

## TRANSCRIPT

### *Task Force on Changes to the Maine Indian Land Claims Settlement Implementing Act*

Fourth Meeting : October 20th, 2019

Criminal and Civil Jurisdiction

Criminal Jurisdiction – Part 1

#### **Janet Stocco (Office of Policy and Legal Analysis):**

I'm Janet Stocco from the Office of Policy and Legal Analysis. I worked on the criminal jurisdiction chart. I want to be honest with you all. I do not have experience very much at all in criminal law other than working for the court system for many years. And I definitely do not have any experience in Indian law. So I used the Canby Treatise and the Cohen Treatise, which was a lot bigger. So I didn't haul it up here this morning. And anytime anyone thinks that there's an error, I am not at all proud or going to be resistant to changing it. I don't want anything in this record to be wrong, so please let me know. Basically these charts were prepared at the direction of the Task force with the idea of being for discussion purposes. So if to the extent there are errors, like I said, correct them and then lets, hopefully it won't stop the discussion because that's not the point.

And please ask questions or anybody behind you has corrections if the charts are fine with that. It sounds like they were, let me know. And also we prepared this overly complicated and footnoted chart and then the Tribes came with a much cleaner chart of federal Indian law, which is a lot easier to read, I concede, and there is a chart in Canby's Treatise that's similar to that one. So it might be helpful to look at both just to have this simple version. But then the more of the details are on the version we gave you. I've been accused in the past of over preparing so that could be why. In the charts you have on the Task Force are all in alphabetical order. So that's why criminal's second, we weren't trying to put you off by putting it out of order.

So one of the things just before we get into this side by side of what actual jurisdiction is, is that the location of the criminal conduct is defined heavily, both in federal law and in state law, about when we're even talking about the

**Janet Stocco (Office of Policy and Legal Analysis):**

possibility of Tribal jurisdiction, that you have to make sure you're talking about Indian lands or Tribal lands, and the way those lands are defined is slightly different. So federal Indian law, oh and I should point out this is default federal law. There could be treaties that are specific to different Tribes. There's public law 280 which has a different scheme entirely. We're not talking about that. We're talking about in the absence of any different arrangement, this is the default understanding. So there's a federal statute that defines what Indian country means. It's not for all purposes, but it does apply to the purpose of deciding criminal jurisdiction and it's on the left-hand side of the front page of your chart.

So paragraph A is all lands in an Indian reservation. It says, notwithstanding the issuance of any patent, which I used to do intellectual property law. Do not think that that has anything to do with that kind of patent. They're talking about even if something's sold and it's owned in fee now, so somebody has complete title, that's still Indian country. Then there is this interesting category, all dependent Indian communities. And there's a complicated test for that. That's case-by-case basis, going to be different. The footnote tells you what that test is, but just to understand, it's not just reservations. There's also this concept of dependent Indian communities and then there's all Indian allotments if the Indian title has not been extinguished. So there, if you go through the Canby treatise in the Cohen treatise, they go through the history of the land and the different ways that the federal government approached Tribal land and there was this period of allotments.

So those are also included. For Maine, the land we're talking about where there might be Tribal court jurisdiction is defined specifically in the Implementing Act. So there is a Passamaquoddy Tribal Court and their jurisdiction would be limited to acts that occur on the reservation. So it's not all of the trust land, it's just the reservation. There is the possibility of expanding that reservation through a process that involves MITSC (Maine Indian Tribal State Commission) and a petition from people who live in a close community of different Indian members, but they're not technically on the reservation. And if the state and the Tribe were to agree that reservation or the area of criminal jurisdiction could be expanded. The same for the Penobscot Nation Tribal Court. And although the Houlton Band of Maliseets, as Chief Sabattus' Maliseet Indians, excuse me, as Chief Sabattus

**Janet Stocco (Office of Policy and Legal Analysis):**

explained, it doesn't yet have their court operational.

They do have the ability to have jurisdiction and it's over activities committed on the Houlton Band jurisdiction land, which again is not all of the trust land. And there is also a process, it doesn't involve MITSC, to expand that area as well. It's at the request of the Tribes and then the state and the Tribe would work it out. The Micmac Settlement Act does not provide for a Tribal court. So this chart isn't going to talk about them, not in an attempt to be rude. It just does not provided for in Maine law at the moment. So as far as actual criminal jurisdiction, when I was looking through trying to figure out how to explain this, I was reminded of Professor Fletcher when he came in and talked about the five general principles of Indian law at the first meeting. And I think understanding what he said there helps understand the way that the federal law framework works.

And that is the idea that Tribes are inherently sovereign. And in the past they had their own codes and traditions of how to deal with offenses that they defined and punishments that they defined on their land and how they dealt with that and that's the background. And then on top of that you have that Congress has the authority under the Constitution, the supreme authority to come in and adjust that. And it's not generally a state authority in that sense. So that's the default federal, which explains why if you look at the Indian offender's side, we're only going to be talking about Tribes and the federal government because the of those fundamental principles of Indian law.

**Sen. Mike Carpenter (Task Force Senate Chair):** Yeah. Janet, if I could interrupt you just for a second. The charts are broken up by sections and so if members of the task force have questions about a particular section, let's try to deal with them, not for purposes of debate, but for purposes of clarification as we go through. And I think Chief Francis has a question back on page one...

**Janet Stocco:** Oh, certainly.

**Chief Kirk Francis (Penobscot Nation):** Just something specific. You spoke of some of the varying limitations on the Maine Tribes, particularly your example around Micmac. And I'm just curious, through your research, did you get any indication at

all as to why these varying limitations exist among all the Tribes?

**Janet Stocco (Office of Policy and Legal Analysis):**

Unfortunately, I have no answers on why. I just had time to figure out what. And even the what could be wrong and I'm open to tainting it, but if anybody in the room knows, I don't know.

**Sen. Carpenter:** Any other questions about the first page in terms of definitions. Thank you. Okay, next page two. So as the Tribes showed in their original chart that they handed out the last meeting and then is also clear on the summary chart they provided. That's an attachment. Jurisdiction in the criminal realm depends very heavily upon who's the offender, who's the defendant in the case and who's the victim. Or if there is a victim, it might be a victimless crime. For example, public indecency, there isn't a specific person. So that's why the chart has way more than three columns. Although three columns were requested, we had to break it down a little bit more. So for Tribal Court jurisdiction, and I'm going to go through the federal scheme as quickly as I can. If you have an Indian defendant and an Indian victim, or victimless crime is the first thing on page two. So there is a Major Crimes Act that gives the federal government jurisdiction over major crimes committed by an Indian in Indian territory.

But remember the Tribes have the inherent sovereignty that Professor Fletcher talked about. So it's possible. And this chart that the Tribes handed out, the Canby Treatise and Cohen Treatise all express the opinion that probably the Tribes also have concurrent jurisdiction over Major Crimes committed by an Indian defendant on Tribal land. But it is definitely clear under federal statute that the federal government has jurisdiction over those major crimes and a list of the major crimes is on footnote 13. Then there is exclusive Tribal Court jurisdiction over other crimes committed against an Indian victim. So again, here there was a federal statute, the General Crimes Act that gives Congress authority basically over crimes in Indian territory, but they specifically carved out an Indian defendant and an Indian victim and that is given exclusive authority to the Tribes. Then there's a problem with the Major Crimes, you know that's we already talked about and then I corrected this just this morning.

So you have the right, if somebody printed off something over the weekend, they

**Janet Stocco (Office of Policy and Legal Analysis):**

have slightly wrong language here. I had written "exclusive jurisdiction" because it depends on which page of the Canby Treatise you read, but there is definitely Tribal jurisdiction over victimless crimes committed by Indian defendants. There is a possibility that there is federal court concurrent jurisdiction. There are cases that go either way, but there is no question that the Tribal courts have jurisdiction over a victimless crimes committed by an Indian defendant. And when we talk about an Indian defendant, federal law does not require it to be a person who is a member of the specific Tribe that is the court, and that's important because Maine law differs in that. The maximum penalties, so any time the Tribal court has jurisdiction, including when it's an Indian defendant and Indian victim or victimless crime, there's a default \$5,000 fine and one year imprisonment maximum penalty.

It's important to know under federal law, the way the statute is written, it's the maximum penalty that may be imposed. It doesn't matter what the maximum possible penalty is for the crime, it's just the maximum penalty the Tribe can impose. It's generally \$5,000 and one year imprisonment. If certain other conditions are met, that is bumped up to \$15,000 fine and three year imprisonment. So it needs to be a defendant who's been convicted of a comparable offense prior or if the crime would be punishable by greater than a year of imprisonment under federal law, then you're going to have the heightened ability to punish in Tribal court. But there are some specific due process protections that federal law requires. They're in the footnotes. Things like counsel for free if you're indigent and proceedings being recorded, things like that that we're familiar with if you are involved in the state court system at all. And then for juveniles, if the Tribal court has jurisdiction over an offense committed by an adult Indian defendant, the jurisdiction would then extend to juveniles.

**Sen. Mike Carpenter:** Any questions about that piece of the jurisdictional puzzle so far?

**Janet Stocco:** So the next category, if you still have the Indian defendant, but now we have a non-Indian victim. Again, remember there's a Major Crimes Act that says that the federal government has jurisdiction over major crimes, but with the default general principle of federal Indian law, that Tribes are sovereign, it's not

**Janet Stocco (Office of Policy and Legal Analysis):**

clear, but it's possible. And the Canby and Cohen Treatises thinks it's true, although they explain, it's not clear that the Tribes would also have concurrent jurisdiction over those offenses. But there's no question that the Tribes have concurrent jurisdiction with their federal courts over non-major crimes. And the reason that's not in question is that General Crimes Act specifically says, the federal government has jurisdiction over these offenses except if the Tribal court has already imposed a penalty on that defendant. So that's a clear recognition that the Tribes have concurrent jurisdiction there.

