

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Rep C

CRK
ROS

L.D. 2007

Date: 4/2/24

Report C

(Filing No. H-911)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" to H.P. 1287, L.D. 2007, "An Act to Advance Self-determination for Wabanaki Nations"

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

'An Act Regarding the Criminal Jurisdiction of Tribal Courts and to Extend the Time for the Penobscot Nation to Certify Its Agreement to Public Law 2023, Chapter 369'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'PART A

Sec. A-1. 30 MRSA §6209-A, sub-§1, as amended by PL 2023, c. 359, §10 and affected by §13 and amended by c. 369, Pt. B, §2 and affected by §4, is further amended to read:

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

~~A. Criminal The following 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 within Passamaquoddy Indian territory by a an adult member of any federally recognized Indian tribe, nation, band or other group, except when committed against a person who is not a member of 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;~~

(1) Class C, D and E crimes in Titles 15, 17, 17-A, 19-A and 29-A that are not committed against a person or the property of a person; and

(2) Class C, D and E crimes committed against a person who is a member of any federally recognized Indian tribe, nation, band or other group or against the property of a person who is a member of any federally recognized Indian tribe, nation, band or other group.

COMMITTEE AMENDMENT

ROS

1 The Passamaquoddy Tribe may not deny to any criminal defendant prosecuted for a
2 Class C crime the rights and protections enumerated in 25 United States Code, Section
3 1302(c);

4 B. Juvenile crimes against a person or property involving conduct that, if committed
5 by an adult, would fall within the exclusive jurisdiction of the Passamaquoddy Tribe
6 under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection
7 1, paragraphs B and C, committed by a juvenile member of the Passamaquoddy Tribe,
8 the Houlton Band of Maliseet Indians, the Mi'kmaq Nation or the Penobscot Nation
9 within Passamaquoddy Indian territory;

10 C. Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of
11 Maliseet Indians, the Mi'kmaq Nation or the Penobscot Nation arising within
12 Passamaquoddy Indian territory and cognizable as small claims under the laws of the
13 State and civil actions against a member of the Passamaquoddy Tribe, the Houlton
14 Band of Maliseet Indians, the Mi'kmaq Nation or the Penobscot Nation under Title 22,
15 section 2383 involving conduct within Passamaquoddy Indian territory by a member
16 of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq
17 Nation or the Penobscot Nation;

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

20 E. Other domestic relations matters, including marriage, divorce and support, between
21 members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the
22 Mi'kmaq Nation or the Penobscot Nation, both of whom reside within the
23 Passamaquoddy Indian territory; and

24 F. Notwithstanding any other provision of this subsection, civil and criminal actions
25 regarding the enforcement of ordinances enacted pursuant to section 6207, subsection
26 10, except that the Passamaquoddy Tribe may not exercise jurisdiction over a nonprofit
27 public municipal corporation, including, but not limited to, the water district
28 established by Private and Special Law 1983, chapter 25.

29 The governing body of the Passamaquoddy Tribe shall decide whether to exercise or
30 terminate the exercise of the exclusive jurisdiction authorized by this subsection. If the
31 Passamaquoddy Tribe chooses not to exercise, or chooses to terminate its exercise of,
32 jurisdiction over the criminal, juvenile, civil and domestic matters described in this
33 subsection, the State has exclusive jurisdiction over those matters. ~~Except as provided in~~
34 ~~paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes~~
35 ~~apply within Passamaquoddy Indian territory and the State has exclusive jurisdiction over~~
36 ~~those offenses and crimes.~~

37 **Sec. A-2. 30 MRSA §6209-A, sub-§1-A**, as enacted by PL 2019, c. 621, Pt. D, §2
38 and affected by §5, is amended to read:

39 **1-A. Concurrent jurisdiction over certain criminal offenses.** The Passamaquoddy
40 Tribe has the right to exercise jurisdiction, concurrently with the State, over the following
41 Class D crimes committed by a person on the Passamaquoddy Indian Reservation or on
42 lands taken into trust by the secretary for the benefit of the Passamaquoddy Tribe, now or
43 in the future, for which the potential maximum term of imprisonment does not exceed one
44 year and the potential fine does not exceed \$2,000: Title 17-A, sections 207-A, 209-A,

COMMITTEE AMENDMENT

1 210-B, 210-C and 211-A and Title 19-A, section 4113 or former section 4011. The
2 concurrent jurisdiction authorized by this subsection does not include an offense committed
3 by a juvenile or a criminal offense committed by a person who is not a member of any
4 federally recognized Indian tribe, nation, band or other group against the person or property
5 of a person who is not a member of any federally recognized Indian tribe, nation, band or
6 other group.

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

17 In exercising the concurrent jurisdiction authorized by this subsection, the Passamaquoddy
18 Tribe is deemed to be enforcing Passamaquoddy tribal law. The definitions of the criminal
19 offenses and the punishments applicable to those criminal offenses over which the
20 Passamaquoddy Tribe has concurrent jurisdiction under this subsection are governed by
21 the laws of the State. Issuance and execution of criminal process also are governed by the
22 laws of the State.

