

MAINE STATE LEGISLATURE

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L.D. 1333

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DATE: 6/22/95

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JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 944, L.D. 1333, Bill, "An Act to Clarify the Jurisdiction of the Passamaquoddy Tribal Court"

Amend the bill by striking out the title and substituting the following:

'An Act Concerning the Jurisdiction of the Tribal Courts of the Passamaquoddy Tribe and the Penobscot Nation'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 4 MRSA §161, first ¶, as amended by PL 1991, c. 484, §1, is further amended to read:

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

Sec. 2. 4 MRSA §165, as amended by PL 1995, c. 65, Pt. A, §4 and affected by Pt. A, §153 and Pt. C, §15, is further amended to read:

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

4 The District Court has jurisdiction, and, except as provided
6 in Title 29-A, section 2602, concurrent jurisdiction with the
8 Superior Court, of all crimes and offenses including violations
10 of any statute or bylaw of a town, village corporation or local
12 health officer, or breaches of the peace, not punishable by
14 imprisonment in the State Prison, to issue process with respect
16 to any violation over which the Passamaquoddy Tribe or the
18 Penobscot Nation exercises exclusive jurisdiction under Title 30,
20 section ~~6209~~ 6209-A or 6209-B and over complaints for desertion
and nonsupport or nonsupport of dependents where either the
spouse, dependent or the respondent resides and may for such
those crimes and offenses impose any of the fines or sentences
provided by law to be imposed ~~therefor~~ for those crimes and
offenses. All fines, penalties and costs imposed by such the
courts paid to the jailer after commitment of a respondent must
be paid over by the respondent monthly.

22 **Sec. 3. 15 MRSA §55**, as amended by PL 1991, c. 484, §5, is
further amended to read:

24 **§55. Search warrants; issuance by district judge or justice of**
26 **the peace**

28 A judge of the District Court or a justice of the peace
shall issue search warrants for any place in the State for such
30 purposes as the Constitution of the United States and the
Constitution of Maine permit, including with respect to any
violation over which the Passamaquoddy Tribe or the Penobscot
32 Nation exercises exclusive jurisdiction under Title 30, section
~~6209~~ 6209-A or 6209-B. The evidence presented to the magistrate
34 in support of the search warrant may consist of affidavits and
other evidence under oath or affirmation that is capable of being
36 reduced to a record for purposes of review. The Supreme Judicial
Court shall by rule provide the procedure of the application for
38 and issuance of search warrants; provided, that ~~where,~~ when no
procedure is specified, the judge or justice of the peace shall
40 proceed in any reasonable manner that will allow the issuance of
a search warrant for any constitutional purpose.

42 **Sec. 4. 15 MRSA §702**, as amended by PL 1991, c. 484, §6, is
44 further amended to read:

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

50 The Justices of the Supreme Judicial Court and of the
Superior Court, Judges of the District Court and justices of the

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2 peace may issue processes for the arrest of persons charged with
3 offenses. For purposes of this section and section 706, full
4 faith and credit must be given to offenses subject to the
5 exclusive jurisdiction of the Passamaquoddy Tribe or the
6 Penobscot Nation under the terms of Title 30, section 6209 6209-A
7 or 6209-B.

8 **Sec. 5. 30 MRSA §6209**, as amended by PL 1991, c. 766, §1 and
9 affected by §2, is repealed.

10 **Sec. 6. 30 MRSA §§6209-A and 6209-B** are enacted to read:

11 **§6209-A. Jurisdiction of the Passamaquoddy Tribal Court**

12 **1. Exclusive jurisdiction over certain matters.** Except as
13 provided in subsections 3 and 4, the Passamaquoddy Tribe has the
14 right to exercise exclusive jurisdiction, separate and distinct
15 from the State, over:

16 A. Criminal offenses for which the maximum potential term
17 of imprisonment is less than one year and the maximum
18 potential fine does not exceed \$5,000 and that are committed
19 on the Indian reservation of the Passamaquoddy Tribe by a
20 member of either the Passamaquoddy Tribe or the Penobscot
21 Nation, except when committed against a person who is not a
22 member of either the Passamaquoddy Tribe or the Penobscot
23 Nation or against the property of a person who is not a
24 member of either the Passamaquoddy Tribe or the Penobscot
25 Nation;

26 B. Juvenile crimes against a person or property involving
27 conduct that, if committed by an adult, would fall within
28 the exclusive jurisdiction of the Passamaquoddy Tribe under
29 paragraph A, and juvenile crimes, as defined in Title 15,
30 section 3103, subsection 1, paragraphs B to D, committed by
31 a juvenile member of either the Passamaquoddy Tribe or the
32 Penobscot Nation on the reservation of the Passamaquoddy
33 Tribe;

34 C. Civil actions between members of either the
35 Passamaquoddy Tribe or the Penobscot Nation arising on the
36 Indian reservation of the Passamaquoddy Tribe and cognizable
37 as small claims under the laws of the State, and civil
38 actions against a member of either the Passamaquoddy Tribe
39 or the Penobscot Nation under Title 22, section 2383
40 involving conduct on the Indian reservation of the
41 Passamaquoddy Tribe by a member of either the Passamaquoddy
42 Tribe or the Penobscot Nation;

43 D. Indian child custody proceedings to the extent
44 authorized by applicable federal law; and

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2 E. Other domestic relations matters, including marriage,
4 divorce and support, between members of either the
6 Passamaquoddy Tribe or the Penobscot Nation, both of whom
 reside within the Indian reservation of the Passamaquoddy
 Tribe.