So that's a pretty straightforward one. Any questions on that one? Okay, so then if you have a non-Indian defendant and an Indian victim, the first line there says generally Tribal courts lacks jurisdiction over non-Indian defendants. That is a Supreme Court decision, the Oliphant case. So doesn't matter how you read the Major Crimes Act or the General Crimes Act, that's the Supreme Court saying unless we have some clear thing from Congress in the future. So Congress came back and came up with the Violence Against Women Act. That's a long history of its own act itself. But there is an exception to the idea that Tribes would never have criminal jurisdiction over non-Indian defendants, and that's defined in VAWA. So Tribes do have concurrent jurisdiction over offenses that are domestic or dating violence and certain protection order violations committed by a non-Indian defendant against an Indian victim.

There needs to be a relationship to the Tribe, so the non-Indian defendant has to reside or be employed in the Tribe's Indian country or be the spouse, intimate partner, or dating partner of a Tribal member or Indian residing in the Tribe's Indian country, and the victim would be an Indian. The maximum penalties and due process protections outlined above apply when it's a VAWA case, but there's an additional layer of due process imposed, so if imprisonment is going to be imposed on this non-Indian defendant, the jury has to be representative, which means it's supposed to include all different kinds of people, including non-Indian people on the jury. Any questions on that one? Oh good. I had a sleepless night over this. It's going well so far. So if you have a non Indian defendant and a non-Indian victim or a victimless crime again, the Oliphant decision by the US Supreme Court, so that Tribes generally lack jurisdiction over non-Indian defendants and there isn't a Congressional carve out, so there's no Tribal

jurisdiction there.

**Janet Stocco (Office of Policy and Legal Analysis):**

For state courts, the key to remember, if you're in the federal law side of the chart, is that states generally have no criminal jurisdiction over crimes by Indians in Indian country. So that's going to be reflected. So if you have an Indian defendant, an Indian victim, or a victimless crime, there is no state court jurisdiction. Again, if it's an Indian defendant and a non-Indian victim, no state court jurisdiction in federal law. If you have a non-Indian defendant and an Indian victim, again, no state court jurisdiction. The only carve-out was created by the US Supreme Court in two decisions, *McBratney* and *Draper*, I hope I am saying them correctly. So if you have a non-Indian defendant and a non-Indian victim or no victim, the US Supreme Court said that that's so completely state. The interest of the state is so great there that that would be exclusive state jurisdiction. Even though the federal law, the General Crimes Act doesn't pretend to make that carve-out, the US Supreme Court said that's an area that's going to be exclusive state jurisdiction.

So we move to federal courts. Under the federal scheme, it's important to remember that there are federal crimes. So, we're a lot often thinking of criminal jurisdiction and in the idea of like usually crimes are state-defined or, in the Tribal courts, Tribe defined. But there are some federal crimes of general applicability. You think drug offenses, if you steal from the US mail, you've committed a federal crime. All of those things, it doesn't matter who the victim is, it doesn't matter who the defendant is. Federal crimes are going to stay federal crimes. And federal crimes are prosecuted in federal court.

But if you look at the more traditional categories of crimes that we were talking about above, if you have an Indian defendant and an Indian victim or a victimless crime, the major crimes, because of the Major Crimes Act, that's going to be federal jurisdiction. That's clear. There's no question about that. But remember there was that question whether the Tribes retain also concurrent jurisdiction as well. It's not an entirely clear area of the law, although both treaties believe that they do in the chart handed out by the Tribes, which was prepared by a law professor, also agrees with that. So in federal court, if you have an Indian defendant and an Indian victim, they would not have jurisdiction over the more minor crimes, because remember that's going to be exclusive Tribal court

**Janet Stocco (Office of Policy and Legal Analysis):**

jurisdiction. And again, it's unclear if there's jurisdiction over victimless crimes committed by Indians, the charts here and Cohen and Canby believe that if it's a victimless crime, it really should be Tribal court jurisdiction.

And there is a really old Supreme Court case about adultery, which apparently is a victimless crime, being married. I thought that was weird. But so in that case, the Supreme Court said, yes, that's a Tribal concern. But some other victimless crimes like OUI, lower federal court decisions have differed on whether that really is just inherent Tribal or whether the federal courts should also have some jurisdiction there too. So that's why that's not ... I put unclear, even though the chart handed out says clear in the summary chart that Cohen makes says it's clear. If you look at the actual text, it says there are some cases going other ways, but it's a general idea. It's an inherent Tribal thing. So it's definitely Tribal jurisdiction. So if you have an Indian defendant and a non-Indian victim, the federal court is going to have jurisdiction over all the crimes.

Remember we said unless the Indian defendant has been punished by the local law of the Tribe already, which is the inherent recognition of the concurrent jurisdiction of the Tribes here. If there's a non-Indian defendant and an Indian victim, remember the Oliphant court case said the Tribes can't have any authority, and we already said the state doesn't have any authority. So that leaves the federal courts. They have the authority over that category of crimes. And then if you have a non-Indian defendant and a non-Indian victim, remember the US Supreme Court said that that's states. They have the exclusive jurisdiction. So there's no federal jurisdiction there due to US Supreme Court case law. So that's what the default federal Indian law is ignoring the pages and pages of treatise where there's all kinds of cases and carve something out here and there. Now let's look at the state, if that's all right with you. This might not have been the best way, but it was my hope it worked. So if we look at the law applied in Maine, I'm on page two.

We have an Indian defendant and an Indian victim or a victimless crime in the federal world, that would be Tribal jurisdiction with some limited penalty provisions. It's very similar in the state world in Maine right now. So the Passamaquoddy Tribal Court has exclusive jurisdiction over crimes committed on

**Janet Stocco (Office of Policy and Legal Analysis):**

the Passamaquoddy Indian reservation. Slightly different language than federal law here, it says if the crime has a maximum potential penalty of \$5,000 fine or less than one year imprisonment. So I don't know if that's significant, but in federal law, federal law says you, Tribal court, can only impose these fines. It doesn't say that's the maximum fine for the offense. So maybe an offense that's punishable by the death penalty, but you can only impose this maximum amount. State law is written a little differently. It says the maximum potential penalty can only be up to a year imprisonment. So if it's defined as a higher class of crime, then you wouldn't have jurisdiction and just sentence them to a lesser amount.

So I think that's a slight difference. I didn't see cases interpreting it to see, but it's written slightly differently. So there are limited penalties similarly, but maybe you would read the statute slightly differently. And then also the defendant and the victim in the Passamaquoddy Tribal Court. Each of those individuals has to be a member of the Passamaquoddy Tribe, Houlton Band of Maliseets Indians or the Penobscot Nation. And victimless crimes are included. So if the defendant is in one of those three groups, then there is jurisdiction if it's a victimless crime. And if the court has jurisdiction over the offense if it was committed by an adult, it would have jurisdiction over the offense committed by a juvenile. You may wonder why did I write the court also has jurisdiction over juvenile victimless crimes involving drugs and alcohol, because sometimes it's not a crime if committed by an adult, but it is if it's a juvenile.

I'm trying to explain why that's covered as well. The Penobscot Nation Tribal court is written slightly differently and only in one area, and that's the identity of the defendant or victim. So the Penobscot Nation Tribal Court, as I read the statute has broader jurisdiction than in the Passamaquoddy tribal court because the defendant and the victim only have to be a member of any federally recognized Indian tribe, Nation Band or other group, so they are not limited to just a member of the Passamaquoddy Tribe, Penobscot Nation or Houlton Band of Maliseet Indians. It could be a member of the Aroostook Band of Micmacs. it could be a Navajo who is visiting it just as long as they're a recognized tribe. Yes?

**Speaker 4:** And do we know why there is that..

**Janet Stocco:** Again, I don't know why they weren't written I don't think at the same time.

**Speaker 4:** Does anyone on the Task Force know why? Okay, thank you.

**Janet Stocco (Office of Policy and Legal Analysis):** The Houlton Band of Maliseet Indians tribal court. This one gave me a lot of heartburn. Sam and I read this about 100 times. We invited many people in our office to read this statute hundreds of times. The language is different and it's a little bit confusing, at least to me. I won't speak for anyone else, but they didn't give me a Eureka moment, I will say that. But it's important to note that there is a statute about the Houlton Band of Maliseet Indians Tribal courts. So there is a potential for jurisdiction should the court become up and running and they choose to exert it. Right now it's not, but there is authority. So it's for any crime on Houlton Band jurisdiction land. It's not called a reservation in the Implementing Act, it's called Houlton Band jurisdiction land. It's not all, like I said, of the trust land and it's defined specifically. The same maximum penalties apply.

So maximum potential penalty, a \$5,000 fine or less than one year imprisonment. And it's very clear to me that if both the defendant and the victim are a member of the Houlton Band of Maliseet Indians, the Houlton Band of Maliseet Indians tribal court would have jurisdiction. Or if the defendant is a member of the Houlton Band of Maliseet Indians and it's a victimless crime. That part is not confusing. The next part's the part that's a little bit written strangely, and in footnote 27 I copied the whole language just so you can see if I'm crazy or if you agree it's strangely written. But if you look at the actual language, it says, and it's the same language for the Penobscot Nation defendants and the Passamaquoddy Tribe's defendants, it says that if the crime is committed on Houlton Band jurisdiction land by a member of the Penobscot Nation against a member or the property of those federally recognized Indian tribes otherwise subject to the exclusive jurisdiction under this subsection.

And this subsection is only about the Penobscot Nation. So one reading of this is to say the defendant and the victim both have to be members of the Penobscot Nation, even though this is the whole Band of Maliseets Indian tribal court. It doesn't seem like that was really intended, but that's what it technically says. If we think maybe they didn't mean sub and they just meant section. If you go one

**Janet Stocco (Office of Policy and Legal Analysis):**

level up, then it would mirror the Passamaquoddy tribal court and it would say if the defendant and the victim are a member of the Houlton Band of Maliseet Indians, the Penobscot Nation and the Passamaquoddy Tribe, as long as they're one of those three, both the defendant and the victim, then the Houlton Band and Maliseet Indians tribal court would have jurisdiction.