23 **Sec. A-3. 30 MRSA §6209-A, sub-§1-B** is enacted to read:

24 **1-B. Exclusive jurisdiction of the State.** Except as provided in subsection 1,
25 paragraphs A and B and subsection 1-A, all laws of the State relating to criminal offenses
26 and juvenile crimes apply within Passamaquoddy Indian territory and the State has
27 exclusive jurisdiction over those offenses and crimes. Notwithstanding subsections 1 and
28 1-A, the State has exclusive jurisdiction over:

29 A. All crimes and juvenile crimes committed within Passamaquoddy Indian territory
30 against the State or against any office, department, agency, authority, commission,
31 board, institution, hospital or other instrumentality of the State, including the Maine
32 Turnpike Authority, the Maine Port Authority, the Northern New England Passenger
33 Rail Authority, the Maine Community College System, the Maine Veterans' Homes,
34 the Maine Public Employees Retirement System, the Maine Military Authority and all
35 similar state entities; and

36 B. Class C, D and E crimes defined in provisions of the Maine Revised Statutes outside
37 of Titles 15, 17, 17-A, 19-A and 29-A committed within Passamaquoddy Indian
38 territory by an adult member of any federally recognized Indian tribe, nation, band or
39 other group that are not committed against a person or the property of a person.

40 Nothing in subsection 1 or 1-A affects, alters or preempts the authority of the State to
41 investigate or prosecute any conduct occurring in the State, including conduct occurring in
42 Passamaquoddy Indian territory, that is within the State's exclusive or concurrent
43 jurisdiction.

1 and its implementing regulations, as amended, within the Penobscot Indian territory;
2 and

3 C. The Penobscot Nation may seek to be treated as a state and to obtain primary
4 enforcement authority from the United States Environmental Protection Agency to
5 implement the federal Safe Drinking Water Act and its implementing regulations, as
6 amended, within Penobscot Indian territory.

7 Notwithstanding any other provision of this subsection, the Penobscot Nation's jurisdiction
8 does not extend beyond the Penobscot Indian territory.

9 **Sec. B-3. 30 MRSA §6207-B** is enacted to read:

10 **§6207-B. Jurisdiction of Penobscot Nation over drinking water within the Penobscot**
11 **Indian territory**

12 Notwithstanding any provision of state law to the contrary, pursuant to the federal
13 Maine Indian Claims Settlement Act of 1980, Public Law 96-420, Section 6(e)(1), the State
14 and the Penobscot Nation agree and establish that:

15 **1. Jurisdiction of Penobscot Nation to administer drinking water-related**
16 **programs.** The Penobscot Nation may seek to be treated as a state pursuant to the federal
17 Safe Drinking Water Act, 42 United States Code, Section 300j-11, and its implementing
18 regulations, as amended, within the Penobscot Indian territory and may otherwise benefit
19 from and exercise jurisdiction under any other federal law enacted after October 10, 1980
20 that permits a federally recognized Indian tribe to administer drinking water-related
21 programs; and

22 **2. Administration of drinking water-related programs does not affect or preempt**
23 **state law.** The application of any provision of the federal Safe Drinking Water Act and its
24 implementing regulations, as amended, and of any other federal law enacted after October
25 10, 1980 that permits a federally recognized Indian tribe to administer drinking water-
26 related programs and the enforcement of such laws and regulations by the Penobscot Nation
27 under subsection 1 does not affect or preempt the laws of the State.

28 Notwithstanding any other provision of this section, the Penobscot Nation's jurisdiction
29 does not extend beyond the Penobscot Indian territory.

30 **Sec. B-4. 30 MRSA §6209-B, sub-§1**, as corrected by RR 2009, c. 1, §19, is
31 amended to read:

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

35 ~~A. Criminal~~ The following criminal offenses for which the maximum potential term
36 of imprisonment does not exceed one year and the maximum potential fine does not
37 exceed \$5,000 and that are committed on the Indian reservation of the within Penobscot
38 Nation Indian territory by a an adult member of any federally recognized Indian tribe,
39 nation, band or other group, except when committed against a person who is not a
40 member of any federally recognized Indian tribe, nation, band or other group or against
41 the property of a person who is not a member of any federally recognized Indian tribe,
42 nation, band or other group;

ROS

1 (1) Class C, D and E crimes in Titles 15, 17, 17-A, 19-A and 29-A that are not
2 committed against a person or the property of a person; and

3 (2) Class C, D and E crimes committed against a person who is a member of any
4 federally recognized Indian tribe, nation, band or other group or against the
5 property of a person who is a member of any federally recognized Indian tribe,
6 nation, band or other group.

7 The Penobscot Nation may not deny to any criminal defendant prosecuted for a Class
8 C crime the rights and protections enumerated in 25 United States Code, Section
9 1302(c);

10 B. Juvenile crimes against a person or property involving conduct that, if committed
11 by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under
12 paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1,
13 paragraphs B and C, committed by a juvenile member of ~~either~~ the Passamaquoddy
14 Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation or the Penobscot
15 Nation ~~on the Indian reservation of the~~ within Penobscot Nation Indian territory;

16 C. Civil actions between members of ~~either~~ the Passamaquoddy Tribe, the Houlton
17 Band of Maliseet Indians, the Mi'kmaq Nation or the Penobscot Nation arising ~~on the~~
18 ~~Indian reservation of the~~ within Penobscot Nation Indian territory and cognizable as
19 small claims under the laws of the State, and civil actions against a member of ~~either~~
20 the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation
21 or the Penobscot Nation under Title 22, section 2383 involving conduct ~~on the Indian~~
22 ~~reservation of the~~ within Penobscot Nation Indian territory by a member of ~~either~~ the
23 Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation or
24 the Penobscot Nation;

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

27 E. Other domestic relations matters, including marriage, divorce and support, between
28 members of ~~either~~ the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians,
29 the Mi'kmaq Nation or the Penobscot Nation, both of whom reside ~~on the Indian~~
30 ~~reservation of the~~ within Penobscot Nation Indian territory; and

31 F. Notwithstanding any other provision of this subsection, civil and criminal actions
32 regarding the enforcement of ordinances enacted pursuant to section 6207, subsection
33 11, except that the Penobscot Nation may not exercise jurisdiction over a nonprofit
34 public municipal corporation.