8 The governing body of the Passamaquoddy Tribe shall decide
10 whether to exercise or terminate the exercise of the exclusive
12 jurisdiction authorized by this subsection. If the Passamaquoddy
14 Tribe chooses not to exercise, or chooses to terminate its
16 exercise of, jurisdiction over the criminal, juvenile, civil and
18 domestic matters described in this subsection, the State has
 exclusive jurisdiction over those matters. Except as provided in
 paragraphs A and B, all laws of the State relating to criminal
 offenses and juvenile crimes apply within the Passamaquoddy
 Indian reservation and the State has exclusive jurisdiction over
 those offenses and crimes.

20 2. Definitions of crimes; tribal procedures. In exercising
22 its exclusive jurisdiction under subsection 1, paragraphs A and
24 B, the Passamaquoddy Tribe is deemed to be enforcing
26 Passamaquoddy tribal law. The definitions of the criminal
28 offenses and juvenile crimes and the punishments applicable to
30 those criminal offenses and juvenile crimes over which the
32 Passamaquoddy Tribe has exclusive jurisdiction under this section
34 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.

36 3. Lesser included offenses in state courts. In any
38 criminal proceeding in the courts of the State in which a
40 criminal offense under the exclusive jurisdiction of the
42 Passamaquoddy Tribe constitutes a lesser included offense of the
 criminal offense charged, the defendant may be convicted in the
 courts of the State of the lesser included offense. A lesser
 included offense is as defined under the laws of the State.

44 4. Double jeopardy, collateral estoppel. A prosecution for
46 a criminal offense or juvenile crime over which the Passamaquoddy
48 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 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.

5. Future Indian communities. Any 25 or more adult members of the Passamaquoddy Tribe residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning Passamaquoddy tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Passamaquoddy Tribe, it amend this Act to extend the jurisdiction of the Passamaquoddy Tribe to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning Passamaquoddy tribal members.

§6209-B. Jurisdiction of the Penobscot Nation Tribal Court

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Penobscot Nation by a member of any federally recognized Indian tribe, nation, band or other group against another member of any federally recognized Indian tribe, nation, band or other group or against the property of another member of any federally recognized Indian tribe, nation, band or other group;

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B to D, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the Indian reservation of the Penobscot Nation;

2 C. Civil actions between members of either the
4 Passamaquoddy Tribe or the Penobscot Nation arising on the
6 Indian reservation of the Penobscot Nation and cognizable as
8 small claims under the laws of the State, and civil actions
10 against a member of either the Passamaquoddy Tribe or the
 Penobscot Nation under Title 22, section 2383 involving
 conduct on the Indian reservation of the Penobscot Nation by
 a member of either the Passamaquoddy Tribe or the Penobscot
 Nation;

12 D. Indian child custody proceedings to the extent
 authorized by applicable federal law; and

14 E. Other domestic relations matters, including marriage,
16 divorce and support, between members of either the
18 Passamaquoddy Tribe or the Penobscot Nation, both of whom
 reside on the Indian reservation of the Penobscot Nation.

20 The governing body of the Penobscot Nation shall decide whether
22 to exercise or terminate the exercise of the exclusive
24 jurisdiction authorized by this subsection. If the Penobscot
26 Nation chooses not to exercise, or chooses to terminate its
28 exercise of, jurisdiction over the criminal, juvenile, civil and
30 domestic matters described in this subsection, the State has
 exclusive jurisdiction over those matters. Except as provided in
 paragraphs A and B, all laws of the State relating to criminal
 offenses and juvenile crimes apply within the Penobscot Indian
 reservation and the State has exclusive jurisdiction over those
 offenses and crimes.

32 2. Definitions of crimes; tribal procedures. In exercising
34 its exclusive jurisdiction under subsection 1, paragraphs A and
36 B, the Penobscot Nation is deemed to be enforcing Penobscot
38 tribal law. The definitions of the criminal offenses and
40 juvenile crimes and the punishments applicable to those criminal
42 offenses and juvenile crimes over which the Penobscot Nation has
44 exclusive jurisdiction under this section are governed by the
46 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.

48 3. Lesser included offenses in state courts. In any
50 criminal proceeding in the courts of the State in which a
 criminal offense under the exclusive jurisdiction of the

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Penobscot Nation constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.

4. Double jeopardy, collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Penobscot Nation 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 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 Penobscot Nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a 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 tribal forum.

