

Chapter 32. Criminal Code

Title 1: GENERAL

Section 1: Jurisdiction

1. The Penobscot Nation asserts its criminal jurisdiction over the Penobscot Indian Territory to the fullest extent authorized under Federal and Penobscot laws, including over non-Indians. In such cases where the Nation asserts its criminal jurisdiction over a non-Indian, a non-Indian defendant retains all the procedural rights of a criminal defendant and must be prosecuted according to the Penobscot laws and Judiciary rules, as may be amended.
2. The Penobscot Nation Judiciary is vested with jurisdiction to enforce all provisions of the Penobscot Nation's laws against a non-Indian who has committed a Covered Crime against an Indian victim within the Penobscot Indian Territory.
3. For purposes of prosecuting non-Indian Violations of Protection Orders, the following conditions must be met:
 - i. The protection order was issued against the defendant,
 - ii. The protection order is consistent with 18 U.S.C. § 2265(b), and
 - iii. The violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.
4. For purposes of prosecuting non-Indian Obstruction of Justice or Assault of Tribal Justice Personnel crimes, the victim need not be Indian.

Title 2: Special Tribal Criminal Jurisdiction “over covered crimes”

Section 1: Covered Crimes

1. **Covered Crimes.** For purposes of exercising criminal jurisdiction over non-Indians, the term ‘covered crime’ means:
 - a. assault of Tribal justice personnel;
 - b. child violence;
 - c. dating violence;
 - d. domestic violence;
 - e. obstruction of justice;
 - f. sexual violence;
 - g. sex trafficking;
 - h. stalking, and
 - i. a violation of a protection order.

Section 2: Defendant's Rights

For purposes of exercising criminal jurisdiction over non-Indians, defendants have the following rights:

1. Every defendant is entitled to those rights enumerated in the Indian Civil Rights Act, 25 U.S.C. §1302.
2. Every defendant has the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution.
3. The Nation must provide any indigent defendant, at trial and on appeal, the assistance of a defense attorney licensed to practice law by any federal, state or tribal jurisdiction in the United States, provided that jurisdiction applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
4. In any criminal proceeding, the presiding judge must:
 - a. Have sufficient legal training to preside over criminal proceedings, and
 - b. Be licensed to practice law by any federal, state or tribal jurisdiction in the United States.
5. In any criminal proceeding, the Judiciary must maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.
6. Every defendant has the privilege of the writ of habeas corpus in a court of the United States to test the legality of their detention by order of the Penobscot Nation.
 - a. Every defendant who is detained in jail or arraigned by the Judiciary must be informed of their federal habeas rights, including the right to stay detention, by being given a written copy of 25 U.S.C. §1302, 25 U.S.C. §1303 and 25 U.S.C. §1304.

Section 3: Definitions

- 1. Assault of Tribal justice personnel.** For purposes of exercising criminal jurisdiction over non-Indians, the term 'assault of Tribal justice personnel' means any violation of the criminal law of the Penobscot Nation that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, the Penobscot Nation or serving the Penobscot Nation during, or because of, the performance or duties of that individual in—
- a. preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;
 - b. adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;
 - c. detaining, providing supervision for, or providing services for persons charged with a covered crime; or
 - d. incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.

2. Child violence. For purposes of exercising criminal jurisdiction over non-Indians, the term ‘child violence’ means the use, threatened use, or attempted use of violence against a child proscribed by the criminal law of the Penobscot Nation.

- a. For purposes this paragraph, the term ‘child’ means a person who has not yet attained the lesser of—
 - i. the age of 18; and
 - ii. except in the case of sexual abuse, the age specified by the criminal law of the Penobscot Nation.

3. Dating violence. For purposes of exercising criminal jurisdiction over non-Indians, the term ‘dating violence’ means any violation of the criminal law of the Penobscot Nation that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

4. Domestic violence. For purposes of exercising criminal jurisdiction over non-Indians, the term ‘domestic violence’ means any violation of the criminal law of the Penobscot Nation that is committed by—

- a. a current or former spouse or intimate partner of the victim;
- b. a person with whom the victim shares a child in common;
- c. a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
- d. a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of the Penobscot Nation.

5. Obstruction of Justice. For purposes of exercising criminal jurisdiction over non-Indians, the term ‘obstruction of justice’ means any violation of the criminal laws of the Penobscot Nation that involves interfering with the administration or due process of the laws of the Penobscot Nation, including any Tribal criminal proceeding, a court order or investigation of a crime.

6. Sexual violence. For purposes of exercising criminal jurisdiction over non-Indians, the term ‘sexual violence’ means any nonconsensual sexual act or contact proscribed by the criminal law of the Penobscot Nation, including in any case in which the victim lacks the capacity to consent to the act.

7. Sex trafficking. For purposes of exercising criminal jurisdiction over non-Indians, the term ‘sex trafficking’ means conduct within the meaning of 18 U.S.C. § 1591.

8. Stalking. For purposes of exercising criminal jurisdiction over non-Indians, the term ‘stalking’ means engaging in a course of conduct directed at a specific person proscribed by the criminal law of the Penobscot Nation that would cause a reasonable person—

- a. to fear for the person’s safety or the safety of others; or
- b. to suffer substantial emotional distress.

9. Violation of a protection order. For purposes of exercising criminal jurisdiction over non-Indians, the term ‘violation of a protection order’ means an act that—

- a. occurs in the Penobscot Nation; and
- b. violates a provision of a protection order that—
 - i. prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - ii. was issued against the defendant;
 - iii. is enforceable by the Penobscot Nation; and
 - iv. is consistent with 18 U.S.C. § 2265(b).

Title 3: Crimes (RESERVED)