

Wabanaki Legal News

A Newsletter of Pine Tree Legal Assistance

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IN THIS ISSUE:

- *Truth and Reconciliation for Wabanaki people*
- *Debt Collection - Know Your Rights*
- *Beware Yo-Yo Auto Sales*

What Is a Will and Why Would I Want One?

by Jim Mitchell, Esq.

A Will is a legal document that states how and to whom your money and property will be distributed when you die. It allows you to control who gets your belongings. A detailed Will can prevent family members and others from fighting about your property in court. So, make a Will if you want to make sure a certain person gets property, money, or a special item.

Please remember that it is a good idea for anyone who owns a house to write a Will even if you believe that your wishes about whom your house should go to are clearly understood.

Please see **Wills**, Page 5



Indian Island

Be Aware of the Long-term Consequences of Criminal Activity

by Sara DePasquale, Esq.

There may be long-term consequences if you plead or are found guilty of a crime. A criminal conviction or juvenile adjudication can impact your life in many ways.

What is a Juvenile Adjudication?

The Maine Juvenile Code applies to a person who is under 18 years old at the time he or she was accused of committing a crime. The state or tribal court “adjudicates” a juvenile if he or she admits to committing the offense or if a court finds the juvenile committed the offense. A juvenile “adjudication” is not a conviction. If you have a juvenile “adjudication” and are asked if you have ever been convicted, the answer is no.

What is a Conviction?

In Maine, a conviction applies to adults (18 years old and older) charged with a crime and found guilty in court. A conviction can happen from a guilty plea or after a hearing where the judge or jury finds the person guilty.

The court can look at your criminal history when sentencing you. If you have a juvenile record in Maine and are charged with a crime as an adult, the court can look at your Class A, B and C juvenile adjudications. Juvenile adjudications for misdemeanors (Class D and E crimes) are not considered.

What is the Difference Between a Felony and Misdemeanor?

- Felonies and misdemeanors are crimes.
- Depending on the age of the person charged, felonies and misdemeanors can result in a conviction (for adults) or adjudication (for juveniles).
- The difference between a felony and misdemeanor is the seriousness of the possible punishment. If the charge could result in a sentence of one year or more, the crime is a felony regardless of the amount of time you are sentenced to or actually serve.
- In Maine, Classes A, B and C crimes are felonies.
- Class D and E offenses are misdemeanors. They have a possible jail sentence of less than 1 year:
 - *Class D (up to 364 days)*
 - *Class E (up to 180 days)*

These sentences apply only if the charges against you were for actions you committed as an adult. If you are charged as

Please see **Consequences**, Page 6

Truth and Reconciliation

by Esther Attean

What is a Truth and Reconciliation Commission?

A TRC is a group of people chosen to investigate a problem and make suggestions about how to make the problem better. This TRC is focusing on what happened to Wabanaki people involved with the Maine child welfare system.

What are the goals of this TRC?

There are three goals:

- To find out and write down what happened
- To give Wabanaki people a place to share their stories and have a voice
- To give the Maine child welfare system suggestions on how it can work better with Wabanaki people

Why have a TRC on Wabanaki people and child welfare?

The United States government has tried many different ways to solve what they called “the Indian problem” - stealing land, killing off entire tribes by war and disease, and by taking Indian children away from their families and communities.

In the 1800’s, different church groups with the support of the government took Indian children and sent them to boarding schools far away from their communities. Children couldn’t speak their own language, wear their own clothes, or practice their own religion. They also treated Indian children badly. Children were abused physically, emotionally, and sexually. Many children died. The ones who made it home after years in these schools were not the same as when they left.

In the 1950’s, the Bureau of Indian Affairs and the Child Welfare League of America did an experiment where they took hundreds of Indian children from their families to raise them in white homes, thinking it was better for them. In Maine, Indian children were taken from their families and placed in white foster homes at a higher rate than most other states.

In 1978, the federal government passed a law called the Indian Child Welfare Act that gave Indian children more protection and recognized a child’s tribal citizenship as being as important as their family relationship. Maine Child Welfare has been working to improve its relationship with Wabanaki tribes and Wabanaki people. A lot of progress has been made, but there are still some problems. This TRC will identify the problems and make suggestions to help fix these problems.

What will this TRC process look like?

The TRC will be made up of five people. They will spend a few months in each tribal community learning the history, getting to know people and their ways of doing things, and listening to people’s stories about what happened to them with Maine Child Welfare.

The TRC will also hear stories from some of the people who

worked for programs that were involved in Indian Child Welfare. The TRC will write a report that includes the information they have gathered (the Truth) and suggestions for how the Maine Child Welfare system can work better with Wabanaki people (the Reconciliation or understanding).

What will be hard about this process?

It will be hard for people to tell their stories because many of these stories are painful to remember. Whether it is a mother who had children taken away, children who were taken away, or other family and friends who were affected by the child welfare system, these stories will not be easy to tell or easy to hear. There is a lot of shame around being involved in the child welfare system and not many people have shared their stories before. There will also be stories about survival and strength.

Who is involved?

The Convening Group is made up of child welfare staff from all of the tribes and the State. There are three people who are paid to work on the TRC planning.

How can I get involved?

There are many ways you can support the TRC in your community, and many ways for tribal members to help:

- Spread the word! – Talk to your family, friends and co-workers about the project; help educate tribal leaders and community members.
- Be a member of the TRC Community Group in your area. There is a group in each tribal community and one for Wabanaki Mental Health in Bangor.
- Share your story with the TRC.

Who do I get in touch with if I want to help or get more information?