35 The governing body of the Penobscot Nation shall decide whether to exercise or terminate
36 the exercise of the exclusive jurisdiction authorized by this subsection. If the Penobscot
37 Nation chooses not to exercise, or chooses to terminate its exercise of, jurisdiction over the
38 criminal, juvenile, civil and domestic matters described in this subsection, the State has
39 exclusive jurisdiction over those matters. ~~Except as provided in paragraphs A and B, all~~
40 ~~laws of the State relating to criminal offenses and juvenile crimes apply within the~~
41 ~~Penobscot Indian reservation and the State has exclusive jurisdiction over those offenses~~
42 ~~and crimes.~~

43 **Sec. B-5. 30 MRSA §6209-B, sub-§1-A**, as enacted by PL 2019, c. 621, Pt. C, §1
44 and affected by §4, is amended to read:

1 **1-A. Concurrent jurisdiction over certain criminal offenses.** The Penobscot Nation
2 has the right to exercise jurisdiction, concurrently with the State, over the following Class
3 D crimes committed by a person on the Penobscot Indian Reservation or on lands taken
4 into trust by the secretary for the benefit of the Penobscot Nation now or in the future, for
5 which the potential maximum term of imprisonment does not exceed one year and the
6 potential fine does not exceed \$2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C
7 and 211-A and Title 19-A, section 4113 or former section 4011. The concurrent
8 jurisdiction authorized by this subsection does not include an offense committed by a
9 juvenile or a criminal offense committed by a person who is not a member of any federally
10 recognized Indian tribe, nation, band or other group against the person or property of a
11 person who is not a member of any federally recognized Indian tribe, nation, band or other
12 group.

13 The governing body of the Penobscot Nation shall decide whether to exercise or terminate
14 the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 2,
15 the Penobscot Nation may not deny to any criminal defendant prosecuted under this
16 subsection the right to a jury of 12, the right to a unanimous jury verdict, the rights and
17 protections enumerated in 25 United States Code, Sections 1302(a), 1302(c), 1303 and
18 1304(d) and all other rights whose protection is necessary under the United States
19 Constitution in order for the State to authorize concurrent jurisdiction under this subsection.
20 If a criminal defendant prosecuted under this subsection moves to suppress statements on
21 the ground that they were made involuntarily, the prosecution has the burden to prove
22 beyond a reasonable doubt that the statements were made voluntarily.

23 In exercising the concurrent jurisdiction authorized by this subsection, the Penobscot
24 Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal
25 offenses and the punishments applicable to those criminal offenses over which the
26 Penobscot Nation has concurrent jurisdiction under this subsection are governed by the
27 laws of the State. Issuance and execution of criminal process also are governed by the laws
28 of the State.

29 **Sec. B-6. 30 MRSA §6209-B, sub-§1-B** is enacted to read:

30 **1-B. Exclusive jurisdiction of the State.** Except as provided in subsection 1,
31 paragraphs A and B and subsection 1-A, all laws of the State relating to criminal offenses
32 and juvenile crimes apply within Penobscot Indian territory and the State has exclusive
33 jurisdiction over those offenses and crimes. Notwithstanding subsections 1 and 1-A, the
34 State has exclusive jurisdiction over:

35 A. All crimes and juvenile crimes committed within Penobscot Indian territory against
36 the State or against any office, department, agency, authority, commission, board,
37 institution, hospital or other instrumentality of the State, including the Maine Turnpike
38 Authority, the Maine Port Authority, the Northern New England Passenger Rail
39 Authority, the Maine Community College System, the Maine Veterans' Homes, the
40 Maine Public Employees Retirement System, the Maine Military Authority and all
41 similar state entities; and

42 B. Class C, D and E crimes defined in provisions of the Maine Revised Statutes outside
43 of Titles 15, 17, 17-A, 19-A and 29-A committed within Penobscot Indian territory by
44 an adult member of any federally recognized Indian tribe, nation, band or other group
45 that are not committed against a person or the property of a person.

ROS

1 Nothing in subsection 1 or 1-A affects, alters or preempts the authority of the State to
2 investigate or prosecute any conduct occurring in the State, including conduct occurring in
3 Penobscot Indian territory, that is within the State's exclusive or concurrent jurisdiction.

4 **Sec. B-7. 30 MRSA §6209-B, sub-§6** is enacted to read:

5 6. Full faith and credit. The State shall give full faith and credit to the judicial
6 proceedings of the Penobscot Nation. The Penobscot Nation shall give full faith and credit
7 to the judicial proceedings of the Passamaquoddy Tribe, the Houlton Band of Maliseet
8 Indians, the Mi'kmaq Nation and the State.

9 **Sec. B-8. Contingent effective date.** This Part takes effect 150 days after
10 adjournment of the Second Regular Session of the 131st Legislature only if, within 120
11 days after adjournment of the Second Regular Session of the 131st Legislature, the
12 Secretary of State receives written certification from the Chief of the Penobscot Nation, or
13 the designee under the Maine Revised Statutes, Title 3, section 602, that the Penobscot
14 Nation has agreed to the provisions of this Part, copies of which must be submitted by the
15 Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives
16 and the Revisor of Statutes.

