

MAINE STATE LEGISLATURE

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Date: 3/16/20 Report C

L.D. 766
(Filing No. H- 764)

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "D" 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 by striking out everything after the enacting clause and inserting the following:

'PART A

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 State shall ~~have~~ has exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation; except as provided in the section or sections referenced in the following:

A. Section 6209-B.

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

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

Sec. A-3. Contingent effective date; certification. This Part does not take effect unless, within 60 days of the adjournment of the Second Regular Session of the

COMMITTEE AMENDMENT

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

8 **PART B**

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

11 **3. Ordinances.** The Passamaquoddy Tribe and the Penobscot Nation each ~~shall have~~
12 has the right to exercise exclusive jurisdiction within its respective Indian territory over
13 violations by members of either tribe or nation of tribal ordinances adopted pursuant to
14 this section or section 6207. The decision to exercise or terminate the jurisdiction
15 authorized by this section ~~shall~~ must be made by each tribal governing body. ~~Should If~~
16 either tribe or nation ~~choose~~ chooses not to exercise, or to terminate its exercise of,
17 jurisdiction as authorized by this section or section 6207, the State ~~shall have~~ has
18 exclusive jurisdiction over violations of tribal ordinances by members of either tribe or
19 nation within the Indian territory of that tribe or nation. The State ~~shall have~~ has
20 exclusive jurisdiction over violations of tribal ordinances by persons not members of
21 either tribe or nation. except as provided in the section or sections referenced in the
22 following:

23 A. Section 6209-A.

24 **Sec. B-2. 30 MRSA §6210, sub-§4-A** is enacted to read:

25 4-A. Reports to the State Bureau of Identification by Passamaquoddy Tribe.
26 Passamaquoddy Tribe law enforcement agencies shall submit to the Department of Public
27 Safety, State Bureau of Identification uniform crime reports and other information
28 required by Title 25, section 1544.

29 **Sec. B-3. Contingent effective date; certification.** This Part does not take
30 effect unless, within 60 days of the adjournment of the Second Regular Session of the
31 129th Legislature, the Secretary of State receives written certification by the Joint Tribal
32 Council of the Passamaquoddy Tribe that the tribe has agreed to the provisions of this
33 Part pursuant to 25 United States Code, Section 1725(e), copies of which must be
34 submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House
35 of Representatives and the Revisor of Statutes; except that in no event may this Part
36 become effective until 90 days after the adjournment of the Second Regular Session of
37 the 129th Legislature.

38 **PART C**

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

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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 a person on the Penobscot Indian Reservation or on lands taken into trust by the secretary for the benefit of the Penobscot Nation now or in the future, 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 an offense committed by a juvenile or a criminal offense committed by a person who is not a member of any federally recognized Indian tribe, nation, band or other group against the person or property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group.

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, the Penobscot Nation may not deny to any criminal defendant prosecuted under this subsection the right to a jury of 12, the right to a unanimous jury verdict, the rights and protections enumerated in 25 United States Code, Sections 1302(a), 1302(c), 1303 and 1304(d) and all other rights whose protection is necessary under the United States Constitution in order for the State to authorize concurrent jurisdiction under this subsection. If a criminal defendant prosecuted under this subsection moves to suppress statements on the ground that they were made involuntarily, the prosecution has the burden to prove beyond a reasonable doubt that the statements were made voluntarily.

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.

This subsection is repealed July 1, 2026.

Sec. C-2. 30 MRSA §6209-B, sub-§2-A is enacted to read:

2-A. Criminal records, juvenile records and fingerprinting. At the arraignment of a criminal defendant, the Penobscot Nation Tribal Court shall inquire whether fingerprints have been taken or whether arrangements have been made for fingerprinting. If neither has occurred, the Penobscot Nation Tribal Court shall instruct both the responsible law enforcement agency and the person charged as to their respective obligations in this regard, consistent with Title 25, section 1542-A.

At the conclusion of a criminal or juvenile proceeding within the Penobscot Nation's exclusive or concurrent jurisdiction, except for 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 Penobscot Nation Tribal Court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

COMMITTEE AMENDMENT

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Sec. C-3. 30 MRSA §6209-B, 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 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 over which the Penobscot Nation 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 over which the State has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the Penobscot Nation 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.

Sec. C-4. Contingent effective date; certification. This Part does not take effect unless, within 60 days of the adjournment of the Second Regular Session of the 129th Legislature, the Secretary of State receives written certification by the Governor and Council of the Penobscot Nation that the nation 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 become effective until 90 days after the adjournment of the Second Regular Session of the 129th Legislature.

