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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 571, L.D. 766, Bill, “An Act Regarding the Penobscot Nation's and Passamaquoddy Tribe's Authority To Exercise Jurisdiction under the Federal Tribal Law and Order Act of 2010 and the Federal Violence Against Women Reauthorization Act of 2013”

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

'PART A

Sec. A-1. 30 MRSA §6206, sub-§3, as enacted by PL 1979, c. 732, §§1 and 31, is amended to read:

3. Ordinances. The Passamaquoddy Tribe and the Penobscot Nation each ~~shall have~~ has the right to exercise exclusive jurisdiction within its respective Indian territory over violations by members of either tribe or nation of tribal ordinances adopted pursuant to this section or section 6207. The decision to exercise or terminate the jurisdiction authorized by this section ~~shall~~ must be made by each tribal governing body. ~~Should~~ If either tribe or nation ~~choose~~ chooses not to exercise, or to terminate its exercise of, jurisdiction as authorized by this section or section 6207, the State ~~shall have~~ has exclusive jurisdiction over violations of tribal ordinances by members of either tribe or nation within the Indian territory of that tribe or nation. The State ~~shall have~~ has exclusive jurisdiction over violations of tribal ordinances by persons not members of either tribe or nation: except as provided in the section or sections referenced in the following:

A. Section 6209-B.

Sec. A-2. 30 MRSA §6210, sub-§5 is enacted to read:

5. Reports to the State Bureau of Identification by Penobscot Nation. Penobscot Nation law enforcement agencies shall submit to the Department of Public Safety, State Bureau of Identification uniform crime reports and other information required by Title 25, section 1544.

COMMITTEE AMENDMENT

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PART C

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

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.

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

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

1 alcohol level, the Penobscot Nation Tribal Court shall transmit to the Department of
2 Public Safety, State Bureau of Identification an abstract duly authorized on forms
3 provided by the bureau.

4 **Sec. C-3. 30 MRSA §6209-B, sub-§4**, as enacted by PL 1995, c. 388, §6 and
5 affected by §8, is amended to read:

6 **4. Double jeopardy, collateral estoppel.** A prosecution for a criminal offense or
7 juvenile crime over which the Penobscot Nation has exclusive jurisdiction under this
8 section does not bar a prosecution for a criminal offense or juvenile crime, arising out of
9 the same conduct, over which the State has exclusive jurisdiction. A prosecution for a
10 criminal offense over which the Penobscot Nation has concurrent jurisdiction under this
11 section does not bar a prosecution for a criminal offense, arising out of the same conduct,
12 over which the State has exclusive jurisdiction. A prosecution for a criminal offense over
13 which the State has concurrent jurisdiction under this section does not bar a prosecution
14 for a criminal offense, arising out of the same conduct, over which the Penobscot Nation
15 has exclusive jurisdiction. A prosecution for a criminal offense or juvenile crime over
16 which the State has exclusive jurisdiction does not bar a prosecution for a criminal
17 offense or juvenile crime, arising out of the same conduct, over which the Penobscot
18 Nation has exclusive jurisdiction under this section. The determination of an issue of fact
19 in a criminal or juvenile proceeding conducted in a tribal forum does not constitute
20 collateral estoppel in a criminal or juvenile proceeding conducted in a state court. The
21 determination of an issue of fact in a criminal or juvenile proceeding conducted in a state
22 court does not constitute collateral estoppel in a criminal or juvenile proceeding
23 conducted in a tribal forum.

24 **Sec. C-4. Contingent effective date; certification.** This Part does not take
25 effect unless, within 60 days of the adjournment of the Second Regular Session of the
26 129th Legislature, the Secretary of State receives written certification by the Governor
27 and Council of the Penobscot Nation that the nation has agreed to the provisions of this
28 Part pursuant to 25 United States Code, Section 1725(e), copies of which must be
29 submitted by the Secretary of State to the Secretary of the Senate, the Clerk of the House
30 of Representatives and the Revisor of Statutes; except that in no event may this Part
31 become effective until 90 days after the adjournment of the Second Regular Session of
32 the 129th Legislature.