So we've written down that that's potentially what was meant. But I just want you to know that's not technically what it says. And then as far as victimless crimes are concerned, there's no question if the defendant is a member of the Houlton Band of Maliseet Indians, there is jurisdiction over victimless crimes. The language of the provisions about Passamaquoddy Tribe defendants and Penobscot Nation defendants is slightly different. The way it's written, it says that the crime has to be committed against another member of a tribe. And so that makes it seem like you need a victim. And there's a whole debate in federal law, when there's a similar statute about whether that includes victimless crimes. So I think that debate could apply here, but probably it, I hate to just make these statements because I'm trying to be very nonpartisan, but it doesn't look like it meant to include victimless crimes because all the rest of the Maine Implementing Act is written that way for all the other Tribal courts and all the other kinds of defendants. But it's just not written that way right now. It's debatable, I guess. So now that I've made that confusing as mud, any questions.

**Chief Clarissa Sabattus (Houlton Band of the Maliseet):**

Hopefully I don't confuse you anymore, but can you explain to me why you're saying that not all trust land is inclusive?

**Janet Stocco:** So yeah, sure. If we look in our binders, let me find it. Let me find it first, and then I'll tell you. And it may be in reality that it is all trust land. So if you look at the Maine Implementing Act copy that you have in your binder, it's the bottom of page 144, is the actual page number on it, you weren't given 144 pages, but that's page number on it.

But it defines Houlton Band jurisdiction land, which is different than the whole category of trust land. And it's only paragraph A. Do you need a copy of that?

**Chief Clarissa Sabattus (Houlton Band of the Maliseet)**: What section? I have a copy of it, I'm just not sure what section.

**Janet Stocco**: Oh sure. It's 6209 C and it's subsection five.

**Rep. Donna Bailey (Task Force House Chair)**: Do you need it?

**Speaker 4**: [inaudible].

**Rep. Donna Bailey**: Janet? She does need it.

**Janet Stocco**: We had copies, but they're all gone. That's not it. All the copies we had are taken.

**Rep. Donna Bailey**: Yeah, she doesn't have a binder, so. [inaudible] did locate a copy for her.

**Janet Stocco**: Are we all set?

**Rep. Donna Bailey**:: [inaudible].

**Janet Stocco**: Let me know when you're ready. So if we look at 6209-C says section five, it says for the purposes of this section, Houlton Band jurisdiction land means only the trust land described as follows. So it's a subsection. Now, I don't know the reality on the ground. This might be all that there is of trust land. So it might be everywhere, but it's defined as a subset, whether it actually is a subset, I don't know.

**Chief Clarissa Sabattus (Houlton Band of Maliseet)**: Thank you.

**Janet Stocco**: Oh, you're welcome. Do you have any more questions on that?

**Rep. Bailey**: We're all set.

**Janet Stocco (Office of Policy and Legal Analysis)**:

Okay, good. So if we have an Indian defendant and a non-Indian victim, there is no Tribal court jurisdiction for any of the Tribes that have either a court now or potential for court in the future under Maine law, which is different from federal law. If you have a non-Indian defendant and an Indian victim, there is no Tribal jurisdiction currently. Remember that's the default federal rule, but there is a VAWA exception. Similarly, in Maine, there's potential for VAWA exception, and that's why you should have a copy of LD 766, that's the engrossed version. So

**Janet Stocco (Office of Policy and Legal Analysis):**

that's the version that the House and the Senate voted on. It is currently on the governor's desk. If that is enacted, so if it's returned and signed by the governor, or vetoes over written, or any possible series of events that make it enacted, it would expand Tribal court criminal jurisdiction as follows. The Passamaquoddy Tribal Court and Penobscot Nation Tribal Court would have a choice whether to exert concurrent jurisdiction with the state over offenses that are class D in Maine law, domestic violence offenses and protection order violations that are committed by adults only, so not juveniles, that are non-Indian defendants against a member of a federally recognized Tribe, Nation Band or other groups.

So that's the broader category you might remember from the Penobscot Nation Tribal Court. It's any federally recognized Tribe, not just one of the three that are mentioned in the other two Tribes court statutes at the moment. The maximum potential penalty for the offense must not exceed \$2,000 fine or one year imprisonment. That's class D in Maine. Due process protections must be applied. They must have a representative jury, which is the same language as VAWA, and a unanimous jury verdict.

This is not, if you look and compare the left and right and all of the potential penalty limitations for Tribal courts under federal law, it's not co-extensive and there is authority in LD 766 as it was passed by the legislature for the judiciary committee, to report out legislation to give the Penobscot Nation in the Passamaquoddy Tribe jurisdiction over crimes other than class DNE crimes. So those are the two crimes that are already kind of included, consistent with, and then it cites VAWA (Violence Against Women Act). So it's possible if that were to be enacted, that that would be followed by more legislation. That would be discussion in this committee room next session. But again, we don't know what will happen with that, or at least I don't. Then if you have a non-Indian defendant and a non-Indian victim or a victimless crime, there's no Tribal jurisdiction. That's the same as federal law. A large difference between default federal law and what happens in Maine is in this next category, which is the jurisdiction of the state courts.

So if you have an Indian defendant, remember under federal law, States generally aren't involved in crimes committed by Indian defendants in Indian territory, but

**Janet Stocco (Office of Policy and Legal Analysis):**

in Maine, except for offenses that are in the exclusive jurisdiction of Tribal court as set forth above, state courts have jurisdiction over all non federal, so any state law crime that's committed by an adult or juvenile. Janet Stocco: And then also, it's important to note that if there is a prosecution in state court and there's what's called a lesser included offense, which I am not a criminal attorney, so I will defer to people who are much more schooled in that than me, but if it's a lesser crime and it's something that would have been in the Tribal court's jurisdiction, but the jury finds that they don't have enough proof to say that the larger offense, then they can still convict them on the lesser offense, because they're already before the state court, even though it would ordinarily only be heard in the Tribal court. And that's literally the best explanation I can give you. You need a criminal lawyer and I'm going to look at Senator Carpenter to try and explain it if you have more of a question.

So then if you have an Indian defendant and a non-Indian victim, that's exclusive state jurisdiction. That's a difference from federal law. If you have a non-Indian defendant and an Indian victim, that's exclusive state jurisdiction, right now. Though we did mention if LD 766 is enacted, the Tribes would have some concurrent jurisdiction here similar to the VAWA jurisdiction, although not exactly identical. If you have a non-Indian defendant and a non-Indian victim, remember this is what the U.S Supreme court said was exclusive state jurisdiction, and that's true in Maine as well.

**Sen Mike Carpenter:** Representative Bailey.

**Rep. Donna Bailey:** Thank you, Mr. Chair. So going back to the Indian defendant, or Indian victim, or victimless crimes, where you say that except for offenses in exclusive jurisdiction of Tribal court, state courts have jurisdiction over non-federal adult crimes and juvenile. Is that exclusive jurisdiction or concurrent?

**Janet Stocco:** It's exclusive, because it's the only other people it could be is the feds. So it's only non-federal crimes, so it's going to be state court.

**Rep. Bailey:** Thank you.

**Janet Stocco (Office of Policy and Legal Analysis):**

Because it's the Tribes have a limited defined jurisdiction and the rest is the state, I guess is the better way to say it. Sen Carpenter: Representative Bailey. Rep. Bailey: So I guess that leads me to a follow up. Are there any areas in criminal law, because that's what we're looking at now, where there is concurrent jurisdiction between state and Tribal courts? In the federal system there is under VAWA and then... Oh, sorry. No. In the federal system there isn't. In Maine, right now, I don't think so either.

**Rep. Bailey:** I mean I don't think so either, but

**Janet Stocco:** But there would be if 766 wasn't

**Rep. Bailey:** If, yeah, if 766. Okay. Thank you.

**Janet Stocco:** Any more? So then in Maine, unlike in the rest of default federal Indian law, there isn't much of a role for the federal courts. So if it's a federal crime, remember we talked about stealing from the U.S mail or certain drug offenses, the federal courts are going to retain that jurisdiction because it's a federal crime that applies in all places. But other than that, there really doesn't appear to be federal court jurisdiction over crimes on Indian territory in Maine.

Then the last little thing, this is probably related to the fact that I went to law school and when you go to law school, you're taught federal courts have jurisdiction over things that are set forth in federal law. And when you read things about criminal jurisdiction in the treatises, they just talk about the court jurisdiction. But because Maine has such a different system, it actually changes who gets to define the crimes. So usually you think if the court has jurisdiction that court's government defined the crime. So if a Tribal court had jurisdiction in federal law, they're looking at a Tribally defined crime. If the federal court has jurisdiction, and under default federal law, they're looking at a federally defined crime. Now it might borrow some state laws when they don't have definitions, but it's still a federal crime. It's a slightly different situation in Maine. So the legislative authorities to define criminal offenses in Indian country, the Tribal government has legislative authority under default federal Indian law, this is page seven, to define all crimes over which the tribal court has exclusive or concurrent jurisdiction.

Remember, I said that's the default rule. If your court is taking care of that case,

**Janet Stocco (Office of Policy and Legal Analysis):**

you're using your government's laws. In Maine, however, Tribal governments generally lack the authority to define the crimes in Indian country. There is an exception. The Passamaquoddy Tribe and the Penobscot Nation have exclusive authority to promulgate and enact ordinances regulating the taking of wildlife

within the respective Indian territories as well as the taking a fish in any pond of less than 10 acres of surface area within their respective Indian territory. This is something Sam will talk to you about when we do the fish and game chart in the future.

So, but I looked online at some of these Tribal ordinances and they do in fact have criminal penalties. So there's a slight area where the Tribes have the authority to make criminal laws, but other than that they are applying state law. So if you look, state legislature's under default federal law, they only have legislative authority to define the crimes within their court jurisdiction. And just to remind you, those are crimes by non-Indians, either against a non-Indian victim or no victim. But in Maine, except in that limited fishing area and hunting area, the definitions of the criminal offenses and juvenile crimes and the punishments applicable, do those criminal offenses and juvenile crimes are governed by the laws of the state.

And then the last page, Congress has legislative authority over Indian country under default federal law. But in Maine, Congress has waived the applicability of several federal criminal laws to Maine. So if you wanted to look at this in your binder, if you happen to have it, it's in the Settlement Act. We printed you the statutes at large, which is like the actual session laws you might think of in the federal government. So the top of the page is 94 stat, 1793. It's section six C of the settlement act, and in that they list all of the federal laws that don't apply in Maine. Those include the General Crimes Act, the Major Crimes Act. So to the extent somebody wanted to, as a Task Force, reach a consensus agreement, we want to go with default federal Indian law. You can't do that without getting rid of this waiver because you're not going to have federal court General Crimes Act and Major Crimes Act jurisdiction unless that's amended.

