

FINAL BILL REPORT

SB 5083

C 39 L 19
Synopsis as Enacted

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.

Senate Committee on Law & Justice
House Committee on Civil Rights & Judiciary

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 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.

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.

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 to 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 jurisdictions of the United States.

Summary: 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.

Votes on Final Passage:

Senate	45	0
House	93	0

Effective: July 28, 2019