33 **PART D**

34 **Sec. D-1. 30 MRSA §6209-A, sub-§1, ¶A**, as amended by PL 2009, c. 384, Pt.
35 E, §1 and affected by §3, is further amended to read:

36 A. Criminal offenses for which the maximum potential term of imprisonment is less
37 than one year and the maximum potential fine does not exceed \$5,000 and that are
38 committed on the Indian reservation of the Passamaquoddy Tribe by a member of ~~the~~
39 ~~Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation~~
40 any federally recognized Indian tribe, nation, band or other group, except when
41 committed against a person who is not a member of ~~the Passamaquoddy Tribe, the~~
42 ~~Houlton Band of Maliseet Indians or the Penobscot Nation or against the property of~~
43 ~~a person who is not a member of the Passamaquoddy Tribe, the Houlton Band of~~

1 Maliseet Indians or the Penobscot Nation any federally recognized Indian tribe,
2 nation, band or other group or against the property of a person who is not a member
3 of any federally recognized Indian tribe, nation, band or other group;

4 **Sec. D-2. 30 MRSA §6209-A, sub-§1-A** is enacted to read:

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

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

28 In exercising the concurrent jurisdiction authorized by this subsection, the
29 Passamaquoddy Tribe is deemed to be enforcing Passamaquoddy tribal law. The
30 definitions of the criminal offenses and the punishments applicable to those criminal
31 offenses over which the Passamaquoddy Tribe has concurrent jurisdiction under this
32 subsection are governed by the laws of the State. Issuance and execution of criminal
33 process also are governed by the laws of the State.

34 **Sec. D-3. 30 MRSA §6209-A, sub-§2-A** is enacted to read:

35 **2-A. Criminal records, juvenile records and fingerprinting.** At the arraignment
36 of a criminal defendant, the Passamaquoddy Tribal Court shall inquire whether
37 fingerprints have been taken or whether arrangements have been made for fingerprinting.
38 If neither has occurred, the Passamaquoddy Tribal Court shall instruct both the
39 responsible law enforcement agency and the person charged as to their respective
40 obligations in this regard, consistent with Title 25, section 1542-A.

41 At the conclusion of a criminal or juvenile proceeding within the Passamaquoddy Tribe's
42 exclusive or concurrent jurisdiction, except for a violation of Title 12 or Title 29-A that is
43 a Class D or Class E crime other than a Class D crime that involves hunting while under
44 the influence of intoxicating liquor or drugs or with an excessive alcohol level or the

1 operation or attempted operation of a watercraft, all-terrain vehicle, snowmobile or motor
2 vehicle while under the influence of intoxicating liquor or drugs or with an excessive
3 alcohol level, the Passamaquoddy Tribal Court shall transmit to the Department of Public
4 Safety, State Bureau of Identification an abstract duly authorized on forms provided by
5 the bureau.

6 **Sec. D-4. 30 MRSA §6209-A, sub-§4**, as enacted by PL 1995, c. 388, §6 and
7 affected by §8, is amended to read:

8 **4. Double jeopardy, collateral estoppel.** A prosecution for a criminal offense or
9 juvenile crime over which the Passamaquoddy Tribe has exclusive jurisdiction under this
10 section does not bar a prosecution for a criminal offense or juvenile crime, arising out of
11 the same conduct, over which the State has exclusive jurisdiction. A prosecution for a
12 criminal offense over which the Passamaquoddy Tribe has concurrent jurisdiction under
13 this section does not bar a prosecution for a criminal offense, arising out of the same
14 conduct, over which the State has exclusive jurisdiction. A prosecution for a criminal
15 offense over which the State has concurrent jurisdiction under this section does not bar a
16 prosecution for a criminal offense, arising out of the same conduct, over which the
17 Passamaquoddy Tribe has exclusive jurisdiction. A prosecution for a criminal offense or
18 juvenile crime over which the State has exclusive jurisdiction does not bar a prosecution
19 for a criminal offense or juvenile crime, arising out of the same conduct, over which the
20 Passamaquoddy Tribe has exclusive jurisdiction under this section. The determination of
21 an issue of fact in a criminal or juvenile proceeding conducted in a Passamaquoddy tribal
22 forum does not constitute collateral estoppel in a criminal or juvenile proceeding
23 conducted in a state court. The determination of an issue of fact in a criminal or juvenile
24 proceeding conducted in a state court does not constitute collateral estoppel in a criminal
25 or juvenile proceeding conducted in a Passamaquoddy tribal forum.

26 **Sec. D-5. Contingent effective date; certification.** This Part does not take
27 effect unless, within 60 days of the adjournment of the Second Regular Session of the
28 129th Legislature, the Secretary of State receives written certification by the Governor
29 and Joint Tribal Council of the Passamaquoddy Tribe that the tribe has agreed to the
30 provisions of this Part pursuant to 25 United States Code, Section 1725(e), copies of
31 which must be submitted by the Secretary of State to the Secretary of the Senate, the
32 Clerk of the House of Representatives and the Revisor of Statutes; except that in no event
33 may this Part become effective until 90 days after the adjournment of the Second Regular
34 Session of the 129th Legislature.

