



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 585

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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**

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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 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.