

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1843

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H.P. 1272

House of Representatives, May 13, 1991

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 BAILEY of Township 27.

Cosponsored by Senator LUDWIG of Aroostook, Senator VOSE of Washington and Representative TOWNSEND of Eastport.

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STATE OF MAINE

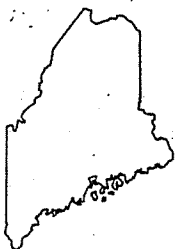
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

**An Act to Improve Implementation of the Maine Indian Claims  
Settlement Laws.**

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

2  
4       **Sec. 1. 4 MRSA §161, first ¶,** as amended by PL 1987, c. 736,  
§3, is further amended to read:

6       The Chief Judge of the District Court may authorize any  
8 attorney-at-law, who is duly licensed to practice law in the  
State, to receive complaints and to issue process for the arrest  
10 of persons charged with offenses, to issue search warrants and to  
endorse certificates of commitment of the mentally ill, all in  
12 accordance with law, and to perform all other such acts and  
duties that are or may be authorized by law. The powers to issue  
14 process for the arrest of persons charged with offenses and to  
issue search warrants extend to offenses subject to the exclusive  
16 jurisdiction of the Passamaquoddy Tribe under the terms of Title  
30, section 6209. That attorney shall may be known as a justice  
of the peace.

18  
20       **Sec. 2. 4 MRSA §165,** as amended by PL 1975, c. 430, 6, is  
further amended to read:

22       **§165. Criminal jurisdiction; fines, penalties and costs paid over**

24       The District Court shall ~~have~~ has jurisdiction, and, except  
as provided in Title 29, section 2302, concurrent jurisdiction  
26 with the Superior Court, of all crimes and offenses including  
violations of any statute or bylaw of a town, village corporation  
28 or local health officer, or breaches of the peace, not punishable  
by imprisonment in the State Prison, to issue process with  
30 respect to any violation over which the Passamaquoddy Tribe  
exercises exclusive jurisdiction under Title 30, section 6209 and  
32 over complaints for desertion and nonsupport or nonsupport of  
dependents where either the spouse, dependent or the respondent  
34 resides and may for such crimes and offenses impose any of the  
fines or sentences provided by law to be imposed therefor. All  
36 fines, penalties and costs imposed by such courts paid to the  
jailer after commitment of a respondent shall must be paid over  
38 by him the respondent monthly.

40       **Sec. 3. 5 MRSA §4573, sub-§4,** as amended by PL 1975, c. 770,  
§34, is further amended to read:

42  
44       **4. Refuse to hire or discharge physically or mentally**  
**handicapped.** Nothing in this Act shall ~~prohibit~~ prohibits an  
employer from refusing to hire or discharging a physically or  
46 mentally handicapped employee, or ~~subject~~ subjects an employer to  
any legal liability resulting from the refusing to employ or the  
48 discharge of a physically or mentally handicapped employee, where  
the employee, because of the physical or mental handicap, is  
50 unable to perform his the duties or perform those duties in a  
manner which that would not endanger the health or safety of the  
52 employee or the health or safety of others or to be at, remain or  
go to or from the place where the duties of employment are to be  
54 performed. ; or

2           **Sec. 4. 5 MRSA §4573, sub-§5** is enacted to read:

4           **5. Federal Indian policy.** Nothing in this Act may be  
6 construed to prohibit any employment policy or action that is  
8 permitted under 42 United States Code, Section 2000e-2(i) (1982)  
of the federal Equal Employment Opportunity Act governing  
employment of Indians.

10           **Sec. 5. 15 MRSA §702**, as amended by PL 1987, c. 736, §21, is  
12 further amended to read:

14           **§702. Justices, judges and justices of the peace may issue**  
**processes**

16           The Justices of the Supreme Judicial Court and of the  
18 Superior Court, Judges of the District Court and justices of the  
20 peace may issue processes for the arrest of persons charged with  
22 offenses. For purposes of this section and section 706, full  
faith and credit must be given to offenses subject to the  
exclusive jurisdiction of the Passamaquoddy Tribe under the terms  
of Title 30, section 6209.

24           **Sec. 6. 15 MRSA §706, 2nd ¶**, as amended by PL 1987, c. 736,  
26 §23, is further amended to read:

28           When a complaint charging a person with the commission of an  
offense, or a duly authenticated arrest warrant issued by the  
30 Tribal Court of the Passamaquoddy Tribe, is made presented to any  
Judge of the District Court, to a justice of the peace or to any  
32 other officer of the District Court authorized to issue process  
~~charging a person with the commission of an offense, such the~~  
34 judge, justice of the peace or other officer shall issue a  
warrant in the name of the District Court for the arrest of such  
36 person, in such that form and under such the circumstances as  
that the Supreme Judicial Court shall by rule ~~provide~~ provides.  
38 Such The justice of the peace or other officer shall does not  
appear as counsel in any criminal case in which he that officer  
40 has heard the complaint. A clerk of the District Court may  
accept a guilty plea upon payment of fines as set by the judge.

42           **Sec. 7. 30 MRSA §6209, sub-§2**, as enacted by PL 1979, c. 732,  
44 §§1 and 31, is amended to read:

46           **2. Definitions of crimes; tribal procedures.** In exercising  
its exclusive jurisdiction under subsection 1, paragraphs A and  
48 B, the respective tribe or nation shall ~~be~~ is deemed to be  
enforcing tribal law, ~~provided, however, the.~~ The definitions of  
50 the criminal offenses and the juvenile crimes, and the  
punishments applicable thereto, to those criminal offenses and  
52 juvenile crimes over which the respective tribe or nation has

2 exclusive jurisdiction under this section, ~~shall be~~ are governed  
3 by the laws of the State. Issuance and execution of criminal  
4 process are also governed by the laws of the State. The  
5 procedures for the establishment and operation of tribal forums  
6 created to effectuate the purpose of this section shall ~~be~~ are  
7 governed by any and all federal statutes, including but without  
8 limitation the provisions of the United States Code, Title 25,  
9 sections 1301 -- 03 and rules or regulations generally applicable  
10 to the exercise of criminal jurisdiction by Indian tribes on  
11 federal Indian reservations.

## 12 STATEMENT OF FACT

13 This bill accomplishes the following:

14  
15 1. Currently neither state or federal law provides a clear  
16 procedure by which the law enforcement authorities of the  
17 Passamaquoddy Tribe may reach a fugitive or evidence of a  
18 violation of a law that is subject to prosecution only in the  
19 tribal forum under the Maine Revised Statutes, Title 30, section  
20 6209 of the laws implementing the Maine Indian Claims Settlement,  
21 when the person or evidence is not within the tribal  
22 reservation. This bill expressly includes the enforcement of  
23 Passamaquoddy tribal law in the existing state court process for  
24 issuing arrest warrants and search warrants. An application for  
25 such a warrant could be made directly to a judge or justice of  
26 the peace or the state warrant could be issued on the basis of a  
27 tribal court warrant previously issued.

28  
29 2. The bill makes clear that the Maine Human Rights Act is  
30 not inconsistent with the federal Equal Employment Opportunity  
31 Act in effect since 1965, which expressly permits an Indian  
32 preference in employment on or near Indian reservations, 42  
33 United States Code, section 2000e-2(i). The United States  
34 Supreme Court has ruled that a policy of employment preference  
35 for members of Indian tribes refers to a political and cultural  
36 group, and does not constitute discrimination on the basis of  
37 race, Morton v. Mancari, 417 U.S. 535, 554-55 (1974).  
38  
39  
40