PART D

Sec. D-1. 30 MRSA §6209-A, sub-§1, ¶A, as amended by PL 2009, c. 384, Pt. E, §1 and affected by §3, is further amended to read:

A. Criminal offenses for which the maximum potential term of imprisonment is less than one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Passamaquoddy Tribe by a member of ~~the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation~~ any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of ~~the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation~~ or against the property of ~~a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation~~ any federally recognized Indian tribe, nation, band or other group or against the property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group;

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Sec. D-2. 30 MRSA §6209-A, sub-§1-A is enacted to read:

1-A. Concurrent jurisdiction over certain criminal offenses. The Passamaquoddy Tribe has the right to exercise jurisdiction, concurrently with the State, over the following Class D crimes committed by a person on the Passamaquoddy Indian Reservation or on lands taken into trust by the secretary for the benefit of the Passamaquoddy Tribe, now or in the future, 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 an offense committed by a juvenile or a criminal offense committed by a person who is not a member of any federally recognized Indian tribe, nation, band or other group against the person or property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group.

The governing body of the Passamaquoddy Tribe shall decide whether to exercise or terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 2, the Passamaquoddy Tribe may not deny to any criminal defendant prosecuted under this subsection the right to a jury of 12, the right to a unanimous jury verdict, the rights and protections enumerated in 25 United States Code, Sections 1302(a), 1302(c), 1303 and 1304(d) and all other rights whose protection is necessary under the United States Constitution in order for the State to authorize concurrent jurisdiction under this subsection. If a criminal defendant prosecuted under this subsection moves to suppress statements on the ground that they were made involuntarily, the prosecution has the burden to prove beyond a reasonable doubt that the statements were made voluntarily.

In exercising the concurrent jurisdiction authorized by this subsection, the Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal offenses and the punishments applicable to those criminal offenses over which the Passamaquoddy Tribe 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.

This subsection is repealed July 1, 2026.

Sec. D-3. 30 MRSA §6209-A, sub-§2-A is enacted to read:

2-A. Criminal records, juvenile records and fingerprinting. At the arraignment of a criminal defendant, the Passamaquoddy Tribal Court shall inquire whether fingerprints have been taken or whether arrangements have been made for fingerprinting. If neither has occurred, the Passamaquoddy Tribal Court shall instruct both the responsible law enforcement agency and the person charged as to their respective obligations in this regard, consistent with Title 25, section 1542-A.

At the conclusion of a criminal or juvenile proceeding within the Passamaquoddy Tribe's exclusive or concurrent jurisdiction, except for 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

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alcohol level, the Passamaquoddy 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. D-4. 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 over which the State has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the Passamaquoddy Tribe 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. D-5. Contingent effective date; certification. This Part does not take effect unless, within 60 days of the adjournment of the Second Regular Session of the 129th Legislature, the Secretary of State receives written certification by the Governor and Joint Tribal Council of the Passamaquoddy Tribe 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 become effective until 90 days after the adjournment of the Second Regular Session of the 129th Legislature.

PART E

Sec. E-1. 17-A MRSA §2, sub-§3-B, as enacted by PL 2007, c. 476, §1, is amended to read:

3-B. "Another jurisdiction" means the Federal Government, the United States military, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, federally recognized Indian tribes and each of the several states except Maine. ~~"Another jurisdiction" also means the Passamaquoddy Tribe when that tribe has acted pursuant to Title 30, section 6209 A, subsection 1, paragraph A or B and the Penobscot Nation when that tribe has acted pursuant to Title 30, section 6209 B, subsection 1, paragraph A or B.~~

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1 **Sec. E-2. 25 MRSA §1541, sub-§4-A**, as amended by PL 2009, c. 447, §23, is
2 further amended to read:

3 **4-A. Responsibility for the collection and maintenance of criminal history**
4 **record information and juvenile crime information.** The commanding officer shall
5 collect and maintain:

6 A. Fingerprints and other criminal history record information pertinent to the
7 identification of individuals who have been arrested as fugitives from justice or who
8 have been arrested or charged with any criminal offense under the laws of this State
9 except a violation of Title 12 or 29-A that is a Class D or E crime other than an
10 alcohol-related or drug-related offense. For purposes of this paragraph, an "alcohol-
11 related or drug-related offense" is a Class D crime that involves hunting while under
12 the influence of intoxicating liquor or drugs or with an excessive alcohol level or the
13 operation or attempted operation of a motorcraft, all-terrain vehicle, snowmobile or
14 motor vehicle while under the influence of intoxicating liquor or drugs or with an
15 excessive alcohol level. The commanding officer may collect and maintain
16 fingerprints and other criminal history record information that may be related to other
17 criminal offenses or to the performance of the commanding officer's obligations
18 under state laws and under agreements with agencies of the United States or any
19 other jurisdiction; and

20 B. Fingerprints and other juvenile crime information pertinent to the identification of
21 individuals who have been taken into custody for juvenile crimes under a uniform
22 interstate compact on juveniles or who have been arrested or charged with juvenile
23 crimes under the laws of this State. The commanding officer may collect and
24 maintain fingerprints and other juvenile crime information that may be related to
25 other juvenile crimes or to the performance of the commanding officer's obligations
26 under state laws and under agreements with agencies of the United States or any
27 other jurisdiction.

28 For purposes of this subsection, "laws of this State" includes Passamaquoddy tribal law as
29 described in Title 30, section 6209-A, subsections 1-A and 2 and Penobscot tribal law as
30 described in Title 30, section 6209-B, subsections 1-A and 2.