17 **PART C**

18 **Sec. C-1. 30 MRSA §6209-C, sub-§1**, as amended by PL 2023, c. 359, §12 and
19 affected by §13 and amended by c. 369, Pt. D, §6 and affected by §8, is further amended
20 to read:

21 **1. Exclusive jurisdiction over certain matters.** Except as provided in subsections 3
22 and 4, the Houlton Band of Maliseet Indians has the right to exercise exclusive jurisdiction,
23 separate and distinct from the State, over:

24 ~~A. Criminal~~ The following criminal offenses for which the maximum potential term
25 of imprisonment does not exceed one year and the maximum potential fine does not
26 exceed \$5,000 and that are committed on Houlton Band Jurisdiction Land by a an adult
27 member of any federally recognized Indian tribe, nation, band or other group, except
28 when committed against a person who is not a member of any federally recognized
29 Indian tribe, nation, band or other group or against the property of a person who is not
30 a member of any federally recognized Indian tribe, nation, band or other group;

31 (1) Class C, D and E crimes in Titles 15, 17, 17-A, 19-A and 29-A that are not
32 committed against a person or the property of a person; and

33 (2) Class C, D and E crimes committed against a person who is a member of any
34 federally recognized Indian tribe, nation, band or other group or against the
35 property of a person who is a member of any federally recognized Indian tribe,
36 nation, band or other group.

37 The Houlton Band of Maliseet Indians may not deny to any criminal defendant
38 prosecuted for a Class C crime the rights and protections enumerated in 25 United
39 States Code, Section 1302(c);

40 B. Juvenile crimes against a person or property involving conduct that, if committed
41 by an adult, would fall within the exclusive jurisdiction of the Houlton Band of
42 Maliseet Indians under paragraph A and juvenile crimes, as defined in Title 15, section
43 3103, subsection 1, paragraphs B and C, committed by a juvenile member of the

ROS

1 Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot Nation or
2 the Mi'kmaq Nation within Houlton Band Jurisdiction Land;

3 C. Civil actions between members of the Houlton Band of Maliseet Indians, the
4 Passamaquoddy Tribe, the Penobscot Nation or the Mi'kmaq Nation arising on Houlton
5 Band Jurisdiction Land and cognizable as small claims under the laws of the State and
6 civil actions against a member of the Houlton Band of Maliseet Indians, the
7 Passamaquoddy Tribe, the Penobscot Nation or the Mi'kmaq Nation under Title 22,
8 section 2383 involving conduct within Houlton Band Jurisdiction Land by a member
9 of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the Penobscot
10 Nation or the Mi'kmaq Nation;

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

13 E. Other domestic relations matters, including marriage, divorce and support, between
14 members of the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, the
15 Penobscot Nation or the Mi'kmaq Nation, both of whom reside within the Houlton
16 Band Jurisdiction Land; and

17 F. Notwithstanding any other provision of this subsection, civil and criminal actions
18 regarding the enforcement of ordinances enacted pursuant to section 6207-C,
19 subsection 10, except that the Houlton Band of Maliseet Indians may not exercise
20 jurisdiction over a nonprofit public municipal corporation.

21 The governing body of the Houlton Band of Maliseet Indians shall decide whether to
22 exercise or terminate the exercise of the exclusive jurisdiction authorized by this
23 subsection. The decision to exercise, to terminate the exercise of or to reassert the exercise
24 of jurisdiction under each of the subject areas described by paragraphs A to E may be made
25 separately. Until the Houlton Band of Maliseet Indians notifies the Attorney General that
26 the band has decided to exercise exclusive jurisdiction set forth in any or all of the
27 paragraphs in this subsection, the State has exclusive jurisdiction over those matters. If the
28 Houlton Band of Maliseet Indians chooses not to exercise or chooses to terminate its
29 exercise of exclusive jurisdiction set forth in any or all of the paragraphs in this subsection,
30 the State has exclusive jurisdiction over those matters until the Houlton Band of Maliseet
31 Indians chooses to exercise its exclusive jurisdiction. When the Houlton Band of Maliseet
32 Indians chooses to reassert the exercise of exclusive jurisdiction over any or all of the areas
33 of the exclusive jurisdiction authorized by this subsection it must first provide 30 days'
34 notice to the Attorney General. ~~Except as provided in paragraphs A and B, all laws of the~~
35 ~~State relating to criminal offenses and juvenile crimes apply within the Houlton Band Trust~~
36 ~~Land and the State has exclusive jurisdiction over those offenses and crimes.~~

37 **Sec. C-2. 30 MRSA §6209-C, sub-§1-C** is enacted to read:

38 **1-C. Exclusive jurisdiction of the State.** Except as provided in subsection 1,
39 paragraphs A and B, all laws of the State relating to criminal offenses and juvenile crimes
40 apply within Houlton Band Trust Land and the State has exclusive jurisdiction over those
41 offenses and crimes. Notwithstanding subsection 1, the State has exclusive jurisdiction
42 over;

43 A. All crimes and juvenile crimes committed on Houlton Band Jurisdiction Land
44 against the State or against any office, department, agency, authority, commission,

COMMITTEE AMENDMENT

ROS

1 board, institution, hospital or other instrumentality of the State, including the Maine
2 Turnpike Authority, the Maine Port Authority, the Northern New England Passenger
3 Rail Authority, the Maine Community College System, the Maine Veterans' Homes,
4 the Maine Public Employees Retirement System, the Maine Military Authority and all
5 similar state entities; and

6 B. Class C, D and E crimes defined in provisions of the Maine Revised Statutes outside
7 of Titles 15, 17, 17-A, 19-A and 29-A committed on Houlton Band Jurisdiction Land
8 by an adult member of any federally recognized Indian tribe, nation, band or other
9 group that are not committed against a person or the property of a person.

10 Nothing in subsection 1 affects, alters or preempts the authority of the State to investigate
11 or prosecute any conduct occurring in the State, including conduct occurring on Houlton
12 Band Trust Land, that is within the State's exclusive or concurrent jurisdiction.

