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**PROBATION ORDERS  
(Invalidated When Sentences Exceed Two Years)**

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**NOTE:**

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL.

CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE "**WORDS & PHRASES**" SECTION OF THIS PART OF THE MANUAL.

## PROBATION ORDERS INVALIDATED WHEN SENTENCES EXCEED TWO YEARS

When a court imposes a sentence of imprisonment of less than two years, it may also direct that the offender comply with a probation order [see section 731 (1) (b) of the *Criminal Code*]. If the imprisonment exceeds two years, no probation order can be made, and if made, it is invalid and unenforceable. Crown Attorneys and judges are usually aware of this provision and probation orders are made, or not made, accordingly.

Crown Attorneys should also be mindful of section 139 (1) of the *Correctional and Conditional Release Act*, which may also affect the validity or availability of a probation order. This section reads as follows:

“Where a person sentenced to a term of imprisonment that has not expired is sentenced to an additional term of imprisonment, the person shall, for the purposes of the *Criminal Code*, the *Prison and Reformatories Act* and this Act, be deemed to have been sentenced to one term of imprisonment commencing at the beginning of the first of those sentences and ending on the expiration of the last of them to be served.”

When read in conjunction with section 731 of the *Criminal Code*, the court is restricted in the imposition of a probation order in at least three circumstances:

First, where the trial judge is either sentencing an offender for a single or multiple offences, a probation order cannot be imposed where either the single sentence, or the combination of sentences imposed at that time exceed the two-year maximum.

Second, where a sentence of incarceration of two years or less followed by probation is made consecutive to existing sentences or parole remnants, the resulting sentence may exceed the two-year ceiling. As a result, a probation order cannot properly follow such a sentence. This requires not only a consideration of the existing sentence, and the effect of a subsequent consecutive or concurrent term, but also the proper calculation of that sentence by virtue of s.139(1) of the *Corrections and Conditional Release Act*.

**Third, the combination of the relevant *Criminal Code* provisions and s.139(1) of the *Corrections and Conditional Release Act* may effectively nullify a previously imposed valid probation order where the subsequent sentence inflates the total**

**sentence beyond the permitted two-year ceiling.**

Crown Attorneys should consider the applicability of these provisions whenever they deal with sentencing situations involving offenders who have received, or who are likely to receive, custodial sentences. Crown Attorneys have a duty to assist the court in avoiding the issuance of ineffective probation orders.