

§6209-B. Jurisdiction of the Penobscot Nation Tribal Court

(CONFLICT)

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. (TEXT EFFECTIVE UNTIL CONTINGENCY: See PL 2023, c. 369, Pt. C, §6) Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed on the Indian reservation of the Penobscot Nation by a 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; [PL 1997, c. 595, §1 (AMD); PL 1997, c. 595, §2 (AFF).]

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of either the Passamaquoddy Tribe or the Penobscot Nation on the Indian reservation of the Penobscot Nation; [RR 2009, c. 1, §19 (COR).]

C. Civil actions between members of either the Passamaquoddy Tribe or the Penobscot Nation arising on the Indian reservation of the Penobscot Nation and cognizable as small claims under the laws of the State, and civil actions against a member of either the Passamaquoddy Tribe or the Penobscot Nation under Title 22, section 2383 involving conduct on the Indian reservation of the Penobscot Nation by a member of either the Passamaquoddy Tribe or the Penobscot Nation; [PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

D. Indian child custody proceedings to the extent authorized by applicable federal law; and [PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

E. Other domestic relations matters, including marriage, divorce and support, between members of either the Passamaquoddy Tribe or the Penobscot Nation, both of whom reside on the Indian reservation of the Penobscot Nation. [PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

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

[RR 2009, c. 1, §19 (COR).]

1. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2023, c. 369, Pt. C, §6) Exclusive jurisdiction over certain matters. Except as provided in subsections 3 and 4, the Penobscot Nation has the right to exercise exclusive jurisdiction, separate and distinct from the State, over:

A. Criminal offenses for which the maximum potential term of imprisonment does not exceed one year and the maximum potential fine does not exceed \$5,000 and that are committed within Penobscot Indian territory by a 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; [PL 2023, c. 369, Pt. C, §4 (AMD); PL 2023, c. 369, Pt. C, §6 (AFF).]

B. Juvenile crimes against a person or property involving conduct that, if committed by an adult, would fall within the exclusive jurisdiction of the Penobscot Nation under paragraph A, and juvenile crimes, as defined in Title 15, section 3103, subsection 1, paragraphs B and C, committed by a juvenile member of either the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation or the Penobscot Nation within Penobscot Indian territory; [PL 2023, c. 369, Pt. C, §4 (AMD); PL 2023, c. 369, Pt. C, §6 (AFF).]

C. Civil actions between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation or the Penobscot Nation arising within Penobscot Indian territory and cognizable as small claims under the laws of the State, and civil actions against a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation or the Penobscot Nation under Title 22, section 2383 involving conduct within Penobscot Indian territory by a member of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation or the Penobscot Nation; [PL 2023, c. 369, Pt. C, §4 (AMD); PL 2023, c. 369, Pt. C, §6 (AFF).]

D. **(CONFLICT: Text as amended by PL 2023, c. 359, §11)** Indian child custody proceedings to the extent authorized by applicable state and federal law; and [PL 2023, c. 359, §11 (AMD); PL 2023, c. 359, §13 (AFF).]

D. **(CONFLICT: Text as amended by PL 2023, c. 369, Pt. C, §4)** Indian child custody proceedings to the extent authorized by applicable state and federal law; [PL 2023, c. 369, Pt. C, §4 (AMD); PL 2023, c. 369, Pt. C, §6 (AFF).]

E. Other domestic relations matters, including marriage, divorce and support, between members of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation or the Penobscot Nation, both of whom reside within Penobscot Indian territory; and [PL 2023, c. 369, Pt. C, §4 (AMD); PL 2023, c. 369, Pt. C, §6 (AFF).]

F. Notwithstanding any other provision of this subsection, civil and criminal actions regarding the enforcement of ordinances enacted pursuant to section 6207, subsection 11, except that the Penobscot Nation may not exercise jurisdiction over a nonprofit public municipal corporation. [PL 2023, c. 369, Pt. C, §4 (NEW); PL 2023, c. 369, Pt. C, §6 (AFF).]

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

[PL 2023, c. 359, §11 (AMD); PL 2023, c. 359, §13 (AFF); PL 2023, c. 369, Pt. C, §4 (AMD); PL 2023, c. 369, Pt. C, §6 (AFF).]

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

nation, band or other group against the person or property of a person who is not a member of any federally recognized Indian tribe, nation, band or other group.

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

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

[PL 2019, c. 621, Pt. C, §1 (NEW); PL 2019, c. 621, Pt. C, §4 (AFF).]

2. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Penobscot Nation is deemed to be enforcing Penobscot tribal law. The definitions of the criminal offenses and juvenile crimes and the punishments applicable to those criminal offenses and juvenile crimes over which the Penobscot Nation has exclusive jurisdiction under this section are governed by the laws of the State. Issuance and execution of criminal process are also governed by the laws of the State. The procedures for the establishment and operation of tribal forums created to effectuate the purposes of this section are governed by federal statute, including, without limitation, the provisions of 25 United States Code, Sections 1301 to 1303 and rules or regulations generally applicable to the exercise of criminal jurisdiction by Indian tribes on federal Indian reservations.

[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

2-A. Criminal records, juvenile records and fingerprinting. At the arraignment of a criminal defendant, the Penobscot Nation Tribal Court shall inquire whether fingerprints have been taken or whether arrangements have been made for fingerprinting. If neither has occurred, the Penobscot Nation Tribal Court shall instruct both the responsible law enforcement agency and the person charged as to their respective obligations in this regard, consistent with Title 25, section 1542-A.

At the conclusion of a criminal or juvenile proceeding within the Penobscot Nation's exclusive or concurrent jurisdiction, except for a violation of Title 12 or Title 29-A that is a Class D or Class E crime other than a Class D crime that involves hunting while under the influence of intoxicating liquor or drugs or with an excessive alcohol level or the operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor vehicle while under the influence of intoxicating liquor or drugs or with an excessive alcohol level, the Penobscot Nation Tribal Court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract duly authorized on forms provided by the bureau.

[PL 2019, c. 621, Pt. C, §2 (NEW); PL 2019, c. 621, Pt. C, §4 (AFF).]

3. Lesser included offenses in state courts. In any criminal proceeding in the courts of the State in which a criminal offense under the exclusive jurisdiction of the Penobscot Nation constitutes a lesser included offense of the criminal offense charged, the defendant may be convicted in the courts of the State of the lesser included offense. A lesser included offense is as defined under the laws of the State.

[PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

4. Double jeopardy, collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Penobscot Nation has exclusive jurisdiction under this section does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense over which the Penobscot Nation has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal offense over which the State has concurrent jurisdiction under this section does not bar a prosecution for a criminal offense, arising out of the same conduct, over which the Penobscot Nation has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution for a criminal offense or juvenile crime, arising out of the same conduct, over which the Penobscot Nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a tribal forum does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a state court does not constitute collateral estoppel in a criminal or juvenile proceeding conducted in a tribal forum. [PL 2019, c. 621, Pt. C, §3 (AMD); PL 2019, c. 621, Pt. C, §4 (AFF).]

5. Future Indian communities. Any 25 or more adult members of the Penobscot Nation residing within their Indian territory and in reasonable proximity to each other may petition the commission for designation as an extended reservation. If the commission determines, after investigation, that the petitioning tribal members constitute an extended reservation, the commission shall establish the boundaries of the extended reservation and recommend to the Legislature that, subject to the approval of the governing body of the Penobscot Nation, it amend this Act to extend the jurisdiction of the Penobscot Nation to the extended reservation. The boundaries of an extended reservation may not exceed those reasonably necessary to encompass the petitioning tribal members. [PL 1995, c. 388, §6 (NEW); PL 1995, c. 388, §8 (AFF).]

6. (TEXT EFFECTIVE ON CONTINGENCY: See PL 2023, c. 369, Pt. C, §6) Full faith and credit. The State shall give full faith and credit to the judicial proceedings of the Penobscot Nation. The Penobscot Nation shall give full faith and credit to the judicial proceedings of the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Mi'kmaq Nation and the State. [PL 2023, c. 369, Pt. C, §5 (NEW); PL 2023, c. 369, Pt. C, §6 (AFF).]

SECTION HISTORY

PL 1995, c. 388, §6 (NEW). PL 1995, c. 388, §8 (AFF). PL 1997, c. 595, §1 (AMD). PL 1997, c. 595, §2 (AFF). RR 2009, c. 1, §19 (COR). PL 2019, c. 621, Pt. C, §§1-3 (AMD). PL 2019, c. 621, Pt. C, §4 (AFF). PL 2023, c. 359, §11 (AMD). PL 2023, c. 359, §13 (AFF). PL 2023, c. 369, Pt. C, §§4, 5 (AMD). PL 2023, c. 369, Pt. C, §6 (AFF).

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