

§7208. Jurisdiction of the Mi'kmaq Tribal Court

1. Exclusive jurisdiction over certain matters. Except as provided in subsections 5 and 6, the Mi'kmaq 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 is less than one year and the maximum potential fine does not exceed \$5,000 and that are committed on Mi'kmaq Nation Jurisdiction Land 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 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (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 Mi'kmaq 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 the Mi'kmaq Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation within Mi'kmaq Nation Jurisdiction Land; [PL 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

C. Civil actions between members of the Mi'kmaq Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation arising on Mi'kmaq Nation Jurisdiction Land and cognizable as small claims under the laws of the State and civil actions against a member of the Mi'kmaq Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation under Title 22, section 2383 involving conduct within Mi'kmaq Nation Jurisdiction Land by a member of the Mi'kmaq Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation; [PL 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

D. Indian child custody proceedings to the extent authorized by applicable state and federal law; [PL 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

E. Other domestic relations matters, including marriage, divorce and support, between members of the Mi'kmaq Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians or the Penobscot Nation, both of whom reside within Mi'kmaq Nation Jurisdiction Land; and [PL 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

F. Notwithstanding any other provision of this subsection, civil and criminal actions regarding the enforcement of ordinances enacted pursuant to section 7206, subsection 8, except that the Mi'kmaq Nation may not exercise jurisdiction over a nonprofit public municipal corporation. [PL 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

The governing body of the Mi'kmaq Nation shall decide whether to exercise or terminate the exercise of the exclusive jurisdiction authorized by this subsection. The decision to exercise, to terminate the exercise of or to reassert the exercise of jurisdiction under each of the subject areas described by paragraphs A to F may be made separately. Until the Mi'kmaq Nation notifies the Attorney General that the nation has decided to exercise exclusive jurisdiction set forth in any or all of the paragraphs in this subsection, the State has exclusive jurisdiction over those matters. If the Mi'kmaq 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. When the Mi'kmaq Nation chooses to reassert the exercise of exclusive jurisdiction over any or all of the areas under paragraphs A to F, the nation must first provide 30 days' notice to the Attorney General. Except as provided in paragraphs A and B, all laws of the State relating to criminal offenses and juvenile

crimes apply within Mi'kmaq Nation Jurisdiction Land and the State has exclusive jurisdiction over those offenses and crimes.

[PL 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

2. Concurrent jurisdiction over certain criminal offenses. The Mi'kmaq Nation has the right to exercise jurisdiction, concurrently with the State, over the following Class D crimes committed by a person within Mi'kmaq Nation Jurisdiction Land or on lands taken into trust by the secretary for the benefit of the Mi'kmaq 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 Mi'kmaq Nation shall decide whether to exercise or terminate the exercise of jurisdiction authorized by this subsection. Notwithstanding subsection 3, the Mi'kmaq 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 Mi'kmaq Nation is deemed to be enforcing Mi'kmaq tribal law. The definitions of the criminal offenses and the punishments applicable to those criminal offenses over which the Mi'kmaq 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 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

3. Definitions of crimes; tribal procedures. In exercising its exclusive jurisdiction under subsection 1, paragraphs A and B, the Mi'kmaq Nation is deemed to be enforcing Mi'kmaq 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 Mi'kmaq 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 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

4. Criminal records, juvenile records and fingerprinting. At the arraignment of a criminal defendant, the Mi'kmaq Tribal Court shall inquire whether fingerprints have been taken or whether arrangements have been made for fingerprinting. If neither has occurred, the Mi'kmaq 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 Mi'kmaq 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 Mi'kmaq 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 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

5. 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 Mi'kmaq 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 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

6. Double jeopardy, collateral estoppel. A prosecution for a criminal offense or juvenile crime over which the Mi'kmaq 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 Mi'kmaq 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 Mi'kmaq 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 Mi'kmaq Nation has exclusive jurisdiction under this section. The determination of an issue of fact in a criminal or juvenile proceeding conducted in a Mi'kmaq 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 Mi'kmaq tribal forum.

[PL 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

7. Full faith and credit. The State shall give full faith and credit to the judicial proceedings of the Mi'kmaq Nation. The Mi'kmaq Nation shall give full faith and credit to the judicial proceedings of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the State. [PL 1989, c. 148, §§3, 4 (NEW); PL 2023, c. 369, Pt. A, §§2, 5 (AFF).]

SECTION HISTORY

PL 1989, c. 148, §§3, 4 (NEW). PL 2023, c. 369, Pt. A, §§2, 5 (AFF).

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