

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1206

H.P. 867

House of Representatives, April 18, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CATHCART of Orono.

Cosponsored by Representative DiPIETRO of South Portland, Representative LAWRENCE of Kittery and Senator ESTY of Cumberland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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**An Act to Assure that Probation Does Not Lessen Consecutive Terms  
of Imprisonment.**

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

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

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

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

13 8. No court may impose a sentence of imprisonment, not  
15 wholly suspended, to be served consecutively to any split  
17 sentence previously imposed or imposed on the same date, if the  
19 result, with the options made available by subsections 5 and 9  
21 and section 1202, subsection 4, would be to release the person  
23 from physical confinement on probation imposed as the first  
25 sentence, and thereafter require that person to serve an  
27 unsuspended term of imprisonment imposed as the 2nd sentence.

23 9. Any justice imposing a sentence of imprisonment to be  
25 served consecutively to any other sentence previously imposed  
27 which the person has not begun to serve, in order to comply with  
29 subsection 8, may rearrange the order in which the sentences are  
31 to be served. Any judge may also do so if that judge has  
33 jurisdiction over each of the sentences involved.

## 31 STATEMENT OF FACT

33 This bill expressly prohibits any court from imposing  
35 consecutive sentence combinations involving probation, the effect  
37 of which would be to have the person at liberty on probation,  
39 only to thereafter be required to serve a consecutive term of  
41 imprisonment. At present, such prohibition must be inferred.  
43 (See generally, State v. Parks, 554 A.2d 1269, 1271-1272 (Me.  
45 1988); State v. Whitmore, 540 A.2d 465, 467 (Me. 1988); see also  
the Maine Revised Statutes, Title 17-A, section 1256, subsection  
5.) A sentence to 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.

47 In addition, this bill expressly provides for 2 new devices  
49 which, along with current law, will give the sentencing court  
51 greater flexibility to avoid the imposition of consecutive  
sentence combinations involving probation that would otherwise  
violate the prohibition in section 2 of the bill. The 2 new  
devices are particularly useful in the situation where the new

1 conviction is for criminal conduct which occurred other than  
during the period of probation on the previously imposed sentence.

3

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