35 PART E

36 **Sec. E-1. 17-A MRSA §2, sub-§3-B**, as enacted by PL 2007, c. 476, §1, is
37 amended to read:

38 **3-B.** "Another jurisdiction" means the Federal Government, the United States
39 military, the District of Columbia, the Commonwealth of Puerto Rico, the
40 Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam,
41 American Samoa, federally recognized Indian tribes and each of the several states except
42 Maine. ~~"Another jurisdiction" also means the Passamaquoddy Tribe when that tribe has~~
43 ~~acted pursuant to Title 30, section 6209-A, subsection 1, paragraph A or B and the~~

1 Penobscot Nation when that tribe has acted pursuant to Title 30, section 6209-B,
2 subsection 1, paragraph A or B.

3 **Sec. E-2. 25 MRSA §1541, sub-§4-A**, as amended by PL 2009, c. 447, §23, is
4 further amended to read:

5 **4-A. Responsibility for the collection and maintenance of criminal history**
6 **record information and juvenile crime information.** The commanding officer shall
7 collect and maintain:

8 A. Fingerprints and other criminal history record information pertinent to the
9 identification of individuals who have been arrested as fugitives from justice or who
10 have been arrested or charged with any criminal offense under the laws of this State
11 except a violation of Title 12 or 29-A that is a Class D or E crime other than an
12 alcohol-related or drug-related offense. For purposes of this paragraph, an "alcohol-
13 related or drug-related offense" is a Class D crime that involves hunting while under
14 the influence of intoxicating liquor or drugs or with an excessive alcohol level or the
15 operation or attempted operation of a motorcraft, all-terrain vehicle, snowmobile or
16 motor vehicle while under the influence of intoxicating liquor or drugs or with an
17 excessive alcohol level. The commanding officer may collect and maintain
18 fingerprints and other criminal history record information that may be related to other
19 criminal offenses or to the performance of the commanding officer's obligations
20 under state laws and under agreements with agencies of the United States or any
21 other jurisdiction; and

22 B. Fingerprints and other juvenile crime information pertinent to the identification of
23 individuals who have been taken into custody for juvenile crimes under a uniform
24 interstate compact on juveniles or who have been arrested or charged with juvenile
25 crimes under the laws of this State. The commanding officer may collect and
26 maintain fingerprints and other juvenile crime information that may be related to
27 other juvenile crimes or to the performance of the commanding officer's obligations
28 under state laws and under agreements with agencies of the United States or any
29 other jurisdiction.

30 For purposes of this subsection, "laws of this State" includes Passamaquoddy tribal law as
31 described in Title 30, section 6209-A, subsections 1-A and 2 and Penobscot tribal law as
32 described in Title 30, section 6209-B, subsections 1-A and 2.

33 **Sec. E-3. 25 MRSA §1542-A, sub-§3, ¶A**, as enacted by PL 1987, c. 512, §3, is
34 amended to read:

35 A. The law enforcement agency having primary responsibility for the criminal
36 investigation and prosecution shall take or cause to be taken the fingerprints of the
37 person named in subsection 1, paragraph A. If the offender is subjected to a custodial
38 arrest, fingerprints shall must be taken prior to that ~~person~~ person's being released
39 from custody. If the offender is summonsed to appear or, relative to a Class D or
40 Class E crime, released at the scene by a law enforcement officer ~~after taking who~~
41 has taken the personal recognizance of any such person for ~~his~~ the person's
42 appearance, fingerprints shall must be taken within 5 days at a time and place
43 specified by the responsible agency. The offender shall appear at the specified time
44 and place and shall submit to the process. To the extent possible, the fingerprinting

1 Passamaquoddy Tribe or the Penobscot Nation, now or in the future. This extended
2 jurisdiction covers lands held in trust on or before the effective date of this Act, as well as
3 lands taken into trust after the effective date of this Act.

4 This amendment also extends the exclusive jurisdiction of the Passamaquoddy Tribal
5 Court to criminal offenses committed on the Passamaquoddy Indian Reservation between
6 members of any federally recognized Indian tribe, nation, band or other group.

7 The tribal courts, law enforcement agencies and law enforcement officers are
8 required to participate in uniform crime reporting by reporting certain information to the
9 Department of Public Safety, State Bureau of Identification, and the bureau is required to
10 share its annual reports with tribal law enforcement agencies.

11 Other changes include revisions to the definition of "another jurisdiction" in the
12 Maine Criminal Code to include criminal convictions by courts of federally recognized
13 Indian tribes. This change is consistent with federal law and the recognition of orders of
14 protection from abuse from the courts of federally recognized Indian tribes by the Maine
15 Revised Statutes, Title 19-A, section 4011.

16 The changes to the Act To Implement the Maine Indian Claims Settlement included
17 in this amendment do not take effect unless the tribes affected approve of the changes and
18 certify their approval.

19 **FISCAL NOTE REQUIRED**

20 **(See attached)**