

# FINAL BILL REPORT

## ESHB 2233

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Synopsis as Enacted

**Brief Description:** Creating a procedure for the state's retrocession of civil and criminal jurisdiction over Indian tribes and Indian country.

**Sponsors:** House Committee on State Government & Tribal Affairs (originally sponsored by Representatives McCoy, Hunt, Haigh, Pedersen, Appleton, Morris, Billig, Fitzgibbon, Eddy, Sells, Tharinger, Jinkins, Hasegawa, Pollet, Wylie, Upthegrove and Roberts).

**House Committee on State Government & Tribal Affairs**  
**Senate Committee on Government Operations, Tribal Relations & Elections**

### **Background:**

#### History of Public Law 280 and the State's Assumption of Jurisdiction Over Indians and Indian Country.

As of the early 1950s, the federal government and Indian tribes jointly exercised criminal and civil jurisdiction over Indians and Indian country. However, in 1953 the United States Congress (Congress) enacted Public Law 280 (PL 280), partly in response to the perception that joint federal/tribal jurisdiction led to inadequate law enforcement in Indian country. Under PL 280, both criminal and civil jurisdiction over Indians and Indian country were transferred from the federal government to selected states. Other specified states were given the option to assume such jurisdiction in the future. The selected states that were granted immediate jurisdiction were Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. The optional states under PL 280 were Washington, Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, and Utah.

Public Law 280 also established that for a state to acquire criminal or civil jurisdiction over the Indians and Indian country within its borders, it must pass legislation explicitly assuming such jurisdiction. Washington enacted such legislation in 1963, authorizing the state to assume civil and criminal jurisdiction over Indians and Indian country within its territory. However, under this legislation the assumption of jurisdiction by the state requires the tribes' consent. Such consent requires that the tribe formally request the state to assume such jurisdiction. Upon receiving this request, the Governor must issue a proclamation affirming the state's jurisdiction over Indians and Indian country in accordance with applicable federal laws.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Although the state's 1963 legislation establishes that the state's jurisdiction over a tribe occurs only upon the request of a tribe, the statute explicitly identifies eight substantive areas of criminal and civil law over which the state retains jurisdiction even without a tribe's consent: compulsory school attendance; public assistance; domestic relations; mental illness; juvenile delinquency; adoption proceedings; dependent children; and operation of motor vehicles on public streets, alleys, roads, and highways.

#### Amendment of PL 280 and the Authorization of State Retrocession.

In 1968 the Congress amended PL 280 to include a retrocession provision authorizing a state that has previously assumed jurisdiction over Indians and Indian country to return all or some of its criminal and/or civil jurisdiction back to the federal government, subject to the approval of the United States Department of the Interior. The term "retrocession," therefore, refers to the process of a state returning its jurisdiction over an Indian tribe back to the United States government.

#### Civil Retrocession Under State Law Following the Amendment of PL 280.

Despite the 1968 amendment of PL 280, state law neither authorizes the state to retrocede its civil jurisdiction over Indians and Indian country nor provides any mechanism for tribes to request retrocession.

#### Criminal Retrocession Under State Law Following the Amendment of PL 280.

Following the amendment of PL 280, a state law was enacted providing a legal procedure by which a tribe may request the state to retrocede criminal jurisdiction over Indians and Indian country. This procedure requires the approval of the Governor and the Legislature and applies only to specific tribes identified in statute.

Under this statutory procedure, in order to request that the state retrocede its criminal jurisdiction back to the federal government, an Indian tribe must submit a resolution to the Governor expressing its desire for state retrocession of criminal jurisdiction acquired by the the state over Indians or Indian country. Upon receipt of the resolution, the Governor may issue a proclamation retroceding the state's criminal jurisdiction back to the United States. The power of the Governor to authorize criminal retrocession is discretionary. In effect, then, the Governor has veto power over any criminal retrocession proposal put forth by an Indian tribe or group. In turn, in order for retrocession to become effective, the Governor's retrocession proclamation must be submitted to a duly authorized federal officer and then approved by the Secretary of the Interior. However, the state's criminal retrocession statutes categorically prohibit the retrocession of either civil or criminal jurisdiction over the following eight areas:

- compulsory school attendance;
- public assistance;
- domestic relations;
- mental illness;
- juvenile delinquency;
- adoption proceedings;
- dependent children; and
- operation of motor vehicles on public streets, alleys, roads, and highways.

After retrocession, the federal government rather than the tribe and/or the state has jurisdiction over certain major crimes committed by Indians on Indian lands. Major crimes under the federal law include homicide, assault, rape, kidnapping, arson, burglary, and robbery, as well as other serious felonies.

Over the years, seven tribes in Washington have sought and received retrocession of state jurisdiction over criminal acts by Indians committed on tribal lands. These tribes are the Quileute, Chehalis, Skokomish, Muckleshoot, Tulalip, Swinomish, and the Colville Confederated Tribes of Washington.

