

MAINE STATE LEGISLATURE

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Majority

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L.D. 766

Date: 6/19/19 Majority

(Filing No. H-648)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 571, L.D. 766, Bill, "An Act Regarding the Penobscot Nation's and Passamaquoddy Tribe's Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013"

Amend the bill in Part A by striking out all of section 1 and inserting the following:

'Sec. A-1. 30 MRSA §6206, sub-§3, as enacted by PL 1979, c. 732, §§1 and 31, is amended to read:

3. Ordinances. The Passamaquoddy Tribe and the Penobscot Nation each ~~shall have~~ has the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section ~~shall~~ must be made by each tribal governing body. ~~Should If~~ either tribe or nation ~~choose~~ chooses not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State ~~shall have~~ has exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. ~~The~~ Except as provided in sections 6209-A and 6209-B, the State shall have has exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation.'

Amend the bill in Part A by inserting after section 1 the following:

'Sec. A-2. 30 MRSA §6210, sub-§5 is enacted to read:

5. Reports to the State Bureau of Identification. Penobscot Nation and Passamaquoddy Tribe law enforcement agencies shall submit to the Department of Public Safety, State Bureau of Identification such uniform crime reports and other information required by Title 25, section 1544.'

Amend the bill in Part A in section 2 in the first line (page 1, line 18 in L.D.) by striking out the following: "Effective" and inserting the following: 'Contingent effective'

COMMITTEE AMENDMENT

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Amend the bill in Part B by striking out all of sections 1 and 2 and inserting the following:

Sec. B-1. 30 MRSA §6209-B, sub-§1-A is enacted to read:

1-A. Concurrent jurisdiction over certain criminal offenses. The Penobscot Nation has the right to exercise jurisdiction, concurrently with the State, over the following Class D crimes committed by an individual who is not a member of a federally recognized Indian tribe on the Penobscot Indian Reservation for which the potential maximum term of imprisonment does not exceed one year and the potential fine does not exceed \$2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A and Title 19-A, section 4011. The concurrent jurisdiction authorized by this subsection does not include offenses committed by juveniles.

The governing body of the Penobscot Nation shall decide whether to exercise or terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 2, if the Penobscot Nation chooses to exercise jurisdiction under this subsection, the Penobscot Nation may not deny to any criminal defendant the right to a jury drawn from a cross section of the community that does not systematically exclude any distinctive group, a jury of 12 and the right to a unanimous jury verdict. In exercising the concurrent jurisdiction authorized by this subsection, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and the punishments applicable to those criminal offenses over which the Penobscot Nation has concurrent jurisdiction under this subsection are governed by the laws of the State. Issuance and execution of criminal process also are governed by the laws of the State.

Sec. B-2. 30 MRSA §6209-B, sub-§2, as enacted by PL 1995, c. 388, §6 and affected by §8, is amended to read:

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

At the conclusion of a prosecution for a criminal offense, except a violation of Title 12 or Title 29-A that is a Class D or Class E crime other than a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive alcohol level, the tribal court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

R O F S

1 **Sec. B-3. 30 MRSA §6209-B, sub-§4**, as enacted by PL 1995, c. 388, §6 and
2 affected by §8, is amended to read:

3 **4. Double jeopardy; collateral estoppel.** A prosecution for a criminal offense or
4 juvenile crime over which the Penobscot Nation has exclusive jurisdiction under this
5 section does not bar a prosecution for a criminal offense or juvenile crime, arising out of
6 the same conduct, over which the State has exclusive jurisdiction. A prosecution for a
7 criminal offense over which the Penobscot Nation has concurrent jurisdiction under this
8 section does not bar a prosecution for a criminal offense, arising out of the same conduct,
9 over which the State has exclusive jurisdiction. A prosecution for a criminal offense or
10 juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution
11 for a criminal offense or juvenile crime, arising out of the same conduct, over which the
12 Penobscot Nation has exclusive jurisdiction under this section. The determination of an
13 issue of fact in a criminal or juvenile proceeding conducted in a tribal forum does not
14 constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state
15 court. The determination of an issue of fact in a criminal or juvenile proceeding
16 conducted in a state court does not constitute collateral estoppel in a criminal or juvenile
17 proceeding conducted in a tribal forum.'

18 Amend the bill in Part B in section 3 in the first line (page 2, line 15 in L.D.) by
19 striking out the following: "Effective" and inserting the following: 'Contingent effective'

20 Amend the bill by inserting after Part B the following:

21 **'PART C**

22 **Sec. C-1. 30 MRSA §6209-A, sub-§1-A** is enacted to read:

23 **1-A. Concurrent jurisdiction over certain criminal offenses.** The Passamaquoddy
24 Tribe has the right to exercise jurisdiction, concurrently with the State, over the following
25 Class D crimes committed by an individual who is not a member of a federally
26 recognized Indian tribe on the Passamaquoddy Tribe Reservation for which the potential
27 maximum term of imprisonment does not exceed one year and the potential fine does not
28 exceed \$2,000; Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A and Title
29 19-A, section 4011. The concurrent jurisdiction authorized by this subsection does not
30 include offenses committed by juveniles.

