

SENATE BILL REPORT

SB 5083

As Passed Senate, February 20, 2019

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: Law & Justice: 1/22/19, 1/24/19 [DP].

Floor Activity:

Passed Senate: 2/20/19, 45-0.

Brief Summary of Bill

- Authorizes state courts to admit certified court records and proceedings of any federally recognized Indian tribe's court as evidence.
- Authorizes state courts to admit certified copies of documents and records of any federally recognized Indian tribe's government as evidence.
- Authorizes state courts to recognize printed copies of any federally recognized Indian tribe's statutes as presumptive evidence of tribal laws.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

Background: Government-to-Government Relationships with Federally Recognized Indian Tribes. Native American tribal governments are sovereign, self-governing entities. Approximately 573 federally recognized Indian tribes are within the United States external

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.

borders. The Indian commerce clause authorizes Congress to regulate commerce with Indian tribes. With the federal Indian Reorganization Act of 1934 and its implementing regulations, Indian tribes began setting up their own court systems and enacting their own written laws. Tribal governments are on equal footing with state governments and have a government-to-government relationship with the federal government.

Washington State has agreements with federally-recognized Indian tribes to facilitate government-to-government relations. The agreements include:

- the Centennial Accord of 1989, intended to improve communication, promote cooperation, and resolve issues through negotiation rather than litigation;
- the New Millennium Agreement of 1999, reaffirming Centennial Accord principles and encouraging the Legislature to establish a structure addressing issues of mutual concern; and
- the Out-of-State Accord of 2003, involving tribes in Oregon and Idaho with treaty rights in Washington State, affirming principles in the 1989 and 1999 agreements, and pledging periodic review of relations and discussion of issues.

Full Faith and Credit for Tribal Court Judgments. 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. Congress has exercised its powers as to federally recognized Indian tribes with respect to a limited number of specific federal statutes, including the Indian Child Welfare Act (ICWA) and the Violence Against Women Act (VAWA). Under these federal laws, states must grant full faith and credit to ICWA and VAWA tribal court orders.

The Washington State courts promulgated Superior Court Civil Rule (CR) 82.5 addressing procedures for actions when an Indian tribal court has exclusive jurisdiction or concurrent jurisdiction with state courts. CR 82.5 requires superior courts in Washington State must recognize, implement, and enforce the orders, judgments, and decrees of Indian tribal courts subject to three limitations. The state court will not recognize the tribal court's decisions if the tribal court:

- lacked jurisdiction over the party or subject matter of the action;
- denied due process as provided by the Indian Civil Rights Act of 1968; or
- does not reciprocally recognize state superior court orders, judgments, and decrees.

Proof of Official Records and Foreign Laws Under Court Rules and Rules of Evidence. 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 the United States federal courts, other states, and territories are admissible into evidence if certified by the officer in charge of the records and the officer attaches the court's seal; there is an exception to the hearsay rule for these records. State courts are required to admit certified copies of United States federal, state, and territorial government records and documents. The government's official seal should be attached if the agency providing the certified records has a seal.

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. In addition, to

be admitted, the laws must be published under the government's authority and commonly used by its courts as evidence of its laws. The Uniform Judicial Notice of Foreign Laws Act of 1941 allows the state courts to take judicial notice of the Constitution, common law, civil law, and statutes of every state, territory, and other jurisdiction of the United States.

Summary of Bill: The court records and proceedings of any federally recognized Indian tribe are admissible in evidence in all Washington State court cases if the tribal court clerk or records officer has certified them and they bear the tribal court's seal. Washington State courts may admit certified copies of the official records of any federally recognized Indian tribe in evidence. If the tribal officer has an official seal, the certified copies must also bear the seal. If a federally recognized Indian tribe publishes printed copies of its laws, and commonly uses them as evidence in its courts, the Washington courts must admit them into evidence. In all other situations, these printed laws are presumptive evidence of the tribe's laws.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which the bill is passed.

Staff Summary of Public Testimony: PRO: Lawyers working with the tribal courts and law enforcement attend the same schools as lawyers who work outside the tribal setting. I approached Westlaw in the 90s to ask for them to publish the tribe's decisions. Now there is a Westlaw publication of tribal court rulings. Full faith and credit should be extended to tribal laws; there is no reason not to do so. There was some resistance until federal laws required full faith and credit, but after that, resistance is less of a problem. The proposed change is a straightforward, common sense, and overdue update to the law. Tribal records should be admissible in the same way as the records of other jurisdictions. Currently, treatment of official tribal records is not uniform and somewhat unpredictable. Sometimes admitting official tribal records and court decisions requires a formal motion, sometimes the lawyers must ask the court to take judicial notice, sometimes tribal officials must come to court to authenticate records. There needs to be a predictable and uniform process. There is no legal impediment to passing this bill and it is proper to treat the tribal laws and records the same as other records. The impetus for this law comes from the Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs working cooperatively with the tribes. This could be considered a housekeeping change. In part, it will help address the problem of offenders fleeing from justice to reservations. Right now, bad actors are avoiding compliance with requirements by escaping to reservations to avoid justice. This bill will help to address the problem.

Persons Testifying: PRO: Senator John McCoy, Prime Sponsor; Kristen Mitchell, Attorney General's Office; Mike Lasnier, Chief of Police, Suquamish Tribe & Indian Country Committee Chairman, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.