Contact your tribal child welfare department, or contact Esther Attean, a Passamaquoddy tribal member and the lead staff person on the TRC at (207) 615-3189. You can e-mail her at: eattean@usm.maine.edu.

Visit our website at: www.mainetribaltrc.org.

Problems With the IRS???

WE MAY BE ABLE TO HELP! Pine Tree Legal Assistance’s Low-Income Taxpayer Clinic (LITC) offers *free* representation to qualifying taxpayers facing the following tax problems:

- *Outstanding tax debt*
- *Levies and liens*
- *Earned Income Credit denials*
- *Exams and audits*
- *Innocent/Injured spouse relief*
- *Tax Court representation*

Call 942-8241 to speak to one of our LITC advocates today.

www.ptla.org/low-income-taxpayer-clinic
FREE TAX WORKSHOPS - CALL US TO ARRANGE FOR A TRAINING ON TAX ISSUES IN YOUR AREA.

Case Notes - Advocacy by Pine Tree's Native American Unit

Denial of Insurance Coverage

The Native American Unit assisted a Penobscot homeowner in a dispute with his insurance company. The insurance company did not renew his homeowner policy because of a negative "community-rating" by an out-of-state rating agency. The rating agency had not visited the Penobscot Reservation. The agency unreasonably assumed that an Indian Reservation would not have a fire department or fire hydrants. As a result, the insurance agency did not renew the homeowner's insurance. The Penobscot Nation has both a fire department and fire hydrants. In fact, there is a fire hydrant right in front of the client's house. The State Bureau of Insurance's Hearing Officer said that the non-renewal was "arbitrary and meaningless." She ordered the insurance company to renew the policy. After that decision, the rating agency did an on-site visit. It gave Indian Island a higher rating than the neighboring town of Milford.

American Indian Religious Freedom Act

The Native Unit represented a Penobscot woman who was threatened with eviction because she was smudging inside her federally subsidized apartment. A neighbor had made a complaint. The landlord said our client had to do her smudging outdoors. We wrote to the landlord. We said the landlord was violating the law, including the American Indian Religious Freedom Act and the Maine Human Rights Act. The landlord contacted a lawyer. We had a settlement conference. We showed that there was no reasonable basis for complaints by other tenants. As a

result, the landlord agreed that our client could continue to practice smudging inside her apartment.

Tribal Housing - Old Debts

We also had two cases where tribal housing authorities were trying to collect old debts. In one case we represented a Passamaquoddy woman in tribal court. Indian Township Housing Authority tried to collect an alleged debt that was more than 17 years old. The Judge said that a 6-year statute of limitations applied to the debt. The judge dismissed the case. As a result, it appears that the Housing Authority has decided not to collect old debts against former tenants. However, it is possible that the Housing Authority may still deny new housing applications from former tenants who have old debts. We encourage anyone who has that problem to contact Pine Tree Legal.

In the second case, we represented a Passamaquoddy elder. He was denied admission to tribal housing at Pleasant Point because of an old alleged debt. Under the law, debts owed to a Housing Authority that are "currently due" can be used to deny an application. Our legal research showed that a debt that would be barred by the statute of limitations should not be considered "currently due." We sent a letter to the Housing Authority. The Housing Authority agreed that the old debt was not a reason to deny admission to our client. That case did not go to court. We encourage anyone with this issue to call the Native American Unit.

YO-YO Auto-Sales: Car Buyers Beware

Buying a new or used car can be a stressful process. You have to decide how much you can afford for a down payment, how much you can pay each month, and what interest rates are reasonable. On top of all of those concerns, new and used car buyers now need to beware of yo-yo auto sales. Yo-yo auto sales typically happen to car buyers with bad or no credit, but all consumers should know some basic information in order to protect themselves.

What is a Yo-Yo Auto Sale?

A yo-yo sale generally occurs in the following way. You, the consumer, purchase a car. A few days, weeks, or months later the car dealer calls you back and says that the financing for the car "fell through." The dealer will often say the loan fell through because of your credit or loan history. The dealer then tells you to either return the car, come to the dealership to sign paperwork for a new loan, or come to the dealership with a co-signer.

When you return to the dealership to review the "new loan" terms and agreement, it will typically have higher interest rates, monthly payments, or otherwise be less affordable. You may feel pressured into signing this new and unaffordable agreement because you think the first loan fell through because of your bad credit. This is not the case. Typically, the dealer did not get as much profit from the sale of the car as he wanted or needed. So, the dealer calls you

Please see **Yo-Yo**, Page 11

OUTREACH SCHEDULE

Passamaquoddy Tribe

Indian Township-Clinic at Peter Dana Point:

1st and 3rd Tuesdays 1pm - 3pm

Sipayik Tribal Courtroom:

2nd and 4th Tuesdays 1pm - 3pm

To make an appointment call: 1-877-213-5630 or 255-8656

Penobscot Nation

Penobscot Tribal Courtroom

Last Tuesday of each month from 10am-12pm

(changes to schedule announced in Tribal Newsletter)

To make an appointment call: 1-877-213-5630 or 1-800-879-7463

Houlton Band of Maliseets

Housing Authority

Last Wednesday of the month 1pm to 3pm, call

1-877-213-5630, local 764-4349

Aroostook Band of Micmacs

The Clinic

Last Wednesday of the month 9am-12pm

call: 1-877-213-5630, local 764-4349

Debt Collection: Understanding Your Rights

When a creditor is trying to collect a debt from you, the law gives the creditor ways to try to collect that money through court. Even if you only co-signed a loan for another person, you are still responsible for that debt just as if you had taken out the loan yourself. When you receive any type of notice from tribal or state court about a debt that you owe or co-signed for, or notice that a creditor is trying to collect a debt, do not ignore it. Call Pine Tree and plan to appear in court on time for your hearing.

