

HOUSE BILL REPORT

HB 1773

As Reported by House Committee On:
State Government & Tribal Affairs

Title: An act relating to providing for retrocession of criminal jurisdiction over Indians and Indian territory, reservations, country, and lands to the United States.

Brief Description: Providing for retrocession of criminal jurisdiction over Indians and Indian territory, reservations, country, and lands to the United States.

Sponsors: Representative McCoy.

Brief History:

Committee Activity:

State Government & Tribal Affairs: 2/10/11, 2/16/11 [DP].

Brief Summary of Bill

- Creates a procedure by which an Indian tribe may cause the state to retrocede its criminal jurisdiction over the Indians and Indian country of that tribe.
- Requires the unconditional retrocession by the state to the federal government of all or any measure of criminal jurisdiction over Indians or Indian country upon the request of the governing body of an Indian tribe.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 6 members: Representatives Hunt, Chair; Darneille, Dunshee, Hurst, McCoy and Miloscia.

Minority Report: Do not pass. Signed by 4 members: Representatives Taylor, Ranking Minority Member; Overstreet, Assistant Ranking Minority Member; Alexander and Condotta.

Staff: Thamas Osborn (786-7129).

Background:

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.

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 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, i.e., the "mandatory states," were Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin. The so-called "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. The State of Washington did exactly that in 1963 when the Legislature enacted RCW 37.12.010, authorizing the state to assume civil and criminal jurisdiction over Indians and Indian country within its territory. However, under this statute 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.

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 Congress amended PL 280 to include a so-called "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 back to the United States.

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

Following the amendment of PL 280, the state Legislature enacted a legal procedure by which a tribe can request the state to retrocede criminal jurisdiction over Indians and Indian country. However, the state has never enacted such legislation authorizing the retrocession of civil jurisdiction.

In order to request that the state retrocede its criminal jurisdiction 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, it should be noted that 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 has jurisdiction over so-called major crimes committed by Indians on Indian lands. Major crimes under the federal law include homicide, assault, rape, kidnapping, arson, burglary, and robbery, among other 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 money for law enforcement. Some state and local agencies have experienced financial difficulty in continuing to participate in law enforcement on tribal lands. Those tribes that have sought and obtained retrocession of state jurisdiction have become eligible for federal funding for law enforcement.

Summary of Bill:

A second, new procedure is created by which an Indian tribe may cause the state to retrocede its criminal jurisdiction over the Indians and Indian country of that tribe. Under this new retrocession procedure, the governing body of a tribe must submit a resolution to the Governor expressing its desire that the state retrocede criminal jurisdiction acquired under PL 280 and state statute. Then, within 60 days of receiving the tribal resolution, the Governor

must issue a proclamation retroceding to the United States its criminal jurisdiction over the Indians and Indian country of the tribe requesting retrocession. The retrocession proclamation becomes effective only after it is accepted by a duly designated federal officer and then approved by the the Secretary of the Interior.

In addition to the federal acquisition of general criminal jurisdiction, retrocession accomplished through this procedure gives the federal government criminal jurisdiction over the following areas explicitly identified in state statute: compulsory school attendance; public assistance; domestic relations; mental illness; juvenile delinquency; adoption proceedings; dependent children; and the operation of motor vehicles on public streets, alleys, roads, and highways.

Appropriation: None.

Fiscal Note: Available.

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) The Indians in this state have always exercised a significant degree of civil and criminal jurisdiction over their tribes and lands, except for a few statutory exceptions. There is currently no reason for tribes to be subject to the civil or criminal jurisdiction of the state. State jurisdiction is an outmoded concept that does not work. The retrocession process returns jurisdiction back to the tribes in conjunction with the federal government. The jurisdictional issues in this bill apply only within the boundaries of Indian lands. Many tribes have developed the infrastructure and institutions necessary for effective law enforcement and the handling of civil legal matters. For example, the Yakama tribe has invested tens of millions of dollars into its law enforcement apparatus, correctional facilities, and court facilities. Accordingly, the Yakamas have the programs and institutions they need to withdraw from state jurisdiction. Furthermore, state jurisdiction over school attendance issues has backfired by making it very difficult for tribes to take the lead in enforcing truancy laws. This has lead to an epidemic of children not attending school. This bill would resolve the problem. Most tribes have voluntarily entered into interlocal agreements with local law enforcement agencies to ensure effective law enforcement in tribal areas. Tribal courts have greatly improved over the years. New federal law would enhance the federal response to major crimes and would relieve the burden on local law enforcement. Criminal jurisdiction extends only to Indians. This bill benefits the tribes as well as the interests of the general public. President Obama recently issued an executive order giving tribes more latitude in dealing with their own issues regarding the courts as well as law enforcement.

(With concerns) The primary concern of state and local law enforcement is that federal authorities have been lax with respect to the investigation and prosecution of major crimes on Indian lands. This has forced local governments to handle such cases. If this bill were to

pass, local law enforcement authorities would have no recourse if the federal authorities refused to act.

(Opposed) None.

Persons Testifying: (In support) Representative McCoy, prime sponsor; Harry Smiskin, Dawn Vyvyan, and George Colby, Yakama Nation; and Naomi Stacy, Confederated Tribes of the Umatilla Reservation.

(With concerns) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.