# MAINE STATE LEGISLATURE

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## (Emergency) (After Deadline) SECOND REGULAR SESSION

## ONE HUNDRED AND THIRTEENTH LEGISLATURE

# Legislative Document

No. 2440

jurisdiction

S.P. 929
In Senate, March 3, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 27.

Reference to the Committee on Judiciary suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator PEARSON of Penobscot.
Cosponsored by Representative CASHMAN of Old Town,
Representative PARADIS of Augusta, Senator BRANNIGAN of
Cumberland.

#### STATE OF MAINE

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

AN ACT Concerning Tribal Courts.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

provisions of AN ACT to Implement the Maine Indian Claims Settlement, the Maine Revised Statutes, Title 30, chapter 601, are based on the limits in the United States Indian Civil Rights Act that existed at the

criminal

current

time of passage of the Maine

the

Whereas,

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- 1 Implementing Act; and
- Whereas, the United States Indian Civil Rights Act was amended in 1986 to allow tribal courts generally 2
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- to impose more substantial penalties; and
- 5 immediate change ANACT to Whereas, an in
- 6 Implement the Maine Indian Claims Settlement 7
- necessary in order that the powers of the Maine tribal courts be similar to those of other courts to issue 8
- 9 witness subpoenas; and
- 10 Whereas, these factors impede tribal
- 11 to exercise their full efforts jurisdiction
- 12 effectively; and
- 13 Whereas, an immediate change in AN ACT to
- 14 Implement the Maine Indian Claims Settlement is
- 15 necessary to remedy these problems; and
- 16 Whereas, in the judgment of the Legislature, these 17
- facts create an emergency within the meaning of the 18 Constitution of Maine and require the following
- for immediately necessary 19 legislation as
- 20 preservation of the public peace, health and safety; 21 now, therefore,
- 22 Be it enacted by the People of the State of Maine as
- 23 follows:
- 24 Sec. 1. 30 MRSA §6209, sub-§1, ¶A, as enacted 25 by PL 1979, c. 732, §1, is amended to read:
- Criminal offenses against a person or property 26 27 which the maximum potential term
- 28 imprisonment does not exceed 6 months one year
- and the maximum potential fine does not 29
- \$500 \$5,000 and which are committed on the Indian 30
- 31 reservation of the respective tribe or nation by a
- member of either tribe or nation against another 32
- 33 member of either tribe or nation or against the
- 34 property of another member of either tribe 35 nation.
- 36 Sec. 2. 30 MRSA §6209, sub-§6 is enacted 37 read:

- 1 6. Subpoena powers. The clerks of the tribal courts may issue subpoenas for witnesses to attend before the respective tribal court in all civil and criminal proceedings within the tribal court's jurisdiction.
- When a person summoned and obliged to attend before tribal court fails to do so without reasonable excuse, that person is liable to the party aggrieved for all damages sustained by the failure to attend the court. When a tribal member summoned and obliged to attend before tribal court fails to do so without reasonable excuse, the judge of the tribal court may issue a capias to apprehend and bring the delinquent before . 14 the judge, and the delinquent shall be punished by a fine of not more than \$100 and costs of attachment, and shall be committed until the fine and costs are paid, provided that the period of commitment does not \* 18 exceed one year.

When a nontribal member is summoned and obliged to attend before tribal court and fails to do so without reasonable excuse, the tribal court may certify to the state court that the person has been summoned obliged to attend before the tribal court and has failed to do so. Upon receipt of the certification from the tribal court, the state court shall issue a capias to apprehend and bring the delinquent before the state court, and that delinquent shall be punished by a fine of not more than \$100 and costs of attachment, and shall be committed until the fine and costs are paid.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

### STATEMENT OF FACT

This bill increases the penalties which tribal courts may impose for on-reservation crimes committed between tribal members. The practical effect of this bill is that tribal courts will be able to hear Class D offenses committed on the reservation between tribal members. The current limitation in law, limiting the court to hearing Class E. crimes, is based on limits that existed at that time in the United States Indian Civil Rights Act. The United States Indian Civil

Rights Act was amended in 1986 to provide that the tribal courts may impose greater penalties, namely one year imprisonment and a \$5,000 fine. The tribes are asking that AN ACT to Implement the Maine Indian Claims Settlement be amended to be consistent with the powers permitted other tribal courts under federal law.

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