If you have been served with a collection notice in the past, but have ignored it, not gone to court, or have not settled the debt, the creditor may have gotten a default judgment against you. This means the court has decided that legally you owe the debt. If there has been a default judgment against you, you will probably get a court subpoena to attend a disclosure hearing. Do not ignore this notice. Contact Pine Tree and plan to appear in court for your hearing.

What is a disclosure hearing?

Once you get a notice to appear in court for a disclosure hearing, it is too late for you to dispute the debt. The time to dispute the debt is when you first get notice that a creditor is trying to collect from you. If you do not respond to that notice and do not attend your first hearing, you have missed your chance to dispute the debt amount.

At the disclosure hearing, the judge will decide whether you have any income or property that the law allows the creditor to take. By law, some or all of your income and property is protected from collection. Exempt income includes:

- TANF
- Social Security and Supplemental Security Income (SSI)
- Veteran's Benefits
- Worker's Compensation
- Maine State Retirement Benefits
- Unemployment Compensation
- Earned Income Tax Credit
- Alimony or support necessary for the debtor or your dependents
- Other forms of public aid

Exempt property includes:

- Between \$47,500 - \$95,000 of equity in your home
- Up to \$5,000 of equity in one vehicle
- Up to \$5,000 of equity in "tools of the trade" - power tools, professional books, and materials necessary for carrying on your trade or business
- Up to \$200 of clothing
- Up to \$200 of equity in household furniture

If a creditor is trying to take any portion of your tribal per capita payments to satisfy your debt, you should contact Pine Tree Legal Assistance immediately.

Bring a list of all of your income and expenses, assets and debts to your court hearing. This will help the judge know what, if anything, you can afford to pay. Remember, even if the judge decides that you cannot pay anything at this time, your debt will not go away. However, the creditor will not be able to request another disclosure hearing for at least 6 months. If it is clear that all of your income and assets are protected from collection and that your income is not likely to change, the creditor may give up trying to collect.

The debt collection process can be complicated. People often agree to make payments they cannot afford because they don't know their rights. Exempt benefits like SSI, TANF, and General Assistance are already too low for people to live on. Anyone who is on public assistance should not agree to a court order to make payments. Before agreeing to any payments, please call Pine Tree for more information and assistance.

News From The North

Jeff Ashby

Greetings from the Presque Isle office of Pine Tree Legal Assistance. We have been holding regular outreach hours in both the Maliseet and Micmac communities. I hope to see you in my travels to your communities.

At Micmac, I hold outreach at the Micmac Health Center. I am there on the last Wednesday of every month from 9:00 a.m. until noon. During outreach, I meet with people who have various legal issues. I discuss with them whether I can help. Recently, I have helped people with border-crossing and housing related matters. Also, I was honored to be invited to a meeting of the new Council and the newly elected Chief, Richard Getchell. I outlined Pine Tree's areas of practice. I also emphasized our commitment to helping Band members with legal issues.

At Maliseet, I was honored to give a presentation on housing admission rules during a Board of Commissioners meeting at the Maliseet Housing Authority. Over the past few months, I have helped several people with housing related issues. They were facing losing their homes and becoming homeless. Regular outreach hours are from 1:00 p.m. to 3:00 p.m. at the Maliseet Housing Authority on the last Wednesday of every month.

Please remember that you can also reach me outside of outreach hours. If you would like to meet at a different time, please call the Presque Isle office to make an appointment.

I wish you the best of health.

Wills

Continued from **Page 1**

Tribal members who are homebuyers in a tribal housing program, but who do not own their home yet, should have a "designated successor" named in the housing agreement with the tribal Housing Authority. A designated successor is the person who will take over your rights to your house after your death. If you would like someone other than the designated successor to inherit your house, name the person you want to inherit your house in your Will. Then, check with your tribal Housing Authority to find out how to change the name of the designated successor to the person named in your Will.

After you create a Will, you sign it in front of two witnesses. The witnesses sign it as well. Your Will is only final at the time of your death. This means you can change your Will at any time but those changes should be made with the same formality as your original Will. If you want to change your Will, contact the Volunteer Lawyers Project for advice.

If you die without a Will ("intestate") a court will decide who gets your property. It will decide how to distribute your property according to applicable laws.

Who Makes Sure That My Will is Followed?

When you make a Will, you name a person who you want to carry out the directions of your Will. This person is called the executor or Personal Representative (P.R.).

The PR reads your original Will and decides whether the Will needs to be "probated." If your Will is probated, a court will review the Will and make sure your directions are followed. If you have few belongings and your Will is well written, the PR can most likely follow the directions without going to probate court.

If there is a house or other substantial property, your named PR will send the original Will to the court and ask to be appointed as PR by the court. Your heirs will be notified about this request. If no one objects, the court gives that person the authority to act as PR. If there is disagreement, the court will decide who to appoint as PR. The PR may also pay any bills you have left at your death if there is money to do so.

Unlike Maine State Courts, the Penobscot Nation and Passamaquoddy Tribe do not have separate Probate Courts. The Tribal Courts act as Probate Courts. Probate matters include inheritance issues (whether or not the deceased left a Will) as well as name changes and guardianships/conservatorships. When hearing probate matters, the Tribal Court generally follows the requirements of the Maine Probate Code. Many Probate matters require notice to interested parties (e.g. heirs, relatives, creditors) and publication. There may be some cost to the filing party due to the necessity of publication.

If I Have a Will and It Goes to Probate, What Will Happen?

Most of the time probate is inexpensive and takes little time. The court simply makes sure everything is in order and the Will is followed.