And then double jeopardy just in case that was something of concern to the Task

Force. So the concept of double jeopardy, like everybody talks about on Law and Order and everything, you're not supposed to be tried twice. But each of the entities is viewed as a sovereign: the federal courts, the state courts and the tribal courts. So those protections don't prevent a prosecution for the same kind of acts, with the one exception of the place where the General Crimes Act says that if a defendant has already been prosecuted and punished in Tribal court, then the federal courts aren't also going to take on that case. That's the one exception. That's by statute in there. Otherwise, there's not double jeopardy because it's dual [inaudible]

**Sen Carpenter:** Representative Dillingham?

**Rep. Kathleen Dillingham:** Thank you. Could you just repeat that again, more slowly for me?

**Janet Stocco:** Sure. So the general rule double jeopardy, we all think of is that if you've been put on trial for murder, say in state court and they lose, so you're acquitted, they can't come back and try you again. You know? So that's when people go out and say, Hey, I actually did it, you know, and I'm free. Then they get sued and they realize that wasn't a wise thing to say.

But the dual sovereign concept is the federal government is a sovereign, the states are sovereign and the Tribes are sovereign. So one sovereign's going to trial doesn't limit the ability of the other sovereign is going to trial. Now they need to have jurisdiction over the case, but if there is concurrent jurisdiction, each of those sovereigns can have a trial and prosecute that individual. There is that one exception, which is in the federal law, specifically under the General Crimes Act. So the federal government isn't going to assume jurisdiction over a case in Indian country if the Tribe has already imposed a penalty under its local law. But otherwise the ability co-exists. And Maine has case law saying the same rules apply in Maine, except we don't have that little carve out.

**Sen Carpenter:** Thank you, Janet. Everybody understand now? Did you have a question? Do you have something you want to say?  
Chief Francis.

**Chief Kirk Francis (Penobscot Nation):**

Thank you for that. I just think you raise some really valid points about, well one about the overall level of inequities that exist right now amongst the Maine Tribes in terms of how they can interact and go about public safety within our communities. But also by talking about the waiver of the General Crimes Act and Major Crimes Act and all that, I think it's extremely important in this tripartite based agreement with the federal government, and I know I'm looking at you and you're just reading the chart, but I think that it's extremely important that the Task Force, whatever approach we take in to get more parity in terms of being in line with federal Indian law that exists throughout Indian country, that we must engage the federal government on this issue and also request their involvement and re-engagement in this relationship and in how crimes are in jurisdiction is gone about in Tribal communities in Maine. They're just going to be a significant part of all of this, I think..

**Janet Stocco:** May I...?

**Chief Kirk Francis (Penobscot Nation):** Because it does provide those gap stops, right? In terms of if there's any concern over, well what happens in this case? Does it leave this level of something not be not taking place while these federal laws that you're citing there make it mandatory for certain crimes to be dealt with by certain jurisdictions, so.

**Janet Stocco (Office of Policy and Legal Analysis):** Yeah. And I just want to be clear I know you know this because you made it clear that you know this, but I just want to be clear to everyone. Generally a nonpartisan staff, we view ourselves as not tied to any party or independent party or anything and where Sam and I are staffing the Task Force, we're not tied either to the state view of how it is or the Tribal view. We try to be neutral. I just wanted to point out things that were different and that I would want to know if I was you and to the extent you view those as inequities, that's totally fine, I just don't want you to think I said that.

**Chief Francis:** That I didn't. I appreciate your time...

**Janet Stocco:** Because I'm not allowed.

**Sen Carpenter:** Questions or comments? Discussion. Let me try the Attorney General's Office. Chris.

**Chris Taub, Attorney General's Office:**

Well, I mean I think that the chart, which I think Janet and Sam put a tremendous amount of work into, and I can't imagine how long it took you to put that together, but there's certainly a lot of effort that went into it. I think that pretty clearly lays out the differences between the way that the Tribes have criminal jurisdiction currently under state law and the way that the Tribes in other parts of the country have jurisdiction under sort of the default federal law.

So I think probably the question for the Task Force now is to what extent do you want to move some or all of the categories more into line with the default federal law. And I think the other issue is, as Janet pointed out, that part of that discussion, and I think as Chief Francis pointed out, is going to have to involve some kind of engagement by the federal government to make sure that we don't end up in a situation with our certain crimes that aren't falling within anyone's jurisdiction. But I think likely those are things that we can work out with the federal government, and I think probably the first step from the Task Force is to consider what exactly you want to do. What crimes do you want to increase jurisdiction for for the Tribes. You want to bring the Tribes completely in line with federal law? Do you want to pick and choose? But I think that's probably what the job of the Task Force is at this point.

**Sen Carpenter:** Representative Bailey?

**Rep. Donna Bailey:** And the other question that perhaps is not as important but just occurred to me as Janet was going through this is: is there any concern, especially with the Tribal members that we look at bringing all Tribes equally in line? Because it looks like there are some differences on how they're treated even currently in terms of who they have jurisdiction over and stuff, and is that something that you want us to look at? And if not, I mean, if my Tribal Task Force members don't care about that, that's not something we need to discuss. But it was striking to me that why is there this different language for the different Tribes?

**Sen Carpenter:** Just before the Chief jumps in, I do think that's an important piece

because we have Tribal courts in two Tribes, authorization in a third and none in the fourth.

**Sen Carpenter:** Chief.

**Chief Kirk Francis (Penobscot Nation):** No, I think those inequities are the problem. And I don't know where every Tribe is in terms of their readiness. I know where we are at Penobscot, but for Houlton Band and for Micmac and others that are trying to build their capacity, I think they should be treated equally under whatever law change we make, with the caveat, until they are ready to exercise that then this is what happens, kind of in those situations. But I don't think we should leave anybody behind on this ever.

**Sen Mike Carpenter:** Right. Chief Sabattus

**Chief Clarissa Sabattus (Houlton Band of the Maliseets):** And just to go off of what he said, I think that... Sorry, what's your name again? (laughter) No, I think that that's exactly how we're feeling, but I also want to make sure that we don't box ourselves into a corner here and say that we have to get approval from the state. Rather I would have it be that when we're ready, we let you know and that we just fall in line with what applies to everyone else. So, and I'm not sure how I feel about picking and choosing, I mean, I think that if we were able to... I mean, I think that federal Indian law should apply, period. I don't think we should try to pick and choose and make it another convoluted mess, like the current one. But that's my opinion.

**Sen Mike Carpenter:** Just let me play the devil's advocate a little bit. I understand that you don't want to be in a position where the Tribe has to get approval from the state. Currently, there is no court, and we certainly don't want there to be a court, a conviction, a reversal, because in the eyes of some appellate body, the courts did not offer sufficient due process, or whatever. So how do we get around that? I mean, we've been proceeding on the assumption that the Penobscot Tribal Court and the Passamaquoddy Tribal Court are up and running and fully functioning, which they have been for some time. So I guess there was no certification for them at the outset. Am I right? And this is historical stuff, I don't know the answer to. Chief Francis? Who said, if anybody, "Yeah, okay, you're good to go."

**Chief Kirk Francis(Penobscot Nation):** I think it's in the statute on how we're allowed to operate and I don't know the whole background. I was nine years old then, so I'm not really sure. But, we certainly can get those answers for you, and if anybody in the room knows, but I know we get our authority through the statute on full faith and credit in the whole..

**Sen Carpenter:** Through the Implementing Act?.

**Chief Francis:** Yes.

**Sen Carpenter:** And the Passamaquoddys as well through the Implementing Act, am I right?

**Chief Francis:** But I think what the Chief was saying was not to go through some approval process right now. But not to have to keep coming back to the state like we're ready and then this evaluation. So setting the criteria now I think would be important.

**Sen Carpenter:** Representative Bailey.

**Rep. Bailey:** But I think that's why it would be helpful to hear what was the evolution with the Penobscot and Passamaquoddy, and use that as a model, if you will. So if there is language and the Implementing Act, Janet, or how that came about.

**Janet Stocco:** I'm not sure how that came about. I'm sure Sam's writing that down on our todo list. But I will point out that the way the statute is written now, and the attorney for the Aroostook Band Micmacs agreed. He and I were both reading the same thing at the same time, that it's just a notice. So if the Houlton Band of Maliseet Indians has a Tribal court, and they want to assert jurisdiction over any or all of the categories laid out in the statute, they have to give the Attorney General's office 30 days notice. There's no prior approval or inspection or any kind of thing like that.

I just wanted to make sure everybody knew that was the state of the law now.

**Sen Carpenter:** Right. And so obviously, I don't mean to be pejorative, but I mean if the Maliseets decided to set up a Tribal court that was inferior in some way in terms of due process or constitutional protections or something that would subject their decisions to review and reversal and all that. And I don't remember, and I was around back then, I was older than nine back then, but I don't remember there was any approval process. I think that the implementing act just

assumed a competent court. In both instances, the Passamaquoddys and the Penobscots, and I don't remember any report.

**Chief Kirk Francis(Penobscot Nation):** Yeah, so, if you look at courts in general, whether they're states, federal or Tribal courts, there's really no certification process for any court. I think it was agreed to at the time that the Tribes would want to exercise this jurisdiction of prosecuting crimes in their own territory under their own Tribal courts. And that's acknowledged. But also just in terms of due process, and I know we'll get into some of this going forward. So at Penobscot, I know we have jury trials at Penobscot. We provide counsel from the time people enter the court system, we have all the constitutional protections in place for defendants and those defendants that feel aggrieved in our court system, they have appeals processes. And so I would say a much more protective system of defendant's rights that in the VAWA for example, it lays out a lot of extra steps in a lot of jurisdictional involvement that can take place under exercise of VAWA.

