

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

FIRST REGULAR SESSION - 1989

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.

STATE OF MAINE

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

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



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.

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

41
43
45
47
49
51
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
47 the Maine Revised Statutes, Title 17-A, section 1256, subsection
49 5.) A sentence to actual incarceration with concurrent probation
51 is not illegal and may well be appropriate to encourage
participation in treatment programs, for example, or to
discourage behavior problems during incarceration.

In addition, this bill expressly provides for 2 new devices
which, along with current law, will give the sentencing court
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.