13 **Sec. C-3. Contingent effective date.** This Part takes effect 150 days after
14 adjournment of the Second Regular Session of the 131st Legislature only if, within 120
15 days after adjournment of the Second Regular Session of the 131st Legislature, the
16 Secretary of State receives written certification from the Chief of the Houlton Band of
17 Maliseet Indians, or the designee under the Maine Revised Statutes, Title 3, section 602,
18 that the Houlton Band of Maliseet Indians has agreed to the provisions of this Part, copies
19 of which must be submitted by the Secretary of State to the Secretary of the Senate, the
20 Clerk of the House of Representatives and the Revisor of Statutes. Upon such written
21 certification by the Houlton Band Council of the Houlton Band of Maliseet Indians, each
22 section of this Part regarding or affecting the Houlton Band of Maliseet Indians and its
23 tribal members and lands constitutes a jurisdictional agreement for purposes of the federal
24 Maine Indian Claims Settlement Act of 1980, Public Law 96-420, Section 6(e)(2). Such
25 written certification by the Houlton Band Council of the Houlton Band of Maliseet Indians
26 does not constitute an agreement that the contingencies in Public Law 1981, chapter 675
27 were met or that the provisions of Public Law 1981, chapter 675 ever took effect.

28 **PART D**

29 **Sec. D-1. 30 MRSA §7208, sub-§1,** as enacted by PL 1989, c. 148, §§3 and 4 and
30 affected by PL 2023, c. 369, Pt. A, §§2 and 5, is amended to read:

31 **1. Exclusive jurisdiction over certain matters.** Except as provided in subsections 5
32 and 6, the Mi'kmaq Nation has the right to exercise exclusive jurisdiction, separate and
33 distinct from the State, over:

34 A. ~~Criminal~~ The following criminal offenses for which the maximum potential term
35 of imprisonment is less than one year and the maximum potential fine does not exceed
36 \$5,000 and that are committed on Mi'kmaq Nation Jurisdiction Land by a an adult
37 member of any federally recognized Indian tribe, nation, band or other group, ~~except~~
38 when committed against a person who is not a member of any federally recognized
39 Indian tribe, nation, band or other group or against the property of a person who is not
40 a member of any federally recognized Indian tribe, nation, band or other group;:

41 (1) Class C, D and E crimes in Titles 15, 17, 17-A, 19-A and 29-A that are not
42 committed against a person or the property of a person; and

43 (2) Class C, D and E crimes committed against a person who is a member of any
44 federally recognized Indian tribe, nation, band or other group or against the

1 property of a person who is a member of any federally recognized Indian tribe,
2 nation, band or other group.

3 The Mi'kmaq Nation may not deny to any criminal defendant prosecuted for a Class C
4 crime the rights and protections enumerated in 25 United States Code, Section 1302(c);

5 B. Juvenile crimes against a person or property involving conduct that, if committed
6 by an adult, would fall within the exclusive jurisdiction of the Mi'kmaq Nation under
7 paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1,
8 paragraphs B and C, committed by a juvenile member of the Mi'kmaq Nation, the
9 Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation
10 within Mi'kmaq Nation Jurisdiction Land;

11 C. Civil actions between members of the Mi'kmaq Nation, the Passamaquoddy Tribe,
12 the Houlton Band of Maliseet Indians or the Penobscot Nation arising on Mi'kmaq
13 Nation Jurisdiction Land and cognizable as small claims under the laws of the State
14 and civil actions against a member of the Mi'kmaq Nation, the Passamaquoddy Tribe,
15 the Houlton Band of Maliseet Indians or the Penobscot Nation under Title 22, section
16 2383 involving conduct within Mi'kmaq Nation Jurisdiction Land by a member of the
17 Mi'kmaq Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or
18 the Penobscot Nation;

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

21 E. Other domestic relations matters, including marriage, divorce and support, between
22 members of the Mi'kmaq Nation, the Passamaquoddy Tribe, the Houlton Band of
23 Maliseet Indians or the Penobscot Nation, both of whom reside within Mi'kmaq Nation
24 Jurisdiction Land; and

25 F. Notwithstanding any other provision of this subsection, civil and criminal actions
26 regarding the enforcement of ordinances enacted pursuant to section 7206, subsection
27 8, except that the Mi'kmaq Nation may not exercise jurisdiction over a nonprofit public
28 municipal corporation.

29 The governing body of the Mi'kmaq Nation shall decide whether to exercise or terminate
30 the exercise of the exclusive jurisdiction authorized by this subsection. The decision to
31 exercise, to terminate the exercise of or to reassert the exercise of jurisdiction under each
32 of the subject areas described by paragraphs A to F may be made separately. Until the
33 Mi'kmaq Nation notifies the Attorney General that the nation has decided to exercise
34 exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State
35 has exclusive jurisdiction over those matters. If the Mi'kmaq Nation chooses not to
36 exercise, or chooses to terminate its exercise of, jurisdiction over the criminal, juvenile,
37 civil and domestic matters described in this subsection, the State has exclusive jurisdiction
38 over those matters. When the Mi'kmaq Nation chooses to reassert the exercise of exclusive
39 jurisdiction over any or all of the areas under paragraphs A to F, the nation must first
40 provide 30 days' notice to the Attorney General. ~~Except as provided in paragraphs A and~~
41 ~~B, all laws of the State relating to criminal offenses and juvenile crimes apply within~~
42 ~~Mi'kmaq Nation Jurisdiction Land and the State has exclusive jurisdiction over those~~
43 ~~offenses and crimes.~~

ROS

1 **Sec. D-2. 30 MRSA §7208, sub-§2**, as enacted by PL 1989, c. 148, §§3 and 4 and
2 affected by PL 2023, c. 369, Pt. A, §§2 and 5, is amended to read:

3 **2. Concurrent jurisdiction over certain criminal offenses.** The Mi'kmaq Nation
4 has the right to exercise jurisdiction, concurrently with the State, over the following Class
5 D crimes committed by a person within Mi'kmaq Nation Jurisdiction Land or on lands
6 taken into trust by the secretary for the benefit of the Mi'kmaq Nation, now or in the future,
7 for which the potential maximum term of imprisonment does not exceed one year and the
8 potential fine does not exceed \$2,000: Title 17-A, sections 207-A, 209-A, 210-B, 210-C
9 and 211-A and Title 19-A, section 4113 or former section 4011. The concurrent jurisdiction
10 authorized by this subsection does not include an offense committed by a juvenile or a
11 criminal offense committed by a person who is not a member of any federally recognized
12 Indian tribe, nation, band or other group against the person or property of a person who is
13 not a member of any federally recognized Indian tribe, nation, band or other group.

14 The governing body of the Mi'kmaq Nation shall decide whether to exercise or terminate
15 the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 3,
16 the Mi'kmaq Nation may not deny to any criminal defendant prosecuted under this
17 subsection the right to a jury of 12, the right to a unanimous jury verdict, the rights and
18 protections enumerated in 25 United States Code, Sections 1302(a), 1302(c), 1303 and
19 1304(d) and all other rights whose protection is necessary under the United States
20 Constitution in order for the State to authorize concurrent jurisdiction under this subsection.
21 If a criminal defendant prosecuted under this subsection moves to suppress statements on
22 the ground that they were made involuntarily, the prosecution has the burden to prove
23 beyond a reasonable doubt that the statements were made voluntarily.

24 In exercising the concurrent jurisdiction authorized by this subsection, the Mi'kmaq Nation
25 is deemed to be enforcing Mi'kmaq tribal law. The definitions of the criminal offenses and
26 the punishments applicable to those criminal offenses over which the Mi'kmaq Nation has
27 concurrent jurisdiction under this subsection are governed by the laws of the State. Issuance
28 and execution of criminal process also are governed by the laws of the State.

29 **Sec. D-3. 30 MRSA §7208, sub-§2-A** is enacted to read:

30 **2-A. Exclusive jurisdiction of the State.** Except as provided in subsection 1,
31 paragraphs A and B and subsection 2, all laws of the State relating to criminal offenses and
32 juvenile crimes apply within Mi'kmaq Nation Trust Land and the State has exclusive
33 jurisdiction over those offenses and crimes. Notwithstanding subsections 1 and 2, the State
34 has exclusive jurisdiction over:

35 A. All crimes and juvenile crimes committed on Mi'kmaq Nation Jurisdiction Land
36 against the State or against any office, department, agency, authority, commission,
37 board, institution, hospital or other instrumentality of the State, including the Maine
38 Turnpike Authority, the Maine Port Authority, the Northern New England Passenger
39 Rail Authority, the Maine Community College System, the Maine Veterans' Homes,
40 the Maine Public Employees Retirement System, the Maine Military Authority and all
41 similar state entities; and

42 B. Class C, D and E crimes defined in provisions of the Maine Revised Statutes outside
43 of Titles 15, 17, 17-A, 19-A and 29-A committed on Mi'kmaq Nation Jurisdiction Land
44 by an adult member of any federally recognized Indian tribe, nation, band or other
45 group that are not committed against a person or the property of a person.

1 Nothing in subsection 1 or 2 affects, alters or preempts the authority of the State to
2 investigate or prosecute any conduct occurring in the State, including conduct occurring on
3 Mi'kmaq Nation Trust Land, that is within the State's exclusive or concurrent jurisdiction.

4 **Sec. D-4. Contingent effective date.** This Part takes effect 150 days after
5 adjournment of the Second Regular Session of the 131st Legislature only if, within 120
6 days after adjournment of the Second Regular Session of the 131st Legislature, the
7 Secretary of State receives written certification from the Chief of the Mi'kmaq Nation, or
8 the designee under the Maine Revised Statutes, Title 3, section 603, that the Mi'kmaq
9 Nation has agreed to the provisions of this Part, copies of which must be submitted by the
10 Secretary of State to the Secretary of the Senate, the Clerk of the House of Representatives
11 and the Revisor of Statutes.

12 **PART E**

13 **Sec. E-1. 30 MRSA §6206, sub-§3,** as corrected by RR 2019, c. 2, Pt. A, §30, is
14 amended to read:

15 **3. Ordinances.** The Passamaquoddy Tribe and the Penobscot Nation each has the
16 right to exercise exclusive jurisdiction within its respective Indian territory over violations
17 by members of ~~either tribe or nation~~ any federally recognized Indian tribe, nation, band or
18 other group of tribal ordinances adopted pursuant to this section or section 6207. The
19 decision to exercise or terminate the jurisdiction authorized by this section must be made
20 by each tribal governing body. If either tribe or nation chooses not to exercise, or to
21 terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State
22 has exclusive jurisdiction over violations of tribal ordinances by members of ~~either tribe or~~
23 ~~nation~~ any federally recognized Indian tribe, nation, band or other group within the Indian
24 territory of that tribe or nation. The State has exclusive jurisdiction over violations of tribal
25 ordinances by persons not members of ~~either tribe or nation~~ any federally recognized Indian
26 tribe, nation, band or other group except as provided in the section or sections referenced
27 in the following:

28 A. Section 6209-A.

29 B. Section 6209-B.

30 **Sec. E-2. 30 MRSA §6210, sub-§1,** as amended by PL 1995, c. 388, §7 and
31 affected by §8, is repealed and the following enacted in its place:

32 **1. Exclusive authority of tribal law enforcement officers.** Law enforcement officers
33 appointed by the Passamaquoddy Tribe and the Penobscot Nation have exclusive authority
34 to enforce:

35 A. Within their respective Indian territories, ordinances adopted under section 6206
36 and section 6207, subsections 1, 10 and 11;

37 B. On their respective Indian reservations, the criminal, juvenile, civil and domestic
38 relations laws over which the Passamaquoddy Tribe or the Penobscot Nation have
39 jurisdiction under section 6209-A, subsection 1 and section 6209-B, subsection 1,
40 respectively; and

41 C. Within their respective Indian territories, the civil and domestic relations laws over
42 which the Passamaquoddy Tribe or the Penobscot Nation have jurisdiction under

ROS

1 section 6209-A, subsection 1, paragraphs C to F and section 6209-B, subsection 1,
2 paragraphs C to F, respectively.

