

MAINE STATE LEGISLATURE

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MAINE DISTRICT COURT
Office of the Chief Judge

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January 15, 2008

Hon. Barry J. Hobbins (Senate Chair)
Hon. Deborah L. Simpson (House Chair)
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

RE: Report pursuant to Resolve, Chapter 92, "To Direct fines Collected on Tribal Lands to the Passamaquoddy Tribe and the Penobscot Nation"

On behalf of the Hon. Ann Murray, Chief Judge of the Maine District Court, I am pleased to attach the Report required by Resolve, 2007, Chapter 92.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Handwritten signature of Charles C. LaVerdiere in cursive.
Charles C. LaVerdiere
Deputy Chief Judge
Maine District Court

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RE: Report pursuant to Resolve, Chapter 92, "To Direct fines Collected on Tribal Lands to the Passamaquoddy Tribe and the Penobscot Nation"

Chairpersons Hobbins and Simpson:

As required by Resolve, Chapter 92, (a copy of which is attached) a work group was formed to develop a process that identified fines arising from traffic summonses issued by tribal law enforcement officers for conduct occurring on tribal land and for payment of those fine revenues to Passamaquoddy Tribe and the Penobscot Nation. In accordance with the Resolve, the work group was chaired by Hon. Charles C. LaVerdiere, Deputy Chief Judge of the District Court, who served at the designation of Chief Judge Ann M. Murray, and included the Chief Executive Officers of the Penobscot Nation Police Department, the Passamaquoddy Tribe Pleasant Point Police Department, and the Passamaquoddy Tribe Indian Township Police Department. The work group's full membership is set forth below. The work group met on December 4, 2007 and December 19, 2007, and all members concur in this report.

As required by the Resolve, the work group examined:

- "A. The status of the Violation Summons and Complaint forms to be used by tribal law enforcement officers;
- B. The status of the process to allow payment of traffic infraction fines to the respective tribes; and
- C. Any recommended language necessary to implement this resolve."

The work group concluded that:

1. Separate Violation Summons and Complaint forms are unnecessary, and
2. A process to allow payment of traffic infraction fines to the respective tribes can be readily achieved if funds are provided for system development and

implementation.

3. The specific language of any implementing legislation will depend on policy decisions to be made by the Legislature.

SUMMONS AND COMPLAINT.

The resolve directed development of a tribal summons and complaint. The work group interpreted this directive as requiring development of a means of identifying the cases from which specified fines would be reimbursed to the tribes. The current Summons and Complaint can accomplish this objective.

The tribal police departments currently use the same forms as are used by all other law enforcement agencies throughout the State. These forms were developed after much work and consultation, with uniformity as the primary goal. Special summons and complaint forms for the tribal departments would be a step back from this process.

The current summons and complaint form contains information that the court's information system can use to identify those fines to be returned to the tribes. Any officer issuing a summons and complaint must identify the officer's law enforcement agency by placing an agency code on the summons. When the summons is docketed in the court's computer information system, this agency code is entered. Tribal police departments, like all other law enforcement agencies, have unique identification codes. By searching for tribal agency codes among docketed cases, the court's information system can identify those cases brought by tribal law enforcement.

With very rare exceptions, tribal law enforcement officers only issue summonses for illegal conduct occurring on tribal lands. Accordingly, the work group recommends using the current summons and complaint form, with the unique agency code, to identify fines related to traffic citations issued by tribal officers. The group is confident this system can achieve the Resolve's aim of returning to the tribes all fines arising from citations issued by tribal officers for conduct on tribal land.

CASES TO BE COVERED AND COSTS.

Identifying fines arising from traffic citations issued by tribal officers on tribal land and paying those fine monies to the respective Tribes will require Judicial Branch resources. Initially, the court's information technology staff will have to program the computer system to recognize summonses issued by tribal officers and to calculate the total amount of fines generated by those cases. This will require both the utilization of outside vendors and work by the court's information technology staff, who will be diverted from other pressing duties. The court estimates the cost of this effort at approximately \$5000.00, which may be reduced somewhat because of a project already under way regarding the gathering of fine revenue information related to cases brought by the State Police.

On an ongoing basis, information technology personnel will be required to periodically run the program that identifies the fine amounts and forward that data to the court's financial department. Finance personnel will then issue checks to the tribes. This ongoing process will not be overly burdensome, but it will add to the workload of already under resourced Judicial Branch personnel.

The process described above relates to the straightforward identification and payment of fine monies generated by all traffic infraction cases arises from tribal officer summonses. The Resolve, however, directs that: "Fines for actions taken by the District Court in the case of defaults or trials are not remitted to the Passamaquoddy Tribe or the Penobscot Nation." The work group interprets this language as expressing the Legislature's intent that fines from cases that consume extraordinary court resources should remain in the general fund rather than be returned to the Tribes. It is correct that collection efforts in default cases and the conducting of trials demand more Judicial Branch resources than cases where these things do not occur. Identifying these cases, and segregating the fine money generated by these cases, however, presents significant challenges from an information technology perspective.

Programming additional variables into a computer report designed to identify the amount of fine revenue to be paid to the Tribes makes the process more challenging and expensive. Including these variables in the programming task could raise the cost of that operation by an additional \$7,000.00 to \$10,000.00. The policy question whether these "extra work" cases should be made an exception so that fines from those cases remain in the general fund is for the Legislature to address. The work group, however, is skeptical whether the savings to the general fund achieved by making the exceptions would justify the cost, at least in the first year or two, of the additional resources necessary to identify and segregate the fines related to these exception cases.