So people can, for example in VAWA, they can petition to the federal court, they can petition to other courts, other courts can be involved at the same time. There is a whole host of things that can take place. And in our court system, our jury system is not limited to to Indians. So we draw from a pool of all community members. Most of the time the make up of that jury is split Indian and non-Indian. So people are truly getting judged by their peers. And you know, I would challenge any court system in the state to come up with the last dozen Indian cases from a criminal standpoint and tell me how many Native Americans were on those juries. So I think we have to start looking at, I think Indian people in this state, when we talk about jurisdiction over Indians and everybody, nobody disagrees with that.

**Rep. Donna Bailey:** We have exclusive jurisdiction over certain crimes pertaining to Indians. Where we kind of get into disagreements sometimes is when we want to expand that to non-Indian crimes in our community. And I just don't understand why nobody has a problem, and I'm not saying anybody here's expressed that problem. I'm just saying I don't understand why people have a problem with, "go ahead and go prosecute your Indians that, but we have a problem with you prosecuting non-Indians." You know, Indians in this state are also citizens of the state of Maine and are due the protections that everybody

else are. And so there's concerns about the court from a prosecutorial standpoint or a due process standpoint, we should really in an in depth way have that conversation so that everybody gets a full understanding that these courts are operating at a very, very high level and have a lot of flexibility through Restorative Justice, for example. Through the ability to hear cases in, in a quick time so or in a timely manner.

**Chief Kirk Francis (Penobscot Nation):** So that a lot of the problems in the violence against women stuff is, we're servicing a lot more women in our programs that are going through the prosecutorial system with their cases because they have to go to other jurisdictions. That's very challenging for Tribal people, especially Tribal victims. And also a lot of times these cases take a year, year and a half. By then, victims have tried to heal themselves. They don't want to be revictimized again. So there's a whole host of things that are local response by a Tribal Court and Tribal judicial system, and our public safety department can handle in a much more productive way through a local response no matter who that is. So, little bit all over the place there but [crosstalk].

**Sen Mike Carpenter:** No, no, that's good. Good. A historical perspective and I hear you, I hear your concerns. So , Janet.. Yes, go ahead Janet.

**Janet Stocco:** I just wanted to point out, I didn't read everything on the chart, but footnote 11 points out that when the Tribes exercise their jurisdiction, Maine law incorporates a lot of the Indian Civil Rights Act. So a lot of the protections that I talked about already apply. So the Indian Civil Rights Act, if you see footnote 11 just as a background, doesn't matter. The penalty requires the courts to protect the rights to speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against them to have compulsory process for obtaining witnesses in their favor, and to hire a counsel.

So those background rules apply in Maine, and the background rules that are applicable for federal Indian law for \$5,000 fine and up to one year imprisonment. That also was incorporated. So all of the requirements for the defendant, it's just the enhanced requirements for \$15,000 fine or three year imprisonment because that authority is not given to Tribal courts in Maine. Those enhanced protections don't automatically apply in Maine, but Maine already incorporates a lot of the due process protections, just not necessarily all of them.

But it is specifically written into the Implementing Act that those sections of federal law apply.

**Sen Carpenter:** Other comments? Yes, go ahead. Yep. Did you have a question?

**Jamie Bissonnette Lewey, Maine Indian Tribal State Commission(MITSC):** I just wanted to make a comment that when a Tribe undergoes the process to develop a Tribal court, that there is, they apply to the federal government for funds to develop that court and go through a process of consultation so that all of the protections are built into the development of the court.

**Sen Carpenter:** Thank you. Janet, back to footnote 11 Indian Civil Rights Act. I assume that preceded the Settlement Act.

**Janet Stocco:** Yep. So, for example, if you look act 6209A, subsection two. If you're looking in the binders, it's labeled page 138. It's obviously not page 138 in the binder, but that's the label on it. So this is this section for the Passamaquoddy Tribal Court. There's similar language elsewhere.

**Sen Carpenter:** What page again? I'm sorry.

**Janet Stocco:** It's called page 138. So subsection two of the Passamaquoddy Tribal Court statute. The first part of it talks about the fact that the definitions of all the crimes are under state law. The issuance and execution of criminal process is governed by the laws of the state. And then it says, that 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 25 USC section 1301 to 1303 and in there is the Indian Civil Rights Act.

So the background, things about speedy and public trial, knowing the charges against you, being able to confront the witnesses against you, hiring counsel, all those background rules apply to Tribal courts, under the Implementing Act. There were some enhanced things, which is in 1302 because that's in between 1301 and 1303. So there are some enhanced due process protections, but those apply when you are able to impose more than one year of imprisonment. So I don't think they automatically imply it in Maine, maybe because the Tribal courts can't impose more than one year imprisonment under current Maine law. It doesn't mean they don't give those protections. They're just not necessarily required to. Does that make sense?

**Sen Carpenter:** I think so.

**Janet Stocco:** I hope so.

**Sen Carpenter:** So I'm looking for somebody to... Chief Peter Paul

**Chief Edward Peter Paul (Aroostook Band of Micmacs):** I just, we have something to say, could I have Craig stand up for a minute and...

**Sen Carpenter:** Sure, your attorney?

**Craig Sanborn Legal counsel, Aroostook Band of Micmacs):** So I guess the one area that the Tribes we're looking at, or contesting was where they said that only the laws that they follow were created by the state of Maine, that one provision. There was a section in the 6206-1. It carves out, especially for the Penobscot and Passamaquoddy, internal Tribal matter, where they, that source of power is not given. It's something that they've always had. So they would argue or at least posit that they have the right to create law themselves, at least in that area. And also in that one section, it gives the rights to the Tribes to create ordinances. I would also add that with the Aroostook Band of Micmacs, under the [inaudible ] case, they refer back onto the federal side, 1725A. That their act or their authority is, will be dictated by their act, their implementing act.

And of course there's a cloud on that, that we don't know if that's valid. So for the jurisdiction of, at least for the Aroostook Band of Micmacs, that is, their source of authority is... Right now we don't know what it is or we haven't agreed to what it is. So we would also, we would reserve that, that any law that we create is not derived through the, at least through the 1980 implementing act for us. Thank you.

**Sen Carpenter:** Yeah, and I think that's probably an important clarification we've been talking, throughout this process. Not to the exclusion of the Micmac Settlement Act, but recognizing I think that there is a question about the validity of the Act and that's something to be decided by somebody other than us. I don't think we're talking that we want to exclude, nor are we assuming. I think, I'm not assuming anything that you folks are automatically in the same boat, if you will, as the other three Tribes, the other four Tribes. So, but that's probably good to say.

I'm looking, I'm open to suggestion about how we move forward from here, whether it's a motion or whatever. We need to begin discussing whether or not

we're going to propose changes, propose changes to the criminal jurisdiction aspect of the Settlement Act, or whether we're going to stay the same or whatever. So at this point we need, look like your hands about to pop up. Representative Bailey.

**Rep. Bailey:** Yeah. But you're going to be disappointed because I'm not going to dive there. But a place I thought we could start would be something that I hope there's general consensus around this Task Force and that we could at least have one positive vote, which would be to support the governor assigning and implementing LD-766, which is the VAWA So that's where I'd like to start just because it's concrete, it's pretty easy to understand and let's at least have a discussion on that particular aspect because it is an important piece in the criminal jurisdiction. So I open it up to discussion.

**Sen Carpenter:** Is there any... Representative Dillingham. Well okay, go ahead representative Dillingham has a question.

**Rep. Kathleen Dillingham:** So it's my understanding that there's been requests that will be coming before the legislative council on Wednesday to extend our number of meetings. In that request then, are you assuming that any sort of reporting out would be at the, if it's approved, at the end of the four additional meetings that you're requesting?

**Sen Carpenter:** If we didn't say that in the request, yeah, that would be the assumption. Either that or we are going to spend four meetings just kind of chatting. And we're not going to get this resolved today probably.

**Rep. Dillingham:** Right. Where I am a member sitting on legislative council. I'm happy to tell you, that I certainly would be supporting that recommendation. And at this point, I am not ready to make any sort of motions on the information before us. Okay.

**Sen Carpenter:** Representative Perry.

**Rep. Anne Perry:** Yeah, I have a question on process. It would to me make sense that we look at both of these. My inclination is to look as much as we can to go to federal law, but let's look at each of these items and see what we can agree on and move forward so we can do one piece at a time.

**Sen Carpenter:** I'm just looking for direction, so that sounds like a direction to me. Unless somebody objects. We'll flip back to page two. So for purposes of general criminal jurisdiction, I think we can maybe move past the possible concurrent jurisdiction issue and go to the next section, which is exclusive jurisdiction over other crimes committed against an Indian victim. Right now...

**Speaker 7:** What page are you on?

**Sen Carpenter:** Page two. Sorry.

**Speaker 7:** All right, [inaudible] to look at page one.

**Sen Carpenter:** Okay. All right. On page one we have the, the location of the criminal conduct, which is important, obviously. So where we're different. Help me out here, Janet.

**Janet Stocco (Office of Policy and Legal Analysis):** So the differences are categories B and C in Indian Country definition under federal law. So there's the concept of dependent Indian communities, but those have to be federally recognized and under federal superintendents, which at the moment doesn't really apply in Maine, because it's kind of, I mean, I'm not an expert in this area, and I invite everybody to correct me on this. It seems quite different [inaudible] in Maine, but maybe that's wrong. And then the allotments, I don't think that that ever happened in Maine, so I don't know that that applies. But if you look at it as category A, which is the reservation and then the idea of the dependent Indian communities, to me at least looks analogous to the idea that you can extend it. There's a group of 25 or more people they petition MITSC. Maybe that's the wrong process, but they petition MITSC and get the extension. Maybe that's too cumbersome of a process and the idea of the dependent Indian community sort of, or automatic is better. I don't know. I leave that to you all.

**Sen Carpenter:** I believe the attorney for the Passamaquoddy.. Go ahead, Corey. Just introduce yourselves because you're on mic.