3 **Sec. E-3. 30 MRSA §6210, sub-§2**, as amended by PL 1995, c. 388, §7 and
4 affected by §8, is repealed and the following enacted in its place:

5 **2. Joint authority of tribal and state law enforcement officers.** Law enforcement
6 officers appointed by the Passamaquoddy Tribe and the Penobscot Nation have the
7 authority within their respective Indian territories and state and county law enforcement
8 officers have the authority within both Indian territories to enforce:

9 A. Rules or regulations adopted by the commission under section 6207, subsection 3;
10 and

11 B. All laws of the State other than those over which law enforcement officers
12 appointed by the Passamaquoddy Tribe or the Penobscot Nation have exclusive
13 jurisdiction under subsection 1.

14 **Sec. E-4. 30 MRSA §6210, sub-§3**, as amended by PL 1995, c. 388, §7 and
15 affected by §8, is further amended to read:

16 **3. Agreements for cooperation and mutual aid.** This section does not ~~prevent~~
17 impact existing agreements for cooperation and mutual aid between the Passamaquoddy
18 Tribe or the Penobscot Nation and any state, county or local law enforcement agency or
19 prevent the Passamaquoddy Tribe or the Penobscot Nation and any state, county or local
20 law enforcement agency from entering into future agreements for cooperation and mutual
21 aid.

22 **Sec. E-5. Contingent effective date.** This Part takes effect 150 days after
23 adjournment of the Second Regular Session of the 131st Legislature only if, within 120
24 days after adjournment of the Second Regular Session of the 131st Legislature, the
25 Secretary of State receives written certification from the Chief of the Penobscot Nation, or
26 the designee under the Maine Revised Statutes, Title 3, section 602, that the nation has
27 agreed to the provisions of this Part and from the Chief of the Passamaquoddy Tribe at
28 Sipayik and the Chief of the Passamaquoddy Tribe at Motahkomikuk, or the designee under
29 Title 3, section 602, that the Passamaquoddy Tribe has agreed to the provisions of this Part,
30 copies of which must be submitted by the Secretary of State to the Secretary of the Senate,
31 the Clerk of the House of Representatives and the Revisor of Statutes.'

32 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
33 number to read consecutively.

34 **SUMMARY**

35 This amendment, which is a minority report of the committee, replaces the bill, which
36 is a concept draft, and changes the title. Parts A, B, C and D of the amendment amend the
37 provisions of An Act to Implement the Maine Indian Claims Settlement, commonly known
38 as "the Maine Implementing Act," and the provisions of the Mi'kmaq Nation Restoration
39 Act regarding the criminal jurisdiction of the tribal courts of the Passamaquoddy Tribe, the
40 Penobscot Nation and the Houlton Band of Maliseet Indians and the potential criminal
41 jurisdiction of the Mi'kmaq Nation Tribal Court, collectively referred to in this summary
42 as "the tribal courts of the Wabanaki Nations." More specifically, Parts A, B, C and D of
43 the amendment:

COMMITTEE AMENDMENT

ROS

- 1 1. Recognize the exclusive jurisdiction of the tribal courts of the Wabanaki Nations
2 over Class C, D and E crimes committed within the relevant Wabanaki Nation's respective
3 Indian territory or jurisdiction land by an adult member of a federally recognized Indian
4 tribe if those crimes:
- 5 A. Are defined in the Maine Revised Statutes, Title 15, 17, 17-A, 19-A or 29-A and
6 are not committed against a person or the property of a person; or
- 7 B. Are defined in any Title of the Maine Revised Statutes and are committed against
8 a person or the property of a person who is a member of any federally recognized Indian
9 tribe;
- 10 2. Provide that the tribal courts of the Wabanaki Nations may not deny to any criminal
11 defendant prosecuted for a Class C crime the rights and protections enumerated in 25
12 United States Code, Section 1302(c), including the requirement that the judge presiding
13 over the criminal proceeding is licensed to practice law and has sufficient legal training;
14 the right to the effective assistance of counsel; the right to the appointment of licensed
15 counsel at the expense of the tribal government if the defendant is indigent; the right to
16 advance notice of all criminal laws and applicable court rules of the tribal government; and
17 the right to have the criminal proceeding recorded;
- 18 3. Retain the provisions of current law directing that, when the tribal courts of the
19 Wabanaki Nations exercise exclusive or concurrent criminal jurisdiction, the definitions of
20 the crimes and the punishments applicable to those crimes are governed by state law. It
21 also retains the provisions of current law directing that the provisions of 25 United States
22 Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise
23 of criminal jurisdiction by Indian tribes apply when the tribal courts of the Wabanaki
24 Nations exercise exclusive or concurrent criminal jurisdiction;
- 25 4. Recognize the exclusive jurisdiction of the State over all crimes and juvenile crimes
26 not within the exclusive or concurrent jurisdiction of the tribal courts of the Wabanaki
27 Nations that are committed on Indian territory or jurisdiction land, including:
- 28 A. Notwithstanding any provision of law to the contrary, all crimes and juvenile crimes
29 against the State or any office, department, agency, authority, commission, board,
30 institution, hospital or other instrumentality of the State; and
- 31 B. All Class C, D and E crimes defined in provisions of the Maine Revised Statutes
32 outside of Titles 15, 17, 17-A, 19-A and 29-A committed by an adult member of any
33 federally recognized Indian tribe that are not committed against a person or the property
34 of a person;
- 35 5. Clarify that nothing within the Maine Implementing Act or the Mi'kmaq Nation
36 Restoration Act affects, alters or preempts the authority of the State to investigate or
37 prosecute any conduct occurring on Indian territory or trust land that is within the State's
38 exclusive or concurrent jurisdiction; and
- 39 6. Make technical changes to correct cross-references to the State's protection from
40 abuse laws.
- 41 Part B of the amendment also amends the provisions of the Maine Implementing Act
42 governing the jurisdictional relationship between the State and the Penobscot Nation that
43 were included within Part C of Public Law 2023, chapter 369, but that were not approved

