statutes.

Section A-1 establishes mandatory nonconcurrent sentences when a person is convicted of a crime committed while the person is serving their sentence on another conviction. We oppose this section of the bill for much the same reason that we oppose mandatory minimum sentences: it would tie judges' hands from ordering a sentence based on all the factors of the individual case. This section would also restrict our ability to return people to wider society even if it is determined that incarceration is no longer necessary or appropriate. It would likely also lead to fuller prisons. We should not create such rigid rules that deny discretion to decision-makers on the ground that the legislature – not judges – are in the best position to decide whether a consecutive or concurrent sentence is appropriate in a given situation. As a solution, we propose removing the last two sentences of Sec. A-1. 17-A MRSA §1609(1) and (2). As written now, those sentences provide:

> No portion of the nonconcurrent sentence may be suspended. Any nonconcurrent sentence that the convicted individual receives as a result of an order entered pursuant to this subsection must be nonconcurrent with all other sentences.

Removing these sentences would enshrine judicial discretion and create fairer outcomes for people who are incarcerated.

Last session, this committee voted against this language, and voted in favor of language that would return some discretion to judges. Unfortunately the bill died when the legislature adjourned early because of COVID-19. We urge you to take back up that language, and reject A-1 as currently written.

We support Part E-1 of the bill, would remove risk assessments from law. *See* 17-A MRSA § 257. Risk assessment instruments are increasingly used in all stages of criminal legal processes, from pretrial detention to probation decisions. Yet, a body of growing research has created serious doubts about their efficacy.[1] Moreover, even those who use risk assessments, and believe that they are accurate and useful, regularly tinker with the factors of their risk assessment algorithm to make sure the tool works well. For this reason, enacting risk assessment factors in statute is bad policy. Statutes are relatively fixed. Statutes are hard to change. Instead, if judges are going to use risk assessments, they should use case-appropriate factors that are informed by the best and most recent science, not factors that non-scientists created years in the past.

Because mandatory concurrent sentences unnecessarily constrain judicial discretion, we urge you to amend Section A-1 as suggested above. If the committee accepted our proposed amendments, we would not oppose this legislation.

Thank you for your consideration.

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[1] *See* Technical Flaws of Pretrial Risk Assessments Raise Grave Concerns, available at https://dam-prod.media.mit.edu/x/2019/07/16/TechnicalFlawsOfPretrial_ML%20site.pdf?source=post_page----------