

HOUSE BILL REPORT

SB 5083

As Reported by House Committee On: Civil Rights & Judiciary

Title: An act relating to allowing certain records, documents, proceedings, and published laws of federally recognized Indian tribes to be admitted as evidence in courts of Washington state.

Brief Description: Allowing certain records, documents, proceedings, and published laws of federally recognized Indian tribes to be admitted as evidence in courts of Washington state.

Sponsors: Senators McCoy, Hasegawa and Saldaña.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/6/19, 3/15/19 [DP].

Brief Summary of Bill

- Allows governmental records and documents and printed published laws of federally recognized tribes to be self-authenticating when presented in Washington courts.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Ingrid Lewis (786-7289).

Background:

Tribal Courts and Enforcement of Court Orders.

There are approximately 573 federally-recognized tribes in the United States, 29 of which are in Washington. Federal law recognizes that Native American tribes retain the sovereign right of self-government that includes the power to make and enforce their own laws. Various laws and intergovernmental agreements recognize the authority of federally-recognized tribes

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.

to establish a tribal court. Tribal courts exert general jurisdiction over their tribal membership, as limited by the tribal code and constitution, and federal law. These courts vary in size, jurisdiction, and procedure.

The full faith and credit clause of the United States Constitution authorizes Congress to prescribe the manner in which states give effect the judgments of other states. Under this clause, state courts enforce the judgments of other state courts as if they were their own orders.

Washington State Superior Court Civil Rule 82.5 requires superior courts to recognize, implement, and enforce the orders, judgments, and decrees of Indian tribal courts in matters in which the tribal court has either exclusive or concurrent jurisdiction, unless the superior court finds the tribal court that rendered the order, judgment, or decree: (1) lacked jurisdiction over a party or the subject matter; (2) denied due process as provided by the Indian Civil Rights Act of 1968; or (3) does not reciprocally provide for recognition and implementation of orders, judgments, and decrees of the superior courts of the State of Washington.

Rules of Evidence.

A document or other item of tangible evidence is admissible into evidence only if it is relevant to the case at hand, satisfies other rules of evidence, and is actually what it purports to be as demonstrated through authentication of the evidence. Generally, a public record or report is self-authenticating, subject to several procedural or statutory requirements. A self-authenticating document is a document that can be admitted into evidence without proof being submitted to support the claim that the document is what it appears to be.

The requirements for proof for authenticating court records, agency records, and foreign laws to admit them into evidence in state court actions are provided in both statute and court rules. Court records and proceedings of federal courts, other states, and territories are admissible into evidence if certified by the officer in charge of the records and affixed with the court's seal; there is an exception to the hearsay rule for these records. State courts are required to admit certified copies of federal, state, and territorial government records and documents. Certified copies are to be affixed with the government's official seal, if available.

State courts are required to admit printed copies of the laws of states, territories, and foreign governments into evidence as presumptive evidence of the government's laws provided that the laws are published under the government's authority and commonly used by its courts as evidence of its laws.

Summary of Bill:

The records and proceedings of a federally-recognized Indian tribe are admissible into evidence if certified by the tribal officer in charge of the records and affixed with the tribal court's seal. Certified copies of governmental records and documents from a federally recognized Indian tribe are admissible into evidence; copies must be affixed with the government's official seal, if available.

Printed copies of a federally-recognized Indian tribe's published laws are admissible as presumptive evidence of the tribe's laws.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Westlaw publishes tribal opinions and laws, and courts in Washington should accept the documents. Tribal attorneys go to the same schools and receive the same training as all other attorneys. This is a fairness issue and gives the tribal courts another step towards full faith and credit.

This is a cooperative attempt to fix an oversight in the law. The Centennial Accords were passed in the late 1980's with the intent to create a government-to-government relationship between the state and over two dozen federally recognized tribes. This is a step in furtherance of that agreement. Records from tribal governments are not automatically admissible in courts.

Current law is silent on the issue of tribal records. It is generally current practice to accept documents from tribal courts, and there is a court rule. This bill would codify the practice and rule in statute.

This affects citizens in Washington in areas like firearms prohibitions. If a person is convicted of a felony in tribal court, historically they could not be incarcerated for over one year, even if they committed a crime that would be a felony outside of tribal land. Recent changes in federal law allows tribal law enforcement to incarcerate people for three years per offense and for up to nine years per incident. Therefore, a felony in Indian Country is equivalent to a felony anywhere else. The state Driving Under the Influence law states that a fourth offense is a felony, but previous offenses must be introduced as evidence even if the offense occurred in Indian Country. A similar argument exists for sex offenses and probation violations. If tribal law enforcement has a person on probation who commits a violation off of the reservation, tribal courts will admit that jurisdiction's probable cause statement to violate the offender, and there should be a reciprocal agreement to ensure that public safety is equal and protected everywhere.

(Opposed) None.

Persons Testifying: Senator McCoy, prime sponsor; Mike Lasnier, The Suquamish Tribe; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.