ROS

1 by the Penobscot Nation within the time frame established in Part C, section 6 of that law.
2 These provisions of Part B of the amendment:

3 1. Recognize the exclusive authority of the Penobscot Nation in Penobscot Indian
4 territory to enact ordinances regulating drinking water unless the nation exercises its
5 discretion to enter into an intergovernmental agreement authorizing the State to exercise
6 concurrent jurisdiction over specific drinking water-related issues. It also prohibits the
7 State from exercising primary enforcement authority to implement the federal Safe
8 Drinking Water Act within Penobscot Indian territory and recognizes the authority of the
9 Penobscot Nation to seek to be treated as a state and to obtain primary enforcement
10 authority to implement the federal Safe Drinking Water Act within Penobscot Indian
11 territory;

12 2. Provide that the exclusive jurisdiction of the Penobscot Nation Tribal Court over
13 certain criminal offenses, juvenile crimes, small claims and civil drug possession actions
14 arising within the Penobscot Indian reservation under current law extends to those same
15 types of criminal offenses, juvenile crimes, small claims and civil drug possession actions
16 arising within all of Penobscot Indian territory. To the extent that the Penobscot Nation
17 Tribal Court has exclusive jurisdiction over members of the Passamaquoddy Tribe or the
18 Penobscot Nation under these provisions, it extends that exclusive jurisdiction to members
19 of any of the Wabanaki Nations. It also provides that the exclusive jurisdiction of the
20 Penobscot Nation Tribal Court over domestic relations matters between members of the
21 Passamaquoddy Tribe and the Penobscot Nation, both of whom reside on the Penobscot
22 Indian reservation, extends to the same types of domestic relations matters arising between
23 members of any of the Wabanaki Nations, both of whom reside within Passamaquoddy
24 Indian territory. The amendment further recognizes the exclusive authority of the
25 Penobscot Nation Tribal Court to enforce any drinking water ordinances adopted by the
26 nation for Penobscot Indian territory, except that the nation may not exercise jurisdiction
27 over a nonprofit public municipal corporation; and

28 3. Clarify within the Maine Implementing Act that the State must give full faith and
29 credit to the judicial proceedings of the Penobscot Nation and that the Penobscot Nation
30 must give full faith and credit to the judicial proceedings of the Passamaquoddy Tribe, the
31 Houlton Band of Maliseet Indians, the Mi'kmaq Nation and the State.

32 Part E of the amendment also amends the provisions of the Maine Implementing Act
33 governing the jurisdictional relationship between the State and both the Passamaquoddy
34 Tribe and the Penobscot Nation that were included within Part E of Public Law 2023,
35 chapter 369, but that were not approved by the Penobscot Nation within the time frame
36 established in Part E, section 5 of that law. These provisions of Part E of the amendment:

37 1. Provide that the Passamaquoddy Tribe and the Penobscot Nation each have
38 exclusive jurisdiction within their respective Indian territory over violations of their
39 respective tribal ordinances by members of any federally recognized Indian tribe, but that
40 the State has exclusive jurisdiction within Passamaquoddy Indian territory and Penobscot
41 Indian territory over violations of applicable tribal ordinances by persons who are not
42 members of any federally recognized Indian tribe; and

43 2. Provide that law enforcement officers appointed by the Passamaquoddy Tribe and
44 the Penobscot Nation have exclusive authority to enforce, within their respective Indian
45 territories, civil and domestic relations laws over which the Passamaquoddy Tribal Court

1 and the Penobscot Nation Tribal Court have exclusive jurisdiction, respectively. Law
2 enforcement officers appointed by the Passamaquoddy Tribe and the Penobscot Nation also
3 have exclusive authority to enforce, on their respective Indian reservations, the criminal
4 and juvenile offenses over which the Passamaquoddy Tribal Court and the Penobscot
5 Nation Tribal Court have exclusive jurisdiction, respectively. State and county law
6 enforcement officers have concurrent authority with law enforcement officers appointed
7 by the Passamaquoddy Tribe and the Penobscot Nation to enforce all other laws of the State
8 within both Indian territories and concurrent authority to enforce fishing rules or
9 regulations adopted by the Maine Indian Tribal State Commission.

10 **FISCAL NOTE REQUIRED**

11 (See attached)



131st MAINE LEGISLATURE

LD 2007

LR 1184(03)

An Act to Advance Self-determination for Wabanaki Nations

Fiscal Note for Bill as Amended by Committee Amendment "B" (H-911)

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

There may be some 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 fines will decrease General Fund or other dedicated revenue by minor amounts.