**Corey Hinton (legal counsel for Passamaquoddy Tribe):** Yes sir. Thank you very much. My name is Corey Hinton. I'm an attorney for the Passamaquoddy Tribe. I just want to add a clarifying point. The general rule under federal Indian law is that lands that are held in trust for Tribes regardless of whether they're considered reservation lands, would be subject to the criminal jurisdiction of a Tribal government. So for purposes of this first chart, there's a focus on land within the limits of a reservation. I would just sort of note that that is actually not

**Corey Hinton (legal counsel for Passamaquoddy Tribe):**

the full rule and so any lands held in trust for the Navajo Nation regardless of whether or not it's a part of the central reservation would be subject to the federal rules of Indian law for criminal jurisdiction. And therefore criminal jurisdiction of Navajo Nation would be in place on those trust lands even though they are not reservation lands.

And that's a very significant point here in Maine because the Tribes have trust land to go far beyond the reservation boundaries.

**Sen Carpenter:** Would that be picked up by the definition in D or not?

**Corey Hinton:** No, it would not. Neither of these definitions would pick that up.

**Sen Carpenter:** Okay. What definition would you propose to pick that up? All land within the limits of any Indian reservation?

**Corey Hinton (legal counsel for Passamaquoddy Tribe):** No, I would say that any lands held in trust for a Tribe would be subject to that Tribe's jurisdiction.

**Sen Carpenter:** I was simply going to put the word, or, after the word reservation.

**Corey Hinton:** I see. Yeah. I mean if we're working with that language specifically, we could. But I mean, if you're working within the definitions of the Settlement Act or the Implementing Act, the Implementing Act recognizes a much more broad definition that encompasses reservation and trust land.

**Sen Carpenter:** Oh it does..? Okay.

**Corey Hinton (legal counsel for Passamaquoddy Tribe):** And that sort of definition might be, might be appropriate here. Just a clarifying point.

**Sen Carpenter:** So for our purposes, if we accepted your suggestion, we would be expanding the term Indian country? As it's viewed in the federal law?

**Corey Hinton (legal counsel for Passamaquoddy Tribe):** : To some extent, but not really. So I mean, Indian country for purposes of this statute could be these categories of lands, but Indian country viewed more broadly includes these

categories plus all other trust lands. So, under the Settlement Act or under federal law, a Tribe can always bring in additional lands to become part of its land base. And those lands may not be on the reservation, but under federal law, all of those lands, which would be trust lands, would be subject to that tribe's jurisdiction.

**Sen Carpenter:** Let me just jump back. Because if you look to the right side, it says committed under reservation.

**Corey Hinton:** Yes.

**Sen Carpenter:** But you're saying that the definition within the Settlement Act of reservation is greater than just the physical boundaries of the reservation?

**Corey Hinton:** No, I'm saying that that there are actually, I believe that the term is trust. It's like Passamaquoddy territory, Penobscot territory, Indian territory. So like, the Indian territory of that Tribe would include reservation and trust land. And so just to put a finer point on it, for purposes here, under current law, you could be in lands far from the reservation and could be committing a crime under state law, under tribal law. But who exercises jurisdiction? Does anybody exercise jurisdiction over that? Is a real open question because just from a law enforcement perspective, the limited ability to exercise jurisdiction is only accentuated when you're in those far flung areas, which are part of our territory.

**Sen Carpenter:** Okay. Representative Dillingham.

**Rep. Kathleen Dillingham:** Thank you. Just brings to mind a question. Is there a listing of all the trust lands and where they are located?

**Corey Hinton:** There may be. I don't have that with me, but I believe that there is a federal process for all those lands to be cataloged, and so you could submit a request to the federal land title records office, which is a part of the Bureau of Indian affairs, and they'd probably be able to provide that. They should have official documentation or something like that. So it does exist somewhere.

**Rep. Dillingham:** Would it be possible to get that information for commission?

**Sen Carpenter:** I think Chief Francis is about to answer your question.

**Chief Kirk Francis (Penobscot Nation):** I think, every Tribe sitting here has a well

documented record of those land holdings in the state, with maps. And certainly at Penobscot, we could get those to the task force fairly quickly.

**Sen Carpenter:** And I wasn't aware that there was any kind of a federal registry, was there?

**Speaker 7:** [inaudible].

**Sen Carpenter:** Yeah. If we could ask the tribes to do that, that might be helpful. All the Tribes. Pardon?

**Speaker 7:** [inaudible].

**en Carpenter:** Yeah, exactly.

**Speaker 15:** [inaudible] list the trust land [inaudible] or a list [inaudible]

**Sen Carpenter:** Just in the state of Maine.

**Chief Edward PeterPaul (Arooskook Band of Micmac):** What about any other reservation [inaudible]?

**Sen Carpenter:** I would say reservation land and and trust land.

**Chief Peter Paul:** [inaudible]?

**Sen Carpenter:** Yep. Hi Corey, you've changed all of a sudden. (laughter) Yes, Mr Sanborn.

**Craig Sanborn(legal counsel Aroostook Band of Micmac):** Speaking on behalf of the Aroostook Band. So in 6209A,, that's with the whole Houlton Band's jurisdiction? She had made a note, the State had made a note that their laws only applied on a subset of their trust land and for the same reason that what Corey just stated, once the tribe has trusts land and they're operating on that land, they could be cutting or whatever the activity is. Our position is that the Tribe should have jurisdiction over that land. So it wouldn't be a subset. It would be all of their trust lands. To the extent that we enter into a deal, the Aroostook Band is also looking at all of its trust lands that it would have criminal jurisdiction or civil jurisdiction over as well. That's it.

**Sen Carpenter:** Okay. Thank you. Chris Taub.

**Chris Taub, Attorney General's Office:** So I just want to make sure I kind of understand, where the discussion's going, but my understanding is from Corey's that..Well, to step back a little bit. There's Indian territory, which is a broader

category, and so Indian territory includes both the reservation itself and then also land that's been taken in, into trust. And so my understanding currently is that, to the extent the Tribes have criminal jurisdiction, it's just over the reservation and not over this broader category of Indian territory. And so I think if what the discussion is to whether, in addition to broadening categories of crimes, that we also broaden sort of the geographic reach to Indian territory. I think it might be helpful, beyond just getting sort of a list of the lands, to actually get a map so that the Task Force could actually visualize where in the state these different areas are.

Because my understanding is they might not be contiguous that like there might be a pocket of trust land here and a pocket of trust land there, and just getting a list of sort of all the holdings might not be as helpful as actually being able to see on a map where everything is.

**Sen Carpenter:** Excuse me. I think that could be very important because right now we all understand where their reservations are, but you're talking land, I know in Oxford County, land in Franklin County and places that the tribes have acquired land and taken it into trust. So, yes Mr. Sanborn.

**Craig Sanborn:** So just for a practical matter, some of the Tribes have individual homesteads on outlying trust lands. So there's a mechanism that if it gets up to 25 they can do an extended reservation. But that still doesn't negate the fact that there are currently some households that are living on trust lands that are not under the authority of the Tribe. The Tribes aren't able to protect their health, welfare and safety. And so I don't see it as a, what's the difference of just changing that to territory to include the reservation? I really don't see what the burden would be on that, to extend that.

**Sen Carpenter:** I don't know that this is a suggestion of a burden. I think we just need to know where the, what we're talking about. Okay. Just definitionally I think we need to and the maps...

**Sen Carpenter:**  
Chief Francis.

**Chief Kirk Francis:**

Yeah. Just as a matter to the Attorney General's Office point. I'm not sure where we're going at this point, but I've got like four things that I thought we were focusing on in the conversation. And while I realize some people may not be ready to vote today, we've been sitting at this table since April now? Or May? And been to every meeting and I think we have these four questions--- Should all Maine Tribes be treated equally? We talked about that in the statute. Should the Tribes be restored to felony jurisdiction? We've discussed that. Restored jurisdiction over non-Indians. And do we want the federal government to -- which it sounds like they're going to have to -- play a role in exercise and concurrent jurisdiction? I think we ought to focus on those four things and take action on at least moving those forward. Because I don't know where we are on the agenda today- if we're going to get to civil jurisdiction.

But I think I'm getting some action items done today, I think is going to be important to the integrity of the process going forward. We don't know if we're going to get these extra meetings. We're assuming we will and where that puts us in a short session kind of concerns me a little bit. So, it's just one person's suggestion, but I think those four items that we were focused on coming in, if we could just get action on, we want a federal default in this area, this area, not in this area, and then we can continue to build our requests to the legislature.

**Sen Mike Carpenter:**

I hear the frustration and I'm certainly not trying to slow things down. I'm just trying to make sure we all understand the definitions, what we're dealing with here. And it appears that there have been some misunderstandings in terms of what we're talking about, whether we're talking about Indian country, Indian territory, a reservation, non reservation. I'm just trying to get that clarified. I am not by any means, I don't think anybody is trying to slow the process down.  
Representative Perry.

**Rep. Anne Perry:**

In reading, in the nutshell here, I'm on page 146 looking at reservation establishment, this is under criminal and civil jurisdiction. The second paragraph down talks about Yankton Sioux Tribe - where am I? I'm going to miss it. That paragraph anyway. It really talks about independent communities and allotments in trust as being part of the definition of reservation, [crosstalk] informal

reservation and I'm thinking that's where that's coming from. I'm sorry, but this to me sounds like federal law-

**Allison Binney ( legislative counsel to Penobscot Nation):**

Hi, it is. So this is Allison-

**Sen Carpenter:**

Identify your-

**Allison Binney:**

This Allison Binney, I am legislative counsel to Penobscot Nation. So the confusion, I think, is just the default Federal Indian law is Tribes exercise criminal jurisdiction over any lands owned in trust status or restricted fee. So not all land that Tribes own is in trust status. Some of it's in restricted fee status. So it is smaller in Maine. The Implementing Act actually is narrower than default federal Indian law over criminal jurisdiction that the tribes can do.

I think that was the point. I think the desire, at least for some Tribes here in Maine, is to make it default Indian law. Which would include allotments or anything that's held in trust status. So allotments typically are held in trust status, but there is restricted fee status too. Here in Maine, some of the Tribes own fee simple land as well. So that's not considered Indian Country under default Indian law rules. But I think that's where the discussion was, with the broader scope of default Indian laws is broader than what's currently in the Maine Implementing Act. The Maine Implementing Act limits the jurisdiction to reservations and there's a definition. But under default Indian law, it's broader, to sound consistent.

