

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 1907

H.P. 1361

House of Representatives, December 24, 2019

**An Act To Restore to the Penobscot Nation and Passamaquoddy
Tribe the Authority To Exercise Jurisdiction under the Federal
Tribal Law and Order Act of 2010**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 20, 2019. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.
Cosponsored by Senator MOORE of Washington and
Representatives: COLLINGS of Portland, EVANGELOS of Friendship, NEWELL of the
Passamaquoddy Tribe, Senators: CARPENTER of Aroostook, President JACKSON of
Aroostook, LAWRENCE of York.

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

2 **PART A**

3 **Sec. A-1. 30 MRSA §6209-B, sub-§1, ¶A**, as amended by PL 1997, c. 595, §1
4 and affected by §2, is further amended to read:

5 A. ~~Criminal offenses for which the maximum potential term of imprisonment does~~
6 ~~not exceed one year and the maximum potential fine does not exceed \$5,000 and that~~
7 ~~are committed on the Indian reservation of the Penobscot Nation by a member of any~~
8 ~~federally recognized Indian tribe, nation, band or other group, except when~~
9 ~~committed against a person who is not a member of any federally recognized Indian~~
10 ~~tribe, nation, band or other group or against the property of a person who is not a~~
11 ~~member of any federally recognized Indian tribe, nation, band or other group~~
12 Penobscot Indian Reservation for which the maximum potential term of
13 imprisonment does not exceed 3 years or a fine of \$15,000, or both, for any one
14 offense;

15 **Sec. A-2. 30 MRSA §6209-B, sub-§6** is enacted to read:

16 **6. Criminal offenses.** The following provisions govern criminal offenses under
17 subsection 1, paragraph A.

18 A. The Penobscot Nation Tribal Court may not impose on a defendant in a criminal
19 proceeding a total penalty or punishment greater than imprisonment for a term of 9
20 years.

21 B. The Penobscot Nation Tribal Court may subject a defendant to a term of
22 imprisonment greater than one year but not to exceed 3 years for any one offense, or
23 a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a
24 person accused of a criminal offense who:

25 (1) Has been previously convicted of the same or a comparable offense by any
26 jurisdiction in the United States; or

27 (2) Is being prosecuted for an offense comparable to an offense that would be
28 punishable by more than one year of imprisonment if prosecuted by the United
29 States or any of the states.

30 C. In a criminal proceeding in which the Penobscot Nation Tribal Court, in
31 exercising powers of self-government, imposes a total term of imprisonment of more
32 than one year on a defendant, the Penobscot Nation shall provide to the defendant all
33 rights set forth in 25 United States Code, Section 1302 (2019).

34 D. In the case of a defendant sentenced to a term of imprisonment exceeding one
35 year, the Penobscot Nation Tribal Court may require the defendant to serve the
36 sentence:

37 (1) In a tribal correctional center that has been approved by the United States
38 Department of the Interior, Bureau of Indian Affairs for long-term incarceration;

1 B. The Passamaquoddy Tribal Court may subject a defendant to a term of
2 imprisonment greater than one year but not to exceed 3 years for any one offense, or
3 a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a
4 person accused of a criminal offense who:

5 (1) Has been previously convicted of the same or a comparable offense by any
6 jurisdiction in the United States; or

7 (2) Is being prosecuted for an offense comparable to an offense that would be
8 punishable by more than one year of imprisonment if prosecuted by the United
9 States or any of the states.

10 C. In a criminal proceeding in which the Passamaquoddy Tribal Court, in exercising
11 powers of self-government, imposes a total term of imprisonment of more than one
12 year on a defendant, the Passamaquoddy Tribe shall provide to the defendant all
13 rights set forth in 25 United States Code, Section 1302 (2019).

14 D. In the case of a defendant sentenced to a term of imprisonment exceeding one
15 year, the Passamaquoddy Tribal Court may require the defendant to serve the
16 sentence:

17 (1) In a tribal correctional center that has been approved by the United States
18 Department of the Interior, Bureau of Indian Affairs for long-term incarceration;

19 (2) In the nearest appropriate federal facility, at the expense of the United States,
20 pursuant to the United States Department of Justice, Bureau of Prisons tribal
21 prisoner program described in the federal Tribal Law and Order Act of 2010,
22 Public Law 111-211, Section 234(c);

23 (3) In a detention or correctional center approved by a state or local government,
24 pursuant to an agreement between the Passamaquoddy Tribe and the state or local
25 government; or

26 (4) In an alternative rehabilitation center of an Indian tribe.

27 As an alternative to a sentence pursuant to subparagraphs (1) to (4), the
28 Passamaquoddy Tribal Court may sentence the defendant to serve an alternative form
29 of punishment, as determined by a tribal court judge pursuant to the laws of the
30 Passamaquoddy Tribe.

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

1

SUMMARY

2 This bill amends the Act To Implement the Maine Indian Claims Settlement by:

3 1. Extending the criminal jurisdiction of the Penobscot Nation and the
4 Passamaquoddy Tribe to persons who are not members of any federally recognized
5 Indian tribe, nation, band or other group when such persons commit certain crimes on the
6 Penobscot Indian Reservation or the Passamaquoddy Indian Reservation;

7 2. Expanding the jurisdiction of the Penobscot Nation and the Passamaquoddy Tribe
8 from criminal offenses with a maximum period of imprisonment of one year and a
9 maximum fine of \$5,000 for any one offense to criminal offenses with a maximum period
10 of imprisonment of 3 years and a maximum fine of \$15,000 for any one offense but not to
11 exceed a total penalty or punishment greater than imprisonment for 9 years, as authorized
12 by the federal Tribal Law and Order Act of 2010, Public Law 111-211; and

13 3. Ensuring that defendants prosecuted in the Penobscot Nation Tribal Court and
14 Passamaquoddy Tribal Court have the rights afforded defendants by the federal Tribal
15 Law and Order Act of 2010, Public Law 111-211; 25 United States Code, Section 1302
16 (2019); and the United States Constitution.