

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 585

H.P. 428

House of Representatives, February 24, 2021

**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**

Received by the Clerk of the House on February 22, 2021. 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 "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative TALBOT ROSS of Portland.
Cosponsored by Representatives: HARNETT of Gardiner, NEWELL of the Passamaquoddy
Tribe, PERRY of Calais, ZAGER of Portland.

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

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

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

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

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

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

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

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

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

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

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

41 (3) In a detention or correctional center approved by a state or local government,
42 pursuant to an agreement between the Penobscot Nation and the state or local
43 government; or

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

2 As an alternative to a sentence pursuant to subparagraphs (1) to (4), the Penobscot
3 Nation Tribal Court may sentence the defendant to an alternative form of punishment,
4 as determined by a tribal court judge pursuant to the laws of the Penobscot Nation.

5 **Sec. A-3. Contingent effective date; certification.** This Part does not take effect
6 unless, within 60 days of the adjournment of the First Regular Session of the 130th
7 Legislature, the Secretary of State receives written certification by the Governor and
8 Council of the Penobscot Nation that the nation has agreed to the provisions of this Part
9 pursuant to 25 United States Code, Section 1725(e), copies of which must be submitted by
10 the Secretary of State to the Secretary of the Senate, the Clerk of the House of
11 Representatives and the Revisor of Statutes; except that in no event may this Part become
12 effective until 90 days after the adjournment of the First Regular Session of the 130th
13 Legislature.

14 **PART B**

15 **Sec. B-1. 30 MRSA §6209-A, sub-§1, ¶A,** as amended by PL 2019, c. 621, Pt. D,
16 §1 and affected by §5, is further amended to read:

17 A. ~~Criminal offenses for which the maximum potential term of imprisonment is less~~
18 ~~than one year and the maximum potential fine does not exceed \$5,000 and that are~~
19 ~~committed on the Indian reservation of the Passamaquoddy Tribe by a member of any~~
20 ~~federally recognized Indian tribe, nation, band or other group, except when committed~~
21 ~~against a person who is not a member of any federally recognized Indian tribe, nation,~~
22 ~~band or other group or against the property of a person who is not a member of any~~
23 ~~federally recognized Indian tribe, nation, band or other group~~ Passamaquoddy Indian
24 Reservation for which the maximum potential term of imprisonment does not exceed
25 3 years or a fine of \$15,000, or both, for any one offense;

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

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

29 A. The Passamaquoddy Tribal Court may not impose on a defendant in a criminal
30 proceeding a total penalty or punishment greater than imprisonment for a term of 9
31 years.

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

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

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

41 C. In a criminal proceeding in which the Passamaquoddy Tribal Court, in exercising
42 powers of self-government, imposes a total term of imprisonment of more than one

1 year on a defendant, the Passamaquoddy Tribe shall provide to the defendant all rights
2 set forth in 25 United States Code, Section 1302 (2019).

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

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

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

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

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

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

18 **Sec. B-3. Contingent effective date; certification.** This Part does not take effect
19 unless, within 60 days of the adjournment of the First Regular Session of the 130th
20 Legislature, the Secretary of State receives written certification by the Joint Tribal Council
21 of the Passamaquoddy Tribe that the tribe has agreed to the provisions of this Part pursuant
22 to 25 United States Code, Section 1725(e), copies of which must be submitted by the
23 Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives
24 and the Revisor of Statutes; except that in no event may this Part become effective until 90
25 days after the adjournment of the First Regular Session of the 130th Legislature.

26 SUMMARY

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

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

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

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