5. Future Indian communities. Any 25 or more adult members of the Penobscot Nation residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Penobscot Nation, it amend this Act to extend the jurisdiction of the Penobscot Nation to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning tribal members.

Sec. 7. 30 MRSA §6210, as amended by PL 1983, c. 498, §1, is further amended to read:

§6210. Law enforcement on Indian reservations and within Indian territory

1. Exclusive authority of tribal law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation shall have exclusive authority to enforce, within their respective Indian territories, ordinances adopted under section 6206 and section 6207, subsection 1, and to enforce, on their respective Indian reservations, the criminal, juvenile, civil and domestic relations laws over which the

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Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under section 6209 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.

2. Joint authority of tribal and state law enforcement officers. Law enforcement officers appointed by the Passamaquoddy Tribe or the Penobscot Nation shall have the authority within their respective Indian territories and state and county law enforcement officers shall have the authority within both Indian territories to enforce rules or regulations adopted by the commission under section 6207, subsection 3 and to enforce, all laws of the State other than those over which the ~~respective tribe-or-nation~~ Passamaquoddy Tribe or the Penobscot Nation has exclusive jurisdiction under section 6209 6209-A, subsection 1 and section 6209-B, subsection 1, respectively.

3. Agreements for cooperation and mutual aid. ~~Nothing herein--shall~~ This section does not prevent the Passamaquoddy Tribe or the Penobscot Nation and any state, county or local law enforcement agency from entering into agreements for cooperation and mutual aid.

4. Powers and training requirements. Law enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation shall possess the same powers and ~~shall-be~~ are subject to the same duties, limitations and training requirements as other corresponding law enforcement officers under the laws of the State.

Sec. 8. Effective date; certification. This Act does not take effect unless, within 60 days of the adjournment of the Legislature, the Secretary of State receives written certification by the Governor and Council of the Penobscot Nation and the Joint Tribal Council of the Passamaquoddy Tribe that the nation and tribe have agreed to the provisions of this Act 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 Act become effective until 90 days after the adjournment of the Legislature.'

Further amend the bill by inserting at the end before the statement of fact the following:

'FISCAL NOTE

This bill may reduce prosecutions for Class D and E crimes in the state court system. If cases that would have resulted in

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2 jail sentences within the county jail system are prosecuted under
tribal jurisdiction, the savings to the counties are estimated to
4 be \$83.22 per day per prisoner. These savings do not affect
reimbursement by the State. The reduction in the number of
6 prosecutions that would have resulted in a jail sentence and the
resulting savings to the county jail system are expected to be
insignificant.

8
10 The Judicial Department may realize some minor savings from
reductions of workload, administrative costs and indigent defense
12 costs. Reductions in the collection of fines may decrease
General Fund revenue by minor amounts.'

14 STATEMENT OF FACT

16
18 This amendment replaces the bill, incorporating the changes
intended in Legislative Documents 116 and 471.

20 The original bill proposed the removal of the sunset on the
expanded criminal jurisdiction of the Passamaquoddy Tribal
22 Court. Legislative Document 471 proposed to remove the sunset on
the expanded criminal jurisdiction of the Penobscot Tribal
24 Court. If these bills were enacted separately, they would create
technical conflicts because they both would be amending the Maine
26 Revised Statutes, Title 30, section 6209, subsection 1.

28 This amendment repeals Title 30, section 6209 and replaces
it with 2 sections, one for the Passamaquoddy Tribal Court
30 provisions and one for the Penobscot Tribal Court provisions.
Subsequent amendments to the jurisdiction of either the
32 Passamaquoddy Tribe's or the Penobscot Nation's jurisdiction will
not have to affect the statute governing the other tribe's or
34 nation's jurisdiction.

36 This amendment also revises the criminal jurisdiction of the
Penobscot Tribal Court to include criminal offenses for which the
38 maximum term of imprisonment possible is one year. The maximum
term under current law is less than one year. Federal law
40 provides for the former.

42 This amendment also amends the Penobscot Tribal Court's
jurisdiction to explicitly reflect the change in federal law in
44 response to Duro v. Reina, 495 U.S. 676 (1990). This extends the
tribal court's jurisdiction over all federally recognized Indians
46 when they commit any of the specified crimes on the Indian
reservation of the Penobscot Nation.

48
50 Prior to the Indian Land Claims Settlement Act, parcels of
property within what are now the boundaries of the Passamaquoddy

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2 reservation were privately owned. The Passamaquoddy Tribe did
not pursue purchasing the parcels. A small number of parcels are
4 owned by members of the Penobscot Nation who are married to
members of the Passamaquoddy Tribe. The language of the statute
6 is revised slightly to ensure that the Passamaquoddy Tribal Court
has jurisdiction over the domestic relations proceedings when
both parties reside "within," rather than "on," the reservation.

8
10 The bill as amended is not effective until both the
Passamaquoddy Tribe and the Penobscot Nation approve it.