Sometimes, family members or others will disagree about the way things are being handled. This can happen with or without a Will. But the clearer you are in your Will, the less chance there is for disagreement about what your wishes are.

Are There Ways Other Than a Will To Pass Along My Property?

Yes. Here are two examples.

1. Name a loved one as a beneficiary on a life insurance policy. When you die, that person gets a check from the company. No Will is needed.
2. Give another person an interest in your property as joint tenant while you're alive. When you die, that person will own the whole property. No Will is needed. Please note that this could trigger a MaineCare ineligibility period. So check with an attorney before making such a transfer.

What If I Have A Power of Attorney?

If you have a Power of Attorney, your agent's power to manage your property interests is only effective during your lifetime. When you die, your agent no longer has any authority to act on your behalf or to manage or dispose of your property.

Let us help you.

You are not required to have a lawyer write your Will, but it is risky to do it yourself because some laws about Wills and property are complex.

The Maine Volunteer Lawyers Project may be able to offer free legal assistance through volunteer attorneys regarding issues about Wills and inheritances. Local informational programs are being developed to provide information to the Native community on these issues. Further information regarding these programs will be publicized in the near future. **Call us at: 207-942-9348 or 888-956-4276.**

IMPORTANT NOTICE

If you receive TANF and live on an Indian Reservation, your TANF benefits cannot be terminated because of the five year time limit if over half of the adults on the reservation are not employed.

Call Pine Tree Legal Assistance at 1-877-213-5630 if you get a letter from DHHS telling you that you have reached the 60 month (5 year) lifetime limit. You may be exempt from termination.

Consequences

Continued from **Page 1**

a juvenile, the adjudication will result in a “disposition” not a “sentence.” A disposition for any class of crime can include commitment to the Mountainview or Long Creek Youth Development Centers. The length of the juvenile disposition can vary. It may even be for an indeterminate amount of time, not for a set number of months or years.

Where Am I Charged?

As an Indian in Maine, you may be charged in one of three courts: tribal, state, or federal. This depends upon the charge, where it occurred, and whether the tribe has a court system.

Passamaquoddy and Penobscot Tribal Courts have exclusive jurisdiction over:

- Adult misdemeanors (classes D and E) committed on their reservation by a member of the Passamaquoddy Tribe, Penobscot Nation or Houlton Band of Maliseet Indians
 - *except when the misdemeanor is committed against a person or property of a person who is not a member of one of those Tribes.*
- Juvenile delinquent conduct that would be within their exclusive jurisdiction if committed by an adult, as described above.
- Some juvenile crimes committed on the reservation by a juvenile of one of the three specified Tribes.
 - *Such crimes include possession of marijuana, alcohol, and failure to show proper identification.*

At the present time, there is no tribal court jurisdiction over members of the Aroostook Band of Micmacs.

Most cases involving crimes committed off the reservation will be heard in State Court. But, if you are accused of breaking a federal law, you can be charged in federal court (U.S. District Court). The federal court covering northern and eastern Maine is in Bangor.

Is My Juvenile Record Public?

Every state has laws about whether juvenile records are private or public. If you have a juvenile record from another state, contact the attorney who helped you to find out if your juvenile record is public.

In Maine, whether your juvenile record is public depends on the type of charge.

- Court petitions charging a juvenile with a felony are public.
- Court petitions charging a juvenile with his or her first Class D crime are not public.
- If a juvenile is charged with a second or third Class D crime, the court records are public if the new charge is from a different incident than the first Class D charge.
- Court petitions charging a juvenile with Class E misdemeanors are not public.

• ————— •
DHHS can now ask TANF recipients who have a drug-related felony conviction dating back to 1996, to take a drug test.
• ————— •

Under Maine law, even if a court record is closed to the public, the victim can view the court documents. The victim cannot have a copy of the documents.

If you have a juvenile record that is public, you can ask the Court to seal your record. This means it will be kept private. You must petition the Court and prove that:

- At least 3 years have passed since you finished the disposition (sentence),
- You have not had any new adjudications or adult convictions since the date of your disposition, and
- You do not have any criminal actions pending.

The Court will balance the public's right to know about your juvenile record against your interest in privacy. If the Court seals your record, court and criminal justice agencies can still access those records. Other agencies like housing authorities and employers cannot. You can answer questions about your juvenile history as if your juvenile adjudication never happened.

Indian Tribes may have different rules and practices concerning the confidentiality and use of juvenile records.

COLLATERAL CONSEQUENCES

If you are adjudicated as a juvenile or convicted as an adult, there may be long-term consequences for you. This is because there are many federal and state laws that allow your criminal history to be considered. Your criminal history can be considered for the following reasons:

Student Loans

When you apply for a federal student loan to go to college, you complete a “Free Application for Federal Student Aid” (FAFSA) through the U.S. Department of Education. Federal law says that if you have been convicted of possession or sale of illegal drugs, you may be ineligible for aid. Because juvenile adjudications are not considered convictions in Maine, you do not have to disclose a Maine juvenile adjudication on your FAFSA.

Tribal educational assistance programs may have different rules about convictions and juvenile adjudications.

Subsidized Housing

Federally assisted housing programs, such as “public housing” and “Section 8,” use federal rules to decide who is eligible for assistance. The rules allow housing agencies to deny admission to an entire household or a specific member of a household if that member has a criminal past. The criminal past must have happened within a “reasonable

Please see **Consequences**, Next page

Consequences

Continued from **Previous page**

time” before the household applies for admission. The federal rules do not define “reasonable time,” but housing agencies may have their own definitions.

