



# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 426

H.P. 310

House of Representatives, January 14, 1999

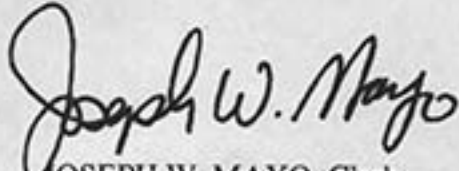
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**An Act to Implement Recommendations of the Maine Indian Tribal-State  
Commission to Ensure Enforcement of Subpoenas by Tribal Courts.**

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Reported by Representative THOMPSON for the Maine Indian Tribal-State Commission,  
pursuant to Resolve 1997, chapter 45, section 3.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered  
under Joint Rule 218.

  
JOSEPH W. MAYO, Clerk

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 14 MRSA §702, as amended by PL 1987, c. 223, §1, is**  
4 further amended to read:

6 **§702. Duty of sheriffs and deputies; fees**

8 Every sheriff and each of his the sheriff's deputies shall  
10 serve and execute, within his the respective county, all writs  
10 and precepts issued by lawful authority ~~to him~~ to the sheriff,  
12 including the Passamaquoddy Tribal Court, as defined in Title 30,  
12 section 6209-A and the Penobscot Tribal Court, as defined in  
14 Title 30, section 6209-B, directed and committed, including those  
14 in which a town, plantation, parish, religious society or school  
16 district, of which he the sheriff is at the time a member, is a  
16 party or interested, but his the legal fees for service shall  
18 must first be paid or secured to him the sheriff. If the fees are  
18 not paid or secured to him the sheriff when the process is  
20 delivered to him the sheriff, he the sheriff shall immediately  
20 return it to the plaintiff or attorney offering it; or if sent to  
22 him the sheriff by mail or otherwise, he the sheriff shall put it  
22 into some post office within 24 hours, directed to the person  
24 sending it; otherwise he the sheriff waives his the sheriff's  
24 right to his the sheriff's fees before service.

26 **SUMMARY**

28 This bill makes it clear that sheriffs and deputies have the  
30 duty to serve and execute papers issued by the Passamaquoddy  
Tribal Court and the Penobscot Tribal Court.

## OFFICE OF POLICY AND LEGAL ANALYSIS

**Date:** 04/16/99

**To:** Joint Standing Committee on Judiciary

**From:** Peggy Reinsch, Legislative Analyst

**LD 426** **An Act to Implement Recommendations of the Maine Indian Tribal-State Commission to Ensure Enforcement of Subpoenas by Tribal Courts.**

### SUMMARY

This bill requires sheriffs and deputies to serve all writs and precepts issued by the Passamaquoddy Tribal Court or the Penobscot Tribal Court. "Writs and precepts" include orders and bench warrants.

The proposed amendment expands the bill by adding a new section to the Implementing Act to give statewide effect to orders and decisions of the Passamaquoddy Tribal Court and the Penobscot Tribal Court.

Under the amendment, each tribal court has the same authority as the State courts to enforce, through civil or criminal contempt, any violation of an order, subpoena, warrant or other process issued by the Tribal Court with respect to any party or other person located within the respective reservation or otherwise subject to the personal jurisdiction of that court. It also requires courts and other authorities of the State and its political subdivisions to execute and enforce the tribal court order, subpoena, warrant or other process with respect to a person not subject to the jurisdiction of the Tribal Court, in the same manner as a similar order issued by the courts of this state.

The amendment also provides that it supersedes inconsistent provisions of the Uniform Enforcement of Foreign Judgments Act, the Uniform Interstate Family Support Act and other state laws providing for the recognition of the judicial orders or proceedings of other jurisdictions.

The proposed amendment provides that the bill would not be effective without approval by the Passamaquoddy Tribe and the Penobscot Indian Nation.

## TESTIMONY

### Proponents

- Sheriffs unclear whether they have power to serve now
- Bill and amendment intended to obviate need to go to District Court or the Superior Court to get a special order
- Full faith and credit included in federal law
- Many jobs off the reservation, but employers often don't honor child support income withholding orders
- Sheriffs come on to tribal lands to serve subpoenas from state courts, but won't serve ours
- Attorneys, prosecutors and judges in tribal courts all have to pass Maine bar
- Tribal courts aren't that foreign
- This is a quantum leap, and it is needed
- Will be used mostly in civil judgments
- Tribal police aren't allowed to go off reservation to serve warrants and subpoenas
- On numerous occasions Tribal Courts have subpoenaed various professional people to come to court after performing evaluations, and several times they have not showed up for court

### Opponents

- Full Faith and Credit Clause requires state's courts to honor the orders and judgments of another state's courts - process to do so
- Uniform Enforcement of Foreign Judgments Act applies to tribal orders
- Be very, very careful before shucking all these laws
- Not clear what broad scope these enforcement powers have
- These are broad, sweeping changes - constitutional ramifications

### POTENTIAL ISSUES OR TECHNICAL PROBLEMS:

- References to the Tribal Courts should be moved to after "lawful authority" on line 10.

### FISCAL IMPACT:

- located within the state
- Judge + Prosecution + Court  
offices are all law school graduates
- ↳ have passed the bar
- ↳ Appellate Judges as well
- Judge Andrew Mearns was Chief Judge  
~~in previous history of Pennsylvania~~  
Third Circuit
- Court modeled on the state court

Magna Charte in process law  
Full faith in here is observed by other states

U F J A C T

Child Support Act -

any of order of another state w/o my Act

Uniform Acts - "Carefully Crafted"

Binding Nature - Settlement Act double jeopardy

T.C. Limited Civil Jurisdiction

State v Mitchell Doctrine. Less Civil

D.C. Limited by Law

binding especially

Non-Jud effect - not clear / separate from law

Non Incl - does not take within a few and rights  
opposition because of unique individualism  
collateral issues

T.C.'s Bench warrant executed off the Res,  
Broad + Sweeping changes