31 **Sec. E-3. 25 MRSA §1542-A, sub-§3, ¶A**, as enacted by PL 1987, c. 512, §3, is
32 amended to read:

33 A. The law enforcement agency having primary responsibility for the criminal
34 investigation and prosecution shall take or cause to be taken the fingerprints of the
35 person named in subsection 1, paragraph A. If the offender is subjected to a custodial
36 arrest, fingerprints shall must be taken prior to that ~~person~~ person's being released
37 from custody. If the offender is summonsed to appear or, relative to a Class D or
38 Class E crime, released at the scene by a law enforcement officer ~~after taking~~ who
39 has taken the personal recognizance of any such person for ~~his~~ the person's
40 appearance, fingerprints shall must be taken within 5 days at a time and place
41 specified by the responsible agency. The offender shall appear at the specified time
42 and place and shall submit to the process. To the extent possible, the fingerprinting
43 shall must occur prior to arraignment. At the time of arraignment, the state court or
44 tribal court shall inquire as to whether fingerprints have been taken or as to whether
45 arrangements have been made for fingerprinting. If this has not occurred, the state

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

1 court or tribal court shall instruct both the responsible law enforcement agency and
2 the person charged as to their respective obligations in this regard.

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

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

SUMMARY

16
17 This amendment is the minority report of the Joint Standing Committee on Judiciary.
18 It differs from the majority report by including a sunset of the special domestic violence
19 jurisdiction of the tribal courts of July 1, 2026. It replaces the bill but carries out the bill's
20 intent of extending tribal court jurisdiction, originally authorized by the federal Violence
21 Against Women Reauthorization Act of 2013, to any person who commits certain Class
22 D domestic violence offenses against a member of a federally recognized tribe, nation,
23 band or other group on the lands of the Passamaquoddy Tribe or the Penobscot Nation.
24 This concurrent jurisdiction includes offenses committed by a member of a federally
25 recognized Indian tribe, nation, band or other group on tribal lands against a person who
26 is not a member of any federally recognized Indian tribe, nation, band or other group.

27 Parts A and C apply to the Penobscot Nation. Parts B and D apply to the
28 Passamaquoddy Tribe.

29 This amendment provides authority for the Passamaquoddy Tribe and the Penobscot
30 Nation to extend the jurisdiction of their respective tribal courts over certain criminal
31 offenses committed by a person, regardless of whether the person is a member of a
32 federally recognized Indian tribe. The criminal offenses are domestic violence offenses
33 in the Maine Criminal Code and criminal violation of a protection from abuse order, but
34 do not include offenses between nontribal members. The criminal offenses are Class D
35 crimes, and the tribe's and nation's jurisdictions are concurrent with the State's jurisdiction
36 for the crimes. The amendment references the tribal courts' guarantees of all other rights
37 whose protection is necessary under the United States Constitution in order for the State
38 to authorize concurrent jurisdiction to ensure that this enactment, if ratified by the
39 Passamaquoddy Tribe, the Penobscot Nation, or both, is not later determined or deemed
40 to be unconstitutional based on subsequent judicial decisions. This extended jurisdiction
41 applies to the domestic violence crimes committed on the respective reservations and
42 lands taken into trust by the Secretary of the Interior for the benefit of the
43 Passamaquoddy Tribe or the Penobscot Nation, now or in the future. This extended
44 jurisdiction covers lands held in trust on or before the effective date of this Act, as well as

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1 lands taken into trust after the effective date of this Act. This extended jurisdiction is
2 repealed July 1, 2026.

3 This amendment also extends the exclusive jurisdiction of the Passamaquoddy Tribal
4 Court to criminal offenses committed on the Passamaquoddy Indian Reservation between
5 members of any federally recognized Indian tribe, nation, band or other group.

6 The tribal courts, law enforcement agencies and law enforcement officers are
7 required to participate in uniform crime reporting by reporting certain information to the
8 Department of Public Safety, State Bureau of Identification, and the bureau is required to
9 share its annual reports with tribal law enforcement agencies.

10 Other changes include revisions to the definition of "another jurisdiction" in the
11 Maine Criminal Code to include criminal convictions by courts of federally recognized
12 Indian tribes. This change is consistent with federal law and the recognition of orders of
13 protection from abuse from the courts of federally recognized Indian tribes by the Maine
14 Revised Statutes, Title 19-A, section 4011.

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

18 **FISCAL NOTE REQUIRED**

19 (See attached)



Approved: 03/12/20 *MRC*

129th MAINE LEGISLATURE

LD 766

LR 1623(08)

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

Fiscal Note for Bill as Amended by Committee Amendment "B" (H-764)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor savings - General Fund

Minor revenue decrease - General Fund

Minor revenue decrease - Other Special Revenue Funds

Correctional and Judicial Impact Statements

Minor reduction of workload associated with the minimal number of cases that will no longer be filed in the court system.

Reductions in the collection of fine and/or fee revenue may decrease General Fund and other dedicated revenue by minor amounts.