Criminal activities that can be grounds for denial of admission are:

- Drug related criminal activity,
- Violent criminal activity, or
- Other criminal activity that would:
 - *threaten the health, safety or right to peaceful enjoyment of the property by other tenants, or*
 - *threaten the health or safety of the housing authority, owner or employees.*

A housing agency will ask adult members of the household applying for admission to reveal any criminal history. The agency will also ask you to sign a release of information form that the housing agency can send to law enforcement. The housing agency can contact law enforcement in the state where the housing is located or any state in which a household applicant has lived. What the law enforcement agency will release depends on whether juvenile records are public under that state's law.

If the housing agency receives a copy of a criminal conviction and denies admission to either the entire household or the person with the criminal conviction, it must notify the applicant and the person with the conviction. It must then send both of them a copy of the record. The applicant can challenge the accuracy and relevance of the information. The housing agency must keep confidential any criminal records it receives. It also must destroy the records once the reason the housing authority asked for them is complete.

If you or a household member is denied admission because of past criminal activity, you can submit proof of rehabilitation. Rehabilitation will depend on what the criminal activity was. If it is a drug charge, then completion of drug rehabilitation will be important. If it is a violent crime, then anger management, no further criminal activity, and successful probation may all help prove rehabilitation.

If a member of your household is required to be a lifetime sex offender registrant under any state's registry, that person must be denied admission to federally assisted housing.

Tribal housing agencies use special federal laws concerning Indian Housing. Because of tribal sovereignty, tribes have a lot of authority to make their own policies. They may have policies on criminal records that are different, and possibly stricter, than other housing agencies.

Sex Offender Registry

Juveniles adjudicated of a sex offense do not have to register on Maine's Sex Offender Registry. However, the law may change. Every state has different requirements for who has to register. If you have been adjudicated of a sex crime and you plan to leave Maine (even for a short while),

find out if the state you are going to requires you to register.

Employment

Maine is an “employment at will” state. This means that without a contract you do not have the right to get a job or keep a job. It is not illegal for an employer to ask about your criminal history.

Some jobs require a professional license or permit. Some require you to register with a state licensing agency. A conviction does not mean you will automatically be denied a license. However, the agency can consider certain convictions. Those include:

- Misdemeanor convictions
 - *for dishonesty or false statements, or*
 - *that are directly related to the trade you are applying for a license in, and*
- All felony convictions

The licensing agency can only look into your criminal past for the last:

- 3 years, or
- 10 years if the job involves health care or law enforcement.

Remember, juvenile adjudications in Maine are not convictions.

Welfare

Federal law allows states to deny welfare benefits such as Temporary Assistance to Needy Families (TANF) and Food Stamps (now called SNAP Supplemental Nutritional Assistance Program) to a person convicted of a drug related felony. Maine currently does not have such a rule, but other states do. There are many changes to Maine's welfare system expected in 2012. DHHS can now ask TANF recipients who have a drug-related felony conviction dating back to 1996, to take a drug test.

- If you refuse, you can be denied TANF.
- If your drug test is positive, DHHS can require you to be in a drug treatment program if you want to get TANF.
- If you refuse drug treatment, your entire family can be cut off TANF.

It is important to know that DHHS cannot require you to take a drug test if you have not had a felony-related drug conviction from 1996 to present.

Voting

You can vote in elections in Maine if you have a felony conviction. Some states do not allow convicted felons to vote. If you move to another state and have a felony conviction, ask about your right to vote.

Tribes make their own rules about who can run for tribal office and vote in tribal elections. Check with your tribe to find out how a felony conviction affects your right to vote or run for office.

A General Description of the Divorce Process

The Parties to the Divorce

The wife and husband are called "the parties to the divorce."

How the Process is Started

- The party who first asks the court for a divorce is called the Plaintiff. The other party is the Defendant.
- The Plaintiff must file a document with the court called a "Complaint For Divorce."
- The Complaint for Divorce form and other divorce forms you will need are available at Tribal Court.

Tribal Court Jurisdiction

Passamaquoddy Tribal Courts have exclusive authority to hear Domestic Relations cases between members of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians when both parties reside on the Passamaquoddy reservation.

The Penobscot Tribal Court has exclusive authority to hear domestic relations cases between members of the Passamaquoddy Tribe or the Penobscot Nation when both parties reside on the Penobscot Nation reservation.

Domestic Relations matters include:

- Marriage
- Divorce
- Parental Rights and Responsibilities
- Spousal Support
- Child Support

The Tribal Courts can also hear domestic relations cases:

- Between tribal members residing off-reservation who agree to proceed in Tribal Court.
- Between a tribal member and a non-Indian spouse or partner residing on the reservation
- Between a tribal member living on the reservation and a non-Indian living off-reservation when both parties agree
- Between a tribal member living off-reservation and a non-Indian living off reservation when both parties agree

The Passamaquoddy and Penobscot Nation courts have the exclusive authority to hear cases related to Indian child custody proceedings when the child lives on the reservation. When an Indian child is a ward of a Tribal Court, the Tribal Court retains exclusive jurisdiction no matter where the child may be physically.

State District Courts have the authority to hear Domestic Relations cases when the Tribal Courts do not have exclusive authority.

