

# MAINE STATE LEGISLATURE

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L.D. 766

Date: 6/19/19 *Minority*

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

COMMITTEE AMENDMENT "B" 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~~ 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

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

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

4 **1-A. Concurrent jurisdiction over certain criminal offenses.** The Penobscot  
5 Nation has the right to exercise jurisdiction, concurrently with the State, over the  
6 following Class D crimes committed by an individual who is not a member of a federally  
7 recognized Indian tribe on the Penobscot Indian Reservation for which the potential  
8 maximum term of imprisonment does not exceed one year and the potential fine does not  
9 exceed \$2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A and Title  
10 19-A, section 4011. The concurrent jurisdiction authorized by this subsection does not  
11 include offenses committed by juveniles.

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

24 This subsection is repealed January 1, 2026.

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

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

38 At the conclusion of a prosecution for a criminal offense, except a violation of Title 12 or  
39 Title 29-A that is a Class D or Class E crime other than a Class D crime that involves  
40 hunting while under the influence of intoxicating liquor or drugs or with an excessive  
41 alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle,  
42 snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or  
43 with an excessive alcohol level, the tribal court shall transmit to the Department of Public

1 Safety, State Bureau of Identification an abstract duly authorized on forms provided by  
2 the bureau.

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

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

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

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

23 **'PART C**

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

25 **1-A. Concurrent jurisdiction over certain criminal offenses.** The Passamaquoddy  
26 Tribe has the right to exercise jurisdiction, concurrently with the State, over the following  
27 Class D crimes committed by an individual who is not a member of a federally  
28 recognized Indian tribe on the Passamaquoddy Tribe Reservation for which the potential  
29 maximum term of imprisonment does not exceed one year and the potential fine does not  
30 exceed \$2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C and 211-A and Title  
31 19-A, section 4011. The concurrent jurisdiction authorized by this subsection does not  
32 include offenses committed by juveniles.

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

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1 by the laws of the State. Issuance and execution of criminal process also are governed by  
2 the laws of the State.

3 This subsection is repealed January 1, 2026.

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

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

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

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

27 **4. Double jeopardy; collateral estoppel.** A prosecution for a criminal offense or  
28 juvenile crime over which the Passamaquoddy Tribe has exclusive jurisdiction under this  
29 section does not bar a prosecution for a criminal offense or juvenile crime, arising out of  
30 the same conduct, over which the State has exclusive jurisdiction. A prosecution for a  
31 criminal offense over which the Passamaquoddy Tribe has concurrent jurisdiction under  
32 this section does not bar a prosecution for a criminal offense, arising out of the same  
33 conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal  
34 offense or juvenile crime over which the State has exclusive jurisdiction does not bar a  
35 prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over  
36 which the Passamaquoddy Tribe has exclusive jurisdiction under this section. The  
37 determination of an issue of fact in a criminal or juvenile proceeding conducted in a  
38 Passamaquoddy tribal forum does not constitute collateral estoppel in a criminal or  
39 juvenile proceeding conducted in a state court. The determination of an issue of fact in a  
40 criminal or juvenile proceeding conducted in a state court does not constitute collateral  
41 estoppel in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal forum.

42 **Sec. C-4. Contingent effective date; certification.** This Part does not take  
43 effect unless, within 60 days of the adjournment of the First Regular Session of the 129th  
44 Legislature, the Secretary of State receives written certification by the Governor and Joint

1 Tribal Council of the Passamaquoddy Tribe and that the tribe has agreed to the provisions  
2 of this Part pursuant to 25 United States Code, Section 1725(e), copies of which must be  
3 submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House  
4 of Representatives and the Revisor of Statutes; except that in no event may this Part  
5 become effective until 90 days after the adjournment of the First Regular Session of the  
6 129th Legislature.

7 **PART D**

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

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

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

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

29 **SUMMARY**

30 This amendment is the minority report. It differs from the majority by repealing the  
31 expanded tribal court jurisdiction January 1, 2026.

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

39 The Joint Standing Committee on Judiciary has authority to report out legislation to  
40 the Second Regular Session of the 129th Legislature concerning the extension of tribal  
41 court jurisdiction to felony domestic violence offenses consistent with the federal

1 Violence Against Women Reauthorization Act of 2013 and the Tribal Law and Order Act  
2 of 2010.

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

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