Tribes that remain subject to state jurisdiction may enter into arrangements with local law enforcement agencies for providing law enforcement on tribal lands. However, tribes subject to full state criminal jurisdiction are not eligible for federal funding for law enforcement purposes. Those tribes that have sought and obtained retrocession of state jurisdiction have become eligible for federal law enforcement funding.

#### Governor's Retrocession Workgroup.

In June of 2011 the Governor convened a Joint Executive-Legislative Workgroup (Workgroup) in order to examine both civil and criminal tribal retrocession issues. The Workgroup was created in response to the tribal retrocession bills considered by the House and Senate during the 2011 Legislative session and consisted of a broad range of gubernatorial appointees, including:

- tribal leaders;
- legislative members from the House and Senate;
- designees from the United States Attorney's Offices for the Eastern and Western Districts of Washington;
- a designee of the Washington State Attorney General;
- professors of Indian Law from the University of Washington and Seattle University;
- state, local, and tribal law enforcement officials;
- an official from the Office of Superintendent of Public Instruction; and
- various executive branch and state agency officials.

The Workgroup conducted a series of meetings during the summer and fall, the last of which involved the consideration of legislative options.

#### **Summary:**

##### Overview of the Retrocession Procedure.

A three-step retrocession procedure is created in which the Governor is granted plenary power to approve or deny a proposed retrocession. The three procedural steps are as follows:

- A tribe must submit a retrocession resolution to the Governor.
- The Governor must approve or deny the retrocession through a process that includes government-to-government meetings with the tribe, as well as non-binding recommendations from the two houses of the Legislature.
- If the Governor approves of the proposed retrocession, a formal retrocession request is forwarded to the Department of the Interior, which has ultimate authority with respect to the authorization of a proposed retrocession.

### Retrocession Procedure Requirements.

Before criminal and/or civil retrocession may occur, various procedural requirements must be met.

*Tribal Resolution.* The governing body of a tribe must pass a resolution requesting that the state retrocede back to the federal government all or part of its civil and/or criminal jurisdiction over the tribe. Before a tribe submits a retrocession resolution to the Governor, the tribe and affected municipalities are encouraged to collaborate in the adoption of interlocal agreements, or other collaborative arrangements, with the goal of ensuring that the best interests of the tribe and the surrounding communities are served by the retrocession process.

The tribe's retrocession resolution must be forwarded to the Governor, accompanied by information about its plan regarding its exercise of jurisdiction following the proposed retrocession.

*Action by Governor and Legislature.* The Governor must convene a government-to-government meeting with the tribe within 90 days of receiving the retrocession resolution. The Governor must consult with elected officials from the counties, cities, and towns proximately located to the area of the proposed retrocession. Also, if the proclamation addresses issues related to the operation of motor vehicles on public roadways, then the Governor must consider whether: (1) there are interlocal agreements in place addressing the uniformity of motor vehicle operations in Indian country; (2) there is a tribal traffic policing agency that will ensure the safe operation of motor vehicles; (3) the affected tribe has traffic codes and courts in place; and (4) there are appropriate traffic control devices in place sufficient to maintain road safety.

Within 120 days of the Governor's receipt of the tribal resolution, the appropriate standing committees of the state House and Senate may conduct public hearings on the tribe's request for state retrocession. Following such public hearings, the designated legislative committees may submit non-binding, advisory recommendations to the Governor.

Within one year of her or his receipt of the retrocession resolution, the Governor must issue a proclamation, if approving the retrocession request either in whole or in part. This one-year deadline may be extended by the mutual consent of the tribe and the Governor. Also, both the tribe and the Governor have unilateral authority to extend the one year retrocession decision deadline by another six months.

*Federal Action.* If the Governor approves the proposed retrocession, the proclamation must be submitted to a duly designated officer of the Department of the Interior, which must then approve or deny the retrocession request. The proclamation does not become effective until it is approved by the federal government in accordance with federal retrocession procedures.

### Other Provisions.

Notwithstanding the state's retrocession of criminal and/or civil jurisdiction:

- the state must retain the civil jurisdiction necessary for the civil commitment of sexually violent predators; and

- retrocession will not abate any action or proceeding filed with any court or agency of state or local government preceding the effective date of the retrocession.

These retrocession procedures:

- do not affect the validity of any retrocession procedure commenced previously under other specified statutes; and
- may be used by any tribe to complete a pending retrocession process or to obtain retrocession with respect to any civil or criminal jurisdiction retained by the state following a previously completed partial retrocession.

Other specified statutes related to retrocession are not applicable to a retrocession initiated under this act.

**Votes on Final Passage:**

House	54	42	
Senate	42	6	(Senate amended)
House			(House refused to concur)
Senate	42	6	(Senate amended)
House	59	38	(House concurred)

**Effective:** June 7, 2012