Grounds for Divorce

"Irreconcilable differences" is a no-fault ground that is used most often in starting a divorce. It means that the marriage has broken down due to serious, irreparable marital discord. Although there are other grounds for divorce recognized by Maine law, this is the preferred grounds for divorce because:

- You do not have to prove that one person is at fault for the breakdown of the marriage
- Your spouse does not have to agree to getting the divorce and cannot stop the divorce from being granted
- You do not need to prove that there has been wrongdoing by one of the parties

Other Issues Settled in a Divorce Case

A divorce legally ends the marriage. It changes your status from married to single. It also determines issues such as:

- living arrangements for the children
- what contact they will have with each parent;
- child support and medical support for the children;
- who will keep what personal property, such as clothing, household furnishings, vehicles, personal items, and financial assets;
- who will be responsible for which debts
- whether the wife wants to change back to her former name

Uncontested Divorce

If you and your spouse agree to all of the terms of your divorce, your divorce is an "uncontested" divorce. If you have an uncontested divorce, the process may be quicker and simpler. Typically, as long as the court finds the terms acceptable, the court will grant the uncontested divorce and include those terms in the final divorce decree.

Spousal Support/Alimony

Spousal Support (also called "alimony") refers to money one spouse pays to the other. This amount is different from child support. The court may grant it if you lack the means to support yourself. If this is the case, you may want to request spousal support.

In deciding whether to grant spousal support, the court will consider the length of the marriage. It will also consider the following factors for both parties:

- age;
- the ability of each party to pay spousal support;
- employment history and employment potential;
- income history and income potential;
- education and training;
- the standard of living of the parties during the marriage;

Free Legal Help from the Maine Volunteer Lawyers Project

The Maine Volunteer Lawyers Project (VLP) provides free legal help to low income tribal members who need assistance with civil law matters. The VLP provides help in both State and Tribal Courts. Some of the issues volunteer lawyers assist with are:

- Family Law
- Custody
- Divorce
- Guardianship
- Parental rights
- Debt issues
- Social Security denials
- Unemployment denials
- Probate matters matters dealing with the assets and estate of a deceased family member.

If you need help with these types of legal issues, please contact us at:

Maine Volunteer Lawyers Project
115 Main Street, Bangor, ME 04401
Toll Free: (888) 956-4276; or (207) 942-9348
Email: jmitchell@vlp.org; or
Fax: (207) 942-8323

When you contact us, we will schedule a time to talk with you. We will talk about your legal issue and determine if you are eligible for our services. We can talk with you over the telephone or in-person. We can meet with you at Indian Island, Pleasant Point, Indian Township, or at our Bangor office. The meetings are scheduled as follows:

INDIAN ISLAND TRIBAL COURT COURTHOUSE ASSISTANCE PROJECT

Last Tuesday of every month 10am - Noon
Walk-in clients are welcome

PASSAMAQUODDY COURTHOUSE ASSISTANCE PROJECT

Pleasant Point and Indian Township by appointment

MAINE VLP BANGOR OFFICE

by appointment

We also accept walk-in clients on the days we are at Indian Island, Pleasant Point and Indian Township.

If you become our client for a family law matter, we will:

- Answer your questions,
- Give you legal advice,
- Help you complete certain court forms, and
- Explain your options for handling your legal matter on your own

In cases when the opposing party is represented by an

attorney, we may attempt to find you an attorney to take your case for free.

If you become our client for a non-family law matter, we may attempt to find you an attorney. The attorney will answer your questions and explain your options for handling your legal matter on your own. In certain cases we may attempt to find you an attorney to take your case for free.

Please contact us if you need assistance with a legal issue. Contacting us sooner rather than later will increase the possibility of obtaining a positive result.



Big Brook on Maliseet Land

The Native American Unit at Pine Tree Legal Assistance gives free legal help to low-income Native Americans. The unit's priorities are cases involving an individual's status as a Native American, including:

- ♦ *Race discrimination in employment, housing, public accommodations, education and credit*
- ♦ *Jay Treaty / cross border rights*
- ♦ *Tribal housing*
- ♦ *Indian Child Welfare Act (ICWA) issues*
- ♦ *Civil rights violations*

Call us at 1-877-213-5630 Contact information for Pine Tree's statewide offices can be found on page 12.

The **Wabanaki Legal News** is published by Pine Tree Legal Assistance, Inc. The views expressed by individual authors are not necessarily shared by Pine Tree Legal Assistance or its staff.

Executive Director of PTLA: Nan Heald, Esq.
PTLA Native American Unit
Directing Attorney: Eric Nelson, Esq.
Staff Attorneys: Mike Guare, Esq.
Paul Thibeault, Esq.
Jeff Ashby, Esq.
Paralegal: Debi Beal

Wabanaki Legal News is online @:

www.ptla.org/wabanaki

Divorce

Continued from Page 8

- health and disabilities of each party;
- contributions of either party as homemaker;
- contributions of either party to the education or earning potential of the other party;
- the ability of the party seeking support to become self-supporting within a reasonable period of time;
- provisions for retirement and health insurance benefits;
- economic misconduct by either party resulting in the loss of marital property or income;
- tax consequences of a spousal support award;
- tax consequences of the court's division of marital property; and
- any other factors the court considers appropriate.

How Parenting Issues Will Be Decided

Parenting issues will be decided by the court if the parents cannot agree. Those issues include whom the children live with, how much contact the parties will have with the children, and how the parents will make decisions about the children's lives.

The court will decide parenting arrangements based on what it believes is in the "best interests of the child." The court will primarily consider the safety and well-being of the children. It will also consider other factors such as:

- the wishes of the parents;
- the wishes of the child or children;
- the interaction of the child with parents, siblings, and other persons who significantly impact the child;
- one parent's physical abuse or the threat of physical abuse against either the child or the other parent;
- chemical dependency or abuse by either parent;
- continuity and stability of care; and
- developmental needs of the child.

Restricting Contact

If you believe that the other parent's contact with the children should be restricted, you can request conditions such as supervised contact. In order for the court to grant your request for supervised visits with the other parent, you will need to explain why supervised visits are necessary to protect the children.

