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**SUBSTITUTE SENATE BILL 5770**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Human Services, Mental Health & Housing (originally sponsored by Senators McCoy, Darneille, Saldaña, and Hunt)

AN ACT Relating to transfer of jurisdiction from a tribe in dependency cases involving Indian children; and amending RCW 13.38.080.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 13.38.080 and 2011 c 309 s 8 are each amended to read as follows:

(1) In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the motion of any of the following persons:

(a) Either of the child's parents;

(b) The child's Indian custodian;

(c) The child's tribe; or

(d) The child, if age twelve or older.

The transfer shall be subject to declination by the tribe. The tribe shall have seventy-five days to affirmatively respond to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within the seventy-five day period shall be construed as a declination to accept transfer of the case.

(2) If the child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(3) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court shall not transfer the proceeding.

(4) Following entry of an order transferring jurisdiction to the Indian child's tribe:

(a) Upon receipt of an order from a tribal court accepting jurisdiction, the state court shall dismiss the child custody proceeding without prejudice.

(b) Pending receipt of such tribal court order, the state court may conduct additional hearings and enter orders which strictly comply with the requirements of the federal Indian child welfare act and this chapter. The state court shall not enter a final order in any child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed, while awaiting receipt of a tribal court order accepting jurisdiction, or in the absence of a tribal court order or other formal written declination of jurisdiction.

(c) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody matter in strict compliance with the federal Indian child welfare act, this chapter, and any applicable tribal‑state agreement.

(5) If a tribal court orders transfer of jurisdiction from the tribe, the state court shall hold a hearing to determine if accepting jurisdiction is consistent with P.L. 95-608, RCW 13.34.240 and 13.38.100, civil rule 82.5, and any other applicable state or federal laws. The tribal court shall transfer a copy of the entire court file to the state court for its consideration. If jurisdiction is accepted the state court shall determine whether the child will be treated as dependent under RCW 13.34.030(6).

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