One final issue featured prominently in the work group's discussions. The Resolve addresses fines from "traffic infractions," which are defined by statute as "any violation of [Title 29] . . . not expressly defined as a crime and otherwise not punishable by incarceration." Accordingly, the Resolve addresses only civil traffic cases and does not address criminal traffic cases such as OUI and OAS, among others. Representative Soctomah, sponsor of the Resolve, expressed his original intent that fines from all traffic cases, both civil and criminal, be returned to the Tribes. The tribal law enforcement representatives also expressed interest in having criminal fine monies returned to the Tribes.

The policy question whether the returned fines should be limited to civil traffic infractions or should include criminal traffic fines is for the Legislature, and the work group makes no recommendation on this question. The following information is provided, however, should the Legislature wish to consider including criminal fines among funds being returned to the Tribes.

For criminal cases, the unique law enforcement agency code could also be used to identify the tribal cases because that information already appears on the criminal summons form as well as on the civil summons. Civil cases go to the violations bureau,

whereas criminal cases go to the regular District Court docket. Accordingly, additional programming would be required to identify the tribal criminal cases, with the cost estimate for this work being approximately \$2000.00.

In addition, the variability of the criminal process leads to many circumstances where a case consumes more than "the usual" amount of court resources. On the criminal side, the work group identified a number of areas where the fines arguably should be retained in the general fund due to the extraordinary expenditure of court resources. These include: 1) cases where a failure to appear occurs and the court must issue a warrant; 2) cases where the court expends funds for payment of appointed counsel; 3) felony cases in general; 4) misdemeanor cases where a jury trial is requested and the cases must be transferred to, and docketed by, a second court; and 5) cases in which a trial is actually held. Criminal cases can be envisioned that consume substantial court resources in which none of the things just mentioned occur, but the variables enumerated above are those that could be captured by the court's computer information system.

As stated above, however, programming additional variables to identify "exception" cases greatly increases the programming costs. If the Legislature decides to return fines to the tribes in criminal traffic cases, but leave to the general fund fines from cases including the variables set forth above, an additional \$10,000.00 to \$15,000.00 in expenditures would be necessary.

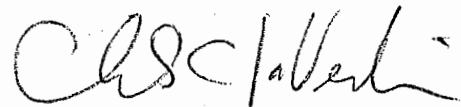
As stated above, creating a system to return fines on tribal cases to the respective Tribes would require the expenditure of Judicial Branch resources. Should the Legislature move forward, it is anticipated that the Judicial branch would seek an appropriation to cover these additional expenditures. The amount of the appropriation would depend on the policy choices made by the Legislature as outlined above.

RECOMMENDED LANGUAGE TO IMPLEMENT THE RESOLVE.

Finally, the Resolve asks that this Report include suggested statutory language for implementing the aims of the Resolve. This is deferred at this time due to the unresolved policy questions identified above. The work group remains willing to work with the Legislature on statutory language once these issues are determined.

Dated: January 15, 2008

Respectfully submitted



Hon. Charles C. LaVerdiere
Deputy Chief Judge
Maine District Court

WORK GROUP MEMBERS:

Hon. Charles C. LaVerdiere, Deputy Chief Judge, Maine District Court
State Representative Donald Soctomah, Passamaquoddy Tribe
State Representative Donna Loring, Penobscot Nation
Robert Bryant, Chief of the Penobscot Nation Police Department
Alexander Nicholas, Chief of the Passamaquoddy Tribe Indian Township Police
Department
Joseph Barnes, Chief of the Passamaquoddy Tribe Pleasant Point Police Department
Sgt. John Preston, Passamaquoddy Tribe Pleasant Point Police Department (designated
by Chief Joseph Barnes)
John D. Pelletier, Esq., Judicial Branch Criminal Process Manager
Doug Birgfeld, Judicial Branch Information Technology Project Manager
Terry Gordon, Senior Court Technology Analyst
Cheryl Moreau, Judicial Branch Revenue and Collections Manager

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Resolve, To Direct Fines Collected on Tribal Lands to the Passamaquoddy Tribe and the Penobscot Nation

Sec. 1 Collection of traffic infraction fines on Indian territory. Resolved: That the chief executive officer of the Passamaquoddy Tribe law enforcement agency and the chief executive officer of the Penobscot Nation law enforcement agency shall work with the Chief Judge of the District Court to:

1. Develop tribal Violation Summons and Complaint forms and books that provide for payment of fines for traffic infractions issued by tribal officers on Indian territory to the respective tribe, and otherwise meet the requirements of the Maine Revised Statutes, Title 29-A, chapter 23, subchapter 6. The form of the tribal Violation Summons and Complaint must be approved by the Chief Judge of the District Court prior to its use;

2. Develop a process that allows fines for traffic infractions on the territory of the Passamaquoddy Tribe or the Penobscot Nation to be paid directly to the respective tribe when the Violation Summons and Complaint was issued by a tribal law enforcement officer. Fines for actions taken by the District Court in the case of defaults or trials are not remitted to the Passamaquoddy Tribe or the Penobscot Nation; and

3. Report to the Joint Standing Committee on Judiciary by January 15, 2008 on the following:

- A. The status of the Violation Summons and Complaint forms to be used by tribal law enforcement officers;
- B. The status of the process to allow payment of traffic infraction fines to the respective tribes; and
- C. Any recommended language necessary to implement this resolve.

After receiving the report, the joint standing committee may submit legislation related to the report to the Second Regular Session of the 123rd Legislature.