Exchanging the Children For Visits

If you and your spouse do not get along or you feel threatened by him or her, you can include specific information about how the children will be exchanged for visits. If your relationship with your spouse has been abusive, you might want to set up a meeting place for the exchange that is public and safe, such as the parking lot of a busy restaurant or shopping center.

Setting Up a Residential Schedule

Parenting arrangements and living and visitation schedules can be general or specific. For example, the schedule can state who the children will live with during the school year, during vacations, and for holidays and other special occasions. The more specific you make your parenting arrangements, the less you and the other parent will be able to disagree.

Child Support

The court will order that child support be paid for the children. The parties are required to prepare and file with the court a "Child Support Affidavit". It contains financial information that the court will use to decide the amount of child support. The court will determine the amount of support based on the parents' financial information and child support guidelines.

Medical Insurance

Every child support order must include whether health insurance will be provided for the children. It also must include how the parents will divide any uninsured medical expenses. The general rule is that a parent who has medical insurance available through his or her employment must cover the children as long as the insurance is available at a reasonable cost. If both parents have health plans, they may both provide coverage for the children.

Financial Statement Regarding Assets, Debts, Income, and Expenses

Both parties to the divorce are required to complete a Financial Statement. It includes a list of assets, debts, income, and expenses. This form is available at the court.

Waiver of Court Fees

You can ask the court to waive court costs and fees if you have a very low income and cannot pay. The court clerk has an Application to Proceed Without Payment of Fees (fee waiver form) and an Indigency Affidavit. Check all of the boxes near the top of the fee waiver form to show that you need all costs waived. List all of your income and expenses on the affidavit form. The court will look at your income and expenses and decide whether you qualify for the waiver.

Free Legal Help

If you financially qualify, the Maine Volunteer Lawyers Project can provide legal assistance. Call 888-956-4276 (toll free) or email jmitchell@vlp.org. Divorce information is available online at www.helpmelaw.org and at www.ptla.org.

Wabanaki Legal News is online @:
www.ptla.org/wabanaki

Yo-Yo Auto

Continued from **Page 3**

back to make a new, more profitable arrangement for the dealership.

If you refuse to return to the dealership with the car and refuse to make the higher payments, the dealer may threaten repossession or report the vehicle "stolen." If you do return to the dealership with the new car but refuse to pay higher payments or find a co-signer, the dealer may refuse to return your down payment, charge you high "wear and tear" fees, or may have already sold the car you traded in.

What Should You Do If You Are a Victim of a Yo-Yo Sale?

- Get all of your possessions out of the car in case the dealer repossesses it
- Gather all the paperwork from the sale of the car (including manuals, stickers on the window, materials in the glove compartment)
- Make sure you keep the temporary license plate
- Write down all conversations you have with the dealer or dealership
- Keep track of all of the dealer's excuses for wanting you to renegotiate your loan
- Keep copies of the original sales contract and the "new" sales contract

There are laws in place to protect consumers from these types of deceptive practices. Please contact Pine Tree Legal Assistance at 877-213-5630 if you think you have been a victim of a yo-yo auto sale.

Consequences

Continued from **Page 7**

Military

If you are thinking of joining the military, you should disclose everything. The military can access all information regarding criminal activity, including sealed juvenile records and information kept at local police departments. The military can reject your enlistment if it has evidence that you may be a discipline problem. However, if the military accepts you, it can help you seal, expunge, or reopen past criminal cases.

Firearms

The Federal Gun Control Act of 1968 includes rules about possessing a firearm and ammunition. Two types of convictions trigger an automatic prohibition for life:

- An indictment or conviction of a felony, or
- A conviction for a domestic violence misdemeanor. The name of the crime you are convicted of does not have to have "domestic violence" in its title.

Conclusion

This article only addresses some of the problems you may face if you have a juvenile or adult criminal history. To learn more about how your history may affect you, contact the attorney who represented you or Pine Tree Legal.

COMMUNITY RESOURCES

AROOSTOOK BAND OF MICMACS:

www.micmac-nsn.gov

Administration, Housing, Child/Family Services	764-1972 or 1-800-355-1435
Micmac Head Start Program	768-3217
Health Department	764-7219 or 1-800-750-1972

HOULTON BAND OF MALISEET INDIANS:

www.maliseets.com

Administration	532-4273 1-800-564-8524(in state) 1-800-545-8524(out of state)
Maliseet Health Department	532-2240 or 1-800-640-2266
Maliseet Health Clinic	532-4229
Maliseet Housing Authority	532-7638 or 532-9140
Indian Child Welfare	532-7260 or 866-3103
Social Services and LEAD	532-7260 or 1-800-532-7280
Domestic Violence and Sexual Assault Program	532-6401 (24/7)
Advocacy Program	532-3000

MALISEET TRIBAL COURT SYSTEM

www.maliseets.com/tribal_courts.htm

Court Administrator 532-4273 x 217
e-mail: tribal.courts@maliseets.com

PENOBSCOT INDIAN NATION:

www.penobscotnation.org

Administration	827-7776 or 1-877-736-6272
Indian Health Services	817-7400
Penobscot Housing Dept.	817-7370
Penobscot Human Services	817-7492
Indian Island Police Dept	817-7358 (dispatcher) 827-7188/911 (emergency) 827-6336 (business)
Domestic Violence and Sexual Assault Crisis Hotline	631-4886 (24/7)
Office - Lynna Tupica	817-7498
PENOBSCOT TRIBAL COURT SYSTEM	
Director of Tribal Court	817-7342
Clerk of Courts	817-7329

PASSAMAQUODDY TRIBE:

PLEASANT POINT www.wabanaki.com

Administration	853-2600
Pleasant Point Health Center	853-0644
Pleasant Point Housing	853-6021
Domestic Violence-Peaceful Relations	853-0644 ext. 555 or 274
Emergency:	853-2613
Police Department	853-2551
Social Services	853-2600 ext. 264 or 261

TRIBAL COURT SYSTEM

www.wabanaki.com/tribal_court.htm

Clerk of Courts 853-2600 ext. 278

INDIAN TOWNSHIP www.passamaquoddy.com

Administration	796-2301
Indian Township Clinic	796-2321
Indian Township Housing	796-8004
Police Department	796-2704

TRIBAL COURT SYSTEM

www.wabanaki.com/tribal_court.htm

Clerk of Courts 853-2600 ext. 252
(when court is in session call: 796-2301 ext. 205)

STATEWIDE CRISIS SERVICES

HEALTH & HUMAN SERVICES

DHHS Child Abuse 1-800-452-1999(24 hour)
1-800-963-9490(TTY)
DHHS Adult Abuse and Neglect 1-800 624-8404

DOMESTIC VIOLENCE

Maine Coalition to End DV 1-866-834-HELP(24 hour)
Houlton Band of Maliseets Domestic Violence and Sexual Assault Program 532-6401(24/7) or 532-3000
Penobscot Indian Nation Domestic Violence and Sexual Assault Program 631-4886 (24/7) or 817-7498
Passamaquoddy Peaceful Relations 853-2613 or 853-0644 ext. 555 or 274
Spruce Run 1-800-863-9909
Penobscot County
Battered Women's Project 1-800-439-2323
Penobscot County
The Next Step 1-800-604-8692 or 255-4785
Washington County
Hope and Justice Project 1-800-439-2323 (24/7) or 764-2977
Aroostook County

RAPE CRISIS SERVICES

Rape Response Services 1-800-310-0000
Penobscot County
Aroostook Mental Health Center 1-800-550-3304
Crisis Line Aroostook County 1-888-568-1112
Downeast Sexual Assault Svcs. 1-800-228-2470
Washington County

OTHER SERVICES

Youth Crisis Stabilization 1-800-499-9130
Statewide Suicide Referral Line 1-800-568-1112
Poison Control Center 1-800-222-1212

2-1-1 MAINE & COMMUNITY ACTION PROGRAMS

2-1-1 MAINE www.211maine.org
2-1-1 Maine is part of a national movement to centralize and streamline access to health and human service information and resources. The state of Maine has thousands of programs offering all types of health and human services.

COMMUNITY ACTION PROGRAMS bring community resources together such as heating assistance and other utility issues, subsidized housing, child care, and transportation services for disabled people. Call 2-1-1 for your local program.

LEGAL SERVICES

PINE TREE LEGAL ASSISTANCE www.ptla.org

Pine Tree Legal represents low-income people with legal problems.

Portland: 774-8211 **Lewiston:** 784-1558
Augusta: 622-4731 **Bangor:** 942-8241
Machias: 255-8656 **Presque Isle:** 764-4349
Farm worker Unit: 1-800-879-7463
NATIVE AMERICAN UNIT #: 1-877-213-5630

VOLUNTEER LAWYERS PROJECT

www.vlp.org 1-800-442-4293

If you meet its eligibility requirements, the VLP can give you legal advice or informational materials for free. In some cases the VLP may provide a referral to a private attorney for free representation.

Intake hours are:

Monday and Tuesday - 9am to 12pm and 1pm to 4pm
Wednesday and Friday - 9am to 12pm
Thursday - 1pm to 4pm

LEGAL SERVICES FOR THE ELDERLY

www.mainelse.org 1-800-750-5353

If you are age 60 or older, LSE can give you free legal advice or limited representation.

PENQUIS LAW PROJECT

www.penquiscap.org 1-800-215-4942

This group gives legal representation to low income residents of Penobscot and Piscataquis Counties in cases involving domestic relations. Priority is given to people who have experienced or are experiencing domestic violence, sexual assault or stalking.

DISABILITY RIGHTS CENTER

www.drme.org 1-800-452-1948

Advice and legal representation to people with disabilities.

BANGOR COURT ASSISTANCE PROGRAM

www.ptla.org/bangor-court-assistance-program 941-3040

Volunteers are available at the Bangor District Court once a month to help you fill out family law and small claims court forms. For upcoming dates call Holly Jarvis at 941-3040.

OTHER COMMUNITY RESOURCES

WABANAKI MENTAL HEALTH ASSOC.

www.wabanaki.org 990-0605 or 1-800-434-3000

Wabanaki provides culturally-sensitive psychological and social services to the Native American populations of Hancock, Penobscot, Piscataquis and parts of Washington Counties.

MAINE INDIAN TRIBAL STATE COMMISSION

www.mitsc.org 817-3799

SOCIAL SECURITY ADMINISTRATION

www.ssa.gov/reach.htm

Statewide 1-800-772-1213
Bangor Area 1-877-405-1448
941-8698 (TTY)
Presque Isle Area 1-866-837-2719
764-2925 (TTY)

MAINE HUMAN RIGHTS COMMISSION

www.maine.gov/mhrc 624-6290
TTY 1-888-577-6690

EMPLOYMENT INFORMATION

MAINE DEPARTMENT OF LABOR

To file unemployment claims online:

www.maine.gov/labor/unemployment

To file unemployment claims by telephone:

1-800-593-7660

Or go to your nearest Career Center:

www.mainecareercenter.com

Bangor 561-4050
Calais 454-7551
Houlton 532-5300
Machias 255-1900
Presque Isle 760-6300