31 The governing body of the Passamaquoddy Tribe shall decide whether to exercise or
32 terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding
33 subsection 2, if the Passamaquoddy Tribe chooses to exercise jurisdiction under this
34 subsection, the Passamaquoddy Tribe may not deny to any criminal defendant the right to
35 a jury drawn from a cross section of the community that does not systematically exclude
36 any distinctive group, a jury of 12 and the right to a unanimous jury verdict. In
37 exercising the concurrent jurisdiction authorized by this subsection, the Passamaquoddy
38 Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the
39 criminal offenses and the punishments applicable to those criminal offenses over which
40 the Passamaquoddy Tribe has concurrent jurisdiction under this subsection are governed
41 by the laws of the State. Issuance and execution of criminal process also are governed by
42 the laws of the State.

H. O. F. S.

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Sec. C-2. 30 MRSA §6209-A, sub-§2, as enacted by PL 1995, c. 388, §6 and affected by §8, is amended to read:

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Passamaquoddy Tribe has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

At the conclusion of a prosecution for a criminal offense, except a violation of Title 12 or Title 29-A that is a Class D or Class E crime other than a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive alcohol level, the tribal court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

Sec. C-3. 30 MRSA §6209-A, sub-§4, as enacted by PL 1995, c. 388, §6 and affected by §8, is amended to read:

4. Double jeopardy; collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Passamaquoddy Tribe has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense over which the Passamaquoddy Tribe has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Passamaquoddy Tribe has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum.

Sec. C-4. Contingent effective date; certification. This Part does not take effect unless, within 60 days of the adjournment of the First Regular Session of the 129th Legislature, the Secretary of State receives written certification by the Governor and Joint Tribal Council of the Passamaquoddy Tribe and that the tribe has agreed to the provisions of this Part pursuant to 25 United States Code, Section 1725(e), copies of which must be submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes; except that in no event may this Part

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1 become effective until 90 days after the adjournment of the First Regular Session of the
2 129th Legislature.

3 **PART D**

4 **Sec. D-1. 25 MRSA §1544, first ¶,** as amended by PL 1985, c. 779, §67, is
5 further amended to read:

6 It ~~shall be~~ is the duty of all state, county, tribal and municipal law enforcement
7 agencies, including those employees of the University of Maine System appointed to act
8 as ~~police~~ law enforcement officers, to submit to the State Bureau of Identification
9 uniform crime reports, to include such information as is necessary to establish a Criminal
10 Justice Information System and to enable the commanding officer to comply with section
11 1541, subsection 3. It ~~shall be~~ is the duty of the bureau to prescribe the form, general
12 content, time and manner of submission of such uniform crime reports. The bureau shall
13 correlate the reports submitted to it and shall compile and submit to the Governor and
14 Legislature annual reports based on such reports. The bureau shall furnish copy of such
15 annual reports ~~shall be furnished~~ to all state, county, tribal and municipal law
16 enforcement agencies.

17 **Sec. D-2. Authority and jurisdiction; legislation.** The Joint Standing
18 Committee on Judiciary may report out to the Second Regular Session of the 129th
19 Legislature legislation that addresses the authority and jurisdiction of the Penobscot
20 Nation and the Passamaquoddy Tribe to charge, prosecute and impose sentences for
21 crimes other than Class D and Class E crimes consistent with the federal Violence
22 Against Women Reauthorization Act of 2013 and the Tribal Law and Order Act of 2010.'

23 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
24 section number to read consecutively.

25 **SUMMARY**

26 This amendment provides authority for the Passamaquoddy Tribe and the Penobscot
27 Nation to extend the jurisdiction of their respective tribal courts over certain criminal
28 offenses committed by an individual, regardless of whether the individual is a member of
29 a federally recognized Indian tribe. The criminal offenses are domestic violence offenses
30 in the Maine Criminal Code and criminal violation of a protection from abuse order. The
31 criminal offenses are Class D crimes, and the tribe's and nation's jurisdictions are
32 concurrent with the State's jurisdiction for the crimes.

33 The Joint Standing Committee on Judiciary has authority to report out legislation to
34 the Second Regular Session of the 129th Legislature concerning the extension of tribal
35 court jurisdiction to felony domestic violence offenses consistent with the federal
36 Violence Against Women Reauthorization Act of 2013 and the Tribal Law and Order Act
37 of 2010.

38 The tribal courts are required to participate in uniform crime reporting by reporting
39 certain information to the Department of Public Safety, State Bureau of Identification,
40 and the bureau will share its annual reports with tribal law enforcement agencies.

ROPS

COMMITTEE AMENDMENT "A" to H.P. 571, L.D. 766

- 1 The changes to the Act To Implement the Maine Indian Claims Settlement included
- 2 in the bill and this amendment do not take effect unless the tribes affected approve of the
- 3 changes and certify their approval.

COMMITTEE AMENDMENT