**Sen Carpenter:**

Thank you. I'm looking for somebody to make a motion, I guess. If you're ready too.

**Rep. Perry:**

I would like to go to default Indian law over what's listed in the Settlement Act. So I'll make that motion.

**Sen Carpenter:**

With regard to which lands we're talking about? Just a section?

**Rep. Perry:**

Yeah.

**Sen Carpenter:**

Okay. There's a motion-

**Janet Stocco (Office of Policy and Legal Analysis):**

Can I ask for clarification of the motion?

**Sen Carpenter:**

Pardon?

**Janet Stocco:**

Can I ask for clarification of the motion?

**Sen Carpenter:**

Sure.

**Janet Stocco:**

Is the idea to go with what Mr. Hinton said, which was to go to the broader Indian territory, and be specific it's all Indian territory for the Passamaquoddy Tribe in the Penobscot Nation? And then, the Houlton Band Trust Land as opposed to just the jurisdiction land subset? Because they don't call it the same thing? That's very helpful in the Act. And I'm not sure with the Micmac.

**Rep. Perry:**

[crosstalk] I'm really looking at the federal definition of what goes with jurisdiction over Indian lands and what they are.

**Sen Carpenter:**

Representative Bailey.

**Rep. Bailey:**

So I still need clarification on the motion because when you say the federal

definition, do you mean what is set forth on page one under default federal Indian law? That definition? Because again I don't think that definition-

**Rep. Perry:**

No, I'm not looking at that definition.

**Rep. Bailey:**

Okay.

**Rep. Perry:**

And I've got to say that going back looking at the Canbey nutshell. It really does look half the definition through the legal process of what is jurisdiction over territory. And I'm suggesting that we use the definition that is defined by the courts and stuff for what that territory is. Is that making sense?

**Sen Carpenter:**

What's your question? I'm sorry.

**Janet Stocco:**

[crosstalk] Maybe. The Canbey Treatise is interpreting. They're talking about the case as interpreting this definition.

**Rep. Perry:**

Right.

I didn't see anything about the independent Indian or the trusts lands as being a part of the jurisdiction. Yeah.

**Janet Stocco:**

They're in B and C.

**Sen Carpenter:**

So this definition that you've pulled together on page one would encompass-

**Janet Stocco:**

That's quoting a statute.

**Sen Carpenter:**

Pardon?

**Janet Stocco (Office of Policy and Legal Analysis):**

So that's quoting the statute and then they Canbey Treatise is talking about cases interpreting that statute. So, I think there's two ways to look at it.

You adopt the federal law, which has all these court cases and swirling mysteries around it-- at least in my opinion-- since all the law review articles are talking about untangling the web or going through the maze or all those things. Or just say we have definitions in Maine law and we're going to go to the broadest ones. I don't know which one's right, but I can understand the second one better. It doesn't mean you can't do the first one. And maybe it's the right way to go with the first one.

**Sen Carpenter:**

Representative Bailey.

**Rep. Bailey:**

I mean I like the second part better so that we are clear. I think clarity is important. So let's just be clear what we mean. Which is we're looking at expanding the current definition to make sure we include ... And that's where I need help with the language we need. We're obviously want to include trust land, but I don't know if that's the correct terminology.

And I only brought that up because I thought that's what Mr. Hinton said, but I could have misinterpreted him. So that's what I thought he was saying.

I don't particularly care for the federal definition here, only because again, it talks about dependent Indian communities in Indian allotments and I don't think we have that here in Maine. So I don't find that definition particularly helpful as to what we're trying to get at. That's the only reason I don't like it.

**Sen Carpenter:**

I'm just not sure how many people we want get at the table here, that's the problem.

Mr. Chavaree, are you an attorney for the Penobscots in ...

**Mark Chavaree (Penobscot Nation legal counsel):**

Yes. [inaudible] I think we're getting kind of bogged down here and from my own standpoint-

**Sen Carpenter:**

Sir, microphone. Nope, there you go. Bingo. Thank you.

**Mark Chavaree:**

[crosstalk] My name is Mark Chavaree, I'm the in house legal counsel for Penobscot Indian Nation. And I'm just trying to move this discussion along. I think as the Attorney General pointed out, in Maine, right now the Tribes are limited to criminal jurisdiction for crimes committed within the reservation. And I think the discussion is about expanding that. And I don't think we need to get bogged down in these federal definitions under Maine law.

In the Implementing Act, there's already a term called "Indian territory," which includes the original reservation and any expansion of the reservation and includes our trust lands. So I think, and I obviously can't speak for Tribal leadership, but as their advisor, I would say I would be comfortable just saying Indian territory.

So we would take the definition of crimes that occur within our reservation to crimes that occur within our territory. And then we won't have to get bogged down in what Indian country means for purposes of the federal. It would be very clear in my mind that it's our reservation and it's our trust lands and that's Indian territory.

**Sen Carpenter:**

Thank you Mark for the clarification. Representative Perry, back to your motion. What's your motion?

**Rep. Perry:**

Yes. Well, what we could do, and looking at the Claims Act is... Because what I'm seeing is each reservation is defined. And if we are going to try to treat, policy-wise, each Tribe equally, is to maybe look at defining what Indian territory is. To include trust lands and just leave that as that and not necessarily define what those territories are in each band.

**Janet Stocco (Office of Policy and Legal Analysis):**

So Indian territory is defined for the Penobscots and for the Passamaquoddy's, so that's defined. And then there's Houlton Band Trust Land, which is defined.

**Sen Carpenter:**

But if I understand the motion we were looking at treating all three tribes the same.

**Janet Stocco:**

I'm just trying to say they're already defined.

**Chief Clarissa Sabattus (Houlton Band of the Maliseet):**

They're not, that's not accurate. That would box us in. We have trust land and if it was worded the same, I think that would be fair.

I don't think that saying this parcel and this parcel are it, as far as trust lands go, because that's not accurate.

**Janet Stocco:**

So I was being confusing and I apologize. So we had that conversation before about the jurisdiction land, which is a limited part of the trust land. And I think I'm understanding motion correctly, that it's to go with, if you go Passamaquoddy and Penobscot, go from the narrower reservation to the broader Indian territory. And then for the Houlton Band of the Maliseet Indians go from the narrower A and B jurisdiction land to actually all of the trust land. And I'm sorry if I misled you and confused you in that. All right.

**Sen Mike Carpenter:**

That's what I think.

**Rep. Anne Perry:**

I guess what I'm trying to do is to not define each one of these things about what each Tribe is, but to do a general statement of what Indian territory is. And it includes this. And then...

**Allison Binney (Legislative counsel to Penobscot Nation):**

Allison Binney, again, legislative counsel. I think Representative Perry -- what

she's, I think trying to say is, there's processes where these Tribes can acquire additional lands and put them in trust, right? In a streamline process under the Settlement Act. So if you want to be kind of more strict, closer to federal Indian law, you probably would have to tweak and make it consistent for all the Tribes. But I think it would just be any trust or restricted fee lands held by the Tribes.

**Allison Binney:**

Yeah. Now or in the future. I mean just any trusts are restricted fee lands.

**Sen Carpenter:**

You get that, Janet?

**Allison Binney:**

The lawyers would have to wordsmith that because Houlton Band is...because each Tribe's treat it differently in the Settlement Act? You would have to go through and probably strike out some things and just have one definition. And maybe you just tweak the definition of Indian territory to encompass trust and restricted fee lands.

**Rep. Perry:**

Yeah. So that everybody has the same status.

**Allison Binney (legislative counsel for Penobscot Nation):**

Thank you. I think.

**Sen Carpenter:**

Thank you. Now and there's a motion that's on the floor. I have not heard a second. Janet, you want to read it back to us?

**Janet Stocco:**

Sure. That the definition, I don't know what we're going to call it, but the land over which this criminal jurisdiction attaches, for lack of a better word at the moment, is any trust or restricted fee lands held by the Tribes now or in the future? Are we saying that Tribes or their members or what are we saying? Or can we work that out later?

**Rep. Perry:**

I would just say in the trust or fee restricted fee lands. Oh sorry...

**Allison Binney:**

So this is allotments, so I don't know that any of that exists in Maine. I don't think allotments exist in Maine. That'd be the only time you would have individually owned Indian land that was held in title to them that would be in trusts or restricted fee. Otherwise it's tribally owned land. They might through a-- what do you call them at Penobscot? Lots of tribes have it where it's tribally owned land in trust, but they do like a life estate to their members.

**Mark Chavaree (Penobscot Nation legal counsel):**

They're called Assignments

**Allison Binney:**

Yeah. Assignments. Land assignment. So Tribes do land assignments, but the title itself is actually with the Tribe.

**Sen Carpenter:**

Representative Bailey?

**Rep. Bailey:**

Allison, before you go back, I just wanted to make sure that what Janet just read doesn't now exclude reservation.

**Allison Binney:**

Yeah, the reservations are held... So any reservations are typically held, they derive from treaties and they are held in restricted fee.

**Rep. Bailey:**

Okay.

**Allison Binney:**

But there is a process for trust lands. And Trust lands is the process that goes through where it's actually held by the federal government in trust for the Tribe.

**Rep. Bailey:**

So if we say again, trust land or restricted fee that includes reservations and extended reservations? Okay.

**Allison Binney:**

Yeah.

**Rep. Bailey:**

I just wanted to be clear on that.

**Allison Binney:**

You can have the lawyers re-look at it and wordsmith it, but I think that should encompass both.

**Rep. Bailey:**

I just don't want to be somehow inadvertently excluding reservations by coming up with this new definition.

**Allison Binney:**

Yeah.

**Sen Carpenter:**

Just by way of warning, if I see your brow is furrowed too much, I'm going to call on you. Mr. Taub.

**Chris Taub, AG:**

I just want to bring us back to the way that Indian territory is defined. So just using the Passamaquoddy as an example. Indian territory is defined as their reservation and then certain additional land that's taken into trust on their behalf. But that land that is taken into trust has certain limits. Like there's some geographic limits. So it's land taken into trust within certain areas that are specified in the statute. And to some extent, there's some temporal time limits too. Like, it has to be taken into trust by a certain time period. So my only point is that if we go with language that simply refers to trust lands, then you're going to have a potentially a situation where Tribes have criminal jurisdiction over land that is not part of Indian territory for purposes of the state Settlement Act.

And I don't know if I'm being clear enough, but you're going to have two separate groups of lands. You're going to have Indian territory and then you're also going to have Indian territory plus maybe some additional trust lands. And the second category is what the Tribes would have criminal jurisdiction over. Which would be broader than what's defined in statute as territory. So in terms of clarity, I mean I don't know how the Tribes feel about that. If they want to have a broader scope. But we already have a framework right in the Settlement Act that has this broader land category. And so if that's acceptable to the tribes-- and it might not be, and I can't obviously speak for them-- but if that definition gives them the jurisdiction geographically, that would be a much simpler and cleaner and less ambiguous way of defining it.

**Sen Carpenter:**

Mr. Hinton.

**Corey Hinton (legal counsel, Passamaquoddy Tribe) :**

Thank you sir. I just want to know that the, I don't mean to further complicate things but we're going there anyways. With respect to the definitions of territory, there are territories defined for Passamaquoddy and Penobscot, but by contrast there are no geographical restrictions on the Micmac Tribe or the Aroostook Band, for example.

So I think we have to be very careful about putting too much weight on the existing definitions of territory. I would note that these definitions have been subject to change since the Settlement Act was enacted. I would also note that a lot of the lands that were specifically put aside or designated as eligible to be included in the territory were only put into that category because they were being made available for sale or for gift by logging companies, philanthropists or whoever it might've been. The Tribes' ancestral territories certainly we're far beyond what is designated as territory. And respectfully, I would just say that as we're looking to define that scope of lands for which criminal jurisdiction for the Tribes that apply, we should not be beholden to the geographic limitation in that definition. Because if we're adopting the Tribes' proposal, the Tribes would be able to put lands into trust that are not specifically listed in the statute already. Just like any other Tribe.

And we want to be mindful of creating the situation that Mr. Taub just referenced,

**Corey Hinton (legal counsel, Passamaquoddy Tribe) :**

where if we put land in the trust, a Passamaquoddy Tribe next to the reservation, there's a legitimate chance that it wouldn't qualify as reservation or trust territory, even though it's literally adjacent to the reservation. So therefore I think it's really important to make sure that criminal jurisdiction is tied to reservation lands and trust lands acquired now or in the future. That way you can ensure that you don't get the gap that I think Mr. Taub was describing. That would just be my suggestion.

**Sen Carpenter:**

Mr. Taub, your thoughts?

**Chris Taub, AG:**

I think the gap would be that you would have land that a Tribe would have criminal jurisdiction over, which would potentially be broader than what's defined in the state law as both its reservation and its and its territory. Right? And so what I'm not sure about is how that would impact other parts of the Settlement Act that refer back to certain powers and limits that reference back to Indian territory.

So for example, you might have that the Tribe has the authority to do something on "Indian territory," but that would be a narrower group of land than what it has criminal jurisdiction over. Does that make sense? The way I've described it?

**Corey Hinton (legal counsel, Passamaquoddy Tribe) :**

It does. And I would just say that we should be prepared to have this same exact conversation for civil jurisdiction. Because what Mr. Taub is describing is a situation where a Tribe is looking to exercise a power outside of criminal jurisdiction. And of course we want to be consistent. And so just at the outset we should acknowledge the need to make these expansions or whatever it might be on a consistent basis for all lands. And so again, I think if we just are careful with the language to describe the land, we can use that phrase consistently with respect to criminal and civil jurisdiction, which would include regulatory jurisdiction as well.

**Sen Carpenter:**

So are we in agreement on how to define it?

**Chris Taub, (Attorney General's Office):**

So Corey, let me ask you this. Is one way to do this to just change the definition of territory?

**Sen Carpenter:**

I would say yes. I think that is probably the most effective way to do this.

**Chris Taub, AG:**

Yeah. So for example, right now for the Passamaquoddy it describes Indian territory as their reservation plus and then it lists a whole bunch of different lands, if taken into trust. And so I think one solution would be to upend that and to make it much simpler and just say under your proposal, it would be basically just all lands taken into trust.

**Corey Hinton :**

That's correct.

**Chris Taub, AG:**

Yeah.

**Sen Carpenter:**

And to expand that to include the Maliseets.

**Corey Hinton (legal counsel, Passamquoddy Tribe) :**

And to the extent that there isn't a similar Maliseet or Aroostook Band of Micmac territory definition. Again, I don't have this language in front of me, we're talking about this on the fly. But the lawyers would need to ensure that each of the Tribes have the same jurisdiction. And it might require creating separate language for those Tribes or eliminating and streamlining. But this is sort of a legislative drafting issue that I think it sounds like we could, we could work through pretty easily.

**Sen Carpenter:**

I think so. And again, I'm not looking to exclude the Micmacs. The Micmac, however, have challenged the authority, if you will, of their Settlement Act. So what I anticipate is as we go through this, then at some point the Tribe will have

to decide whether they want to come on board with what we are recommending or whatever. So I'm not excluding them by any means. Charlie and I go back a long ways. But so I just want to make it very clear that I'm not. So I was just adding the Maliseets because they had a different definition of Indian land, if you will. I just want to make sure what just kept those three on board and then the other folks can decide whether they want to do it or not.

Janet?

**Janet Stocco:**

I was just looking at the definition of Houlton Band trust land. And maybe that's a good model because it says "the land or natural resources acquired by the secretary in trust" and it doesn't say in this parcel or that parcel. And so it'd be Indian territory. If you take Mr. Taub and Mr. Hinton's recommendations, you make them look like Houlton band trust land for the other two Tribes.

**Sen Carpenter:**

Mr. Sanborn.

**Craig Sanborn (counsel to Aroostook Band of Micmac):**

One other difference between the Northern Tribes and the Southern Tribes is this idea of a reservation. So historically the Penobscots and the Passamaquoddys always lived or had villages in the area where they lived. And they had restricted fee or reservation lands recognized by the state going back to the beginning of time. The Northern Tribes were nomadic. That was just the way it was. They had Indian possession of the land, but they were nomadic. They didn't have at that time a recognized reservation area, but they do now. And so what I would like is I would like for them, at least for the the Aroostook Band and I would imagine that maybe the Maliseets would like it as well, is that we at least have the ability to petition to convert our trust land into reservation land as well. So we'd like to be able to expand or add a definition of reservation to the Northern Tribes.

**Sen Carpenter:**

Okay. I hear you. That doesn't really deal with what we're trying to do with here though. So we'll come back to that. Janet?

**Janet Stocco:**

So I just wanted to be clear. I was talking to counselor Binney sort of on the side

and she reminded me. So we have the trust land, which the Houlton Band of Maliseet Indians. The way that's defined is pretty clear. It's land acquired in trust. And then there's what she called restricted fee status, which is right now what the reservations are for the other two Tribes. So we would just leave those two categories for those Tribes. But the trust land's already broad and the definition.

**Chief Clarissa Sabattus (Houlton Band of Maliseets):**

I think that if you're going to have restricted fee land, it should apply to all.

**Janet Stocco:**

Okay. I will defer to way you all tell me to draft that because I'm not entirely sure what restricted fee land is. Just being honest.

**Sen Carpenter:**

There is a motion on the floor has not yet been seconded.

**Allison Binney (legislative counsel for Penobscot Nation):**

I think we could work lawyers and sort it out.

**Sen Carpenter:**

Hold on.

**Allison Binney:**

Oh, sorry.

**Sen Carpenter:**

Please. Okay. One at a time. Go ahead.

**Allison Binney:**

Allison. Back again. I think the lawyers could probably wordsmith this out, but so restricted fee is typically reservation lands. So it's land either through a treaty. So it's not land that's been taken into trust status by the federal government, which has to be done affirmatively. And it's actually held in trust for the benefit of the Tribe by the federal government.

Restricted fee land is typically the reservations because it's typically the land that was acknowledged as being the prior reservation. And therefore it's subject to the

Non Intercourse Act. So your settlement is all about eliminating any non Intercourse Act applicability, but it's restricted fee still.

So it's commonly just called treaty title. So it's the land that the Tribes have had forever. Versus trust land, which is typically newly acquired land that's then taken into trust status by the federal government.

**Sen Carpenter:**

Mr. Taub, go ahead.

**Chris Taub, AG:**

How would we identify the restricted fee land?

**Allison Binney:**

So the easiest way I would do it, and I only speak for Penobscot because it's defined already. It's the Penobscot reservation. And you could just leave that part of the Settlement Act in place.

But I think if the concept is restricted fee and trust land, I think the lawyers could wordsmith it out to make sure that we aren't doing something weird. But it's just trust and restricted fee.

**Sen Carpenter:**

I agree. Representative Bailey?

**Rep. Bailey:**

Yes, I was just going to reiterate that. But remember, as a Task Force, we're just making recommendations. So I know we're kind of getting into the weeds of the actual drafting and all that stuff and we want to be clear what our recommendation is. But whatever recommendation we make that then may turn into legislation is going to go before a public hearing, have a work session. It will get worked and clarified and the lawyers and legislative aids will work on it. So just keep that focus. And on that note, so Janet, can you read back what the pending motion is please?

**Janet Stocco:**

To have criminal jurisdiction apply over any trust land are restricted fee lands held by Tribes now or in the future.

**Rep. Bailey:**

Great. I Like that. I'd like to second that motion.

**Sen Carpenter:**

Moved by Representative Perry, seconded by representative Bailey. And before we vote, I just want to point out that this is how this is going to go folks. This is going to be like watching grass grow. Just so you know. This should not have been the most difficult thing that we're going to do on this Task Force. So just be prepared as it's going to be slow and painful, but it's progress. So, further discussions on the motion pending before the Task Force?

All in favor of Representative Perry's motion? Did you get that Janet? Everybody up again please. All in favor. Okay. All opposed? Okay. I didn't count the numbers but it's something to one. One, two, three, four.

**Janet Stocco:**

I counted nine to one.

Sen Carpenter:

Okay. With that successful note, we're going to take a break for about 45 minutes. I'd like everybody back in their seat by 10 minutes of one please. Thank you.